

COMMUNIQUE OF THE
ARGENTINE NATIONAL CONTACT POINT (ANCP)
for the OECD Guidelines for Multinational Enterprises
as closing of the specific instance “*Maxiconsumo S.A. v. Molinos Río de la Plata S.A.*”

Buenos Aires, Argentina,

23 January 2019

The functions of the Argentine National Contact Point (ANCP) are to promote the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) and to contribute to the resolution of issues related to their implementation. The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards.

The ANCP is the authority in charge of receiving claims involving non-observance or breach of the OECD Guidelines for Multinational Enterprises. The ANCP acts in compliance with its Procedure Manual and within the framework of the abovementioned Guidelines.

Specific Instance: “*Maxiconsumo S.A. c/ Molinos Río de la Plata S.A.*”

Complainant:

On 1 June 2018, Mr. Mario Gustavo Bosco, in his capacity as attorney-in-fact for the enterprise Maxiconsumo S.A. submitted a Specific Instance to the Argentine National Contact Point (ANCP) alleging non-compliance with the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) by the enterprise Molinos Río de la Plata S.A.

On 4 June 2018, Maxiconsumo's attorney-in-fact lodged another submission to the ANCP reporting a new fact -Resolution No. 363, issued by the Secretary for Commerce on 22 June 2018- and attaching decision No. 28922880 by the National Commission for Competition Defence, dated 15 June 2018.

In its complaint, Maxiconsumo stated that Molinos had been one of Maxiconsumo's regular suppliers since the beginning of its operations (in the year 1993) and that it used to buy different mass consumption products of top brands that were specifically required by consumers.

As stated in the complaint, on 17 December 2014 Maxiconsumo received a certified letter from Molinos informing its decision to stop selling its products to Maxiconsumo, which it considered arbitrary.

Maxiconsumo's legal representative claimed that, after receiving the certified letter, Maxiconsumo ordered refrigerated food from Molinos following the agreed usual procedures for placing orders, on the understanding that the termination of the business relationship had been a misunderstanding.

However, as stated in the complaint, Molinos stopped processing Maxiconsumo's new orders.

On the basis of the above, Maxiconsumo decided to request the ANCP's good offices in the dispute with Molinos, asking the ANCP to:

- a. Declare the formal admissibility of the complaint.
- b. Accept the specific instance with the aim of offering its good offices to examine non-observance by Molinos of the OECD Guidelines.
- c. Facilitate dialogue and understanding between Maxiconsumo and Molinos in order to resolve the substantive issues raised in the complaint.

Procedure:

On 3 August 2018, the ANCP declared the Formal Admissibility of the specific instance regarding the Foreword and Chapters II ("General Policies") and X ("Competition"), since it considered that, *prima facie*, the complaint submitted by Maxiconsumo complied with the formal requirements set forth in the OECD Guidelines for Multinational Enterprises.

In addition, as stated in the Formal Admissibility report, the allegations made in the complaint were under investigation by a judicial body and by the National Commission for Competition Defence. However, the ANCP could participate in the proceedings through its good offices upon mutual agreement of the parties.

In this context, the ANCP had a meeting with Molinos' representatives in order to inform them of the complaint filed by Maxiconsumo and of the nature and scope of the specific instance procedure.

On 26 December 2018, Molinos' attorney-in-fact sent a notice to the ANCP informing that, considering the court proceedings filed with the Argentine Ordinary Court in Commercial Matters in 2017 and still pending, Molinos deemed it appropriate to seek resolution of the complaint submitted by Maxiconsumo to the ANCP through the abovementioned judicial procedure, since prior conciliation attempts had been made with no success.

Conclusion:

The ANPC has duly considered the arguments of the two parties involved and has acted within the framework of the powers and functions vested upon it by the OECD Guidelines, serving as a forum for discussion between the parties concerned.

It should be noted that the OECD Guidelines provide for the closing of the procedures of a specific stage when no agreement is reached by the parties or when either party is not willing to take part in the proceedings.

Nevertheless, the ANCP encourages the parties to consider finding a way to generate the conditions required to engage in dialogue and constructively work for the resolution of the issues in which they are involved.

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Ministry of Foreign Affairs, International Trade and Worship