

**ARGENTINA**

*1998*

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Competition Law No. 25156

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### I. Activities of the National Commission for the Defence of Competition

1. This chapter shows the outcome of activities carried out by the NCDC (National Commission for the Defence of Competition) in its capacity as enforcing authority of Antitrust Act No. 22262. By virtue of such law, the Commission has assessed complaints and conducted official investigations due to alleged violations thereof. The above law stipulates that any action or behaviour relating to the manufacture and exchange of goods or services, which limit, restrict or distort competition, or stands as abuse of a dominant position in any market, in a way that may cause injury to the general economic interest, is forbidden and shall be punished.

#### *Activities carried out through 1998*

2. The information below refers to cases decided on in 1998. Behaviours have been classified as follows: Price Undertaking, Price Discrimination, Pricing, Imposition of Exclusivity, Barriers to Market Entry, Predatory Prices and Market Division. Chart 1 shows that most cases (15) have been complaints on account of behaviours that set up barriers to market entry, standing for 47 percent of the total. Three out of all of these cases have been given sanctions (the only sanctions imposed in this term), ten have been dismissed and in two of the cases the respondent company has committed to change its behaviour.

**Chart 1**  
**Cases decided on by NCDC in 1998 by behaviour and type of settlement**

Type of Behaviour	No. of Cases	Sanctions	Dismissals	Commitments
Price Undertaking	2	0	2	0
Price Discrimination	1	0	1	0
Pricing	1	0	0	1
Imposition of Exclusivity	3	0	3	0
Barriers to Market Entry	15	3	10	2
Predatory Prices	3	0	3	0
Market Division	2	0	2	0
Actions not falling into the Law	5	0	5	0
<b>TOTAL</b>	<b>32</b>	<b>3</b>	<b>26</b>	<b>3</b>

*Source: National Commission for the Defence of Competition*

3. As to the final decision of the NCDC in connection with the behaviours assessed and, as a consequence of the proceeding set forth by law, cases are concluded with a decision by which the Commission advises the Secretary of Industry, Commerce and Mining on the criteria to be adopted. The different alternatives are as follows:

- a. dismissal of complaint, if such facts do not fall into the law or reasonable explanations are accepted;
- b. the allegedly responsible party is advised to accept a commitment, by means of which, such party offers to discontinue the investigated facts or to modify aspects related thereto, either immediately or gradually;
- c. order to cease or disist from reported behaviour;
- d. application of a sanction.

4. In 1998, 75 percent of the total number of cases was dismissed, 17 percent was given sanctions, and the remaining 8 percent accepted the commitment to cease such behaviour.

5. On the other hand, and with the purpose of assessing the cases analysed in connection with the market involved, groups were organised as shown in Chart 2, using an adapted version of the International Uniform Industrial Classification (IUC)-revision No. 3. It was observed that most cases occurred in the markets of manufacturing of chemicals (12 percent) and in ground transportation services (12 percent). In general, a very similar distribution has been observed in the relative market share of the remaining markets.

6. Sanctions were applied to the markets of prepaid legal services, newspaper advertising and metal boxes for caskets.

**Chart 2**  
**Cases settled by markets involved**

Markets involved	No. of Cases	Settlement/ Sanction	Settlement/ Dismissal	Settlement/ Commitment
Manufacturing of Beverages	2	-		-
Alcoholic Beverages	-	-	2	-
Manufacturing of Chemicals	4	-		-
Physiologic Serum	-	-	1	-
Vaccines	-	-	1	-
Drugs	-	-	2	-
Ground Transportation	4	-		-
Cab service	-	-	4	-
Air Transportation Service	3	-		-
Sale of Flight Tickets	-	-	2	-
Room for Hangars	-	-	1	-
Other Business Activities	2			
Prepaid legal services	-	1	1	-
Social and Health Care Services	3	-		
Clinic & Sanatorium Associations			2	1
Advertising	1		-	-
Advertising on newspapers	-	1	-	-
Waste Disposal and Sewage	1	-		-
Solid waste	-	-	1	-
Recreational Services-Cultural and Sports Services	1	-	-	
Ski schools	-	-	-	1
Crude Oil and Natural Gas Recovery	1	-		-
Liquid fuel			1	-
Business Activities (search and security)	1	-	-	
Security and Surveillance Services				1
Manufacturing of Other Metal Products	1		-	-
Metal boxes for caskets		1	-	-

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Chart 2 (cont'd)

Markets involved	No. of Cases	Settlement/ Sanction	Settlement/ Dismissal	Settlement/ Commitment
Electric Power Generation, Transmission and Distribution	1	-	-	-
Electric power transmission	-	-	1	-
Computer Services and Other Related Activities	1	-	-	-
Computer programs	-	-	1	-
Cinema, Radio and Television Activities and Other Entertainment Activities	2	-	-	-
Distribution of motion pictures	-	-	2	-
Mail and Telecommunication Services	2	-	-	-
Cellular Mobile Radio Communications Services	-	-	2	-
Manufacturing of Other Chemicals	1	-	-	-
Body lotions	-	-	1	-
Manufacturing of Medical Devices and Instruments	1	-	-	-
Ostomedic products	-	-	1	-
<b>Total</b>	<b>32</b>	<b>3</b>	<b>26</b>	<b>3</b>

Source: National Commission for the Defence of Competition

### **Main cases under examination by the end of 1998**

7. By the end of December 1998, a total of 39 cases were under examination by the NCDC. The 54 percent of them were focused in the following markets: medical-health care services (9 cases), cable television (8 cases) and liquefied petroleum gas (4 cases). As for the respondent companies, none was involved in more than one case.

8. Out of the 39 cases under examination, only four were officially filed by the NCDC, involving the markets of health care services, dental services, liquefied petroleum gas, and port activities.

**Chart 3**  
**Cases under examination by the end of 1998**

Order	Filing Date	Parties involved	Respondent	Market
1	02-21-97	Representative Barrios Arrechea Togni de Velly	Amarilla S.A. and Others	Liquefied Gas
2	03-12-97	S.A.D.I.T [Argentine Society of Independent Tobacco Distributors]	Massalin Particulares S.A.	Cigarettes
3	04-08-97	Undersecretariat of Commerce	Posadas Cablevisión	Cable Television

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and Municipality of Misiones

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Chart 3 (cont'd)

Order	Filing	Parties involved		Market
4	06-11-97	Coordinadora de Salud SRL	Association of Clinics and Sanatoriums of Tucumán	Health Care Services
5	06-23-97	AAAVYT Argentine Associations of Travel and Tourism Agencies	Aerolíneas Argentinas S.A., Austral SA, Air France, Alitalia and other Domestic and International Passenger Air-transport Companies	Flight tickets
6	07-18-97	Sensormatic Argentina SA	Checkpoint System S.A.	Labels for Anti-theft Alarm Systems
7	07-24-97	NCDC	Health Care Association of the City of Resistencia	Health Care Services. Union-Run Social Security.
8	07-24-97	FABA - Federation of Groceries, Retailers, Self-service, Food and Related Items of the Province of Buenos Aires	Visa Argentina S.A., American Express S.A., Cabal, Diners Club Argentina S.A.	Credit Cards
9	07-24-97	Néstor Donato Ferrari	Plan Ovalo S.A. de Ahorro- Circulo de Inversiones S.A.- Volkswagen S.A. de Ahorro y Empresas de Seguro	Savings Plans for Specific Purposes
10	07-31-97	Mutual Assistance Association of El Dorado	Medical Association	Health Care Services
11	08-11-97	NCDC	YPF S.A.	Liquefied petroleum gas
12	08-19-97	Unitec S.A.	Carrier Argentina S.A. and Surrey S.A.	Heaters
13	09-16-97	Federation of Fuel Industrialists of the Republic of Argentina	EG3 S.A.	Fuel
14	09-23-97	Medinea S.A.	IAMP- Medisur	Health Care Services
15	10-01-97	Procter y Gamble S.A.	Unilever de Argentina S.A.	Washing machine soap
16	10-23-97	El Cafayetano S.R.L.	Empresa El Indio S.R.L.	Passenger Transportation
17	11-10-97	Private Health Care Institute Río Uruguay	ACLER - Association of Clinics and Sanatoriums of the Province of Entre Ríos	Sanatorium Health Care Services
18	11-25-97	Diego Bonadeo and others	Torneos y Competencias and Tsc.	Cable Television
19	02-19-98	Red Odontológica S.A.	Dental Association of Chaco	Dental Health Care Services
20	03-31-98	Autogas S.A.	YPF S.A.	Liquefied petroleum gas
21	04-28-98	NCDC	Dental Federation of the Province of Corrientes	Dental Health Care Services
22	05-05-98	Ricardo R. Barisio	Dental Association Venado Tuerto	Dental Health Care Services

Chart 3 (cont'd)

