

Antitrust & Competition: An overview on the latest news in Argentina¹

This article is intended to be an overview on the Antitrust and Competition field in Argentina over the course of this year. There is still much more to be done, and the COVID-19 crisis has challenged both the Antitrust Authority and competitors to devote all their efforts to tackle the current situation. We hereby report the latest news and measures taken in relation to the subject matter hereof.



¹ This article is not intended to be a full legal report, and it does not constitute legal advice. You should consult with a counsel to determine applicable legal requirements in a specific situation.

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1. New appointments at the Argentine Antitrust Commission (the “CNDC”)

Further to the information included in Section 1 of our previous article “Antitrust & Competition: Current Scenario and Trending Topics in Argentina”, published on May 21, 2020, regarding the appointments at the CNDC of new commissioners in January and May 2020², a new Commissioner (Mrs. Balbina María Griffa) was appointed on June 10, 2020 pursuant to Decree No. 530/2020, as from February 19, 2020.

There is still room to appoint one (1) more commissioner to complete all the members of the CNDC.

In Argentina, the merger control review and anticompetitive practices investigation is still entrusted to a double tier structure composed by the CNDC which performs a technical analysis and issues a non-mandatory report to the Secretary of Domestic Trade (*Secretaría de Comercio Interior*), who issues the final resolution in all matters related to the Antitrust Act (the “SDT”, and together with the CNDC, the “Antitrust Authority”). The Antitrust Authority is under the jurisdiction of the Minister of Productive Development.

The Antitrust Authority shall continue as an interim enforcement agency until the appointment of the National Competition Authority (the “NCA”), the National Competition Tribunal (the “Competition Tribunal”), the Secretariat of Anti-competitive practices and the Secretariat of Economic Concentrations as stated by the Antitrust Act No.

27,442 (the “Antitrust Act”). Currently, we cannot assure if the public examination to appoint the NCA will be relaunched or if the Federal Government will select a new list in accordance with the former participants.

However, the appointments abovementioned, could suggest that the Federal Government has no intention of finally appointing the members of the NCA, the Competition Tribunal, nor the Secretariats of Economic Concentrations and Anti-competitive practices as stated by the Antitrust Act.

2. Limited Antitrust Authority’s activity throughout 2020

The Antitrust Act is fully in force, and individuals and companies must comply with it. Notwithstanding the foregoing, because of the COVID-19 pandemic, all procedural deadlines in all dockets –e.g. investigations and economic concentrations– are suspended until June 28, 2020³. It is expected that this suspension will be extended as long as the mandatory isolation and lockdown persists⁴.

Nevertheless, as there must be a minimum provision of services, the Antitrust Authority activity is limited to urgent matters. Accordingly,

² The current secretary of the SDT, Mrs. Paula Irene Español, has been appointed on December 27, 2019 by means of Decree No. 93/2019 of the Federal Government. Likewise, Mr. Rodrigo Sebastián Luchinsky is the new President of the CNDC as from January 21, 2020 (appointed by means of Decree No. 94/2020 of the Federal Government) and the Argentine President Fernández has appointed three (3) new Commissioners. By means of Decrees No. 479/2020 and No. 480/2020 (dated May 16, 2020), Mr. Pablo Lepere and Mr. Guillermo Marcelo Pérez Vacchini have been appointed as from March 19, 2020 and April 23, 2020, respectively. Online Link: <https://www.theworldlawgroup.com/writable/documents/news/WLG-Antitrust-Summary-2019-May-2020.pdf>.

³ Resolution No. 98/2020 issued by the SDT provided for the suspension of all procedural deadlines in all dockets in process pursuant to the Antitrust Act and Fair Trading Regime, among others, from March 16, 2020 to March 31, 2020. The suspension has been extended by the SDT up to April 12, 2020 by Resolution No. 105/2020, up to April 26, 2020 by Resolution No. 113/2020, up to May 10, 2020 by Resolution No. 123/2020, and further up to May 24, 2020 by Resolution No. 132/2020, and further up to June 7, 2020 by Resolution No. 150/2020. We expect that a new resolution formally extends this suspension.

⁴ Decree No. 260/2020 issued by the Federal Government, in relation to the mandatory isolation, and its corresponding extensions up to June 28, 2020. It is possible that this mandatory isolation is further extended.

the CNDC published on its website⁵ the admission of urgent filings, which shall be made by sending the applicable documentation via e-mail in accordance with the instructions therein⁶.

