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Dear readers,

We are delighted to present the first Newsletter of the Regional Center for Competition (RCC) in Latin America!

As you may know, the RCC was officially launched in November 2019 in Lima, Peru. It is a partnership between INDECOPI and OECD to provide capacity building and policy advice for competition officials from the region. As a result, Peru joins two other countries in hosting regional centers for competition: Korea and Hungary, which focus on Asia and Eastern Europe respectively. The beneficiaries of the RCC-Lima include Latin American and the Caribbean countries.

The Newsletters intend to update you with recent developments of the RCC, share regional experiences, and put faces into names! Briefly, this first Newsletter has three sections: I – RCC activities and updates; II – Contributions from experts; and III – Interview with head of agencies.

First, this Newsletter shares information about the launch of the RCC in November 2019, as well as the first two workshops organized so far in Lima: Workshop on Mergers (20-21 November 2019) and Advocacy (3-4 March 2020). It also presents the calendar of future events, which required adjustments in dates and format due to the current Covid-19 crisis. The next Workshop will be held remotely and it will focus on Health Sector.

Then, it provides an exclusive interview with Mr. Ivo Gagliuffi Piercechi, head of INDECOPI. He has agreed to meet remotely with the OECD during the confinement period to share his views about the RCC, Indecopi’s challenges and, of course, issues related to the Covid-19 crisis.

Finally, this Newsletter presents contributions from competition experts as an effort to promote experience sharing and policy guidance to RCC’s beneficiary countries. We are delighted to have an article about the OECD’s policy advices on the Covid-19 crisis and another on market studies, in addition to national contributions from Argentina, Brazil, Mexico, Peru and Trinidad and Tobago.

We hope you enjoying the reading! Please feel free to contact us for any suggestion or assistance concerning the RCC activities.

With our very best regards,

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SECTION I:
RCC activities and updates
OFFICIAL LAUNCH
Lima, 20 November 2019

On 20 November 2019, the RCC-Lima was officially launched in presence of Mr. Ludger Schuknecht (Deputy Secretary-General of the OECD), Mr. Gustavo Meza-Cuadra (Minister of Foreign Affairs of Peru), Mr. Ivo Gagliuffi (Chairman of Indecopi), Mr. Javier Coronado (CEO of Indecopi), Mr. Frédéric Jenny (Chairman of the OECD Competition Committee), Mr. Antonio Gomes (Acting Deputy Director of the OECD’s Directorate for Financial and Enterprise Affairs) and Antonio Capobianco (Acting head of the OECD’s Competition Division).

WORKSHOP ON MERGERS
Lima, 20-21 November 2019

The first workshop was held back-to-back with the official launch of the RCC in November 2019. It focused on merger control and gathered 31 participants from 12 jurisdictions1.

The discussions were led by James Mancini (OECD), covering sessions related to introduction of merger control, market definition, notification thresholds, minority shareholding, definitions of control and influence, gun jumping, SSNIP and pricing pressure tests, non-price effects, as well as case studies and exercises based on hypothetical scenarios. Experts from OECD, Brazil, Mexico and the European Commission added to the discussions: Antonio Capobianco, Paulo Burnier da Silveira, Juan Francisco Valerio Mendez, and Hanna Anttilainen, respectively.

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1 Argentina, Brazil, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, and Uruguay.
The Advocacy Workshop was held during 3-4 March 2020 in Lima, Peru. The Workshop gathered 32 participants from 15 jurisdictions\(^2\). The program included sessions on basics of advocacy, competition assessment, market studies and fight against bid-rigging. It also invited participants to develop an outline of advocacy program and plan a market study through hypothetical case exercises.

In addition to Paulo Burnier da Silveira and Patricia Bascunana-Ambros who led the workshop on behalf of the OECD, three guest experts added to the discussions: Molly Askin, Counsel for International Antitrust at U.S. Federal Trade Commission (FTC); Joaquín López Vallés, head of the Advocacy Department at the Spanish National Commission on Markets and Competition (CNMC); and María José Contreras de Velasco, head of the Advocacy Department at the Mexican Federal Economic Competition Commission (COFECE). The participants also had the opportunity to share their own advocacy stories during a specific panel dedicated to the exchanges of regional experiences.

\(^2\) Argentina, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Paraguay, Peru, Trinidad and Tobago, Uruguay and the Andean Community.
FUTURE WORKSHOPS
June-December 2020

The next workshops will focus on the following topics: Health Sector, Cartel Detection and Market Definition. The dates and format will consider the current Covid-19 crisis and its confinement measures around the world. Below is the preliminary agenda for the Workshop on Health Sector, which will occur remotely during 22-26 June 2020:

WEBINAR WORKSHOP ON HEALTH SECTOR
22 - 26 JUNE 2020
(Time Zone: Lima, Peru [UTC -5 hours])

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<td>9h00 - 10h30</td>
<td>Introduction to Competition in the Health Sector</td>
<td>Bid-Rigging in the Health Sector practice and challenges</td>
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<td>Competition and Regulation in the Health Sector</td>
<td>Cartel Enforcement: In the Health Sector experience sharing in Latin America</td>
<td>Case exercise: Hypothetical case on hospital merger</td>
<td>Abuse of dominance in Pharmaceutical Industry</td>
<td>Covid-19 crisis: Control de Fusiones en tiempos de crisis</td>
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The following workshops – on Cartel Detection and Market Definition – are likely to occur during September and November 2020, either remotely or in Lima depending on how the Covid-19 crisis evolves.
OECD UPDATES IN LATIN AMERICA

Latin American and Caribbean Competition Forum (LACCF)

Reminder that the latest information regarding the Latin American and Caribbean Competition Forum (LACCF) currently scheduled for 22-23 September 2020 hosted by CADE in Rio de Janeiro Brazil as well as the Ibero-American Forum can be found at: www.oecd.org/competition/latinamerica.

Public Procurement Projects in Brazil and Peru

The OECD is committed to support governments to design public procurement procedures that promote competition and reduce the risk of rigging bids. This is why the OECD has been working closely with governments and public bodies to encourage and facilitate the implementation of the OECD Recommendations and Guidelines. Against this background, Argentina, Colombia and Mexico have sought the OECD’s support in the past years to improve their procurement practices and step up their fight against bid rigging.

Brazil and Peru are currently working with the OECD in similar projects. The Brazilian project was requested by CADE and it focuses in the review of public procurement’s regulation and practices at the federal level. It will end with a detailed assessment report, and will include two training sessions for senior officials (one on design of competitive tenders and bid-rigging detection and another on damage claims resulting from anticompetitive practices). The Peruvian project is conducted with ESSALUD (the Social Health Insurance in Peru, Seguro Social de Salud del Peru) and focused on public procurements in the health sector. The OECD will prepare a report with its assessment and recommendations; provide an implementation action plan; and draft a co-operation agreement between ESSALUD and INDECOPI on the promotion of competition and the fight against rigging. The OECD, working with senior competition peers, will, like in Brazil, provide training to ESSALUD’s procurement officials on competition in tenders.
SECTION II:
Interview with Mr. Ivo Gagliuffi Piercechi, head of INDECOPI
Paulo: Thank you for taking a moment to talk remotely to us during the Covid-19 crisis. It is a pleasure to see you, and we hope you and your family are doing well. My first question refers to the Regional Centre for Competition in Latin America: the RCC-Lima. This initiative adds to other two Regional Centres supported by the OECD (RCC-Seoul and RCC-Budapest). Could you tell us what motivated INDECOPI to partner with the OECD in this project? If possible, please also share with us your expectations for the Centre.

Ivo: First of all, thank you for this opportunity to talk to you and the OECD. It is a pleasure to talk to you, Paulo. I also hope that you and your family are well. As for the question, we consider that the OECD is the main reference in the field of competition policy in the world. There are other important forums that work with competition issues, such as the International Competition Network (ICN), but the OECD seems the best place to discuss about competition policies. In addition, the other policies that the OECD discusses are equally important to competition authorities. This was the main motivation that lead us to ask the OECD for the possibility of hosting the RCC in Peru. The partnership was formalized by a Memorandum of Understanding (MoU) between Peru and the OECD. The negotiation process was long, important and professional, lasting around two years. The RCC was finally launched in Lima, during November of last year, with a participation of around 30 officials of various Latin American competition agencies.

We also have short and long-term goals. In the short run, the RCC is expected to be the best place for Latin American competition authorities to 1) train the people, 2) create a network amongst competition officials, and 3) harmonize the legal framework for competition in the region, in terms of common principles. The RCC may also foster the horizontal cooperation between agencies – not only for the workshops, but also in other topics that competition authorities need to their work. As for our vision for the future, the RCC should be a reference not only in Latin America but worldwide. This would allow showing to the global antitrust community the importance of cooperation through the training of civil servants. Providing the best trainings will enable us to have the civil servants, and therefore best policies. All experts and practitioners will be grateful about that. It is a win-win situation for everyone.

Paulo: Speaking about INDECOPI, allow me to ask you a question on domestic issues. Peru approved a merger control legislation in 2019. It is a great accomplishment, congratulations for this important reform. Concerning implementation, the legislation establishes a period of 9 months for the merger control system to enter into effect. However, I understand that this period was postponed due to the current Covid-19 crisis. Do you have an idea of timeframe for the new legislation to apply?

Ivo: Of course, thank you very much. The merger control was scheduled to start on 20 August 2020. But due to the Covid-19 crisis, INDECOPI has proposed to the Executive branch the possibility to postpone the entry in force of the new law. The idea is to postpone its entry into force to 1st January 2021. This is a first possibility, but we are negotiating with the Executive branch.
We proposed this adjustment because the implementation of the merger control law in Peru should be done in the best way, which the current crisis challenges as it suspends many activities. There are three main axes for the implementation of the merger control legislation: 1) budget, which we have successfully obtained from the Ministry of Economy; 2) recruitment of staff to work exclusively for merger control; and 3) an additional regulation, by the form of a legislative decree, which the Executive branch needs to revise and approve our proposal. These will enable the implementation of the new merger control legislation in Peru. For the moment, due to the crisis, we were unable to launch the concours for the additional staff positions, so this was the reason why we asked to postpone the entrance into effect of the merger control law. As for the merger control regulation, we worked very hard in the first three months (December, January and February), so we have a first draft, which we intended to publish just before the crisis arrived. Once we have it publish, we will collect inputs from experts and interested stakeholders, before enacting the last version. We would also need 2-3 months for the competition community to study the regulation before it takes into effect.

