ARGENTINA

(1997)

I. Law 22.262 for the defense of competition and the role of the National Commission for the Defense of Competition (NCDC)

1. Law 22.262

1. The anti-trust legislation had its onset in Argentina in 1923, when Law 11.210 was approved. Ever since, this Law has been amended several times due to the poor results reached and with one common particularity: assigning increasing responsibilities to the Executive Power in search of obtaining a better effectiveness of its enforcement. The last important amendment to the law, which resulted into the current Law 22.262 for the Defense of Competition, took place in 1980 and one of its main elements was the creation on the NCDC.

2. The basic goal of Law 22.262 is the avoidance of anti-competitive practices that may affect the community general welfare. Therefore, the object of the law are behaviours, and not market structures, and its concerns are the consequences and not the causes that may create those behaviours.

3. Fourty-eight articles divided into four chapters compose the Law. The first chapter (articles 1-5) refers to the enforcement scope. The second chapter (articles 6-31) refers to the NCDC powers and the administrative process that is to be followed during the investigations for those cases that fit into the law. The third chapter (articles 32-42) refers to the judicial instance where those behaviours and anti-competitive cases may be submitted to, including a non- exhaustive description of possible felonies. Last, chapter four (articles 43-48) contains transitory and complementary provisions.

4. As it can be understood by the above mentioned, Law 22.262 is an organic as well as a procedure law. Its organic provisions are basically articles number 1, 2, 3, 5 (this last one now derogated and 41. The object of the law is specified and the crimes are classified in these articles. In articles 6-16 however, lies the creation of the NCDC and its structure, powers and functions are established, while Article 42 is the one imposing penalties in case of crime. Almost the rest of the law (articles 4,17-31,32-40) is about procedures and regulates the steps to be followed in the administrative and judicial instances.

5. Article number 1 has a clear European influence and it is the most important in the Law, since it defines as its main objective, the prohibition of " acts or behaviours (...) limiting, restricting or distorting competition or constituting abuse of a dominant position in a market, in a manner which may result in a damage to the general economic interest". Article number 2 complements the definition of article number 1, since it defines what is understood by "dominant position in a market" of a person or a group of people.

6. The three elements mentioned in article number 1 (restriction of competition, abuse of a dominant position and damage to the general economic interest) are the columns where the law finds its support to judge whether a behaviour deserves to be punished or not. The first two are alternative, but the last one is a necessary condition to constitute a breach of the law. This implies that a certain behaviour can be punished by the Law for the Defense of Competition if it is, first, anti- competitive (restricting a certain

market functioning or abusing of a dominant position in it), and second, harmful to the community (damaging the general economic interest). However, this damage may be potential, although, as this law clearly defines in its explanation of motives, this potentiality makes reference to a sound danger and not to a simple logical and abstract possibility. In this manner, the enforcement of this law is not ruled by a "per se" principle of the sole existence of anti- competitive acts, but on the contrary by the so called "rule of reason", which requires the demonstration of the existence of negative economical effects affecting the community. This implies a very strong influence of the American legislation over the issue.

7. Article number 5, now derogated, had in the structure of Law 22.262, the function of excluding from its object, the acts and behaviours specifically being ruled by special systems, as is the case of public companies, legal monopolies, economic promotion systems, marketing of products submitted to regulation, etc. Article 41 (to which article number 3 refers to) is used, on the other hand, to particularise cases that, as long as they fit into the general definition of Article 1, constitute punishable felonies at the law's judicial instance. From the normative analysis' point of view, these can be considered as examples that the law specifies of acts and behaviours harming the general economic interest that we are trying to protect.

2. The National Commission for the Defense of Competition

8. The basic role of the NCDC is investigating and deciding in a non-binding manner about cases initiated ex officio or after filing of a private complaint. A professional body composed by a president and four commissioners approve its decisions, which afterwards serve as a basis for the decision of the Secretary of Industry, Commerce and Mining. The NCDC has also the power to perform market studies, reports and standards of law interpretation, which may help to a better acknowledgement of competition in general and to the prevention of anti-competitive practices.

9. The powers to take action against basic anti- competitive practices that are instrumented through the NCDC decisions and following resolutions by the Secretary of Industry, Commerce and Mining are the following:

- Dismissing complaints;
- Accepting explanations from the defendant;
- Issuing cease and desist orders about certain behaviours;
- Imposing fines.