Order	Filing	Parties involved		Market
23	05-15-98	Impsat S.A.	Advance Comunicaciones S.A., Telecom Soluciones S.A., Startel SA, Telefónica de Argentina S.A. and Telecom Argentina -Stet France Telecom S.A.	Data Transmission
24	06-02-98	Standing Commission of Constitutional Affairs and Justice of the Legislature of Chubut Province	Atelco S.A., Transcable S.A., Holding Supercanal S.A. and Grupo Uno S.A.	Cable Television
25	06-02-98	Teledifusora S.A.	Torneos y Competencias and Televisión Satelital Codificada S.A.	Cable Television
26	06-02-98	Teledifusora S.A. Cable Operator	Pramer S.R.L. Signal Distributor	Cable Television
27	06-12-98	P.A.M.I.	Argentine Association of Anesthesiology	Surgery and Anesthesiology
28	08-13-98	Inhabitants of the City of Bariloche	Merchants of the City of Bariloche	Bottled gas
29	09-29-98	Adelco Consumer Action Santa Fe Branch	Cablevisión S.A. and Multicanal S.A.	Cable Television
30	10-25-98	General Commerce Bureau of Entre Ríos	Video Cable 6 S.A.	Cable Television
31	11-03-98	NCDC	Port Activity Coordinating Center and Others	Port Activities
32	11-03-98	Ventachap S.C.A.	Siderar S.A.	Rolled Steel
33	11-12-98	General Domestic Trade Bureau of Santa Fe	VCC (Galavisión)	Cable Television
34	11-10-98	Footwear Industry Chamber of Córdoba]	Hipermercado Carrefour	Sports footwear and Trainers
35	11-20-98	Civil Civic Crusade Association for the Defense of Consumers and Users of Public Utilities	AGN National Audit Bureau; SIGEN	Monopolistic Public Utilities
36	12-03-98	Association of Anesthesiology of La Pampa	Health Care Association of La Pampa and Associations of Clinics and Sanatoriums	Health Care Services
37	12-15-98	TDH-(Televisión Directa al Hogar S.A.)	Torneos y Competencias and Others	Cable Television
38	12-15-98	Fedecamaras	Exxel Group and Others	Sale of Molinos Río de La Plata Company
39	12-17-98	Oeste Gas S.A.	Total Gas S.A. and YPF Gas S.A.	Liquefied petroleum gas packaging

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### *Relevant Cases*

9. During 1998 the NCDC decided on 32 cases submitted to its consideration. 26 of them were dismissed, three were penalised, and the remaining three resulted in a commitment to cease such behaviour.

10. This section includes summaries of the major decisions as deemed by the Commission against the remaining cases studied during 1998. Significance is measured not only by the quantitative importance of the market involved, but also by the case significance as a source of case law.

### *Newspaper Advertising*

11. This case was filed by Editorial AMFIN S.A. reporting that Arte Gráfico Editorial Argentino S.A. (AGEA S.A.) was applying a discount scheme on advertisements published in Clarín newspaper not related to sales volume, but rather to advertisement exclusivity.

12. After conducting the investigation, the NCDC concluded that exclusivity reduces the information available to end consumers, by depriving newspaper readers other than Clarín's of the possibility to have access to the advertisements by those advertisers who would have advertised on such papers if this policy had not been implemented.

13. The exclusivity may also impact on the general economic interest given the effect that this practice, imposed on the advertising market, may have on the newspaper market itself.

14. In the period under examination, Clarín had the largest market share in newspaper sales in the City of Buenos Aires, accounting for approximately 60 percent. Having the largest newspaper circulation provided the respondent with the possibility to take advantage of its newspaper market share to restrict competition, potentially exclude competitors and hinder entry of other newspapers of lower circulation to the advertising market. In turn, the volume of ads favoured by this clause was significant, since it had an impact on 25% of the advertising billing of Clarín. In this case it was understood that there was no reason of efficiency that justified the specialisation of an advertiser in a single newspaper, since it does not provide the newspaper with any specific service, but uses the newspaper circulation to reach out its own clients instead.

15. The NCDC concluded that the purpose of the implementation of an exclusive bonus policy for Clarín newspaper advertisers was to restrict competition; as well as to generate the potential danger of excluding competitors who had a share in this market or other prospective newcomers.

16. Against this background, the NCDC advised AGEA S.A. to cease the imputed behaviour of granting exclusive discounts or bonuses in the ads run by their advertisers, regardless of their form.

17. In this case the NCDC members did not reach a full agreement. As a consequence they issued two dissident decisions. One of the dissident decisions advised to dismiss the proceedings as the reported behaviour did not fall into the provisions of Law No. 22262, since it was understood that the exclusivity discount was a typical and pro-competitive practice in the market, and that it may injure competition only under certain circumstances. In addition, limitations to newcomers were considered non-existing according to this decision, owing to the fact that the exclusivity period was too brief to constitute a threat to competition.

18. The second decision was partially dissident, as it agreed in that the reported behaviour infringed upon Law No. 22262, though it believed it would have been appropriate to apply a pesos four hundred

thousand sanction (\$400,000) to AGEA, on the grounds of the deterring function of a fine on economic agents, and because it deemed that the agent's dominant behaviour had been arbitrary.

19. The Secretary's resolution welcomed the opinion of the majority decision and issued a cease and desist order, accordingly.

#### *Ski training*

20. The facts, object of this decision, consisted in a complaint filed by Fanski S.R.L. ski school due to discrimination to access to the lifting means in the northern sector of Catedral Mount (Bariloche) by the concessionaire of such lifting means, called Catedral Alta Patagonia S.A. (CAP S.A.).

21. Such company signed an agreement with Sur Ski S.R.L. ski school, which was later called "Escuela Catedral Alta Patagonia", whereby instructors were granted free of charge access to the lifting means in exchange for a profit share and the provision of certain advertising services. Likewise, it set a special rate for the remaining instructors and schools, much higher than that paid by regular users of the lifting means. Such special rate implied a virtual exclusion of the remaining instructors from the ski training market under analysis.

22. The NCDC conducted a preliminary investigation and advised on an injunction (Decision 270 - 10/7/97), appealed by CAP S.A. However, having completed the examination phase, CAP S.A. submitted a commitment, whereby it accepted not to set different rates to instructors and remaining users, and not to place captions reading that the instructors of Escuela Catedral Alta Patagonia were the only instructors authorised to teach ski.

23. The NCDC advised to accept such a commitment and the Secretary of Industry, Commerce and Mining resolved accordingly, as he understood that it implied ceasing price discrimination and the reported excluding behaviour.

#### *Liquid Fuel*

24. The complaint the decision refers to is that Eg3 S.A. (liquid fuel producer with a 10 percent to 12 percent market share) makes price discrimination among service stations, selling at lower prices to those which belong to Carrefour than to those which do not (a few of them being associated to F.E.C.R.A.).

25. Eg3 S.A. explanations stress that Carrefour is a different client from regular service stations. Since it handles a larger volume, sells a mix of different products, it does not require Eg3 S.A. to make additional investments in stations and has an important advertising impact on Eg3 S.A. sales.

26. To advise on the acceptance of the explanations, the NCDC took into account that the main effect of Carrefour entry to the fuel sale business had been the public price reduction, which had impacted the prices of the whole area of influence of the supermarket (and therefore increased surplus consumption).

27. It was also deemed that Eg3 S.A. market share was not sufficiently large so as to exercise a considerable market power, and that price discrimination between Carrefour and the other service stations was due to cost considerations and resulted in greater competition among the brands and in benefits for the general economic interest.

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### *Metal boxes for caskets and welding services*

28. The behaviour analysed consists in practices agreed by A.S.I.S.F. and the members of A.F.C.M.A.A. in a joint security agreement for metal boxes once welded. These practices placed barriers to market entry for other metal box manufacturers.

29. The origin of the agreement in question was a provision of the Cemetery Authority of the City of Buenos Aires, which made it mandatory for funeral service companies to secure caskets for fifteen years. This encouraged the associations of metal box manufacturers and welders to offer their own security system, reliable for funeral companies. Such system has undergone certain variations as from 1978, and members of A.S.I.S.F. and A.F.C.M.A.A., who concentrate most of their markets in the metropolitan area of Buenos Aires, are exclusively adhered thereto.

30. The NCDC's opinion on this case was that, even though the agreement between A.S.I.S.F. and A.F.C.M.A.A. is beneficial, in general, (since it establishes a security system that increases funeral services reliability), it has also been an instrument to hinder market entry to other metal box manufacturers, by virtue of the fact that one of the clauses in the agreement does not enable them to participate in the system. **Therefore, the decision produced ordered to cease the clause that hindered the signing of similar agreements with third parties, as well as another clause in favour of price undertaking among manufacturers of metal boxes for caskets.**

### *Security and surveillance market*

31. The NCDC officially filed the case pursuant to sections 17 and 18, Act No. 22262, as provided on 11/13/97 in File 064-003028/96: Organización de Investigaciones Privadas Argentina on/Complaint vs./ Control de Seguridad S.A: on/ Act No. 22262, as it deemed there might be liability involving the Cámara Argentina de Empresas de Seguridad e Investigación (C.A.E.S.I.) [Argentine Chamber of Security and Search Companies]- due to an alleged behaviour provided for in section 1, Act No. 22262.

32. The investigated fact consisted in the inclusion in the Collective Bargaining Agreement No. 194/92 by and between C.A.E.S.I. and Unión de Personal de Seguridad de la República Argentina (U.P.S.R.A.) [Security Staff Union of the Republic of Argentina] of a section (section 32 of the Collective Bargaining Agreement), which prevents security and surveillance companies from quoting prices below those set by the above Chamber, in the alleged need to preserve the essential ethical rules in delivering the relevant services. The above section also states that infringement of the above may make the business entity file the corresponding complaints before competent national, provincial or municipal agencies, or state companies, decentralised or autonomous entities.

