

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Designing publicly funded healthcare markets – Note by Argentina****26 November 2018**

This document reproduces a written contribution from Argentina submitted for Item 4 of the 66th OECD Working Party 2 meeting on 26 November 2018.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/designing-publicly-funded-healthcare-markets.htm>

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JT03438799

Argentina¹

1. Introduction

1. The healthcare system in Argentina combines a publicly funded service provision with private healthcare providers. Specifically, the Argentine healthcare system is composed of three sectors explained below.

- A public health care sector, including the national and provincial ministries as well as the network of public hospitals and primary health care units. The public health sector is funded with general taxes and payments made by social security when its beneficiaries use public health care facilities. Because provision of health services is free in the public health care sector, it is primarily used by the poor and uninsured population, which represent about 34% of total population.
- A social security sector, organised in social insurance entities (the so-called *Obras Sociales*, OS for its Spanish acronym), covering all workers of the formal economy and their families. OS are mainly funded with payroll contributions of employers and employees, although in some cases they may also receive funding from the national or provincial public budgets. Most OS operate through contracts with private providers. In 2015, about 53% of the population was a beneficiary of one OS, although this figure varies with the evolution of formal employment.
- A private health care sector, providing services to individuals, OS beneficiaries and people with private health insurance. This sector includes the private insurance companies called Prepaid Medicine Enterprises (EMP for its Spanish acronym), private hospitals and independent healthcare professionals.

2. The OS sector is very heterogeneous, with some national OS being managed by the labour unions or professional associations and others managed by the provincial governments. Workers are free to choose the OS to which they belong. The largest OS in terms of beneficiaries is the Instituto Nacional de Servicios Sociales para Jubilados y Pensionados, commonly known as PAMI, which provides health care insurance to the retired population and accounts for about 18% of the population covered by the social security sector.

3. Health insurance providers (both national OS and EMP) must provide at least a basic set of medical benefits to their beneficiaries, known as the Mandatory Medical Programme (PMO for its Spanish acronym).² Among others, the PMO specifies the percentage of the cost of medications that must be borne by the insurer, as well as a list of

¹ This contribution was prepared by Lucía Quesada and received comments from Cecilia de Mendoza and Federico Volujewicz. Contribution from the National Commission for the Defence of Competition, Argentina.

² This obligation does not apply to provincial OS, which are subject to each province's own regulations.

medical services whose cost the insurer must bear.³ The Superintendence of Health Services (*Superintendencia de Servicios de Salud*, SSS for its Spanish acronym), as the national OS and EMP regulator, is in charge of monitoring compliance with the obligations of the PMO.

4. A series of analysis of the pharmaceutical market in Argentina have concluded that prices for medicines in Argentina are higher than in other countries, even within Latin America. This is particularly the case for, although not restricted to, high cost medicines.⁴ In view of this, the Argentine government is redesigning the public procurement system for pharmaceutical products, aimed at reducing the price that both the public sector and individual consumers pay for medicines.

5. Two recent experiences in this area are developed in the following sections. These should be considered as first steps towards a more comprehensive public policy in the pharmaceutical market.

2. Designing a new procurement system for high-cost medicines in Argentina: Joint procurement of factor VIII for haemophilia A

6. In March 2018, for the very first time, four different public entities joined in the organisation of an international tender to procure factor VIII, a treatment for haemophilia A.⁵

- The Ministry of Health
- PAMI
- The SSS
- IOMA, the OS of the province of Buenos Aires.⁶

7. Haemophilia is a hereditary haemorrhagic disease characterized by the appearance of internal or external bleedings produced by the partial or total deficiency of a coagulant protein. There are two types of haemophilia: haemophilia A (factor VIII deficiency) and

³ The PMO is a basic bundle of medical services that includes preventive and ambulatory medicine; full coverage of mothers during pregnancy and childbirth; full coverage of children during the first year of life; scheduled visits to the doctor's office; emergencies; hospitalization; surgery of minor and greater complexity; mental health; odontology; physical therapy and speech therapy practices of rehabilitation; coverage of 40% of the cost of medicines and 100% during hospitalization; 100% of oncological medicines and medicines for chronic diseases; haemodialysis and dialysis; etc.

