

English - Or. English

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

Working Party No. 3 on Co-operation and Enforcement

Methodologies for Conducting Market Studies - Note by Argentina

20 June 2017

This document reproduces a written contribution from Argentina submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 20 June 2017.

More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

Please contact Ms. Despina Pachnou if you have any questions regarding this document [phone number: +33 1 45 24 95 25 -- E-mail address: despina.pachnou@oecd.org].

JT03413821

Argentina¹

1. Introduction

1. Conducting market studies is one of Argentina's competition authority (Comisión Nacional de Defensa de la Competencia, hereinafter "CNDC") powers. Indeed, article 20 of Argentina's competition act (Law No. 25,156) states that the CNDC has the power to "[c]arry out market studies and market investigations..." (paragraph a) and to "[i]ssue general of sectorial recommendations regarding the form of competition in the markets" (paragraph d).

2. Despite this provision, for many years the CNDC has made little use of these powers. However, competition policy in Argentina has acquired new impetus since the new government took office in December 2015. As part of this process, the CNDC has conducted a series of market studies in various sectors. The main objective of these studies was to have a diagnosis that would allow the authority to evaluate the general wisdom that competition conditions in Argentina are poor. This contribution addresses the methodologies implemented by the CNDC to conduct market studies and reviews some of the results that have been found, as well as the actions taken by the CNDC.

3. Section 2 discusses the purpose of market studies and market investigations. Section 3 reviews methodologies followed by the CNDC for conducting market studies. Section 4 discusses the case of electronic payment systems in Argentina. Lastly, Section 5 presents final remarks.

2. The purpose of market studies and market investigations

4. As stated above, Argentina's competition law gives the CNDC the power to carry out market studies and market investigation. In Argentina, as in some other jurisdictions, there is a difference between market studies and market investigations. While, a market study is used to provide a diagnosis of the competitive environment of a particular market or sector with the use of public information or information available to the CNDC, in a market investigation, the competition authority will generally implement formal information requests and interviews with the parties involved in the market, including consumers, suppliers and regulatory agencies. Hence, a market study is a first step that involves fewer resources than a market investigation and gives elements to decide whether a deeper analysis is needed. A market study, thus, may derive in a market investigation. Ultimately, market investigations may trigger the issuing of pro-competitive recommendations from the CNDC or the opening of an ex-officio antitrust procedure if enough elements have been gathered.

5. During 2016 the CNDC launched a series of market studies covering 12 different sectors in Argentina: aluminum, steel, petrochemicals, credit cards and electronic payment systems, dairy products, beef, edible oil, laundry detergent, pharmaceuticals, long-distance passenger transportation, mobile communications and supermarkets, as shown in Table 1. Some of these studies resulted in new investigations, like the case of electronic payment systems, dairy products, aluminum, and steel, while others triggered a

¹ This contribution was prepared by Cecilia de Mendoza and Lucía Quesada.

discussion of how to improve competition conditions in the sector and how to create a more competition-friendly environment for doing business in Argentina. For example, studies on consumer products like edible oil and laundry detergent concluded that there was need to explore commercial practices of big retail stores and their interaction with suppliers in the Argentine market. This motivated the launch of a supermarkets study by the CNDC, with the goal of analyzing the vertical relationships in the supermarkets supply chain in order to identify potential anticompetitive practices and possible remedies. The supermarkets study proposed the creation of a supply code of good practices as a tool for monitoring the conduct of big suppliers and foster competition.

Table 1. Market studies launched by the CNDC in 2016

Input Markets	Consumer Products	Services	Other
Aluminum	Beef	Long-distance passenger transportation	Pharmaceuticals
Steel	Dairy products	Mobile communications	
Petrochemicals	Edible oil	Electronic payment systems	
	Laundry detergent	Supermarkets	

Source: CNDC.

6. Selection of markets depends mainly on three factors: a) economic and social impact; b) government priorities; and c) potential for anticompetitive practices. In conducting market studies, the CNDC acts within the powers delegated by the Secretary of Commerce through Resolution No. 190-E/2016, issued on 28 July 2016.² This Resolution empowers the CNDC to undertake market studies and research; maintaining the Secretary of Commerce the power to request the CNDC the investigation of those sectors it considers to be relevant. In general, the CNDC has taken the approach of selecting sectors that directly impact consumers and families, for instance, markets that account for an important share of consumer spending. On the production side, the Agency has prioritized input markets in the first stages of the value chain of key sectors of the economy, such as construction, transportation, and oil and gas. Examples of input markets include aluminum, steel, and petrochemicals.

