



A spotlight on antitrust and competition law
Market shifts in Latin America and Iberia
2022/23

Argentina



Secretary of Commerce has clarified the **rules around merger approval for transactions involving a “change of control”**.

- Decision of Court of Appeals for Federal Civil and Commercial Matters sets out **important precedents in the area of distribution and vertical restraints** (April 2023).
- New **regulations on M&A controls** approved (May 2023).

Brazil



In 2022, **660 mergers were reviewed**. This is a record number.

- The Brazilian Competition Authority set up a **specialized unit focusing on Unilateral Conduct** to intensify the fight against abusive conducts (May 2022). Recent investigations **show digital platforms and Bigtech are in the spotlight**.
- Introduction of Law 14,470/2022, seeking to encourage actions to repair competitive damages (November 2022).
- **Vertical merger review guidelines are expected** in 2023.
- Severe change at the Competition Authority is expected as **four out of seven commissioners will see their terms come to an end in 2023**.

Chile



Significant development: interlocking directorates as a sanctionable conduct.

- In 2022, new guidance published on the analysis of **horizontal mergers**.
- The Authority has invested time in **market studies**, such as in hospitality and the impact of digital platforms.
- New **Extended Producer Responsibility (EPR) Law** that mandates prior competitive assessment from the Competition Tribunal.

Colombia



In 2022, **256 mergers** were reviewed.

- The authority is showing a **proactive approach to bid rigging cases**.
- Besides from bid rigging investigations, the authority is accepting commitments to expedite the closure of investigations.

Mexico



Those involved in cartels could be sanctioned **with fines of up to 10% of income**. Individuals may also be punished with **imprisonment for up to 10 years**.

- The Federal Competition Commission (COFECE) announced it had **opened an investigation into possible cartels** in the distribution and exhibition of films in movie theaters and also the distribution and commercialization of scopolamine (May 2023).
- COFECE fined three water, waste management and treatment companies **more than MXN USD11 million** for failing to notify a transaction when legally required to do so (May 2023).

Peru



Indecopi has prioritized **cartel-related infringements** in the behavioral space, resulting in a significant decision in November 2021, currently in second administrative instance, **imposing fines of approximately USD697 million** on thirty construction companies and twenty-six individuals for rigging state construction projects.

- New merger control regime, enacted in 2021, is being coherently applied, resulting in **timely clearances of over 20 mergers**.
- The Authority has invested time in **market studies**, recently in fintech.

Portugal



Timely filing of M&A transactions is crucial to avoid costly fines, with a **record-breaking EUR2.5 million fine imposed in 2022 for gun jumping**.

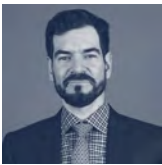
- The PCA has focused on cases in the food and drinks retail distribution sector, resulting in fines amounting to **EUR675 million** in 2022.
- The healthcare sector has faced cartel investigations, leading to fines totalling **EUR191 million** in 2022.
- The PCA has opened cases in the labour market, targeting no-poach agreements, with fines reaching **EUR11.3 million** in 2022.
- Multinational companies are facing significant court battles as alleged victims of competition law infringements seek damages claims, potentially costing them hundreds of millions of euros.

Spain



Gun jumping has become a priority in the M&A field, with over 20 investigations opened on average each year. **Fines for gun jumping can be significant, reaching up to 5% of turnover**.

- The **authority has invested in technology** for smart detection of infringements, monitoring public tenders and prices. It is also focused on improving decision quality to avoid judicial overturning.
- Increased engagement **with companies and citizens through public studies**, consultations, and strategic planning initiatives, such as the recent guidance to calculate cartel damages or on prohibitions to participate in public tenders following antitrust infringements.



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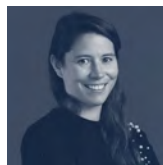
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