Organisation for Economic Co-operation and Development

DAF/COMP/WD(2026)49

Unclassified

English - Or. English

20 May 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Information Sharing in Competition Policy – Note by Argentina

24 June 2026

This document reproduces a written contribution from Argentina submitted for Item 5 of the 149th OECD Competition Committee meeting on 22-24 June 2026.

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JT03587361

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1. The exchange of information between competitors is one of the most complex and ambivalent challenges in contemporary competition law. Whilst such practices may generate efficiencies and reduce market asymmetries, they carry the inherent risk of becoming instruments of anti-competitive coordination. Particularly in highly concentrated markets, the circulation of data has the potential to dispel strategic uncertainty, facilitating the alignment of behaviour and the crystallisation of tacit or explicit collusion.

2. The purpose of this paper is to examine the legal and technical treatment that the Argentine competition law system applies to this phenomenon, analysing the balance between information transparency and the preservation of commercial independence.

3. To this end, the text is structured into the following sections: firstly, it describes the current regulatory framework under Act No. 27.442 on the Defence of Competition (LDC, for its acronym in Spanish), which classifies the exchange of information as an autonomous conduct. Secondly, it analyses the authority's decision-making practice through the study of a case involving a wheat flour cartel, which was sanctioned in 2022. The third section details certain specific recommendations relating to the exchange of information within business chambers and professional associations, as set out in the *Guidelines on Competition Policy for Business Chambers and Associations and Professional Bodies and Associations*, drawn up and published by the former National Commission for the Defence of Competition in 2018. Fourthly, a pro-competitive recommendation issued by the competition authority in the context of a cement market investigation is described, which draws on the guidance recommendations for Chambers and Associations. The final section concludes with considerations on how Argentina's competition policy balances enforcement actions and competition promotion policies regarding the exchange of information between competitors

1. Regulatory Framework: Information Exchange under the LDC

4. The Act on the Defence of Competition (LDC, for its acronym in Spanish) No. 27.442, enacted in 2018 and currently in force, expressly addresses the exchange of information in Section 3, Subparagraph a), by classifying as a practice restricting competition any conduct consisting of fixing—directly or indirectly—the sale or purchase price of goods or services, as well as exchanging information with the same object or effect.

5. Like the other practices restricting competition detailed in Section 3, the exchange of information must fall within the scope of Section 1 of the LDC in order to be punishable, that is to say, it must constitute an act or conduct relating to the production and exchange of goods or services, the object or effect of which is to limit, restrict, distort or pervert competition or market access, in such a way as to be detrimental to the general economic interest.

6. In this regard, the exchange of information is defined in law as an autonomous act, not merely as an ancillary element or evidence of an underlying price-fixing agreement. This allows it to be classified as an independent infringement when its object or effect is the fixing of prices, without the need to prove the existence of a broader explicit agreement, although the infringement requires, in principle, the verification of an anti-competitive object or effect and harm to the general economic interest.

7. It should also be noted that the conduct subject to sanctions is the exchange of information for the purpose of price-fixing. This type of behaviour is usually associated with a price-fixing agreement between competitors, an anti-competitive practice classified by the LDC as a practice that absolutely restricts competition, as set out in Section 2 of the Act, which is presumed to be detrimental to the general economic interest.

8. For this reason, in decision-making practice, when the exchange of information operates as part of a broader collusive scheme, the authority has sanctioned it as an independent practice; however, as it is associated with concerted conduct that is absolutely restrictive under Section 2, this has facilitated its classification under Section 1, without the need for a very high standard of proof regarding its harm to the general economic interest.

9. As an example, the following section analyses the sanction imposed on a wheat flour cartel, in which the exchange of information between competitors within the framework of the trade associations bringing together companies in the sector was also sanctioned.

