



International
Competition
Network

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**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

CARTELS WORKING GROUP

Subgroup 2: Enforcement Techniques

CNDC

13/03/2023

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Competition Defence Act – Act 27.442 (LDC, for its acronym in Spanish) (http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/310241/norma.htm). It is available in Spanish. Former Competition Defence Act – Act 25.156 (http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60016/texact.htm). It is available in Spanish.
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Decree 480/2018, arguably the most important implementing regulation regarding the competition regime in Argentina https://www.argentina.gob.ar/normativa/nacional/decreto-480-2018-310663/texto). It is available in Spanish.

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>The Agency does not currently have specific guidelines regarding cartels.</p> <p>However, it does have a guideline that provides recommendations and best practices for business associations, chambers and professional associations in Argentina. This guideline, by definition, focuses on the avoidance of cartel-like activities.</p> <p>The «<i>Antitrust Guidelines for Business Associations and Chambers and Professional Associations</i>» is available in Spanish.</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There is no other relevant material published.</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>The LDC does not make any reference to the term “cartel” or “cartels”.</p> <p>The expression employed by the legislation is “concerted practices or conducts” and “agreements amongst competitors”.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>According to Section 2 of the LDC, “hardcore cartels” (which include price fixing, market sharing, bid rigging and production or sales quotas) are considered practices that are absolutely restrictive of competition.</p> <p>In contrast, other types of concerted practices, as established by Section 3, are typified as practices that may be considered restrictive of competition under certain conditions —those conditions are outlined in Section 1 of the LDC.</p> <p>The LDC was the first piece of antitrust legislation that made this distinction among coordinated practices.</p> <p>From now on, the term <i>cartel</i> will be used to refer to any of the extremely serious coordinated behaviours outlined in Section 2 of the LDC.</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>Section 29 of the LDC states that the competition authority can grant permits for contracts, agreements or arrangements that could be classified as "hardcore cartels" under Section 2, but only if those agreements do not harm the general economic interest.</p> <p>According to Decree 480/18, exceptions can be granted if the assessed agreement:</p> <ol style="list-style-type: none"> 1. Improves the production or distribution of goods or services. 2. Promotes technical or economic progress. 3. Generates concrete benefits for consumers. 4. Does not impose restrictions on involved companies that are not indispensable to achieving the objectives mentioned above. 5. It does not offer such companies the possibility of eliminating competition.
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Since the LDC was enacted in 2018, no cartel has been prosecuted and sanctioned under the new regime—meaning there is no established case law about the scope of the distinction the LDC now makes between practices that are absolutely restrictive of competition and practices that may be considered restrictive of competition.</p> <p>However, the LDC allows for exclusions for hardcore cartels under specific instances, as defined by Section 29 of the LDC.</p> <p>In other words, the legislation considers some serious cartels to be permissible under specific situations, even though they are typically regarded as unlawful actions. This might imply that involvement in hardcore cartels is not <i>per se</i> illegal.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>A combination of the three.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>National Commission for the Defence of Competition (CNDC, for its acronym in Spanish, or the Agency)</p>
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³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Address: Av. Pres. Julio A. Roca 694, C1067ABO. Ciudad Autónoma de Buenos Aires, Argentina. Tel: (+5411) 4349-3480 Email: cndc@produccion.gob.ar Website: https://www.argentina.gob.ar/defensadelacompetencia Languages available: Spanish, English, French and Portuguese.</p>
<p>C. Information point for potential complainants:</p>	<p>Guidelines to present a complaint: https://www.argentina.gob.ar/denunciar-conductas-anticompetitivas-de-empresas-o-concentracion-economica The option to file an anti-competitive conduct complaint entirely online will be available shortly.</p>
<p>D. Contact point where complaints can be lodged:</p>	<p>The complaint can be submitted through the <i>Citizen Submission</i> system, or in person at the CNDC's front desk (Av. Presidente Julio A. Roca 694 PB).</p>
<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>In some cases, the Agency may require the assistance of law enforcement and court personnel to carry out specific measures throughout an investigation, notably if a dawn raid order is granted.</p>

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>Secretariat of Commerce of the Ministry of Economy, Agriculture and Productive Development (the Enforcing Authority).</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Av. Presidente Julio A. Roca 651, 2nd Floor, C1067ABB, Ciudad de Buenos Aires, República Argentina.</p>
<p>C. Contact point for questions and consultations:</p>	<p>N/A</p>