3. Methodologies for conducting market studies

3.1. Market studies within the CNDC's organizational structure

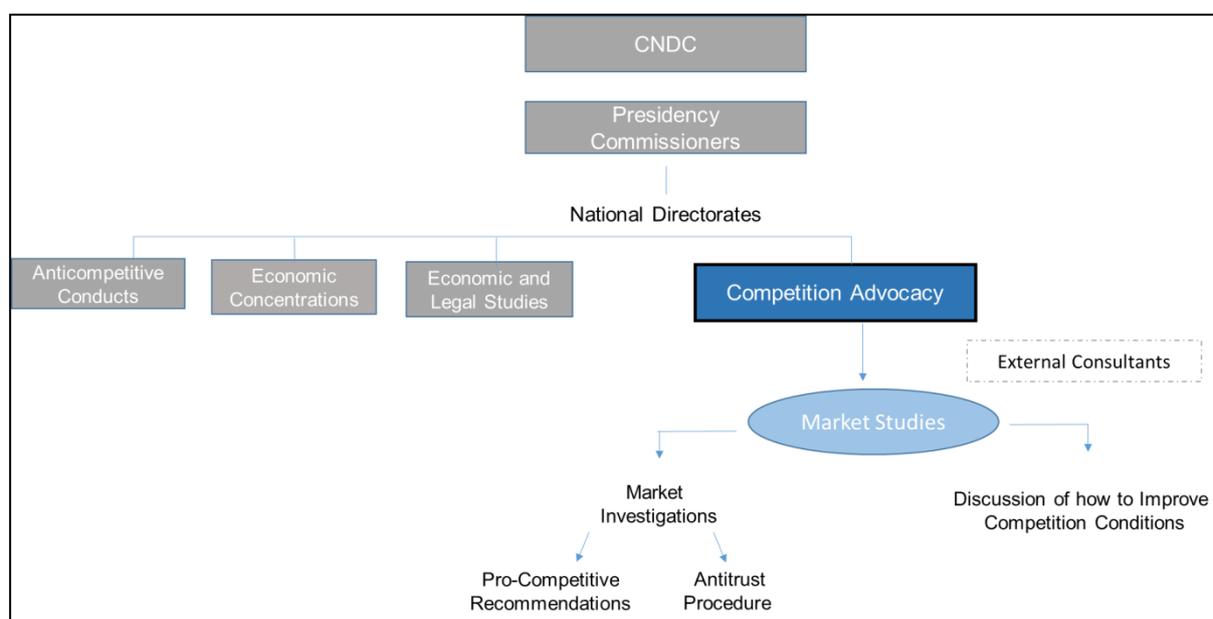
7. Under the new organizational structure, market studies are coordinated by the Competition Advocacy Unit, one of the four National Directorates that compose the CNDC, as displayed in Figure 1.³ The general practice so far has been to hire external

² Decrees No. 1/2016 and No. 718/2016 have designated the Secretary of Commerce as the enforcement authority of the competition act. Through Resolution No. 190-E/2016, the Secretary of Commerce has delegated some of its powers to the CNDC.

³ In July 2016, the organizational structure of the first operational level of the CNDC was approved by Administrative Decision No. 756/2016, incorporating to its structure four National Directorates, in

consultants to carry out the market studies commended by the CNDC. External consultants are chosen so as to have expertise in competition analysis and in the sector under study. Bringing external experts to assist with market studies has been, in part, the result of internal human resource limitations, taking into account the large number of studies and investigations that the new authorities have decided to undertake.

Figure 1. The CNDC structure and market studies



Source: CNDC.