33. To advise on the acceptance of the commitment submitted, the filings made by the Executive Council of C.A.E.S.I. before the Commission were taken into account. Such filings expressly stated that companies would be prevented from quoting prices as they deem appropriate. Besides, in such filings there is evidence of the dealings made before the Ministry of Labour and Social Security in order to request interpretation of the above section 32 in view of the scope of the commitment assumed.

### *Prepaid legal services*

34. The Claimant is the Argentine Chamber of Prepaid Legal Services, an association that represents companies delivering prepaid legal services all over the country, which are voluntary members thereof. This corporation is authorised to operate by the Argentine Corporations Office. ASISTENCIA INTEGRAL

S.A. (company which feels injured by the respondent's behaviour) is a corporation that delivers prepaid legal services under the trademark ASIST-LEY and is a member of the Claiming Chamber.

35. The Respondent is the San Nicolás Bar Association (C.A.S.N.), a legal entity which has control on the commission and practice of law within its jurisdiction.

36. These proceedings resulted from the complaint filed by the Argentine Chamber of Prepaid Legal Services against the Bar Association of San Nicolás, Province of Buenos Aires, in consideration that the concepts expressed by this Bar Association in two statements published in two local newspapers would infringe the legal rules in force, and therefore, they may generate restricting effects on the legal service competence, violating of section 1, Act 22262. In fact, the two statements published, one in "El Norte" newspaper of San Nicolás and the other in "El Imparcial" newspaper of San Pedro, have warned the community that "the delivery of such legal services" (prepaid services) has not been authorised by any State agency, that the delivery of prepaid legal services violates the legal rules currently in force and that the forms of advertising by means of which ASIST-LEY promotes its services are expressly forbidden by the legal regulations currently in force.

37. In the decision in question, the National Commission does not challenge the exercise of specific powers the C.A.S.N. has been granted by law, but rather considers that the publications in the newspapers constitute a behaviour, which given the originating source, tends to generate concrete and direct effects, such as: deterrence of individuals from hiring legal systems that have been qualified as illegitimate, or discrediting of the attorneys associated to the new service. Therefore, it is reasonable to assume that the intention is to hinder the access of this kind of services to the market.

38. The Commission understood that it was the duty of San Nicolás Bar Association to order to cease any behaviour, whose aim or effect were setting up barriers to market entry to legal services at the judicial district of San Nicolás rendering services which were not legally forbidden.

*Health care services for union-run social security members*

39. The Corrientes Health Care Association imposed a fee ranging from \$10,000 and \$11,000 on health care professionals to become members and/or be part of the providers' list. In Addition, through the Executive Commission, it had sent letters to its members instructing them not to join any union-run social security on an individual basis, since membership was to be processed through this entity. Non compliance with this instruction would entail sanctions on account of union misbehaviour.

40. Corrientes Health Care Association submitted the commitment provided for in section 23, Act No. 22262. Deriving from the submitted commitment is the acknowledgement by the Association of having incurred in the behaviour reported, since it had committed to:

- a. discuss the elimination of the \$10,000 admission fee in the first regular meeting, reducing such fee to the prevailing amounts prior to the amendment that increased it to the current amount;
- b. also assume the commitment not to adopt any measure against any member who did not acknowledge the resolutions of Corrientes Health Care Association and hired their union-run social security on their own;
- c. not to punish anyone for such situation in the future.

41. The NCDC decided to accept this commitment, for compliance therewith definitely removes the behaviours of the investigated market.

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### II. Market Studies

42. The Commission has pursued its policy of examining both the structure and performance of significant markets and making such studies public, as well as the decisions of cases that best illustrate the nature and scope of Law No. 22262.

#### **"Tax Evasion and Competitiveness in the Beef Market" – Executive Summary**

43. Upon a filing by the Argentine Beef Industry Association showing the distortion tax evasion has introduced in the beef market, the National Commission for Defence of Competition has produced a study where the competitive advantages obtained therein have been analysed.

44. This study includes the conclusions drawn from such investigation, which have taken into account the informative depositions and contributions provided by the various market players and independent experts as well as the information received from public agencies, with expertise in the subject matter, such as the General Public Revenue Bureau and the Secretariat of Agriculture, Livestock, Fisheries and Food.

45. Given the peculiarities of the beef producing and trading sector, where the number of players is very significant and the relationship developed in time very complex, it was appropriate to include, prior to the chapter related to tax evasion, other sections where the general characteristics of this sector and the supply and demand operation were briefly explained.

46. Starting with a general overview of the industry, the problem of tax evasion was further analysed and the approximate amount and effects on the market operation estimated. These estimates were made based on a 21 percent VAT.

47. As it is widely known, Decree No. 760 dated June 30, 1998 established as of July 1, 1998 a tax rate that amounts to 50 percent of VAT, that is 10 percent on: a) final sales and imports of live bovine animals and b) final sales and imports of beef and bovine edible waste not submitted to cooking or manufacturing processes. This paper does not take into account these modifications in the VAT tax rate, since the purpose of the NCDC was to assess the tax evasion impact on this market in the last three years.

#### ***Main conclusions:***

1. The beef sector has traditionally had a remarkable dominance within the Argentine economy. The gross value of the beef industry production accounts for almost 6 percent of the total gross value of the manufacture industrial production and about 20 percent of the total value of Food and Beverage production. It employs approximately 46 000 people.
2. Tax evasion in the whole beef market, from cattle purchase to the beef sale to consumers, has been a historical phenomenon, which has worsened over the last few years due to the increase in value added tax. The forms are very varied, ranging from cattle purchase and sale in the black market (including ensuing undeclared slaughter and retail sale also in the black market) to the underselling in terms of kilos, prices and categories.
3. Based on received contributions, both from different market players and several official areas, this Commission has proceeded to quantify the probable tax evasion amounts in this market. For that purpose, 4 categories of tax evasion cases have been created: case 1, total VAT evasion (materialised through clandestine slaughter, which has become more sizeable

over the last years and has enabled tax evading individuals to compete in the market at lower prices or else get a significant additional benefit on public sales prices against “those who do not evade” or “tax dodgers”); case 2, seeming reduction of cattle sales price by 20 percent; case 3, reduction of the weight of the animal sold by the producer by 15 percent; and case 4, change of category of the animal sold by the producer.

4. The estimates made show an annual tax evasion level of \$407 million, \$377 million accounts for VAT and \$30 million to social burden. Assuming that retail sales amount to \$6.9 billion annually (including the meat, hides and by-products), \$1.2 billion should be collected annually as VAT, net of export reimbursement. Therefore, VAT evasion of about \$377 million accounts for about 30% tax evasion of the sector.

**Total Estimated Evasion (\*)**

Tax Evaded	In million \$
<b>VAT</b>	377
<b>Producers and Industrialists</b>	307
<b>Case 1 – tax evasion in the whole chain</b>	239
<b>Case 2 – 20% reduction in cattle price</b>	35
<b>Case 3 – 15% reduction in cattle weight</b>	13
<b>Case 4 – Change of animal category</b>	21
<b>RETAIL SHOPS</b>	70
<b>Social burden</b>	30
<b>100% of social burden</b>	20
<b>50% of social burden</b>	10
<b>TOTAL TAX EVASION</b>	407

(\*) Excluding income tax and assuming a slaughter of 13,000,000 animals.

5. It is worth highlighting that the \$407 million would only account for losses due to tax evasion. Shrinkage in competitiveness and efficiency of non-evading producers, meat packers and stores has not been taken into account. From the cost and margin differences between taxpayers and tax dodgers arise the advantages of the latter over the former.
6. The following chart shows “tax dodgers” benefits (lower costs and greater margins) in each standard case used, expressed in terms of public sales price of those “who pay”. Approximately 19 percent of total slaughtered products would evade 100 percent of VAT. This situation provides tax dodgers with a 27 percent advantage on the public price against taxpayers. On the other hand, 15 percent would benefit from an additional four percent as they declare lower prices, eight percent with an additional three percent as they declare lower animal weight and, finally, six percent of the market would get seven percent as they declare a lower category for the slaughtered animal.

**Estimate of Benefits Taxpayers on the Public Sales Price**

	% Total Slaughter <sup>(*)</sup>	Benefit/Sale Price <sup>(1)</sup>
Case 1	19%	27%
Case 2	15%	4%
Case 3	8%	3%
Case 4	6%	7%

<sup>(1)</sup>Public sales price net of VAT  
On the slaughter of 13,000,000 animals

- In order to appreciate the effects of tax evasion on the competitiveness and efficiency of the sector, it was decided to estimate taxpayer’s competitiveness losses against tax dodgers, based on cost and margin differences considered in each of the four standard cases that were analysed.