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>In Argentina, the responsibility for enforcing the LDC provisions against anti-competitive activities falls under the jurisdiction of the <i>Tribunal de Defensa de la Competencia</i> (TDC, for its acronym in Spanish). The LDC also established a unit called <i>Secretaría de Conductas Anticompetitivas</i>, a division to which it allocates several prosecutorial responsibilities before the TDC.</p> <p>However, as the TDC and its Secretariat have yet to be established, the role of competition law enforcement authority is currently being performed by the Secretary of Commerce.</p> <p>The Secretariat of Commerce has entrusted many investigating and prosecuting powers to tackle anticompetitive activities, including cartels, to the CNDC.</p> <p>In this provisional institutional arrangement, the CNDC issues a non-binding legal opinion about the merits of a cartel case, but the ultimate decision on its resolution lies with the Secretary of Commerce.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>In Argentina, if a cartel case falls under criminal proceedings, neither the Secretariat of Commerce nor the CNDC plays a role in its prosecution before criminal courts.</p> <p>However, it should be noted that the LDC provides that the leniency immunity also covers criminal liability—specifically, for the offences defined in Sections 300 and 309 of the National Criminal Code. This is relevant because the Secretary of Commerce, after the issuance of a non-binding opinion by the CNDC, is currently in charge of determining whether to grant a leniency request.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>Investigations into cartels can begin with a complaint or leads from an individual or organisation, with a leniency request from a cartel's participant, with a request from the Enforcing Authority in response to other measures conducted by the CNDC (i.e., market studies), or <i>ex officio</i>.</p>
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<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>Complainants must follow specific requirements to file a complaint with the Agency. An essential requirement is submitting the complaint in writing.</p> <p>A complaint should include the following:</p> <ul style="list-style-type: none"> ● The name and address of the complainant. ● The name of the person or organisation that the complainant believes violated the antitrust laws. ● A clear and specific description of the violation. ● A detailed explanation of the facts that the complainant believes support the complaint. ● A brief statement identifying the specific antitrust provision the plaintiff claims was violated. ● A description of the evidence that the complainant believes supports the complaint. <p>The LDC also directs that complainants confirm their complaints before CNDC officials—meaning complainants must appear <i>in person</i> and affirm the complaint. This requirement allows the Agency to ensure that a complaint is made in good faith and that complainants clearly understand the allegations they are making. The CNDC can also ask the complainant further questions or request additional information during this meeting.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>There is no requirement for specific standing or particular interest to file a complaint against an alleged cartel. Any person or entity may file a complaint with the Agency regarding such conduct.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>The CNDC must take action on each complaint it receives—meaning it must investigate every complaint submitted. However, it has discretion on how to handle it.</p> <p>If the Agency resolves there is sufficient evidence to prosecute an alleged cartel successfully, it will issue a legal opinion proposing to the Enforcing Authority that the suspected offenders be indicted. If, on the other hand, it believes it lacks sufficient evidence to prosecute it properly, it will issue a legal opinion advising the Enforcing Authority to close the case and take no further action.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>The CNDC must take action on each complaint it receives. However, if there is insufficient evidence to prosecute, the CNDC will issue an opinion to archive the proceedings and close the complaint. This opinion must outline the CNDC's reasons for not pursuing the case.</p>

<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>There is no specific time limit set by law or regulation for the Agency to decide whether to investigate or reject a complaint.</p> <p>However, it is essential to note that the LDC has a statute of limitations for antitrust violations. The statute of limitations is five years from when the violation was committed or, in the case of continuous conduct, from when the conduct under analysis ceased.</p>
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6. Leniency policy⁵

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p><i>Programa de Clemencia</i>, Leniency Programme or Leniency Regime, as regulated under Chapter VIII of LDC.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>The leniency regime in Argentina offers both full and partial leniency options for individuals or companies that cooperate with the investigation of a cartel.</p> <p>Under full leniency, an individual or company may be granted immunity from fines if they are the first to come forward and provide information and cooperation that leads to the discovery of the cartel. Under partial leniency, an individual or company may receive a reduction in fines in exchange for their cooperation and the information provided.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>The first participant in severe cartel activities to come forward may be granted full leniency. Seeking exemption or reduction from sanctions or fines cannot be done jointly by two or more separate and independent cartel participants.</p> <p>It is important to note that leniency, which includes the exemption or reduction from sanctions or fines, is only available for hardcore cartel conducts—those listed in Section 2 of the LDC—, which means that individuals or entities involved in unilateral infringements or concerted practices outside of this scope are not eligible for leniency.</p>

⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>The eligibility for leniency is contingent on the Agency being unaware of the cartel's existence or having insufficient knowledge to launch an inquiry.</p> <p>Leniency applications must be made before a formal indictment is issued concerning the reported anticompetitive activity. Any corporate person pondering applying for leniency must come forward before being officially served with the indictment.</p> <p>This formal indictment for anticompetitive activity is done under Section 41 of the LDC and it is a significant milestone in any inquiry.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Any individual or corporate person that has incurred or is incurring in cartel-like activity may apply for leniency.</p> <p>It should be noted that leniency is only available for hardcore cartel conducts—those listed in Section 2 of the LDC—which means that individuals or entities involved in unilateral infringements or concerted practices not listed in Section 2 of the LDC are not eligible for leniency.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>To be granted full leniency, an applicant must be the first to come forward with decisive evidence on a cartel existence and activities and, unless otherwise advised to preserve the successful outcome of the inquiry, the applicant must immediately discontinue his involvement in the cartel.</p> <p>The applicant must also cooperate with the Agency fully, continuously, and diligently and must not destroy, fabricate, or conceal evidence.</p> <p>It should be noted that the applicant must not have previously disclosed or revealed publicly their intention to seek leniency.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>In cases where the requirements for full leniency are not met, an applicant may still be eligible for a reduction in the penalty imposed for their involvement in the cartel under investigation.</p> <p>This reduction may range from 50% to 20% of the maximum penalty that would have been imposed, depending on the additional evidence provided by the applicant.</p> <p>Likewise, an applicant who does not meet the requirements for full or partial leniency but provides evidence of a second, distinct and unrelated cartel may be granted a reduction of one-third in the penalty imposed for their involvement in the first conduct—besides full leniency for the later.</p>

<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>Once a leniency application has been conditionally accepted, the applicant is expected to comply with certain obligations in order to maintain the benefit.</p> <p>These duties include immediately ceasing participation in the infringing conduct unless otherwise instructed by the Agency to avoid hindering the investigation, providing full and continuous cooperation, not destroying, falsifying or concealing evidence of the conduct, and not disclosing or revealing their intention to seek leniency.</p> <p>Failure to comply with these obligations may result in the termination of the leniency benefit. Furthermore, supplying the Agency with incorrect, incomplete, inaccurate, or deceptive information or documents may result in the leniency benefit being denied.</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>Currently, there are no formal requirements for making a leniency application. Nevertheless, the Agency is drafting a regulation that will outline the procedure and the information requirements for an optimal leniency request.</p> <p>Until this regulation is issued, potential applicants can assume that any leniency request must be filed written as an affidavit.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>The LDC has a defined set of procedural steps to be followed by an applicant. The procedure can be broken down into four stages:</p> <ol style="list-style-type: none"> 1. Request for a marker: In this stage, the applicant communicates their intention to apply for leniency and can consult with the Agency regarding the leniency program and the information he must submit. 2. Formal application submission: In this stage, the applicant formally applies for leniency and supplies the Agency with all the necessary information, documentation, and evidence required to determine the existence of a cartel. 3. Conditional granting of the benefit <i>post</i> assessment of the submitted evidence: the Agency evaluates the background information submitted by the applicant and, if deemed appropriate, grants a conditional benefit, such as exemption or reduction of the sanction, subject to full cooperation throughout the procedure. The Agency may also request additional information or clarification to determine the existence of the cartel under investigation. 4. Conclusive granting of the benefit: After evaluating the information and evidence provided by the applicant and ensuring the applicant's cooperation, the benefit may be granted permanently by the Enforcement Authority. <p>These procedural steps are designed to ensure that the applicant is fully aware of the requirements and expectations of the leniency program and that both the Agency and the Enforcement Authority can thoroughly evaluate the information provided by the applicant.</p>

<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>During the leniency application process, there are four stages. In the third stage, the Agency assesses the applicant's background information and the level of cooperation already provided.</p> <p>If deemed eligible, the Agency will grant a conditional benefit, such as exemption or reduction of the sanction, subject to full cooperation throughout the process.</p> <p>The Agency may also request additional information to determine the existence of the cartel under investigation.</p> <p>The format in which the agency will deliver the provisional eligibility for immunity described here has yet to be established.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>Given the legal framework currently in force, it appears that the Enforcement Authority will issue a formal decision regarding the request for immunity.</p> <p>The legal system gives the Enforcement Authority the power to decide on granting the final leniency benefit after evaluating the information and evidence provided by the applicant and their compliance with the requirement of cooperation throughout the procedure.</p>
<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>Yes, there is a marker system called «<i>Registro Nacional de Marcadores</i>», which is a confidential registry that lists all applications for markers from leniency applicants, indexing the order of priority of each request according to its date of (formal) presentation.</p> <p>The Registry Directorate, a unit within the CNDC's structure, is the division in charge of the National Registry and receives and issues all notifications to and from the CNDC.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>The LDC states a category of leniency <i>plus</i>.</p> <p>Suppose an applicant cannot meet the requirements for full or partial immunity but, during the investigation, discloses a separate and distinct cartel for which it meets the criteria for full exemption. In that case, this applicant will be granted full immunity for the later cartel and a reduction of one-third of the sanction or fine that would otherwise have been imposed for their participation in the first cartel.</p>