This is why we requested the Executive branch to postpone the Act. We need to finish these first steps.

On the top of this, we have the feeling that this might not be the best moment to implement the new merger rules in Peru due to the unprecedented challenges arising from the Covid-19 crisis. An important number of companies are thinking about the possibility to merge with others in this moment. For this additional reason, January 2021 seems better for the new legislation to start. For now, we are thinking in the possibility to provide guidance on collaboration agreements. The US DoJ, the US FTC, the Canadian Competition Bureau, and the European Commission have launched recommendations related to this topic in time of crisis.

More broadly, our main goals as a competition agency in Peru go beyond the implementation of the merger control act – although we realize it will be a historical moment for competition policy in Peru. For instance, we aim to develop a true National Policy for Competition. Peru needs a very clear vision for competition policy in order to extend the current policy beyond the current government and my time as head of Indecopi. The future governments and the future chairperson of INDECOPI would welcome having clear goals for competition policy in Peru. This is why we are proposing to have a National Policy for Competition. We are therefore working in this with Switzerland Cooperation (SECO) and the World Bank, and possibility having its launch this year.

Paulo: Indeed, the Covid-19 crisis is affecting us all in various ways. It also affects consumers and companies. What advices would you give to competition authorities from Latin America to deal with the current situation?

Ivo: My first advice relates to management. Our main lesson so far is that you need to digitalize all services and digital support to employees. It is important to move forward in despite of the crisis. Institutions cannot stop. I will give one example: during the crisis, the Competition Commission had to issue an important merger control decision related to the electricity sector. As you know, this is the only sector where we have the possibility of doing merger control in Peru for now. The deadline to issue the decision (resolución) was 27 March 2020, in the middle of the suspension of activities in INDECOPI and the Peruvian government. The Competition Commission was able to work remotely, in a virtual way, with a virtual session amongst Commissioners, which allowed INDECOPI to render its final decision within the legal deadline. This is a great example to show how agencies – competition, consumer, IP agencies – will need to have a digital transformation on the way they work, both internally between themselves and externally in relation to the people that work with the agency. This is the main lesson
that we have so far from this period of Covid-19 crisis. A second experience to share is that it is difficult to implement a competition policy in a period of crisis. There is a certain “relativization” of the main principles. We will not accept any kind of hard-core cartels, but we could think about another vision concerning collaboration agreements, especially vertical agreements in the health sector. It seems possible that competitors may share efforts and resources to production, distribution, etc. In some cases, it may be best for the market, and best for consumers.

**Paulo.** Thank you very much for your time, Ivo. Would you like to leave a last message to our audience, maybe a message of hope during this period of lockdown worldwide?

**Ivo.** Yes, of course. We have a positive mind-set of the current situation. We will need to understand the lessons that this crisis will provide. Not only in the competition and legal perspectives, but also the social and personal perspectives. We will need to prioritize our goals and our thinking. Regarding competition policy, I would like to leave one last message: we are going to continue with our best efforts with the RCC. These virtual sessions will allow us to keep the workshops. We need to keep the spirit of the OECD, and the other Latin American agencies. This is why all Latin American competition officers are very much welcome to come to “Peru”, although it will be for now totally virtual and not located in any place. It will be real Latin American sessions because technology will give us this possibility! Thank you very much again, Paulo. It is a real pleasure to work with you.

**Paulo.** It is me to thank you very much for your time and for this interview. We wish you all the best in Peru. Please also send our very best regards to the INDECOPI staff.
SECTION III: Contributions from experts
OECD: Challenges and opportunities for competition authorities arising from Covid-19 crisis

by Ruben Maximiano and Paulo Burnier da Silveira

The Covid-19 crisis may significantly affect how firms behave in markets for the supply of essential goods and services due to supply and demand shocks. In particular, Covid-19 has led to a sharp increase of the demand for certain products resulting in difficulties in the production or distribution of products that are essential to deal with the pandemic as a direct consequence of the confinement measures applied to many workers as well as supply chain disruptions, leading to shortages.1

The new and unexpected scenario means competition authorities face challenges related to excessive pricing, new forms of collaboration between competitors, crisis cartels, rescue mergers amongst other potential anti-competitive business practices. It also requires a great effort of competition advocacy, which was the topic explored during the last RCC Workshop in Lima.

Advocating for competition

Regarding advocacy, authorities may be called upon or wish to assist governments as they role out support measures to the economy, in particular by providing subsidies and other types of state support to businesses. Such support measures will be necessary to prop up the economy, however if competition principles are not considered they can leave a lasting legacy on markets and stunt growth in the future. Therefore, competition authorities may wish to advocate for competitive neutrality, to ensure that certain firms are not unduly benefited over other competitors. In particular, support should not be provided to firms that were already failing prior to the crisis - or at least there needs to be very good reason for why that would be the case (possible examples may be that significant employment would be lost, specific know-how held by the firm). Also exit strategies from state interventions need to be in-built into the initial interventions so that as soon as market conditions allow, markets are eased back into competition. Depending on national circumstances, this is a major opportunity for competition authorities to ensure markets stay competitive in the long run by acting now. Further, competition authorities may wish to provide input to governments when they consider regulation at this time, for instance on pricing (see below) or on collective bargaining rights between workers / grey area workers facing monopsony (such as in digital platforms).

Enforcing in times of crisis

One of the consequences of sudden changes in market conditions is a mismatch of demand and supply which may lead to significant increase in prices of goods and services. These may be legitimate but may be also undertaken strategically by firms. In these situations, firms may increase prices relative to costs, or reduce output to maximize gains related to prior stocks acquired at lower prices. Consumer exploitation through pricing policies is often referred to as price gouging when it involves significant and rapid price increase after some type of shock in the demand or supply (e.g. as a result of an earthquake or a pandemic). In some jurisdictions, excessive pricing may be considered an exploitative abuse of dominance. Authorities with a consumer protection mandate may address such price increases as consumer law infringements. Such cases may be run faster and therefore may be more appropriate in certain circumstances. In either case, the challenge for enforcers is to distinguish a behaviour that is abusive or unfair, respectively, from one that reflects a lawful response to a temporary shortage resulting in

from the emergency at issue. Another way to address the problem are price controls implemented by the government. While such policies may protect consumers from price gouging in the short-run, they risk distorting price signals that would otherwise encourage greater production and swift market entry to address shortages (OECD Roundtable on Excessive Prices, 2011)

**Collaboration between competitors** is likely to rise during a crisis, as firms may engage in joint R&D projects (e.g. medical researches) or in joint production/distribution of essential goods (e.g. food chain or products of first necessity). These arrangements may be necessary during crises to increase the production of a certain product or coordinate an essential service. Co-operation between competitors may indeed increase consumer welfare by making more products available, and most competition laws allows for competitor cooperation when there are efficiencies and consumer benefits. However, competition authorities should ensure that such cooperation does not spill over into hard-core restrictions of competition, such as price fixing. Moreover, competition authorities should ensure that any short-term co-operation does not extend any longer than necessary to address the crisis (OECD Recommendation on Hard Core Cartels, 2019).

Last but not least, the Covid-19 crisis will raise challenges related to **merger control** including the need for e-filing. Competition authorities should be able to quickly adapt procedures whenever possible, in order to assure an efficient review of transactions during the crisis. Another challenge that may arise concerns rescue mergers. Governments and competition authorities should be cautious when reviewing these cases and only accept the failing firm defence in limited circumstances (OECD Roundtable on Failing Firm Defense, 2009).

The OECD reacted quickly to provide **policy guidance** to governments competition authorities. It issued a set of responses to Covid-19, which are available at OECD’s website. The box below summarizes the main advices regarding competition enforcement issues for competition authorities.

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**EXCESSIVE PRICING**

Monitor closely any significant and rapid price increases. In the short term, this may include enforcement actions to identify where and when prices increased in the supply chain, as well as the use of interim measures or warning letters to stop the conduct quickly when appropriate.

Co-ordinate actions with consumer protection agencies, or rely on consumer protection powers (if available) to protect consumers from unfair pricing practices in the short-term.

**CO-OPERATION BETWEEN COMPETITORS**

Clarify to business how authorities will consider efficiencies in arrangements between competitors (e.g. open fast-track channels to provide advice on specific cases of co-operation).

Ensure that legitimate co-operation between competitors is necessary and limited in time. They should not include hard-core restrictions such as price fixing.

**MERGER CONTROL**

Look for flexibility within given procedures to speed up reviews of mergers where necessary, make use of expedite derogations when justified (e.g. simplified procedures), advise on jumpstopping, prioritise investigations by deferring non-urgent cases, and make use of e-filings and videoconferences.

Closely review claims of rescue mergers and only accept failing firm defences following close scrutiny of the evidence, to avoid achieving short-term benefits at the cost of longer-term higher prices / lower quality / less innovation.

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Meanwhile, many competition authorities adopted teleworking policies and modernized their procedures. In CADE (Brazil) and COFECE (Mexico), the judgement sessions occur remotely, which enables the continuity of final administrative decisions on merger control and anticompetitive practices. The FNE (Chile) adopted for the first time the possibility of e-filing merger requests.

Examples from Latin America reveal that competition authorities may exit stronger from the Covid-19 crisis. It is thus a challenge for competition authorities to continue delivering in times of confinement and economic crisis, but also an opportunity for them to review practices, reconsider priorities and modernize procedures.