**Effects of Tax Evasion on the whole Market**

Standard Cases	Estimated Tons*	Benefits of tax dodgers			Total	
		Cattle breeders Mill \$	Meat Packers Mill \$	Retailers Mill \$	Mill\$	%
Case 1	546,000	49	199	98	346	79.9
Case 2	436,800	----	35	9	44	10.2
Case 3	218,400	----	14	3	17	3.9
Case 4	174,720	----	21	5	26	6.0
<b>Total</b>	<b>1,375,920</b>	<b>49</b>	<b>269</b>	<b>115</b>	<b>433</b>	<b>100</b>
<b>Total slaughter</b>	<b>2,839,200</b>	<b>11.3%</b>	<b>62.1%</b>	<b>26.6%</b>	<b>100%</b>	

\* The assumption is based on an estimated 390kg average weight per animal and an average yield of 56%.

Tax dodgers would get, on the whole, an additional \$433 million. This value exceeds government losses due to tax evasion, which amount to \$407 million. Such difference results from the fact that in the four cases analysed we have assumed that those who evade, in addition to not paying taxes, have lower costs. In the first case they would be due to a larger return, no loss due to confiscation or no meat refrigeration. In the remaining cases, lower costs would account for lower losses due to confiscation or shortages resulting from meat refrigeration. If, in addition, we add social burden evasion which would represent \$30 million, the profit of “non paying” meat packers would amount to \$463 million.

The main beneficiaries, according to the Commission analysis, would be meat packers operating in the black market, since they would be holding back approximately 62 percent of their profits due to evasion.

- As observed in the above paragraph, tax evasion brings about an evident lack of equality in the cattle and beef markets, and lack of efficiency as it involves a price distortion and therefore, a distortion among the different market players. These distortions introduced by evasion in the price system, within a context of wide idle capacity, discriminate against intra-marginal producers who observe tax rules and thus impact on the adjustment

efficiency. The elimination of tax evasion would allow for the disappearance of marginal operators from the market who, having higher costs, will reduce them artificially through non-compliance with tax and sanitation rules. All in all, the elimination of tax evasion would enable the market, which is in itself competitive and operates at reduced profitability margins, to adjust its installed capacity in favour of the most truly efficient producers.

9. From the theoretical point of view, this tax evasion operates, in addition, as an entry barrier for those who, for different reasons, do not evade. This is the perspective adopted by exporting meat packers, who point out that to be able to compete in the domestic market against companies that evade taxes, they have to pay an additional cost, in other words, VAT itself. Moreover, this barrier also impacts on prospective investors.

### **"Liquid Fuel Market" - Executive Summary**

1. This study is intended to disclose the results of a research work conducted by the National Commission for Defence of Competition in the liquid fuel market. In February 1998, the National Secretariat of Energy informed the NCDC that it had identified differences between the domestic prices resulting from oil and the equivalent international values (import parity), and provided it with the relevant information on the subject matter. Based on such information and some other data gathered from various sources, the NCDC has produced this study that includes opinions from different experts in the subject.
2. Up until the end of last decade, the Argentine oil market was fully regulated. After its deregulation earlier this decade, crude oil and its by-products can be freely imported and exported without paying export tariffs or duties. In turn, the companies involved fix the selling price freely; and the installation of new service stations is only subject to safety conditions and regulations. Likewise, wholesale fuel and lubricant distributors are allowed to enter the market, and entry of new refineries has been liberalised provided that they do not cause a negative ecological impact.
3. Since YPF privatisation in 1991 and the deregulation of the sector, while crude oil domestic prices have kept on a par with international prices, gasoline and, to a lesser extent, gas-oil prices net of taxes, have reached price levels higher than import parity. This proves the globalisation problems and insufficient competition in the liquid fuel market in Argentina. However, this gap between domestic prices and import parity is difficult to explain, as gasoline import and marketing is free from the legal point of view.
4. Between 1993 and 1997 the price of by-products (regular gasoline, premium gasoline and gas-oil) net of taxes, has increased by 15.4 percent on average. This figure exceeds the consumer price index increase (8.5 percent) and the international crude oil price (7.8 percent). It is also interesting to notice the evolution of an indicator of the refining gross margin, resulting from the difference between the average prices of premium gasoline and gas-oil and the crude oil barrel. That was about 5 dollars in the first quarter of 1993 (US\$ 22.83 - US\$ 18.11). It almost amounted to US\$ 12 in the first quarter of 1994, and dropped to US\$ 7.50 in the last quarter of 1996. In the last quarter of 1997, such margin was US\$ 11 (US\$ 30 - US\$ 19).
5. The gap between domestic price and import parity should encourage the installation of new refineries and/or by-product imports. The installation of new refineries is highly improbable, since it needs large investments and the installed capacity still exceeds domestic by-product

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demand. In turn, imports have not controlled domestic prices, due to logistic, legal and market problems as identified in this study.

6. The low “challengeability”<sup>1</sup> in the by-product market has made competition adopt different shapes in this market, through advertising, publicity, casting of lots, a bigger infrastructure, etc., though not prices. This is typical of a market with entry barriers discouraging new entrants. In the crude oil market, where these restrictions do not exist, the domestic price has quickly aligned with export parity, but, as pointed out in the above paragraphs, this did not happen in the liquid fuel market.
7. The main restrictions to competition in by-product markets result from:
  - i. Logistic problems to import fuel:
    - import is expensive due to port draught,
    - the tankage associated with maritime and river traffic is concentrated in the three main refineries,
    - the pipeline regulation regime shows some deficiencies which make fuel customs clearance difficult.
  - ii. Legal problems hindering imports and wholesale market.
  - iii. The difficulties in the operation of the wholesale trading market.
8. The presence of the main refineries dominates the fuel market and this is reflected on the commercial chain. YPF, for example, refines 51 percent of products and sells 45 percent of gasolines and 46 percent of gas-oil. This does not happen in countries where market rules have been operating for a longer period. For example, the leading company in the market has a 26 percent share in Holland, 26 percent in Australia, 21 percent in France, 16 percent in UK, 13 percent in Germany and eight percent in US.
9. In the last few years there has been growth in the whole independent commercial chain (made up of “white flag” stations), which did not exist prior to market deregulation. By September 1997, such chain had 592 service stations, that is, 9.75 percent of the total service stations in the country.
10. The poor globalisation of the Argentine fuel market is explained, to a large extent, by the way in which its logistics has been developed, which consists in ports, pipelines and storage plants.
11. Port terminals, which allow for the exit of refinery products or the entry of imported products, still impose costly lightening tasks due to the port draught. All the Argentine maritime terminals operate with ships of up to 60 000m<sup>3</sup> capacity, at most. This places restrictions on international trade as they demand lightening operations with master ships of 200 000 to 300 000m<sup>3</sup> that have to wait offshore to be unloaded. In La Plata port, for example, the draught disables the entry of ships over 14,000m<sup>3</sup>, and the lightening cost is \$2 each barrel.
12. In Argentina ducts are managed and run by the private sector, and are subject to the open entry regime restricted by cap tariffs. Thus, access to ducts is secured once the carrier concessionaire has met its own needs. Therefore, any refining or trading agent is entitled to

access the duct, provided that there is excess capacity. Such excess capacity available to third parties seems to have decreased in time, due to the increase of carried volumes. As a result, entry of new players in the oil market is more expensive than in the case of excess transport capacity, since in general oil companies already established own the existing ducts.

13. The last aspect related to the oil sector logistics, which hinders the by-product customs clearance, is the storage capacity. YPF owns 57 percent of the total storage, then Shell has 13 percent and Esso eight percent. A great deal of the storage has access to a river or maritime port and is concentrated in a few companies. This is an obstacle for incoming and outgoing traffic of products for importers with no storage capacity of their own.
14. The basic requirement to import is to be a passive subject of oil transfer tax (OTT), pursuant to Act 23 988. This law requires to have traded, at least, 100 000m<sup>3</sup> the year prior to the registration application date. This requirement significantly restricts the share of local new competing trading agents in this market.
15. Decree 2 485/91, in turn, regulates such law by creating additional restrictions: trading companies should credit a net shareholders' equity not lower than the highest tax created (that of premium gasoline) on a 50 000m<sup>3</sup> fuel volume. This restriction implies a proven financial creditworthiness, which at present values is approximately 25 million dollars. This is a restriction that does not exist for any other type of import outside the sector.
16. The legal framework (Act 23 988) also establishes that those who desire to become passive subjects to be able to trade fuels and other by-products should do so under their own brand and service stations with the same brand. Besides, they should have fuel storage and dispatch plants to suit the traded volumes. These restrictions curtail the possibility for wholesalers to supply "white flag" service stations with imported products, since ownership of storage and dispatch plants as well as own label products is required, which is not possible unless they are forced to adopt a specific brand from the market, which would remove their individuality.
17. The fuel transfer tax regime imposes an additional financial cost on importers, to be paid up upon market dispatch. In contrast, domestic refineries pay taxes ex factory as they sell products.
18. The wholesale market is not sufficiently developed in Argentina. Part of this is due to of the institutional inheritance from the previous system, for the regulatory regime had induced refineries to develop their own distribution and sales chain. Additionally, instead of fixing ex-factory prices, the withholding value for refining, transport and trading costs was also established.
19. The wholesale trading agent's role is key to "arbitrate" (purchase and sell) in this market, in such cases where there are differences between domestic and international prices.
20. The logistic restrictions already pointed out and the existence of legal barriers (tax treatment, minimum storage capacity, etc.) are the main present obstacles for the existence of a competitive wholesale market. This has caused wholesale distribution to fall almost completely in the hands of refinery companies. Therefore, independent trading agents have little share in this segment.

