

ARGENTINA

(1999)

1. The past year has been one of important changes in Argentina, and also, in its competition policy.
2. The most important change last year was the approval of the new competition law by the Argentine Congress. The Law 25.156 introduced major changes to its predecessor Law 22.262, specially with the establishment of the pre-merger control and the creation of a new Tribunal as an autarchic institution.
3. In the political arena, and after a ten-year-long peronist ruling, there has been a change in the government, with an Alianza of political parties taking power on December 10. A new administrative structure was approved on December 13, creating the new *Secretaría de Defensa de la Competencia y del Consumidor*, at the Ministry of Economy, as the new competition policy authority.

I. Changes to competition laws and policies.

4. Argentina has a new competition law since September 1999. Though partially vetoed by the Executive Branch, Law N° 25.156 replaced its 1980 predecessor, Law N° 22.262.
5. This new law introduces important changes to the ancient regime, such as the merger control and the establishment of a new and independent enforcement agency.
6. The goal of Law N° 25.156, as expressed in its Article 1, is the same as it was in the former law: to preserve the general economic interest from anticompetitive conducts (restricting competition in a market or abusing of a dominant position). The law does not punishes anticompetitive practices per se since there must be a damage or a sound danger to the community. Therefore, the law continues to apply the rule of reason approach, which requires the demonstration of negative economic effects affecting the community.
7. The new law introduces the effects theory in its Article 3, regulating the economic activities that, although conducted abroad, have effects in Argentina.
8. The main innovation in the competition regime is the merger and acquisition control. This is a preventive measure that has been assimilated from the modern competition laws and that has almost doubled the work at the *Comisión Nacional de Defensa de la Competencia* (CNDC), the law's transitional enforcement agency.
9. According to article 8 of the law, an economic concentration has to be notified to the enforcement authority, previously or within a week of its closing, if the business volume of the group of companies involved in the operation exceeds the sum of \$200.000.000 in Argentina or \$2.500.000.000 world-wide.
10. By economic concentration, the law in its Article 6 establishes that there must be a gain of control of one or various companies, defined as:
 1. The merger of companies;
 2. The transfer of a business;

ARGENTINA

3. The acquisition of any rights on stocks or debt instruments that may be converted into stock or that may give any type of substantial influence or control on the issue;
4. Any other agreement that transfers the assets of a company or that gives a determinant influence in the making of ordinary or extraordinary business administration decisions.

11. Some exceptions are listed in Article 10, and they include the acquisition of one company by a foreign company that does not have any assets or stocks in other companies in Argentina, or when a company already controls more than 50% of the acquired company.

12. Once notified, the CNDC has, by Article 13, 45 administrative days to either approve, condition or disapprove an operation. If within that period there is no resolution, the operation will be considered automatically approved.

13. Another important improvement introduced by Law N° 25.156 is the creation of the *Tribunal Nacional de Defensa de la Competencia* (National Competition Court) as an autarchic body related to the Ministry of Economics. This organ has been created to replace the actual CNDC that depended both economically and politically on the Minister of Economics, who appointed its commissioners.

14. The Court will be composed of seven judges appointed by the Argentine President after a previous public contest selection by a jury composed of members of the three branches of government and members of the Academies of Law and Economic Sciences. The judges will serve renewable terms of six years and their dismissal will require a decision by the selection jury mentioned above.

15. Currently, the *Secretaría de Defensa de la Competencia y del Consumidor*, an office of the Ministry of Economics (created by Decree 20 of December 13, 1999) currently in charge of the CNDC, is finishing the Regulation project. Once approved by Decree, the process to designate the new judges will begin. After the Court is settled, the CNDC will disappear and the Secretariat will act as the competition attorney in charge of investigating possible misconducts in order to file formal accusations on behalf of the National Government.

16. The new Court is expected to initiate its activities by the end of this year. Meanwhile, the CNDC is still working in both the conduct cases as well as the merger cases.

