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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ARGENTINA

-- 2004 --

This report is submitted by the Delegation of Argentina to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

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I. Enforcement of competition laws and policies.

1. Action against anticompetitive practices, including agreements and abuses of dominant positions:

1. During 2004 CNDC resolved 29 actions against non-competitive conduct- practices, including agreements and abuses of dominant positions (anti-cartel).

2. The sector classification was: food 1, health services 2, telecommunications sector 3, TV cable systems 2, transport 3, other activities of production of goods and services 18. (Provisional Data).

a) Summary of activities of:

- Competition authorities;

3. The three larger matters of 2004 were: 1) Merger&Acquisitions, 2) Analysis of cases of eventual violations of the law of competition through anticompetitive conducts, 3) Analysis and investigations of markets.

b) Description of **significant cases**, including those with international implications.

SIDERAR:

Iron and Steel Industry. Flat products.

4. Denouncer: Ventachap S.C.A. (adhered Marby S.A.C.I.F.I.A. and Casiraghi Hnos. S.A.) notified several denouncements about possible anticompetitive practices performed (carried out) by the firm Siderar S.A.I.C. that belongs to the iron and steel sector, producing flat products.

5. The upstream markets of hot rolled steel, cold rolled steel, cutting tinplate and cold rolled steel.

6. The respective downstream markets were defined as cutting and schedules of hot rolled steel, cold roll steel, secondary cutting tinplate and coated cold rolled steel.

7. The aforementioned denouncement informs a set of possible anticompetitive practices that were the follows**:**

8. Mergers&acquisitions in which SIDERAR was an active player: the denouncement reports that the firm above mentioned gained dominant position in flat rolled steel production. This dominance was because of the acquisition of the firms SOMISA and Comesi.

9. Respect of the first acquisition, CNDC established that taking into account the fact that it had been an operation of privatisation of governmental assets performed under the legal regulatory schedule of an specific Decree Nº 1164/1992 it was not reviewable unto the light of Competition Law Nº 22262.

10. Respect of the acquisition of COMESI despite of the dominance the firm had reached in the marketplace of steel, the acquisition was concerted in 1997 when the legislation did not include the control of operations of economic concentration such as it is the legal framework of competition policy nowadays established by Act 25156.

11. Agreement and practices of division of geographical markets in the MERCOSUR. The denouncement informs a geographical division of markets between SIDERAR and the Brazilian competitors, USIMINAS chiefly.

12. From this point of view it was said that the equity of USIMINAS as minor shareholder in the directory of SIDERAR, steel sector agreement approved by Resolution GMC Nº 13/1992, and the equity of both firms together with a Mexican firm to acquire the governmental enterprise Sidor of Venezuela and furthermore, the denouncement of jointed practices of dumping.

13. Respect of the equity of Usiminas the auditing works made by the CNDC´s professionals of the staff did not find specific elements concerning to arrangements between competitors.

14. The iron and steel sector agreement of the MERCOSUR was negotiated in the legal terms of the "Tratado de Asunción" that was built-in unto our juridical national framework by means of a law, therefore the Competition Law 22.262 was not applicable.

15. The participation in the process of privatisation of a Venezuela's enterprise of steel sector joint to Usiminas is an operation without effects (impact) respect of the Argentina's steel sector in the present denouncement.

16. The antidumping denouncements are notified in accordance with the regulatory and specific framework that establish a mechanism of consults to CNDC, but the application is facultative of the Trade Policy and Antidumping Authority.

17. The strategies of productive specialisation followed by Siderar and Acindar caused that the first firm produced only flat products and the second one only long products. The denouncement reported as a proof that Siderar had finished the production of no flat products and this situation was the cause of the increase of benefits (U$S 3 millions). Although, Acindar of the line lacked of production, line of flat products and this fact would be an element to have into account as part of an agreement of specialisation**.**

18. But, in the opposite, the evidence showed that a unilateral Siderar´s decision sacrificed a level of revenue as the indicated to generate in a few years' benefits in the elaboration of flat products in the order of US$ 240 millions.

19. Besides, the denouncement included some references unto practices of prices discrimination applied by Siderar either sector or regional marketplaces.

20. Nevertheless the lack of specific elements of proof in the presentation of the denouncer an east appearance as an issue was included unto have in account in the analysis of possible anticompetitive vertical practices.