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21. Also, the market entry of the retail trading is limited due to the financial creditworthiness necessary to install and maintain a network of service stations (approximately one million dollars for each new station).<sup>2</sup>
22. As to the sale price of by-products in service stations, a survey held in August 1998 by the Price Analysis Bureau, which reports to the Secretariat of Domestic Commerce reveals that:
  - i. Prices of same flag service stations are uniform. This is due to the fact that refineries supply dispatchers at benchmark prices.
  - ii. There is almost a 9.5 percent price difference in gasoline and 16.4 percent in gas-oil among different flag dispatchers along one single avenue in the City of Buenos Aires.
23. Other frequent problems in the Argentine trade segment are those deriving from the informality of the sector:
  - As from the differences between the amounts of by-products on demand and supply the existence of adulteration in fuels can be inferred. They are explained by the differential imposition among different by-products, which brings about incentives to evade the fuel tax. For example, fuel-oil and kerosene can be mixed with gas-oil, and solvents of different characteristics may be mixed with gas. This leads to products which do not observe the technical requirements promised to the user because of a substitution or mix, in addition to an important tax loss.
  - Besides, there have been fraudulent manoeuvres with gasoline brought from the south, which is exempted from the fuel transfer tax.
  - Decree 402/96, in addition to defining the various by-products that are sometimes part of the above mentioned adulteration, eliminated the exemption from the fuel transfer tax which was beneficial for virgin gasoline, natural gasoline, solvent and turpentine, unless these products were intended for “use as raw material in the manufacturing of chemicals and petrochemicals, as input in the production of paints, dilution liquids, adhesives, agrochemicals and in the oil extraction process for edible use”. The current problem is to control the destination of these by-products.<sup>3</sup>
24. This kind of denaturalisation has an impact on the fuel market and warn refineries about the presence of wholesale middlemen as they introduce unfair competition, also detrimental to consumers. The correction of tax distortions that currently facilitate this traffic and the police control by the electric power authority may contribute to clear this market of unfair competitors and to institutionalise the presence of new wholesale trading agents.
25. The liquid fuel market is characterised by a marked concentration of the supply in a few companies and by high sunk costs, all of which restricts competition based on price. Unlike what happens with the price of crude oil, domestic oil by-product prices are not aligned with equivalent international prices (import parity). To make domestic prices converge with international prices in this market there should not be any type of specific import restriction. In this study, there is a series of logistic (items 10-13), legal (items 14-17) and trading (items 18-24) restrictions, which limit liquid fuel import and, therefore, reduce the chances to include new entrants in this market.

26. In this market, these restrictions do not allow imports to play a disciplinary role that would make domestic prices tend to be more international. This generates revenues for refineries already set up, which would not exist if these restrictions were removed.
27. More competition in the fuel market seems to be associated with effective globalisation, by means of the presence of a wholesale trade network that would arbitrate in case of eventual differences between domestic and international prices.

### III. Antitrust Law Draft Bill

48. The Antitrust Act No. 22262 is aimed at banning acts and behaviours that limit, restrict, or distort competition or constitute abuse of dominant position in the market place, in such a way that may affect general economic interests. In this sense, the law pursues economic efficiency, based on the understanding that it promotes the general welfare of consumers.

49. Likewise, the Antitrust law must be understood as a policy instrument that fosters business, strengthens market mechanisms and establishes clear rules for operating companies, so that they gain in terms of both efficiency and competitiveness. This is particularly relevant in commodity production sectors, such as energy, in which our economy accounts for substantial comparative advantages.

50. Therefore, when in the framework of competition policy, the term general welfare is referred to, the interpretation should not be limited to consumers but it should also take companies into account, for they are the ones that purchase the largest quantities of economic inputs (raw materials; labour; transportation, freight, insurance and financial services, etc.) and the most injured ones in the face of anti-competitive and unfair practices. This way, the economy as a whole and the companies in particular can gain international competitiveness.

51. In this context, the National Commission for the Defence of Competition –enforcement body for Act 22262- in the last few years has consolidated its role as the authority responsible for watching over the competition process in the markets and to identify anti-competitive practices. However, the dynamics of trade relations and the new fabric of commercial transactions are calling for readjustment of current standards so that the enforcement authority can count on powers and responsibilities that enable it to perform efficiently in the defence of competition field.

52. For this reason, and facing the need to concur with existing international guidelines, the National Congress has been debating over a new antitrust bill since 1998. Following are some modifications this bill would include:

- ◆ The creation of an Antitrust Court, as an autonomous agency within the sphere of the Ministry of Economy and Public Works and Services that will be empowered to impose sanctions on its own that can be appealed in court.
- ◆ The explicit incorporation of the agency's authority to pass non-binding opinions on standards or public regulations affecting competition and to issue general or sectorial recommendations about competition modalities in the markets.
- ◆ Adding control of economic concentration operations that, because of their size, may affect the right performance of the market. Operations that go beyond certain established parameters are to be notified. Thus, the Court will have the power to object to them or limit them when their social costs are deemed to exceed the benefits.

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- ◆ The broadening of punitive powers, both in terms of the amounts of fines as well as the imposition of conditions that aim at re-establishing competition.
- ◆ A greater transparency in the whole antitrust process by holding public hearings.
- ◆ Abolition of every attribution of authority in competition issues granted to other government agencies or entities.

Recently, the National Congress sanctioned the Defence of Competition, Act (No. 25156), which come into force on September, 29<sup>th</sup> 1999, and contains basically the new element stated above. **Exhibit I**

## IV. Resources

### *Staff Training*

53. With the purpose of pursuing human resources training policy, the NCDC has continued to take actions intended to improve personnel skills through 1998. Among such actions it is worth highlighting the participation in the following events:

- ◆ In February 1998 an official from the Commission attended a series of meetings in Washington, D.C. with officials from the Federal Trade Commission and the Department of Justice dealing with the improvement of economic analysis procedures used by their agencies in defence of competition cases (in investigations of mergers in particular), with a particular interest in:
  - Methodology for the definition of geographically relevant market and product.
  - Methodology for market research (data collection to estimate market share, price series, entry barriers, etc.)
  - Procedures for accounting data collection and auditing.
  - Use of statistical and econometric analysis in investigations.
- ◆ The NCDC's authorities, together with officials from relevant competition agencies of eleven Latin American countries gathered in Panama City on October 9<sup>th</sup> to discuss a great variety of subjects at the "**First Summit of the Americas on Competition**". Taking the continuously increasing global economy integration into consideration, in particular the strong and growing economic links among the countries, accordingly, and acknowledging the fact that the effective implementation of laws and competition policies is essential to ensure an adequate free market performance, they expressed their intention to:
  - Foster a genuine culture of competition among market players in their own countries.
  - Assert their commitment for an effective enforcement of appropriate antitrust laws, especially fighting illegal pricing agreements, previously arranged public tender offers and market distribution.
  - Co-operate with one another, provided it is consistent with their own laws, in order to maximise both efficiency and efficacy in antitrust law application of each one of the countries, helping to promote the best practices in competition policy application with an emphasis on institutional transparency.
  - Motivate efforts of small economies in the region that still do not count on competition systems to finish the development of their regulatory frameworks.

- Give impetus to these principles at the Competition Policy Negotiation Group of the Free Trade Agreement of the Americas.
- ◆ A Commission member attended the Seminar organised by the OECD and the Ministry of Industry and Trade of Finland in September 1998 in order to deal with regulation, competition and privatisation issues. The aspects addressed were the following:
  - Privatisation and Competition: The evidence of public utility and infrastructure privatisation, the experience of the United Kingdom and Chile.
  - From state monopolies to competitive markets: the case of telecommunication privatisations (the TELECOM case).
  - The role of regulation, the contents of regulation tools and the various approaches of regulation policies and institutions.
  - Privatisation methods and the impact on competitors.
- ◆ NCDC's representatives also attended the Second Conference organised by the Competition Authority of Norway, in the city of Oslo, in September 1998. The agenda placed special emphasis on analytical and methodological fundamentals of the analysis of competition policy.
 

For that purpose, the Norwegian Competition Authority called upon a group of experts who carried out a critical review of competition policy analytical and methodological issues and put forward new approaches. International experts were specially summoned to discuss some specific aspects.
- ◆ One representative of the NCDC attended the Annual Conference of the Fordham Corporate Law Institute in October 1998. The central issue of the Conference was International Defence of Competition Policy and Legislation.
 

The first part of the meeting focused on Canadian and American policies, whereas in the second part the Argentine and Brazilian cases were dealt with, particularly underlining the recent and intense developments of policy cases.

The NCDC submitted a document called "Argentine Competition Policy", which was intended to explain the overall characteristics of the Argentine antitrust law and the NCDC's activities as an enforcing authority of such law. The document included a legal and economic description of the content of NCDC's guidelines. Likewise, presentations were made on the economic reforms that took place in Argentina in the 90s and their impact on competition policy. A description was provided on some pending issues that are presently being discussed at the National Congress, where there is a draft bill to amend the current competition law.
- ◆ OECD participation.
 

