

15 November 2017

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by Argentina****4 December 2017**

This document reproduces a written contribution from Italy submitted for Item 3 of the 64th meeting of the Working Part No. 2 on Competition and Regulation on 4 December 2017.

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JT03422991

Argentina¹

1. Introduction

1. Interaction between the competition agency and sectorial regulators is one element that could help the competition authority understand the market in question and, therefore, make better-informed decisions. This includes decisions on potential sanctions in antitrust cases, decisions on mergers and acquisitions and possible remedies, and pro-competitive recommendations.

2. In the case of Argentina, since the appointment of its new authorities in February 2016, cooperation between the National Commission for the Defense of Competition (CNDC) and the Central Bank of the Argentine Republic (BCRA for its Spanish acronym) has been intense and very productive. Moreover, this cooperation has been useful for the three main areas: Antitrust, Mergers and Acquisitions and Competition Advocacy. All cases involve the market for credit and debit cards and electronic payment systems.

3. A system of electronic means of payment entails a series of activities, often pursued by different players. The most commonly known example is the credit cards system. The electronic payment systems market is one that is known in economic literature as a “two-sided market” that functions as a platform with two kinds of users: cardholders (or payers) and merchants (or collectors).² The electronic payments platform generates network externalities, as the value of the platform for a user on one side of the market depends on how many users there are on the other side.³ In an electronic payment system, the owner of the platform may charge a fee for the use of the platform to users on both sides of the market.

4. In Argentina, Law No. 25,065, as amended by Law No. 26,010 (LTC) regulates the payment cards market. Pursuant to article 50 of the LTC, the BCRA shall act as the enforcement authority regarding financial issues, while the Secretary of Commerce (SC) shall act as the enforcement authority for commercial issues.

5. This contribution explains three related (although different) cases in the electronic means of payments market, the extent of the cooperation between the two governmental agencies and how the BCRA’s contribution was taken into account in the competition authority’s decision.

¹ This contribution was prepared by Lucía Quesada and received comments from Esteban Greco and Fernanda Viicens. Contribution from the National Commission for the Defense of Competition, Argentina.

² Credit and debit cards are currently the most widely used electronic means of payment. However, recently new electronic means of payment have emerged, such as bank transfers and electronic wallets.

³ The more businesses that accept Visa, the greater is the value of holding a Visa card. Similarly, the more individuals who hold a Visa card, the greater is the value to a merchant of accepting Visa.

2. Recent instances of cooperation with the BCRA

6. As stated above, the BCRA was involved in three different cases in the last year. The CNDC has greatly benefited from cooperation with the BCRA, which turned out to be essential in all three cases to achieve informed and reasonable decisions, as well as to make sure that the regulator's objectives were aligned with competition promotion goals. The three cases are:

- **Advocacy department:** Study of the market of credit and debit cards and electronic payment systems;⁴
- **Mergers department:** Acquisition by Prisma Medios de Pago S.A. (hereinafter "PRISMA") of Banelco S.A. (hereinafter "BANELCO");⁵ and
- **Antitrust department:** Investigation for abuse of dominant position against PRISMA and for collusion of its shareholders.⁶

7. The three cases are actually related, because they all involve the same main company, PRISMA and, therefore, cooperation with the BCRA should be taken as integral, although some specificities of each case can be highlighted. In what follows, we briefly describe the issues at stake in each of the three cases and how cooperation with the central bank has developed.

2.1. Market study

8. On May 20, 2016, the CNDC opened a market investigation with the objective of analyzing the conditions of competition in the market for credit and debit cards and electronic means of payment. The investigation was undertaken in response to a concern shared by the CNDC and the BCRA as to a possible dominant position in the market.

9. The investigation concluded that there was a high degree of concentration in the acquisition and processing markets, with a single firm per trademark offering these services. In the case of the Visa brand, the sole acquirer and processor is PRISMA, which moreover participates in all related markets through associated companies.⁷ PRISMA is owned by 14 Argentine banks (including 9 of the 10 biggest banks in terms of volume of deposits) which together issued 80% of credit cards and 72% of debit cards in 2015.⁸

⁴ File No. S01: 0204600/2016 entitled "TARJETAS DE CRÉDITO, DÉBITO Y MEDIOS DE PAGO ELECTRÓNICOS S/INVESTIGACIÓN DE MERCADO (C. 1596)". Resolution No. 17/2016 of the CNDC dated August 29, 2016.

