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Voluntary peer review of competition law and policy: Paraguay*, **

* The findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of the competition law and policy of Paraguay.

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I. Social, economic and political context

1. Paraguay is located in South America and covers an area of 406,752 km^2. It is a landlocked country bordered by Argentina, the Plurinational State of Bolivia and Brazil. The Paraguay River physically divides the country into two regions, the Chaco and the Eastern Region, each of which has distinct physical, climatic, ecological, administrative and demographic characteristics. Eastern Paraguay is the core of the nation since 97 per cent of the total population (7,232,889 inhabitants)[1] is concentrated in this region.

2. With 7,453,694 inhabitants, Paraguay occupies 105th position in the population rankings of the world's 196 nations and has a very low population density of 18 inhabitants per square kilometre. The capital is Asunción and the national currency is the guaraní.

3. Paraguay's economy and gross domestic product (GDP) are heavily reliant on the two largest sectors – the agricultural sector and the trade and finance sector. Trade and finance activities are concentrated in Asunción, Ciudad del Este, Encarnación and Pedro Juan Caballero. The agricultural sector accounts for around 26 per cent of GDP and almost all of the country's exports. A breakdown by subsector reveals that crops account for 17 per cent and livestock for 7 per cent. Soy makes up 93 per cent of crop production, with cotton and tobacco accounting for the remainder.

4. Livestock is another cornerstone of the Paraguayan economy. In 2010, Paraguay became the world's eighth largest exporter of beef, achieving a level of quality recognized worldwide. In the past 10 years, Paraguayan beef exports have increased from US$ 50 million to US$ 1.7 billion, the country's cattle stock has grown by 49 per cent, slaughter numbers have risen and there has been a three-fold increase in the number of slaughterhouses.[2]

5. Another sizeable sector of note is the electrical energy sector. The country consumes only 16 per cent of the electricity it produces and sells the remainder to other countries, primarily Argentina and Brazil, with which it shares the Yacyretá hydroelectric power plant (Argentina) and the Itaipú hydroelectric power plant (Brazil).[3]

6. As for the current economic situation, Paraguay has a GDP of almost US$ 41 billion and recorded growth of 4.1 per cent in 2021. In 2021, its public debt was US$ 14,642 million, equivalent to 37.72 per cent of GDP, with per capita debt at US$ 1,991.[4]

7. Politically, Paraguay is a presidential republic in which the Head of State and Government is the President of the Republic. The current Constitution, enacted on 20 June 1992, was inspired by the constitutions of Western nations and enshrines the fundamental principles of representative, pluralist republican democracy in a social welfare state governed by the rule of law.[5]

8. The South American regional integration initiatives of which Paraguay is a member, namely, the Southern Common Market (MERCOSUR), the Central-West South American Integration Zone (ZICOSUR) and the Initiative for the Integration of Regional Infrastructure in South America (IIRSA), each have differentiated strategies and specific areas of action.

[1] National Institute of Statistics. See https://www.ine.gov.py/publicacion/2/poblacion.

[2] See https://cifca.agr.una.py/novedades/paraguay-ganaderia-y-su-crecimiento/.

[3] In 2022, following the disconnection of its last remaining thermal power plant. Paraguay became the only country in the world in which clean, renewable energy sources account for 100 per cent of electricity generation. However, according to the Climate Change Vulnerability and Adaptation Index for the Latin American and Caribbean region maintained by the Andean Development Corporation, Paraguay is the South American country most vulnerable to climate change, ranking among the 10 nations in the continent at extreme risk owing to its low levels of development and its economic dependence on the agricultural sector, As Paraguay struggles with droughts, floods, increasingly extreme weather events, a lack of water security and population displacement, its energy future is also starting to look less than optimistic. The Office of the Deputy Minister for Mining and Energy has indicated that, as of 2030, the country's energy production will be insufficient to meet local demand.

[4] See https://www.worldbank.org/en/country/nicaragua/overview#1.

[5] The legal system is based on Roman law and the Napoleonic Code. The Constitution promulgated in 1992 is the supreme law of the land and lays the bases for the tripartite division of powers between the executive, the legislature and the judiciary.

II. Background information on competition law

9. Article 107 of the Constitution of Paraguay, concerning freedom of competition, establishes that "all persons have the right to engage in the lawful economic activity of their choice, within a system of equal opportunities. Competition in the market is guaranteed. The creation of monopolies and artificial increases or decreases in prices that restrict free competition shall not be permitted. Usury and the unauthorized trade of harmful articles shall be punished under the criminal law".