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>The confidentiality of an applicant's identity seeking leniency is protected by the LDC.</p> <p>Criminal or civil courts involved in legal proceedings arising from competition law violations are prohibited from ordering the disclosure of any statements, information, or evidence provided by an applicant in compliance with their duty of cooperation in the context of a leniency request.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>A leniency request denial is among the decisions that can be appealed before the courts.</p> <p>The LDC provides that if the Enforcement Authority denies an applicant's request for leniency, the application cannot be considered an admission of guilt or wrongdoing by the applicant, and the information and evidence obtained from the application may not be used or disclosed by the competition authority.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>A leniency application should be filed to the Registry Directorate, the division that receives and issues all notifications to and from the CNDC, in a sealed envelope.</p> <p>Address: Av. Pres. Julio A. Roca 694, C1067ABO. Ciudad Autónoma de Buenos Aires, Argentina.</p> <p>Phone number: +54 9 11 4349-3480</p> <p>Hours: 9:30 to 18:00</p> <p>Competent officer: Ms. Micaela Perez Moreno or Mr. Martin Ataefe —both Directors in the Anticompetitive Conducts Directorate, the unit within the CNDC currently in charge of prosecuting anticompetitive activities.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>The leniency program allows the potential applicant to communicate their intention to apply for leniency and submit a formal application with the necessary information, documentation, and evidence.</p> <p>The CNDC then evaluates the submitted data and grants a conditional benefit, subject to the applicant's cooperation throughout the procedure.</p> <p>After assessing the information and evidence provided and ensuring the applicant's cooperation, the authority may grant the benefit definitively.</p> <p>It should be noted that although a regulation outlining the procedure for leniency requests is currently being drafted, potential applicants should assume that the agency has the power to revoke the conditional leniency benefit up until the definitive granting of immunity.</p>

<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>"Affirmative leniency" is neither explicitly permitted nor prohibited by the LDC.</p> <p>LDC does not have a clear stance on whether the Agency is allowed to approach potential leniency applicants to encourage them to come forward with information on anticompetitive practices.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>The confidentiality of an applicant's identity seeking leniency is protected by the LDC. Also, Decree 418/18 specifically states that all officials involved must preserve rigorous confidentiality on matters and data submitted to them in the context of an immunity request procedure.</p> <p>Correspondingly, civil and criminal courts handling legal proceedings arising from competition law violations are prohibited from ordering the disclosure of any statements, information, or evidence provided by an applicant in compliance with their cooperation duties in the context of a leniency request procedure.</p> <p>In the event the Enforcement Authority rejects the application for immunity, the information and evidence obtained in the context of the immunity request cannot be used nor disclosed to other governmental entities or the general public.</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>No</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>N/A</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>N/A</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>N/A</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>N/A</p>

<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>N/A</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>N/A</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>N/A</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>N/A</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Yes, as indicated by Act 27.442, and Decree 480/2018.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>Any type of anticompetitive conduct (cartels, minor coordinated conducts and unilateral conduct) is eligible.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>The CNDC follows a "case-by-case" approach to decide on commitments.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>Both.</p>

<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>Under LDC's Section 45, a company accused of anticompetitive conduct may voluntarily submit a commitment to the Agency, which involves immediate or gradual termination of the business practices contested by the Agency.</p> <p>The company must present the commitment before the CNDC issues a resolution on the case. The Enforcement Authority can conditionally approve the commitment, and the proceedings are suspended if accepted.</p> <p>If, after three years, it is evident that all conditions have been complied with and there is no recurrence of the conduct, the case is closed. Only the alleged offender of the anticompetitive conduct can initiate the process, which is subject to the Enforcement Authority's approval.</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No.</p>
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	<p>To ensure commitment compliance, the Agency launches a "verification incident" where it consults with competitors, customers, suppliers, or any third party affected by the anticompetitive conduct.</p> <p>The verification assesses the evolution of the market conditions since an accused company engaged in anticompetitive behaviour and certifies whether it has ceased.</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	<p>According to the LDC's Section 45, a company accused of anticompetitive conduct can submit a voluntary commitment to the Agency, which involves ending the contested business practices.</p> <p>The Enforcement Authority can conditionally approve the commitment—and proceedings are suspended—but it can also reject them.</p> <p>Whichever decision is reached by the Enforcement Authority, the LDC does not deem it contestable. Nonetheless, the court will consider whether it causes irreparable injury to either the plaintiff (if the investigation began with a complaint) or the defendant. If it does, it has the ability to assess it on the merits and either affirm or overturn it.</p>