10. All these resolutions can be appealed before the federal courts corresponding to the jurisdiction where the behaviour was analysed, or before the National Court of Appeals for Economic and Criminal Matters, if the corresponding jurisdiction is the Capital Federal.

11. In spite of the powers granted by Law 22.262, the NCDC only began to have a relevant performance in 1997, because almost for the first time appeared relevant cases that gave the NCDC an intervention that could modify the operations of certain key markets of the economy.

12. The long period between the enactment of the current anti-trust law in 1980 and its effective enforcement in 1997, was due to the change of the economic system that took place in our country during the last decade.

13. To understand the relevance of this event, it will be important to remember that until the enforcement of the stabilisation plan in 1991, Argentina's doors were almost closed to international trade,

with strong regulations on prices and an important level of state control over its economic structure. As a consequence of this, the allocation of resources depended many times upon official decisions more than upon private ones, and the role of competition as a factor to improve the general welfare was extremely soft and distorted by interventions originated in different economic policies.

14. Another important factor of discouragement for an effective enforcement of the law for the defense of competition was that, since the 70's, the State financed its budgetary deficits with increasing inflationary tax rates. With all this, a growing capacity for anticipation was growing in the private agents to defend their incomes, and this culminated in two episodes of hyperinflation which made evident that there were not options but stabilisation. Particularly during the 80's this capacity for anticipation was manifested through an increasing trend to make preventive price raises based upon inflationary expectations. These were attempted to be counterattacked through price agreements between the State and the trade associations. The State itself encouraged to incur into breach of the law for the defense of competition when encouraging income policies that induced also a corporative structure for the business life.

15. In such a context the function of an agency of enforcement of an anti-trust law had little room, due to the lack of incentives to take any form of action. This made the NCDC an agency of almost formal existence, which dedicated its few resources to solve cases with almost no impact on the general economic interest. This implied a distortion of this Commission's role, which, from being an agency created to enforce a federal law that protect the marketplace, turned to a limited task: solving quasi-irrelevant disputes between parties.

II. Changes to Competition Laws and Policies

1. The Law for the Defense of Competition and the Health Services Market (Guideline No 1)

16. The NCDC produced during 1997 a document which has as object the study of the structural and functional aspects of the health market, that might be concerning from the point of view of competition . Its purpose is to provide an economic framework that may explain such aspects and to relate it to the jurisprudence developed by the NCDC about the issue, concluding with some guidelines that may be enforced in similar cases.

17. The health services market represents quite an important segment in the economic activity of the country. A new modality that has been growing significantly in such markets, are entities that negotiate between the basic service providers and the end consumers. Such entities normally take the form of "providers associations" (networks, unions and professional associations, clinic federations, etc.) and "health funds administrators"(social security services and companies of pre-paid health, etc.) and their relationships usually causes conflicts and anti-competitive behaviours with direct effect over suppliers and end service consumers.

18. The creation of fund administrators has a clear economic explanation due to the nature of the demand of health services, that by definition is always subject to a strong uncertainty and scale economies. Due also to the importance of the health expenses that a person may have when suffering from a certain illness, the insurance mechanism makes everything more efficient. Through this mechanism, people pay when having a perfect health in exchange of assistance in case of eventual illness.

19. The organisation of health fund administrators is also useful in certain cases to solve problems caused by external effects from the health companies and the public welfare characteristics of such

renderings. This explains why so many times the doctors' assistance coverage is mandatory and why some health insurance systems (social entities) often have a re-distributing or "solidary" component in the way of performing the contributions. The opposite alternative would be that each person pay for the specified insured risks, as it usually happens in the pre-paid health systems.

20. The providers association success can also be explained through some arguments based upon efficiency considerations. Such considerations can be connected with information interchange and training improvement activities, saving costs in the administrative activities, scale economies in the use of resources such as emergency services and specialists derivations, etc. Plus, the sole existence of a list of the providers' association, could benefit the society as a whole, when reducing transaction costs, making health services easier with the customers and allowing them to have an access even more direct to a wider number of health providers.

21. The providers associations' role as center of the health services supply, however, presents several problems from the point of view of competition at several important points. On one hand, these associations may be useful to carry out anti-competitive practices such as price fixing or market division, whose objective is to increase the providers'profits sacrificing the consumers' interests (who end up paying more for the same services or having access to a less wider scope of services). On the other hand, and sometimes as an instrument to keep the mentioned practices working, the associations are able to use their market power to exclude their members from certain benefits that they offer (for example, exclusion from their providers list), in general as a punishment because those members have, in one way or the other, gone beyond the arranged practice that the association imposes.