We are aware of several filings of economic concentrations in accordance with this online procedure. Since January 17, 2020, though, there have been no updates in the CNDC 's website so far, nor in the Public Registry of economic concentrations which must be updated in such website.

(i) Merger control

The Antitrust Authority has authorised a total of three (3) economic concentrations⁷. From those, only one (1) has been initiated pursuant to the Antitrust Act 25,156. All these economic concentrations were authorised without conditions. The Antitrust Authority took an average of fifteen (15) months to issue its final resolution in these cases.

Furthermore, there is no public information available of any advisory opinion⁸ analysed during 2020.

(ii) Conduct cases

We are not aware of any reported anticompetitive conducts initiated in 2020. In addition, as far as we know, no progress was made in relation to the

existing anticompetitive conduct cases, including cartel cases.

(iii) Market investigations⁹

On March 20, 2020, the Antitrust Authority approved the Guidelines for Market Investigations. Through the new guidelines, the Antitrust Authority sets forth a series of parameters to perform such investigations, including, objectives, methodologies, timelines, profile of consultants, and general structure of an investigation, among others.

Thus far, the Antitrust Authority has not concluded any market investigations during 2020. The average time in which the Antitrust Authority concluded a market investigation in recent years is fifteen (15) months.

Nonetheless, it should be noted that on March 30, 2020, the SDT issued the Resolution No. 103/2020 (the "Resolution 103"), which ordered the CNDC to initiate a market investigation on the beef market in order to determine potential violations to the Antitrust Act. It should be noted that the CNDC did a similar market investigation in 2016¹⁰ and concluded in 2017 that there were no antitrust issues in such market.

Resolution 103 also set up an information regime with respect to all companies registered with the Federal Tax Authority ("AFIP," for its Spanish

⁵ Please visit:

<https://www.argentina.gob.ar/defensadelacompetencia/presentaciones-urgentes-covid>

⁶ The e-mail shall be sent between 9:30 am and 1:30 pm, with "URGENT PRESENTATION" as its subject. It must have signature scanned in color, and if its attachments are larger than 5 MB, a link to download them should be included.

⁷ Resolution No. RESOL-2020-22-APN-SCI#MDP, issued by the SDT in File No. EX-2019-08531604- -APN-DGD#MPYT (Conc. 1683), dated January 30, 2020.

Resolution No. RESOL-2020-21-APN-SCI#MDP, issued by the SDT in File No. EX-2017-32313399- -APN-DDYME#MP (Conc. 1563), dated January 30, 2020.

Resolution No. RESOL-2020-59-APN-SCI#MDP, issued by the SDT in File No. EX-2019-18823317- -APN-DGD#MPYT (Conc. 1695), dated March 2, 2020.

⁸ The parties of a certain transaction may file for an advisory opinion when they have doubts regarding the obligation to file the mandatory notification or not. By means of this, the Antitrust Authority issues a resolution clarifying the subject to the parties.

⁹ The market investigations aim to evaluate the current competitive situation in a certain market and, if applicable, recommend pro-competitive measures or initiate a conduct investigation. To do so, the Antitrust Authority usually entrusts experts in the relevant field to perform studies in key Argentine markets.

¹⁰ See "Study of the conditions of competition in the Argentine bovine meat market (Estudio sobre las condiciones de competencia en el mercado argentino de carne vacuna)," August 2016. Online link: https://www.argentina.gob.ar/sites/default/files/cndc_resumen_mercado_de_la_carne_vacuna.pdf.

acronym) whose activities are related to beef industry and its derivatives.

The parties subject to Resolution 103 must file a monthly report to the applicable authority (e.g. Consumers Protection Secretariat) with the following information: the daily quantity of beef and cowhide that is commercialized, their average daily sale price per unit of measurement and the category of origin of such products.

Additionally, pursuant to Argentine's Government official website¹¹, the CNDC will initiate a market investigation on the market for bulk and tubular medical liquid oxygen, together with the corresponding transport service throughout the country, to determine potential breaches to the Antitrust Act.

3. Prospects of improvements in the fulfilment of the Antitrust Act

Despite the fact that the Antitrust Act has been in force since May 24th, 2018, there are still some provisions that have not been implemented yet.

Nevertheless, because of the abovementioned suspension of all procedural deadlines and the uncertainty with regards to the appointment of the NCA, it is not clear whether if this outstanding issues pursuant to the Antitrust Act will be implemented in the short term.