**RELATED OECD PUBLICATIONS**

*Competition, State Aids and Subsidies* (2010)
*Information Exchanges between Competitors* (2010)
*Crisis Cartels* (2011)
*Excessive Prices* (2011)
*Competitive Neutrality* (2015)
*Industrial Policy and the Promotion of Domestic Industry* (2018)
*Excessive Prices in Pharmaceutical Markets* (2018)
*Competition in Labour Markets* (2019)
Market studies are an analytical tool for competition authorities to assess whether there are competition problems in a sector or a market, outside the context of a merger review or antitrust investigation. In some jurisdictions, some regulators have concurrent competition powers and carry out market studies in the sectors they regulate following a similar process to that of competition authorities. In November 2014, the UK Financial Conduct Authority (FCA) launched a market study on credit cards. The FCA took the following key steps along the journey of this study.

**Step 1 - Why did the FCA decide to look into the credit card market?**
The FCA had just been given powers to regulate the consumer credit sector in April 2014. It needed to build its knowledge in order to proportionally and effectively regulate it where necessary. One of the largest market in the consumer credit sector is credit cards, with around 30 million consumers holding at least one credit card, together having an estimated £61 billion of outstanding balances. This was one of the largest areas of unsecured lending within the FCA’s remit, and represented 32.5% of total unsecured personal borrowing in the UK, at the time of the study. The credit card market was therefore important and if it functioned well, could deliver significant benefits to consumers. So the regulator launched a market study to assess whether the market was working well in the interest of consumers and, if not, to understand why and to identify appropriate ways to improve the situation. In a market where competition is working effectively in the interests of consumers we would expect to see well-informed and active consumers who choose the available products that best suit their needs and use them in an optimal way. In such a market, credit card firms would need to continue to offer competitive products to retain and attract consumers.

**Step 2 – What was the scope?**
The study focused on credit card services offered to retail consumers by credit card providers (including banks, mono-lines and their affinity and co-brand partners) through a range of distribution channels. Although the study looked at both the borrowing and payment functions of credit cards, it focused on the use of credit cards as a form of revolving credit, given that this was where most of the initial concerns laid.

The regulation of interchange fees and card payment systems more generally fell within the purview of another regulator - the Payment Systems Regulator (PSR). The FCA therefore did not focus on these issues, although the implications of the Interchange Fee Regulation on credit card services offered to retail consumers were reflected in the analysis.
We investigated three themes in the market study:

**Theme 1**
*The extent to which consumers drive effective competition through shopping around and switching.*

We recognised that consumers’ ability and willingness to compare credit card offers and switch may vary among individuals and consumer groups. Depending on the features of the market, the pressure consumers, who actively shop around and switch between providers, exert on firms may or may not benefit other consumers who are less active in the market.

The scoping phase identified a number of factors that could influence consumers’ ability and willingness to effectively shop around and/or to switch between credit card providers: fees, charges and product complexity; transparency and fairness of terms and conditions; distribution channels; and consumer behavioural biases. Therefore, these potential issues were set out for investigation.

**Theme 2**
*How firms recover their costs across different cardholder groups and the impact of this on the market.*

It was commonly believed at the time, that there was considerable cross-subsidisation in credit card markets, but there was limited research on the extent to which this might actually occur. ‘Cross-subsidisation’ is not necessarily anticompetitive or detrimental. There may be an issue, however, where it: (i) creates a barrier to entry and expansion, e.g. by impeding the development of new business models or product offerings that benefit consumers; or (ii) results in certain consumer groups being unduly disadvantaged (which could be the case, for example, where a small group of cardholders contribute a disproportionately large amount to providers’ income).

**Theme 3**
*The extent of unaffordable credit card debt*

We focused in particular whether some consumers were over-borrowing or under-repaying on their balances and whether firms had incentives to provide unaffordable credit that leads to consumer detriment.

There was already a substantial amount of published research on the drivers of over-borrowing and under-repaying on credit cards, identifying a number of consumer behavioural biases as key drivers of this behaviour. There was more limited analysis on the profitability of providing credit cards to over-indebted consumers. Therefore, a key focus of the analysis was on understanding whether and why firms might provide unaffordable lending given the competitive dynamics of the market.

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Step 3 – What was the evidence gathered to support the analysis.

To gain a better understanding of the market, we analysed a wide range of data and information. We also met with firms, trade associations and consumer groups, and received input from interested parties in response to the launched of the study.

**Consumer research**

To provide information on how consumers shop around and switch credit cards as well as to understand the challenges they faced when shopping around and switching, we commissioned an online survey, which was completed by 39,837 consumers.

**Request for firm data and information**

To understand the supply side of the market, we requested quantitative and qualitative data from credit card firms. The FCA, who has data gathering powers, used these powers to collect information from firms. Smaller credit card firms received a shortened version of the information request to reduce the burden on them. We asked firms for:

- Financial data on their actual and forecast financial performance at the portfolio and product level. The team also asked for details of how they measured performance and for additional details regarding their financing and bad debt policies.
- Strategy documents, including information on their current strategy and business model in relation to credit cards, including affinity and co-brand relationships, product design, pricing and acquisition strategies. We also requested documents detailing how their strategy is impacted by external factors such as competitors, technology and the potential impact of the Interchange Fee Regulation.
- Consumer research they had carried out on consumer behaviour in relation to credit cards, including on searching and comparing credit cards, switching, consumer responses to new products and changes in credit card product features, use of price comparison websites and repayment behaviour.
- Marketing and financial promotion documents and literature as well as copies of the information provided to consumers as part of the application process.
- Credit assessment and approval processes, including how they assess credit risk and affordability, their approach to setting and reviewing credit limits and their forbearance policies.
- The study team also undertook a focused review of a sample of price comparison websites, financial promotions and products’ terms and conditions.

**Account-level data**

We requested monthly account-level data for 34 million consumers and 74 million active credit card accounts from a sample of 11 credit card firms representing around 80% of the market over a five-year period (Jan 2010 – Jan 2015). The data contained information on monthly balances and repayments, as well as product information such as interest rates and fees. This was an extensive data request and without this granularity, we could not have undertaken some of the detailed analysis that led to some of the key findings.

Over the course of the market study, we also had a number of meetings and engagement events with consumer groups, firms and trade associations which proved most productive.
Literature reviews and international comparison
We commissioned two academic literature reviews for the market study: one on consumer behaviour and behavioural biases; and one on affordability in the credit card market. We also conducted an international comparison exercise involving 10 other countries, principally to understand how other jurisdictions had sought to address issues giving rise to concern in the credit card space.

Step 4: What were the analytical methodologies used?
The data and information gathered were used to conduct several piece of analysis including:

- Descriptive analysis of the market
- Switching analysis – why consumers switch, reasons for switching without shopping around, why some consumers do not switch, estimation of the gains form switching and switching costs.
- Business model and profitability analysis – the share of revenue from conditional fees, the relative profitability of different consumer groups, the impact on profitability of the Interchange Feed Regulations.
- Affordability analysis to build a series of problem debt indicators to assess the scale of the problem and analyse the distribution of profitability of such accounts to assess the incentives of firms to mitigate them.

Step 5: What were the findings?
We found that in most of the market, competition was working fairly well for most consumers, which was not the expectation of many of our external stakeholders at the beginning of the study. Firms competed strongly for custom on some features – not only for new consumers but also for ‘back book’ consumers [existing borrowers with balances]. However, competition was focused primarily on introductory promotional offers and rewards, with less competitive pressure on interest rates outside promotional offers and other fees and charges. We wanted to ensure industry was clear about fees and charges, so consumers could focus on the overall cost of using credit cards.

The market was moderately concentrated but there had been new entry in recent years. However, higher credit risk consumers had a more limited choice of products and providers than lower risk consumers. The main barriers to serving this segment, other than commercial viability, appeared to be the reputational and regulatory risks associated with higher risk and higher cost lending.

Our evidence suggested many consumers were open to switching – each year around 14% of consumers with a credit card took out a new one – and firms did not consider a lack of switching to be a significant barrier to entry or expansion. However some consumers with higher risk profiles were less willing to shop around for fear of affecting their credit record.

All lending activity carries default risk. That said, we were concerned about the scale of potentially problematic debt in this market including for consumers who were just above the default level. We found that around 6.9% of cardholders [about 2 million people] were in arrears or had defaulted. We estimated a further 2 million people had persistent levels of debt that some may be struggling to repay, and that a further 1.6 million people were repeatedly making minimum payments on their credit card debt. 8.9% of credit cards active in January 2015 (5.1 million accounts) would – on their repayment patterns and assuming no further borrowing – take more than 10 years to pay off their balance.

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Consumers in default were extremely unprofitable and firms were active in contacting consumers who miss payments and triggering forbearance at this point. However, consumers with persistent levels of debt, or who made minimum payments, were profitable. Firms therefore had fewer incentives to address this and we found that most firms did not routinely intervene to address this behaviour. We considered that there is more firms could do to help those with persistently high credit card debt to reduce debt burdens before they become problematic, and to prompt those repeatedly making minimum payments to repay quicker when they are able to. We believed the incentives for firms in this market could be realigned in this area.

**Step 6 – What was the proposed package of remedies?**

The FCA proposed a package of remedies intended to address the concerns identified at various points in the journey that consumers take during the lifetime of their credit card agreements, including those in problem debt. The infographic below illustrates the objectives the FCA was seeking to meet for each identified issue.

**PROPOSED PACKAGE OF REMEDIES**

[Infographic showing various stages of the credit card journey and proposed remedies for each stage]

After the Final Findings report was published in July 2016, the FCA followed to **Step 7** – the detail design and consultation of the above legally binding remedies accompanied by cost-benefit analysis to demonstrate their proportionality. The FCA also made a public commitment to carry out an ex-post evaluation review once the remedies had time to embed. This final step constituted **Step 8** of the UK credit cards market study journey.

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[https://www.fca.org.uk/publications/policy-statements/ps18-04-credit-card-market-study](https://www.fca.org.uk/publications/policy-statements/ps18-04-credit-card-market-study)
Introduction
On May 20, 2016, Argentina’s National Commission for the Defense of Competition (CNDC for its Spanish acronym), launched a study to analyze the competitive conditions on the Credit Cards, Debit Cards and Electronic means of Payment market. The study was a response to Argentina’s Central Bank’s (BCRA for its Spanish acronym) concerns about the competition conditions in the market.