22. Since it started working, the NCDC has investigated a set of cases that involved providers associations and health fund administrators, and its judgements on those cases can be considered as a basic source of law interpretation for similar cases. From the different acts and behaviours of the health services market that have been object of analysis under the competition legislation of the NCDC, two groups are outstanding: cases of price-fixing; and cases of exclusivity imposition when hiring health services.

23. Among the cases of price fixing that the Commission has solved, seven judgements mentioned in this report are the most outstanding, that involved the Official Capital Federal Association of Biochemists and Pharmaceuticals (1982), the Argentine Anesthesiology Association (1983), the Official Capital Federal Association of Biochemist and Pharmaceuticals (1987), The Rosario Anesthesiology Association (1988), the Neuquén Medical Association (1988), the Rosario Urology Association (1988, and the Tandil Medical Association (1995). Among those cases connected with exclusivity imposition when hiring health services, the report analysed those cases involving FeMeBa (1982), the Pharmaceutical Association of the Province of Buenos Aires (1984), the Medical Association of the City of Córdoba (1988), the Pharmaceutical Association of the Province of Santa Fé (1989) the Medical Association of Misiones Alto Paraná (1992), the Medical Association of Misiones South (1995) and the social service OSPRERA (1997).

24. Dealing with the above mentioned cases made the NCDC establish a set of principles of law 22.262 interpretation that are enforceable in most of the cases. One of the principles is that the professional associations are not excluded from the law for the defense of the competition enforcement area. Another principle is that the defense of patients' free health providers election can not be presented as an excuse to justify that these providers arrange their economic behaviours to fix prices or deter direct hiring between suppliers and demanders. Finally, one last principle is that the fact that service providers associations' or health fund administrators may be non profit organisations, does not mean that they are not able to affect the general economic interest with their acts.

25. From the exhibited theoretical concepts and from the NCDC jurisprudence, the document also brings general guidelines regarding the type of behaviour observed in the health services market that are punishable and anti-competitive. These standards are six:

1. providers associations and groups of providers associations that gather more than 25% of providers of some speciality in any relevant market shall not fix minimum fees or prices for their services;

2. associations and groups of associations shall be able to fix prices for their members' services and/or monthly payments for capitalisation systems, when these arise from negotiations with health fund administrators or with their representatives. Such prices shall also be able to arise from negotiations between fund administrators (or representatives) and independent providers;

3. providers associations and groups of providers associations that gather more than the 25% of providers of any speciality in any relevant market shall not be able to establish exclusivity clauses that imply that their members are compelled to enter into agreements with health funds administrators only through the association;

4. health fund administrators that, individually or in group, represent more than the 25% of the private demand in a relevant market should hire providers through a system of members' free election or bids or competitive contests;

5. agreements between providers associations or groups of providers associations and health fund administrators or representatives, shall not bear exclusivity clauses that forbid the association hiring other potential suppliers, or the administrator hiring independently other providers or providers associations;

6. when an association gathers more than the 50 % of any market providers and, under circumstances that are typical of its functioning and structure, not belonging to the association may imply an important difficulty for practising, the association shall not establish clauses forbidding membership of providers that comply with the skills requirement that are relevant for the related activity.

2. Government proposal for new legislation: Amendments to Law 22.262

26. The House of Representatives of Argentina is at the moment discussing a bill, which will replace the current Law 22.262. The main amendments, which reflect the trends governing this issue in other countries, shall be as follows:

a) to create a National Administrative Court for the Defense of Competition as an autonomous and independent body, which will by itself have the power to impose sanctions, that may be appealed at the judicial power;

b) to incorporate, as in the most advanced countries in the world, the control over operations of economic concentration that, due to their magnitude, could affect the normal course of the market. Previous binding notice shall be provided for those operations that may overcome certain standards and shall be defined in regulations. The National Court for the

Defense of Competition will be able to oppose to or condition those operations, when it deems their costs as exceeding the social benefits;

c) to explicitly incorporate the agency powers to rule over public regulations affecting competition, with a non-binding character, as well as giving general or sector counselling about competition modalities in the market, incorporating the role of competition advocacy;

d) to broaden punishing possibilities, regarding fine amounts as well as the imposition of conditions in search of competition restoration;

e) to eliminate prison penalties;

f) to increase the transparency of the process, incorporating public hearings;

g) to derogate all competition concerns related to Law 22.262 granted to other agencies or state bodies.

