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## **Global Forum on Competition**

### **THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES**

#### **Contribution from Argentina**

-- Session IV --

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## **THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES**

### **Competition and Consumer Policies Enforcement**

**-- Argentina --**

#### **1. General aspects of the Competition and Consumer Policies.**

The first aspect to explain how competition and consumer policies are developed in Argentina is normative. There exist both Law N° 25156 of Competition Defence and Law N° 24240 of Consumer Defence.

The Competition Defence Law protects consumers indirectly, sanctioning anticompetitive practices and assessing changes in markets structures due to economic mergers. In this way, the “general economic interest” is protected, which in case of final assets, it is identified with consumer interest.

In this way, it is possible to highlight that markets with high competition levels and in which anticompetitive practices are prosecuted will create benefits for consumers related to lower prices and higher number of products offered regarding situations where competition is restricted.

The Consumer Defence Law, in general terms, is complementary to the Competition Defence Law, to the extent that the consumer protection is direct and it answers individual complaints that not necessarily arise from the lack of competition within the market.

Following, examples of prosecutable practices under enforcement of this law: non – compliance of contracts, defectuous warranties, ineffective technical services and repairments, omission of budget presentation, requirement related to information provision in credit card operations, among many others. In these and other cases, it is considered that the consumers are the weaker party in the consumption relation due to their lack of enough knowledge about the product they are buying and the conditions of the contract with the provider, either there is or not a written contract.

To sum up, it can be affirmed that competition defence and consumer defence are complementary policies to the extent that broader competition favours consumers in terms of prices they pay, access to market of higher demand and a better quality and variation of products. On its behalf, consumer policy has a tendency to assure that, whatever be the level of competition in the market, the consumers will not be prejudiced by their weak position in the consumption relation with the supplier.

We can take as an example the case of the mobile phone market in Argentina, which structure was analysed within the framework of economic mergers where, during the last years, an important increase in the number of consumers that could reach these services and a level of competition quite intense in aspects such as the cost of the telephones, sales through promotion, publicity investment, etc. despite the number of providers was not large. At the same time, mobile telephone services are within the main markets receiving complaints through arbitration -595 during 2007- and complaints. It is also within the more sanctioned markets for non compliance with the Law for Defence of Competition in Argentina.

Another important distinction that can be arose between competition and consumer laws is that the first results relevant in any market under consideration, while the second is more relevant in those markets where the knowledge the consumers has about the product they are about to acquire is important to avoid a prejudice.

The latter is more probable to happen in certain markets such as financial markets, where the consumers are asked to sign contracts with predisposed clauses which scope they are not aware of.

In the same sense, consumers are more vulnerable in situations of pressure through aggressive publicity or with insufficient or distorted information, so they are not in the proper conditions for a reasonable choice or simply, due to the proper complexity of the good, they do not have enough information to assess the quality or possible defects.

Sanction statistics in Argentina show that it is precisely in those types of markets where the consumer policy is more necessary. In this way, in the case of complaints through consumption arbitrage, historically, the markets with more complaints have been: mobile phone companies (16.74%), banks (12.13%), timeshare (11.45%), appliances (8.78%) and automobile (7.83%).

As regards this fact, it can be mentioned that within the period 2006/2007, in the Secretariat of Domestic Commerce, there have been 400 sanctions fines for infraction of Law N° 24240 of Consumer Defense, for a total amount of AR\$13,438,100, i.e. €2,951,955, and a sanction for summons.

## **2. Institutional aspects in the enforcement of competition and consumer policies.**

This regards the institutional structure under which the competition and consumer policies are enforced. In the first case, the law provides the creation of an independent tribunal, whose members would be elected through competitive examination (one president and six commissioners) but, up to now, it has not been constituted, so the National Commission for Defence of Competition (CNDC) is still working. Its President and commissioners write opinions that suggest the decision that the Secretary of Domestic Commerce should take (for example, to approve an economic merger or to sanction a company).

In the case of consumer policy, the enforcement authority is also the Secretariat of Domestic Commerce, which delegates in the National Director of Domestic Commerce the final decision about possible infractions to the Law and the eventual enforcement of a sanction. In the same sense, the Directions of Domestic Commerce or equivalent agencies in the provinces of Argentina are also enforcement authorities and can deal with any of the complaints presented.