2. Sanction for Coordinated Conduct and the Exchange of Information in the Wheat Flour Sector

10. In 2022, the then CNDC imposed sanctions on three associations in the milling sector—the Argentine Federation of the Milling Industry (FAIM), the Chamber of Milling Industries (CIM) and the Association of Small and Medium-sized Milling Industries (APYMIMRA)—, and the company Molino Cañuelas S.A.C.I.F.I.A., for implementing a concerted practice of setting minimum prices and exchanging sensitive commercial information in the wheat milling and flour marketing market.

11. A crucial element of the case was the identification of an institutionalised coordination scheme known as the 'General Agreement for the Defence of Free Competition in the Milling Sector'. Far from constituting a mere informal exchange of information, the evidence showed that this agreement was designed, implemented and monitored by the entities under investigation, with formal mechanisms for auditing, monitoring and sanctioning non-compliance. The sectoral associations involved did not act merely as passive channels for the transmission of information: they convened sectoral meetings, encouraged operators to join the scheme and contributed to its maintenance over time.

12. This case clearly illustrates the distinction between the legitimate role and the anti-competitive role of a trade association, which we shall examine in the next section in the *Guidelines on Competition Law for Trade Associations, Chambers of Commerce, and Professional Bodies* and Associations. Whilst the function of sectoral representation, training or the dissemination of best practice is lawful, the use of the chamber as a platform to structure coordination agreements — with the institutionalisation of monitoring and internal disciplinary mechanisms characteristic of a cartel — makes the association a direct participant in practices that are absolutely restrictive of competition. The liability of the entities involved was, in this case, of a direct nature.

13. The enforcement authority concluded that the entities under investigation should be sanctioned for engaging in a concerted horizontal practice of setting minimum prices and exchanging sensitive information in the wheat milling market and in the flour marketing throughout the national territory, thereby affecting the general economic interest, in breach of the provisions of Section 1, 2 Subaragraph a) and 3 Subparagraph a) of the LDC.

14. From an evidential perspective, the case demonstrates the use of direct documentary evidence as the main basis for the investigative file. The evidence gathered included emails through which price reference points were circulated amongst operators, internal presentations detailing how the agreement operated, and minutes of meetings of the trade associations that documented its design and monitoring. The existence of an audit system and internal disciplinary mechanisms was considered particularly indicative of the intention to maintain effective and lasting coordination: these elements enabled the authority to infer that the exchange formed part of a deliberate coordination framework.

15. The question of whether participation in trade association meetings gives rise to a presumption of information exchange was addressed by the authority. Attendance at meetings where the agreement was designed and monitored was considered a relevant element of the case, insofar as the minutes recorded the active participation of the representatives and the commitments undertaken. The authority did not require proof that each participant had actually used the information received to alter their competitive behaviour; it was sufficient to demonstrate that sensitive information had circulated through the associations' institutionalised channels for the purpose of maintaining the agreement.

16. With regard to penalties, fines were subject to the caps set out in Act No. 25.156, the competition law which predated Act No. 27.442 enacted in 2018 and was in force at the start of the investigation. However, a fine of AR$ 150,000,000 was imposed on Molino Cañuelas, AR$ 150,000,000 on FAIM, AR$ 93,974,602 on CIM and AR$ 51,131,995 on APYMINRA, totalling a combined fine of approximately 445 million pesos. Furthermore, behavioural obligations were imposed to prevent the recurrence of such practices, applicable to both companies and associations, alongside cease-and-desist orders and measures to disseminate compliance programmes.

17. Moreover, the LDC applies to business associations and chambers to the same extent as it does to natural and legal persons engaged in economic activities. The liability of these entities may be direct—where they themselves adopt or recommend anti-competitive conduct—or indirect—where their conduct facilitates the commission of such practices by their members—and their conduct is subject to sanctions such as the imposition of cease-and-desist orders and fines.