III. Activities of the National Commission for the Defense of Competition

27. The reasons that explained the lack of relevant activity of the NCDC in the old economic order were also accompanied by a lack of political will to enforce the law for the defense of competition, that was sustained even when the economic environment started to change. Under those circumstances the NCDC suffered from a severe lack of human and material resources to be able to take action, which ended up damaging its public image.

28. At this moment the former picture has changed dramatically. Now we can say that there is an economical context which, with the purposes of preserving the efficiency and equity in the markets, claims for an effective enforcement of this kind of policies; that the NCDC counts on adequate human and material resources, and that there is at last a sound political manifestation from the Secretariat of Industry, Commerce and Mining to enforce the law.

29. The best proof of the increasing activity of the NCDC is the list of cases under investigation up to 12/31/97, in chart 1. In that list there are companies acting either as complainants or as defendants, which shows the great changes produced in such cases. The market list, on the other hand, also reveals that that the NCDC is currently analysing the functioning of some sectors, whose importance to increase competition is undeniable, something particularly important when economic policy has given up the use of the devaluation instrument. Finally, even if the accused behaviours are briefly expressed, it is relevant to point out that the importance of those cases are compelling the NCDC to make deeper analysis, using all the available analytical instruments and the experience of antitrust agencies around the world.

Chart 1: Main NCDC cases under study up to 12/31/97

Case	Behaviour	Market
Ámbito Financiero vs. AGEA	Exclusion	Newspapers
Subsecretaría de Comercio de Misiones vs. Posadas Cable	Unilateral abuse	Cable Television
AAAVYT vs. Junta de Representantes de ompañías Aéreas and others	Collusion	Air Transportation
FABA vs. VISA, Mastercards and others	Unilateral Abuse	Credit Cards
Plan Ovalo and other about Breach of Law22.262	Unilateral Abuse	Car Insurance
Cruzada Cívica vs. Movicom, Miniphone and other.	Unilateral Abuse	Cellular Phones
YPF about Breach of Law22.262	Unilateral Abuse	Liquid Gas
FECRA vs. Eg3	Unilateral Abuse	Liquid Fuels
Procter & Gamble vs. Unilever and others.	Exclusion	Soap powder
Cinematográfica Olmo vs. Buena Vista Columbia Tristar and others.	Exclusion	Movies
Torneos y Competencias about breach of Law 22.262	Unilateral Abuse	Television

1. Market Studies

30. One of the functions that Law 22.262 grants to the NCDC is performing studies about structure, functioning and performance of markets. Such studies are routine in the cases of complaints that the NCDC receives or in those initiated sua sponte concerning specific anti-competitive practices. During 1997 however, the NCDC decided to broaden its scope about this point, and started a new form of acting: market monitoring. For these purposes, it was understood that having the power to act sua sponte, the NCDC had also the obligation to be informed about the development of the different markets.

31. Since the available resources to carry out market studies were limited, as opposed to the kind of activity the NCDC wanted to start, the first step meant a careful definition of the possible sectors of interest for the defense of competition. It was then concluded that it was better to concentrate on the producers of main manufacturing inputs. The scope included a total of 17 sectors, all of them producers of intermediate goods and very crucial for industry competitiveness. These sectors corresponded to flat plate steel and non-flat steel and stitchless ducts, aluminum, electric wires, cement, liquid fuels, leather, tin cans, liquified petroleum gas, wheat flour, construction materials, rubber tires, paper, oil refining, petrochemistry, cotton textiles, and floated glass. To carry out some analysis, the NCDC used its own human resources; for some others it signed an agreement with the Torcuato Di Tella Institute , an institution of renowned prestige in the area of the economic research.

32. The research starting point was that after the liberalisation of the country's foreign trade, the objective was making the domestic markets more contestable by imports. The result had to be a reorganisation of the domestic prices so they could, in a first instance, approach the imports parity. For a purchaser to operate in those markets, after an initial adjustment period, it would have to mean the same buying a foreign or a domestic product, and anyway, the decision should depend on the evaluation of the differences between both products, and not substantially on prices. In the long term, for those cases where exports were not marginal, domestic price should fall up to the export parity, due to the fact that, for the local producer it would be the indifferent selling in domestic or international markets.

33. Whatever the final results were, the tendency to inferior prices previous to the opening would prevail, unless their behaviour was influenced by conditions that would encourage anti-competitive practices. Detecting such conditions and the behaviours abetted by them was one of the main objectives of the achieved work, in the light of an eventual filing by the NCDC against the involved economic agents.