This paper describes the work done by the CNDC on investigating said market, starting with the analysis of the market conditions, the participation of the different actors, the recommendations issued by the CNDC and the impact of those recommendations on the posterior developments in the market.

The first section provides a description of how the market works, the kind of activities that are involved and competition problems that have been found during the analysis. Section 2 explains the CNDC’s investigation process, from the joint work with the BCRA to the final recommendations to improve market competition. In Section 3 refers to the impact on the society of the CNDC’s recommendations and the lessons learned through the whole experience. Finally in Section 4 we will discuss how the market evolved since the issuing of our market study and the current state of competition.

1. The Argentine Electronic Payment Market’s System struggle

1.1. Legal Framework

Act 25,065, modified by Act 26,010 (LTC, for its Spanish acronym), regulates Payment Cards Market in Argentina, establishing that the BCRA and the Secretary of Commerce (hereinafter the “SC”) shall act as the enforcement authority of said legislation.

According to the LTC, credit, debit and purchasing cards are the three different kinds of cards which can be used as payment methods. While credit and debit cards can be issued by a licensed financial institution, debit cards shall only be issued by banks authorized by the BCRA.

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Article 15 of the LTC establishes a cap of 3% for credit cards and 1.5% for debit cards for the merchant discount fee that shall be charged in every respect, stipulating that different fees shall not be charged “among business acting under the same activity or offering similar products or services.”

1.2. The Argentine electronic payment market

The Electronic Payment Market System (the “EPMS”) is what economists call a two-sided market, as it works with a platform with two distinct user groups (cardholders and merchants) and provides each other with network benefits, in the sense that the value of the platform to one side depends on the number of users on the other side.10

This process involves many actors, technologies and fees for services in order to complete an electronic payment transaction: Card brand owners (CBO), Cardholders, Merchants, Card Issuers, Processors, Acquirers,11 Aggregators,12 and Terminal providers.13

An Electronic Payment System (EPS) works as follows: The CBO grants licenses to issuing cards and/or acquiring merchants for a fee. Whenever a cardholder makes a purchase using a card, he or she pays the price of the product plus an additional fee to the card issuer.14 Then the issuer transfers the payment to the acquirer minus the interchange fee. Finally, the acquirer transfers the payment to the merchant, minus the merchant discount fee. Thus, not only the level of prices matters, but also its structure, that is, the proportion of the total price that is allocated to each side of the market. Additionally, the processor sends the purchase to the CBO and to the issuing bank in order to authorize and complete the transaction.

There are two types of electric payment systems: “closed” and “open”. In a closed system the CBO, Issuer and Acquirer are the same company (e.g. American Express); while in an open system the CBO, Issuer and Acquirer are different companies (e.g. Visa and MasterCard).

In 2015 Argentina had 80 financial institutions, 64 of which were banks. The biggest bank is the (state-owned) Banco de la Nación Argentina, which concentrates 27% of the total deposits in the banking system. In addition, the 10 largest banks accumulate 76% of total banking deposits. All of them participate as payment card issuers.

An EPS is formed by the interaction of certain activities. For that reason, the CNDC has defined the following relevant markets: a) Issuance of Electronic Means of Payment; b) Acquiring; c) Electronic Payment Processing; and d) Provision of Terminals or Interfaces for Electronic Payment.

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10 Having a Visa card is valuable to cardholders because it is accepted by a large set of merchants. Similarly, merchants are willing to pay for being on the Visa network because many customers hold a Visa card in their wallets.

11 Acquirers are licensees of the platform owner in charge of subscribing merchants.

12 Aggregators provide payment services for online sales. They must sign a contract with an acquirer in order to process the payments.

13 Points of sale (POS) for in-person transactions and gateways for online transactions.

14 Usually issuers charge cardholders a fixed fee for holding the card plus a transaction-based fee. The latter may be negative, when rewards to the use of the card are given.
1.3. Competition issues

The largest firm in the market is PRISMA MEDIOS DE PAGO S.A. (PRISMA), which through its associated companies, participates in all the relevant markets. PRISMA is owned by 14 banks (and Visa International) who have issued 80% of credit cards and 72% of debit cards currently in the market, and is the only firm licensed to issue and acquire Visa. Moreover, Visa accounts for almost 60% of all credit card transactions. Figure 1 shows the market shares of the credit card market as of 2015.

![Figure 1. Market shares in the credit card market (% of the value of transactions) – 2015](source: Morgan Stanley, Argentina Financial Institutions: A Primer on the Card Industry, June 2016)

PRISMA is also the sole processor of Visa transactions. The role of PRISMA for MasterCard's transactions is played by FIRST DATA CONO SUR S.R.L. (“FIRST DATA”) which is the only company licensed to acquire the brand MasterCard in Argentina.15

As a consequence, both companies determine the commercial conditions under which they offer the acquiring services to merchants (PRISMA for Visa and FIRST DATA for MasterCard), charging the maximum fee allowed by the LTC to almost all economic activities. PRISMA has set the interchange fee for Visa transactions at 95% of the merchant discount fee. The remaining 5% goes to the paying bank. PRISMA does not receive a (direct) payment for its acquiring services. The interchange fee for MasterCard transactions is determined by MASTERCARD INTERNATIONAL at similar values. The difference between the merchant discount fee and the interchange fee is divided between FIRST DATA and the paying bank.

CNDC’s analysis showed that Visa’s business model in Argentina has a triple vertical integration between Issuers, Acquirer and Processor. MasterCard’s case is different as, although Acquirer and Processor are vertically integrated, there is no such vertical integration with issuing banks. Therefore, serious competition restrictions have been noticed as a consequence of Visa’s exclusive license and the vertical integration between acquiring and processing markets.

15 Besides FIRST DATA, other companies have received a license to issue MasterCard.
1.3.1. Restrictions to Price Competition

In the EPS, there are three main prices: (a) the fee charged to the cardholder by the issuer, (b) the interchange fee paid by the acquirer to the issuer, and (c) the merchant discount fee paid by the merchant to the acquirer. The first one is determined in a market where there are many competitors and concentration is low and, therefore, is competitive.

However, compared to other countries, Argentina’s interchange fees are high, which results in high merchant discount fees. The lack of variability among the merchant discount fees, the fact that they are fixed at 3% and 1.5% for credit and debit card respectively, and the prohibition to discriminate prices based on the volume of the transactions, as stated on article 15 of the LTC, are signals of the lack of competition.

1.3.2. Restrictions to Financing Competition

Since 2013, when PRISMA implemented the “zero-interest” payment mechanism, competition among banks to offer financing conditions has been reduced.

Said mechanism worked as follows. An interest rate unilaterally determined by PRISMA was charged to merchants, who, in turn, added the financial cost to the price of the product. This implied a restriction to competition from other financing options. Since the price of the product included financial costs, alternative financing methods has implied a double interest, which generated a serious competition disadvantage.

1.3.3. Restrictions to Third-parties Competitors Operations

The analysis of the information gathered during the investigation suggested that PRISMA has offered discriminatory sale conditions in the processing and the acquiring markets to its competitors in the Provision of Terminals or interfaces for Electronic Payment Market, which means an alleged abuse of dominant position in order to restrict downstream competition.

1.3.4. Barriers to entry

Given the market configuration, the CNDC found that significant barriers to entry were present in the acquiring and processing markets. First, in order to enter the acquiring market, a firm would need a license from Visa International. Visa International claimed that, in countries like Argentina, it only gives licenses to financial institutions working under the BCRA regulatory rules. As said, in Argentina, the current acquirer PRISMA is owned by the largest banks in the country. Hence, financial institutions that could apply for a license to acquire Visa are relative small and unlikely to invest in developing an acquiring network.

Second, the margin in the acquiring business has been set by PRISMA itself at very low levels.16

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16 The margin is defined by the difference between the merchant discount fee (that the merchant pays to the acquirer) and the interchange fee (that the acquirer pays to the issuer). In most countries, the interchange fee is either regulated or fixed by the CBG. In Argentina, for the case of Visa, the interchange fee is set by PRISMA at 95% of the merchant discount fee, leaving a margin of only 5% for the acquirer and the paying bank.
2. Response of the Competition Authority

The CNDC concluded that the EPS in Argentina is highly concentrated, with PRISMA holding a dominant position in all four markets. This, together with the existence of vertical integration, the high entry barriers and the largest banks taking part in PRISMA’s decision making process, has constrained the normal development of the acquiring and processing markets, enabling PRISMA to extend its market power in said markets towards the provision of terminals or interfaces for electronic payment, and towards the aggregators and gateway services.

In view of the foregoing, the CNDC issued Resolution N° 17/2016, and recommended:

2.1. To the BCRA as the market regulator:

To review the EPS legal framework towards the promotion of a more competitive market; to promote the entry of new actors in the acquiring market; to promote multi-brand acquiring, so that any acquirer might have access to licenses of all the cards they wish to represent; to establish legal conditions to guarantee that processing services would be provided from incumbents in non-discriminatory conditions; to promote a mechanism to reduce entry barriers in alternative means of payments; and to foster competition on consumption financing by encouraging transparency and allowing customers to differentiate between the price of the products and the financial costs.

2.2. To the BCRA and the Secretary of Commerce as enforcement authorities of the LTC:

To repeal the second paragraph of article 15 of the LTC in order to enable acquirers to price discriminate among merchants; to modify the LTC in order to empower the BCRA to regulate the interchange fee following international best practices; and to establish a mechanism to guarantee transparency of the financial costs in credit card transactions.

2.3. To the SC as the enforcement authority of the Competition Act:

To open an investigation against PRISMA for potential abuse of dominant position and against PRISMA’s shareholders for potential collusion.

3. Immediate impact and Lessons

CNDC’s recommendations have been taken into account by the SC and the BCRA;

The SC opened an ex officio investigation in order to investigate potential anticompetitive conducts allegedly carried out by PRISMA and its shareholders. Since then, a large number of complaints were filed against PRISMA for the same alleged reasons.

