



VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY:

URUGUAY



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LAW AND POLICY:

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I. ECONOMIC, POLITICAL AND SOCIAL CONTEXT¹

The Eastern Republic of Uruguay is located in South America and is bordered to the northeast by Brazil, to the west by Argentina, to the southwest by the Atlantic Ocean and to the south by the Rio de la Plata. It has a population of approximately 3,467,054 inhabitants² and an area of 176,215 km².

The form of government established by the Constitution³ is a republican democracy. Sovereignty is exercised directly by the electorate through elections, initiatives and referendums and indirectly by the people's representatives. The political system is based on the principle of the separation of powers.

Executive authority is exercised by the President, in conjunction with the relevant minister or ministers or with the Council of Ministers. If the presidency is temporarily or definitively vacant, the Vice-President exercises the same powers and performs the same duties.

The President is both the Head of State and the Head of Government and is elected for a five-year term that cannot be renewed until at least one term has lapsed since the end of his or her mandate. Mr. Tabaré Vázquez, of the Frente Amplio party, has been President of Uruguay since 1 March 2015.

Legislative authority is exercised by the General Assembly, which consists of the House of Representatives and the Senate. Parliamentary elections are held concurrently with presidential elections.

Judicial authority rests with the Supreme Court, tribunals and courts. The General Assembly appoints the members of the Supreme Court, which is the final level of appeal and is responsible for ensuring the constitutionality of laws.

Uruguay stands out among Latin American countries for having a long and strong democratic tradition that has broken down on only two occasions. The first was in 1933 when a coup d'état resulted in the dissolution of parliament and censorship of the press. The second occurred during the military dictatorship of 1973-1984. The country also stands out in the region for its high social and economic standards, largely attained or consolidated in the last century.

The history of Uruguay in the twentieth century is characterized by four stages: the consolidation of democracy, social reform and economic prosperity

(1903-1930); the economic and political crisis, restoration of democracy and growth through import substitution industrialization (1930-1958); economic stagnation, the fragmentation of traditional political parties, the rise of the left and the military dictatorship (1959-1985); and the restoration of democracy, the entry of Uruguay into the Southern Common Market (MERCOSUR) and the crisis of 2002.⁴

During the first stage, key political, social and economic reforms were undertaken under the leadership of José Batlle y Ordóñez; for example, universal and secret suffrage, free and fair elections, the separation of Church and State, and the eight-hour work day were introduced. The State played a central role in the economy and the provision of public services. In the first half of the twentieth century, the country built a wealthy, integrated and modern society.

The country's economy was based primarily on agricultural products and livestock. The import substitution model was intended to promote industrial development. However, the country fell into crisis in the early 1950s as a result of a drop in commodity prices. This period was marked by economic stagnation and social unrest. The bipartisan political system, made up of the Partido Colorado and the Partido Nacional, began to change in 1960. Small leftist parties joined with other groups and dissident leaders from traditional parties to form a new political party called Frente Amplio. Following the 1971 election, the traditional parties began to systematically shed votes, leading to the election in 2004 of Frente Amplio, which went on to be the majority party for three consecutive terms.

The economic, social and political crisis led to a coup in 1973 and a 12-year military dictatorship that ended in 1985. After the Constitution was reinstated, economic and State reforms were gradually implemented by successive governments of the traditional parties. However, while the democratic transition was rapidly concluded, various privatizations and State reforms were blocked by the leftist opposition and social organizations.

In that context, the traditional parties converged on the centre right of the ideological spectrum, advocating pro-free market reforms, such as the demonopolization of certain markets and the privatization of State enterprises. Frente Amplio took on the role of defender of State-owned enterprises and workers' rights.

Nowadays, the insurance market, the pension system and the mobile telephone network operate as competitive markets in which State-owned enterprises participate. However, some sectors, such as fuel or landline telephone networks, are still State monopolies.

Even though during most of the 1990s economic growth rates were around 5 per cent and inflation and unemployment rates were around 10 per cent, that phase ended in 2002 with a deep recession and a financial crisis.

The Uruguayan banking system had traditionally acted as a regional financial centre thanks to its liberalized regulations and reliability, and Argentine savers had been depositing their money in Uruguayan banks for several years. When the economic crisis hit Argentina in 2001, depositors from that country made a run on the banks, prompting the State to inject considerable amounts of cash to shore up struggling banks. Since then, some requirements and control of the banking system have been tightened and the share of non-resident deposits has decreased. The system is currently well-capitalized, with high levels of international reserves and liquidity, and low non-performing loan ratios.