21. Anticompetitive vertical practices. In the fact the Siderar had the double character of monopolist in the upstream market issues and competitor in the respective downstream markets auditing works were realised in order to establish the existence of possible vertical anticompetitive practices.

22. Based on the information and evaluation reached by means of that auditing works it was clear that enough evidence existed to deepen the investigation in the markets of cold rolled steel and the relevant downstream markets of coated cold rolled steel.

23. The hypotheses of work that guided the instruction was the possible "prices squeeze" that Siderar should realised over the competitor downstream markets Comesi, which was finally acquired by Siderar.

24. This situation was part of the original denouncement.

25. The auditing report established that during the previous years unto the acquisition of Comesi, Siderar increased the price of sale unto said competitor of cold rolled steel full-hard, more than another small competitor.

26. During the same period Siderar sold to a cheaper price the product coated cold rolled steel in which the firm was in competing with Comesi and Ostrillion.

27. Although these elements were clear and constituted signs of a situation of prices squeeze; CNDC also had into account that the effects of this possible behaviour, central appearance to consider in the enforcement (Article I of Law 22.262).

28. From the approach the research could establish that Comesi substituted cold rolled steel full hard form SIDERAR for cheaper imports, which reached almost 80% of its needs.

29. Finally, appointing to exhaust all possible instances of analyses the report evaluated if the policy of Siderar, furthermore the anticompetitive effects were pursuing to exclude Comesi of the marketplace.

30. Even when this last appearance was not explicitly said in the applicable law to analyse the case, a judge of the Supreme Court of Argentina in relation with Law 22.262 opened this possibility.

31. The criteria applied in this case is the same that the criteria used to analyse the named “Alcoa case” in USA, consisting in a possible behaviour of prices squeeze.

32. The elements took into account to make the evaluation were the following:

a) That the denounced firm can monopolise the products,

b) That the price of those products is more high-flown that the named “fair price”,

c) That the product is demanded to compete in a second marketplace where the monopolist is a competitor,

d) That the price of the monopolist in the second relevant market is the lowest, so that the competitors can not subsist if the own price is at an equal level.

33. In order to determine whether the monopolist is receiving or not a fair price in the case “Alcoa” the method consists of three tests that also were incorporated to the presentation, when applicable for the proof in view of the information collected.

34. The first, named billing test, consists in compare the price that the monopolist charges in the wholesaler and retailer markets, if the first is greater than the second it is presumed that there is a price squeeze.

35. The second test named Transfer Test answers to the question about the vertically integrated firm could have obtained benefits by selling at its own prices of retailer and buying in the wholesaler marketplace at the price that the firm sold the issue. So, it is considered that there is not prices squeeze.

36. The third test is known as “the comparative rate of return test”, suggests that once that the costs are completely determined, if the vertically integrated enterprise obtains a margin of benefit at the

wholesaler stage greater that the margin gained at the marketplace retailer, probably there is "price squeeze".

37. After the application of this set of tests did not appeared evidence enough to punish unto denounced enterprise by a behaviour that had had for object to exclude a competitor of the marketplace where the firm as consequence would have a dominant position.

38. In accordance with the results of the investigations performed, CNDC recommended the archive of the "case" to the Technical Co-ordination Secretariat of the Ministry of Economy and Production.

PROFERTIL

Commercialisation of urea into national level.

Denouncer: Marcelo Larribite, agricultural producer.

Denounced: PROFERTIL.

39. The behaviour: abuse of dominant position in the domestic market and price discrimination between the domestic market and sales as exports.

40. Urea is the nitrogen fertilising most used across the extent of the country and it use was of growth most sustainable as much in our country as to a world level, because of it is the fertilising most efficient in terms of costs to provide of nitrogen, nutrient of agricultural production.

41. There are two types of formulation of urea substitutable between the commodities that bring 46% of nitrogen for oneness of avoirdupois and market under the form of commodity.

42. The production and commerce of urea is organised in Argentina at three different stages. Upstream, the production and primary commerce of the product, downstream, commerce and allocation at wholesale level, and final commerce and allocation (retail level).

43. Therefore, three markets are defined as follows:

- relevant market of primary commercialisation of urea, where urea producers sell the product to wholesale dealers.

- relevant market of wholesale commercialisation and allocation of urea, where the suppliers are the wholesale dealers and the buyers are retail dealers.