10. Other laws addressing issues of competition include Act No. 1143/97, by which the Protocol on the Defence of Competition of MERCOSUR was adopted. The purpose of the Protocol, which was incorporated into national law on 15 October 1997, is to protect competition within the framework of MERCOSUR. Another important law is Act No. 3026/06, by which the agreement on the Regulations implementing the Protocol on the Defence of Competition of MERCOSUR was adopted. The Regulations implementing the Protocol were incorporated into Paraguayan law on 7 September 2006.

11. The adoption of the Act on the Protection of Competition was not a peaceful process. It took 10 years, counting from the date on which the first draft of the bill was brought before the chambers of Congress, for the law to be enacted in 2013. The legislative information system maintained by the Paraguayan parliament indicates that three drafts of the Act on the Protection of Competition were presented to Congress, in 2003, 2008 and 2010.[6]

12. The third draft of the bill, which was given the green light by the National Congress, was the fruit of a consensus forged between the executive branch, through the Ministry of Trade and Industry, and the business sector, represented by the Paraguayan Industrial Union and the Federation of Production, Industry and Commerce (FEPRINCO).

13. The draft prepared by the Ministry of Trade and Industry was brought before the legislature and passed by the Senate on 21 March 2013.[7] Act No. 4956/2013 on the Protection of Competition (hereinafter the Act) was adopted by the National Congress on 21 June 2013.

III. Legal framework for freedom of competition

14. The Act is divided into six titles, each containing a number of chapters. For clarity and ease of reference, the following section of this document is divided into four subsections covering: (i) substantive provisions; (ii) institutional structure; (iii) procedures; and (iv) other matters.

A. Substantive provisions

15. Article 2.1 of the Act recognizes that, for reasons of general interest, there may be economic sectors or activities to which its provisions do not apply.

16. With regard to scope of application, article 3 establishes that, as a general rule, the Act is applicable to all actions, practices and agreements that have effects on freedom of competition in Paraguay even if they are implemented outside the country. Such actions, practices and agreements may be implemented by any subject of law, that is, by any individual or any public or private legal entity domiciled in Paraguay or abroad.

17. Lastly, article 6 of the Act provides a general definition of the term "relevant market", from both the product and the geographical point of view, without prejudice to any additional criteria that may be established by the implementing authority when ruling on a specific case.

1. Prohibited agreements

18. Prohibited agreements are regulated in article 8 (Title I (II)) of the Act and Title I (I) of the Regulations. Article 8 is open-ended: the first paragraph thereof begins by prohibiting

[6] See http://silpy.congreso.gov.py.

[7] Diario de Sesiones de la Honorable Cámara de Senadores No. 235, 21 March 2013, page 24 et seq.

any agreement, decision or concerted or consciously parallel practice that has the object or effect of restricting free competition, then specifies the types of conduct in a non-exhaustive list.

19. The Act does not differentiate between concerted practices and consciously parallel practices. Concerted practices undoubtedly constitute anti-competitive conduct in that the uncertainty inherent in a competitive market is in some respects eliminated. Conscious parallel action or conscious parallelism, on the other hand, refers to practices that might reasonably be adopted by economic agents in an oligopolistic market in which their decisions are interdependent.

20. The second and final paragraph of article 8 establishes the implementing authority's duty to assess the efficiency gains potentially deriving from the conduct subject to analysis, which duty is reiterated in article 5 of the Regulations. This form of analysis should not be carried out in the case of hard-core cartels, which should instead be analysed under the per se rule. For all other horizontal agreements, it should be for the parties, and not for the authority, to prove efficiency gains.

2. Abusive conduct

21. The rules concerning abuse of dominant position are set forth in articles 9 to 11 (Title I (III)) of the Act and Title I (II) of the Regulations.

22. Pursuant to the general notion of abuse of dominance and the prohibition of such abuse established in article 9 of the Act, collective abuse of dominance is also prohibited.

23. An entire article of the Act is dedicated to predatory pricing. According to information obtained in Paraguay, this provision reflects particular concerns within the private sector about the high levels of contraband trade in the country.

24. Lastly, the Act introduced a provision on abusive counterparties that prohibits any act by which the conclusion of contracts is made subject to the acceptance of onerous terms and conditions.

25. There are no provisions in the Act that restrict administrative acts that could infringe freedom of competition, as might be the case when procurement terms and conditions contain anti-competitive clauses. It would be advisable to introduce such a provision.

3. Concentrations

26. Economic concentrations are regulated in articles 12 to 14 (Title I (IV)) of the Act and are extensively addressed in Title I (III) of the Regulations.

27. Concentrations are not permitted if they introduce a significant barrier to effective competition. To determine whether this is the case, the Act provides that the structure of the market, the market position of competitors and their economic and financial strength and the possibilities for choice of suppliers and users, among other factors, should be taken into account.

