



## COMPETITION LAW

# GONDOLAS LAW

Law No. 27,545, published on March 17th, 2020 in the Official Gazette, seeks to regulate the supply, display and distribution of products in supermarket shelves and virtual stores to accomplish four objectives:

- Protect competition in the market
- Contribute to transparent and competitive prices to the benefit of consumers
- Expand the offer, including and protecting the activity of Small and Medium-sized Enterprises (SMEs)
- Promote the supply of products from rural families and indigenous agricultural sectors

The provisions of this law are defined as of a public order significance, and are integrated with those dealing with consumer protection and competition (Laws No 24,240, 27,442 and Decree No. 274/2019 on, respectively, Consumer Protection, Competition and Fair Trade, and their complementary regulations).

Even when the law has yet not been regulated, it establishes that those included in this regime will have 120 days from its publication to make necessary adjustments and implement its provisions.



## 1. Scope and definitions of the law

### Definitions

#### Gondolas

Any physical space, furniture and/or shelf, where products of similar characteristics are displayed, including gondola ends.

***Does not include: exclusive freezers, display islands and displays adjacent to checkout lines.***

#### Virtual stores

Websites, mobile apps, online retail stores and the like.

### Regulated parties

#### Included

Supermarkets, minimarts, retail and wholesale supply chains (Section 1 of Law No. 18,425).

#### Not included

Store whose turnover be equivalent to those of the Micro, Small and Medium Enterprises (MiS-MEs), as defined by Law 24,467.

### Included products

The enforcement authority (to be determined by the Executive Branch) must prepare a list of the different categories of products included in this regime, which at least must include these products:

- Food
- Beverages
- Personal hygiene supplies
- Home cleaning supplies

## 2. Supply chain

### Relationship between stores and suppliers

**Maximum payment term to MiSMEs:** may not exceed 60 consecutive days.

**Interest:** suppliers may apply interest using the active interest rate set by Banco Nación.

**Advance payments:** suppliers may not be required to make any contributions or financial advances for any reason, nor stores may apply financial deductions or unilateral debits to them.

**Terms of delivery:** within the context of contractual negotiations, suppliers may not be requested to make free or below-cost deliveries, nor any other anti-competitive practice.

**Pricing and costs:** in price negotiations, suppliers may not be imposed those conditions or price variations agreed with third-party suppliers. It is prohibited for retailers to request suppliers the payment of reverse distribution costs or products replacements. All costs related to promotional discounts or derived from residues or faulty items must be established contractually and through fair and objective criteria.

**In writing:** contractual obligations or their amendments must be formalized in writing.

**Sensitive information:** agreeing to supply sensitive commercial information that is inappropriate for the commercial relationship or that implies information related to the supplier's relationship with other market operators, or competitors' information, is prohibited.



## Code of Best Business Practices of Retail and Wholesale Distribution

***The Code will be drafted by the enforcement authority and will be mandatory*** for those subject to the provisions of the law having a gross annual turnover in excess of 300,000,000 mobile units under Law 27,442 (to date, approximately USD 144.9 million), considering the turnover of all companies within their economic group.

Companies not included above may voluntarily join the Code through a procedure to be established by the enforcement authority.

### The Code shall:

- Include those practices considered abusive according to the law and competition, fair trade and consumer protection regulations
- Provide for the appointment of a corporate executive responsible to monitor compliance with the Code, and the notification of the appointment to the suppliers and the enforcement authority
- Establish an obligation to include in agreements alternative dispute resolution procedures, which may consist on private mediation and / or arbitration
- Provide for the periodic referral to the enforcement authority of the required information on compliance with the Code and the Value Chain Observatory created by it, as a sworn statement

**Written contracts entered into between retailers and their suppliers must incorporate a copy of the Code of Best Business Practices.**

