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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

## **Competition and Consumer Policy in Digital Markets – Note by Paraguay**

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## Paraguay

### 1. Introduction

1. This paper aims to present a case in which competition law and consumer protection law interacted in Paraguay, related to the payments sector with digital implications.

### 2. Law and authority

2. Paraguay's 1992 Constitution sets out the guarantee for competition in the market<sup>1</sup>.

3. Paraguay's competition law was enacted in 2013 under No. 4956 and the name of *Ley de Defensa de la Competencia* (LDC for its acronym in Spanish)<sup>2</sup>. In addition to setting the first legal framework in the country on matters of mergers and anticompetitive practices (abuse of dominance and anticompetitive agreements or cartels), it established a national competition authority for the first time: CONACOM. There was no prior institution or office that filled the role of a competition authority in the country.

4. CONACOM operates through two main bodies. The Board of Directors, comprised by three members, leads the institution on administrative matters, performs the role of competition advocacy and makes the decision on all enforcement cases<sup>3</sup>.

5. The enforcement cases, which could pertain to merger control, abuse of dominance or anticompetitive agreements, are all brought to the attention of the Board of Directors by the Directorate for Investigation, which has functional autonomy<sup>4</sup>.

6. On merger control, the Directorate for Investigation studies merger operations and issues technical opinions. Merger review is focused on whether the operation would significantly restrict competition due to the creation or reinforcement of dominance in the market.

7. When it comes to anticompetitive practices, the Directorate is in charge of investigating and filing charges against the alleged infringers of the LDC before the Board of Directors.

8. Law No. 1334/98 on Consumer and User Protection establishes standards for the protection and defense of consumers and users in their dignity, health, safety, and economic interests, and the Secretariat for Consumer Protection (SEDECO) is the enforcement authority of the aforementioned regulation through established bylaws, possessing powers of control and ex officio inspection for the purpose of verifying compliance with the regulations.

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<sup>1</sup> Constitution of the Republic of Paraguay, article 107.

<sup>2</sup> The LDC is available in Spanish at <https://www.bacn.gov.py/leyes-paraguayas/4775/ley-n-4956-defensa-de-la-competencia> (Accessed 21 Oct 2025).

<sup>3</sup> LDC, art. 17.

<sup>4</sup> LDC, art. 30.

### 3. Enforcement action

9. In 2022, CONACOM of Paraguay initiated a disciplinary proceeding that culminated in a sanction against a major financial operator, Bancard S.A., for abuse of dominant position.

10. The case started with a complaint filed by a bank, Banco Continental S.A.E.C.A., which had a card processing company in its economic group.

11. Bancard S.A. is the leading card processing company and it has most major banks as shareholders, including Banco Continental S.A.E.C.A.

12. The disciplinary proceeding concluded<sup>5</sup> in 2023 that Bancard S.A. incurred in the infringement of the prohibition of abuse of dominant position, specifically through:

- The limitation of production or distribution to the unjustified detriment of competitors or consumers.
- The unjustified application of unequal conditions for equivalent services in commercial or service relationships, placing some competitors at a disadvantage.

13. The resolution of the Board concluded that:

- An exclusivity agreement applied by Bancard S.A. generated barriers to entry in the card processing and acquisition markets by stating out that financial institutions that signed it could only perform those services through Bancard S.A.
- As Bancard S.A. had 19 shareholders who are financial institutions operating in the regulated market, it had most of the demand reserved.
- The exclusivity applied by Bancard S.A. was subject to penalties due to termination which disincentivized financial institutions from switching providers.
- Bancard S.A. applied unequal commercial or contractual conditions to Banco Continental S.A.E.C.A. and other market participants when they did not sign the exclusivity agreement, paying them lower commissions and benefitting Bancard S.A. for that difference, even though they were for the same services. This created an unfair disadvantage for financial institutions that did not sign the exclusivity agreement.
- The application of said exclusivity created an anticompetitive closure of the processing and acquisition markets.
- It was proven that the conduct was set out with the purpose of obtaining unfair advantages and to cause damage to other processing companies and consumers.

14. The penalty imposed amounted to approximately USD 1,100,000 and its collection is pending of the result of the judicial revision in the courts of the country.