28. Without prejudice to the legally established criteria and the detailed description of the procedure set forth in the Regulations, it would be useful for the authority to issue a guide or guidelines in which it explains its methodology for analysing concentration operations with a view to providing certainty for economic agents.[8] The foregoing would entail the exercise of the power set forth in article 69 of the Regulations.

[8] The National Competition Commission (CONACOM) has already adopted instructions for giving notification of a concentration operation. The instructions contain rules for giving notice of such operations. The guide or guidelines that it is suggested should be produced would set forth the criteria to be adopted by the authority when analysing a concentration operation.

B. Institutional aspects

29. Enforcing competition law is the responsibility of the National Competition Commission (CONACOM), a centralized collegiate authority with two main bodies: the three-member Board of Directors, which is the highest authority, and the Directorate for Investigations, which is headed by a public official. CONOCAM's remit is to promote and protect free competition in the markets. Its powers are those typical of a competition authority, namely, investigative and decision-making powers.

30. The Regulations establish the principles that should guide CONACOM in its activities, including, specifically, the principle that there should be no restrictions on incentives for businesses to compete, the bases for their decisions, the predictability of their actions or the optimal and efficient use of their resources.

1. Board of Directors of the National Competition Commission (CONACOM)

31. To perform its duties, the Board of Directors of CONACOM is accorded a broad range of powers under article 29 of the Act. Its legal representative is the Chair of the Board, who holds office for a period of two years. Board members remain in office for a period of six years, renewable once.

32. As regards the independence, autonomy and professional expertise of Board members, the Act contains a set of provisions intended to ensure that these core guiding principles are respected in the area of competition policy (art. 15).

33. It should be noted that, although the three Board members are appointed by the executive branch from three shortlists provided by the Ministry of Trade and Industry, these shortlists are drawn up following a merit-based competitive selection process carried out by the Evaluation Board, half of whose members are drawn from the private sector, and that this process serves to guarantee the independence as well as the professional expertise of the selected candidates.

34. To prevent incompatibilities of office, Board members must dedicate themselves exclusively to the work of the Commission and are not permitted to serve as directors, managers or employees of entities included in the scope of the Act's application.

35. CONACOM is required to make its annual report publicly available and to send copies to the Ministry of Trade and Industry, the Ministry of Finance and the manufacturing, industry, trade and services unions. At least once a year, the Chair of the Board of Directors must appear before the Economy and Finance Committees of the National Congress to give account of his or her performance.

36. The powers and duties of CONACOM, particularly those of its Board of Directors, are set forth in article 29 of the Act. CONACOM has been accorded the broadest possible powers to enforce the law in its two areas of action, namely, the protection of competition and competition advocacy.

37. Of particular note are its powers and duties in respect of the Act's application to anti-competitive practices (in both the investigative and decision-making stages), monitoring compliance with its decisions and prior examination of concentration operations.

38. For competition promotion and advocacy, the Board of Directors is accorded a series of powers and duties to facilitate efforts to raise awareness of the principle of free competition at all levels, that is, among public authorities, the media, consumers and businesses.

2. Directorate for Investigations

39. Paraguay has opted to have a single authority. Consequently, article 30 of the Act provided for the establishment, alongside the Board of Directors, of a directorate for investigations, headed by a director of investigations appointed by the Evaluation Board.

40. Article 30 stipulates that the Director of Investigations must request authorization from the Commission prior to opening an investigation, a requirement that could affect the independence of the work that the person investigating anti-competitive practices must carry

out. A more detailed description of the powers of the Directorate for Investigations is contained in article 54 of the Act and article 57 of the Regulations.

C. Investigative procedures and powers

41. The Act contains extensive provisions regulating the procedure for the application of sanctions (Title III) but only one article regulating the procedure for giving notification of concentration operations (art. 14). The latter procedure is, however, covered in detail in the Regulations.

1. Procedure for the application of sanctions

42. There are two stages to the sanctioning procedure: the investigation stage and the disciplinary process.

43. A period of 90 days is established for the investigation stage, renewable once only for an equal period by the Board of Directors. While investigations should certainly be conducted efficiently and expeditiously, on occasions the complexity of the conduct under investigation or the market that it affects warrants a lengthier time allowance.[9] The Act guarantees that the parties under investigation may contribute to the investigation and empowers the authority to terminate the investigation by agreement or upon receipt of an undertaking to cease the conduct being investigated.

44. Article 75 of the Regulations lists a series of investigative powers, which include the power to carry out inspections, with or without prior notice. If the commercial or industrial premises to be inspected are closed, CONACOM may request permission to force entry, in which case court authorization is needed.

45. At the end of the investigation stage, the Act provides for two possibilities: either the case is dismissed or charges are formulated. Such charges are set out in an expert's report that the Directorate for Investigations then submits to the Board of Directors.