In October writer the state of observer the Commission, through one of the delegates, participated in the Working Group Meeting No. 3 of the Competition Policy and Legislation Committee (CLP)

### ***International Co-operation***

54. Institutional strengthening actions have been completed with the joint design of a specific program together with the Inter American Development Bank for such purpose, which expects to count on funds from the Bank as well as other multilateral agencies.

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55. Thus, throughout 1998, contacts and exchanges with similar agencies from other countries have been intensified. It is worth mentioning the technical assistance provided by the Federal Trade Commission and the Department of Justice of the USA, including visits of officials from the above mentioned agencies to Buenos Aires.

***Funding from international agencies: “Institutional Strengthening of the National Commission for the Defence of Competition” Project. IDB TC 97-10-16-3 AR***

56. The project aims at contributing to the strengthening and enhancement of the Argentine institutional mechanism responsible for guaranteeing the validity of free competition processes in the markets.

57. In order to attain such objective, the Program has been designed as comprising the following components:

***First component: Improvement of the Organisational and Co-ordination Framework.***

Activities:

- To ensure that the current legislation is the appropriate one to regulate competition and that it is consistent with the macroeconomic policy and the government authorities’ commitment to regulate competition.

***Second component: Information system upgrade and library implementation.***

Activities:

- To have a specialised library with suitable material to support the Commission’s work.

***Third component: Training and Information Delivery.***

Activities:

- To train NCDC’s professional staff in legal, economic and technical aspects to regulate and supervise competition.

***Fourth component: Development and application of a competitiveness industrial indicators system to monitor the markets.***

Activities:

- To design and implement a data bank that facilitates information for decision-making purposes in a timely and efficient manner.

58. The issue of defence of competition has been identified by international agencies as a need, as it has been made evident by recent fora and seminars and by the decision to include the preservation of appropriate levels of competition in the markets in the World Trade Organisation's agenda.

59. On the other hand, studies made concerning the application process of antitrust laws are concurring when they point out that both human resources shortage and lack of experience are the most significant limitations that Latin American countries are facing nowadays. Since they are relatively new institutions imbedded in the bureaucratic structures of traditional public administration, they do not have enough autonomy and technical capacity to respond to market dynamics.

60. In the case of Argentina, this technical assistance project will contribute to the strengthening of the NCDC, supporting the measures adopted by the National Executive Branch, which has decided to provide greater operating expeditiousness to the Commission by Decree No. 660/96. On the other hand, after the recent signing of the MERCOSUR Antitrust Protocol in December 1996, Argentina has undertaken the commitment to adopt a policy that regulates competition and harmonises competition policies in the region, while it is indispensable to co-ordinate efforts in other aspects such as the regulatory framework, the institutional framework, the responsible entity, the procedures that will be implemented, public information services and an appropriate infrastructure.

61. The strengthening program has been designed to overcome difficulties and support the NCDC in the challenges that it is to face up within the next few years.

***Co-operation with other agencies dedicated to defence of competition issues: Federal Trade Commission and Department of Justice of the USA***

62. In response to a request made by the Commission, the US Agency for International Development (USAID) has allocated funds to the Federal Trade Commission and the Department of Justice of the USA through 1998 to put together a mission consisting of legal advisors from the above mentioned agencies, who, as from October, spent two months in this Commission.

63. The Work Plan through October and November sought out the following goals:

1. To collaborate in the definition of NCDC's role at the initiation of investigations.
2. To develop tools for analysis and investigation purposes.
3. Investigation and application of the economic merger process and of necessary regulations for an effective control of such mergers.

64. The activities carried out in order to reach the above mentioned goals have mainly involved meetings with the Commission's staff and authorities, in addition to the delivery of seminars on a weekly basis.

***General Bureau of Competition, Consumers and Fraud Suppression of France***

65. In the co-operation framework approved of by the Association for Development of Technological, Economic and Financial Exchange (ADTEFE) with the Secretariat of Industry, Trade and Mining of Argentina, the French government provides funds for technical assistance to the NCDC by sending an expert from the General Bureau of Competition, Consumers and Fraud Suppression of France.

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66. The program as anticipated consists in a number of presentations and meetings to be held by the expert and NCDC's professional staff, in which the following topics are to be addressed:

- Main penalised behaviours:
  - Regulatory texts.
  - Practice typology.
- Investigation powers:
  - Difficulties and limitations in the application of powers.
- Evidence in terms of competition:
  - The existence of practices, the issue of anti-competition. The impact of practices.
- Survey methods:
  - Methodological constant features.
  - Methodology for vertical agreements.
  - Methodology for horizontal agreements.
  - Methodology for abuse of dominant position.
  - Outcome perception.
  - Administrative report writing.

67. This program is to take place in Buenos Aires, it will last three days and the date is to be set in the course of 1999.

## NOTES

1. A market is challengeable when there are no barriers to entry for new competitors.
2. A factor to be highlighted in the fuel trading sector is the contractual relation established by refineries with dispatchers, which implies supply exclusivity during the term of contract (typically 10 years). These terms are not too different from those existing in other countries. For example, in the European Union, contracts between refineries and gas stations have a maximum 10 year term, which is typically the same in Argentina.
3. A mechanism that might be analyzed to reduce evasion due to change of destination would be a tax reimbursement to industries that have used these products.

**Exhibit I****COMPETITION LAW No. 25 156****ARTICLE I  
UNLAWFUL PRACTICES AND AGREEMENTS**

SECTION 1. Acts and behaviours related to the production or trade of goods and services limiting, restricting or distorting competition or constituting abuse of a dominant position in a market, in a manner such, which may result in a damage to the general economic interest are prohibited and will be penalised pursuant to the rules of this law.

This section includes, provided the provisions of the above paragraph are operative, significant competitive advantages obtained through violation, declared by administrative act or final order, of other regulations.

SECTION 2. The following behaviours, among others, to the extent provided by section 1, constitute anticompetitive practices:

- a) Fixing, agreeing or handling either directly or indirectly the selling price or purchase of goods or services at which they are offered or purchased in the market, as well as exchanging information with the same purpose or to the same effect;
- b) Establishing the obligation of producing, processing, distributing, purchasing or marketing only a restricted or limited amount of goods or rendering a restricted or limited number, volume or frequency of services;
- c) Sharing horizontally areas, markets, customers and supply sources;
- d) Concerting or co-ordinating positions in tenders or bid contests;
- e) Concerting the limitation or control of technological development or investments made for the production or marketing of goods and services;
- f) Preventing, hampering or obstructing the entry or permanence of persons in a market or excluding them from such market;
- g) Fixing, imposing or practising, directly or indirectly, in agreement with competitors or individually, any form of price and purchase conditions or of sale of goods, furnishing of services or production;
- h) Regulating goods or services markets by means of agreements in order to restrict or control technological research and development, the production of goods or the furnishing of services or hindering investments made in the production of goods or services or in their distribution;
- i) Subordinating the sale of goods to the purchase of other goods or to the use of a service, or subordinating the furnishing of services to the use of other service or to the purchase of goods;
- j) Subordinating the purchase or sale to the condition of not using, purchasing, selling or supplying goods or services, produced, processed, distributed or marketed by a third party;
- k) Imposing discriminatory conditions for the purchasing or transfer of goods or services without reasons based on commercial usual practices;
- l) Refusing, without justified cause, to satisfy effective orders for the purchase or sale of goods or services, under the conditions prevailing in the relevant market;

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- ll) Discontinuing the provision of a dominant monopolistic service in the market from a public service or public interest provider;
- m) Transferring goods or furnishing services at prices lower than their cost price, without reasons based on commercial usual practices in order to remove competitors from the market or damage the image, property or trademark value of its goods or services providers.

SECTION 3.- All natural or artificial, public or private, profit or non profit persons, performing economic activities in whole or part of the national territory and those performing economic activities outside the country, to the extent their acts, activities or agreements affect the national market, are subject to the provisions of this law.

To the effects of this law, in order to determine the actual nature of acts, behaviours and agreements, the economic circumstances and relations effectively established or followed shall be taken into account.

### **ARTICLE II**

#### **DOMINANT POSITION**

SECTION 4. For the purposes of this law it is understood that one or more persons enjoy a dominant position when for a certain type of product or service that person is the only supplier or buyer in the national market or in one or several parts of the world, or when without being the only one, he or she is not exposed to substantial competition or when, because of the vertical or horizontal degree of integration he or she is able to determine the economic possibility of a competitor or participant in the market, to the latter's detriment.

SECTION 5.- In order to establish a dominant position in a market the following circumstances shall be considered:

- a) The extent to which the relevant goods or services may be replaced by other national or foreign goods or services, and the conditions and time required for such replacement;
- b) The extent to which regulatory restrictions limit the access of products or suppliers or buyers to the relevant market;
- c) The extent to which the presumed liable subject is able to affect unilaterally price formation or restrict the supply or demand in the market and the extent to which its competitors are able to offset said power.

### **ARTICLE III**

#### **ECONOMIC CONCENTRATION AND MERGERS**

SECTION 6. For the purposes of this law it is understood that economic concentration is the take-over of one or several firms by the following acts:

- a) Merger of firms;
- b) Transfer of goodwill;
- c) The acquisition of the property or any right over the shares or holding of capital stock or certificates of indebtedness granting any type of right to exchange them for shares or

holdings of capital stock or influence in some way the decisions of the person issuing them when such acquisition grants to the purchaser the control or substantial influence over it;

- d) Any other agreement or act transferring factually or legally to a person or economic group the assets of a firm or granting it decision-making powers as to the ordinary and extraordinary management of a firm.