15. Bancard S.A. was also ordered to implement corrective measures, including:

- Bancard S.A. must refrain from applying discriminatory conditions for equivalent benefits to Banco Continental S.A.E.C.A. and any other shareholder-issuer of credit and/or debit cards.

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<sup>5</sup> CONACOM: Resolution D/AL N° 59/2023, Investigative proceedings No. 3/2022 “Bancard S.A. re: alleged infraction to Law No. 4956/2013”.

- Bancard S.A. must refrain from any practice that has the purpose or effect of vertical restrictions, particularly through the application of exclusivity clauses, in the credit and debit card issuing, acquiring, and processing markets.
- From the notification of this resolution, Bancard S.A., in cases where issuers (banks, financial institutions, or others) carry out promotions in stores at its expense, must refrain from imposing, directly or indirectly, formally or informally, exclusive use of its payment terminals or services (POS, platforms, links, among others).
- From the notification of this resolution, Bancard S.A. must continue to provide all the services it currently provides to Banco Continental S.A.E.C.A., under the same conditions as those provided to other shareholder-issuers, for equivalent services. However, this point may be reviewed by CONACOM at the request of a party, following the issuance of a regulatory provision by the Central Bank of Paraguay establishing full interconnection or interoperability between operators and companies that process and manage credit and debit cards.

#### 4. Competition law and consumer law

16. While the Board of CONACOM conducted the administrative summary proceedings, where it was determined that Bancard sought to obtain undue advantages, harm another processor, and affect consumers by altering the competitive process, in parallel, a precautionary measure<sup>6</sup> was granted, which resolved to halt Bancard's decision to terminate its service provision contract with Banco Continental. In this regard, it was verified that the eventual interruption of the service—especially the "switch," essential for multiple transactions—could generate a negative impact not only on the bank's clients but also on merchants and other actors in the financial system.

17. Regarding the object of the precautionary measure, the claimant Continental expressed that the adoption of the emergency measure responds to imminent harm, which will affect not only Continental users but also 400,000 consumers, among which are 6,000 merchants and more than 30 cooperatives that are users of the payment services offered by said bank.

18. Thus, it is possible to determine that the eventual suspension of said services by Bancard could affect not only Continental clients who perform operations for services provided by the bank, but also other actors in the financial system (merchants, clients of other entities), as the interconnection with Continental through the platform provided by Bancard could be compromised.

19. In view of the foregoing, it was concluded that the termination of the contract signed between Bancard and Continental could undermine free competition in the market, given that merchant clients, merchants, and cardholders would unfailingly and forcibly be required to resort to other banking entities to continue operating normally within their respective spheres of activity.

20. The Central Bank of Paraguay warned of risks to the financial system, although its regulatory capacity over Bancard was indirect. In this context, the precautionary measure sought to preserve competition and avoid immediate harm by maintaining the existing contractual conditions.

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<sup>6</sup> Resolution D/AL No. 26/2023, dated 21 June 2023, File No. 95/2023: "Banco Continental S.A.E.C.A. re: precautionary measure".

21. Furthermore, it was concluded that the suspension of services would force users to migrate to other entities, affecting free competition. In parallel, the Secretariat for Consumer Protection<sup>7</sup> opened an ex officio investigation and sanctioned Bancard for service intermittency, stating that said firm holds a dominant market position (at this point, it should be clarified that the consumer protection authority did not specify any particular product or geographic market when asserting that Bancard holds a dominant position), prior to the final resolution by CONACOM, which confirmed said dominant position and its abuse in the card acquiring and processing markets.

22. During the administrative proceedings of the Secretariat for Consumer Protection, it was verified that several consumers and service users reported experiencing difficulties when attempting to use their credit and debit cards to purchase products at various commercial establishments, causing delays and serious harm, and forcing them to abandon their purchases due to the inability to make payments through said means on Sunday, February 26, 2023. Bancard alleged that the interruption was caused by problems with its internet provider.

23. Each process was carried out independently, although CONACOM's precautionary measure sought to guarantee the rights of consumers who used the services derived from the relationship between Bancard and Continental through the switch, and the resolution of the Secretariat for Consumer Protection pointed to Bancard's dominant position and its recidivism to establish the maximum sanction for said firm. Each institution acted within its own sphere, without the existence of coordination or cooperation between them.

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<sup>7</sup> Resolution No. 971/2023, dated 8 August 2023; available: <https://sedeco.gov.py/infractores-2023/>