46. The disciplinary process begins with the formulation of charges by the Directorate for Investigations. The accused party is notified of the charges and provided with all supporting background information, and then has 18 days in which to put forward a defence and 40 days in which to submit evidence.

47. At the end of the pleadings stage, the Board of Directors has a maximum of 40 days counting from the date on which the pleadings were filed or the deadline for their submission expired in which to issue a final decision. In its decisions, it may impose fines, order the cessation of the anti-competitive conduct or impose conditions and/or obligations.

48. The Act is extremely stringent when it comes to compliance with the aforementioned 40-day time limit: if the Board of Directors does not issue a decision before the deadline, the "positive silence" rule, whereby the Board's silence is deemed to constitute a decision in the defendant's favour, applies. A comparison of past experience[10] shows that, for complex investigations, the time required far exceeds this 40-day period; it would therefore be helpful to extend it.

49. Lastly, the Directorate for Investigations may propose any preventive measures necessary to ensure the effectiveness of the final decision issued by the Board of Directors.

50. The system of sanctions is set forth in article 62 et seq. of the Act and article 90 et seq. of the Regulations. The main sanctions envisaged are fines and the annulment of acts or agreements. Sanctions may be imposed not only upon the offending legal entity but also upon the directors and senior executives of the legal entity.

[9] In Spain, for example, the investigation stage may last up to a year, counting from the date of the agreement to initiate an investigation. From the date of the agreement to initiate the sanctioning procedure, the maximum permitted period is a year and a half (art. 28 (4) of the Regulations implementing the Act on the Protection of Competition).

[10] For example, in Spain, a period of six months is provided for decision-making (article 45 (5) of the Regulations implementing the Act on the Protection of Competition).

51. The only avenue of recourse available during the sanctioning process is a request for reconsideration or review, which must be filed with CONACOM within 10 days. Decisions issued by the Board of Directors may be challenged by bringing a contentious administrative appeal before the Court of Auditors.

52. Disqualification from contracts awarded by State bodies and public companies is not one of the sanctions envisaged in the event of collusive tendering (bid rigging). It is important that this sanction, which is a highly effective deterrent, be introduced.

2. Procedure for notification of a concentration operation

53. The notification and registration procedure for concentration operations is set forth in article 14 of the Act and is detailed in article 15 et seq. of the Regulations.

54. Two alternative notification thresholds are established. The first is based on the market share that the company resulting from the concentration would obtain (45 per cent). The second is based on the global sales of the parties to the operation in the last accounting period (100,000 minimum monthly salaries,[11] equivalent to approximately US$ 35 million). In the event of failure to give notice of a concentration in which these thresholds are exceeded, the Directorate for Investigations must inform the interested parties that they have a maximum of 20 days within which to submit the required notification.

55. There are two phases to the notification and registration procedure, and a final decision must be issued within a maximum of 90 days. In the first phase, which should not exceed 30 days, CONACOM may: (i) declare the request inadmissible; (ii) authorize the operation provided it is evident that it does not create a significant obstacle to effective competition; or (iii) proceed to the second phase if further analysis is required.

56. Articles 23 et seq. of the Regulations set forth the procedure for evaluating a concentration operation. Specifically, these articles detail the manner in which the evaluation, including the analysis of efficiencies, should be carried out and the burden of proof that notifying companies must satisfy.

57. The "positive silence" rule also applies in this matter. In other words, if the Board of Directors does not issue the corresponding decision within 60 days, the transaction will be deemed to be authorized.

58. The Regulations also establish a series of non-compliance related offences to which concentration processes might give rise. Specifically, the following constitute offences: (i) failure to give notification of the operation; (ii) providing false information; and (iii) failure to respect compliance terms and conditions. In addition to constituting offences, these conducts result in the annulment of the concentration operation.

D. Regulated sectors

59. One of CONACOM's duties is to coordinate its actions with those of the sector regulators (art. 29 (f) of the Act). Furthermore, as established in a specific section of the Act dedicated to this topic (art. 61), as a general principle, not only do the regulatory bodies have a duty to cooperate with CONACOM but all public institutions are under an obligation, on pain of fine, to provide the authority with any information it might require and notify it of any situation that, in their opinion, could be detrimental to free competition. Similarly, the authorities may request a non-binding opinion from CONACOM when necessary to resolve a dispute in judicial and administrative proceedings.

60. Closely related to this necessary coordination and collaboration with the regulatory bodies are the authority's power and duty to issue sector-specific studies – a power expressly provided for in article 29 (h) of the Act.

[11] The legal minimum wage is 2,550,307 guaranies, equivalent to US$ 344.