3. Guidelines on Competition Law for Business Associations, Chambers of Commerce, and Professional Bodies and Associations

18. In December 2018, the then CNDC published the *Competition Guidelines for Business Associations, Chambers of Commerce, and Professional Bodies and Associations* (hereinafter 'the Guidelines'), a key competition advocacy tool designed to guide the conduct of organisations that bring together competitors. The Guidelines establish an analytical and operational framework for distinguishing lawful activities from anti-competitive practices within the sphere of associations, with particular attention to the exchange of information.

19. The Guidelines begin by acknowledging that the exchange of information is, in a sense, one of the core objectives of many trade associations and chambers of commerce, insofar as they act as forums for sectoral coordination and institutional representation. However, it warns that this function may give rise to anti-competitive risks when the information exchanged is commercially sensitive.

20. In order to identify when an exchange of information has the potential to be collusive, the Guidelines adopt an economic approach that weighs up three key variables.

The first one is the nature of the information: information relating to prices, production volumes, future commercial strategies or business plans has a high potential for collusion, whereas information on general market conditions presents a lower risk. The second variable is recency: information on future plans is the most dangerous; historical information —defined as that dating back at least twelve months at the time of its publication or exchange— poses a considerably lower risk. The third variable is the level of aggregation: information broken down by individual company can be used directly to implement collusive agreements, whilst aggregated information presents a lower risk of collusion, although—as we shall see later—this distinction is not absolute.

21. The Guidelines also emphasise that the anti-competitive potential of information exchange is amplified by the market context: it is greater the more concentrated the market is, the more frequent the exchange, and the less the information is disseminated beyond the association's members. It also stipulates that participation in statistical information programmes must be voluntary and open to non-member firms, that the staff responsible for collecting the information must be independent of the member firms, and that associations must not serve as a forum for members to discuss the information disseminated and its impact on commercial strategies.

22. The Guidelines also set out these criteria as best-practice principles, which serve as recommendations and guidelines for lawful conduct. These include: avoiding the exchange of commercially sensitive information (prices, turnover, costs, production volumes, customers, forecasts); collecting only historical data with a minimum time lag of twelve months; requesting information infrequently and expressly stating that it is provided on a voluntary basis; disseminating information in aggregate form, for general reference purposes; and ensuring its accessibility to unaffiliated third parties.

4. Market Research in the Cement Sector

23. The market investigation into the Portland cement sector, which was concluded in 2022, provides a complementary perspective on the risks associated with the exchange of information through trade associations. Unlike the flour case, where anti-competitive conduct was substantiated by direct documentary evidence, this market investigation used quantitative and inferential tools to assess the potential risk posed by the statistical system of the Association of Portland Cement Manufacturers (AFCP).

24. The Argentine cement market is highly concentrated, with only four cement producers in the country — Loma Negra C.I.A.S.A., Holcim S.A., Cementos Avellaneda S.A. and Petroquímica Comodoro Rivadavia S.A. In this context, the AFCP brings together all the companies in the market and has played a central role in the sector's regulatory history. In 2005, through SCT Resolution No. 124 and CNDC Ruling No. 513, the Argentine authority sanctioned a cartel in the cement industry that had lasted for approximately twenty years, during which the AFCP acted as a mechanism for coordination and information sharing among the firms. The association's statistical system allowed companies to ascertain their competitors' cement production and dispatch on a weekly basis, by plant, destination, packaging and mode of transport, with a level of detail that far exceeded what was necessary for general statistical purposes and constituted a key tool for monitoring market shares and detecting deviations from the collusive agreement.

25. As a result, the authority ordered the AFCP to take steps to ensure that individual information on each company was accessible only to association staff responsible for managing the statistical system, who would be required to maintain strict confidentiality. This restriction —set out in Sections 1, 2 and 3 of SCT Resolution No. 124/05— altered

the association's statistical disclosure framework, which subsequently published aggregated data by province, without identifying individual companies.

26. The 2022 market investigation revisited the issue of the AFCP's statistical system to assess whether the reformed scheme continued to pose risks to competition. The conclusion was affirmative, with the finding that the competitive sensitivity of the information does not depend solely on whether it is disaggregated by company, but on whether the market structure allows individual data to be inferred from seemingly aggregated data.