In particular, for example, the Antitrust Authority have not implemented yet: (i) the fee for submitting a mandatory notification and/or an advisory opinion; (ii) the procedure by means of which an interested third party might file an opposition to a transaction; (iii) the new procedures for advisory opinions, preliminary proceedings, requests for clearance of those

concentrations that prima facie do not entail a risk to competition, and the new proceeding -including the information required- to request clearance for an economic concentration; (iv) conduct cases' proceedings carried out by electronic means; and (v) the regulation of the leniency program –for which, as far as we know, no company has applied yet-.

The pre-merger control system will be into effect only after one (1) year as from the date in which the NCA is duly constituted with its members and in full functions. Then, it seems that the post-closing notification -submitted within one (1) week as from the date of effective change of control- shall continue to apply for economic concentrations in Argentina.

Pursuant to the Antitrust Act, the Competition Tribunal will annually formulate a draft budget for the NCA for subsequent submission to the Federal Government; and the NCA will administer its budget autonomously, according to the autarchy assigned by law. But as long as the NCA it is not appointed, this shall remain unfinished.

The Antitrust Act also establishes a new regime to foster competition in Argentina, and provides the appointment of a commission to prepare a preliminary draft of an act for the promotion of retail competition¹².

Although the current members of the CNDC have recently mentioned that they are working on all the above pending issues, they are not certain on when they will be concluded and or finally implemented.

4. Judicial review 2020

The Antitrust Act established a Specialized Court¹³ within the Federal Civil and Commercial Court of

¹¹ See Online Link: <https://www.argentina.gob.ar/noticias/empresa-de-oxigeno-liquido-debe-mantener-precios-y-aumentar-su-produccion>.

¹² We are of the opinion that this will not be implemented as a similar law was recently passed (e.g. the Shelves Law).

¹³ On August 24, 2018 the Judges Selection Commission and the Judicial School of the Magistrates Council issued the call for Tender No. 415 to integrate the Specialized Chamber in Antitrust Matters within the

Federal Civil and Commercial Court of Appeals. The registration period was from September 10 to September 14, 2018. The jury presented the report with the scores on May 7, 2019 and Mr. Camaño presented the report with the pre-scoring of the applicants' backgrounds on May 22, 2019. A provisional order of merit was published on June 3, 2019. The deadline for filing objections to this order was June 7, 2019. The deadline for the conclusion of the process was originally set at April 11, 2019, but it was later extended to May 28, 2019. At the moment, the deadline for

Appeals, located in the City of Buenos Aires. The new Specialized Court will act as a competent court of appeals; and as a judicial reviewing body of all administrative resolutions issued by the Antitrust Authority with effects in the City of Buenos Aires.

The administrative resolutions issued by the Antitrust Authority with effects outside the City of Buenos Aires, will still be subject to the review of the applicable Federal Court of Appeals in such jurisdictions.

We have been able to identify only four (4) antitrust cases reviewed by judicial courts. However, none of these cases have been posted yet by the CNDC on its website in 2020.

Because of the COVID-19 pandemic, the Supreme Court has declared an extraordinary judicial recess as from March 16, 2020¹⁴. This will most probably delay any procedure related to the judicial review of antitrust cases.

The Supreme Court has intervened in two (2) of such cases, the Federal Civil and Commercial Court of Appeals in one (1) case, and the Federal Administrative Contentious Court of Appeals has also intervened in one (1) case -which had been appealed from a Federal Administrative Contentious Court No. 12 that intervened in the year 2019¹⁵-. Moreover, we can highlight that only the latter refers to the resolution of a substantive issue. The other three (3) cases resolve mere procedural formalities.

Right of information and confidentiality of antitrust dockets¹⁶

In this case, the Antitrust Authority rejected the motion filed by Messrs. Guillermo Robledo and Eduardo Manuel Murua, by means of which they

requested the Antitrust Authority to guarantee their right to access the information and/or documentation pertaining to the economic concentration.

The petitioners filed an appeal, which was dismissed by the Antitrust Authority on October 4, 2018. The Antitrust Authority reasoned that in the context of economic concentrations, the parties thereto provide sensitive commercial information, which disclosure could entail an advantage for competitors or third parties and, as a consequence, competition and the general economic interest could be affected. Further, the Antitrust Authority also noted that the petitioners had failed to identify the specific information they required.