9. Investigative powers of the enforcing institution(s)⁸

⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Among the investigative measures available there are requests for information, subpoenas, under-oath third-party depositions, expert opinions, searches or raids on the alleged wrongdoer's premises, and also searches on electronic or computer devices.</p> <p>Some of these measures may require the prior and express approval of the Enforcement Authority or a court warrant.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>The Agency may—with the prior and express approval of the Enforcement Authority—search alleged wrongdoers' premises, vehicles and personal belongings (such as electronic or computer devices) in the context of an antitrust inquiry.</p> <p>These measures also do require a court warrant.</p>
<p>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</p>	<p>There is no established case law on inspecting servers located abroad during antitrust investigations. However, the LDC does not explicitly prohibit the CNDC from conducting such inspections. It is worth noting that inspecting servers outside of Argentina's territory may be subject to international treaties and the laws of the jurisdiction where the servers are located and that cooperation from foreign authorities may be essential.</p> <p>As far as the CNDC is aware of, no existing case law in Argentina would provide guidance nor any other national agency that has been required to deal with this issue.</p> <p>Thus, the Agency will approach any future inspection of servers located abroad with consideration of the legal framework of the relevant jurisdiction.</p>
<p>D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>It is controversial whether evidence obtained outside the scope of an authorisation allowing inspection can be seized or used as evidence in another case. However, if the evidence is immediately brought to the attention of the investigated parties, the Agency could potentially use it against them in different proceedings. Despite this, if the person under investigation has the right to dispute the evidence used against them, it could be admissible in a case involving them. Nonetheless, this solution is susceptible to various arguments, such as the doctrine of the fruit of the poisonous tree, which highlights the risk of using illegally obtained evidence.</p>

⁹ “Searches/raids” means all types of search, raid or inspection measures.

<p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>In rare situations, defendants in Argentina have challenged in court certain investigative actions taken by the Agency and the Enforcement Authority. It has also been disputed whether interim measures taken during an antitrust inquiry were permissible.</p> <p>These issues have arisen mainly because of various requirements set forth by the LDC that have yet to be satisfied, most notably the TDC and the Secretaries' material establishment.</p> <p>Some of these challenges have succeeded, which has caused a closer look at the existing institutional framework and the authority given to the provisional Enforcement Authority.</p>
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10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>Fundamental due process-related rights in cartel cases are outlined in Chapter VI of the LDC. The procedure for imposing sanctions for anti-competitive infringements, including cartels and other forms of illegal coordinated activity, is described in this chapter.</p> <p>The LDC states that the Agency shall procure, whenever possible, that all procedural stages are conducted electronically.</p> <p>Barring exceptional circumstances, defendants and their attorneys shall always have access to the available information. However, third parties cannot gain access to the investigation record.</p> <p>If the Agency determines that a complaint is credible, it will serve the alleged offenders a copy of it. If the procedure starts ex officio, the Agency will provide the suspected offender with a written document outlining the circumstances and legal justification for its belief that their business activities may violate competition law.</p> <p>Alleged offenders will have 15 business days to offer any justification they deem appropriate.</p> <p>After reviewing the evidence gathered and the defendants' explanations, the Enforcement Authority—after the Agency releases a legal opinion assessing the factual and legal circumstances of the case—will decide whether to press charges against them formally.</p> <p>The defendants must be appropriately notified, and the indictment must clearly explain the unlawful behaviour being placed on them. The discovery phase follows.</p> <p>If there is an indictment, the alleged offenders will have 20 days to present their legal defence and submit relevant evidence that, in the defendant's view, allows ruling out any unlawful behaviour.</p> <p>After the discovery phase is over, defendants shall be given</p>
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	<p>the chance to make their case on the merits, and the Enforcement Authority will make a final decision within a maximum of 60 business days.</p> <p>Besides the protections granted by the procedure established in Chapter VI of the LDC, the National Criminal Code and the National Criminal Procedure Code provisions are also applicable in a supplementary capacity—to the extent that they are compatible with the LDC provisions. Among other due process rules and principles included here, there is the right of access to documents in possession of the Agency, the right to confront companies or individuals who make allegations against them, the right to legal representation before the Agency and the Enforcement Authority, and the right not to self-incriminate.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal cooperation? Please indicate the relevant legal provisions.</p>	<p>The investigation record and the material included therein are always kept confidential for everyone other than the defendants and complainants. In addition, defendants and complainants have the right to request that specific information they had submitted be kept confidential from a person with access to the record.</p> <p>As for the treatment of sensitive data, the LDC does not make a difference between the data obtained via compulsory legal order and the one provided voluntarily.</p> <p>It is also noteworthy that, on one hand, the LDC provides protection for the identity of leniency applicants. On the other hand, it states that criminal and civil courts involved in legal proceedings arising from competition law violations are prohibited from ordering the disclosure of any statements, information, or evidence provided by an applicant in compliance with their duty of cooperation in the context of a leniency request, including any competitively sensitive information.</p> <p>These rules, which are specifically stated in Section 34 of both the LDC and Decree 480/18, ensure the protection of competitively sensitive information held by the Agency, no matter how it was obtained.</p>

