Cartel Enforcement
Global review – September 2020
Fight against cartels continues to consolidate around the world

The period between 2017 and the beginning of 2020 has shown the importance of the prosecution of cartels in the context of global competition law enforcement. Competition authorities are intensifying their initiatives and concluding investigations in strategic sectors such as technology and digital services, construction, transport and mobility services, life sciences, financial services, retail and consumer goods, agriculture, food and energy.

In many jurisdictions, fines imposed against participants in cartels have increased significantly or remained at a high level in the reference period.

In 2019, the European Commission imposed cartel fines of around EUR1.4 billion. Taking into account fines of National Competition Authorities, the total fines imposed within the EU (excluding the UK) exceeded EUR4 billion in 2019.

In the US, the amount of fines for cartels, after an important decrease in 2017, rose again to USD356 million in 2019.

In other jurisdictions such as Australia, Canada, Brazil and Ukraine, cartel fines have increased significantly in the last three years.

Some jurisdictions have introduced new pieces of legislation to improve the effectiveness of cartel enforcement and tools available to Competition Authorities (including Argentina and Peru in South America; Japan and the Philippines in Asia; South Africa). Others are conducting a review process of several aspects of their current laws (e.g. Russia).

In the EU, Directive (EU) 2019/1 (ECN+ Directive), aimed at providing competition authorities of the Member States with the means to implement competition rules more effectively and to guarantee the proper functioning of the internal market, should be implemented by Member States by February 2021.

The criminal prosecution of cartels continues to be a key factor in many jurisdictions, with particular regard to US, Canada, Australia and Ireland. New Zealand introduced criminal penalties adopting a law that will come into force on April 8, 2021. In the UK, the authorities continue to seek directors’ disqualification orders in addition to monetary penalties.

The unprecedented challenges relating to the COVID-19 crisis have affected enforcement activities from the first quarter of 2020 and contributed to re-design priorities and organizational efforts by Competition Authorities, which are mostly focusing on matters affecting primary needs.

Investigations in other key sectors such as digital economy, which were becoming more and more critical before the pandemic outbreak, will have increased visibility in the coming months.
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Global cartel enforcement activity
2019 global penalties

Annual penalties are estimates only and are based on penalties publicly reported in each jurisdiction (by calendar year or fiscal year) and USD exchange rate as at January 1, 2020). Penalties may be subject to review or appeal. For more information, see the Country Snapshot section.

*Data for US based on fiscal year from October 1 to September 30; data for Japan and South Africa based on fiscal year from April 1 to March 31.
2019 European penalties

- **High (Greater than USD100 million)**
  - Germany: EUR848 million
  - Spain: EUR422 million
  - Italy: EUR692 million

- **Average (USD10 million – USD100 million)**
  - France: EUR480.7 million
  - Portugal: EUR280.2 million
  - Austria: EUR1.7 million

- **Low (Less than USD10 million)**
  - Belgium: EUR1.3 million
  - Slovakia: EUR0
  - Finland: EUR300 thousand
  - Poland: PLN3.8 million
  - Romania: EUR1.82 million
  - Denmark: DKK14 million
  - Netherlands: EUR0
## Penalty trends around the world

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<td>EUR1 million</td>
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<td>Brazil</td>
<td>BRL96 million</td>
<td>BRL627.26 million</td>
<td>BRL792.58 million</td>
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Annual penalties are estimates only and are based on penalties publicly reported in each jurisdiction (by calendar year or fiscal year) and USD exchange rate as at January 1, 2019 (for 2017 and 2018 penalties) and January 1, 2020 (for 2019 penalties). Penalties may be subject to review or appeal. For more information, see the Country Snapshot section.

1 Where applicable. In case information for 2019 is not available, reference is made to information relating to 2017 and 2018.

2 Russia’s information in the table refers to total fines for competition law infringements (including cartels) for years 2017 and 2018. (Information on total cartel penalties is not available).

Criminal enforcement

Jurisdictions with criminal cartel laws:

Some jurisdictions (such as Colombia, Hungary, Italy, Poland and Spain) have only criminalized aspects of cartel conduct, such as bid rigging.
The global enforcement mix – emerging trends

Criminal liability

Prosecution of individuals (in addition to the corporations for which they act) remains a key factor of the cartel enforcement activity around the world.

In the US, for example, 28 individuals were prosecuted for criminal antitrust or related conduct in 2018, while the number of prosecuted individuals was 15 in 2019, with an average prison sentence of 18 months in the decade 2010-2019.

In Canada in 2019, four individuals were convicted with conditional sentences of 19, 22, 18 and 12 months.

In Asia Pacific, the adoption of a law introducing criminal penalties for cartels in New Zealand is notable. The law will come into force on April 8, 2021. In 2019 Australia saw the imposition of a criminal penalty for AUD34.5 million in a single case.

In the UK, in 2017 an individual pleaded guilty to a charge and was sentenced to two years’ imprisonment, suspended for two years (due to poor health), subject to a six-month curfew and disqualified from acting as a company director for seven years.