8. There is a constant interaction between the Advocacy Unit and its consultants throughout the life of a project. Once a market has been selected, the Unit develops specific terms of reference that define the goals, content, and specific deliveries of the study. Consultants send preliminary reports to be reviewed by the Advocacy team. Once a final draft is produced, a presentation of the results before the CNDC takes place. As mentioned in Section 2, when publicly available information is not enough to rule out competition problems, a market study may derive in a market investigation, which involves a more detailed examination of anti-competitive practices and adverse competition issues. Market investigations are entirely carried out by the CNDC's Advocacy Unit. The results of the market study delivered by the external consultant are used as an important input for such investigations. The case of credit cards and electronic payment systems, which is explained in detail in Section 4, is a clear example of this process. Market investigations have also been opened in dairy products, aluminum and long steel products.⁴ If, on the contrary, the market study is sufficient to rule out competition issues, the Advocacy Unit produces a report summary available to the general public containing basic market features and a brief discussion of the problems found in the sector, most of the times unrelated to competition. As of the date of this

charge of Anticompetitive Conducts, Economic Concentrations, Economic and Legal Studies and Competition Advocacy.

⁴ The dairy products investigation is expected to be closed by mid-2017, while the results of other two are scheduled for the end of the year.

publication, the CNDC produced public summaries in the edible oil, beef, and laundry detergent markets.⁵

3.2. Structure of market studies and information gathering

9. Even though markets differ in nature, final reports follow a general structure under the logic of a competition analysis, which includes: (i) a general characterization of the industry, including economic agents, value chain and regulatory framework; (ii) relevant market definition, in line with antitrust guidelines; (iii) market structure and concentration; (iv) barriers to entry; (v) analysis of dominant position and market power; (vi) analysis of commercial practices and its effects on competition; and (vii) conclusions on potential anti-competitive practices and pro-competitive recommendations.

10. For the most part, market studies are based on public information or information available to the CNDC. Under a market investigation framework, the competition authority also has powers to issue information requests during the information gathering process.

11. Broadly speaking, the most common data sources include statistical information from government agencies, third-party providers, business stakeholders, and CNDC cases, that is, past or ongoing antitrust cases and market investigations. Below are examples of the different data sources used in market studies.

3.2.1. Supermarkets and mass consumer products

12. Market studies on edible oil and laundry detergent calculate market shares and concentration indicators using data from third data providers, specifically marketing research companies that collect pricing and volume data on items sold in retail stores throughout the country. These types of data are usually expensive and unavailable to the general public. At the time of the study, the data was available to the consultants who undertook the studies or had been introduced as evidence within a CNDC file.

13. It is worth mentioning that the Ministry of Production has recently acquired data on sales of consumer products on a regular basis and made it available to different technical units under its orbit, including the CNDC. The study on supermarkets, for instance, used this database to study pricing behavior of big retail stores on a selection of consumer products and analyze their competition patterns. Future CNDC market studies on mass consumer products will have access to useful data that was not available until recently.

3.2.2. Input markets

14. Business stakeholders are an important source of industry information on input markets. Data collected by business associations like CAIAMA (Argentinian Chamber for Aluminum and Metals Industries) and APLA (Latin American Petrochemical and Chemical Association) was widely used in the aluminum and petrochemicals market studies. However, it is important to note that business chambers are a useful source of information for the general description of an economic sector (like total domestic demand or foreign trade by product, end-use market, etc.), but not for obtaining disaggregated information by firm, which is crucial for an antitrust analysis.

⁵ Summary reports are available at <https://www.argentina.gob.ar/defensadelacompetencia/estudiosdemercado>.

15. Past or ongoing antitrust cases and market investigations are one of the most relevant sources of information for market studies for various reasons.⁶ On the one hand, this material generally includes detailed market information. Also, it may include individual firm information that can only be obtained under a formal framework or investigation (like financial statements, list of clients, etc.). Most importantly, these cases provide important background on commercial practices and potential anti-competitive conducts that may have motivated a market study in the first place. The studies on aluminum, steel, and petrochemicals review past and ongoing cases in detail. As a general rule, market studies that include information from ongoing cases are strictly confidential and restricted to internal use, although a public version of the study may be prepared if needed.

3.2.3. Services

16. Market studies on long-distance passenger transportation, mobile communications, and electronic payment systems review evidence from multiple indicators of effective competition in Argentina. These studies have market regulators as an important source of information.

17. For the case of mobiles, the main data used in the study came from the “Ente Nacional de Comunicaciones” (ENACOM), the regulator of the communications market. ENACOM regularly collects information from the providers of mobile services. In the passenger transportation study, the Comisión Nacional de Regulación del Transporte (CNRT) was the main source on key variables like number of passengers, providers, types of services, and tariffs, to name a few.