⁵ File No. S01: 0121963/2015 entitled "PRISMA MEDIOS DE PAGO S.A. Y OTROS S/ NOTIFICACIÓN ART. 8° DE LA LEY N° 25.156 (CONC. N° 1240)". Opinion No. 123/2017 of the CNDC dated June 16, 2017 and Resolution No. 310/2017 of the Ministry of Production dated July 18, 2017.

⁶ File No S01: 0391366/2016 entitled "INVESTIGACIÓN DE OFICIO CONTRA PRISMA MEDIOS DE PAGO S.A. Y SUS ACCIONISTAS EN LOS TÉRMINOS DEL ART. 1 Y 2, INC. a), f), g), h), j), k) y l) de la Ley 25.156 (C. 1613)". Opinion No. 76/2017 of the CNDC dated September 7, 2017 and Resolution No. 493/2017 of the Ministry of Production dated September 26, 2017.

⁷ An electronic payment system is composed of the interaction of various activities. In this market study, the CNDC defined four relevant markets: a) issuance of electronic means of payment, b) acquiring, c) processing, and d) provision of terminals or interfaces for electronic payments.

⁸ Visa International Service Association also has a small (2.11%) share in PRISMA.

PRISMA is also the owner (a) of Lapos, which offers terminals for processing in-person payments by card; (b) of SPS Decidir, which offers gateway services for processing online payments; and (c) of Todo Pago, which offers an interface for online payments. In Argentina, Visa is the leading name in the credit cards market: in 2015, 58% of credit card transactions were carried out using Visa cards, followed by MasterCard, with 11%.⁹ For this reason, the CNDC concluded that PRISMA held a dominant position in the acquisition and processing markets.

10. As a result of the analysis, the CNDC concluded that the issuance and acquisition markets had high barriers to entry and that the configuration of the market had restrictive effects on competition in the acquisition and consumer financing markets. These restrictions were reflected in three aspects:

- Restraints on competition in acquiring: the fees charged to merchants had remained at the top established by the law since it was enacted in 2005, indicating that any efficiency gains in the market had not been reflected in lower prices to merchants. This was also favored by a clause in the law banning price discrimination.
- Restraints on competition in the market for financial services for consumption: the implementation of the “interest-free instalments” system for credit card purchases has restrained competition by other consumer finance mechanisms, as interest on the financing of these instalments is integrated into the product’s cash price. This is facilitated by the corporate structure of PRISMA, whose shareholders are the country’s biggest banks.¹⁰
- Restraints on competition in related markets: PRISMA’s dominant position in the acquiring market extends to other downstream markets in which PRISMA also participates. This is reflected in conditions that allegedly discriminate against competitors in the market for provision of interfaces for online payments.¹¹

11. Following this investigation, in August 2016 the CNDC issued a series of recommendations to the BCRA and the Secretary of Commerce for improving the conditions of competition in the sector. In particular, these recommendations aimed at increasing competition in the acquiring market through the reduction of entry barriers and

⁹ In the case of MasterCard, the only acquirer is First Data Cono Sur S.R.L., who also acts as processor of transactions with MasterCard, although it is not the only processor. The essential difference with PRISMA relates to the market share of the brands they represent.

¹⁰ The practice of interest-free instalments was widespread in Argentina, especially for the purchase of home appliances and other durable goods. The system functioned as follows. The merchant offered the product at a certain price, which could be paid by the purchaser with a credit card in a number of predetermined, interest-free instalments. 48 hours after the sale, the acquirer (PRISMA in transactions with the Visa card) would transfer the amount of the sale to the merchant (net of the fee), with a discount corresponding to the interest rate for advance payment of the amount of the instalments. To cover this cost, the merchant included in the cash price a component corresponding to the interest that would have to be paid if the sale were made in instalments. As a result, if a purchaser wished to use any means other than the credit card to finance his or her purchases, he or she would be paying the interest twice: a) the explicit interest rate charged by the lender, and b) the implicit interest rate built into the price, to finance the credit card instalment payments.