SECTION 7.- Economic concentrations which object or effect is to reduce, restrict or distort competition, in a manner which may be prejudicial to the general economic interest are hereby prohibited.

SECTION 8.- The acts listed in section 6 of this law, when the aggregate of the total turnover in the country of involved firms exceeds the amount of two hundred million pesos (\$200 000 000) or when the total world-wide turnover of all involved firms exceeds two thousand five hundred million pesos (\$2 500 000 000) shall be notified to the Tribunal for the Defence of Competition for their examination, either prior to or during the week after the execution of the agreement, the publication of the acquisition or exchange offer or the acquisition of a controlling share, upon the occurrence of the first of the above mentioned events, under penalty, in the event of non-compliance, of the provisions of section 46 paragraph d). The acts shall be effective upon the parties or in respect of third parties after the provisions of section 13 and 14 hereof have been fulfilled, as appropriate.

For the purposes of this law it is understood that total turnover shall be the amount resulting from the sale of products and provision of services of the involved companies during the last fiscal year corresponding to their usual activities, prior deduction of discounts on sales, value added tax and other taxes directly related to turnover.

In order to estimate the turnover of the involved firm the following shall be added:

- a) The concerned firm's turnover.
- b) The firms' turnover where such firm owns, directly or indirectly:
  - 1. Over 50% of the capital stock or working capital
  - 2. Over 50% of the voting rights.
  - 3. The right to appoint over 50% of the members of the surveillance board or management or offices legally representing the firm, or
  - 4. The right to conduct the activities of the firm.
- c) The companies having the rights or powers referred to in paragraph b) in respect of an involved firm.
- d) The companies where one of the companies contemplated in paragraph c) has the rights or powers mentioned in paragraph b).
- e) The companies where several of the companies mentioned in paragraphs a) to d) hereof have together the rights or powers referred to in paragraph b).

SECTION 9.- Failure to notify the operations provided in the preceding section shall be subject to the penalties provided in section 46 paragraph d).

SECTION 10.- The following operations are exempt from the mandatory notice provided in the above section:

- a) The acquisition of firms where the purchaser already holds over 50% of the shareholding;
- b) The acquisition of bonds, debentures, shares with no voting rights or certificates of indebtedness of firms;

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- c) The acquisition of only one firm by only one foreign firm which does not own any assets or shares of other companies in Argentina;
- d) Acquisitions of liquidated companies (with no registered activity during the last year in the country).

SECTION 11.- The National Tribunal for the Defence of Competition shall determine the data and background that persons shall furnish the Tribunal and the dates when said data and background have to be submitted.

SECTION 12.- The regulation shall establish the manner and additional content of the notification of economic concentration and control operations projects of firms in order to ensure their confidentiality.

SECTION 13.- In all cases subject to the notification provided in this article, the Tribunal upon founded resolution, shall decide within forty five (45) days after submittal of the relevant application and documentation to:

- a) Approve the operation;
- b) Subordinate the act to the compliance of the conditions to be established by the Tribunal;
- c) Refuse the authorisation.

SECTION 14.- If no resolution is issued in this respect at the end of the term provided in the preceding section, the operation shall be considered implicitly approved. Implicit approval shall have in all cases the same legal effects than explicit approval.

SECTION 15.- After economic concentrations are notified and authorised they shall not be challenged in administrative offices upon the basis of data and documentation verified by the Tribunal, unless said resolution has been issued upon false or incomplete data provided by the applicant.

SECTION 16.- If the economic concentration involves firms or persons whose economic activity is regulated by the national government through a controlling or regulatory agency, the National Tribunal for the Defence of Competition, prior to issuing its resolution, shall require from said government agency a report and founded opinion on the economic concentration proposal concerning its impact on competition in the respective market or on its compliance with the relevant regulatory framework.

## ARTICLE IV

### ENFORCEMENT AUTHORITY

SECTION 17.- The National Tribunal for the Defence of Competition is organised as a self-financing agency within the scope of the National Ministry of Economy and Public Works and Services in order to apply and control compliance with this law. The Tribunal shall have its seat in the city of Buenos Aires but it shall be able to act, sit or meet anywhere in the Republic by delegates appointed by the President of the Tribunal. The inquiring delegates shall be national, provincial or municipal officers.

SECTION 18.- The National Tribunal for the Defence of Competition shall be made up by seven (7) members with satisfactory professional records and qualifications to perform their duties, at least two shall be lawyers and two professionals in economics with more than five (5) years in practice. The members of the tribunal shall not be able to perform any other activity during their commission, except for teaching.

SECTION 19.- The members of the Tribunal shall be appointed by the National Executive upon public call for candidates' experience and a competitive examination taken by a Jury made up by the national

Treasurer, the Secretary of Industry, Trade and Mining of the National Ministry of Economy and Public Works, the Chairmen of the Trade Commissions of both national Legislative Chambers, the President of the National Court of Appeals for Commercial Matters and the Presidents of the National Academy of Law and National Academy of Economic Sciences.

SECTION 20.- The members of the Tribunal shall serve for a six (6) year term in their positions. They shall be partially renewed every three years and they may be reelected in accordance with the procedures established in the above section. Three members shall be renewed at the end of the first three years and the other four member at the end of the following three years. They shall be removed by prior decision –by simple majority- of the above mentioned Jury.

The action for removal shall be mandatory brought in the event of charge by the national Executive or the President of the Tribunal and by exclusive decision of the Jury should the action arise from a different source.

The Jury shall issue procedural rules ensuring the right of self-defence and due expedition of the case.

SECTION 21.- Causes for removal are:

- a) Misconduct;
- b) Reiterated negligence which delays the furthering of proceedings;
- c) Supervening disability;
- d) Sentence for intentional crime;
- e) Violations to incompatibility rules;
- f) Not to excuse himself/herself from participation in the cases provided in the National Civil and Commercial Procedural Code.

SECTION 22.-If a member of the Tribunal is subject to indictment for intentional crime he or she shall forthwith be preventively suspended from the performance of his/her duties.

SECTION 23.- The National Registry for the Defence of Competition is organised within the scope of the National Tribunal for the Defence of Competition, where economic concentration operations provided in Article III and final resolutions issued by the Tribunal will be registered. It will be a public Registry.

SECTION 24.- The powers of the National Tribunal for the Defence of Competition are the following:

- a) To make market surveys and studies as deemed necessary. For such purpose it shall be able to require from private persons and national, provincial or municipal authorities and from associations of Defence to Consumers and users any necessary documentation and co-operation;
- b) To hold hearings with the presumed liable subjects, complainants, victims, witnesses and experts, take evidence and order confrontations and to such effect it will be able to request assistance from the police;
- c) To order expert's examination of books, documents and other elements leading to the investigation, control inventories, verify sources and cost of raw material or other assets;
- d) To impose the penalties established by this law;
- e) To promote the study and investigation of competition;
- f) When applicable, it will be able to give opinion on competition and free competition in respect of laws, regulations, circular letters and administrative acts, and such opinion shall not be binding;
- g) To issue general or sectorial recommendations about competition modalities in the markets;

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- h) To act together with competent offices in the negotiation of international treaties or agreements concerning competition regulations or policies and free competition;
- i) To draft its internal rules. Such rules shall establish among other questions the procedure to elect and the term in office of the President who is the legal representative of the Tribunal;
- j) To organise the National Registry of Competition created by this law;
- k) To bring and prosecute actions before Justice; a legal representative shall be appointed to such effect.
- l) To stay procedural terms established by this law by well founded resolution.
- ll) To enter into places which have to be inspected with the consent of occupants or by judicial order requested by the Tribunal to the competent judge, who shall issue his/her decision in 24 hours;
- m) To request to the competent judge the pertinent precautionary measures, which shall be resolved within 24 hours;
- n) To subscribe agreements with provincial or municipal agencies in order to authorise the establishment of offices to receive complaints in the provinces;
- ñ) The President of the Tribunal shall be responsible for the administrative management of the agency and shall be able to contract personnel to perform specific or extraordinary works which cannot be done by the permanent staff and he/she shall fix the working conditions and the remuneration. The provisions of the labor contract law shall govern the relationship with the permanent staff;
- o) To encourage mutually agreed solutions among the parties; Vetoed by Decree N° 1019/99
- p) To subscribe agreements with associations of users and consumers to promote the participation of community associations for the defence of competition and market transparency.

### **ARTICLE V**

#### **BUDGET**

SECTION 25.- The Tribunal for the Defence of Competition shall prepare on an annual basis a draft budget for submittal to the National Executive.

The Tribunal shall fix the fees to be paid by the interested parties for the proceedings brought before said Tribunal. The proceeds thereof shall be applied to the payment of the Tribunal's ordinary and reasonable expenses.

### **ARTICLE VI**

#### **PROCEDURE**

SECTION 26.- The investigation will be initiated on a sua sponte basis or upon a complaint filed by any public or private natural or artificial person.

SECTION 27.- All terms considered hereunder shall be computed in working days for governmental activities.