27. The cement market has characteristics that make aggregate data at provincial level functionally equivalent to individual data: in seven provinces, only two suppliers operate, and in most of the remaining provinces, only three of the four existing competitors have an active presence. In this context, each company can reconstruct its rivals' sales volumes and market shares with a fair degree of accuracy from the provincial data published monthly by the AFCP, even though that data is not explicitly disaggregated by company. The fact that the information is very up to date — being published on a monthly basis — exacerbated this risk, facilitating almost real-time monitoring of competitors' commercial strategies.

28. The CNDC supported this conclusion with econometric analyses: provincial price regression models demonstrated that cement prices vary systematically according to the level of provincial market concentration and the distance to the nearest competitor's plant. This pointed to the existence of a pricing scheme that incorporates information on rivals' behaviour — information whose transmission would have been facilitated, at least in part, by the AFCP's statistical data.

29. Whilst it is true that the AFCP formally complied with the restrictions imposed in 2005—publishing aggregated data rather than company-specific data—the CNDC nevertheless determined, almost twenty years later, that the system could still facilitate coordination. This highlights that information disclosure remedies require a degree of monitoring and that formal compliance with such remedies does not guarantee their substantive effectiveness if market conditions make it possible to infer sensitive information from the published data.

30. Indeed, the 2022 market investigation led to new pro-competitive recommendations addressed to the AFCP: i) to refrain from requesting, receiving and distributing shipment and production data broken down by province where the data is less than twelve months old; and ii) to publish only aggregated data at national level where the data is less than that threshold. The AFCP implemented these recommendations and adapted its statistical platform accordingly

5. Final Considerations

31. An analysis of information exchange between competitors under Argentine competition law reveals the inherent complexity of a practice which, by its very nature, lies at the intersection of efficiency and the risk of collusion. The exchange of information is a tool which, under certain conditions, can help to improve the functioning of markets. However, when it involves commercially sensitive, up-to-date and sufficiently granular information — particularly in concentrated markets — it can become an ideal mechanism for reducing strategic uncertainty and facilitating anti-competitive coordination

32. The regulatory framework of the LDC adequately reflects this ambivalence by classifying the exchange of information as an independent offence, punishable where its object or effect is to restrict competition or facilitate collusive practices, in particular price-

fixing. The authority's decision-making practice has reinforced this approach, demonstrating — as in the case of the milling sector — that the exchange of information can constitute a structural component of cartel schemes, especially when it is organised through trade associations with formal monitoring and disciplinary mechanisms

33. At the same time, the development of competition advocacy tools, such as the *Guidelines for Trade Associations and Chambers of Commerce*, demonstrates a complementary strategy aimed at preventing infringements by promoting best practice. This approach recognises the legitimate role of these bodies, but sets out clear parameters to prevent them from becoming vehicles for anti-competitive coordination.

34. Market research in the cement sector, for its part, adds an additional dimension to the analysis by highlighting that even information-sharing schemes that appear to be compatible with regulatory recommendations can give rise to risks when the structural characteristics of the market allow sensitive data to be inferred from aggregated information. This finding underscores the need to adopt a dynamic and contextual approach, in which risk assessment is not limited to formal criteria, but incorporates the actual functioning of the markets.

35. In short, Argentina's competition policy regarding the exchange of information strikes a balance between enforcement and promotion: on the one hand, it imposes strict penalties on practices that contribute to collusion; on the other, it provides guidance to economic operators through clear guidelines that enable them to carry out legitimate activities without incurring anti-competitive risks.

36. The challenge ahead lies in deepening this integrated approach, strengthening the authority's technical capabilities to detect and prove sophisticated coordination schemes, whilst continuing to promote a culture of compliance within the private sector. Against a backdrop of increasingly complex markets and greater availability of data, defining the lawful boundaries of information sharing will remain a key aspect of ensuring competitive, transparent and efficient markets.