- relevant market of retailer commercialisation and allocation of urea, where retail dealers supply products and the agricultural producers demand it.

44. PROFERTIL, a national enterprise that produces granular urea that had begun the activities in January 2001, involved fundamentally in the first marketplace. Profertil orientated the sales of 2002 period 53% to local market, 44% to foreign market and only the remaining *3%* of total sales was sold in the wholesale market.

45. Profertil doesn't participate in the downstream retail market.

46. It is clear the "seasonal" characteristic of local demand of urea, which proceeds of agricultural production that is in function of natural condition no entirely under control by means of technology.

47. On the contrary, the industrial production of urea is continuous along the year and not programmed interruptions generate high costs.

48. In addition, there is not enough storage capacity in the whole chain, and it is not renewable to expand it by taking into account the seasonal lack of domestic demand.

49. There is strong evidence of demand substitution due to the consumers of the first market, the wholesaler delivers, are at the same time effective or eventual competitors of PROFERTIL, playing the double role of importer-delivership wholesaler, and the main grain traders of the Argentina – ASOCIACION de COOPERATIVAS ARGENTINAS, NIDERA SA, CARGILL SACI, LA PLATA Cereal SA. These firms are the owners of the whole logistic infrastructure necessary to imports of urea (i.e. for facilities, storage capacity, and distribution channels. Also, before Profertil started to produce, they had imported big amounts of urea in the 90´s, due to the strong increase in the domestic demand, but since the beginning of Profertil production the average of imports represents 18% of Argentine demand.

50. This phenomenon also is observed in the two downstream markets.

51. Despite of these evidences of substitution between national and imported urea, CNDC has adopted for definition a geographic extension more restricted, putting the national level for the three markets aforementioned.

52. Along the investigation the procedure was to analyse as much the framework as the applying formation of prices in each one of these markets, for the period 2001-2002, in order to evaluate the denounced anticompetitive practice.

53. As a result of the investigation it appears respect to the proceeding of PROFERTIL in the different markets in which the firm participates, the following conclusions:

54. In the negotiations of prices between PROFERTIL and the wholesaler dealers of the Argentine segment market of primary commercialisation, it was taken as a reference the international price in which the denounced firm had not any influence. Indeed, it was in the opposite place, as a mere price taker; because it share in the world exports is only 2%. The international price referred granular urea is quoted in base on the price FOB in Middle Orient, in accordance with the share of the countries of the Arabian Gulf, which account for the 50% of the world exports.

55. PROFERTIL has not captive local marketplace by means of contracts of provision, because there are no contracts of exclusive dealing that link this enterprise with its customers, this is to say with the wholesaler dealership.

56. Although PROFERTIL has a very important (high) share in the Argentine market of primary commerce -around 70% -, it doesn't charge a price higher than the import parity (PPI) because urea supplied by foreign countries at international quotation is an actual competitive pressure over domestic prices.

57. Based on this evidence the investigation concluded that the prices of sale to dealership wholesaler have being changing around of the said level of equilibrium. (PPI).

58. Sales that PROFERTIL has performed to retailers had been done at the price of concurrence in the national market of wholesaler allocation, where the operations between wholesalers and retailers take place.

59. In view of the little share in this market –around of the 4%- Profertil is only a price taker.

60. It was verified that prices of sale to wholesale providers are on average at PPI level plus and that additional costs applied at the stage of commerce – from wholesalers to retailers such as long local freights, discharge, reception, storage, delivery to heap of grain in lorry of the retailer and the margins of helpfulness of the wholesale.

61. PROFERTIL does not fix the final price that pays the argentine agricultural producer because there is no commercial relation between them. It was verified that prices to agricultural producer proceed of the previous stage with the addition of the margins of benefits and costs applied to the retailer.

62. According to the CNDC research prices that the argentine agricultural producers pay for urea were similar and even lower in the last year to those that pay agricultural producers of USA.

63. To the purposes of comparison it was chosen the case of USA because it has strong similarities with Argentine markets, for instance, agricultural framework - production of extensive grain and use of technology-; extension of its territory -for the needs that implies the infrastructure of logistics to the chain of allocation - and with a similar framework of market of urea, is said, there is domestic production, competition with imported urea and exports of the product at the same time.

