

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy 2023 – Argentina

Julián Peña (Allende & Brea) · Thursday, January 11th, 2024

### General considerations

Competition law enforcement in Argentina was not immune to the political context in 2023. This was reflected both in the reduction of decisions taken by the outgoing government because of the presidential elections that started in August and ended in late November, as well as in the drastic changes promised by the new government that took office in December.

Although there have been no changes regarding the competition law since it was last enacted in 2018, on December 27, 2023, the Argentine government sent a bill to Congress[1] to fully amend the Competition Law. The bill is expected to be debated in early 2024.

The consolidation of the Competition Authority's new interpretation of the concept of *general economic interest* the ultimate goal of the competition law, continued in 2023 with the publication in May of the new Merger Control Procedure Regulations[2], replacing the ones that have been in place since 2001. This consisted of the redefinition of the goals of the competition law by introducing a more flexible interpretation of the concept of the *general economic interest*. The new broadened interpretation of the *general economic interest*, not related only to the consumer welfare standard but also to other goals considered necessary such as labour, environment, import-substitution, gender concerns, or others, remains at the Competition Authority's discretion.

Regarding digital markets, in October 2023, the Competition Authority created an internal working group to focus on its study[3], though no relevant decisions have been taken on this front.

On the institutional front, all of the members of the Competition Authority submitted their resignation in December 2023 due to the change of government. This is the first time that a massive resignation has taken place in many decades. Except for the Secretary of Trade, no other appointments have been made up to December 31, 2023.

### Merger control

In May 2023, the Competition Authority issued new Merger Control Procedure Regulations[4] which introduced the following changes:

- implementation of the fast-track mechanism introduced by the Argentine Competition Law in its 2018 reform;
- setting much harder effects on the submission of incomplete information;
- requesting the parties to provide a greater amount of documentation regarding the goals of the transaction;
- introduction of additional reasons to suspend and/or interrupt the Competition Authority's clock;
- introduction of a requirement to the notifying parties to prepare a draft resolution; and,
- establishment of the possibility for the notifying parties to introduce Non-Competition consideration in the analysis of the transaction.

The Competition Authority issued one Objection Report<sup>[5]</sup> which included the imposition of an injunction. The Objection Reports are preliminary a set of public statements issued by the Competition Authority with the purpose of pointing out the competition concerns identified in a given transaction. These Objection Reports were first introduced in 2018 by the Competition Law.

In 2023, the Competition Authority conditioned one transaction<sup>[6]</sup> and imposed a late filing fine in only one case.

### **Enforcement of anti-competitive conducts**

The Competition Authority has been more active in unilateral cases than in cartel cases in 2023.

In fact, there were no known cartel cases finished by the Competition Authority in 2023. In September 2023, the Competition Authority did, however, close without further investigation the 2018 investigation for alleged bid rigging in the public works sector<sup>[7]</sup>. The Competition Authority considered that there was no sufficient evidence to justify the pursuit of the investigation.

On the unilateral conducts front, however, the Competition Authority has been active in both imposing fines as well as by issuing injunctions.

In January 2023, the Competition Authority sanctioned Telecom Argentina S.A. and Arte Radiotelevisivo Argentino S.A. (both companies belong to the same economic group), for exclusionary abuse of dominant position in the pay TV market by imposing discriminatory sales conditions for the signals Canal 13 and TN<sup>[8]</sup>. Both companies were found to have abused their dominant position by fixing an excessive number of minimum subscribers to AMX, a company that provides services under the Claro brand in the greater metropolitan areas of Buenos Aires, Córdoba and Rosario, the three most populated cities in Argentina. The fine was imposed notwithstanding the fact that the parties had reached a commercial solution in July 2021. Since the conduct took place before the 2018 reform, the Competition Authority imposed the maximum possible fine (AR\$ 150 million).

In March 2023, the Competition Authority imposed an AR\$389 million fine (approximately US\$ 1.8 million) to Cervecería y Maltería Quilmes S.A.I.C.A.y G., for failing to comply with the corrective measures issued by the Competition Authority in August 2021 for exclusionary abuse of dominant position<sup>[9]</sup>. The imposition of this penalty fine constitutes an unprecedented measure. The August 2021 sanction was upheld by the Federal Civil and Commercial Court in April 2023.

In November 2023, the Competition Authority issued an injunction against Visa in an alleged

dominant position case regarding payment facilitators' involvement in cross-border transactions.