In the 1990s, Uruguay also began to liberalize its foreign trade when it joined MERCOSUR. Most of its exports went to Argentina and Brazil. However, as a consequence of the 2002 crisis and its impact on imports, foreign trade policy was widened to include other countries, chiefly the United States of America. Currently, 77 per cent of exports go to 15 different markets.⁵ Exports were a key element in the recovery starting in 2003.⁶

Thanks to the roll-out of programmes to introduce macroeconomic adjustments, strengthen the financial system and restructure public spending, the country recovered well from the 2002 crisis.⁷ According to the World Bank, the country's economic growth in the last decade has been inclusive and has led to a reduction in poverty and more widely shared prosperity.⁸

In July 2013, the World Bank ranked Uruguay as a high-income country. Its gross national income per capita was US\$ 16,810 in 2014, having grown at an average annual rate of 5.2 per cent between 2006 and 2014.⁹

Moderate poverty declined from 32.5 per cent in 2006 to 9.7 per cent in 2014, while extreme poverty

practically disappeared — falling from 2.5 per cent to 0.3 per cent over the same period. In terms of equality, the income of the poorest 40 per cent of the Uruguayan population rose by 5.8 per cent between 2003 and 2013. This sound macroeconomic performance was also reflected in the labour market, which recorded a historically low unemployment rate in 2014 (6.6 per cent), although, given the current slowdown, it increased to 7.4 per cent in June 2015.¹⁰

Uruguay is a regional leader in various welfare indicators. In 2014, the country's Human Development Index was 0.793, placing it in the high human development category. Uruguay ranked 52nd out of 188 countries, higher than the category average (0.744) and higher than the average of countries in Latin America and the Caribbean (0.748). Between 1980 and 2014, its Human Development Index rose from 0.664 to 0.793, an increase of 19.4 per cent, or an approximate annual average increase of 0.52 per cent.¹¹

In 2014, Uruguay obtained a score of 68.6 on the Index of Economic Freedom, according to which it is a moderately free country and ranks 43rd out of the 178 countries that have been evaluated. It is in fifth position at the regional level.¹²

According to the Human Opportunity Index, Uruguay has also achieved a high degree of equal opportunity in terms of access to basic services such as education, drinking water, electricity and sanitation.¹³

In light of the foregoing, there is no doubt that the country's transformation in recent years has been very successful. Its main challenge now is to achieve sustainable economic development. The country remains structurally vulnerable owing to its size, dependence on the performance of neighbouring countries and foreign markets, and its high dollarization level.

A. Background information on competition law

The Constitution of Uruguay contains two provisions that set out the principles of competition and form the basis of a market economy. First, article 36 safeguards freedom of industry and trade,¹⁴ stating: "Every person may engage in labour, farming, industry, trade, a profession or any other lawful activity, except where restricted by law for reasons of public interest."

Second, article 50 establishes State control over trustified commercial or industrial organizations:

The State shall guide the foreign trade of the

Republic, by protecting productive activities whose purpose is exportation or the replacement of imported goods. The law shall promote investments to this end, preferably using public savings. All trustified commercial or industrial organizations shall be subject to the supervision of the State comptroller. Likewise, the State shall launch decentralization policies to promote regional development and general well-being.

However, for a long time these provisions were not reflected in law in a way that would appropriately promote and protect the principles of competition. According to Daniel Hargain, a professor of commercial law and international trade law and a lawyer specialized in competition law: "Given that neither of these two rules had been reflected in the law, their implementation was nearly impossible, rendering them useless in preventing anticompetitive conduct."¹⁵

The first legislative step was the promulgation of the Act on Public and Private Services, Public Safety and Conditions for the Development of Productive Activities of 29 June 2000 (Act No. 17.243), which laid down the first rules on competition in Uruguay. Its three articles defined the scope of the Act, drew up a list of prohibited practices and provided for the possibility of arbitration in any dispute. The Act, according to some experts, was "rudimentary and difficult to implement".¹⁶

Under article 13 of Act No. 17.243, all businesses engaged in economic activities were subject to competition rules, except where provided for by law for reasons of public interest or if the business was considered a public service. Article 14 enumerated the prohibited practices, including certain types of agreements and concerted practices, as well as abuse of dominant position, which have the effect of

interest. For some, this constituted the main obstacle to the implementation of Act No. 17.243 insofar as the "biggest problem with the initial law was the need to demonstrate harm to the public interest".¹⁷

Article 15 stipulated that any dispute could be taken to arbitration, in accordance with the General Procedural Code.

The aforementioned rules were subsequently supplemented by the 2001 Budget Act (Act No. 17.296) and Decree No. 86/001 of 28 February 2001, which established the Directorate-General for Trade within the Ministry of Economic Affairs and Finance as the enforcement agency.

Article 158 of Act No. 17.296 set forth the responsibilities and powers of the enforcement agency, which can be summarized as follows: (a) to request information from public institutions and individuals in fulfilment of their obligations; (b) to set up specialized arbitration centres; (c) to issue opinions on matters submitted to it for consideration; (d) to enforce the penalties provided for by law; (e) to request the collaboration of specialized bodies to carry out inspections, investigations, expert analyses, audits and checks; (f) to summon those under investigation and third parties for the purpose of obtaining information; (g) to apply to the competent judge for the adoption of precautionary measures; (h) to develop and submit for consideration by the executive branch a procedure for determining that prohibited conduct has occurred and for enforcing penalties; and (i) to encourage the signing of agreements, settlements or undertakings to cease and desist in matters submitted for its consideration.

Article 157 laid down the penalties for anticompetitive practices, namely dismissal, the temporary or definitive cessation of the conduct and its effects, and a fine ranging from 500 to 20,000 Indexed Units (U).¹⁸ The gravity of the offence was determined on

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