64. In this way, concerning to the analyses of the presumed anticompetitive practice of price discrimination performed by PROFERTIL between, on the one hand, its sales to local market, and on the other hand, to foreign customers, and taking into account the described characteristics and circumstances of the market of urea, this practice is a rational one, from the economic point of view. The difference of prices between these two segments of the market can not be considered as an anticompetitive practice, whenever the practice is caused by reasonable differential costs. In fact, it was demonstrated that in each one, the prices are formed according to the respective “opportunity costs”.

65. As it was said above, price differences are explained by costs included in the wholesale deliverers of Argentine segment, that is FOB price, services (i.e. freight and insurance) and costs of nationalisation (i.e. custom, foreign trade taxes). In these way PPI prices is determined.

66. Although, in order to compete and export to international market, PROFERTIL must to sell to the value of FOB prices that the foreign market determines, which are lower than the local prices, for definition. It was verified that Prices FOB of exports carried out by PROFERTIL are similar to Prices FOB Middle East, values of international reference for granular urea.

67. Conclusion: nevertheless the national segment of the marketplace “upstairs waters” (market of primary commercialisation of urea) is highly concentrated, PROFERTIL has no chance to act in terms of abuse of dominant position because is highly contestable, as much for the low level of existing tariffs, so as for the port and logistical facilities that great wholesaler deliver have to import, so as for the abilities to import directly in little scale, by lorry o railroad, as much as the retailers delivers as the agricultural producers.

68. The downstream markets (marketplace national of wholesaler delivership) appear less concentrated, although it is less contestable, but a contingent abuse in it, would be as a result of an abuse previous in the “upstream markets”.

69. In order that an abuse in the market of wholesaler delivership only it would be possible by means of an agreement between the other participants and PROFERTIL, because this last is caterer and besides has ability of access to the following stage.

70. Nevertheless, it was not found evidence of such agreement.

71. According to the aforementioned reasons the denounced firm could not exert abuse of dominant position in the retailer national market where the Argentine agricultural producers play.

72. Finally and in accordance with the reasons explained, CNDC concluded that PROFERTIL did not performed any anticompetitive practice in terms of Law 25.156 recommending to the Technical Co-ordination Secretary to accept the explanations brought by the firm.

2. Mergers and acquisitions.

a) Statistics on number and type of mergers notified and/or controlled under competition laws;

73. During 2004 CNDC was involved in 46 investigations of mergers&acquisitions.

74. From a sectored point of view, the activities concerning this group, was the following: gas 4, liquid combustibles 6, food 5, services 5, assurance 4, other sectors 22.

b) Summary of significant cases.

GRUPO BIMBO (Bimbo Group) – COMPAÑÍA DE ALIMENTOS FARGO S.A. (FARGO)

75. Accordance with the prescriptions of Act 25156, the legal framework of competition policy, the Competition Authority began the investigation of the merger, especially whereas the indirect control that could exert above FARGO.

76. In order that these two groups of firms were producing, trading and distributing industrial bread products in Argentina it was a case of horizontal merger between the firms aforementioned.

77. The analysis included the impact of the transaction in two relevant markets of the products: the industrial white and black bread and industrial bread for hamburgers and hot dogs, both in the local market.

78. First of all, unto depart of the analysis of the market share of "BIMBO de Argentina" (under the control of BIMBO Group) and FARGO in form, so it appeared to be some competition problems.

79. FARGO had produced approximately the 58% of the industrial white and black bread in the year 2003; meanwhile the firm BIMBO had shared 21% in the market. So, both enterprises would produce in a joint form the 79% of the over all supply of the market.

80. In other hand, concerning BOLLERIA, both would produce 62% of the market.

81. Nevertheless, the negative impact of the operation of concentration in the framework of competence is not only the concentration of the market. Therefore, the result of the economic analysis was subject of further considerations and analysis included other issues, like the existence of entry barriers unto the relevant markets.

82. The conclusion was that the competition in the market would be harmed because of the merger that implied the absorption for part of BIMBO of the leader of the market: FARGO.

83. The outcome would be the conformation of a mega-enterprise with no strenuous competitor, according to the characteristics of the other firms of the market.