E. Other legal aspects of interest

1. Extraterritorial effects

61. As stated above, the Act applies to individuals and legal entities of Paraguayan and foreign nationality domiciled in Paraguay or abroad. As to the conducts covered by its provisions, the most important criteria is that they should have an effect on competition in the national territory and can thus be dealt with by CONACOM (art. 3.2 of the Act).

62. The most efficient way to conduct an investigation involving foreign companies is through effective coordination and cooperation with other agencies. To date, CONACOM has signed 20 international agreements, 16 of which are technical cooperation agreements concluded primarily with the objective of engaging in technical cooperation activities and exchanging experience of applying competition law and promoting competition policy in their respective jurisdictions. Under these agreements, information has been exchanged only once, with the Costa Rican competition authority.

2. Compensation for damage

63. In order to promote effective competition, it is important that the legal framework for the protection of free competition establishes rules and facilitates the procedures through which consumers and companies that have been adversely affected by conduct that restricts free competition may seek compensation for damage suffered.

64. The Act includes provision for such situations in article 84. In order for an action for damages to be brought before the civil courts, the conduct must first have been declared to be an offence in a final, enforceable decision issued by CONACOM. Civil proceedings are thus limited to assessing the evidence of damage and the causal relationship between this damage and the offending act. CONACOM may be asked to issue an amicus curiae report on the restrictive practice and on the propriety and appropriate amount of compensation.

3. Statute of limitations

65. The Act establishes a four-year limitation period for offences and petitions for annulment or compensation for damage or injury. It would be desirable for a distinction to be made between the statute of limitations applicable to public proceedings brought to penalize unlawful conduct and the period applicable to private actions brought to claim compensation, since the latter can only be initiated once CONACOM has issued a binding decision.

III. Enforcement of the Act on the Protection of Competition

A. Restrictive agreements

66. Horizontal agreements between competitors and concerted practices aimed at fixing purchase or sale prices, restricting output, assigning market zones or quotas or affecting the outcome of tender processes are the most serious forms of anti-competitive conduct and most authorities usually prioritize the investigation of these practices.

67. In the case of Paraguay, however, owing to the lack of a leniency programme, among other reasons, there have been very few investigations into restrictive agreements. Two cases relating to this issue are described below.[12]

Case involving a tender for medical supplies

68. The Directorate for Investigations ordered an investigation into alleged collusion between two companies, Eurotec S.A. and Imedic S.A., which, between 2018 and 2020, allegedly entered into an agreement to influence the outcome of eight public tenders related

[12] See https://www.conacom.gov.py/ambitos-de-actuacion/practicas-restrictivas/historial-de-expedientes.

to various drugs, including special materials for the treatment of the coronavirus disease (COVID-19).

69. The Board of Directors of CONACOM dismissed the charge recommended by the Director of Investigations, invoking a rather formal argument, based on article 2 (4) of the Act, according to which "the exercise of a right, power or special prerogative granted or recognized by law shall not be considered as anti-competitive conduct or abuse of a dominant position".

70. No appeal against the decision of the Board of Directors of CONACOM was filed with the Court of Auditors.

Case involving advertisements by the Fuels Trade Association

71. Another investigation ordered by CONACOM into a violation of article 8 of the Act related to public advertisements produced by the Cámara de Distribuidoras Paraguayas de Combustibles, a trade association made up of 10 fuel wholesalers. These advertisements contained recommended sales prices for fuels.

72. In this case, the Board of Directors admitted the charge brought by the Directorate for Investigations but ordered certain behavioural remedies rather than imposing a fine for the conduct. The aforementioned trade association was instructed to issue a press release stating that publishing an advertisement of this kind in a national newspaper was prohibited and to produce 1,000 copies of a leaflet containing information on the legal provisions applicable to the issue. In addition, a fine of one monthly minimum wage was established for each day by which compliance with the measures was delayed.

B. Abuse of dominant position

73. CONACOM has heard few cases involving abuse of dominant position. The most important such case concerned the rights to broadcast national football matches on television, and is described below.

74. In 2020, the Directorate for Investigations accused Teledeportes Paraguay S.A, a company which belongs to the Millicom group, of having abused its dominant position in the wholesale signal distribution market, including the live broadcasting of football matches, in that it had refused to respond to requests from AMX Paraguay S.A. and Tuves Paraguay S.A. about the licensing of rights to broadcast Paraguayan first division football matches.

75. The Directorate for Investigations considered this conduct to be expressly prohibited under article 9 (3) of the Act, concerning the unjustified refusal to satisfy requests to purchase products or services, and that, as a result, the accused company should be found guilty. However, the Board of Directors did not accept this recommendation because there was no clear and conclusive evidence that the refusal had been unjustified.