## Outlook for 2024

With the new government, and most likely with a new law as well, 2024 will most certainly be very different to 2023 with regard to competition enforcement in Argentina. If the bill is approved, fewer merger filings are expected since the filing threshold, unless it is changed in the Congressional debate, will most likely be much higher than the current one. This would give more time and resources for the Competition Authority to focus more on both cartels and unilateral conduct investigations.

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[1] See Exhibit 3 of the Bill of Law including the new “Basis and Starting Points for the Freedom of Argentines” at: <http://www.saij.gov.ar/proyecto-ley-bases-puntos-partida-para-libertad-argentinos-proyecto-ley-bases-puntos-partida-para-libertad-argentinos-nv40785-2023-12-27/123456789-0abc-587-04ti-lpssedadevon?>

[2] Merger Control Procedure Regulations, Resolution 905/2023 and Exhibit I, Secretariat of Trade of the Ministry of Economy, <https://servicios.infoleg.gov.ar/infolegInternet/anexos/380000-384999/383980/norma.htm>.

[3] See press release: <https://www.argentina.gob.ar/noticias/la-cndc-creo-el-grupo-de-investigacion-y-trabajo-sobre-mercados-digitales>.

[4] Merger Control Procedure Regulations, Resolution 905/2023 and Exhibit I, Secretariat of Trade of the Ministry of Economy, <https://servicios.infoleg.gov.ar/infolegInternet/anexos/380000-384999/383980/norma.htm>.

[5] GEORGALOS HNOS. S.A.I.C.A. and MONDELEZ DE ARGENTINA S.A., “CONC.1860 – GEORGALOS HNOS. S.A.I.C.A. S/NOTIFICACIÓN ART. 9 DE LA LEY N.º 27.442”, Resolution 975, [https://www.argentina.gob.ar/sites/default/files/2023/05/georgalos-mondelez\\_dictamen\\_y\\_reso.pdf](https://www.argentina.gob.ar/sites/default/files/2023/05/georgalos-mondelez_dictamen_y_reso.pdf).

[6] Linde AG and Praxair INC., “CONC.1663 – LINDE AG Y PRAXAIR, INC. S/NOTIFICACIÓN ART. 9 DE LA LEY N.º 27.442”, Resolution 1039, [https://www.argentina.gob.ar/sites/default/files/2023/08/linde\\_praxair\\_dictamen\\_y\\_reso\\_2.pdf](https://www.argentina.gob.ar/sites/default/files/2023/08/linde_praxair_dictamen_y_reso_2.pdf).

[7] “C.1698-SECRETARÍA DE COMERCIO S/ SOLICITUD DE INTERVENCIÓN”, Resolution 1287, [https://www.argentina.gob.ar/sites/default/files/2023/09/cond.\\_1698\\_-\\_dictamen\\_cndc\\_y\\_resolucion\\_sc.pdf](https://www.argentina.gob.ar/sites/default/files/2023/09/cond._1698_-_dictamen_cndc_y_resolucion_sc.pdf).

[8] “ARTE RADIODIFUSIVO ARGENTINA S.A. Y OTROS S/ INFRACCIÓN LEY 25.156” (C.1676), Resolution 8, [https://www.argentina.gob.ar/sites/default/files/2023/01/dictamen\\_reso\\_artear\\_telecom.pdf](https://www.argentina.gob.ar/sites/default/files/2023/01/dictamen_reso_artear_telecom.pdf).

[9] Fine to Cervecería and Matería Quilmes S.A.I.C.A. “INCIDENTE N° XVII – CERVECERIA Y MALTERIA QUILMES S.A.I.C.A. Y G. S/ INCUMPLIMIENTO RESOL-2021-866-APN-SCI#MDP”, Resolution 96, [https://www.argentina.gob.ar/sites/default/files/2023/03/resolucion\\_1589\\_inc\\_cese\\_0.pdf](https://www.argentina.gob.ar/sites/default/files/2023/03/resolucion_1589_inc_cese_0.pdf).

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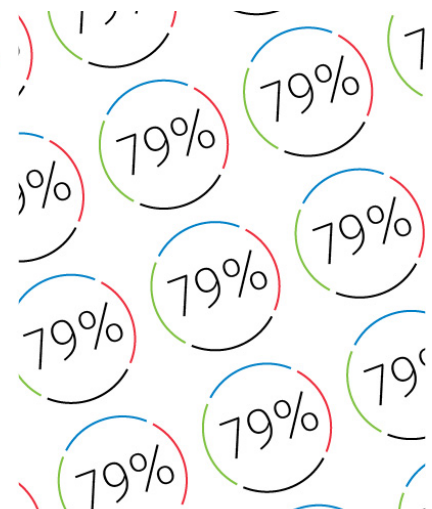
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