THE CARTELS AND LENIENCY REVIEW

EIGHTH EDITION

Editors
John Buretta and John Terzaken

THE LAWREVIEWS

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Editors
John Buretta and John Terzaken

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PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcers. Some notable cartels have managed to remain intact for as long as a decade before being uncovered. Some may never see the light of day. However, for those that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from 26 jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. Stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

This book serves as a useful resource to the local practitioner, as well as those faced with navigating the global regulatory thicket in international cartel investigations. The proliferation of cartel enforcement and associated leniency programmes continues to increase the number and degree of different procedural, substantive and enforcement practice demands on clients ensnared in investigations of international infringements. Counsel for these clients must manage the various burdens imposed by differing authorities, including by prioritising and sequencing responses to competing requests across jurisdictions, and evaluating which requests can be deferred or negotiated to avoid complicating matters in other jurisdictions. But these logistical challenges are only the beginning, as counsel must also be prepared to wrestle with competing standards among authorities on issues such as employee liability, confidentiality, privilege, privacy, document preservation and many others, as well as consider the collateral implications of the potential involvement of non-antitrust regulators.

The authors are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations and many have served in senior positions in government. They know both what the law says and how it is actually enforced, and we think you will find their guidance regarding the practices of local competition

authorities invaluable. This book seeks to provide both breadth of coverage (with a chapter on each of the 26 jurisdictions) and analytical depth for those practitioners who may find themselves on the front line of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the eighth edition of *The Cartels and Leniency Review*. We hope you will find it a useful resource. The views expressed are those of the authors, not of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

John Buretta
Cravath, Swaine & Moore LLP
New York

John Terzaken
Simpson Thacher & Bartlett LLP
Washington, DC

January 2020

Chapter 1

ARGENTINA

Camila Corvalán[1]

I ENFORCEMENT POLICIES AND GUIDANCE

Antitrust legislation began in Argentina with the enforcement of Act No. 11,120, inspired by the provisions of the antitrust law in the United States. This Act was replaced by Act No. 12,906, which was in turn replaced by Act No. 22,262 in 1980.

The enforcement of Act No. 22,262 resulted in the establishment of the first antitrust agency of Argentina, the National Commission for the Defence of Competition (CNDC), which focuses on targeting and sanctioning anticompetitive conduct.[2] Finally, on 25 August 1999, this Act was abrogated and replaced by Act No. 25,156 (the Competition Act), which was complemented by Decree No. 89/2011. The law and the named decree were complemented by regulations regarding the procedures established in them.[3] Some of the sections of Act No. 25,156 were modified in September 2014 under Act No. 26,993.

On 24 May 2018, a new Antitrust Law entered into effect, namely Law No. 27,442 (the new Antitrust Law), which is the current law. On the same day, the new Antitrust Law was complemented by Decree No. 480/2018. This new Law has implemented substantial changes in the antitrust system, in both the analysis of anticompetitive conduct and merger control review. With this new Law, Argentina has moved forward as regards antitrust legislation.

Further to the aforementioned specific regulation, the Argentine Constitution promotes effective competition and efficiency among markets in Argentina and intends to protect consumers' welfare.

The new Antitrust Law provides for the establishment of the National Competition Authority (ANAC), which, once created, will enforce the Law and its complementary regulations. The Anticompetitive Conducts Trial Secretariat, the Economic Concentrations Secretariat and the Antitrust Tribunal will operate within this new independent agency. However, until the ANAC is created, the enforcement of the new Antitrust Law will be the responsibility of the Secretariat of Domestic Trade, with the aid of the CNDC, currently led by Esteban Greco.

The CNDC is still the agency that investigates both anticompetitive conduct and merger and acquisition (M&A) procedures as a formal requirement of the Secretariat, which has full power to investigate and decide on the existence of anticompetitive conduct either at the request of a party or *ex officio*,[4] until the ANAC is created.[5]

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1 Camila Corvalán is a senior associate at Estudio Beccar Varela.