34. In general, results confirmed that domestic prices in the studied sectors were at the same level of the import parity. In those cases that were still beyond their respective import parities, there was some evidence that would indicate that the main importers and manufacturers were in many cases the same person, without parallel imports. In some markets where there were no imports in the previous experiences of economic opening, these started to flow due to a perceived strength in the macroeconomic scheme, which is holding a fixed exchange rate. The process started in general with the biggest client companies, which could place larger purchase orders abroad, making the entrance of new products possible for the Argentine economy.

2. Relevant cases

American Express versus Visa, MasterCard and Argencard

35. This case started out after American Express Travel Related Services and American Express Argentina S.A. filed a complaint against Visa International, Visa Argentina S.A., MasterCard International and Argencard S.A. The behaviour analysed in this case was entry deterrence to the market of general use credit cards. The complainant blamed the defendant for the possible adoption of a rule that imposed Visa and MasterCard's automatic launch to their issuer banks who would also accept issuing American Express and other non authorised credit cards. The evidence presented by the accuser was based upon cases from the European Union, Asia and the USA, and upon the public announcements made by the defendants' officers.

36. According to the evidence gathered in this cause, the NCDC dismissed the possibility that accused Visa Argentina and Argencard of incurring in such behaviour, and deemed that they did not possess legal capacity for it. The presumptive breach of the law 22.262 could however, involve the international companies, since in the case of both Visa and MasterCard, the marketing policies were established by their head offices. From the resulting investigation it was concluded that, even if the defendants rule existed or had existed in other countries, had not been adopted in Argentina, therefore the case could not be deemed as a breach of the law for the defense of the competition. In spite of that, the judgement warned about the consequences that could arise from adopting such a rule in our country, and it was deemed that its enforcement would configure an anti-competitive behaviour, since it could obstruct the access of potential competitors to the market and affect the general economic interest.

37. In virtue of said fundaments, the NCDC recommended accepting the explanations given by the defendants and filing the record. In its resolution, the Secretary of Industry, Commerce and Mining adopted the NCDC opinion, and requested it to perform a regular follow-up of the credit card market evolution.

Argentine Chamber of Stationers and Bookstores versus Makro Supermarkets

38. In this case, the Argentine Chamber of Stationers and Bookstores filed a complaint against Makro Supermarkets. The complainant is a civil association that acts in defense of the interests of retail business selling stationery and books. The defendant is a supermarket chain that sells a wide variety of retail and wholesale products.

39. The analysed behaviour was a practice of predatory prices, that is, selling to a price lower than the cost as a strategy to exclude competitors, in order to gain market power to establish higher prices. According to the complaint, Makro was offering a family pack of Rivadavia 480 writing paper sheets at

$5,90 (VAT included) when its purchase price was $8,88 (plus VAT minus discounts), which ended implying a unit sale price which was inferior in more than $3 to the acquisition cost.

40. From the investigation that the NCDC carried out, it was concluded that Makro had a very small share in the market of supermarkets and hypermarkets (7%) and even a smaller share (1%) in the market of family packs of Rivadavia 480 writing paper sheets. In the light of this, the possibility of a dominant position was dismissed. At the same time, it was proved that the product sale, at a price under its cost, was offered only for 15 days. All of this led to the conclusion that such behaviour had not had the power to distort the market or produce an economic damage.

41. The NCDC also verified that the share in the sales of Rivadavia writing paper within the total sales of the defendant was very low, which led to infer that that product under-its-cost-sale was a marketing strategy that replaced advertising. It was also pointed out that the market had no entry barriers. In the light of all this, the NCDC understood that the universally accepted assumptions to configure a practice of predatory prices were not verified. As there were already additional benefits for the consumers (since they had the discounts), the NCDC concluded that no damage was observed neither to the normal market functioning nor to the general economic interest. In virtue of those fundaments, the Secretary of Industry, Commerce and Mining accepted the explanations given by Makro Supermarkets and filed the record.

SADIT and others versus Massalin Particulares and others

42. In this case, the Argentine Society of Tobacco Independent Distributors (SADIT) filed a complaint against Massalin Particulares S.A. This complaint was later accumulated to others by some independent distributors; a retail dealer and the company named Nobleza Piccardo S.A., which also implied Massalin Particulares exclusive distributors. At a certain point of the procedure, however, the NCDC decided to incorporate Nobleza Piccardo also as a presumed responsible party, when realising that it had adopted a similar behaviour than that adopted by Massalin Particulares.

