



**United Nations Conference
on Trade and Development**

Distr.: General
26 April 2017
English
Original: Spanish

**Trade and Development Board
Intergovernmental Group of Experts on
Competition Law and Policy**

Sixteenth session

Geneva, 5-7 July 2017

Item 3 of the provisional agenda

**Work programme, including capacity-building in and
technical assistance on competition law and policy**

**Voluntary peer review of competition law and
policy**

Argentina

Overview*

* The findings, interpretations, and conclusions expressed herein are those of the author and do not necessarily reflect the views of the United Nations or its officials or Member States.



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I. Context and background

A. Economic and political context of Argentina

1. Located at the southern tip of the Americas, Argentina is the eighth largest country in the world and the second largest in Latin America in terms of surface area, covering a total of 2.8 million km². With 43 million inhabitants, it also has the third largest population of any Latin American country. In the past, mainly during the Second World War and in the years following, Argentina achieved important political status worldwide, creating the expectation that it would go on to play a significant role among the most advanced nations in the world. However, a number of political problems prevented its economy from taking off.

2. Argentina experienced a series of political crises under alternating authoritarian and democratic leadership until 2015, when Argentine economic policy underwent a shift. The new President has shown keen interest in boosting competition policy and has introduced a number of positive initiatives in that regard, including the appointment of a new chair and new advisers to the National Competition Commission and the launching of a legislative process that is expected to result in the adoption of a new Competition Act.

3. Competition law has long been an integral part of Argentine politics and economics. It seems that the United States of America had an influence, at least on paper, in creating an interest in competition policy on the Argentine political scene early on, considerably before other countries, including in Europe, adopted legislation in this area.

4. Nevertheless, in recent years, competition policy has been suspected of being used as a means of political influence. It is now crucial, therefore, to strengthen the independence of the competition authorities in order to restore credibility in their actions.

B. Background of the current Competition Act

5. There is widespread agreement on the growing importance of fair competition and the need for tools that facilitate the taking of appropriate decisions that ensure the effective and transparent functioning of the market.

6. To this end, and also with the aim of prohibiting certain types of anticompetitive behaviour, Act 11.210 was promulgated in 1923. This was the first major piece of legislation in this area. That Act was repealed by Act No. 12.960 of 1946, which was in force until the adoption in 1980 of Act No. 22.262, which maintained the overall criminalization of such behaviour based on the previous Act.

7. Finally, as a result of various complaints of anticompetitive practices, a new standard was deemed necessary to reflect the market situation. Thus, in 1999, the Competition Act (Law No. 25.156) entered into force. This Act did away with criminal sanctions and considered competition law infringements as administrative offences and introduced mechanisms to prevent anticompetitive behaviour, such as the prior control of concentrations.

II. Current regulations of the Competition Act

8. In order to understand the new challenges facing competition law in Argentina, it is necessary to analyse the various aspects of competition law as practised under the Competition Act (Law 25.156).

A. Agreements and anticompetitive practices

9. Section I of the Act governs “agreements and prohibited practices”; article 1 of that section represents the core of the entire anticompetitive legal system, by setting out a

general prohibition and defining the three criteria to be met — jointly — to sanction a conduct, that is, in order to deem it anticompetitive. The criteria are as follows:

- (a) The conduct relates to the production or exchange of goods or services;
- (b) The conduct may distort competition, a term that encompasses the actions of “limiting” “restricting” and “misrepresenting”, with abuse of dominant position being considered a particular way of distorting competition;
- (c) The distortionary conduct could be detrimental to the legally protected interest known as “the general economic interest”.

10. Argentine legislation thus does not define illegal practices per se, but instead requires examining the circumstances of each case according to the “rule of reason”. As for anticompetitive conduct, it can be classified as a horizontal agreement, a vertical agreement or abuse of dominant position.