¹¹ Todo Pago (owned by PRISMA) competes with Mercado Pago, Pay U and other companies in this market.

promotion of multi-brand acquiring, providing access to processing services in non-discriminatory conditions and initiating an *ex-officio* investigation against PRISMA and its shareholders.

2.2. Acquisition by PRISMA of BANELCO

12. On June 3, 2015 an operation was notified to the CNDC consisting of the acquisition by PRISMA (formerly, Visa Argentina S.A.) of a 100% stake in BANELCO. The operation was actually a corporate restructuring, where most shareholders were present in both companies. As explained in Section 2.1, PRISMA operates in all the value chain of the electronic payments market and is owned by 14 Argentine banks. BANELCO owns the largest ATM network in Argentina and is in charge of processing all operations related to bank accounts, including operations through ATMs, online payments and transfers, and mobile payments. The sellers in this operation are 10 Argentine banks, all of them also owners of PRISMA.

13. PRISMA and BANELCO work as a unique and integrated processing payment company. In particular, Visa credit and debit cards operate in the BANELCO ATM network, Visa debit cards are used to make in-person payments within the Visa network and Visa credit cards may be used to pay through the BANELCO online network.

14. Referring to the results of the market study, the CNDC acknowledged that competition conditions in the markets involved were far from satisfactory. However, it also considered that this particular operation would not restrict competition even further. Therefore, in June 2017 the CNDC recommended the approval of the operation. At the same time, the CNDC issued additional recommendations to the BCRA that complement the recommendations issued in August 2016. In this case, the CNDC recommended that the BCRA guarantees that PRISMA provide access to its competitors in the immediate transfers market to the clients' bank account balances and that it considers additional measures such as a functional and accounting separation between PRISMA's two business units.

2.3. Antitrust investigation against PRISMA and its shareholders

15. As explained above, one of the recommendations of the market study was to start an *ex-officio* investigation against PRISMA and its shareholders. Following this recommendation, the investigation was opened on August 30, 2016. PRISMA was investigated for allegedly abusing its dominant position by giving discriminatory treatment, providing low quality service and refusing to provide processing services to its competitors in the market for provision of interfaces for online transactions. PRISMA's shareholders, on the other hand, were investigated for allegedly colluding to fix interest rates and commercial conditions regarding the interest-free instalment financing mechanism.

16. In March 2017, as provided by article 36 of Argentina's competition act (Law 25,156), PRISMA submitted a settlement proposal consisting of a structural remedy (divestiture of PRISMA), on the one hand, and a behavioral remedy related to the conditions for providing its processing services. All of PRISMA's shareholders later ratified PRISMA's proposal. The CNDC launched a market test, by which it submitted PRISMA's proposal for consultation with the main stakeholders, especially the BCRA. After negotiating the terms of the settlement proposal with the CNDC, a new (and final)

version of the settlement agreement was submitted on August 2017. The main terms of this agreement are:

- **Commitment to divest:** PRISMA's shareholders shall sell all their stakes in PRISMA. Moreover, PRISMA's buyer shall not be a combination of two or more commercial banks currently operating in Argentina. In addition, PRISMA shall stop providing the immediate transfer service, which shall not be included in the sale.
- **Contractual commitments:** PRISMA shall sign issuer-processing contracts with the banks with which it currently operates at market prices, providing guarantees of service provision. On the other hand, the merchant discount fee shall explicitly separate the portion attributed to the interchange fee from the portion attributed to the acquiring fee. Finally, PRISMA commits to provide its services to third parties under non-discriminatory conditions in all the relevant markets involved.

17. On September 26, 2017, the Ministry of Production, acting as competition enforcement authority, approved PRISMA's commitment following the CNDC's recommendation of September 7, 2017.

3. Cooperation with the financial regulator and its impact on the CNDC's decisions

18. In the three cases described in Section 2, cooperation with the BCRA was crucial to help the CNDC in its decision making process.