43. Massalin Particulares as well as Nobleza Piccardo are corporations controlled by foreign companies that produce and sell cigarettes, and between the two of them supply the whole Argentine market (Massalin a 60% and Nobleza 40% approximately). SADIT, on the other hand, is a civil association that gathers 50 % of the 220 independent sub distributors who worked throughout the Capital Federal and Gran Buenos Aires. The behaviour analysed in this case was Massalin Particulares' and Nobleza Piccardo's imposition of exclusivity to the cigarettes wholesale distributors acting in Capital Federal and Gran Buenos Aires, and the exclusion of independent sub-distributors. One of the complaints also made reference to a similar exclusion of an independent sub-distributor in the city of Tucumán.

44. According to the investigation, exclusive distributors of each manufacturer, who supplied (directly or through sub-distributors) the different existing sales points from that area, have been carrying out cigarette distribution inside the country for years. In the Capital Federal and Gran Buenos Aires, however, distributors traded products from both companies, also using sub-distributors in many cases. From March 1997, Massalin Particulares modified its distribution system and divided the metropolitan area into 29 zones, appointing one exclusive distributor each. A few days later, Nobleza Piccardo adopted a similar system, and appointed zones to 13 exclusive distributors. One of the clearest consequences of the new system was the disappearance of the independent sub-distributor, due to the fact that, in both cases the contractual relationships between manufacturers and their distributors imposed on the latter the obligation to supply directly to retail stores.

45. From the elements of the case, it seemed that the change in the distribution system did not have as object (or as effect) increasing the market power of the producer companies, and neither it banned the access of new competitors. Besides, it was also proved that the possibility of price discrimination among all the sub-markets into which Massalin Particulares and Nobleza Piccardo divided the market was limited by the tax authorities' control over cigarette pricing policies. Therefore, it was understood that the exclusivity was part of the companies' competitive strategy, for the purposes of saving costs, improving quality and reliability of their products, and introducing incentives to guarantee a more efficient marketing.

46. In the light of all this, the NCDC considered that in this case the exclusivity encouraged competition, and that the rent transfers among producers, distributors and sub-distributors might affect private interests, but not the general economic interest, since the consumers surplus had not been modified with the change of system. The NCDC recommended accepting the explanations given by the defendants and filed the proceedings record, as provided in articles 21 and 30 of Law 22.262. The Secretary of Industry, Commerce and Mining followed such advice in his judgement.

Axle and others about breach of Law 22.262

47. This case started with a complaint from several companies that distribute liquified petroleum gas (LPG), and then it was continued by the NCDC. The defendants were five valve producers (Vaspia, Forargen, Tidar, Errepol and Metalúrgica VG) and the company Axle S.A., which had been appointed their common commercial representative by the above mentioned producers. Axle was in charge of the marketing services and it informed the sales conditions, the supplying company and the price to be paid for each valve order.

48. The analysed behaviour in this case consisted of a restriction to competition in the LPG bottle valve market, through a unified marketing system. From the evidence gathered, the NCDC deemed that the agreement among the manufacturers and the distributor appointed by all of them, constituted a collusive practice capable to restrict competition, basing the grounds for the damage to the general economic interest.

49. In its judgement, the NCDC considered the existence of documented evidence that proved the agreement. It also considered the fact that the defendants concentrated most of the supply (they were the only valve manufacturers authorised by Gas del Estado at the time the behaviour took place), the low product differentiation, and the noticeable price parallelism in its price evolution. Besides, the NCDC said that the common distribution system imposed by the defendants, set the grounds for a concerted pricing policy and for other collusive behaviours, since it weakened the market mechanism and implied an obstacle for the operation of the incentives related to competition.

50. The collusive practice between Axle and the valve manufacturers proved to be harmful for the general welfare when later, new competitors arrived into the market. Such arrival, due to imports, had the effect of reducing prices, which also proved the scarce competitive dynamics in the market during the enforcement of the agreement of unified commercial representation. The restriction to competition that could be read between lines in the agreement was, however, a practice with a background of long years in the referred market. Such market had been characterised by the presence of corporative behaviours long before the deregulation economy process took place.