76. The right to challenge the decision of the Board of Directors of CONACOM by means of a contentious administrative appeal, as provided for in article 68 of the Act, was not exercised in this case.[13]

C. Concentrations

77. Investigations into economic concentrations have accounted for most of the Commission's workload. Between November 2015, when CONACOM first began operating, and the date of completion of this report, it received 47 notifications of concentrations, all but three of which proceeded to the second phase of the process.[14]

[13] See https://www.conacom.gov.py/ambitos-de-actuacion/practicas-restrictivas/historial-de-expedientes.

[14] See https://www.conacom.gov.py/ambitos-de-actuacion/concentraciones/listado-de-operaciones-de-concentracion.

78. Most of the operations reported (30) were approved outright, while 7 were approved with remedies and only 1 was rejected. Three cases relating to concentration operations are currently pending before the Court of Auditors.

79. The only operation refused by CONACOM involved the meat industry (agreement between Frigomerc S.A. and Frigorífico Norte S.A.).

80. The operation that CONACOM refused to authorize involved an agreement between Frigomerc S.A., the largest beef producer in Paraguay which has four cold storage plants nationwide and a distribution centre and is a subsidiary of the multinational Athena Foods, and Frigorífico Norte S.A. (Frigonorte). Under the terms of the agreement, Frigonorte undertook to slaughter, process and package 12,000 head of cattle per month at its cold storage plant on behalf of Frigomerc. The term of the agreement was one year, renewable for equal periods upon expiration.

81. The analysis of the concentration focused on two markets that would be affected by the operation. The first was the market for fresh meat sales, in which Frigomerc was the market leader with a share of around 30 per cent. The other was the market for the purchase of cattle for slaughter, in which Frigomerc had a 40 per cent share, which was far greater than that of its closest competitors. In the latter market, the concentration ex post would have given Frigomerc a market share of around 50 per cent, since Frigonorte's share of the market was around 8 per cent. Thus, the market would have gone from being moderately to highly concentrated: if Frigonorte's output of 12,000 head of cattle was added to the output of Frigomerc, the latter would have had a market share of 47.36 per cent.

82. CONACOM concluded that the operation would strengthen the dominant position of Frigomerc and refused to authorize the operation. Its decision was appealed before the Court of Auditors.

D. Sector-specific studies

83. At the time of writing, CONACOM has prepared a report on the competitiveness of the meat sector throughout its value chain and, in particular, on exports over the last five years. The study was conducted at the request of two senators (members of the National Congress) in April 2020. The aim of the report was to review market behaviour studies and research related to the national meat sector and activities carried out within the sector, assess competitiveness, analyse regulatory obstacles to competitiveness and outline the regulatory tools available to promote competitiveness at the national level.

IV. Competition advocacy

84. CONACOM has taken various measures to advocate competition. In recent years the authority has been very active, issuing a total of 28 non-binding opinions on bills, regulations and tender specifications and conditions for public procurement processes in the period 2020–2022.

85. Also noteworthy in the area of competition advocacy are the framework and specific agreements that CONACOM has signed with a number of public authorities to improve inter-institutional coordination and cooperation and, as part of this process, to train these authorities in the area of free competition.[15] `

86. It has also given a number of talks to familiarize trade unions, universities and the general public with the work of the institution, besides giving interviews to the press.

[15] As at the date of this report, CONACOM had entered into 28 agreements of this type, including with the Central Bank, the National Directorate for Intellectual Property, the Ministry for Consumer Protection, the National Telecommunications Commission, the National Securities Commission and the National Institute of Statistics, among others.

VI. Relations with sector regulators and other public agencies

87. In the early 2000s, certain key sectors of the Paraguayan economy were liberalized and agencies were established to regulate the activities of private service providers operating in these sectors.

88. **Telecommunications**. Services in this area are regulated by Act No. 642 of 1995. The authority responsible for enforcing this Act is the National Telecommunications Commission (CONATEL), which regulates national telecommunications.

89. CONATEL grants licenses for the provision of mobile telephony services, television broadcasting, Internet services and radio broadcasting. The licenses are granted for five years and are renewable.

90. With regard to the relationship between the competition authority and the sector regulator, in November 2017 CONACOM and CONATEL signed a framework agreement for inter-institutional cooperation that sets out the general guidelines for such cooperation.

91. **Energy**. Act No. 966, establishing the National Electricity Administration as an independent body, was adopted in 1964. Under article 5 of the Act, the purpose of the Administration is to meet the country's electricity needs, as sole supplier, and to regulate the generation, transmission, distribution and marketing of electricity.

92. The energy transmission and generation sectors have been partially liberalized and are regulated by the aforementioned Act. The electricity distribution sector has not been liberalized, except in certain respects, and distribution services continue to be provided solely by the National Electricity Administration.

93. CONACOM has not entered into any cooperation and/or coordination agreements with the National Electricity Administration.

