

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Non-price Effects of Mergers - Note by Argentina****6 June 2018**

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More documents related to this discussion can be found at www.oecd.org/daf/competition/non-price-effects-of-mergers.htm.

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Argentina

1. Introduction

1. In Argentina, mergers and acquisitions are notified whenever they meet certain standards set forth in article 8 of Act No. 25,156 (also known as “the Competition Defence Act”). The National Commission for the Defence of Competition (Comisión Nacional de Defensa de la Competencia - CNDC) evaluates those mergers to check if they can “*restrict or distort competition, so as to be detrimental to the general economic interest*” (article 7, Act No. 25,156). As established in that Act, a merger may cause harm if it generates or strengthens sufficient market power to restrict supply or to increase the price of the good being marketed.

2. However, a merger may also result in non-price effects, that is, effects on other dimensions of competition different from price that should be taken into account in the analysis, such as modifying product quality and variety, altering conditions for research and development.

3. This contribution reviews several Argentine merger cases that included non-price effects as part of the analysis. For that purpose, cases have been classified according to different effects that we have found in our experience. In particular, effects refer to product quality and variety, research and development and entry.

2. Product quality and variety

4. The effects of a merger on product quality and variety are probably the most traditional non-price effects that appear in competition agencies’ evaluations throughout the world. In Argentina, these effects have been considered mainly in a few mergers that involve telecommunications and digital markets, both as elements that can affect competition in those markets and also as possible sources of efficiency for the firms that take part in a merger.

5. A leading case dealing with non-price effects in terms of quality and variety of products was “TELEFÓNICA MEDIA/ATLANTIDA COMUNICACIONES” (2000).¹ As a result of said merger, TELEFÓNICA MEDIA S.A., the largest telecommunications company in Argentina at the time, acquired all the shares of ATLANTIDA COMUNICACIONES S.A.

6. One of the main issues in this case had to do with free-to-air television market in Mar del Plata, a city of the province of Buenos Aires. Free-to-air television services, often limited to specific regions, are provided free of charge in Argentina, and the income that firms accrue for participating in that market comes exclusively from advertising. However, since free-to-air television programs are heterogeneous in terms of their quality, the variety of those programs becomes a central variable of analysis, and both quality and variety of programs could be affected by a merger.

¹ TELEFÓNICA MEDIA S.A./ATLANTIDA COMUNICACIONES S.A. (2000). Resolution 47/2000, Secretary of Competition Defence and Consumer Protection.

7. In this case, the investigation focused mainly on the city of Mar del Plata, because it was the only urban area in which the merger under analysis would lead to a monopoly. Indeed, at the time, TELEFÓNICA MEDIA S.A. was the owner of a free-to-air channel in that city and it was acquiring its single competitor. The transaction was, therefore, dangerous to competition because, among other issues, the merger could restrict the number and quality of programs available to viewers in said city. Following these considerations, as well as others related to the market of television advertising, the CNDC approved the merger but imposed the condition that the merged firm should divest one of the two television channels in Mar del Plata.

8. An additional merger that affected digital markets in Argentina and was analysed using concepts related to non-price effects is “HEWLETT-PACKARD/ELECTRONIC DATA SYSTEMS” (2009).² This transaction was a “market extension merger” (i.e., a conglomerate merger that affected complementary product markets). In this case, the CNDC emphasized the economies of scope that the merger generated, which helped to improve the quality of the products and services offered by HEWLETT-PACKARD. ELECTRONIC DATA SYSTEMS provided information technology and data analysis services to both government agencies and large retail and health companies and, therefore, the merger had the potential to improve HEWLETT-PACKARD’s integral service.

3. Research and development

9. A significant non-price effect of a merger is the impact that it could have on research and development (R&D). This is particularly true in the case of firms operating in dynamic markets, such as pharmaceutical and digital industries. Though risky, R&D investments can sometimes allow companies to behave as monopolists (through the process of patent registration). R&D activities can therefore lead to lower levels of competition in some markets, though it could be counterbalanced by the benefits that society obtains from both innovation and provision of new or improved products.

10. Some antitrust economic literature has recently suggested that horizontal mergers between firms that are intensively engaged in R&D tend to decrease incentives to innovate and to perform R&D activities.³ These effects tend to appear in mergers that increase market concentration substantially and have no appreciable efficiency gains related to R&D. In the Argentine antitrust experience, however, there seem to be no examples of that kind of mergers, while there are cases in which efficiency gains (i.e., synergies) seemed to predominate.

