

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Argentina

Julián Peña (Allende & Brea) · Wednesday, January 25th, 2023

General considerations

During 2022 there have been no changes regarding the competition law since it was last enacted in 2018. The bill approved by the Senate in February 2021 amending certain aspects of the law, was not discussed at the House of Deputies during 2022 and is expected to lose parliamentary status in February 2023. In May 2022 the Antitrust Authority opened for consultation a review of the 2001 merger regulations. However, the final version of the new mergers had not been approved as of November 1, 2022.

The main change of competition policy in 2022 has been the consolidation of the Competition Authority's new interpretation of the concept of the "*general economic interest*", the ultimate goal of the competition law. In April 2022, the President of the Antitrust Authority gave a conference where he confirmed that, following the new trends in the United States with the neo-Brandeisian movement, the Antitrust Authority has decided to redefine the scope of the goals of the competition law by introducing a more flexible interpretation of the concept of the "*general economic interest*".

Accordingly, the Antitrust Authority has now broadened the interpretation of the "general economic interest", not related only to the consumer welfare standard but also to other goals considered necessary such as labour, environment, import-substitution, gender concerns, or others, at the Antitrust Authority's discretion. The same criteria have been reflected in the draft merger guidelines and in both merger cases and in the issuing of injunctions by the Antitrust Authority.

Merger control

The Antitrust Authority continued in 2022 a process started in 2021 with the issuing of various Objection Reports. The Objection Reports are preliminary public statements issued by the Antitrust Authority with the purpose of pointing out the antitrust concerns identified in a given transaction. In 2022, the three objection reports have been issued in an earlier stage of the investigation than those issued in 2021, which were the first ever to be issued since the objection reports had been introduced by the 2018 competition law. Additionally, the issuance of the objection reports in 2022 came along for the first time with injunctions.

In 2022, the Antitrust Authority has conditioned one transaction (up to November 1, 2022) and has imposed late filing fines in 7 different mergers (both to local and to cross-border transactions).

Conducts

In April 2022, the Antitrust Authority imposed a sanction for cartel in the wheat flour market to Federación Argentina de la Industria Molinera (FAIM), Cámara de Industriales Molineros (CIM), Asociación de Pequeñas y Medianas Industrias Molineras de la República Argentina (APYMIMRA) and Molino Cañuelas S.A. The fines imposed on all those responsible amounted to AR\$445 million (approximately USD\$4 million) and imposed certain behavioural remedies. Within the framework of the investigation, the Antitrust Authority evidenced the existence of an agreement entered by the accused parties for the fixing of minimum prices and the exchange of sensitive information. Three of the accused parties offered settlements, though they were rejected by the Antitrust Authority since the proposals made did not merit their acceptance.

Also in April 2022, the Antitrust Authority finished an investigation into the Portland cement market and concluded that there were grounds to initiate a cartel investigation, which is currently in process.

In November 2022, the Antitrust Authority sanctioned certain nightclubs of the city of Bariloche (Province of Rio Negro, Argentina) with fines totalling AR\$240 million (approximately USD\$1.5 million) for engaging in a price-fixing and market allocation cartel. In addition, the Antitrust Authority ordered some of the sanctioned companies the divestment of certain assets and exempted one of the companies that was a party to the cartel from sanctions despite not having filed for leniency.

There were no known cases of unilateral conducts finished by the Antitrust Authority in 2022.

Outlook for 2023

According to the president of the Antitrust Authority, the agency will pursue more investigations on unilateral conduct in 2023. At the end of 2022, the government announced that the Antitrust Authority will investigate whether a number of companies with strong market power have committed abusive conduct. However, there is no news yet as to which companies the government was referring to.

The next year will also be influenced by the political context since there will be presidential elections in October. In that context, and considering that the annual inflation level is approximately 100%, it is foreseeable that the Antitrust Authority will initiate investigations on potential exploitative abuses in politically sensitive markets.

Due to the political scenario, no changes to the Antitrust Law are expected to take place in 2023, nor will the Antitrust Tribunal created by the 2018 reform be constituted. Thus, merger control will remain to be an *ex-post* regime.

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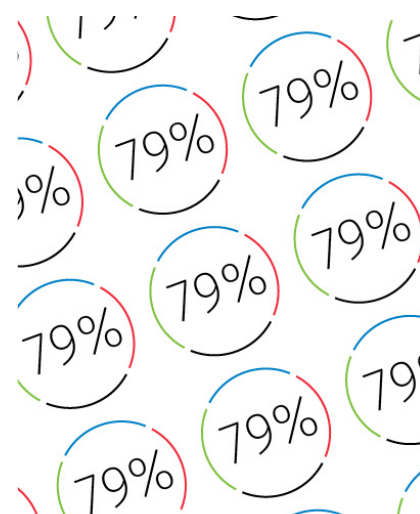
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