2 First Antitrust Agency constituted in Argentina by Act No. 22,262, Section 6.

3 Resolution Nos. 40/2001, 26/2006 and 164/2001.

4 Section 20, Act No. 25,156.

5 Section 80, Act No. 27,442.

The investigation of anticompetitive conduct or the analysis of M&A by the CNDC results in a non-binding recommendation to the Secretariat, which will make the final decision on the case, subject to analysis (this applies to both M&A reviews and investigation procedures). The decisions of the Secretariat may be appealed by parties to the judicial courts.

With the enforcement of the new Antitrust Law, certain practices are considered *per se* illegal; this is new in the Argentine antitrust system, taking into consideration that before the enforcement of the new Antitrust Law, all anticompetitive conduct was analysed by the rule of reason criterion. The practices that are considered *per se* illegal must be deemed null and will not generate any kinds of effects. Practices considered *per se* illegal are listed under Section 2 of the new Antitrust Law as follows:

a to fix, directly or indirectly, the price of the purchase or sale of products or services;

b to establish the obligations (1) of manufacturing, distributing, buying or commercialising a limited amount of goods or (2) to provide a limited number, volume or frequency of services;

c to divide, distribute or horizontally impose areas, portions or segments of the markets, clients or supply sources; or

d to establish or coordinate submissions or abstentions in public tenders.

Section 1 of the new Antitrust Law establishes that acts or behaviours relating to the production or trading of goods and services that limit, restrict or distort competition or constitute abuse of a dominant position in a market in a way that may result in (potential or actual) damage to the general economic interest[6] are prohibited and shall be sanctioned pursuant to the rules of the law.

Further, Section 3 of the new Antitrust Law provides a detailed list of anticompetitive conduct that could be considered unlawful by the competition authorities. The types of anticompetitive conduct that are still analysed by the rule of reason criterion are:

a to fix, agree or manipulate, directly or indirectly, the price for the sale or purchase of goods and services for which they are tendered or asked in the market, as well as to exchange information for the same purpose or to the same effect;

b to establish obligations to produce, process, distribute, purchase or commercialise only a restricted or limited quantity of goods, or to render a restricted or limited number, volume or frequency of services;

c to agree upon the limitation or control of the technical development or investments bound to the production or commercialisation of goods and services;

d to prevent, render difficult or preclude third parties entering or staying in, or to exclude them from, a market;

e to regulate goods or service markets, by agreements to limit or control research and technological development, the production of goods or the rendering of services, or to render difficult the investments bound to the production or distribution of goods or services;

f to subordinate the sale of an asset to the acquisition of another or to the use of a service, or to subordinate the rendering of a service to the use of another or the acquisition of an asset;

6 The general economic interest is the interest protected by the Antitrust Law, understood by doctrinaires as 'the consumer's welfare'.

g to submit a purchase or sale to the condition of not using, acquiring, selling or supplying goods or services produced, processed, distributed or commercialised by a third party;

h to impose discriminatory conditions to the acquisition or alienation of goods or services, with no reason grounded on commercial uses and customs;

i to refuse, without justification, to meet specific orders for the purchase or sale of goods or services, made in the conditions standing in the market involved; or

j to suspend the supply of a dominant monopoly service in a market to a user of public utilities or public interest service.

One of the first cartel cases investigated in Argentina was *Silos Areneros de Buenos Aires v. Arenera Argentina and others*[7] in 1986. In the history of Argentine antitrust cartel investigations, there are two significant cases regarding the cement and liquid oxygen markets.[8] Both resulted in fines of approximately 310 million Argentine pesos. Both cases were appealed to judicial courts and to the Supreme Court of Justice, and the sanctions imposed by the competition authority were confirmed by both.

Cartels are considered by the Argentine antitrust authorities (as well as by antitrust authorities worldwide) as serious infringements of the Antitrust Law because, as previously stated, they constitute one of the practices that are punished the most severely by the antitrust authorities.