II. Enforcement of competition laws and policies.

17. During 1999, the CNDC both continued analysing anticompetitive conducts and started to implement the pre-merger control regime introduced by the new competition law towards the end of the year. Due to budget restraints, the CNDC staff has studied simultaneously both the misconducts and the merger notifications.

1) Action against anticompetitive practices.

18. The past year the CNDC has solved 19 cases and has received 70 new cases to study.

19. The most important case during 1999 has been "CNDC vs. YPF S.A.", regarding the oil company's abuse of dominant position in the liquid gas market. The company was punished with a \$ 109.644.000 fine and was ordered to end its price discrimination practice between national and foreign buyers.

20. Another important ruling was "*Asociación Argentina de Agencias de Viajes y Turismo (AAAVYT) vs. Junta de Representantes de Compañías Aéreas (JURCA)*", regarding the reduction of the percentages paid to the travel agencies by the airlines in the sales of international and national ticket sales. The CNDC accepted the explanations given by JURCA and the compromise offered by two most important national airlines regarding the incentives for the travel agencies.

Frame N° 1			
CNDC performance on conduct cases			
	1997	1998	1999
Conduct cases decisions	24	32	19
Cases filed	37	46	70

Frame N° 2			
Indicators on the evolution of the CNDC performance			
Indicators	1997	1998	1999
Cases solved / Professionals	1.3	1.6	0.8
Cases started / Professionals	2.1	2.3	3.0
Budget / Cases solved	\$ 23,013	\$ 33,862	\$ 74,275
Budget / Cases started	\$ 14,928	\$ 23,556	\$ 20,160
Cases solved per month	3.4	4.6	2.7
Staff	18	20	23
Cases solved	24	32	19
Cases started	37	46	70
Budget	\$ 552,318	\$ 1,083,581	\$ 1,411,222

2) *Mergers and acquisitions.*

21. Since the beginning of October, the CNDC started to implement the pre-merger control established by Law 25.156. In the first three months, the CNDC has analysed 47 operations, solving seven of them. All of them have been finished before the 45-day period established by the new law.

ARGENTINA

22. In order to harmonise its interpretation of the new control regime, the CNDC has prepared some guidelines for the study and analysis of economic concentrations that were approved by Resolution 726/99.

23. The most important operation approved was the acquisition of Pepsi's local bottler, Baesa S.A., by the leading Argentine beer company, Quilmes S.A..

Frame N° 3			
CNDC performance in merger control			
	1997	1998	1999
Merger control decisions	0	0	7
Merger cases filed	0	0	47
Pending merger cases	0	0	40

III. International relations.

a) *Mercosur.*

24. Argentina has continued its participation in Mercosur's Technical Committee N° 5 -Competition Policy-.

25. During 1999, TC 5 has met in July in the city of Asunción, Paraguay, and continued with the drafting of the regulation of the Mercosur Competition Protocol signed in Fortaleza in 1996.

26. The committee also analysed a co-operation agreement project with the Interamerican Development Bank, that did not prevailed.

b) *FTAA.*

27. The Negotiating Group on Competition Policy of the Free Trade Area of the Americas continued its work during 1999. The group was established in the Buenos Aires Trade Negotiations Committee in 1998 and has met four times in the past year and Argentina has participated in all of the meetings.

28. The general objective of the group is to guarantee that the benefits of the FTAA liberalisation process will not be diminished by corporate anti-competitive practices.

During 1999 the group accomplished a draft with the terms of reference for future negotiations in the FTAA.

c) *WTO.*

Argentina has participated in the meetings of the Working Group on the relation of Trade and Competition Policies of the World Trade Organisation that continued to accomplish the Singapore mandate. The basic

goal of these meetings has been to hold debates among experts on policy regarding potential barriers to international trade that may derive from anti-competitive practices by local or foreign companies.

d) OECD

29. After its admission as a Permanent Observer at Competition Law and Policy Committee of the Organisation for Economic Co-operation and Development, Argentina has participated in the different working groups at the CLP meetings held in Paris.