Since CNDC’s recommendations there has been evidence of enhanced and growing competition in the market. New payment methods such as mobile payment systems, have been developed and offered by different providers, and a process of structural changes in the vertical and horizontal relationships between main stakeholders has begun, towards less concentrated and more contestable markets.
4. Current state of competition

More than two years after issuing the CNDC’s recommendations, the electronic payment market has experienced a great transformation.

The first and main effect has been that as of January 2nd, 2019, the recommendations put out by the CNDC as to allow acquirers to handle many brands has been approved. This means the end of exclusivity by the main card brands of the country: any acquirer is authorized to offer their services to merchants and be able to charge from any card. This allows for more competition and the possibility for new competitors to enter the market. In effect, PRISMA as well as FIRST DATA have acquired the licenses to offer merchants the ability to use the Visa and Mastercard networks.17

The PRISMA case also had positive effects with respect to lowering the costs different agents had to pay for the use of the credit and debit cards as a mean of pay. In this sense, the BCRA regulated the interchange fees that the different financial entities could charge over each transaction. The new regulation, which came to effect by April 2017, imposed a maximum of 2% for credit card transactions and 1% for debit cards. This reduction represents around 25% with respect to the old fees. Also, this regulation foresees a reduction of the interchange over time, as shown in Figure 3.

![Interchange Fee Projection](image)

Source: own elaboration based on note BCRA “A” 6212

As can be seen on Figure 3, by 2020 the maximum interchange rate will be 0.70% for debit card transactions and 1.50% for credit cards transactions. Starting 2021, these values will decrease to 0.60% and 1.30% respectively. The decrease in interchange rate will lower barriers to entry to new acquirers, because it allows for higher margins and profits.

Simultaneously with these new regulations passed by the BCRA, the Secretary of Commerce, the main credit card associations and important stakeholders of the credit card industry managed to arrive to a

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17 The delay to allow the multibrand acquiring process is related to technical issues which had to solved previously. The BCRA, Secretary of Com- mers and CNDC monitored this issue until it was finally approved.
deal to lower the fee paid by the merchants for the use of the credit cards\textsuperscript{18}. The agreement consisted in lowering the fee to up to a maximum of 1.8\% for use of credit cards and 0.8\% for use of debit cards in a four-year period. As of January 1\textsuperscript{st}, 2019 the values are 2.15\% and 1\% respectively\textsuperscript{19}.

Also, the BCRA has passed new regulations with the objective of lowering transaction costs and allowing the growth and development of new and innovating means of payment\textsuperscript{20}. These new measures allowed the proliferation of new technologies such as electronic wallets and mobile payments platforms.

These innovations also were accompanied by technical innovations which improved means of payment currently existing, for example, credit cards incorporated contactless technology, by which consumers would pay for the products or services by simply approaching or “touching” the cards to the POS and that would suffice to complete the transaction. The system possesses encrypted information which would protect the information of the transaction and the card.

In addition to everything previously discussed, the new policies taken by the BCRA had another positive effect with the means of payment. In the beginning of 2018, the regulation for payment through QR codes was approved \textsuperscript{21}. Argentina became the first country in Latin America to develop this new technology. This technology is important because it allows merchants to sell to consumers without the need to own the physical devices or hardware POS. The infrastructure needed for the user to pay is a mobile device with the ability to read QR codes. The user can also pay with whatever means of payment whether it be, credit card, debit card or others.

There was also a new regulation, which even though it was less impactful, it did help contribute to make the daily banking operations more agile and helped speed up the electronic payments system. This new norm was the implement of the “ALIAS CBU” for mobile banking operations and internet banks, which brings down the time taken to do an electronic transfer by assigning an alias to each bank account, identified by a 22 numeric code called the CBU. Previous to the new norm, the transactions were made with the CBU.

Finally, to finish talking about the current state, we are going to mention a new phenomenon which has recently appeared partly due to the changes of digitizing banking in the last two years. We are talking about banks which are 100\% digital\textsuperscript{22}. Their competitive strategy is based on offering low cost products which might be attractive to the segment of the population which is not completely covered by the traditional banking system\textsuperscript{23}.

\textsuperscript{18} Ministry of Production, Change in the credit card market: fees are lowered and competition prospers. 17th of March, 2017, available in Spanish in https://www.produccion.gob.ar/2017/03/17/cambia-el-mercado-de-tarjetas-bajan-aranceles-y-avanza-la-competicencia-60744.
\textsuperscript{19} Increase, They lower fees for credit and debit cards!, 28th December 2018, Available in Spanish in https://increasecard.com/bajan-los-costos-de-arancel-para-tarjetas/.
\textsuperscript{20} http://www.bcra.gov.ar/MediosPago/Politica_Pagos.asp#.
\textsuperscript{21} BCRA Note A6425. The note sets the requirements following the best international practices by which the QR code may accept payments. The QR codes, also have an advantage to store more information than the traditional bar codes. To access the information it is necessary to do so by scanning it from the phone. For more information, you may visit: https://www.qrcode.com.
\textsuperscript{22} In this moment, there are currently four completely digital banks in Argentina: Wilobank, Opensbank, Brubank and Rebanking.
Brazil: Advocacy initiatives through CADE’s Cahiers – 10 market studies in 6 years

by Guilherme Mendes Resende and Omar Barroso Khodr

Introduction

In recent years we have witnessed a wide range of discussions in politics, economics, and society being addressed by the press, in social media accounts, and blogs. In our current scenario, government institutions have the mission to create a more transparent and unbiased system in order to aid public opinion towards a better future. Given such criteria, advocacy strategies have been a common repertoire for the Brazilian Competition Authority (CADE) to intermediate consensus among policy makers and business leaders. Since 2014, CADE has published 10 different market studies for public disclosure in our website – called Cadernos do CADE (CADE’s Cahiers) – which consolidate, systematize and disseminate CADE’s case-law in relation to a specific market, considering its economic and competitive aspects in order to promote public awareness and transparency. The studies were performed by key researchers of the Department of Economic Studies (DEE), and they vary between different market segments that will be briefly presented in this article.

Cadernos do CADE (CADE’s Cahiers)

The aim of CADE’s Cahiers is to disseminate wider support for causes in economic competition and awareness to the public. The market studies performed in the past six years take a wide range of markets sectors, from gasoline retail, health services, education, air/maritime transportations, ports, cement, payment methods, and agricultural inputs. Despite the diversity of sectors, our studies found common patterns that emerge when each industry is investigated.

The first study published in 2014 on automotive fuel retailers, focused in the gasoline product which is the main product of consumption in gas stations. This market was chosen because of its importance for economic defense studies, given that it exists numerous cases of cartels with settled jurisprudence. In the case of M&As, the choice of cases was those where restrictions were imposed for the approval of the operation. In the cases approved with restrictions, it was required a detailed analysis on important aspects on competition to define relevant markets and the relationship between companies and fuel distribution. The research found high concentration in different market dimensions as in the geographical. The collusive agreements played out between agents was a concern factor that could threat economic competition.

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26 Available at: http://www.cade.gov.br/acesso-a-informacao/publicacoes-institucionais/publicacoes-dee/Cadernos%20Do%20CADE
Published in 2015, the health supplementary health market, investigated a sector which affects the well-being for millions of Brazilians nationwide. Brazil uses a single health system similar to England, which aims by constitutional decree to aid health services as a state duty and universal right. However, the choice for healthcare differ between Brazilians, as the study found that 46,634,678 people were users of private services, which created higher concern for public authorities to investigate business deals between institutions and consumers. It was discovered attempts for private institutions to implement price tables to compensate medical services provided by operators and coordination between specialized treatments to centralize price deals. The research concluded the application of coercive measures by medical entities, breaking economic competitive order.

After the period of rapid economic expansion in the early 2000’s in Brazil, the country’s higher education system experienced an increase of services provided to students. This opened the opportunity for financial aid, and online programs offered to students from different socio-economic backgrounds. Between 2001 and 2015, the study discusses the criterion to define relevant markets given the variety of services provided by institutions. It was observed the creation of barriers to entry by traditional institutions due to their expansions in M&As deals, variety of services, and geographical dominance scale. By the completion of the study in 2016, most mergers were approved without restrictions and only five mergers were approved with remedies (out of 62) during 2001-2015.

The port services study published in 2017, addressed relevant regulation topics in this field. In the early 2010’s a new law was passed to expand even more private investment and eliminate differentiation between cargo delivered by sea or train. The research focused on the competition between terminals located at the same port zone, it was found significant competition between ports with best performance in terminals at the Brazilian state of Santa Catarina. It was required sophisticated analysis to identify vertical agreements that could disrupt economic order. Only two coordination agreements were settled, meanwhile six where condemned, and two others cooperated in investigations with CADE.

Also, in 2017 another study involving cargo distribution was published, however this time it was investigated the air transport of passengers and cargo. The sector presented a set of conditions to limit competition by, for instance, barriers to entry, and infrastructure constraints in airports. According to the research, the market has an intense level of concentration which follows an oligopolistic nature. The recent restructure of the Brazilian aviation system opened the sector for new companies like Gol and Azul to reshape the market and services offered. The innovations in this sector, opened the opportunity for new regulatory remedies to be imposed as for companies to declare price information to the Civil aviation government institution. For CADE is still to keep track in this market that has constant changes in business and services models.

Similar to the 2015 study in the supplementary health market, in 2018 it was conducted a research on mergers in health insurance markets, hospitals and diagnostic treatments. This sector has key importance in Brazil’s socio-economic participation and GDP. It is estimated that 1/4 of the population relies on private health services as previously discussed. In the last decade, this sector passed through major structural changes, with greater participation of major players at the domestic scale. The increase in the business model of these institutions became the for large investments, and an intense process for M&As to link companies of similar services. It was observed in mergers cases similar to Amil and D’or, the creation of powerful economic partnerships that required structural remedies in order to protect economic environment.
Between 2010 and 2017, the maritime transport business faced a strong growth process. With the need to optimize productivity, this sector has a heavy necessity to obtain economies of scale. Business conditions resulted in an increase on mergers submitted to CADE, with the main focus on shipping partnerships and vertical integration for logistic chains. Furthermore, the study compared the same market with the EU and USA jurisdictions, which displayed benefits on antitrust flexibilization.