## Special contracting regime for regional products suppliers

- Payment terms must not exceed 40 consecutive days
- Conditions for the delivery of products must be flexible and take into account sector-specific characteristics
- Requirements for contracting, distribution and sale should be simplified
- In case of late payments, suppliers may apply interest at the active interest rate set by Banco Nación, as long as there are no proven legal reasons for non-compliance







### 3. Display rules, sanctions and enforcement

#### Rules for the display of products

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- 1** | Lowest-priced products (per unit of measurement) must be displayed “at an equidistant height between the first and last shelf”.
  - 2** | In virtual locations, lowest-priced products (per unit of measurement) shall appear in the first display of products of the relevant category.
  - 3** | Twenty-five per cent of the available space for products of similar characteristics and different brands must be guaranteed for the exhibition of products made by national MiS-MEs, and / or produced by cooperatives and / or mutual associations, and an additional 5% for products originating from rural families or the indigenous agricultural sector.
  - 4** | Products from a single supplier or business group must not exceed 30% of the available space shared with products of similar characteristics. Products originated in not less than five suppliers or business groups shall be displayed in the gondolas.
  - 5** | Products of brands licensed by the same commercial group or companies linked or controlled by it will be considered of a single brand for purposes of the law.
  - 6** | In exhibition islands and exhibitors located next to checkout lines, 50% of the space must exhibit products made by national MiSMEs.
  - 7** | Imported products must not exceed the percentage of available space for each category of products determined by the enforcement authority, considering the ability of the national industry to meet the demand for the relevant products.
  - 8** | Domestic products produced by MiPYMEs, rural families or the indigenous agriculture sector that may be offered under the law must be highlighted in gondolas and virtual locations with an isologotype designed by the enforcement authority with the legend ‘Buy MiPYMEs’ and including the number of the law.
  - 9** | Anticompetitive exclusions of suppliers through the rental of spaces in gondolas or virtual locations, or the granting of preferential spaces in gondolas or virtual locations, are prohibited. In particular, the payment of royalties and / or commissions imposed by retailers that due to their characteristics or magnitude may compel a supplier to choose a single distribution channel will be considered an anticompetitive exclusion.



## Penalties and procedure

- 1** | The procedure and penalties established in the Fair Trade Regime -without prejudice to other penalties that may apply under Laws No. 27,442 or 24,240- shall apply.
- 2** | If the breach affects consumers, complaints may also be filed before consumer protection enforcement authorities.
- 3** | In cases where, due to lack of competition in the supply for a certain category of products, it may be temporarily impossible to meet the minimum limits established in the law, retailers shall inform the enforcement authority, within a period that may not exceed 30 days (extendable for a single time for the same period) the justified reasons for non-compliance and the expected adjustment period for them to comply with the provisions of the law.
- 4** | In that direction, before determining the lack of supply of products in a certain segment, retailers shall publish on the web portal to be determined by the enforcement authority for a term of 60 days the relevant products, prices, guaranteed annual demand and supply requirements, in order to ensure the search for new suppliers. The absence of suppliers will allow partial non-compliance with this law until a new local supplier may appear to satisfy the demand of the supply chains.
- 5** | The enforcement authority shall set up a free telephone line to receive complaints by consumers and consumer associations for lack of competition.



## Compliance

### Value Chain Observatory

A Value Chain Observatory is created within the auspices of the enforcement authority. The Observatory shall:

- Require and compile relevant information from the different stages of the production processes of the products that fall under the scope of the law scope in Argentina
- Have the duty of monitoring, advising, providing information and studying the operation of the value chain of the products that fall under its scope
- Advise the Public Administration bodies involved

### Ad honorem monitoring

Trade associations, trade chambers, cooperatives and others encompassing parties participating in the production and marketing of the products included in the law and consumer associations may monitor compliance with the law as an ad honorem collaborator, after having reached an institutional agreement providing for the registration and training of authorized individuals. The latter will be authorized to file complaints for breaches of the law.

*To see the complete content of the Law (available in Spanish), please refer to the following [Link](#).*

### For more information, do not hesitate to contact

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