It is important to state that there is no definition of a cartel or its equivalent in the Antitrust Law. Nonetheless, the CNDC has stated in a precedent[9] that the following are the principal characteristics of collusive practices: price agreements, quantity agreements and market segmentation. Further, the CNDC has concluded – after several cartel investigations – that there are certain factors that facilitate collusion, namely buyer power, product homogeneity, symmetry, oligopolistic markets and multi-market contacts.

Further, it is important to highlight that the Antitrust Law has adopted the effects doctrine, which implies, in practice, that any act or conduct performed, or any agreement signed abroad, that has an effect in Argentine territory could be challenged by the antitrust authorities.

II COOPERATION WITH OTHER JURISDICTIONS

Pursuant to Section 28, subsection (j) of the new Antitrust Law, the Antitrust Tribunal has, by law, the following functions and faculties: to 'act with the competent agencies in the negotiation of international treaties, agreements or regulation or competition policies and free competition'.

The new Antitrust Law does not contain any statement of cooperation with other jurisdictions regarding international cooperation in cartel cases. This notwithstanding, informal international cooperation could be expected on cross-border cartel cases.

7 Resolution No. 442/86 from the former Secretary of Commerce.

8 *CNDC v. Loma Negra and others* (2005), Resolution No. 124/05 from the former Secretary of Technical Coordination; and *CNDC v. Air Liquide and others* (2005), Resolution No. 119/05 from the former Secretary of Technical Coordination.

9 'Oficina anticorrupción s/ solicitud de intervención CNDC (C. 1142) expediente No. S01:0320435/2006', 4 December 2015.

Argentina has signed several documents concerning cooperation with worldwide authorities in antitrust matters:

a a cooperation agreement with Peru, which was signed in 2017, promoting information exchange regarding anticompetitive behaviour and M&A analysis;

b a cooperation agreement with Brazil, which was ratified by Law No. 26,662, and entered into force in October 2010, regarding cooperation between its defence of competition authorities in the application of the relevant laws;

c a Protocol for the Defence of Competition and an Agreement for the Defence of Competition within the Mercosur, which were approved in December 1996 and December 2010, respectively; and

d a Collaboration Agreement between the National Commission of Markets and Competition of Spain and the CNDC in 2014.

Further, in November 2015, the Organisation for Economic Co-operation and Development (OECD) reincorporated Argentina as an observer in its Competition Committee, which is in charge of monitoring the worldwide fight against, inter alia, cartel cases and transparency. One of the objectives of the current president of the CNDC is to state international policies as regards antitrust matters so as to promote transparency and efficiency in the Argentine market.

In the past few years, staff at the CNDC have received exhaustive training from experts from other agencies. Among other things, the CNDC chaired the United Nations Conference on Trade and Development's 15th session of the Intergovernmental Group of Experts on Competition Law and Policy and rejoined the International Competition Network.

On 28 November 2018, the CNDC, and the competent authorities in other countries in Central and South America,[10] signed a declaration in Paris highlighting the benefits of clemency programmes.

III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

The new Antitrust Law establishes (in Section 1) that acts or behaviours relating to the production or trade of goods and services that limit, restrict or distort competition or constitute an abuse of a dominant position in a market in a way that may result in a (potential or actual) damage to the general economic interest[11] are prohibited and shall be sanctioned pursuant to the rules of the law.

Further, Sections 2 and 3 of the Act provide a list of anticompetitive conducts that are considered *per se* illegal and a list of behaviours that could be considered unlawful by the Argentine antitrust authorities.

Additionally, it is important to highlight that the new Antitrust Law has adopted the effects doctrine, which implies that any act performed, or agreement signed abroad that has an effect, in Argentine territory can be challenged by the Argentine antitrust authorities. With regard to collusive practices, there does not need to be a formal and express agreement in place for the new Antitrust Law to be applicable; only an informal understanding between the parties involved in a cartel case is necessary.