84. Concerning with the competition between brands, the conclusion was that both of them are the first (BIMBO) and the second (FARGO), option for the potential consumers who after the present

operation will be controlled by BIMBO Group. Therefore, the increase of the price of any of the two brands would determine benefits for the merged firm because of the important percentage of the consumers that would shift to the product of the merged firm that did not increase the price.

85. The idle capacity of the involved firms was an important barrier to entry. The idle capacity of both enterprises was of the 50% so; the incumbent will be able to answer before the entrance of a new competitor by increasing precipitously the production because of the level of their costs of production.

86. Finally, the analysis took on consideration the positive effects of the operation concerning the efficiency gains in order to compensate the harm aforementioned on the competition.

87. Nevertheless, the conclusion was that in view of the result of the operation in a few competitive and concentrated contexts, the firms involved would not have incentives to carry over the efficiency gains obtained towards the consumers.

88. In abstract, the operation of economic concentration in the terms that it was notified, seriously restrain the competence in the markets of industrial black and white bread and industrial bread for hamburgers and hot dogs, giving to BIMBO the possibility of exert market power.

89. In order to attain the approval of the operation, the notifying parties presented a commitment of divestment previous to the authorization of the operation.

90. The default situation in that was involved FARGO and the fact that a strategic leisure of BIMBO in this operation was already in charge of the control of FARGO, determined that the CNDC decided to accept the commitment of divestment and not to forbid the operation.

91. The commitment consisted in the transference of a business unit compounded by the LACTAL trademark, the production plant placed in Pacheco (Province of Buenos Aires) and the system of distribution appropriate for the selling of the products of LACTAL brand.

92. Competition Authority considered that the transference of the business unit unto a strenuous and entrant competitor would maintain the competition in the markets involved

93. The buyer of the business unto divestment would be a third person without links, neither strategic agreement, with the parties involved in the operation at the moment of the transference.

94. The third part should count with the financial resources, the capability and the incentives to develop as a full competitor in the market of industrial bread.

95. Whenever the operation of sale of the business was reached, this is to say, when the agreement of divestment had been put into practice by means of a contract of sale, CNDC should recommend to the Technical Secretariat of the Ministry of Economy and Production to proceed to authorize the notified operation in terms of the article 13 a) of Act 25.156.

TELEFONICA - BELLSOUTH CORPORATION

96. Relevant Markets: mobile telecommunications, local wireline telephony, long distance telephony, services of access to Internet access, services of data transmission, provision of local links long distance transmission (high voice and data).

97. The involved enterprises in the merger were BELLSOUTH CORPORATION and TELEFÓNICA MÓVILES S.A. (TELEFONICA)

98. As a result of the investigation was CNDC´s recommendation to subordinate it to the approval of the present operation of concentration, in terms of the Art. 13 Inc.b. Act 25.156.

99. In Argentina, the operation implied taking of control of the company COMPAÑÍA DE RADIOCOMUNICACIONES MÓVILES (MOVICOM) and of the company under its control, COMPAÑÍA DE TELÉFONOS DEL PLATA by the acquirer.

100. TELEFONICA is involved in Argentina in the lending services of wireline local telephony, national and international long distance telephony, mobile telephony, data transmission, Internet access, and other services related to the aforementioned issues.

101. MOVICOM is server of mobile telephony, wireline telephony, trucking, data transmission, Internet access, local telephony, national and international long distance telephony, and provision of infrastructure of telecommunications.

102. As a result of it, the notified operation implies overlapping in several relevant markets of fixed telecommunication: wireline local telephony, national and international long distance telephony, data transmission, Internet access, and services of provision of infrastructure (transport of long distance and provision of local links); and also in the marketplace of mobile telecommunications.

103. The operation presents also vertical relations in diverse services: the provision of lines of wireline telephony to the service of public telephony, the provision of local access to the suppliers of Internet (ISPs), the completion of calls in net mobile and the service of roaming.

104. In relation with market of wireline telecommunications there was no competition problem in order of two reasons.

105. First of all, in cases of local wireline telephony or concerning to local links, the largeness of the increase of the concentration was sufficiently small to modify substantially the competitiveness and the dynamics of the market. The cause of it was fundamentally the lack of market share of Movicom and the position of dominance of Telefonica in them.

106. The second reason was the fact that in markets in which the presence of Movicom was more significant relatively, for example in the service of Data transmission in long distance telephony, the preoccupation stay equally diluted because of the active participation of a great number of companies of telephony arriving to the market.