1. Horizontal agreements

11. Horizontal agreements are arrangements between competing firms that are involved in the production or exchange of equal or similar products in the same geographical market and that generally agree, directly or indirectly, to: set prices; (b) share the market; and/or (c) exclude actual or potential competitors. These are the most harmful behaviours for the competitive functioning of the market.

2. Vertical agreements

12. Vertical agreements are agreements between firms that operate at different levels of the production or distribution chain. Argentine legal opinion considers such agreements punishable only if they seek to achieve a dominant position or may produce horizontal effects. Vertical agreements may involve resale price maintenance and other restrictions affecting sales to third parties, including limits on the sales volume and profit margin of third parties, price discrimination and tied selling.

3. Abuse of a dominant position

13. For there to be “abuse”, a person, whether natural or legal, must have obtained a position of dominance in a given market, and must use that dominant position to affect competition by excluding competitors or hindering their entry into the market. However, the dominant position does not extend to the entire market, but rather refers to a relevant market that has been previously defined in terms of the product and geography.

14. As a general comment regarding the practice of the National Competition Commission in prosecuting anticompetitive conduct, there are significant delays in the Commission’s consideration of cases of infringements, which often takes more than five years to complete. Since 2016, however, the processing time has decreased significantly.

B. Control of economic concentrations

15. Concentrations the object or effect of which is or may be to restrict or distort competition in a manner which may be prejudicial to the general economic interest are prohibited. There is an obligation to give notification of an agreement involving concentrations prior to or within one week of the implementation of the agreement.

16. The criterion for determining whether there is an obligation to provide notification of a concentration for review by the Competition Authority is solely quantitative, in that there is an obligation of notification when the combined aggregate turnover of all the participating firms exceeds 200,000,000 pesos, provided that the amount of the concentration and the value of the assets located in Argentina each does not exceed 20,000,000 pesos. With the passage of time, this amount has become outdated; consequently, transactions are being submitted for review by businesses that, on account of their size, have no ability to affect competition.

17. Following the study, the National Competition Commission issues a decision in which it conveys its findings and makes a recommendation, currently, to the Secretary of Commerce regarding the authorization of the concentration. The Secretary of Commerce is thus the competent institution for granting or not granting the concentration.

C. The procedure in respect of conduct: administrative procedure as a residual rule

18. Article 56 of the Competition Act establishes Act No. 19.549 on Administrative Procedure as a residuary law, with the new framework replacing the former criminal procedure.

19. This is further evidence of the decriminalization of competition law and its incorporation into administrative law. However, this has given rise to a significant problem, namely, that decisions are issued even later, since the new procedure requires an additional report by the Legal Department.

D. Competition Tribunal

20. In the original Competition Act, the Competition Tribunal was established as an independent body within the Ministry of Economic Affairs, Public Works and Services and tasked with enforcing and monitoring compliance with the Act, with full jurisdiction over all areas of competition law and over every industry.

21. However, the Tribunal was never set up; as a result, in 2014, the executive branch itself initiated a reform that assigned all decision-making responsibilities to a sole staff member, the Secretary of Commerce. Such a move represented, to a large extent, a step backwards in the institutional progress, at least on paper, towards a depoliticized, independent system for the enforcement of competition rules, by vesting an agency of the “independent administration”, rather than in a government department, with decision-making powers.

E. Compensation for damages resulting from infringement of the competition rules

22. The remedial measures taken by the competition authority — primarily in response to the general public interest — clearly are not enough alone to simultaneously protect private interests within the framework of competition law.

23. Such anticompetitive practices directly affect citizens, while creating subjective rights whose protection in inter-private relations requires the intervention of the ordinary courts.

24. In Argentina, since the entry into force of Act No. 25.156, there have been very few civil suits involving compensation for damages. Thus, despite the fact that the courts have expressly recognized the possibility of compensation and reparations for infringements of competition law, such proceedings are not common.