Consequently, Messrs. Guillermo Robledo and Eduardo Manuel Murua filed a *writ of amparo* pursuant to section 43 of the Argentine National Constitution. In its judgment, the Federal Administrative Contentious Court No. 12 recalled that such protective action is an exceptional procedure for cases which have no other judicial remedy that is more suitable. In connection with the right of access to public information, it ruled on the possibility of a requested party –in this case the Antitrust Authority– refusing to provide sensitive information by means of an administrative reasoned act, and argued that allowing a third party to access the proceeding could generate a precedent that could affect the purposes of the Antitrust Act, as it would generate negative incentives to provide all useful information to analyse the market and the operation in order to prevent a competitor from accessing such sensitive information. In this sense, the court intended to preserve the confidentiality of the dockets and limited the exercise of the right to information.

Guillermo Robledo and Eduardo Manuel Murua appealed the resolution issued by the Federal

the conclusion of the process has expired, and since February 27, 2020 no new information has been published regarding the tender.

¹⁴ In accordance with Decree No. 297/2020 and Decree No. 325/2020 of the Federal Government, and the Supreme Court's rulings, courts shall remain closed until June 28, 2020, in principle. Only urgent matters may be submitted, but the Supreme Court's criterion during the emergency to assess whether there is actually an urgent matter is very strict.

¹⁵ Federal Administrative Contentious Court, No. 12, "*Robledo Guillermo c/EN - Camara Nacional De Defensa De La Competencia s/ Amparo Ley 16.986*", September 23, 2019.

¹⁶ Federal Administrative Contentious Court of Appeals, "*Robledo Guillermo c/EN - Camara Nacional De Defensa De La Competencia s/ Amparo Ley 16.986*", February 18, 2020.

Administrative Contentious Court, No. 12. On February 18, 2020 the Federal Administrative Contentious Court of Appeals resolved that under Law No. 27,275 -which regulates the right of access to public information-, an information requirement can only be rejected if the reasons under which the delivery of the information could cause damage to a genuine right or interest are reasonably described and justified. This is in order to avoid an illegitimate interference in the exercise of the right to access to public information.

The Court of Appeals also recognized that the former Antitrust Act No. 25,156 should apply to this case as it had been initiated under this law.

Finally, the Court of Appeals admitted the *writ of amparo* and ordered the Antitrust Authority to issue an informed decision on which information could be shared with the petitioners, and which should be kept confidential to preserve the general economic interest.

This case is relevant not only because it refers to the concerns among the disclosure of public information and the confidentiality of all antitrust dockets regarding third parties, but also because it has been initiated within the economic concentration “*Cablevisión-Telecom (Conc. 1507)*”¹⁷.

5. Upward trend as a consequence of the COVID-19

The Federal Government, as most governments around the world, has been forced to take immediate and extraordinary actions to cope and

overcome the health, social, and economic crisis aggravated by the COVID-19 pandemic. In particular, the Argentine Government has taken certain measures in relation to competition and antitrust matters, and is still implementing them.

First of all, although the Antitrust Act is fully in force, and individuals and companies must comply with it, all procedural deadlines in all dockets are suspended as mentioned above.

Apart from this, it is worth noting that in order to avoid possible shortages and price increases during the COVID-19 pandemic, the Federal Government imposed maximum prices on some critical products, forced their supply, required the entire chain of production, distribution, and commercialization of several products to produce the maximum of the available capacity and intervened in the marketing of certain medical goods.

As already mentioned above, the SDT also decided to initiate market investigations in certain industries. All of the above, based on the Antitrust Act, the Supply Act No. 20,680 (the “Supply Act”), and the Decree No. 274/2019 (“Fair Trading Regime”).

(i) Maximum prices

In particular, in Argentina –in addition to all the measures that were taken in connection with the COVID-19 and the economic emergency– a maximum retail price cap system¹⁸ for food products, drinks, and other basic or essential supplies was established¹⁹.

¹⁷ See “*Cablevisión SA, Cablevisión Holding SA, Telecom Argentina SA, Fintech Media LLC y Fintech Telecom LLC s/ notificación art. 8 ley 25.156 (Conc. 1507)*” and its accumulated record “*Telecom Argentina SA y Universo TV SA s/ análisis propuesta de desinversión en Conc. 1507*”. Online Links: <http://cndc.produccion.gob.ar/node/2419> and <http://cndc.produccion.gob.ar/node/2573>.