The eight-edition published in 2019 investigates the cement sector in Brazil. The posture adopted in the relevant market analysis was to define the product as only one kind, despite the different categories of cement offered to consumers. The research described one of the most relevant cartel cases in Brazil. In 2014, CADE condemned unanimously the so-called cement cartel. The fines applied to six companies, six individuals, and three associations totaled BRL 3.1 billion. CADE's Tribunal also determined the divestment of plants, and prohibition of carrying operations in the cement and concrete sector until 2019.

The 2019 study observed the expressive growth on payment methods in the last years, raised different concerns about the competition scope in financial services offered in Brazil. The largest Brazilian banks have turned into large conglomerates which are able to control large portion of payment methods. More challenges emerged in the study, as this market encompasses multiple intermediation platforms for payments. Given such examination, the pricing strategy in this sector required sophisticated tools for antitrust authorities and researchers to identify market distortion that could harm competition.

Our latest study published in 2020 on agricultural inputs, show that many cases require extensive effort, it was necessary in this research the cooperation of different competition regulatory agencies across the world to analyze the high dimension of technical data. In this study, given the entrance of different international groups and M&A deals it was of top priority to identify relevant markets in this sector. It was found in 2016-2017 that important economic groups dominated the market of seeds and pesticides, as this group was restricted to four companies: Bayer, Basf, Syngenta e Corteva.

**Final considerations**
As explained in the introduction, as we live in a world that is constant change, never before we have been dependent on advocacy strategies to influence better decision making in public policy and an overall public awareness. The publication *Cadernos do CADE* (CADE’s Cahiers) is one example of how CADE can inform, systematize and disseminate competition discussion regarding specific sectors.

The remainder of 2020 will prove to be a challenging year for policy makers and businesses, as we engage in the fight against the global pandemic caused by the Corona Virus (Covid-19). The rapid expansion of the virus, plastered economic structures and influenced public expenses to prioritize health care and economic aid which leaves other discussions for later period. We can expect delays on auctions, deals, and regulations, as governments prioritize Covid-19 related issues, and businesses worry to survive in this time of crisis. We might see in the near future more M&A’s being practiced in some industries due limitations imposed by the virus spread, which decreases productivity, cash inflows, and consumer demand. It is of utmost importance the continuous research of the defense of economic competition in times of uncertainty as the economy possibly walks into a possible recession, which may bring more market concentration and anticompetitive business practices under an uncertain future scenario.
**Mexico: Advocating for pro-competitive regulation in the Notarial services market**

*by María José Contreras de Velasco*

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**Introduction**

Public notaries grant legal certainty to acts of real estate sales, wills, document certification, among others. Notarial services are indispensable for the efficient operation of markets, so their regulation must favour the provision and access of these services under the best conditions of quality, opportunity and price.

For these reasons, ensuring consistency between the regulation of notarial services and competition policy is a matter of interest to competition authorities in various countries. As such, the Netherlands, Chile, Peru and Spain, as well as Mexico (see Box 1), among others, have carried out advocacy activities to promote the provision of these services under competitive conditions.

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**Box 1. Other studies on the provision of notarial services in the world**

In recent years, several competition authorities have analysed the regulatory framework and operation of notary services, in order to make recommendations that improve their provision.

On July 31, 2018, the Chilean Fiscalía Nacional Económica (FNE) published the “Market Study on Notaries”, which concluded that the notary system in Chile needs a deep and structural reform, due to the impact that the notarial activities have on the country’s productivity and competitiveness.

In Peru, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) approved in December 2014 the Advocacy Report on competition in the notary services market in Peru and published it in 2015. The document aims at identifying possible modifications to the regulatory framework to encourage the provision of notarial services in the best possible conditions of quality, price, opportunity and accessibility.

The National Competition Commission in Spain (now the National Commission of Markets and Competition) published the Report on Professional Colleges. This Report analyses the result of the implementation of Spanish and European regulations intended to promote the liberalization of professional services, including notarial services, which came into force on 2006. The Report has the objective of fostering a complete adaptation of autonomous norms, Statutes and other norms included in the 2006 Services Directive that regulate the activities of Professional Colleges, including Notarial Colleges.

The following are common issues addressed by recommendations included in the aforementioned studies to improve the competition conditions of notarial services:

- **Remove entry restrictions for the provision of notary services**: allow all candidates who meet a series of minimum, objective, and necessary criteria to fulfil notarial activities.

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Establish objective entry mechanisms: establish clear and objective parameters that allow for the entry of the most qualified people to the notarial activity.

Limit the role of notarial associations: to reduce the participation of Notarial Associations on the entry process or bar exams for the selection of public notaries. To eliminate the intervention of representatives of notary associations in accreditation committees and replace them with academic personnel from public and private universities.

Allow for the free determination of tariffs and/or prices: to allow prices to be determined freely according to the demand of the service, so that each notary can set their fees at their discretion, especially for those procedures of a "mechanical nature" (such as, certification of copies), and avoid the establishment of fixed tariffs.

Set quality parameters for the transmission and storage of information: these parameters must be updated regularly and be publicly accessible. Additionally, the transmission and storage of information derived from notarial procedures so to generate efficiencies and provide greater legal certainty for users could be standardized.

Remove restrictions to advertising and promotion activities.

Eliminate limits to the number and location of notaries: allow free location and remove limits to the number of notaries in the territory. Moreover, allow notaries to offer their services outside their local jurisdiction.

Creation of a similar public figure: the creation of “certifying notaries”, as legal figures that can provide “mechanical services” has been proposed as a substitute for notaries.

State notary laws selected as the “most absurd regulatory obstacles to competition and entrepreneurship”

In 2016, the Mexican antitrust agency (COFECE or Commission), together with the Ministry of Economy, the National Commission for Regulatory Improvement and the National Institute of Entrepreneurs, called for the “Award for identifying the most absurd regulatory obstacles to competition and entrepreneurship”. This award offered citizens, entrepreneurs and businessmen an opportunity to point out the regulatory obstacles that, according to their experience, affected their ability to entry and compete in a market. The jury, composed by the representatives of public bodies, entrepreneurs’ associations, and businesses’ chambers, and think tanks, recognized notary laws in Mexico as the most absurd regulatory obstacles to competition and entrepreneurship.

This exercise corroborated the importance of promoting the principles of competition and free market access in the Mexican notarial system. As a result of the Award, similar obstacles in the 32 state laws that rule the access to notary patents and the provision of these services in the country were identified. These include:

- **32 states establish fixed prices.** The Executive power sets the notary fees, and the College of Notaries can suggest how much notaries should charge. This reduces the incentives to offer prices below the reference tariffs.

- **29 states impose mandatory membership.** Notaries must be in a College or Council of Notaries, which facilitates the exchange of information among notaries to enter into pricing agreements.
28 states grant discretionary power to the governor to grant patents. In most States, the governor can determine the offer of notarial services under non-objective criteria, which generate uncertainty for those interested in becoming notaries, for example, the governor can launch a call to participate for a patent when “in his opinion there is a demand for such according to an increase in business activities” or “because of the needs of the service”.

29 states establish unjustified requirements to provide a notarial patent. Notarial laws demand compliance with requirements such as: minimum age, good conduct or a certain time of residence in the entity where the notary will practice.

18 states limit the number of notaries. Some of them determine the number according to the number of inhabitants per municipality or judicial district (i.e., they establish a maximum of one notary per every 50 thousand inhabitants).

19 states restrain the exercise of the notarial function to a certain area. This facilitates market segmentation, because each notary has an area of influence to offer their services, limiting real competition among notaries.

9 states consider the participation of the Colleges in the determination of the number of notaries. This creates incentives for incumbents to limit the entry of new notaries.

Opinion on the draft “Law of Notaries for the state of Veracruz”
In 2018, the congress of the Mexican state of Veracruz proposed an initiative to create a new law to regulate the notarial activity of that state. COFECE issued an opinion on the draft law.

In its analysis, COFECE detected that the approval of the initiative would: i) entail a reduction in the access to services through artificially limiting the number of notaries (maximum one for every 40 thousand inhabitants); ii) grant discretionary power to the governor in the publication of vacancies and their suppression; iii) impose restrictions on the different advertising channels for notarial services; iv) establish fixed tariffs that inhibit notaries from offering more attractive service conditions for users; and v) consider sanctions for exercising their functions outside their geographical boundaries. These regulatory considerations would artificially limit the number of possible notary service providers, to the detriment of consumers and the operation of markets that use notarial services for their efficient operation. Likewise, its approval would mean that Veracruz would have had one of the strictest notarial laws at the national level.

Therefore, COFECE issued the following recommendations to the state Congress:

i. Not to fix the number of notaries in a region. COFECE recommended to remove the restriction on the maximum and minimum number of notaries and instead, let the number and location of notaries adjust to the needs of the population.

ii. Eliminate the Governor’s discretionary power to grant notarial patents and the requirements not related to technical capacity. The regime for the granting of patents should only guard the correct performance of the notarial activity, and it should be affected by the growth of the need for the service, without artificially limiting its provision and without

28 Document available at: https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V87/1/4513633.pdf
unjustifiably excluding potential providers of notarial services when they have the corresponding qualifications. Therefore, the entry of more providers of this service should not depend on a discretionary decision of the Governor or a request made by the notaries in office.

iii. **Allow publicity for notaries.** Establish in the regulations that notaries will be allowed to advertise their services in the media that they consider most adequate.

iv. **Eliminate any provision that establishes minimum or fixed tariffs.** Given that its main objective is to avoid the collection of excessive fees in a context of possible scarcity and to reduce the asymmetry of information that users face, the tariffs that - if applicable - set the regulations must be maximum.

v. **Eliminate the restrictions on the location of notaries.** COFECE recommended to liberalize the exercise of notarial services between regions within the state.