18. Finally, the study on electronic payment systems was a response to Argentina’s Central Bank’s concerns about the competition conditions in the market. The CNDC worked with the collaboration and the support of the Central Bank during all stages of the investigation, including access to market financial data relevant to the study.

19. The aforementioned studies reveal the importance of the interaction between the competition authority and market regulators, not only in the process of data collection, but during the different stages of the study. Section 4 presents the study on electronic payment systems, which provides an interesting example of how interagency collaboration can maximize impact.

4. Case study: Electronic payment systems in Argentina

20. On 20 May, 2016, the CNDC opened a market investigation with the objective of analyzing competition conditions in the market for credit and debit cards and electronic means of payment.⁷ The investigation was undertaken in response to the concern expressed by Argentina’s Central Bank (Banco Central de la República Argentina, BCRA) and some business associations as to a possible dominant position in the market. As their starting point, the CNDC and the BCRA jointly commissioned an external

⁶ In fact, CNDC terms of references require that consultants review cases under the competition authority that are related to the sector.

⁷ Resolution CNDC No. 17/2016, dated 29 of August 2016, on the matter S01: 0604600/2016 “TARJETAS DE CRÉDITO, DÉBITO Y MEDIOS DE PAGO ELECTRÓNICOS S/INVESTIGACIÓN DE MERCADO (C. 1596)”, available at https://www.argentina.gob.ar/sites/default/files/cndc_resol_invmerc_tarjetas_2.pdf.

consultant to produce a market study that would provide an initial diagnostic assessment of competition conditions in the market.

4.1. Main problems encountered in the market

21. The market study showed that there was a high degree of concentration in the acquiring and processing markets, with a single firm per trademark offering these services. In the case of Visa, the sole acquirer and processor is PRISMA MEDIOS DE PAGO S.A. (Prisma), which moreover participates in all the relevant markets through associated companies.⁸ Prisma is owned by 14 national banks (including 9 of the 10 largest banks) which together issued 80% of credit cards and 72% of debit cards in 2015.⁹ In the case of MasterCard, the only acquirer is FIRST DATA CONO SUR S.R.L. (First Data). First Data also acts as processor for MasterCard transactions, although it is not the only processor. The essential difference between Prisma and First Data has to do with the market share of the brands they represent. In Argentina, Visa is the leading name in the credit card market. In 2015, Visa accounted for 58% of the amount of credit card transactions, followed by MasterCard, with 11%. For this reason, the CNDC concluded that Prisma held a dominant position in the acquiring and processing markets.

22. To further evaluate the scope of the effect of Prisma's dominant position, the CNDC opened a market investigation. In this context, it held a series of hearings with various market players, including Prisma, First Data and some of their clients, as well as other providers of electronic means of payment. As a result of the analysis, the CNDC concluded that entry barriers in the processing and acquiring markets were high and that the configuration of the market had restrictive effects on competition in the acquiring and consumer financing markets.

4.2. Recommendations of the CNDC

23. As a result of this investigation, the CNDC issued a series of recommendations for improving the conditions of competition in the sector. The CNDC recommended:

- That the BCRA, as market regulator, should (i) create the conditions needed to facilitate entry of new acquirers into the market and to promote multi-brand acquiring, (ii) establish regulatory conditions to guarantee access to the processing services in non-discriminatory conditions for new entrants; (iii) encourage the development of other electronic means of payment; and (iv) foster competition in consumer finance by enabling merchants and consumers to choose between different providers;
- That the Secretary of Commerce (SC), as enforcement authority of the competition act, should open an antitrust investigation against Prisma and its shareholders (the banks) for alleged anticompetitive practices; and
- That the BCRA and the SC, as enforcement authorities of the credit card act, should (i) promote the repeal of the restriction on the discrimination of the

⁸ In this matter, the CNDC defined four relevant markets: (i) issuance of electronic means of payment; (ii) acquiring; (iii) processing; and (iv) provision of terminals or interfaces for electronic payments.

⁹ Prisma is also the owner of: Lapos, which offers terminals for processing face-to-face payments by card; SPS Decidir, which offers gateway services for processing online payments; and Todo Pago, which offers an interface for online payments.

merchant discount rate established in article 15 of the credit card law (LTC);¹⁰ (ii) promote regulation of the interchange rate in accordance with international best practices; and (iii) establish conditions to guarantee the transparency of financing costs in transactions financed with credit cards.