¹⁸ By means of Disposition No. 3, the Ministry of Productive Development and the Undersecretariat of Actions for the Defense of Consumers created an information system, free and for public consultation, for the publication of the maximum retail prices for a basic basket of consumer products, available at <https://preciosmaximos.argentina.gob.ar/#/>.

¹⁹ Administrative Decision No. 472/2020 obliges the Federal Government to take the prices set forth by the Resolution on maximum retail prices as maximum prices for all procurements and supplies made during the emergency. Likewise, pursuant to Decree No. 260/2020, the National Executive Branch allowed the Ministry of Health and the Ministry of Productive Development to set maximum retail prices for alcohol gel, facemasks, and other supplies considered critical, and to adopt the necessary measures to avoid their shortage. Additionally, Resolution No. 86/2020 and Resolution No. 115/2020 issued by the SDT set the sale prices of alcohol gel and its derived products back to the values in force on February 15, 2020, and prohibited its modification for 90 days. Resolution No. 114/2020 issued by the SDT sets the sale prices of facemasks back to the values in force on March 6, 2020, and

On March 20, 2020, the SDT issued the Resolution No. 100/2020 (the “Resolution 100”). Resolution 100 jointly issued by the Ministry of Productive Development and the SDT, applies, among others, to producers, distributors, and retailers, established maximum retail prices for certain products.

Such resolution’s term was extended and will continue in force from March 20, 2020, until June 30, 2020 (term which may be further extended).

During this term, companies of these industries (e.g. food products, drinks, personal hygiene, and cleaning products companies –subject to the provisions of Resolution 100–) are obliged to keep their prices back to the values in force on March 6, 2020.

Resolution 100 also requires the entire chain of production, distribution, and commercialization of the products subject to such Resolution 100 to increase their production to the maximum of their installed capacity and ensure their transportation and provision.

(ii) Shelves Law

On March 17, 2020, Law No. 27,545 (“Shelves Law”)²⁰ was enacted by Decree No. 268/2020. The provisions of the Shelves Law are determined to be of public order. The only admissible exception for non-compliance with the limits established in the display of Products on shelves and virtual locations is related to the non-existence of supplier companies of a certain product category.

It is provided that the sanctions foreseen for the case of non-compliance with the Shelves Law are those provided for in the Fair Trading Regime.

The Shelves Law also involves several guidelines for business conduct to be considered.

establishes a maximum price of 40 Argentine pesos per unit. Such resolutions’ terms were extended in order to maintain such prices during the crisis caused by the COVID-19. Finally, the fruits and vegetables originally covered by the resolution on maximum retail prices are not subject to said resolution as from the issuance of Resolution No. 118/2020 by the SDT, on April 18, 2020, with the duty to inform SEPA being optional.

The Shelves Law takes on many of the pro-competitive recommendations and general guidelines –which the CNDC issued to the SDT as a result of the supermarkets market investigation²¹–. Likewise, the code of business practice already designed by the CNDC could be used by the enforcement authority of the Shelves Law to implement the code of good commercial practices set forth therein.

In addition, it is remarkable that the controls in connection with the Supply Act –applicable regardless of the current context of emergency–, have also increased as a result of the economic emergency and the COVID-19.

(iii) Current application of maximum prices and the Supply Act

It is worth highlighting that, in connection with the increases in price and the compliance of these regulations –depending on the conduct and the context in which it is carried out–, the penalties set forth in the Antitrust Act, in the Fair Trade Regime or in the Supply Act may apply.

Application of these provisions may even be extended to directors, administrators, managers, and members of legal entities who have participated in punishable acts, with wilful misconduct of gross negligence.

Beyond the constitutional issues that companies may arise from the different regulations used to face the health emergency, and without making reference to their effectiveness, some of the measures carried out by the SDT in order to apply such regulations –together with the corresponding enforcement or local authorities– are analysed herein.

²⁰ Creating a food value chain, programme of measures for the promotion of competition, promotion of SMEs and exhibition in shelves.

²¹ CNDC expert opinion N° DISFC-2019-34-APN-CNDC#MPYT, expediente N° EX-2017-15554948, “IM. 5 - INVESTIGACIÓN DE MERCADO SOBRE LAS CONDICIONES DE COMPETENCIA EN EL MERCADO DE SUPERMERCADOS”, May 8, 2019.