51. Since the case referred to a commercial practice that, at the moment of the decision had already been abandoned by the defendants companies, there was no need to impose to those companies a cease

and desist order. However, the NCDC did recommend fining Tidar, Errepol and Axle according to the different companies' sales amounts and the different time extension in which they kept the anti-competitive behaviour. The Secretary of Industry, Commerce and Mining agreed to such opinion in his corresponding decision.

IV. The Role of the NCDC in the formulation and implementation of other policies

52. In Argentina the NCDC has no formal involvement in the formulation of other policies. The previous consultation to the NCDC is not customary and it is not prescribed by any law.

53. However, the NCDC can give opinions about other policies through its decisions (e.g. recently in a case about TV broadcasting rights, the NCDC suggested the need of a regulation for some programs of public interest).

54. The consistency of the competition policy with other policies, such as trade and industry, is ensured by the action of the Secretary of Trade & Industry, as the NCDC judgements are not binding for his final resolution of the case.

V. Resources

55. During 1997 a set of important political decisions was taken with the objective of completing the process of structural change initiated in 1989. Among other aspects, this meant a new revision of the national public sector organisation to eradicate bureaucratic redundancies and empower those institutions in charge of the top priority objectives. One of the institutions that the Executive Power decided to revitalise was the NCDC. For this the Executive Power commanded (by means of decree 660/96) that its president had exclusivity and the level of a sub-secretary in the NCDC. Formerly, the presidency of the NCDC was held by one of the Secretariat of Commerce Sub- Secretaries, which meant that this officer carried out his functions only as a side work as opposed to his Sub-Secretariat management. Therefore there was not a management unit, since the head was in charge of the commissioners as a group.

56. Regarding human resources, the NCDC renewed three members in 1997 and went on with the process initiated in 1996, incorporating several highly qualified professionals, preferably young and with postgraduate studies. Six professionals, two recently graduated economists from the Institute of Government Economies, and two government administrators appointed by the Secretariat of Public Functions have been incorporated to the NCDC staff. The important improvement of the NCDC's human resources operative capabilities can be observed in the following Table .

57. Regarding staff, the NCDC has established for the very first time, a training plan with the objective of taking the agency to the level of similar agencies in developed countries. To achieve this, a training program was created in those agencies, financed by non-refundable funds from national and international agencies, part of which has been obtained from the United Nations Development Program.

Permanent, temporary and hired staff for the NCDC

	1996	1997
Lawyers	5	9
Accountants	2	3
Economists	3	9
Political Sciences		1
Total of Professionals	10	22
Clerks	4	5
General Total	14	27

58. Regarding physical resources, in April 1997 the NCDC opened its new and completely refurbished offices on the forth floor at Julio A. Roca 651, Capital Federal, headquarters of the Secretariat of Industry, Commerce and Mining. This remodelling led to two movings in few months, which implied certain uneasiness but finally had the benefits of a working environment where the space organisation and the furniture transmit an image of authority and functionality that matches the mission set by law 22.262 and with higher productivity requirements to the staff.

59. Simultaneously, we have achieved outstanding speeding in the internal work by means of the acquisition of personal computers, a total of 23. These computers are connected in network among them and with the Ministry of Economy and Public Services, and some of them with the Internet. For a better appreciation to the importance that we give to this equipment, we would like to point out that by the end of 1996 there were at the NCDC only four computers and that only part of the staff had the skills to operate them.

60. To supplement this improvement of the information processing capabilities, we have started the creation of a specialized library, which will be useful as a reference for professionals and specialists that are interested in this field. We also subscribed to databases with jurisprudence about the defense of competition in other countries, so the NCDC's professional work can improve with a better information of the analysed cases and with the latest economic and legal literature.

61. Regarding financial resources, the NCDC during 1996 didn't have its own budget as it was included in the Undersecretariat of Commerce. Only in 1997 the NCDC obtained its own budget, which it was of U$ 691.401. For the 1998 period the budget increased a 64 %.

1. Brief economic analysis of the Argentine law for the defense of competition

62. The object of the herein document is the analysis of law 22.262 from the point of view of its connection with the economic analysis. It is basically an interweave between the legal concepts and the economic concepts, with the objective of facilitating the law interpretation. This piece of work is divided into four sections. In the first one, the main concepts found in the legal standard are briefly explained. In the second one the objective is the search for the implied economic concepts. In the third one there is a classification of anti-competitive acts and behaviours, and in the fourth one there is a lay out of the main conclusions throughout the document.