Two years after the initiative proposal was published, the Congress has not discussed or voted the draft decree.

**Conclusions and learnings**

Notarial services grant authenticity and certainty to a variety of legal and economic acts relevant to the efficient functioning of markets. These acts are important for the development of multiple economic activities, so their regulation must favour the provision of these services in the best possible quality, price, opportunity and accessibility conditions.

In Mexico, as in other countries, there are some recurring regulatory precepts in state regulations that could hinder the provision of these services under desirable conditions, to the detriment of users. In this regard, COFECE has submitted various recommendations to modify state notary laws to eliminate these obstacles and promote access to these services in the best possible conditions. These measures are mainly aimed at promoting the existence of a greater number of notaries and the possibility that there may be differentiation among them, ensuring competition and consequently, better quality of the service at lower prices.

It should be emphasized that the comprehensive solution for the best provision of notary services could be the adoption of a free entry permit regime subject to requirements to guarantee the quality and accessibility of the service. It has also been proposed to elaborate a General Law of Notaries that applies to all Mexican states, which establishes general bases to standardize the regulation of the profession.

Additionally, the use of technology could soon impact and eventually replace the provision of certain notarial services. For example, wills, certifications and contracts, could be carried out the use of blockchain technology.

Due to the relevance of the role that notarial services play in the efficient functioning of markets, facilitating the access of a greater number of lawyers could contribute to a better functioning of the economy. The conclusions drawn in various advocacy efforts of a number of competition authorities, inspired by the principles of free competition, can be useful to generate better supply conditions for the benefit of all.
An efficient public procurement system that seeks to optimize resources to obtain better conditions necessarily requires clear rules that promote competition, transparency and minimize the risk of corruption. This is a highly complex task, because it is not only related with the issuance of norms that counteract the problems, but also implied with the permanent coordination of various authorities that work towards this objective and, in turn, also generate a culture of regulatory compliance by the economic agents participating in this market.

Public procurements exceeded 23 billion dollars, equivalent to 11.7% of the Peruvian Gross Domestic Product (GDP) in 2017.

Therefore, one of Indecopi’s main objective is to be able to contribute to the promotion of competition in public procurement, since it will not only allow better prices but also, as a side effect, will contribute to the reduction of corruption, given that the plurality of economic agents that appear in the contracting procedures will generate lower probabilities of success of illegal acts.

Since 2018, a series of actions have been taken that have allowed Indecopi to reach the aforementioned objective. In addition, one of Indecopi’s steps to have a greater approach to this objective was the collaboration obtained between Indecopi and the authorities that manage and supervise public contracting, such as the Procurement Supervising Agency (OSCE by its acronym in the Peruvian law) and Peru Compras.

Following, Indecopi presents the main actions carried out to contribute to the promotion of competition in public procurement:

**LEGAL RECOMMENDATIONS**

In August 2018, within the framework of its powers to issue competition advocacies, Indecopi made certain recommendations to promote competition in public procurement, which involved modifying the State Contracting Law or its Regulations, that were integrally accepted and generated the amendments in the regulation of the State Contracting Law, and were in force since January 30, 2019.

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The recommendations made and received were the following:

**Reserve of the Estimated Value**
One of the main recommendations was that the price that the public entity was willing to pay for purchasing goods or contracting services (known as an Estimated Value) should not be publicized, because this information reduces the possibility that bidders offer lower prices and the possibilities of saving for the entity as well as, it could facilitate the execution of bid rigging.

The referential price system was designed to prevent excessive price increases from one period to another, but in reality, it reduced competition in the market and the prices were established upper than usual they were in a competition scenario. In fact, according to a study carried out by the authority in charge of supervising state contracting (OSCE) showed a high percentage (71.2% in 2014) of public tenders where the winner won with an amount equivalent or higher of the estimated value, when the Estimated Value was public.

**Collaboration with Indecopi**
Another recommendation issued by Indecopi was to modify the State Procurement Law in order to establish that the public entities that are in charge of elaborating the public bidders and the OSCE can contact Indecopi officials as soon as they have evidence or possible anti-competitive behaviors to guarantee an adequate intervention of the competition authority.

In effect, the current provision 14 of the State Contracting Law establishes that the information collected by Indecopi about possible anti-competitive practices in public procedures addressed to acquire goods and services must be kept confidential and must not be notified to the alleged responsible to ensure the effectiveness of the investigation.

**Disqualification for participating in anti-competitive practices**
The recent amendment introduced into the State Contracting Law specified that when Indecopi determines an infraction of the Peruvian Competiton Act classified as a very serious and the sanction imposed by the Commission of the Defense of Free Competition is not appealed by the infractor, the OSCE will proceed with the registration of the infractor to disqualified from contracting with the State for a period of one year.

It is important to mention that this measure only applies to those behaviors considered as very serious, but not to minor offenses or serious ones, as well as it is awpcified that the time of disqualification is for 1 year. In addition, it was underlined that the disqualification is a legal consequence of the declaration of anti-competitive conduct in contracts with the State.

In this way, the purpose of this amendment is that bidders have clear rules about the consequences of participating in a cartel and, thereby, discourage them from committing this type of practices that are so harmful for the society.

**Independent Offer Statement**
As a result of another recommendation made by Indecopi, it is mandatory to all bidders to present an affidavit certifying that they participate in the contracting process independently, without consulting, communicating, agreeing, arranging or agreeing with any competitor. This institutional proposal seeks to mitigate anticompetitive conduct in government administrative proceedings.

These affidavits seek to ensure that the companies and their representatives are aware about the prohibition of being part of anti-competitive conduct and the consequences, assuming administrative and criminal liabilities if they make a sworn statement that is false. As well as to discourage the risks for companies to coordinate their offers with other competing companies.
GUIDE TO FIGHT COLLUSION IN PUBLIC PROCUREMENT

In March 2019, Indecopi, in collaboration with two representative institutions in State Procurement, published a Guide to Fight Collusion in Public Procurement with the purpose of giving training to the officials that participate in the selection and contracting procedures of the State by in order to design procedures to promote competition as well as to identify possible evidence of anti-competitive behavior in public procurement and to report this situation to Indecopi to start the corresponding investigations and, if applicable, initiate an administrative sanction proceeding against the alleged perpetrators.

Although the primary recipients of this guide are the officials in charge of selection and contracting procedures within public entities, this document should also serve as a reference for other relevant actors in state contracting such as the State Procurement Supervisory Body (OSCE), public Peruvian entities, as well as companies interested in contracting with public entities and their advisors.

Likewise, although this guide takes as a reference the procedures foreseen in the Law on State Procurement and its Regulations, the principles and recommendations of this document may be taken into account in any state-contracting regime, with the objective of favoring competition, to the extent that it does not contradict with the current normative framework.

Indecopi is aware that the investigated practices not only damage the competitive process but also undermines public resources (OECD estimated overprices that arise from anti-competitive practices in tenders at around 34.6%). Form this reason, Indecopi hopes that the Guide will reinforce the cooperation between Indecopi and the entities in charge of public purchases, allowing an effective and timely intervention to detect and punish cartels, including the disarticulation before the execution of the illegal actions.

The Guide has been divided into various sections. In one of them, the different modalities of anti-competitive agreements that could occur in the context of public tenders are explained in simple terms, showing some cases that have been sanctioned by Indecopi. In other words, the aim of the Guide is to clarify the participation of the agents that participate in public contracting about those anticompetitive conducts that are prohibited and sanctioned.

In other section, recommendations are formulated that could be followed by public entities to promote competition at different times in the selection and contracting procedures in their charge. For example, promoting corporate purchases, avoiding possible cases of establishing inadequate requirements. Its objective is that the State can promote greater competition and efficiency in public spending.

WORKSHOPS

In addition, between April and August 2019, training on the Guide to Combating Collusion in Public Procurement was held for more than 400 public officials in various cities in the country. This work additionally allows us to become aware of the problems they face in public contracting carried out in their respective jurisdictions.

The main allies in detecting anti-competitive agreements in selection procedures are the officials in charge of these procedures. This is the main reason why as part of the strategy to promote competition in public procurement, trainings were promoted so that public officials can warn of possible signs of anti-competitive behavior within public contracting and inform Indecopi to carry out the pertinent inquiries.
Trinidad and Tobago: Advocacy efforts that pushed for the new Competition Law

by Bevan Narinesingh

Introduction

On February 10 2020, the remaining parts of the Fair Trading Act came into force when the President of the Republic of Trinidad and Tobago, Her Excellency Paula Mae Weekes signed the relevant instrument of proclamation. This was indeed a watershed moment in the history of Trinidad and Tobago as it further reinforced the efforts of the present as well as previous governments to embrace and promote the principles of a free market economy with there being a commitment to have a more competitive business environment in Trinidad and Tobago.

The full proclamation of the Act was also a culmination of the hard work and commitment of the staff and Commissioners of the Trinidad and Tobago Fair Trading Commission (“the Commission”) who completed a journey that started in 2014 when the Commission was established.

About the Fair Trading Act

The Fair Trading Act creates an institutional framework for the enforcement of competition policy in Trinidad and Tobago and addresses major issues including:

- The abuse of monopoly power
- Anti-competitive mergers
- Anti-competitive agreements and
- The enforcement of the relevant clauses or enforcement measures

Specific anti-competitive practices that are prohibited under the Act include price-fixing, market sharing, collusion, cartels and bid rigging. Furthermore, enterprises wishing to merge are required to seek the prior approval of the Trinidad and Tobago Fair Trading Commission which is an independent Statutory Agency responsible for protecting, promoting and maintaining fair competition in the economy.

Need for the Legislation

The legislation was a reflection of the policies by various Trinidad and Tobago governments to embrace the principles and ideals of a market economy which is ideally characterized by there being effective competition.