By means of Decree No. 351/2020 (“Decree 351”) of the National Executive Branch, mayors and governors must control the compliance of the abovementioned Resolution 100 within their areas of responsibility, and were given special powers to enforce such control. Nevertheless, any infringement-related decision of Resolution 100 is still a matter to be decided by the SDT.

On the other hand, the Decree 351 calls provincial governors and the chief of government of the City of Buenos Aires, to control and judge the compliance with the Resolution 100 pursuant to Sections 3 and 18 of the Supply Act.

According to Section 3 of the Supply Act, the governors and the chief of government of the City of Buenos Aires have the powers, directly or through their officials, and exclusively within their jurisdictions, to: (i) set maximum prices (while not set by the Federal Government); and (ii) subject to final approval of the Federal Government in some cases, modify the maximum prices set by the Federal Government, if necessary, to ensure the supply of products. For that purpose, the governors may –among other measures– require all documentation related to the commercial activity of a company, require information regarding sale prices and their availability; require books and records, and apply sanctions in case of infringements committed in the relevant province as long as such infringements do not affect other jurisdictions.

Furthermore, in order to implement the provisions set forth in Resolution 100, the SDT together with other authorities –such as the inspectors of the AFIP, the Ministry of Environment, the Undersecretariat of Actions for the Defense of Consumers, and the provincial and municipal

authorities and inspectors–, are carrying out inspections and taking different measures to comply with the control of price and supply regulations.

In this context, the SDT organized numerous inspections in different municipalities, as well as a virtual meeting²² with referents of the commerce area throughout the Argentine territory, during which it was concluded that the maximum prices are being met throughout the country and that the supply is effective. In such meeting, the provincial authorities –ministers of Production, Trade secretaries, and directors of Consumers Defense– stated that they identified a decrease in the supply of certain goods –flour, oil, and sugar–.

They also pointed out that in large commercialization chains the prices are fully met, and they mentioned a gap in local stores because they are supplied by wholesalers who charge amounts that do not comply with those values in force on March 6, 2020, as stated by Resolution 100. In this sense, they made emphasis in the effectiveness of the controls to correct the prices in these stores.

The inspections that have been carried out so far²³, unless as it is publicly known, have been in connection with business, distributors, suppliers, and industries throughout the country. Generally they are carried out in local shops, such as supermarkets, self-services, stores, butchers, greengrocers, pharmacies, wholesale chains, meat-packing plants, poultry houses, laboratories, drugstores, distributors, facemasks factories, and food producers, among others.

Except for some particular cases, such as the supermarkets Coto²⁴ and Jumbo²⁵, and the market

²² In connection thereof, the SDT published a summary of the meeting dated May 9, 2020. Online link:

<https://www.argentina.gob.ar/noticias/alto-acatamiento-los-precios-maximos-en-todo-el-pais>.

²³ In connection thereof, the SDT has published a report dated May 25, 2020. Online link: <https://www.argentina.gob.ar/noticias/precios-maximos-mas-de-13000-inspecciones-en-todo-el-pais>. On June 11, 2020, an update regarding the inspections was published. Online link: <https://www.argentina.gob.ar/noticias/escobar-paula-espanol-y-ariel-sujarchuk-supervisaron-inspeccion-de-precios>.

²⁴ For example, the supermarket “Coto” has almost been shut down on April. Online link: <https://www.lanacion.com.ar/economia/clausuran-supermercado-alfredo-coto-barbijo-encabeza-protesta-nid2350659>.

²⁵ The SDT and local authorities carried out an inspection in the supermarket “Jumbo” in Belén de Escobar. They registered the noncompliance of the maximum reference prices in about 10 products, and for not showing the price of certain products, against Resolution 100 and 7/2002, respectively. Online link: <https://www.argentina.gob.ar/noticias/escobar-paula-espanol-y-ariel-sujarchuk-supervisaron-inspeccion-de-precios>.

investigations abovementioned (bovine meat and medical liquid oxygen), most of the controls performed by the SDT (and other national, provincial and municipal authorities involved) were mainly in local shops (such as supermarkets, self-services and stores).

On the other hand, the SDT reported that virtual audits of essential sanitary goods were carried out to the company “Mercado Libre” and, after the observations reported to the online sales platform, 70 percent of the 500 publications that did not comply with the reference prices for gel alcohol, ethyl alcohol, and single layer, triple layers, and N95 facemasks were definitely removed.