⁴ See, for example, Tobar, F. and J. Charreau, "Comparación internacional del precio de los medicamentos de alto costo: Argentina, Países del Cono sur, España e Italia", *Instituto de Estudios Sobre Políticas de Salud*, December 2011.

⁵ File EX-2018-04630637-APN-DCYC#MS, ADQUISICIÓN DE FACTOR VIII PARA EL TRATAMIENTO DE HEMOFILIA TIPO A, information available at <https://comprar.gob.ar/BuscarAvanzado.aspx>, process number 80-0004-LPU18.

⁶ IOMA's beneficiaries are public employees of the province of Buenos Aires and their families. IOMA is the largest provincial OS in Argentina. As provincial OS, IOMA is not regulated by the SSS.

haemophilia B (factor IX deficiency). It is a chronic disease affecting about 2,600 patients in Argentina.

8. In Argentina high cost medicines (such as factor VIII) are fully funded by the public sector. The SSS reimburses those national OS and EMP who pay for these medicines. For example, reimbursements applications of factor VIII received by the SSS accounted for 19% of total reimbursements in 2016. In 2016, total public expenditure on factor VIII was about ARS 3 trillion (USD 200 billion in 2016).⁷ Furthermore, factor VIII prices in Argentina seemed to be significantly above those in other countries. For example, in 2017 it was estimated that the price in Argentina was, on average, about 55% higher than in Paraguay, 220% higher than in Spain and almost 600% higher than in South Korea.

9. In addition, factor VIII is produced by many different laboratories under different brands and studies have shown that there is no difference in terms of efficacy among brands. Moreover, patients can change brands within the same treatment without adverse effects.

10. Finally, many countries in the world, such as Brazil, Chile, Colombia and Peru (Latin America) and Spain, UK, France and Germany (Europe) already jointly procured factor VIII.

11. Therefore, the market of this particular medicine had many characteristics that made it suitable for being a pilot experience in joint procurement:

- A small, stable and predictable consumption
- A high impact on public expenditure
- A potential for high reduction in prices
- Successful experiences in other countries
- Many providers with interchangeability among different brands

2.1. Objectives and results

12. In this context, the decision to jointly procure factor VIII was made with the following goals:

- Achieve coordination among public procurers to develop a national system of negotiation of joint purchases, which could be used for this and other medicines;
- Achieve savings for ARS 800 million (about USD 46 million in 2017) for a 12-month period in the purchase of factor VIII in 2018, without altering the quality of the product;
- Ensure access to quality, safe and effective medicines, delivered on time;
- Strengthen transparency of administrative processes and reduce the risks of inappropriate practices, including collusion.

13. To achieve these goals, a task force was put in place to design both the strategy and the process. This task force included one political and one medical representative of each

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The average exchange rate in 2016 was 14.8 ARS/USD.

of the four entities and a consulting team from the anticorruption and the antitrust agencies. The latter with the idea of monitoring the process and the tender documents to prevent both corruption and collusion.

14. In order to minimize the opportunities for collusion, some presentations of factor VIII that are only produced by a limited number of pharmaceutical companies were excluded from the tender. In addition, no partial bids were accepted, to prevent agreements to allocate the market among different suppliers.

15. On 9 March 2018, bids were received in the COMPR.AR platform (<https://comprar.gob.ar/>). Nine pharmaceutical companies submitted bids. The experience was a huge success as the winning bid implied a reduction of about 80% in the price of factor VIII compared to the average paid by the four entities in 2017 and savings for ARS 1.4 billion, exceeding by 75% the target savings. Competition advocacy and an appropriate design of the tender documents were key components of this successful story. This was a first step towards a more competitive system for purchasing high cost medicines and an important signal to the industry.

