

Argentina - Senate introduces minor changes to Antitrust Bill

Kluwer Competition Law Blog

April 26, 2018

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Please refer to this post as: Julián Peña, Federico Rossi, 'Argentina - Senate introduces minor changes to Antitrust Bill', Kluwer Competition Law Blog, April 26 2018,

<http://competitionlawblog.kluwercompetitionlaw.com/2018/04/26/argentina-senate-introduces-minor-changes-antitrust-bill/>

The Senate has approved with minor amendments the Antitrust Bill (the “Bill”) that had been approved by the Chamber of Deputies. The Senate introduced minor amendments to a few articles of the Bill, though none of them are substantial. The amended Bill will now be considered by the Chamber of Deputies and approval is likely to take place in the next few weeks. The main changes that the Bill contains regarding the current law are:

Per se hard-core cartels - The Bill 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 Bill envisages the creation of the National Antitrust 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 may 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 number of years that illegal conduct lasted, 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 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 to the ANC's decisions.

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