In the period 2018-2019, Russia had four cartel related cases that resulted in the imprisonment of seven individuals.

Private enforcement

Private actions are becoming an increasingly important aspect of cartel enforcement.

At EU level, the national implementation of the Directive 2014/104/EU (EU Damages Directive) has led to an increase in the private damages actions for cartels in many Member States, even though the real impact of the EU Damages Directive provisions will probably be seen in the coming years. The EU Damages Directive
aims to remove obstacles to compensation, including by providing private parties with easier access to evidence and establishing a rebuttable presumption that cartels cause harm. A further increase of the antitrust litigation on cartels could probably be encouraged by the adoption, in August 2019, of the European Commission Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser. The Guidelines intend to provide national Courts and other parties with more clarity and practical tools for estimating damages at different levels of the supply chain. It is interesting to note that it seems that European Commission decisions are likely to be followed by damages actions in many Member States. This is the case of the so-called Trucks cartel decision, which has led to follow-on actions in a significant number of European jurisdictions.

Private enforcement is also a key factor overseas. Within the reference period, the Americas have seen intense class actions activity, in particular in the US and Canada. In the Asia Pacific area, the private enforcement activity in Australia is notable.

**Cartel investigations, leniency programs and international cooperation**

Leniency programs – according to which immunity or reduction of fine may be granted to the applicants which provide to the competition authority evidence of the existence of a cartel – seem to continue to be a key tool to detect cartels around the globe. Leniency programs generally do not apply to vertical restrictions, being open to horizontal cartels exclusively.

Dawn raids are an increasingly important instrument of the cartel enforcement activity of the national competition authorities all over the world. According to the available information, the numbers of the dawn raids has increased over the years in almost every jurisdictions.

Within the European Union scenario, the ability of the competition authorities to effectively investigate is likely to be reinforced thanks to the adoption of the Directive (EU) 2019/1 of the European Parliament and of the Council (ECN+ Directive), which will empower the national authorities and enhance cooperation between the European Commission and the national competition authorities in cartel cases. Cooperation between competition authorities remains an important developing feature in cartel enforcement, in particular with reference to the emerging economies, such as the digital sector which presents challenges going beyond the state boarders. In this scenario, it is notable the joint publication of the French and German competition authorities on algorithms and competition published on November 2019. A recent trend shows also cases of multidisciplinary approach: for example, in Italy the competition and the communication authorities have concluded in February 2020 a joint Sector Inquiry on Big Data.

Another cooperation development concerned the coordinated actions by the competition bodies against the unprecedented challenges relating to COVID-19 crisis. In this context, for example, ECN (European Competition Network), ICN (International Competition Network) and ASEAN (Experts Group on Competition of the Association of Southeast Asian Nations) have issued joint statement declaring the priorities and setting a common approach for the cartel enforcement during the pandemic crisis.

**Compliance programs**

It is interesting to note that a number of jurisdictions acknowledge compliance programs as a legal ground for reduction of fines and in other cases the adoption of a compliance program could be accepted by the competition authorities as a mitigating factor when assessing the amount of the fine.

**COVID-19 related issues**

The COVID-19 outbreak spread at the beginning of 2020 has had a notable impact on cartel enforcement priorities all over the world. National competition authorities of almost every jurisdictions have adopted statement declaring their priorities in cartel enforcement activities during the outbreak and, in some cases, adopted temporary frameworks and/or ad hoc procedures, aimed at replying to the impact of the outbreak.

It is possible to see the following general trends. Although the general antitrust rules continue to apply, national competition authorities show to have adopted a more relaxed approach toward cooperation agreements between competitors aimed at responding to the shortage of production and supply of goods, especially in the healthcare, pharmaceutical and food
retail sectors. On the other hand, authorities have raised their investigation focus scrutinizing more deeply such conducts which seek to abusively exploit the crisis (such as price increase/fixing, artificial shortage and exchange of commercially sensible information).

The outbreak has led to impacts on competition authorities’ operational activities as well, such as temporary suspension of the terms and deadlines of the proceedings and a general slowdown of investigation activities (such as dawn raids).

**Focus sectors**

Key sectors of the cartel enforcement activity around the world which are likely to be a continuing focus in 2020 include:

- health and life sciences;
- technology & digital economy;
- construction;
- retail and e-commerce;
- transportation;
- financial services;
- agriculture & food; and
- energy.
Country snapshot
Europe

Austria

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A cartel investigation into the construction sector that was launched in 2017 now comprises 50 companies and (according to publicly available information) concerns over 800 building contracts. The case will probably be decided next year and it is the largest ever conducted by the Federal Competition Authority (FCA). The fines are also expected to be substantial and may be the highest ever imposed by the FCA.

In addition to construction, it is expected that in 2020 the FCA will continue to focus its cartel enforcement activity in the e-commerce, online service platforms, food retail, taxi and car rental sectors.