11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!

Under the LDC, actions arising from anticompetitive conduct are subject to a statute of limitations of 5 years after the infringement occurred. For continuous conduct, the statute of limitations begins to run when the anticompetitive conduct ceases.

There are several circumstances where the statute of limitations period may be interrupted.

This includes the filing of a complaint, the commission of another anticompetitive infringement or the filing of an application for leniency. Recall that, in accordance with the LDC, the Agency is required to serve a copy of the complaint to the alleged offenders if it finds the complaint to be credible. If the process is initiated ex officio, the Agency will give the suspected offender a formal statement describing the facts and the grounds upon why it has reasonable grounds to believe that their business activities may be unlawful under the LDC. The statute of limitations will be interrupted if any of these documents are appropriately notified.

The LDC allows the Agency and the Enforce Authority to use their discretion in suspending any procedural deadline through a reasonable decision.

B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!

There is no deadline, statutory or otherwise, for the Agency or the Enforcement Authority to decide on a case's merits, besides statute of limitations of 5 years after the infringement occurred or ceases.

<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>An appeal may be filed against those decisions issued by the CNDC which order:</p> <ul style="list-style-type: none"> a) The application of sanctions; b) The cessation or abstention from the anticompetitive conduct; c) The rejection of the complaint by the enforcement authority; d) The rejection of an application for the Leniency Regime; e) Resolutions issued that order the compliance with conditions which establish or order the cessation of or abstention from the anticompetitive conduct, in order to prevent the occurrence of damage, or to reduce the extent, continuation or aggravation of damage <p>The appeal shall be filed before the Agency within fifteen (15) working days of the decision being served. The Agency shall refer the appeal to the court with jurisdiction in the matter within ten (10) days, together with a response to the suit and the investigation record.</p>
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12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>In cartel cases under the LDC, several types of decisions can be made on the merits of the case. They include decisions that order the unlawful behaviour to cease, decisions to fine the alleged offenders, and decisions including remedies that the Agency deems most suited to prevent and mitigate the impact of the cartel. Additionally, the Enforcement Authority may request a court to split the companies involved—basically, a compulsory spin-off.</p> <p>In some instances, the Enforcement Authority may suspend a company from the National Registry of State Providers for up to eight years in a hardcore cartel case.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>Besides a more extended period of suspension from the National Registry of State Providers for hardcore cartel cases, there are no specific types of decisions applicable exclusively to hardcore cartel cases.</p>

<p>C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>LDC's Section 44 states that, at any stage of an investigation, the Enforcing Authority may impose compliance with certain conditions or mandate the immediate termination of any business practice that it assesses preliminarily as anti-competitive.</p> <p>Thus, when a business practice likely to be anticompetitive (<i>likelihood of prevailing on the merits</i>) is causing or could cause severe distortion or imminent damage to the competition process in a given market (<i>showing of irreparable injury if relief is not granted</i>), The Enforcement Authority may mandate interim measures that look more likely to avoid or mitigate the damage.</p> <p>Under the current institutional arrangement, the Agency issues a non-binding legal opinion advising whether an interim measure is admissible or not in a particular case, and the Enforcement Authority issues the respective order.</p>
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13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>Anyone who hinders or obstructs an investigation or fails to comply with the Agency information requirements may be subject to fines. This includes failing to provide incomplete or false information, submitting to an inspection, appearing at a hearing, and refusing to hand over books or papers.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>The sanctions the Agency or the Enforcement Authority can impose for non-compliance with procedural obligations, such as failure to deliver requested information, are exclusively monetary. The purpose of these penalties, which are regarded as administrative punishments, is to incentivize compliance with procedural requirements.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>According to the LDC, anyone who unduly interferes with an investigation, whether suspected offender or a third party, may be sanctioned for a procedural infringement.</p>