F. Implementing authority

25. The National Competition Commission and the various secretariats of the Ministry of Economic Affairs, Public Works and Services have acted as implementing authorities for the Competition Act, as provided for under the now-repealed Act No. 22.262. However, when the current Competition Act was adopted, it was decided to establish a national competition tribunal and to designate it as the implementing authority; as mentioned above, those plans never materialized.

26. In the absence of that tribunal, both the National Competition Commission and the Secretary of Commerce have issued decisions on competition law; as can be expected, there

have been court challenges to the jurisdiction of both agencies in implementing the Competition Act.

27. Finally, in May 2015, the executive branch amended annex II of Decree No. 357/2002 in order to confer on the Secretary of Commerce the role of implementing authority, and thus considerably limit the functions of the National Competition Commission by assigning it purely advisory and administrative operational tasks. Nevertheless, since 2016, certain powers belonging to the Secretary of Commerce, as the implementing authority, have been delegated to the National Competition Commission.

G. Procedure for reviewing conduct

28. With regard to the procedure for reviewing conduct, that is, acts or behaviour expressed in any way and whose object or impact are those referred to in article 1 of the Competition Act, it should be noted that:

(a) The procedure may be initiated ex officio or by a complaint from any natural or legal person, be they public or private. The current regulations create particular challenges for the initiation of the procedure: first, complaints must necessarily be processed and the system does not provide for fast-track processing for the dismissal of complaints that, from the start, appear to involve events that do not constitute competition violations; and secondly, ex officio initiation of the procedure is the prerogative of the Secretary of Commerce, rather than the National Competition Commission;

(b) Following the investigation, in view of the allegations and the evidence submitted, the National Competition Commission prepares views that are then transmitted to the implementing authority — the Secretary of Commerce — who in turn issues a decision within a deadline of 60 days. That decision brings the administrative proceedings to an end. The problem with the deadlines is that they are statutory: not complying with them does not imply the discontinuation of the case and so are often not observed;

(c) The parties may request precautionary measures in order to halt the damage resulting from the anticompetitive conduct. The adoption of such measures is the competence of the Secretary of Commerce;

(d) The procedure provides for a specific way of settling a case without punishment, or a “negotiated termination”. The procedure involving commitments and negotiated termination is a specific way to settle a case that satisfies two interests: putting an immediate end to the anticompetitive conduct and saving the costs incurred in the processing of a case. This in turn allows the competition authority to devote its efforts to the most important cases.

H. Sanctions

29. Beginning with article 46, after outlining the procedure for reviewing conduct, the Competition Act sets out the sanctions that can be applied to “physical persons or legal entities” that do not comply with the provisions of the Act.

30. Non-compliance with competition rules is cost-effective if the offender goes unpunished or receives a light punishment. This is obvious in the case of cartels, where a price hike has the potential to generate large profits for the companies involved. Accordingly, sanctions have been set at a level so as to serve as a sufficient deterrent to companies who otherwise might seek to obtain economic benefit by taking decisions that violate competition law. The financial penalties provided for under Argentine competition law are lower than those established in other countries that have developed further in this area; it is therefore particularly ripe for reform.

I. Judicial appeal

31. In addition to many years of lack of clarity surrounding the implementing authority, there are doubts about whether the judicial body competent for reviewing competition-related decisions is the National Court for Economic Criminal Matters or the Federal Civil and Commercial Court; overall, the case law tends towards the latter.

J. Competition advocacy

32. The National Competition Commission promotes institutional and international relations by organizing seminars on competition issues and conducting outreach activities in universities, chambers of commerce and other private sector organizations. Internationally, the Commission has participated in forums and workshops, and has run internship and other training programmes for other competition institutions. It has worked together with other agencies and multilateral organizations, and increasingly so since the major reforms begun in 2016.

III. Commentary on the most relevant cases

33. This section contains commentary on specific competition cases heard in recent years in Argentina that are considered of practical relevance and that refer to cartels, vertical relationships, abuses of dominance and concentrations. Activities relating to competition advocacy will also be covered.