63. The parts of the Argentine law for the defense of competition more connected to the economic concepts are articles 1, 2 and 41. From these, it is the first one that obviously requires more attention,

because it defines as objective of the law the prohibition of " acts or behaviours (...) limiting, restricting or distorting competition or constituting abuse of a dominant position in a market, which may result in a damage to the general economic interest". The three elements mentioned in article number 1 (restriction of competition, abuse of a dominant position and damage to the general economic interest) are the columns where law finds its support to judge whether a behaviour deserves to be punished or not. The first two are alternative, but the last one is a necessary condition to constitute a breach of the law.

64. The notion of "general economic interest", that appears in article 1 of law 22.262, is a concept of difficult enforcement from the legal point of view, but from the economic point of view it is connected with the notions of "total surplus of the economic agents". Such concept, created from adding the consumers' surplus to the producers' profits, allows the creation of a first operative definition of the value of the general economic interest generated in a market, which is of particular interest for the economic analysis of the legislation for the defense of competition. Precisely, such magnitude maximizes when the market structure is of a perfect competition. It is then understood that, for the interpretation of a law that punishes going beyond the lateral limits of the competitive paradigm, it is convenient to identify the general economic interest with the concept of total surplus of the economic agents.

65. The notion of "abuse of a dominant position " is another concept that the law for the defense of competition uses to classify certain acts or behaviour within the sort of practices considered anti-competitive. Even when this rule does not define the abuse of a dominant position in itself, it does define the dominant position. This definition appears in article 2, referring to the dominant position of an individual company (for which it is required to be the only supplier or demander or, without being the only one, not to be exposed to a substantial competition) as well as the dominant position of a group of companies (which takes place when there is no effective competition among them nor with third parties).

66. The economic concept connected to the ideas of dominant position is the concept of "market power" (defined as the ability of an individual economic agent or group of agents working co-ordinately to influence over prices), and the abuse of such a dominant position may be assimilated to the exercise of such power. The market power, however, is a concept that may be possessed by several agents working independently. A dominant position, however, can only be exercised by a single firm or by a group of firms working together (cartel).

67. The abuse of a dominant position can be therefore related to the behaviour that the economic theory predicts for different sorts of industrial structure, and this relationship is particularly close when the markets are not contestable or are not exposed to international competition. In such cases, the abuse of a dominant position would be favoured when the market has a structure of monopoly, monopsony, price or quantity leadership, or when there is collusion among its members. A dominant position would not exist, however, if the market worked under perfect competition structures, monopolistic competition, Cournot or Bertrand oligopolies, or a bilateral monopoly.

68. A company or group of companies is considered to be in breach of law 22.262 when there is sound evidence of an anti-competitive act or behaviour with potential damage to the general economic interest. Such acts are those defined in article 1, being interpreted that a behaviour fits one of the breaches of the law, if it implies an exercise of the market power affecting its functioning and resulting in a decrease of the total surplus of economic agents. In many cases, however, the anti-competitive practices are more a sign that an economic agent is exercising his market power, than a sample of direct harmful exercise of it. Such a thing happens, for example, with some cases of price discrimination (where some consumers are harmed but some others are benefited) and of exclusive imposition to suppliers or clients (where some efficiency advantages can be intertwined with abuses of a dominant position).

69. Within the anti-competitive behaviours, there is some plausible classification. Two particularly useful classifications divide such acts into unilateral and arranged (according to their nature: independent or co-ordinated), and horizontal and vertical (if they affect competitors or suppliers and customers.) A third possible classification is the one dividing anti-competitive behaviours into abusive practices and exclusionary practices, whether they imply a direct exercise of the market power or restrict the competition through obstacles imposed to real or potential competitors. A fourth classification deals with the instruments used to carry out anti-competitive acts, which may basically be prices or quantities. Within the first of those groups are the monopoly prices, the monopsony prices, the price agreements, the predatory prices, the vertical price fixing and the price discrimination. Within the group of the quantity restrictions, there can be found the quantity agreements, market divisions, refusals to sale, tying, exclusive distribution, etc.

70. The main conclusions of this document are the partial identification of certain legal concepts (general economic interest, abuse of a dominant position) with certain economic concepts (total surplus of economic agents, exercise of the market power) and the classification of the market structures whose functioning could originate behaviours in breach of law 22.262. It also suggests a classification of the anti-competitive practices, as well as the idea that (even if some cases could represent acts not directly affecting the total surplus of economic agents) such practices could work as signs that indicate an exercise of a market power that has a negative impact on the general economic interest.