19. To start with, the market study was initiated as a response to the concern expressed by the BCRA and associations representing e-commerce businesses with respect to competition conditions in the market. The CNDC worked in collaboration of the BCRA during all stages of the investigation. In fact, the close interaction between the two agencies explains why the CNDC's recommendations, although non-binding, had a real impact on the market. Indeed, throughout the process, it became clear that the BCRA shared the objective of promoting competition in the market as a means to foster the development of new and innovative means of payment and to reduce transactions in cash.

20. Therefore, since the issuance of the recommendations the BCRA has implemented several measures oriented to promoting competition. First, the BCRA has issued rules forcing the banks to provide all their clients with systems to pay through immediate transfers from their savings or current accounts.¹² Through these transfers, new electronic payment systems have been put in place to compete with credit and debit cards. Second, the BCRA has set maximum values for the interchange fees for credit and debit card transactions using a decreasing scheme that will reach 0.6% for debit card transactions and 1.3% for credit card transactions in 2021.¹³ The reduction of the interchange fee increases the acquiring margin, providing incentives to potential entrants to compete in the market for acquiring services. Fourth, the BCRA has reached an agreement to gradually reducing the merchant discount fees at a pace similar to the reduction in the interchange fee, but maintaining a reasonable acquiring margin. Finally, the BCRA has started conversations with VISA, to favor the issuance of licenses to allow

¹² BCRA, Comunicación "A" 6043 dated August 13, 2016; Comunicación "A" 6269 dated July 6, 2017 and Comunicación "A" 6285 dated July 25, 2017.

¹³ BCRA, Comunicación "A" 6216, dated March 31, 2017.

other companies to acquire the Visa brand. In this context, VISA has recently opened an office in Buenos Aires to better handle operations in Argentina.

21. As regards the merger case, the BCRA explicitly stated that improving competition in the market from electronic payment systems was one of its main objectives. In this sense, although the view of the central bank was that the competitive impact of the operation was hard to predict, the authorities commit themselves to cooperate in order to monitor the evolution of the market and its regulation.

22. Finally, cooperation with the BCRA also referred to the settlement agreement offered by PRISMA and its shareholders in the context of the antitrust investigation. In particular, the BCRA suggested that the agreement could include a reference to exclusivity in the acquiring market and to the fact that the company should operate in multi-acquiring context and limit promotion of exclusivities. In addition, it also explained the need to reduce barriers to entry to new providers of payment systems (in particular, their access to the bank account balances), so that they be able to compete on the provision of immediate transfer services.

23. In all three cases, the intervention of the BCRA was a very useful piece of information that the CNDC took into consideration in its decision-making process. It helped understanding the technical details of the workings of the market; designing and implementing pro-competitive regulatory changes; and assessing the potential impact of the remedial measures on the market.

4. Conclusions

24. The CNDC has had a very fruitful and cooperative relationship with the BCRA in the last year and a half. Thanks to this relationship, a common agenda of promoting competition and innovation in electronic payment systems has developed. In this context, the CNDC has taken three important decisions and the BCRA has implemented several regulatory changes to reduce barriers to entry.

25. As a consequence, the competitive structure of the electronic payment system has already started to improve. For example, new electronic means of payments have developed, including electronic wallets, immediate transfers and mobile payment systems. In addition, regarding the instalment payment system, merchants have now the option to cash all the instalments at the time of the purchase with a discount or to cash each instalment at its expiring date, which puts competitive pressure on the discount they are offered.

26. However, there is still much work to do in this area, including monitoring compliance with the commitment offered by PRISMA and its shareholders. Cooperation with the BCRA will certainly be useful to perform this task and to ensure that competition is improved as a result of the market's restructuring. It is worth emphasizing that this is the first time in Argentina's history that an antitrust case ends with a structural remedy. PRISMA's divestiture, therefore, should develop in a way that competition in the market gets unambiguously improved.

27. Although regulators and competition agencies do not always see eye to eye, the Argentine experience in the electronic means of payments market has proved successful so far. There may be instances in the future where objectives of the two agencies may diverge. However, as long as communication channels remain open, bridges could be built, that could reconcile opposite views of a particular problem.