A. Horizontal agreements

Cement cartel

34. A new development in the practice of the National Competition Commission is evident in this decision,¹ in which the amount of the fine was calculated on the basis of the companies' hypothetical unlawful gains. The decision penalized five companies, in addition to the umbrella business association that encompassed them, for participating in market-sharing agreements, price-fixing and information sharing.

Automotive cartel

35. The decision² handed down in this case was criticized for various reasons: because manufacturers and importers were not those against whom a complaint had been brought and also because the approach involving the identification of "parallelism plus factors" was not followed, that is, the mere parallelism of prices should be deemed insufficient, in the absence of additional evidence, to prove collusion. Although the National Competition Commission found additional evidence of parallelism, such evidence was regarded merely as information relating to market structure which facilitated collusion; there was, however, no other evidence in the case file, such as documentation of meetings or contacts between the alleged members of the cartel. The decision was overturned by the Court of Appeal.

Medicinal gelatin cartel

36. The procedure³ in this case, which lasted for more than nine years and which involved searches at the headquarters of companies being investigated, as well as in certain hospitals and other health facilities, featured a particularly innovative development: a fine of 200,000 pesos was imposed on each of three physical persons representing the laboratories that had been found guilty of collusion; and, naturally, a fine of 10 million

¹ Decision No. 124/2005 of the Secretary of Technical Coordination.

² Decision of the Secretary of Commerce of 12 December 2014.

³ Decision of the Secretary of Commerce of 4 December 2015.

pesos was imposed on each of four pharmaceutical companies for price agreements and market-sharing.

B. Vertical agreements

37. The National Competition Commission and the implementing authority have not shown particular interest in prosecuting vertical restraints. Vertical restraints are not usually penalized if they are not accompanied by horizontal restraints or abuse of a dominant position.

Televised football case

38. A quintessential example is the case involving televised football,⁴ in which the resulting decision was overturned by the National Court for Criminal Economic Matters,⁵ which found that the practice was a lawful vertical arrangement.

39. The approach taken in such cases by the National Competition Commission to the controversial issue of vertical restraints is to consider them as anticompetitive conduct, and very often as abuse of a dominant position. In any case, the case law has shown a tendency not to consider vertical restraints as anticompetitive, including vertical restraints which, like vertical resale price maintenance, are regarded as collusive under other laws and jurisdictions.

C. Abuse of a dominant position

Clorox case: exclusionary abuse

40. This case⁶ is a clear example of a dominant firm behaving in such a way as to consolidate its privileged position by imposing on distributors and clients more onerous conditions if they purchase products from its competitors than if they limit themselves to purchasing products from the dominant firm.

Yacimientos Petrolíferos Fiscales case: exploitative abuse

41. It is important to highlight that the decision⁷ in this case punishes abusive price-fixing, which is a form of “exploitative abuse”, as opposed to “exclusionary abuse”, whose anticompetitive effects are obvious. Despite the difficulty in identifying a price as abusive, such was the conclusion of the authorities in this case, which found that fixing different prices for the domestic and export markets, while prohibiting re-import, can be considered abusive where the price for the domestic market is set higher than that for exports.

Royal Canin case: negotiated termination

42. An example of a negotiated termination is the Royal Canin decision,⁸ which accepted the commitments, in accordance with the views of the National Competition Commission. In its views, the National Competition Commission reviewed precedents in which commitments had been accepted, and stipulated that such commitments should not be accepted automatically, but should always take into account the circumstances of a case. In the particular case in question, the responsible party undertook to resume supplies to the complainant, with specific discounts and under the same conditions as for other clients in the area. These terms were accepted by the complainant and consequently incorporated into the Commission’s views, which then served as the basis for the official decision.

⁴ Decision of the Secretary of Competition, Market Deregulation and Consumer Protection of 12 August 2001, which was in accordance with the views of the National Competition Commission.

⁵ Judgment of Chamber B of the National Court for Criminal Economic Matters of 29 August 2003.