SECTION 28.- The complaint shall include:

- a) The name and address of the person filing the complaint;

- b) The claimant's name and address; - Vetoed by Decree No. 1019/99
- c) The specific object of the complaint;
- d) A detailed explanation of the grounds therefor;
- e) A concise statement of the right involved.

SECTION 29.- Should the complaint be deemed relevant by the Tribunal, the latter shall serve notice of same on the presumed liable subject so that he/she may provide the pertinent explanations within ten (10) days. If the investigation were initiated on a sua sponte basis, an account of the events that originated it and the grounds therefor shall be informed to the presumed liable subject.

SECTION 30.- Upon filing of an answer to the above notice or expiration of the term to answer the same, the Tribunal will decide on the legal basis of the investigation.

SECTION 31.- If the Tribunal considers that the explanations given are satisfactory or that the evidence brought forth is insufficient for the purposes of carrying on further proceedings, it shall order that the case be filed.

SECTION 32.- Upon completion of the investigation, the Tribunal shall notify the presumed liable subjects so that within fifteen (15) days they may present their defence and submit the evidence they deem relevant.

SECTION 33.- The Tribunal's decisions regarding evidence are unappealable.

SECTION 34.- Upon completion of the investigation, the parties may within six (6) days contest the merits of the evidence produced. The Tribunal shall issue a resolution within a term not in excess of sixty (60) days. Upon resolution of the Tribunal the administrative proceedings come to an end.

SECTION 35.- The Tribunal may at any stage in the proceedings request compliance with conditions set forth by said Tribunal or order that the detrimental behaviour be either discontinued or abstained from. Where serious detriment to the competition policy is likely to be caused, the Tribunal may adopt such measures as are deemed under the circumstances to most convenient for the prevention thereof. Against such resolution, a devolutive appeal can be filed as provided in sections 52 and 53.

It may likewise order, either on a sua sponte basis or at the request of the interested party, the suspension, modification or reversal of the adopted measures on account of circumstances subsequent to or unknown at the time of adopting such measures.

SECTION 36.- Prior to the issuance of the resolution pursuant to section, the presumed liable subject may undertake to discontinue forthwith or gradually the investigated events or modify aspects related thereto. Such commitment shall be subject to approval by the Tribunal for the Defence of Competition for the purpose of staying the proceedings.

After three (3) years of continued compliance with the undertaking provided in this section, the proceedings shall be filed.

SECTION 37.- The Tribunal may, either sua sponte or at the request of the interested party, within three (3) days from serving the notice and without carrying out the procedural steps, clarify confusing concepts or amend any omissions incurred in its resolutions.

SECTION 38.- The National Tribunal for the Defence of Competition will decide to call a public hearing whenever it is deemed convenient for the course of the investigation.

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SECTION 39.- The decision of the National Tribunal for the Defence of Competition regarding the holding of such hearing shall contain, as applicable, the following:

- a) identification of the investigation under course;
- b) nature of the hearing;
- c) object;
- d) date, time and place of the hearing
- e) requirements for attendance and participation.

SECTION 40.- The hearing shall be convened with at least twenty (20) days' prior notice and notified to the parties involved in the case within no less than fifteen (15) days prior to the date appointed for such hearing.

SECTION 41.- The notice of a public hearing shall be published in the Official Gazette and two newspapers of national circulation not less than ten (10) days in advance of the set date. Said publication shall contain at least the information stated in section 39.

SECTION 42.- The Tribunal may allow the participation as third parties in the proceedings brought before it of the persons involved in the investigated events, the consumer and business associations having a legal standing, the provinces and any other person having a legitimate interest in the investigated events.

SECTION 43.- The Tribunal may request opinions on the investigated events from public or private natural or artificial persons who are conversant with the subject.

SECTION 44.- Resolutions involving penalties imposed by the Tribunal shall, once they have been notified to the interested parties and become final, be published in the Official Gazette and, when deemed convenient by the Tribunal, in the leading national newspapers, at the expense of the penalised party.

SECTION 45.- The person who incurs in a false accusation shall be subject to the penalties stipulated in section 46, paragraph b) hereof when using false information or documents for the purpose of damaging his/her competitors, without prejudice to other applicable civil or criminal actions.

## **ARTICLE VII**

### **PENALTIES**

SECTION 46.- Natural and artificial persons not complying with the provisions of this law shall be subject to the following penalties:

- a) Termination of the acts or behaviours provided in Articles I and II and, if applicable, removal of the effects thereof;
- b) Those who perform the acts prohibited by Articles I and II and section 13 of Article III, shall be penalised with a fine of from ten thousand pesos (\$ 10,000) up to one hundred and fifty million pesos (\$ 150,000,000) which will be adjusted in accordance with : 1. The loss incurred by all persons affected by the prohibited activity; 2. The profit obtained by all persons involved in the prohibited activity; 3. The value of the involved assets belonging to the persons referred to in item 2 above, at the time of the corresponding violation. Should there be recidivism, the fine amounts will double.
- c) Without prejudice to other penalties which might apply hereunder, the Tribunal may, when it is verified that acts representing abuse of dominant position are performed or that a

monopolistic or oligopolistic position has been achieved or strengthened through violation of the provisions hereunder, order compliance with conditions aimed at counteracting the distorting effects caused to competitors or, otherwise, request the competent judge to dissolve, liquidate, deconcentrate or split up the non-complying companies;

- d) Persons not complying with the provisions in sections 8, 35 and 36, shall be subject to a daily fine of up to one million pesos (\$ 1,000,000), computed as from the date of expiration of the obligation to inform about economic concentration projects, or non-compliance with the commitment or the order to discontinue or abstain from such behaviour. All that without prejudice to other penalties which might apply under the circumstances.

SECTION 47.- Artificial persons are accountable for the behaviours of natural persons who act on behalf, with the co-operation or for the benefit of said artificial persons, even when the act leading to such representation has been ineffective.

SECTION 48.- When violations provided hereunder are committed by an artificial person, the fine shall also be jointly imposed on those directors, managers, administrators, statutory auditors or members of the Surveillance Committee, agents or legal representatives of said artificial person who, due to action taken or failure to carry out their control, supervision or surveillance duties, may have contributed to, encouraged or allowed such violations.

In such a case, a supplementary penalty consisting of disqualification to engage in commerce for one (1) to ten (10) years may be imposed on the artificial person and on the natural persons mentioned in the preceding paragraph.

SECTION 49.- When imposing fines, the Tribunal shall consider the relevance of the violation incurred, the damages caused thereby, the presumption of intent, the violator's participation in the market, the size of the market involved, the duration of the injurious practice or concentration and the recidivism or background of the liable subject, as well as his/her financial standing.

SECTION 50.- Those who obstruct or hinder the investigation or do not comply with the Tribunal's requirements may be penalised with up to five hundred pesos (\$ 500) daily fines. When, at the Tribunal's discretion the above mentioned violation has been committed, the presumed liable subject will be required to take a position on such matter and he/she shall file an answer and produce evidence within five (5) days.

SECTION 51.- Natural or artificial persons damaged by acts prohibited hereunder may bring an action for damages in accordance with the ordinary law before the judge having jurisdiction over said matter.

## **ARTICLE VIII**

### **APPEALS**

SECTION 52.- Resolutions issued by the Tribunal ordering:

- a) Imposition of penalties;
- b) Discontinuance of or abstention from a behaviour;
- c) Opposition or conditioning in respect of the acts provided in Article III;
- d) Dismissal of the complaint by the Tribunal for the Defence of the Competition; will be appealable.

Appeals granted in respect of item a) above shall have a staying effect and those granted in respect of items b), c) and d) above shall have a non-staying effect.

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SECTION 53.- The appeal shall be filed and its legal foundation stated before the National Tribunal for the Defence of Competition within fifteen (15) days from notification of the resolution. Said Tribunal shall, within five (5) days of such filing, refer the case to the corresponding Federal Court.

### **ARTICLE IX**

#### **STATUTE OF LIMITATIONS**

SECTION 54.- Actions arising from violations hereunder shall lapse within five (5) years.

SECTION 55.- The statute of limitation is tolled upon the filing of a complaint or the commission of another act prohibited hereunder.

### **ARTICLE X**

#### **TEMPORARY AND SUPPLEMENTARY PROVISIONS**

SECTION 56.- In those cases not provided for hereunder, the Criminal Code and the Criminal Procedural Code shall be applicable to the extent consistent with the provisions of this law.

SECTION 57.- The provisions of law 19,549 shall not be applicable to matters governed by the present law.

SECTION 58.- Law 22,262 is hereby repealed. However, proceedings pending as of the effective date of the present law shall continue to be conducted in accordance with the provisions of the former law before the corresponding enforcement authority, which will continue to remain in effect until the National Tribunal for the Defence of Competition is organised and becomes operative. It shall likewise hear all the cases brought as from the coming into effect of the present law. Once the Tribunal is organised, such cases shall be referred to the latter for trial.

SECTION 59.- Any jurisdictional powers concerning the subject matter and purpose of this law conferred on other governmental agencies are hereby revoked.

SECTION 60.- The Executive shall regulate the present law within one hundred and twenty (120) days computed as from the date of its publication.

SECTION 61.- Be it communicated to the Executive Branch.