10 The declaration was signed by Argentina, Peru, Chile, Brazil and Mexico.

11 See footnote 6.

There are no exceptions expressly included in the new Antitrust Law regarding cartel cases. However, pursuant to Section 1 of the Act, the law does not forbid conduct that involves parties that do not have sufficient market power to damage (potentially or actually) the general economic interest.

IV LENIENCY PROGRAMMES

The new Antitrust Law has introduced a leniency programme into Argentina's antitrust system. From the outset, the authorities have supported the application and enforcement of a leniency programme and emphasise that it will help to encourage efficiency and transparency among markets and competitors. Added to that is the fact that clemency programmes have a preventive role.

The aim of introducing a leniency programme is to facilitate the investigation of cartels. The programme that is included in the new Antitrust Law grants (1) full immunity to the first applicant as long as the applicant provides the authorities with significant evidence, (2) a reduction of between 20 per cent and 50 per cent of the fine imposed on other applicants, depending on the type of information and evidence provided for the analysis of the case, and (3) a supplementary benefit, known as leniency plus, consisting of a reduction by one-third of the fine or sanction that would otherwise have been imposed as a result of the petitioner's participation in the first conduct, if the petitioner reveals a second, different, cartel in the investigation.

Further, to obtain full immunity, the petitioner must comply with the following conditions:

a be the first of those involved in the conduct to apply and supply sufficient evidence;
b cease the anticompetitive behaviour, unless the authority requests that it be continued;
c fully cooperate with the CNDC;
d keep the evidence; and
e keep the petition of leniency confidential.

At the time of writing, there are no public records acknowledging any application or filing for leniency.

V PENALTIES

Penalties for anticompetitive conduct are detailed in Section 55 of the new Antitrust Law.

Infringements of the Law regarding a cartel case may result in harsh consequences for both the infringing company (or companies) and any employees that took part in the conduct.

Under current Argentine legislation, penalties for infringing the Antitrust Law are determined as follows: fines will increased to the higher of (1) 30 per cent of the turnover of the business associated with the infringement in the previous fiscal year, multiplied by the number of years of the infringement (the latter with a cap of 30 per cent of the total Argentine consolidated turnover of the infringing parties in the previous fiscal year), or (2) twice the amount of the economic benefit caused by the infringement. In the event that both methods can be used, the method that achieves the higher amount for the fine will be used.

Further, and if the foregoing criteria cannot be applied, fines will be imposed by the ANAC with a cap of 200 million *unidades móviles*.[12] In the case of a repeat offence, offenders' fines may be doubled. As well as the fine, the ANAC may require the immediate ceasing of the acts or conduct and, if considered necessary by the ANAC, the removal of offenders' effects.

To determine the sanctions, the authorities take into account, among other things:

a the loss suffered by all the individuals and companies that have been affected by the unlawful activity;

b the benefit obtained by all the individuals and companies that were involved in the activity;

c the position of the companies in the market that are involved in the investigation;

d the accounts of the companies involved in the investigation;

e the duration of the conduct subject to investigation;

f an estimation of the inflated prices generated by the conduct subject to investigation;

g the characteristics of the products involved and their contribution to the welfare of society; and

h the value of the products that are part of the investigation as well as the assets held by the individuals involved.

The CNDC has stated in a precedent[13] that when sanctioning collusive conduct, penalties should be established for an amount that 'may compensate society for the damage caused; and be superior to the benefits obtained by the companies involved in the case'.

The logic behind the pecuniary fine is that the imposition and the amount of the fine act as disincentives for those considering engaging in anticompetitive conduct.

In the event of a recurrence of unlawful activity, the fine could be doubled. Without prejudice to other penalties that may be related to the activity, when verified acts that constitute a cartel case, or where it is noted that a monopolistic or oligopolistic position in violation of the provisions of the Antitrust Law has been acquired or consolidated, the competent authority, currently the Secretariat, may enforce conditions that have the aim of neutralising the distortional effects that the activity has had on competition, or appeal to a judge to have the offending companies dissolved, liquidated, decentralised or divided.