94. **Fuels**. The refining, import, distribution and marketing of petroleum-derived fuels are regulated by Decree No. 10.911/20. Decree No. 10.183 of 2000 authorized Petróleos Paraguayos (PETROPAR) and the fuel distribution companies authorized by the Ministry of Trade and Industry to freely market all types of naphthas.

95. The regulations allow PETROPAR to participate in all areas of the industry, i.e., to explore, assess and exploit hydrocarbon deposits; to import, export and reship hydrocarbons, their derivatives and related products; to transport, store, refine and distribute hydrocarbons; and to market them on the national and international markets.

96. Although PETROPAR is a public company, it does not act as market regulator. This function is performed by the Ministry of Trade and Industry, acting through the Directorate General for Fuels of the Office of the Deputy Minister for Industry and Services.

97. **Public transport**. The agency that regulates national and international passenger and cargo transport services is the National Directorate for Transport (DINATRAN), which was established in 2000 by Act No. 1590/2000. Under article 37 of this Act, concessions to provide services are awarded for a limited period of time by means of a public tender process.

98. As the sector requires reform, it would be advisable for CONACOM to conduct a study to assess the degree of competition that currently exists in this market.

99. **Water supply and sanitary services**. Sanitary services in Paraguay are regulated by Act No. 1614, which establishes the regulatory and tariff framework governing public drinking water supply services and the sewage system. Article 8 establishes the sector regulator, named the Regulatory Office for Sanitary Services (ERSSAN), and that one of its main functions is to regulate the tariff system established in the Act. The Act provides that sanitation service providers must have a concession or a permit in order to operate.

100. The main provider of sanitation services is Empresa de Servicios Sanitarios del Paraguay (ESSAP), which was established by Act No. 1615 of 31 October 2000 on the reorganization and transformation of decentralized public bodies and the reform and modernization of central government agencies.

101. **Consumer protection**. Act No. 1334/98 on Consumer and User Protection was amended by Act No. 6366 of 2019. The purpose of the Act, as is usual for this area, is to uphold the basic rights of consumers such as the right to freedom of choice and to clear and transparent information on the products and services available on the market. The authority responsible for enforcing the Act and ensuring compliance with its provisions is the Ministry for Consumer Protection (SEDECO), established by Act No. 4974 of 2013.

102. There is a framework agreement for institutional cooperation between CONACOM and SEDECO that sets out various possible forms of cooperation. Despite the close relationship between competition policy and consumer rights protection policy, CONACOM has not received any complaints referred by SEDECO.

103. **Public procurement**. Competition law assigns particular importance to public procurement. Article 6 of the Regulations explains what is meant by the term collusive tendering and the evidence or background information to be taken into consideration when investigating practices of this type.

104. On 24 July 2020, the two institutions concluded a framework cooperation agreement in which they agreed on various methods of collaboration, including, in particular, information-sharing and data-sharing.

105. With regard to training and advice on competition matters, CONACOM issued guidelines on collusion in public procurement in September 2022.

VII. International commitments

106. The main international commitments undertaken by Paraguay have been through MERCOSUR.[16] In the area of competition, the Protocol on the Defence of Competition of MERCOSUR[17] was signed on 16 and 17 December 1996 and adopted by Act No. 1143 on 15 October 1997.

107. According to CONACOM, the Committee for the Defence of Competition operates and meets sporadically, but no information on the application of sanctions to economic agents has been provided.

108. As a member of MERCOSUR, Paraguay has benefited from the free trade agreements that the bloc has established with other countries. However, only the bilateral agreement with Chile includes a section on competition policy.[18]

109. CONACOM has participated in the last five meetings of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.[19] Since 2017, it has regularly attended and participated in the Latin American Competition Forum, organized by the Organisation for Economic Co-operation and Development and the Inter-American Development Bank, and in the Ibero-American Competition Forum organized annually by Spain and Portugal.

VIII. Conclusions and recommendations

110. Paraguay has had a law on competition for 10 years, since 21 June 2013. This law addresses and regulates the most important matters related to the effective implementation of

[16] MECROSUR is a mechanism for promoting economic and trade integration whose founding members were Argentina, Brazil, Paraguay and Uruguay in 1991. The Bolivarian Republic of Venezuela joined subsequently but its rights and obligations are currently suspended. The Plurinational State of Bolivia is in the process of joining. Chile, Colombia, Ecuador, Guyana, Peru and Suriname also participate, as Associated States.

[17] Adopted in Paraguay under Act No. 3026.

[18] See https://www.bizlatinhub.com/es/tratado-libre-comercio-chile/.

[19] See https://unctad.org/topic/competition-and-consumer-protection/intergovernmental-group-of-experts-on-competition-law-and-policy.

competition policy. At the institutional level, the country has opted to have a single authority, namely CONACOM, composed of a board of directors and a directorate for investigations.