107. Much of them have important lying of own nets and this fact contributes to maintain the markets of high rivalry.

108. Nevertheless, the fact aforementioned, in the segment of provision of wirelines to providers of public telephony, taking into account that the analysed operation would imply the birth of a company with a high share in the provision of wirelines that additionally would share in the downstream market of public telephony, would exist incentives to displace the competitors by the action of the new firm.

109. In this sense, CNDC has recommended to the Secretary to inform to the notifying parts that they will have to provide lines of public telephony to the suppliers of public telephony under no discriminated conditions respect of those conceded to themselves (or those others linked or controlled by them), in order to get coherence with the regulatory scheme of the activity.

110. Concerning the sector of mobile telecommunications the notified operation produces an important increase in the level of concentration in the national market, that is more significant in the Metropolitan Area of Buenos Aires and in the South.

111. Taking as a point of departure that increase in the level of concentration of the market, it was analysed the possible anticompetitive horizontal and vertical effects that would proceed as a result of the aforementioned facts.

112. Concerning to the possible horizontal effects in the market of mobiles telecommunications, the conclusion was that the operation did not induce preoccupation in relation with a possible unilateral exercise of power of market, because of the high intensity of competition in the market, and because of the parts involved in the notification were not especially near competitors in a market where exists some differences between operators.

113. The other competitors were capable companies in size, production capacity and incentives to neutralise a potential exercise of market power, and the parts involved in the notification will not accumulate spectre more than 50 MHz.

114. In the case of possible co-ordinated horizontal effects in the market of mobile telecommunications it had been concluded that the operation neither produced preoccupation due to the competition in the market which was verified in various dimensions (price, variety of plans, introduction of new services and technologies, advertising), the others competitors have incentives to obtain greater market shares, and Movicom (the enterprise object of the absorption) had had descendent share in the time being.

115. These factors will avoid the co-ordinated exercise of market power.

116. The anticompettive vertical effects that would have place in the market of mobile communications as consequence of the notified operation were in relation with the service of “roaming” and the completion in mobile- calls mobile.

117. In the case of agreements of “roaming” the present operation have not negative effects because of the existence of regulatory rules that compel operators to establish no discriminatory arrangements.

118. Besides, the map of nets and transmission technologies of mobile telephony are not much modified

119. In view of the approval of the notified operation, in accordance with the fact that there is no area of the country in which the merged firm is the unique supplier of roaming in any of the utilised technologies.

120. Concerning to the completion in mobile – mobile calls (CPP is out of service for Judicial decision), there are private agreements of reciprocal compensation between the operators.

121. CNDC´s understanding respect of the aforementioned fact, was that the notified operation, producing an increase in the size of the net of the parts involved, could give place to a drawing-down of values of completion in detriment of the competitors off-net.

122. Therefore the advisable situation was to inform to the notifying parties that until the enforcement of the specific regulation on the CPP mobile – mobile, they will have to abstain of utilise the in-net completion charges in order to exclude competitors of the market.

123. At the same time, CNDC considered opportune reiterating in that instance, in line with the recommendation of year 2002, that the convergence towards the charges of completion of calls with the criteria adopted completion in wireline nets for RNI would vanish the mentioned concern.

124. In other hand, the present operation of concentration would have implied the accumulation of radio-electric spectrum of approximately 85 MHz, level overhead to 50 MHz established as full-scale in the regulation, (Decree 266/98).

125. Secretariat of Communications through Resolution 268/2004 has subjected the jointed operation of the involved enterprises to the compliance of the rules of regulation that reimburses almost 35 MHz of radio-electric spectrum.

126. Nevertheless, the same Resolution did not establish terms to devolution of the frequencies overstepped.

127. Furthermore, the aforementioned Resolution, Art. 4º established a schedule "that approval expediently", so that in fact it has been created an intermission of time (transitional period) in that involved enterprises will concentrate the radio-electric spectrum.

128. Also, during the named "transitional period" the accumulation of spectrum implied into the merger decreased operative total costs.

129. So that, the merger without restraints to concentration of spectrum, will obtain advantages of productive costs on the other companies of mobile telephony.

130. In conclusion, CNDC understood that the term in which the involved companies would have the concentrated spectrum was not innocuous for the competition.