Further, the companies are liable for the acts of their employees (even those who are not in a managerial position) performed on their behalf, for their benefit or with their assistance.

As a consequence of the aforementioned, directors, managers, administrators, receivers or members of the surveillance commission who contribute, encourage or permit an infringement are jointly and severally liable regarding the imposition of the fine.

In addition to all the sanctions described above, the individuals or legal entities that are injured by the acts and behaviour forbidden by the Antitrust Law may sue for damages in a court of competent jurisdiction in accordance with the laws of Argentina.

Finally, any agreements or terms and conditions that infringe the Antitrust Law might be declared null and void.

12 *Unidad movil* is a coefficient updated annually by the Argentine inflation index. The value of one *unidad movil* is currently fixed at 26.40 Argentine pesos.

13 See footnote 9.

VI 'DAY ONE' RESPONSE

The antitrust authorities have very broad investigative powers to enforce the prohibition and investigation of cartel cases.

In practice, the antitrust authorities request, in the first instance, either the parties involved, or third parties that may have knowledge or information regarding the collusion, to provide documents or information they deem necessary to pursue the investigation. Usually they request general information regarding the market and the product involved in the investigation, shares of the players involved, competitors, barriers to entry in the market, capacity and distribution channels, among other things.

The antitrust authorities, in the second instance, usually call the parties they believe are involved in the cartel case, or third parties, to hearings. The hearings are usually held in the antitrust commission offices and officiated by the lawyers and economists who are in charge of the case.

The antitrust authorities may also request a judicial order to inspect the companies that they believe are involved in the cartel case with the aim of obtaining evidence.

As part of the inspection, the authorities may review emails, diaries and documentation that they understand could have information or constitute evidence regarding the cartel case.

In addition, the antitrust authorities usually review all communications made by associated competitors.

VII PRIVATE ENFORCEMENT

With regard to private enforcement, Section 62 of the new Antitrust Law provides that 'any person damaged by anticompetitive practices may bring an action for damages in accordance with civil law before a judge having jurisdiction over the matter'.

Two relevant cases that involved claims for damages, and had previously been sanctioned by the CNDC, were initiated as a consequence of anticompetitive conduct. One was a cartel case and the other focused on an abuse of dominant position.

The first, *Asociación Protección Consumidores del Mercado Común del Sur v. Loma Negra Cía Industrial Argentina SA y otros s/ ordinario*, was rejected by the judge for lack of legitimacy.

In the second case, *Auto Gas SA v. YPF SA y otros s/ ordinario*, the judge estimated that the damages amounted to 13,094,457 Argentine pesos, plus the costs of the process.

The new Antitrust Law includes new provisions regarding private enforcement; the changes focus on establishing a more efficient and faster procedure. The parties in a case should file the claim once the administrative decision imposing a sanction is final. The administrative decision will be binding on the civil judge and the case will be heard under expedited procedural rules. Further, parties who have benefited from leniency applications will be exempted from civil liability, with the following exceptions: (1) claims by defendants' purchasers or their direct and indirect suppliers, and (2) cases in which the defendants could not obtain complete redress of their claim from parties that have not benefited from leniency applications.

VIII CURRENT DEVELOPMENTS

In February 2016, Esteban Greco took office as the president of the CNDC and will continue to lead the competition authority until the ANAC is constituted. As a first step, Mr Greco carried out internal audits. He has also released the results of internal audits

regarding anticompetitive conduct (including but not limited to cartel cases). Mr Greco acknowledged that the antitrust authorities, in previous years, have failed to comply with the terms established in the Antitrust Law as regards conduct cases. He stated that conduct cases initiated with an aim other than the protection of market competition will be dismissed and closed.

The new Antitrust Law, which was promoted – among others – by the CNDC, entered into force in May 2018.