4.3. Impact of the market investigation: Implementation of the CNDC recommendations

24. The recommendations issued by the CNDC triggered a number of changes in the credit and debit card market.

25. First, the SC requested the opening of an ex-officio investigation against Prisma and its shareholders, which the CNDC is currently conducting. Since that time, the CNDC has received nine additional complaints against Prisma.

26. Second, competition in the market for electronic means of payment increased under the influence of two basic factors: (i) the emergence of new electronic payment mechanisms, such as mobile apps for electronic payments facilitated by regulatory changes implemented by the BCRA; and (ii) the beginning of a process of structural change in the vertical and horizontal relationships of the main market players.

27. Third, the National Chamber of Deputies gave preliminary approval to a new draft bill regulating the payment card market.¹¹ During the transition to the new law, the BCRA has regulated the interchange rate and an agreement has been reached to reduce the merchant discount rate.

28. Lastly, the CNDC recommendations had a noticeable impact in the mass-communication media. As a result, the general public was made aware of competition policy and the activities of the CNDC, as a first step in creating a culture of competition in Argentina. This is particularly important in this country, where competition policy has been abandoned for the last 10 years.

5. Final remarks

29. Argentina's competition authority has started a new chapter in the history of competition policy enforcement. To make this process a reality, the CNDC assumed a firm commitment with competition advocacy as a tool for promoting competition culture in Argentina. A special unit within the CNDC was created to this end, with one of its main roles being the coordination of market studies and market investigations.

30. During 2016, the CNDC launched a series of market studies covering 12 different sectors in Argentina and at least two important lessons have emerged since then.

¹⁰ Article 15 of the Law No. 25.065 (the credit card act) sets a ceiling merchant discount rate that acquirers can charge. That ceiling is set at 3% of the value of the transaction for credit cards and 1.5% for debit cards. It also includes a non-discrimination provision, which prohibits the charging of “*differentiated discount rates by way of commissions or other charges, among merchants belonging to the same line of business or in relation to equal or similar products or services.*”

¹¹ This draft bill, which was initiated by the executive branch and was drafted jointly by the CNDC, the SC and the BCRA, incorporates many of the CNDC recommendations, such as promoting multi-brand acquisition, prohibiting exclusivity of acquiring by brand, and regulating the interchange rate.

31. The first lesson is related to the importance of independence in conducting market studies and market investigations for the competition authority. For the first time since its creation in 1980, the CNDC has a special task force to provide specific studies and advocate on competition law related issues. The Draft Competition Bill currently in Congress creates a new institutional arrangement, with an independent competition agency, the National Competition Authority (“NCA”), so that competition law enforcement is driven by competition considerations and not by other issues.

32. The Draft Bill also creates the Competition Advocacy Under-Secretariat. Among other tasks, this Under-Secretariat will be the formal channel through which the Executive Power would be able to propose specific market investigations and political initiatives related with competition law. This shall prevent the NCA from any other informal pressures from the Executive Power, contributing at the same time to foster the independence of the competition authority. Despite this, under the Draft Bill the NCA keeps its power to carry out its own market studies and market investigations.

33. Second, consultation of stakeholders, particularly market regulators, is a crucial element for maximizing impact of market studies and investigations. The outcome of the market study and investigation into credit and debit cards and electronic means of payment has had a concrete impact in the sector, and the project is considered successful. Throughout the whole process, the CNDC met with the Central Bank authorities, not only to take advantage of the knowledge of the market regulator but also to coordinate and evaluate feasible options for establishing modifications to the regulatory framework to improve competition in this market. The Central Bank has started to implement the recommendations issued by the CNDC. The continuous exchange of opinions and information with the Central Bank was critical to guarantee that the Central Bank shared the CNDC’s recommendations and that they were, indeed, implementable. Following this leading case, the CNDC is establishing links with all market regulators in sectors which are the object of market studies.

34. In short, in 2016 the CNDC has started a new path in terms of market studies and market investigations. As part of this process, a methodology to develop market studies has been outlined and results on four markets have already been published, while the others are expected to be by the end of this year.