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹¹ Only for agencies which answered “yes” to question 2.B. above

<p>D. Criteria for determining the sanction / fine:</p>	<p>The LDC does not provide specific criteria for determining the penalty amount or the sanction imposed on parties for procedural breaches.</p> <p>The decision on the amount of the fine or sanction depends on the facts of the case and the severity of the violation. The CNDC has discretion to consider the gravity and nature of the breach when imposing fines, and the penalties can vary depending on the circumstances of the case.</p> <p>The fines are intended to serve as a deterrent and to ensure compliance with the procedural obligations under the LDC.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>The fine for procedural violations is up to 500 mobile units per day. A mobile unit is a unit of account whose value in Argentine pesos is adjusted annually.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>In cartel cases under the LDC, several types of decisions can be made on the merits of the case. They include decisions that order the unlawful behaviour to cease, decisions to fine the alleged offenders, and decisions including remedies that the Agency deems most suited to prevent and mitigate the impact of the cartel. Additionally, the Enforcement Authority may request a court to split the companies involved.</p> <p>In some instances, the Enforcement Authority may suspend a company from the National Registry of State Providers for up to eight years in a hardcore cartel case.</p> <p>Legal entities are liable for conduct carried out by individuals who had acted on behalf of or for the benefit of the legal entity, even when the act that served as the basis for the representation is ineffective.</p> <p>When illegal conduct is carried out by a legal entity, the penalty will also be applied jointly to its directors, managers, administrators, trustees or members of the Supervisory Board, agents or legal representatives who, due to their action or negligence, lack of supervision or surveillance, have contributed, encouraged or allowed the violation.</p> <p>In such a case, a complementary sanction of disqualification to engage in business from one (1) to ten (10) years may be imposed on the legal entity and the persons enumerated above.</p> <p>Joint liability may reach the controlling persons or entities when their action or negligence in performing their duties of control, supervision or surveillance over the offender have contributed, encouraged or allowed the violation.</p>
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<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>The criteria for determining the sanction/fine in antitrust cases include various factors such as the seriousness of the infringement, the damage caused to those affected by the prohibited activity, the benefit obtained by those involved in the prohibited activity, the deterrent effect of the sanction, the value of the assets involved, <i>mens rea</i>, duration, and participation of the offender in the market, the size of the market affected, the duration of the practice, the background of the person responsible, and their financial capacity.</p> <p>The offender's cooperation throughout the investigation may be taken into account by the Agency as a mitigating factor when considering the penalty.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Those who carry out acts prohibited by the LDC shall be punished with a fine of (i) up to thirty percent (30%) of the turnover associated with the products or services involved in the unlawful act, during the last financial year, multiplied by the number of years of duration of such act, which amount may not exceed thirty percent (30%) of the nationally consolidated turnover recorded by the economic group to which the offenders belong, during the last financial year, or (ii) up to twice the economic benefit reported by the unlawful act committed.</p> <p>If the fine can be calculated according to the two criteria set out above, the higher fine shall apply.</p> <p>If the fine cannot be determined according to these criteria, the penalty may be up to the equivalent of two hundred million (200,000,000) mobile units.</p> <p>Fines will be increased for offenders who have previously been sanctioned for anti-competitive infringements within the last ten (10) years.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are no published guidelines regarding the calculation of fines.</p>
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>Any challenge to a decision imposing a sanction/fine shall be granted with suspensory effects if the alleged offender can provide guarantees (in form of insurance) that the Agency believes that reasonably safeguards payment.</p> <p>Appeals against daily fines shall be granted with non-suspensory effects.</p>

D.