The new Law will create a new, independent national competition authority.[14] This will be comprised of (1) the Antitrust Tribunal, (2) the Anticompetitive Conducts Trial Secretariat (which will be in charge of the anticompetitive conduct analysis), and (3) the Economic Concentrations Secretariat (which will be in charge of the merger control process). As regards anticompetitive practices, the new Law:

a considers cartel practices illegal *per se*;
b includes a leniency programme (see Section IV); and
c could consider interlocking directorates to be illegal, under a rule of reason approach.

In March 2019, by means of Resolution No. 84/2019, the Secretariat of Domestic Trade initiated the selection process for the candidates to constitute the ANAC. In October 2019, Resolution No. 638/2019 was issued, approving the list of nominees to fill the vacant positions.

The Executive Branch shall now appoint the new members of the competition authority with the approval of Congress. The current president of the CNDC, Esteban Greco, achieved the highest score out of all the nominees. Additionally, on 10 December 2019, the new president of Argentina, Alberto Fernandez, took office.

With regard to developments in anticompetitive cases, in September 2016 the Antitrust Commission served notice to Prisma Medios de Pago SA (Prisma) and its 14 shareholder banks of an investigation by which three main anticompetitive conducts were set. This case was initiated as a consequence of an investigation held by the Antitrust Commission – in early 2016 – that was focused on credit cards and electronic payment methods. The conclusion of this investigation was that there was a lack of competition and transparency in the market.

Prisma is the operator of VISA in Argentina and is owned by – among others – 14 of Argentina's larger banks. As part of the investigation, Prisma submitted a settlement proposal to the Antitrust Commission in March 2017, which was approved by the Ministry of Production on 7 September 2017. The settlement proposal consisted of a structural and a behavioural remedy. The structural remedy was a commitment by Prisma's shareholders to sell their stakes in Prisma; this related to the conditions for providing its processing services. The behavioural remedy also related to the conditions for providing its processing services; namely that Prisma shall sign issuer-processing contracts with the banks with which it currently operates at 'market prices', providing guarantees of service provisions. The Antitrust Commission stated that this settlement resolves the vertical integration issue between Prisma and the 14 banks, and concerns regarding horizontal integration. The Antitrust Commission expects this settlement to result in an increase in competition within the market involved and the introduction of new electronic payment methods.

14 Autoridad Nacional de Competencia.

In December 2015, the antitrust authorities imposed a large fine on four important laboratories (B Braun Medical SA, Gobbi Novag SA, Fresenius Kabi SA and CSL Behring SA) and some of their representatives. The fines imposed amounted to 10 million Argentine pesos for each company and 200,000 Argentine pesos for the representatives.

This case was initiated by a claim made by a consumer that reported the existence of a cartel between the named companies in the provision of gelatin for hospitals. The antitrust authorities started the investigation by requesting information from the hospitals and subsequently asked for a judicial order to review the companies in situ and to take any information that they deemed necessary to proceed with the cartel investigation. As a second step, the CNDC called the representatives of the companies and of the hospitals to attend hearings.

In its analysis, the CNDC highlighted the following, as regards the definition and the characteristics of a cartel: 'an agreement within competitors with the object of increasing benefits and prices of the companies involved without obtaining any objective compensatory advantage. In practice this last is made by stating prices, limiting production, spreading markets, assigning clients or territories, colluding in bidding process or combining all these practices'.[15]

The most valuable evidence used by the antitrust authorities to sanction the companies was email exchanges between representatives of the companies. In this case, the authorities highlighted that another factor to consider when evaluating the possibilities of collusion in an oligopolistic market is transparency, as it is an efficient tool that allows companies to reveal the actions of their competitors.

Also of note is a case in which the former Secretary of Trade, through Resolution No. 271/2014, imposed fines on eight automobile companies in December 2014, on the grounds of what was thought to be a collusive agreement between the companies on the sale of automobiles in Tierra del Fuego, Buenos Aires. Fines were imposed on Volkswagen Argentina SA, Honda Motor de Argentina SA, Toyota Argentina SA, General Motors Argentina SRL, Renault Argentina SA, Ford Argentina SCA, Fiat Auto Argentina SA and Peugeot-Citroën Argentina SA.