3. Designing a new public procurement system for provision of pharmaceuticals for the elderly

16. PAMI is the OS that serves the retired population, people over 70 years-old without retirement benefits and veterans of the Malvinas war. It is Argentina's largest OS, both in terms of number of beneficiaries and in terms of expenditure in pharmaceutical products. In addition, PAMI covers up to 80% of the cost of outpatient medications and 100% of the cost of special treatments, which are those that include complex diseases and require high-cost medications. For this reason, PAMI accounts for a significant portion of the demand for medicines and represents between 35% and 40% of the total market for pharmaceutical products, which makes it the largest single buyer of medicines in Argentina.

17. PAMI's medicine procurement system directly affects the way in which the suppliers of pharmaceutical products compete and, ultimately, the price paid for medicines by the entire population. The remaining of the section explains the way PAMI had been structuring its dealings with the pharmaceutical industry until 31 March 2018, the potential distortions to competition this system implied, and the changes implemented starting on 1 April 2018.

3.1. Agreement between PAMI and the pharmaceutical industry

18. Starting in 1997, PAMI organised the provision of medicines to its beneficiaries through an agreement with the pharmaceutical industry. The agreement was signed by PAMI, on the one side, and three trade associations representing most of the pharmaceutical industry, on the other.⁸ The agreement establishes the discount that the pharmaceutical industry agrees to give to PAMI on the portion of the price that PAMI pays. In addition, PAMI delegates in the pharmaceutical industry the administration and management of the

⁸ The three trade associations are: CAEMe, which groups 39 multinational laboratories, CILFA, which groups 43 large and middle-sized Argentine laboratories, and COOPERALA, which concentrates around 100 small laboratories. Not included in this agreement is the association that represent laboratories specialised in generic products.

agreement. The agreement, however, does not regulate the price that end consumers will pay for medicines at the pharmacies, which is set by the laboratories.

19. Several distortions to competition have been identified in this agreement, to the detriment of PAMI, on the one hand, of PAMI's beneficiaries, and, more generally, of final consumers of medicines. In particular, negotiations with trade associations instead of individual pharmaceutical companies:

- Facilitate collusion in the pharmaceutical industry;
- Prevent PAMI from using its own bargaining power to influence final prices to consumers;
- Create barriers to entry to pharmaceutical companies not belonging to those associations, mainly generic pharmaceutical producers;

3.2. Changes introduced in 2018

20. Starting April 2018, PAMI changed the way it would contract with the pharmaceutical industry.⁹ The objective of this change is to reduce prices paid for medicines by final consumers. The main characteristics of the new agreement are explained below.

- The retail price for outpatient medicines will decrease by 5% with respect to the prevailing price as of 28 February 2018, without changing the percentage of the price covered by PAMI.
- For the case of oncological and special treatment medicines, price reductions are set at 46%, 63% and 70%, depending on the number of suppliers of each active ingredient as of March 2018. In addition, PAMI reserves the right to tender (individually or jointly with other entities) some oncological drugs during 2018.
- In all cases, quarterly updates of the retail price, which cannot exceed 70% of the change in CPI, are established.

21. In addition, with the new agreement PAMI recovers autonomy by keeping the power to set the commercial conditions that would apply individually to pharmaceutical companies and to pharmacists associations and the administration of the agreement, including payments and reimbursement approvals.

22. This new agreement should be seen as a first step towards a more competitive and consumer-oriented way of negotiating with the pharmaceutical industry, in particular, replacing negotiations with associations of pharmaceutical companies by negotiations with individual companies.

⁹ The CNDC has held informal meetings with PAMI and Chief of Staff officials to discuss the highlights of the new agreement.

4. Competition efforts in health care markets

23. The competition authority has recently issued two decisions involving local cartels in the health care markets. One case related to price fixing in the provision of pharmaceuticals in the province of Tucumán, while the other one concerned collusion in the provision of hospital services in the province of Salta.¹⁰

4.1. Price fixing of pharmaceuticals in the province of Tucumán

24. On 23 January 2018, the Secretary of Commerce imposed a fine on three associations of pharmacists in the province of Tucumán for fixing prices of pharmaceuticals, regulating advertising of pharmaceuticals and imposing limits to the operating hours of pharmacies.¹¹

25. The CNDC proved the existence of an agreement by which the three entities committed not to make discounts larger than 10% on the retail price of medicines and other perfumery products, and to regulate the opening and closing hours of pharmacies. Moreover, it was found that certain obligations prevented pharmacies from advertising over-the-counter medicines and perfumery products. Consumers were directly affected by the agreement, as they were prevented from obtaining better prices and quality of service provision.