15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Under the LDC, a specific appeal procedure allows defendants to appeal decisions made by the Enforcement Authority.</p> <p>This appeal procedure applies to decisions related to the application of penalties, orders to halt specific business practices, merger prohibitions or the imposition of remedies, dismissal of complaints, rejection of requests for admission to the leniency programme, and decisions ordering an injunction or interim measure.</p> <p>A decision adopted in a cartel case—whether a fine or an order to stop specific conduct—may be subject to appeal before courts.</p> <p>Grounds for appeal may include questions of law or fact and breaches of procedural requirements.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>The challenges against a decision of the Enforcement Authority should be made before the Specialised Competition Defence Court of Appeals as established by Chapter XI the LDC.</p> <p>However, as this court has not been established, yet, challenges lie with the Federal Commercial Court of Appeals with jurisdiction in the place where the misconduct was supposedly carried out.</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>LDC's Chapter IX establishes that individuals or entities affected by activities prohibited under competition law may seek compensation for damages and losses under conventional tort law before the appropriate court.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>The LDC does not establish specific rules on this matter. Any tort claim for damages caused by anticompetitive violations is governed by the Civil Code's general rules concerning civil liability.</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages</p>	<p>LDC does not establish specific rules on this matter. Any tort claim for damages caused by anticompetitive violations is governed by the Civil Code's general rules concerning civil liability.</p>

in which these materials are available]	
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Individuals or companies who have suffered damages or losses due to actions in breach of competition law may seek compensation in the appropriate court under LDC's Chapter IX and the Civil Code's general rules concerning civil liability.</p> <p>In cartel and unilateral conduct infringements, private antitrust causes of action can emerge, and victims of such violations can be awarded monetary damages as compensation.</p> <p>The court will assess the settlement amount depending on the offence's seriousness and other relevant considerations. It is important to emphasise that, depending on the facts of the case, various sorts of compensation may be possible.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>Once finalised, the Enforcement Authority's decision concerning the breach of the LDC will serve as <i>res judicata</i> in this case.</p> <p>The court hearing a tort claim will base its decision on the extent of damages on the evaluation done by the Enforcement Authority in its opinion.</p> <p>Finding infringement by the Enforcement Authority significantly impacts the plaintiff's case seeking relief to establish liability for the defendant's misconduct and also helps streamline the litigation process, as the Enforcement Authority's conclusions may be relied upon by the court without the need for further extensive discovery.</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Yes.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>Individuals or companies who successfully apply to the LDC's leniency program may be exempted or reduced from civil liability by the Enforcement Authority.</p> <p>Nonetheless, a successful leniency applicant will be jointly and severally liable before its direct and indirect buyers or suppliers; and (ii) other injured parties when full compensation for the damage caused by the other companies involved in the same cartel infringement proves unattainable.</p>

<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>N/A</p>
<p>I. Information about class action opportunities</p>	<p>N/A</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>N/A</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> ● Role of your competition agency in the damage calculation (if at all) 	<p>The LDC does not establish specific rules on this matter. Any tort claim for damages caused by anticompetitive violations is governed by the Civil Code's general rules concerning civil liability.</p> <p>Neither the Enforcement Authority nor the Agency currently plays a role in the damage calculation procedure.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> ● can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? ● is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? ● summary of the rules regulating the disclosure of confidential information by the competition agency to the court ● summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>In Argentina, private enforcement is complex, and it is necessary to have more case law on the subject. Under Section 34 of the LDC, processes are open for defendants and complainants but confidential for third parties.</p> <p>Assume the court requests evidence from the case record from the Agency. In those circumstances, the first step is to inform the court of the confidentiality principle and ask the judge to release the Agency of this burden. Any request for information, however, is still a court order that must be heeded.</p> <p>When assessing whether to provide the information, it may be necessary to consider factors such as if a third party has already provided the information the court is requesting, the need to ask for the judge to take measures to prevent disclosure and to inform the court that only the information contained in the resolution/decision of the authority is public.</p> <p>The confidentiality of an applicant's identity seeking leniency is protected by the LDC. Also, Decree 418/18 specifically states that officials involved in an immunity request procedure must preserve rigorous confidentiality on matters and data submitted to them</p> <p>Correspondingly, civil and criminal courts handling legal proceedings arising from competition law violations are prohibited from ordering the disclosure of any statements, information, or evidence provided by an applicant in compliance with their cooperation duties in the context of a leniency request procedure.</p>

	<p>In the event the Enforcement Authority rejects the application for immunity, the information and evidence obtained in the context of the immunity request cannot be used nor disclosed to other governmental entities or the public.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>The concept of passing on is not explicitly addressed in the LDC.</p> <p>Caselaw on this issue is scarce and passing on has been partially allowed as a defence in a case adjudicated under the previous competition act. This solution aligns with the general principle of civil liability, which requires that a potential plaintiff must have suffered harm to seek damages.</p> <p>As a result, an individual or entity seeking compensation for antitrust breaches must demonstrate that a real loss was experienced, and a court will award damages based on the actual harm sustained.</p> <p>Argentina's tort law is more expansive than that of the United States, and indirect purchasers may sue individuals or corporations sanctioned for LDC breaches.</p>