⁶ Decision of the Secretary of Commerce of 17 April 2015.

⁷ Decision of the Secretariat of Industry, Commerce and Mining of 2 March 1999 (No. 189/99).

⁸ Decision of the Secretary of Commerce of 7 June 2012.

D. Economic concentrations

Telefónica-Telecom case

43. The concern in this case⁹ was the influence of Telefónica España S.A. over the two main telecommunications operators in Argentina: full and direct influence over Telefónica de Argentina S.A.; and indirect influence over Telecom Argentina S.A. The Secretary approved the concentration with certain constraints, which were challenged by the notifying parties before the Court of Appeal, which granted the appeal on formal grounds relating to the rights of defence; a new procedure was ultimately called for.

44. Also at issue in this case was whether the operation in fact constituted a concentration. This was confirmed by the courts, and the case was submitted under a new procedure, which resulted in the decision of the Secretary of Economic Policy of 13 October 2010, by which it approved the concentration (with conditions), with the commitments submitted by the notifying parties, namely the prohibition of participation or veto powers for Telefónica España S.A. with respect to Telco S.p.A. or any other business owned by the latter, over any issue linked to the Argentine market.

Hoyts/Cinemark Argentina case (approval with commitments under art. 13 (b) of the Competition Act)

45. The Secretary of Commerce, by a decision handed down on 6 May 2015, approved a concentration involving certain companies linked to the film screening market. The concentration was approved with the commitment submitted by the notifying parties, following the clarifications made by the National Competition Commission which in sum consisted of limits on growth and price maintenance over a five-year period in two regions, the northern zone of greater Buenos Aires and in the autonomous city of Buenos Aires.

Concentration of Iberia Líneas Aéreas de España S.A. and British Airways Plc (approval with conditions)

46. The Secretary of Commerce, by a decision handed down on 2 February 2015, approved the concentration of Iberia and British Airways, subject to certain conditions proposed by the National Competition Commission.¹⁰

47. It is not clear how the competition concerns identified were resolved through the adoption of conditions consisting of the maintenance of flights and passenger capacity. While such measures may well benefit travellers on that route, to the extent that direct flights between Buenos Aires and London will not be cancelled, they are hardly linked to the competition issues stemming from the concentration. The measure therefore appears to have been politically inspired rather than having anything to do with competition.

Concentration of Multicanal/Cablevisión (approval with commitments under art. 13 (a) of the Competition Act)

48. In this case processed by the National Competition Commission, the notifying parties accepted certain commitments for a period of two years; consequently, the Secretary of Commerce approved the concentration under article 13 (a) of the Competition Act, that is, without conditions.¹¹

49. Certain problems subsequently arose:

(a) The Executive considered that the commitments had not been kept, which reversed the authorization, thus obliging the parties to dissolve the concentration.

(b) The concentration had been approved under article 13 (a) of the Competition Act (authorization of the operation) rather than under article 13 (b) (subjecting approval to

⁹ Decision No. 438/09 of the Secretary of Commerce.

¹⁰ To maintain capacity, in terms of both frequency and number of seats, over a period of five years on the Buenos Aires/London route; and to monitor the prices for the Buenos Aires/Brussels and Buenos Aires/Vienna routes for a period of three years.

¹¹ Decision of the Secretary of Commerce of 7 December 2007.

fulfilment of conditions to be established). The parties filed an appeal and the courts ultimately overturned the Minister's decision No. 113/2010, as they considered that the approval of the concentration had not been subject to conditions, while allowing that compliance with the commitments made might be enforced through other means.

Concentration of Pampa Argentina and AEI Servicios Argentina, a straightforward approval

50. The Secretary of Commerce, by a decision handed down on 28 August 2015, approved a complex concentration in the electricity market. The National Competition Commission, after analysing the effects of the concentration on the market, considered that the increases and the shares resulting from the concentration in the various markets analysed were not significant (since, with the exception of distribution, in which market the group resulting from the concentration would have a share of 26.38 per cent, shares in the other markets analysed would not exceed 7 per cent), concluded that the concentration did not raise competition-related concerns and therefore recommended that the implementing authority approve the operation without conditions.