26. Other restrictions imposed by these entities consisted of fighting all activity and competition from chains of pharmacies. Any pharmacy that wanted to operate in the province of Tucumán was forced to adhere to these entities to be part of the collecting system for pharmaceutical benefits and have access to the main OS and EMP, which represents a restriction to free competition. Moreover, these entities established sanctions for those pharmacies that would like to compete through lower prices or better services. The sanctions consisted of the exclusion from the providers lists of the three entities and, therefore, from the collecting management service of the medicines covered by the largest OS in the province.

4.2. Collusion of hospitals in the province of Salta

27. In June 2012 the CNDC received a complaint from the Secretary of Consumer Protection of the Ministry of Government of the province of Salta regarding a cartel agreement between 15 clinics in the cities of Salta, Tartagal and Metán (province of Salta). The agreement consisted of fixing prices for the provision of hospital services to OS and EMP. The participants of this agreement were the clinics associated in the Association of

¹⁰ Health care provision has provincial jurisdiction in Argentina, while the CNDC has national jurisdiction and, therefore, intervenes in both national and local cases.

¹¹ Resolution SC No. 47/2018, dated 23 January 2018 and Opinion CNDC No. 94 dated 7 November 2017, in the case entitled “Colegio de Farmacéuticos de Tucumán s/Infracción Ley 25.156 (C. 1462)”. In addition to the fines imposed, the three associations were ordered to refrain from prohibiting competition among their associates, to allow discounts on medicines and perfumery products, to allow advertising that fits within the current legal framework and not to interfere in the setting of working hours of their associated pharmacies. In this sense, the entities were ordered to modify or eliminate the articles of their internal norms and the code of ethics that could impose barriers or hinder competition among pharmacies.

Private Clinics and Sanatoriums of the Province of Salta, (ACLISASA) and other non-associated clinics. ACLISASA was used as an instrument to set up the cartel.

28. As a consequence of this agreement, OS and EMP were forced to, either increase the cost of medical insurance or rationalize the use of medical benefits, providing a poorer service to their clients. In any case, the harmful effects of the price agreement directly affected the welfare of the users of sanatoriums services in Salta.

29. On 31 July 2017, the Secretary of Commerce imposed a fine to the clinics and ACLISASA.¹² At the same time, it initiated an ex officio investigation against the Argentine Confederation of Clinics, Sanatoriums and Hospitals (CONFECCLISA) for elaborating and disseminating the referential values for the clinics benefits to its members. The behaviour of CONFECCLISA could fit within the conducts prohibited by the Argentine competition law, such as possible concerted price fixing, exchange of information with the same object or fixing, imposition or practice of agreements with competitors in relation to prices and conditions of purchase or sale of goods, provision of services or production. If proven, this would be a national cartel.

5. Conclusions

30. Designing efficient and competitive public procurement systems for pharmaceutical products is a fundamental tool to achieve efficiency in public healthcare budget allocation. The two stories presented in the Sections 2 and 3 are steps in that direction. The challenge, therefore, is to move forward, replicate the joint procurement system to other high-cost medicines, and deepen the reforms in the way PAMI and other OS deal with the pharmaceutical industry.

31. In order to contribute to this discussion, the CNDC is currently finishing a study of the market for pharmaceuticals, whose conclusions and main recommendations will be soon publicly available.

32. On the other hand, the CNDC has made enforcement efforts in the area of pharmaceuticals and provision of hospital services that would result in a more efficient allocation of the OS budgets, which, as explained, is funded by payroll contributions and/or national and provincial budgets.

¹² Resolution SC No. 598/2017, dated 31 July 2017 and Opinion CNDC No. 53 dated 27 July 2017, in the case entitled “Asociación de Clínicas y Sanatorios Privados de Salta, Círculo Médico de Salta y otros s/Infracción Ley 25.156 (C. 1440)”.