It is also worth to mention that, from 1998, Argentina has its National System of Consumption Arbitrage, as a mechanism designed exclusively to solve conflicts originated by the final consumption of goods and services. Up to date, this System has received almost 20000 consumer's complaints.

From the point of view of the contents of the complaints for possible infractions to one or the other law, it can happens that a file opened in the area of competition defence is sent later to consumer defence, given that the complaint fits its law. It can also happen the other way around, that a complaint opened in the Consumer defence area, ultimately is a possible infraction to the competition law, so it is sent to the CNDC.

In the latter case, it is interesting to mention that, from the point of view of the enforcement of both laws, some of the complaints presented in the Directions of Commerce of the Provinces as infractions to the consumer law are actually actions that can be framed within the competition law, being finally sent to the area of consumer defence of the federal government and in last instance received by the CNDC. Here lays an important difference because the competition law does not have dispositions allowing delegation of

reception and resolution of complaints to the provinces, so all the files opened in the country must be conducted by the CNDC.

### **3. Possible Conflicts between Competition and Consumer Policies.**

About possible conflicts between competition and consumer policies, as in any other legislation for consumer protection, in our system, there are standards that, to ensure health or safety to consumers or to compensate eventual asymmetries of information between the provider and the consumer, can eventually create or increase the barrier of the entrance in certain markets or to restrict the competition in them.

As it probable happens with most of the legislations, Argentina has specific standards related to safety in consumption (food; chemical, agrochemical and pharmaceutical products, electronic devices, etc.). These standards, in some cases, could have implications in the competition processes of the markets involved, especially if its effective enforcement implies some kind of barrier for the entrance of new competitors (for example, if the entrance requirements to be approved by the public authority go beyond reasonable parameters). However, we also have to bear in mind that these standards ensure other legal items, not less important than competition, as consumer health and safety.

Besides the mentioned standards, the proper legislation about consumption can present cases of trade off between competition in the market and prevention in other deficiencies of it.

This could be the case when there is, legally, a general assurance for certain kind of goods due to deficiencies or vices. If consumers could not internalise the difference between the technical services of each product at the moment of the purchase, it is possible that entrance barrier could be generated in some markets of "technical services and of "spare parts and replacements".

In fact, the CNDC has had several complaints of abuse of dominant position on behalf of agents or franchisers or the same manufacturers that deny selling original spare parts to other providers of technical services or of repairs that do not belong to their own net of official agents. There are cases in the industries of elevators, automobiles and others.

We estimate that this type of legislation can also restrict in some way the competition in the import market of this type of products, to the extent that this kind of legislation promotes exclusive franchising and representations.

However, we understand that the existence of a legislation on guaranties, that protects consumers against hidden vices in the differed consumer products, in general justifies the restriction over competition that the standard fixes, besides, in many of these cases the mentioned restriction is compensated by a strong competition "inter-brand" in the involved markets.

On the other hand, there is in Argentina a legislation that regulates market activity developed in competition conditions. This can be the case of Law N° 25065, which regulates the operation of credit cards in aspects that, generically, the Consumer Defence Law considers as the information that must be provided to the client in the monthly report of operations or in the conditions of the contract. It also regulates other aspects related to the system costs, such as fixation of limits to the financing interests of credit cards and "higher" the established limits to the rates that the issuing bank to the different shops involved, avoiding their dispersion.

### **4. Price fixation policies in certain markets**

From a perspective exceeding the scope of the consumer protection legislation, we can mention those governmental interventions in certain markets of massive consumption items or their devices, many of

which can be internationally tradeable (corn, bread, milk, petroleum), where the government has promoted price stability agreements or has fixed export taxes, in a way that, for those products, prices paid in the domestic market are lower than the prices in international markets.

The pursued aim with these policies is to avoid the exclusion of an important range of domestic consumers from the complete or lower demand of these goods. Beyond pursued aims, the truth is that price fixation of these products is conducted with mechanisms different from the competition ones.

These policies have also been verified in Argentina for some services, which are offered partially in private and which consumption includes relatively important population sectors. The most significant examples are education and medical services.