E. Competition advocacy

Report on credit cards, debit cards and other electronic means of payment

51. On 26 August 2016, the National Competition Commission, by Decision No. 17, published the results of an investigation into the anticompetitive behaviour and dominant position of the company Prisma Medios de Pagos on the market of credit cards, debit cards and other electronic means of payment, and issued a series of recommendations to the Central Bank of Argentina and to the Secretary of Commerce.

52. As a result of a comprehensive study of the aforementioned market, the Commission decided to take action on the following recommendations:

(a) The Central Bank should comprehensively review the regulation of electronic means of payment, focusing especially on the implementation of policies that promote competition;

(b) The Secretary of Commerce should initiate an ex officio investigation into the company Prisma Medios de Pagos and its shareholders (14 of the country's largest banks) for alleged anticompetitive practices and, in particular, alleged abuse of dominance. This was agreed by the Secretary of Commerce.

IV. A new impetus for competition policy (plans to reform the Competition Act)

53. As a result of the 2015 elections, a new Government was formed and that Government decided that competition policy should be one of the pillars of its political agenda. It demonstrated its commitment from the very start, by appointing a new president and new members to the National Competition Commission, revamping the structure of the Commission, delegating powers of the Secretary of Commerce to the Commission, launching a staff restructuring plan and, most importantly, giving the impetus for new competition legislation, a draft of which was presented to Congress in September 2016.

54. The bill incorporates the 2006 recommendations of the Organisation for Economic Cooperation and Development (OECD) to modernize and bolster the independence of the Argentine competition legal framework. Once the bill is adopted, Argentina will rank among those countries endowed with advanced legislation in this area and will have the tools necessary to enforce a vigorous competition policy.

55. The bill consists of 15 sections. The first section defines the agreements and practices prohibited, and the second establishes the criteria for identifying a dominant position.

56. Section III covers concentrations and mergers and incorporates the 2006 recommendations contained in the peer review prepared by OECD, which are as follows:

(a) Increase efficiency in conduct investigations through measures such as:

- (i) Raising the notification thresholds;
- (ii) Shortening the time required to approve “easy” mergers;
- (iii) Opposing the right of third parties to appeal from merger decisions;

(b) Review the current merger notification regime which permits the parties to consummate their merger before the competition authority completes its review.

57. The notification thresholds have been significantly low owing to inflation, which means that significant efforts and resources went into reviewing mergers that were unlikely to affect competition. The bill proposes significantly higher thresholds and, so that they do not become outdated as a result of inflation, proposes using a so-called “mobile unit” of account; it also establishes the compulsory notification of mergers whose turnover in Argentina exceeds 150 million mobile units. It sets the initial value of the mobile unit of account at 15 pesos, but proposes that that value be modified annually taking into account the changes in consumer prices (consumer price indices).

58. The bill also provides for a new method for calculating turnover that takes into account the turnover of both the acquiring business and the business being acquired.

59. Assuming the OECD recommendations are approved, the bill provides for a procedure divided into two phases: phase I would allow for the clearance of mergers that do not raise competition concerns, while a phase II review would be initiated for those mergers with circumstances identified during phase I as potentially leading to competition problems and that therefore warrant a more extensive analysis. The bill also provides for summary reviews of mergers that are least likely to be prohibited.

60. As for the review procedure, the bill establishes tight deadlines that, unlike in the current scenario, will be expected to be observed. This will ensure that concentrations are reviewed quickly, and thus address the concerns of the business community relating to the fact that concentrations cannot be carried out until the competition authority issues a decision in regard thereof.