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The legislation was also a recognition that policy interventions are necessary in order to maintain and encourage healthy competition with there being a regulatory framework that promotes, maintains and protects competition, improves the competitiveness of the economy and provides the stimulus for firms to enhance their efficiency and better compete in both domestic and international markets.

Moreover, members of the business community, small, medium and large, have long complained about the unfair business practices of some of their competitors. However, because the legislation was not fully proclaimed, the Commission had been unable to receive and investigate complaints of anti-competitive conduct. This lack of investigatory and enforcement power was clearly adversely affecting the Commission's public image with the Commission being seen as a 'toothless' organization who was unable to effectively address the competition issues facing Trinidad and Tobago. Additionally, the Commission's continued work in the areas of competition advocacy and public education was being adversely affected because of the Commission's inability to apply and enforce the Act's provisions.

The legislation was thus quite necessary with there being an urgent need to send the message that practices such as abuse of monopoly power, anti-competitive mergers and anti-competitive agreements will not be tolerated and that healthy competition can encourage entrepreneurial activity and market entry thus leading to greater efficiency and greater competitiveness.

**Getting the Support of the Stakeholders for the Proclamation of the Legislation**

The Trinidad and Tobago Fair Trading Commission like all competition/antitrust agencies operates on the premise that vigorous and unfettered marketplace competition will yield the most advantageous result for consumers and the business sector.

There was thus the need to get stakeholder support in order to ensure that the full proclamation of the legislation became a reality. This required an effective stakeholder management strategy with there being a targeted approach to stakeholders who were broadly categorized into four groups: Government, the Business Community, Consumers and the Media.

The overall objective of the Commission's strategy was to emphasize the benefits of increased competition and explain how each stakeholder group could specifically benefit from the legislation being fully proclaimed.

**Specific Approaches to stakeholders**

**(i) Government**

The objective was to make the proclamation of the legislation a government priority. This was done by stressing how the implementation of competition law would assist and complement the government’s Trade policy and its Vision 2030 objectives (a policy plan by the Government to make Trinidad and Tobago a fully developed country by 2030) in areas such as trade promotion, investment facilitation and business development.

The key messages that we tried to communicate was that increased competition could lead to significant economic growth, productivity and development. Additionally it was stressed that the Government's anti-corruption initiatives would also greatly be complemented by an effective competition regime in particular as it relates to bid rigging which remains a pervasive problem in
Trinidad and Tobago. Statistical evidence was a major part of our engagement efforts with there being an emphasis on how the Commission could save money for the government in certain key areas e.g. procurement expenditure, healthcare spending and food costs.

Statistical data was also used to support our assertion that increased competition had resulted in significant benefits to other national economies. This data had to of course be very credible which was why the information used was obtained from reputable sources such as the United Nations Conference on Trade and Development (UNCTAD), the International Competition Network (ICN), as well as from well-established national competition agencies.

The specific engagement efforts involved making presentations to Ministries and being part of coordinated efforts with other government agencies and Ministries in particular those involved in areas such as investment facilitation, international trade and sustainable development. These activities reemphasized the relevance and importance of having an effective competition law framework which together with properly implemented government policy in areas such as investment facilitation, trade promotion and business development can potentially enhance the investment climate, safeguard the market liberalization process and promote an enabling environment for sustainable growth and development.

(ii) Business Community

In terms of the business community, our engagement efforts were focussed on emphasizing why competition was good for business which included the dissemination of the following key messages to these stakeholders:

- Competition leads to innovation and creative thinking
- Constant competition ensures that your product offering continues to evolve with the evolving marketplace
- Competition forces you and your business to figure out how to be different and to distinguish yourself from your competitors
- Competition helps a business to narrow its focus and helps you concentrate on what you’re really good at
- Competition causes businesses to work smarter and leads to increased efficiency with respect to methods of production and use of resources.

The approach to the business community was focussed on us explaining to them that an effective piece of legislation such as the Fair Trading Act together with properly implemented government policy can help to create a more level playing field which could then lead to greater investment, facilitate increased market entry and encourage business development.

In terms of the methods of engagement, the emphasis was on the following: attending and making contributions at important business seminars, hosting competition sensitization sessions for the business community, issuing public notices and press releases on topical issues and writing articles in the Business section of the various daily newspapers about competition and its benefits. Furthermore, the Commission also helped companies prepare compliance documents in anticipation of the Act’s full proclamation while at the same time trying to alleviate the fears of some members of the business community concerning the effects of the legislation on their livelihood. This was a major part of our engagement efforts with the business community as we
recognized that certain agreements or practices might have been considered as being part of Trinidad and Tobago's business culture and landscape for quite some time, many of which would now be prohibited under the Fair Trading Act. We thus tried to encourage the business community to change their behaviour and emphasized the need for collaboration with us not being too judgmental with respect to their previous market conduct.

The approach taken with the business community was highly successful as their members for the large part recognized that increased competition can be very beneficial for business and to the economy in general. This was evidenced by the proclamation of the legislation getting the full support of key organizations in the business community including the Trinidad and Tobago Chamber of Commerce, the Trinidad and Tobago Manufacturers’ Association (TTMA), the American Chamber of Commerce Trinidad and Tobago (AMCHAM TT) and other Business Associations in Trinidad and Tobago.

(iii) Consumers

The approach to consumers was different from that taken to other stakeholders primarily because the Commission does not directly address consumer issues as these issues fall under the direct purview of the Consumer Affairs Division, Ministry of Trade and Industry. The engagement with these stakeholders thus needed to be a combined effort with the Consumer Affairs Division and involved a number of collaborative consumer sessions with the Consumer Affairs Division as the sharing of booths (where relevant questions were addresses and literature distributed) during various consumer conventions and other relevant events. There were also a number of joint interviews conducted by staff of both the Commission and the Consumer Affairs Division which was critical since there was a critical need for consumers (and the general public) to understand that there was a clear distinction between our roles and responsibilities.

The key message that both the Commission and the Consumer Affairs Division tried to bring across was that increased competition can lead to lower prices and better quality of goods and services for consumers. This message was also communicated through the dissemination of brochures and the extensive use of social media in particular Facebook and Twitter.

This approach to consumers were quite successful with many consumers advocating for the proclamation of the Fair Trading Act with the expectation that it would reinforce existing efforts in the area of consumer reform.

(iv) Media

The Commission recognized from the outset that the support of the media for the proclamation of the legislation was critical and made it a major part of our stakeholder management strategy. This support was achieved through relevant media interviews on both radio and television, inviting media members to attend and give coverage of the sensitization sessions the Commission held with the various stakeholders with there also being a specific session with the media.
Furthermore, the Commission also published timely public notices and releases to the media that quickly addressed issues coming to the national spotlight. The Commission’s Commissioners and staff also wrote articles for the business newspapers as well as published articles of interest on our interactive website.

The approach to the media was focused on them recognizing that the legislation could lead to significant changes in the economic landscape and that the Commission was a credible organization with knowledgeable and trained Commissioners and staff who would be able to effectively carry out their responsibilities under the legislation. It was further emphasized that many of the anti-competitive business activities that were occurring with impunity in Trinidad and Tobago would not have been happening if the provisions of the Fair Trading Act were being properly enforced.

The media proved to be a very important stakeholder in getting the legislation proclaimed as they emphasized that not only could the legislation benefit both consumers and the overall business community but also that the majority of stakeholders were in support of the legislation. Additionally, the media underscored the credibility of the Commission as an organization that could effectively administer the legislation and help ensure that many of the expected benefits from a fully functioning competition regime could be realized.

Success of Advocacy Efforts: Why did we succeed in getting the legislation proclaimed?

The Commission’s success in getting the legislation proclaimed can be attributed to a number of factors which other competition/anti-trust agencies can use for guidance when trying to influence policy makers. These include the following:

- The need to understand your country’s unique circumstances and the existing political temperature in particular the socio-economic priorities of the Government and to determine how these fit with the goals and principles of competition law and policy
- Using key words and messages to the relevant stakeholders with there being suitable adaptation for specific groups. As an example, some of the key words in our messages were- fair play, lower prices, efficiency, innovation, economic and sustainable development
- Establishing or building upon the organization’s credibility
- Using social media and press releases and public notices in a timely and effective manner in particular as they relate to key national developments.
• Having good knowledgeable people on your staff as well as Board Members who are able to effectively promote the work of the organization
• Being very responsive to issues that stakeholders may have while at the same time being both flexible and adaptable
• Being realistic in you engagements and only making commitments that you know you can keep
• Using credible and updated statistics in order to get stakeholder support
• Designing a collaborative environment (both internally and externally) that builds trust and belief in the organization’s work

What should we expect with the legislation now being fully proclaimed?
The intention of the Fair Trading Act is to help in shaping fairer competition and a business environment which is open to all. The full proclamation of the legislation is expected to enhance the Trinidad and Tobago Fair Trading Commission’s existing work and activities.

With the legislation now fully proclaimed, the Commission will now be able to act upon the concerns that have been identified with regard to anti-competitive process over the last few years since the Commission is now fully empowered to receive and investigate complaints of anti-competitive conduct which is expected to lead to lower prices, higher quality goods and services and greater innovation and thus greater consumer welfare and overall welfare.

Sectors where the legislation is expected to lead to positive changes include construction, medical/pharmaceutical, alcohol, energy services, motor vehicle (including parts), food production, supply and distribution, entertainment, tourism and transport. This is based on the experiences of similar type agencies in developing countries particularly in Caribbean Community (CARICOM) region.

Final Thoughts
The Trinidad and Tobago Fair Trading Commission is committed to promoting and ensuring a fair marketplace and being a fair, objective and accountable organization. While we were successful in getting the legislation fully proclaimed, we also recognize that the proclamation and implementation of the legislation is simply the next step on a continuous journey of progress for the organization. This is a pretty exciting time for the organization as we continue to try to stay responsive to trends and opportunities both locally and internationally with the Commission remaining committed to ensuring that all stakeholders operate in accordance with the provisions of the Fair Trading Act.

This is based on our firm belief that competition has an important role to play in improving the productivity and growth prospects of the Trinidad and Tobago economy.