11. That is the case of a merger between two international pharmaceutical companies, SHIRE PLC and BAXALTA INCORPORATED.⁴ Both companies focused, among other areas, on research and development of drugs to treat rare diseases. In this case, the CNDC

² HEWLETT-PACKARD COMPANY/ELECTRONIC DATA SYSTEMS CORPORATION (2009). Resolution 388/2009, Secretary of Internal Commerce.

³ See, for example, Motta, Massimo and Emanuele Tarantino: “The Effect of a Merger on Investment”; *CEPR Discussion Paper No. 11550*, 2016; and Federico, Giulio, Gregor Langus and Tommaso Valletti: “Horizontal Mergers and Product Innovation”; *SSRN Papers*, 2018.

⁴ SHIRE PLC/BAXALTA INCORPORATED (2017). Resolution 169/2017, Secretary of Commerce.

recommended to approve the merger without conditions, since it did not generate any significant increase in market concentration, while recognizing that the transaction was basically motivated by the opportunity to profit from synergies (that is, from the advantages of increased efficiency in production and medical investigation, as a result of the combined R&D portfolio).

4. Entry of new competitors and growth of competitors' market share

12. Since non-price effects can take the form of dynamic efficiencies or inefficiencies, it becomes difficult to accurately predict the impact of this kind of effects in the short run. Therefore, those effects are usually not taken into account in antitrust merger analysis. However, in Argentina, there have been some merger cases where it was possible to observe and examine some structural changes derived from the merger itself, such as, for example, the entry of new competitors.

13. In the “ABI/MODELO” case,⁵ for example, the CNDC analysed the effects of the international acquisition of a Mexican beer company (GRUPO MODELO) by the main supplier of beer in Argentina (ANHEUSER-BUSCH INVEB N.V., also known as ABI). As a result of this merger, the latter firm obtained the rights to import GRUPO MODELO's beers (of which the most important one is the beer sold under the brand Corona). Before this transaction, those beers were not imported by ABI but by its main competitor, COMPAÑÍA INDUSTRIAL CERVECERA S.A. (CICSA).

14. Due to the new horizontal relationship between ABI and GRUPO MODELO, CICSA decided to rearrange its beer brand portfolio, and began to import and to manufacture another Mexican beer brand, known as Sol. This implied that the segment of the market in which Corona operated became more competitive than before, due to the increased rivalry between Corona and Sol. This resulted in an increase in consumption, together with a reduction in price for both Mexican beer brands, and this element was taken into account by the CNDC when it finally approved the merger, several years after its occurrence.

5. Concluding remarks

15. CNDC's jurisprudence shows a relatively small number of cases that have dealt with non-price effects in merger analysis. Only one of them (TELEFÓNICA MEDIA/ATLANTIDA COMUNICACIONES, 2000) ended up with an asset divestiture motivated by those non-price effects, which in that case had to do with a reduction in quality and variety of the TV programming. Moreover, there seem to be no cases in which the CNDC detected possible harmful effects of mergers on R&D activities.

16. However, several cases recognized dynamic efficiencies as key factors to determine the impact of a merger on the general economic interest, and those efficiencies were generally derived from non-price effects. These effects have to do with product quality and variety, research and development and with the entry of new competitors and the strengthening of existing ones.

⁵ ANHEUSER-BUSCH INVEB N.V./GRUPO MODELO S.A.B DE C.V. (2017). Resolution 257/2017, Secretary of Commerce.

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- TELEFÓNICA MEDIA S.A./ATLANTIDA COMUNICACIONES S.A. (2000). Resolution 47/00, Secretary of Competition and Consumer Protection.
- HEWLETT-PACKARD COMPANY/ELECTRONIC DATA SYSTEMS CORPORATION (2009). Resolution 388/09. Secretary of Internal Commerce.
- ANHEUSER-BUSCH INVEB N.V./GRUPO MODELO S.A.B DE C.V. (2017). Resolution 257/17. Secretary of Commerce.
- SHIRE PLC/BAXALTA INCORPORATED (2017). Resolution 169/17. Secretary of Commerce.