61. Section IV, on the implementing authority, proposes significant amendments to the existing institutional framework by bolstering the authority’s independence. To that end, it provides for the establishment of a national competition authority, consisting of the Competition Tribunal, as a collegiate decision-making body, and two bodies each composed of a single member — the Secretariat for Conduct Investigations and the Secretariat for Economic Concentrations — tasked with carrying out the relevant investigations. The Tribunal is to be composed of a President and four members.

62. As for the selection of members of the national competition authority, including the President and members of the Competition Tribunal and the incumbents of the two Secretariats, the bill provides for a procedure under which these members are to be nominated, following a public competitive examination, by an ad hoc jury that draws up a shortlist of three candidates for each post, to be made public. The Executive then appoints the members of the national competition authority on the basis of a substantiated decision. The members of the authority are to be appointed for a period of five years during which they may not be removed from their posts.

63. Section V contains provisions on the Office of the Under-Secretariat for Competition Advocacy, which will be the executive branch’s agency for participating in initiatives on the promotion and implementation of competition law. Section VI sets out the budget of the national competition authority.

64. Section VII outlines the procedures with provisions that, although in principle deal with both conduct review and concentration control, primarily regulate conduct reviews, ensuring an appropriate balance of the duties of transparency, provision of means for the investigation of offences and rights of defence. The procedure provides for the participation of various stakeholders in a case and for negotiated termination.

65. Section VIII of the bill is devoted to regulating sanctions, which it proposes raising significantly. The following criteria are established for determining sanctions:

(a) Up to 30 per cent of the turnover associated with the product or service concerned in the unlawful act over the previous financial period, multiplied by the number of years the infringement lasted;

(b) Up to 30 per cent of the consolidated turnover of the group to which the offenders belong over the previous financial period;

(c) Twice the amount of the unlawful profit obtained through the punishable act.

66. Where it is possible to calculate the amount using two or more of these approaches, the higher amount will apply. Otherwise, the fine is set at a maximum of 200 million mobile units.

67. To increase the deterrent effect of the sanctions, the bill provides for other measures such as the exclusion of offenders from the national register of suppliers to the State and the penalization and disqualification of the firm's management.

68. Section IX proposes the establishment of a leniency programme, reflecting one of the 2006 OECD recommendations. In line with the most successful international experiences, the bill provides for immunity from fines for the first participant to apply for leniency, so long as it immediately ceases the anticompetitive conduct, cooperates fully with the investigation, does not destroy evidence and does not disclose the fact that it has made a request for immunity. It also provides for the reduction of fines of between 80 and 20 per cent for later applicants to the leniency programme.

69. Section X of the bill refers to actions for damages for competition infringements. This section is to be incorporated into existing Argentine legislation as a further deterrent and thus provides for measures such as the reduction in responsibility or immunity from claims for those who participate in the leniency programme; this is considered necessary to ensure that there is no disincentive to participating in programme. It also provides that the Tribunal's ruling will have binding force with regard to follow-up actions, that is, actions to be taken once the Competition Tribunal has issued its final ruling.

70. Section XI, on appeals against decisions of the Competition Tribunal, proposes the establishment of a special court, the National Court of Appeal for Competition Law (section XII).

71. Section XIII proposes a statute of limitation of five years for prohibited conduct. With regard to claims for damages, the bill proposes establishing a time frame of three years from the cessation of the anticompetitive behaviour or from the time said behaviour was brought to the attention of the injured party for independent actions and of two years from the final ruling of the Competition Tribunal for follow-up actions.

72. Finally, section XIV, devoted to competition advocacy, proposes setting up a fund to promote competition, and section XV sets out transitional and ancillary provisions.

V. Current situation

73. An analysis of the current situation of competition policy in Argentina necessarily should take as its basis the conclusions and recommendations issued as part of the peer review conducted by OECD in 2006, which are as follows:

(a) Create the National Tribunal for the Defence of Competition;

(b) Increase the budget of the competition agency;

(c) Strengthen anti-cartel enforcement;

(d) Increase efficiency in conduct investigations;

(e) Review the current merger review regime;

- (f) Free the National Competition Commission from as much political influence as possible;
- (g) Broaden the efforts towards building a competition culture;
- (h) Develop a relationship with the judges who hear appeals in competition cases;
- (i) Expand the competition agency's role in regulated sectors.