As informed by the SDT, between March 23 and May 25, 2020, more than 13,000 inspections have been carried out to control prices and supplies. And between May 25 and June 11, 2020, 2,000 more inspections were also carried out.

As a result of these inspections, 150 preventive closures were ordered and more than 3,000 minutes records were filed, and the SDT reported that the fines will be imposed after the corresponding procedures (beyond the measures already ordered by the SDT to correct the price distortion such as, for example, the return of the excess in price or the distribution of the goods in stockpiling). In other words, according to the SDT report, only about 1.3 percent of the inspected establishments were closed down.

Regarding the price of alcohol, alcohol gel, and facemasks –which by means of Resolution SDT No. 86/2020, the prices of these essential goods were the values in force on February 15, 2020–, the SDT reported that the controls have commenced as from February 17, 2020. In connection thereof, nearly 3,000 operations were carried out.

In turn, the SDT received more than 4,300 consumer complaints in May, stemming from

alleged abuses in food products’ prices, specifically regarding sugar and fresh products –milk, meats, vegetables, and eggs–. In relation to these products, it must be noted that on May 22, 2020, the SDT convened the Consumers Defense referents organized under the National Consumer Council (“CoFeDeC,” per its Spanish acronym) to strengthen the supervision of local businesses, placing greater emphasis in retail prices of fresh products from the entire production, distribution, and commercialization chain.

In addition, the SDT highlighted the work done by these organizations, which bring together the provinces’ and the City of Buenos Aires’ heads of the Consumers Defense, to control maximum retail prices and supply of essential goods.

(iv) Pro-competitive agreements

Section 29 of the Antitrust Act provides that the Antitrust Authority may grant permissions to execute contracts, agreements or arrangements among competitors involving prohibited conducts, pursuant to Section 2 of the Antitrust Act, as long as they do not generate any harm to the general economic interest and they meet the requirements of the applicable regulations²⁶.

There is no public evidence yet of any case in which the Antitrust Authority applied this provision. It will certainly be a challenge for companies that would like to apply for it and for the Antitrust Authority to implement this, and that the permission is issued in due time, considering the current and continued state of emergency.

None of the measures taken in Argentina, so far, refer to permissions to execute cooperation agreements between competitors nor any kind of exception or mitigation in the application of fines and sanctions established by the Antitrust Act in case of cooperation agreements.

²⁶ Pursuant to the Regulatory Decree, in order for the Antitrust Authority to grant such permission, it shall verify that such contracts, agreements and/or arrangements: (i) contribute to improving the production or distribution of goods and/or services; (ii) promote technical or economic progress; (iii) result in specific benefits to consumers; (iv) do not impose

on the concerned undertakings restrictions which are not indispensable to achieve the objectives set out in the preceding paragraphs; and (v) do not offer such undertakings the possibility of eliminating competition in respect of a substantial part of the concerned market.

Nevertheless, we believe that there will be more flexibility in dealing with pro-competitive agreements, as this has occurred in many jurisdictions and as it has been suggested by the ICN (International Competition Network)²⁷ and the Competition Division of the Organisation for Economic Co-operation and Development (OECD)²⁸.

For any concerns or questions, please contact:



Gabriel H. Lozano

Competition & Antitrust Law
Partner

gabriel.lozano@bruchou.com



Estanislao H. Olmos

Competition & Antitrust Law
Partner

estanislao.olmos@bruchou.com



Dolores M. Cedrone

Competition & Antitrust Law
Associate

dolores.cedrone@bruchou.com

²⁷ In particular, the ICN has posted a statement called “*ICN Steering Group Statement: Competition during and after the COVID-19 Pandemic*” that embraces certain considerations upon the effects of the Pandemic in the economy and competition, and the efforts that the competition agencies are committed to in order to face this crisis new challenges. By means of this statement the ICN proposed several guidelines for the competition agencies around the world. Online Link: <https://abogados.com.ar/covid-19-desafios-y-lineamientos-para-las-autoridades-de-defensa-de-la-competencia/25713>.

²⁸ Among other statements, the OECD posted the note “*Co-operation between competitors in the time of COVID-19*”. This note analyses several examples of co-operation agreements from different jurisdictions and identifies some common criteria of lawful co-operation. Moreover, it identifies emerging challenges and solutions that competition authorities have developed during the COVID-19 crisis, as well as open issues. Online link: <http://www.oecd.org/competition/Co-operation-between-competitors-in-the-time-of-COVID-19.pdf>.