The sanction was appealed and finally revoked by the Court of Appeals of Comodoro Rivadavia.[16] This was the first large sanction to be revoked by a court of appeals regarding cartel cases. One of the arguments that the court used to revoke the fines was that the evidence used by the antitrust authorities to sanction the companies was not sufficient to prove the existence of a cartel and specifically stated that 'there is no evidence that proves voluntary agreements that had as a consequence homogeneous conducts'.

Further, in July 2018, the Secretariat of Trade fined the Argentine Society of Authors and Composers of Music (SADAIC) 42 million Argentine pesos for excessive prices in the copyright paid by hotels and other establishments that offer accommodation. The case was initiated by the request of an investigation conducted by the CNDC. The antitrust authority stated that the measure implied an improvement in the competitiveness of the tourism sector and had as a consequence the reduction of tariffs for the rights of authors and composers.

In its analysis, the CNDC used a novel method, making an international comparison of the fees paid for the reproduction of musical works. As a result of the analysis, the CNDC discovered that prices in Argentina were much higher than in other countries. After

15 See footnote 9.

16 *Honda Motors Argentina S.A. y otros v. Estado Nacional- Secretaria de comercio s/ Recurso directo ley 25156.*

conducting the analysis, the CNDC recommended to the Secretariat of Trade the imposition of fines. The fine imposed represents 10 per cent of the turnover obtained by SADAIC between 2009 and 2014.

The antitrust authority has published guidelines to make its intervention more predictable.

In this regard, the newest guidelines are focused on prevention of anticompetitive practices for business chambers (introduced in December 2018) and exclusionary abuse of dominance (introduced in May 2019).

The guideline on prevention of anticompetitive practices for business chambers helps draw the limit between the right of association and the obligation not to incur in practices that may damage competition. The guideline on exclusionary abuse of dominance aims to explain the practices that constitute infringements of Act No. 27,442 and to contribute to predictability in decision-making, notwithstanding its application on a case-by-case basis and the use of complementary criteria that may be developed in the future.

Another relevant event that took place in 2019 was the publication of the OECD's report on the fight of collusion in public procurement in Argentina, aimed at the analysis of regulations and practices regarding public procurement. This publication offers recommendations on measures to promote competition in the sector.

The authority investigated 114 cases between January and November 2019: 79 regarding merger control (resolution is still pending in 10 of these), 23 regarding anticompetitive practices, 11 requests for opinion and one market competition investigation. The results were as follows:

a 59 mergers were approved;
b seven mergers were closed with no resolution;
c two mergers were resolved with the imposition of fines;
d one merger was approved with conditions;
e 22 cases of anticompetitive practice were closed;
f one case of anticompetitive practice was resolved with the imposition of fines;
g 11 requests for opinion were made; and
h one market competition investigation was closed.

Appendix 1

ABOUT THE AUTHORS

CAMILA CORVALÁN

Estudio Beccar Varela

Camila Corvalán is based in Estudio Beccar Varela's office in Buenos Aires, and practises in a broad range of antitrust matters, including investigations of anticompetitive conduct as well as merger and acquisition control. She is also involved in antitrust litigation cases before judicial courts.

Ms Corvalán received her degree from the Catholic University of Argentina and graduated with honours. She performed her postgraduate studies at the same university and specialised in competition law in Madrid, Spain. She also worked as an editor for the Argentine journal *El Derecho* alongside her office work. Ms Corvalán is active in professional women's forums.

ESTUDIO BECCAR VARELA

Edificio República
Tucumán 1, 3rd floor
C1049AAA Buenos Aires
Argentina
Tel: +54 11 4379 4719
Fax: +54 11 4379 6860
ccorvalan@beccarvarela.com
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