131. Although CNDC knew that was admissible the existence of a period of time, which seemed to be necessary to the migration of clients between the companies, it adverted respect to the duration generated the necessary incentives to minimise the "transitional period".

132. According to the aforementioned reasons, CNDC has recommended to the Technical and Co-ordination Secretary to subordinate the approval of the operation of concentration, in the terms of Art.13, Inc. b, Act 25.156, until the enterprises effectively reduce the spectrum holdings till the levels of concentration established in Decree N° 266/98, Article 4°.

133. Knowing this measure, the parts will have to put into practice the following:

134. Until the enforcement of the specific regulation on the CPP mobile – mobile to abstain of utilising in net completion charges to exclude competitors of the market.

135. To provide lines of telephony to the suppliers of public telephony under no discriminated conditions respect of those brought to themselves or to those linked or under control.

II. Resources of competition authorities.

136. Nowadays the CNDC is in charge of enforcing the Law. The CNDC reports to the Technical Co-ordination Secretariat of the Ministry of Economy and Production. Its decisions are non-binding recommendations, which are reported to the Secretariat who takes the final decisions about anticompetitive conducts and merger&acquisitions based on CNDC´s recommendations.

137. This decision process will be soon improved by establishing the TNDC, body settled down by the Law 25156 to enforce competition policy.

138. It will be able to regulate the agreements and anticompetitive practices that restrain the markets, as well as, the abuse of dominant position.

139. The main functions and faculties of the TNDC will be the following:

- To conduct market investigations in order to determine if there is any anticompetitive practice taking place. So, an investigation can be opened by a formal complaint or by initiative of the Tribunal;
- To ask for information and conduct public audiences. About investigative techniques, inquires and down raids, are able to gather evidence that justify the decision taken.
- To impose sanctions. The last amendment of the Law increased the Agency's capacity to impose sanctions and measures to re-establish competition in any market.
- To emit pro competitive recommendations, promoting its advocacy role.
- To elaborate cautions measures.
- To participate in the negotiation of international agreements.
- To promote bilateral agreements.

1. Resources overall:

a) Annual budget (in your currency and USD):

140. The 2004 annual budget was in total $ 2,161,697 = US$ 745.412.

b) Number of employees (person-years):

141. The total staff is 48: the Competition Authorities are 5 officials; 34 technical analysts (divided into 13 lawyers and 21 economists); and 9 administrative employees**.**

2. Human resources applied to:

142. The total staff is focused on competition in the various stages of the enforcement and advocacy efforts.

3. Period covered by the above information:

143. Year 2004.

III. Summaries of or references to new reports and studies on competition policy issues.

144. On 2005, the CNCD was completed by the appointment of the fourth Vocal, and National Government has sent to the Congress the project to re-formulate Act 25.156, with the object to constitute the TNDC (Tribunal Nacional de Defensa de la Competencia) that demonstrate the political commitment to strengthen national competition institutions.

145. Finally, the mention of two cases of anti-competitive conducts, concluded recently, but developed during past years, is a clear example of the commitments of the agency in fighting hard core cartels.

146. One of the two cases concluded in a global fine that was the most important in the whole history of enforcement of competition in Argentina.

147. The amount of fines applied to enterprises of cement production was the following: Loma Negra ($ 138.700.000, U$S 47,8 millions), Minetti ($100.100.000, U$S 34,5 millions), Cementos Avellaneda ($34.600.000, U$S 11,9 millions), Cemento San Martín ($28.400.000, U$S 9,8 millions) and Petroquímica Comodoro Rivadavia ($7.300.000, U$S 2,5 millions), AFCP($ 529.289, U$S 182.513). In total: $309.629.289.000, U$S 106,70 millions.

148. The other measure was the result of an investigation involving the following firms: Praxair Argentina SA, Air Liquide Argentina SA, Messer Argentina SA (acquired by Air Liquide), Aga SA and Indura Argentina SA, in the market of medicinal oxygen with national dimension.

149. Fines applied were the following: Praxair Argentina SA ($26.100.000, U$S 9 millions) Air Liquide Argentina SA ($24.900.000, U$S 8,5 millions), Aga S.A. ($14.200.00, U$S 4,8 millions) and Indura Argentina SA, ($ 5.100.000, U$S 1,7 millions). In total: $70.300.000, U$S 24,2 millions.