111. In application of the anti-trust rules, owing to a lack of resources CONACOM has investigated only a few cases of anti-competitive practices and abuse of dominant position. In none of these cases did it uphold the charges brought by the Directorate for Investigations. The sanctions system is ineffective as a deterrent in that it provides for fines of up to the equivalent of 150 per cent of the profits or 20 per cent of the sales of the products concerned by the practice, which tend to be very small. Moreover, it does not include an immunity and leniency programme, which is undoubtedly a major shortcoming in the fight against hard-core cartels.

112. Monitoring concentrations has absorbed the authority's time and effort owing to the limited resources available and because the Directorate for Investigations has focused mainly on assessing these operations.

113. With regard to competition advocacy, CONACOM has issued several non-binding opinions on bills, regulations, tender specifications and other matters. It has also established a series of framework agreements with public authorities to improve inter-institutional coordination and the training of public authorities in antitrust matters.

114. At the international level, CONACOM has entered into a fair number of technical cooperation agreements with other competition agencies and has participated in the most important forums on competition matters, namely, those organized by the Organisation for Economic Co-operation and Development, the International Competition Network and UNCTAD.

115. Although the adoption of the Act has made it possible to lay the bases for developing a policy on competition and prohibiting anti-competitive practices, a review of the anti-trust system that takes in the substantive provisions of the legal and regulatory instruments, institutional and budgetary provisions and the functioning of the system and CONACOM is needed.

A. Recommendations for the legislative and executive branches

1. Substantive changes

116. With regard to cartels, it is recommended that a per se rule be established for hard-core cartels. For this purpose, article 2.3 of the Act should be amended to exempt the authority from the obligation to assess the possible efficiency gains and the effects of anti-competitive conduct.

117. It is recommended that article 8 of the Act be amended to remove consciously parallel practices from the list of prohibited agreements.

118. Article 9 (a) of the Act should be amended to make it clear that the list of abusive conducts is indicative in nature. Article 9 (b) of the Act should be amended to include a reference to the artificial and structural barriers to determining positions of dominance.

119. It is recommended that the free competition system should include a leniency programme that grants total or partial immunity to companies that wish to cooperate with the authority in the investigation of hard-core cartels.

2. Institutional changes

120. In order to ensure the effective independence of the Directorate for Investigations and the Board of Directors of CONACOM, the requirement to obtain the approval of the Board prior to initiating an investigation should be eliminated.

121. In selection processes, there should be no limits on the margin of discretion accorded to the Evaluation Board when assessing the professional profile of each possible member of the Board of Directors.

122. The time limits for the conduct of investigations provided for in the Act are clearly insufficient. They should therefore be extended in order to provide greater guarantees that all investigative formalities can be concluded.

123. It would be advisable to consider increasing the budget allocated to CONACOM so that it can recruit more professionals, especially for the Directorate for Investigations.

3. Changes to the way the system operates

124. In the electricity sector, a public agency with exclusively regulatory powers should be established.

125. For calculating fines, the total sales of the offending companies should be taken into consideration, not just sales of the products affected by the conduct.

126. Consideration should be given to the possibility of including disqualification from contracts awarded by State bodies and public companies and also from concessions for a term of 3 or 5 years as a sanction for collusive conduct.

127. In order to encourage the private enforcement of competition law, longer statutes of limitations should be established.

128. Lastly, it should be possible for CONACOM to apply to the Court of Auditors to challenge administrative acts lacking the status of law that are likely to obstruct effective competition.

B. Recommendations relating to the operation of CONACOM

129. The authority should issue guidelines explaining the methodology it uses to analyse concentration operations.

130. There is a need to clarify whether notification of a concentration operation suspends the execution or realization of the operation for which authorization is sought until a decision on the notification has been reached.

131. The powers that CONACOM may exercise for the purpose of gathering the information required to prepare sector-specific studies should be explicitly stated.

132. In future, priority should be given to investigations of prohibited conduct in the affected markets since there have been very few such investigations to date.

133. Although CONACOM has carried out a number of advocacy activities, efforts to promote a culture of competition should be redoubled with a view to raising awareness of the subject among the general public and, above all, in the business sphere.

134. CONACOM should improve coordination with sector regulators by concluding cooperation agreements.

135. A sector-specific study of public transport should be conducted in order to determine the degree of competition in this industry.

136. Cooperation with the consumer protection authority (SEDECO) and the National Directorate of Public Procurement should be strengthened owing to the clear interrelationships likely in the cases with which each agency deals.

137. With regard to the judiciary, cooperation mechanisms should be established to improve training on competition matters for judges, and particularly for members of the Court of Auditors.