

Kluwer Competition Law Blog

Argentina – Congress partially approves new Competition Law bill

Julián Peña (Allende & Brea) · Tuesday, November 28th, 2017

On November 22, 2017, the Chamber of Deputies approved the bill introducing a new Competition Law in Argentina (the “New Competition Law”). The bill will now go to the Senate for its approval, which may come as early as mid-December. The main changes that the New Competition Law contains are:

- **Per se hard-core cartels** – The New Competition Law establishes that hard-core cartels are to be considered *per se* unlawful, thus creating an exception to the general *rule of reason* framework of analysis.
- **Reform of the institutional framework** – The New Competition Law envisages the creation of the National Competition Authority (the “ANC”), as a decentralized and independent competition agency within the sphere of the Executive branch. The ANC’s authorities will be the Tribunal for the Defense of Competition, the Secretariat for Investigation of Anticompetitive Conducts, as well as the Secretariat of Economic Concentrations. The members of these bodies will have five year-terms which could be renewed only once, and can only be removed with proper justification.
- **Greater sanctions for anticompetitive conducts** – Fines shall be established according to whichever is the higher of the following criteria: (i) Up to 30% of turnover related to the affected products multiplied by the number of years that the illegal conduct lasted, a sum which may not exceed 30% of the national turnover achieved by the economic groups involved in the unlawful conduct during the previous fiscal year; or (iii) twice the illicit profit obtained. Recidivism will be subject to a duplication of the fine.
- **Introduction of a Leniency Program** – The creation of a Leniency Program which will fully exempt from any sanction to the first party that applies for leniency and meets certain requirements, and would reduce the fines between 50% and 20% for subsequent applicants that provide useful information to prove a collusion. The draft bill also contemplates the introduction of a Leniency Plus mechanism by which a leniency applicant will be entitled to a fine reduction of up to 1/3 for participation in the first cartel, if it provides useful information about a different cartel.
- **Changes in merger control** – The draft bill introduces various changes to the existing merger control system, notably, the implementation of a pre-merger control regime; an update and modification of the notification thresholds which were established in pesos in the 1999 reform (since then the Argentine peso was devaluated more than 15 times vis-à-vis the U.S. dollar) and the methods used for their calculation; and the introduction of a fast-track mechanism for transactions unlikely to affect competition.

- **Damages actions** – The draft bill allows any injured party to bring either stand-alone or follow-on damages actions as a consequence of infringements to the competition law.
- **Judicial review** – The draft bill provides for the creation of the National Competition Law Court of Appeals, which would act as the competent court in appeals of the ANC's decisions.

The Senate will most likely review the New Competition Law in the next few weeks, though this has not yet been confirmed.

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