74. If it were not for the significant steps taken since 2016, the situation could not appear more bleak, given that none of the recommended reforms have been carried out to date: independence has not been strengthened; anti-cartel enforcement has not become more efficient; the merger review regime has not undergone any changes; and there is still no leniency programme, which is necessary to boost anti-cartel enforcement.

75. However, as from 2016, major steps have been taken to improve Argentine competition policy, including the measures referred to in the preceding paragraph, through the appointment of new members of the National Competition Commission, the development of a staff restructuring plan, the delegation of powers of the Secretary of Commerce to the Commission, the revamping of the administrative structure, and most notably, the introduction of a competition bill which, once adopted, will prove a powerful tool in developing a vigorous competition policy.

VI. Conclusions

76. **Conclusion 1.** The recommendations made in the 2006 OECD peer review remain valid. Specifically, between the adoption of the 2006 recommendations and 2016, there does not seem to have been a decrease in the role of politics in the application of competition rules. Since 2016, however, such political influence has diminished markedly.

77. **Conclusion 2.** Since 2016, major steps have been taken, in terms of both the organization and the activities of the National Competition Commission, with a view to bolstering the independence and effectiveness of the competition authority.

78. **Conclusion 3.** Likewise, the delegation of certain powers belonging to the Secretary of Commerce to the Commission, as the implementing authority, demonstrates the Government's willingness to strengthen Argentine competition policy in line with international best practices.

79. **Conclusion 4.** The introduction of a bill on competition policy is also an outward expression of a commitment in line with the 2006 recommendations. With full respect for the sovereignty of the legislature, the speedy adoption of the bill is necessary to provide the Argentine competition regime with an advanced law consistent with international best practices.

80. **Conclusion 5.** The contents of the bill reflects all the concerns that were noted in 2006 and that have been expressed repeatedly since then, for example, increasing the notification thresholds for mergers, regulating the suspensive effect of notifications, reducing the time necessary for processing cases, introducing a leniency programme and establishing a competition tribunal. At the same time, the system in place for appointing those who play essential roles in the Argentine competition regime and their security of tenure during the period of appointment serve to strengthen the system's independence from political influence and economic interests.

81. **Conclusion 6.** Until the new law is adopted, it will be crucial to continue making efforts to reduce case processing times for conduct and merger reviews. In this context, it would be useful to consider the time limits established by law as preclusive and not simply statutory, as is currently the case, so that once they have elapsed, without duly justified interruptions, the case may be deemed to have been discontinued.

82. **Conclusion 7.** Since 2016, the new Commission, together with the Secretary of Commerce, has played an important role in promoting competition, not only through the creation of a directorate for competition advocacy, but also through the preparation of a report on the credit card market which has had a significant impact on the economy.

Competition advocacy is an excellent tool for creating a culture of competition and therefore should be intensified.

83. **Conclusion 8.** In parallel with the adoption of the bill, and even in the lead-up to its adoption, the Commission should be provided with sufficient financial means to exercise its functions without relying on the political will of the Executive, while developing more flexible options for staff recruitment. This will give the best professionals access to the national competition authority and thereby elevate its prestige. It is important to provide that authority with the necessary financial resources. In this regard, consideration could be given to establishing a fee for control of concentrations, which in turn would boost the authority's resources and strengthen its economic independence.

84. **Conclusion 9.** Private enforcement of competition rules should be facilitated by providing adequate procedures to those harmed by the infringement of competition rules so that they may claim damages and thus provide a new deterrent to violations. In the regulation, it would be useful to consider the conflicts with the leniency programme that may arise in this area and to establish mechanisms to ensure that this programme is not seen as a disincentive based on fear of initiating actions to claim for damages.