In the reference period, the FCA and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) have decided to intensify their cooperation on digital topics within the framework of a task force. There are plans to intensify communication between the two authorities regarding experience, as well as joint events on digital platforms. The aim of the task force is to find and use synergies in order to develop the best possible solutions for digital competition.

With regard to damages actions, a remarkable development at EU level comes from a request for a preliminary ruling submitted by the Austrian Supreme Court. On December 12, 2019, the European Court of Justice clarified that any loss having a causal connection with an infringement of EU competition law must be capable of giving rise to compensation, even if such loss arose in a separate market than the market affected by the cartel (case C-435/18 Otis Gesellschaft m.b.H. and Others v Upper Austria and Others).

COVID-19 related issues

The FCA has published information about impacts of the COVID-19 outbreak. In fact, the health industry will become a bigger priority in enforcement. Due to the high demand in healthcare products (such as masks, sanitizers, soap, etc.), the risk of illegal cartel agreements or other abusive conduct in this area is clearly very high. The FCA will investigate in particular any suspicion of inflated prices, artificial shortages or other abusive behavior.

Furthermore, the FCA has stated that cooperation between competitors may be necessary to avoid supply bottlenecks and an impending product shortage.

Merger registrations and deadlines were affected as well:

- for merger applications (Phase I) received by the FCA before April 30, 2020, the four – or six-week period for the submission of a request for examination by the Federal Competition Authority or the Federal Cartel Prosecutor did not begin to run until May 1, 2020;
- regarding requests for examination (Phase II) brought before the Austrian Cartel Court before April 30, 2020, the five/six-month decision period began on May 1, 2020.

The transitional measures for Austrian merger control have now become obsolete.

Additionally, an electronic submission of merger notifications was made possible. This option remains available for now.
One of the most interesting updates on the cartel enforcement in Belgium is the increase of the fine cap provided by the new Belgian Competition Act – dated May 2, 2019 and entered into force on June 3, 2019: from 10% of the Belgian consolidated turnover to 10% of the worldwide consolidated turnover.

Moreover, according to the new Belgian Competition Act, the scope of the prohibition for individuals to conclude a cartel agreement has been clarified and enlarged: it does not only concern individuals having a mandate to represent the concerned company but also individuals who act in relation to the business activity of the company.

On May 28, 2019, the Belgian Competition Authority (BCA) imposed a fine of EUR1 million on the Professional Organization of Pharmacists for alleged exclusionary measures against MediCare-Market, a retailer of both medicines and health products. The Professional Organization of Pharmacists allegedly attempted to prevent MediCare-Market from engaging in pharmacy and healthcare activities, including through disciplinary and judicial proceedings. In its decision, the BCA noted the prices of medicines in Belgium were particularly high and that the Professional Organization of Pharmacists could not invoke public-service obligations to justify anticompetitive practices. The BCA found that the Professional Organization of Pharmacists engaged in restriction of competition by object, while it nevertheless concluded that the practices under scrutiny had adverse competition effects.

In 2018, the BCA did not impose any fine.

In 2017, the BCA imposed fines for a total amount of EUR1.79 million under a settlement procedure involving five companies for a cartel in the context of public tenders (the companies agreed which company would win which tender). The cartel was reported to the BCA by one of the companies under the application to the leniency program.

According to its praxis, the BCA mostly intends to pursue cases brought to its attention via leniency applications or complaints, rather than initiating ex officio investigations into specific sectors.

The aforementioned increase of the fine cap may change the incentives for companies to apply for leniency in Belgium. Immunity or a reduction in a fine may indeed be granted to an undertaking or an association of undertakings which, together with others, is involved in a prohibited practice, in case that undertaking (or association of undertakings) contributes at proving the existence of the prohibited practice and identifying the participants. The notice that sets out the conditions under which immunity or a reduction in the fine will be granted is applicable to undertakings that participate in a cartel, which covers both horizontal and vertical agreements, and concerted practices.

The leniency regime can be considered as a relatively important aspect of cartel enforcement in Belgium as most of the cartel cases in which a final decision has been adopted to date were triggered by one or more leniency applicants. In 2016, the BCA amended the leniency guidelines in order to extend the possibility for the private individuals to apply for leniency.

**COVID-19 related issues**

No major impact or particular framework can be noted in Belgium in relation to the COVID-19.
Denmark

The landmark case for cartel enforcement in Denmark in 2019 has regarded the Danish road-marking consortium, which has reached its conclusion at the Supreme Court. This case concerned the compliance of a consortium agreement with the Danish provision which prohibits restrictive agreements and provides the relevant criteria and factors to be included in the assessment of whether a joint bid by potential competitors could be deemed as anti-competitive. In sum, the tender documents underlying the joint bid appeared to be crucial for the assessment, including whether the parties had the capacity to submit individual bids for parts of a bigger tender rather than submitting a joint bid for the whole tender.

Furthermore, in 2019 a case in the demolition sector came to a final conclusion. The Danish Competition and Consumer Authority (DCCA) has found that more than ten undertakings active in the demolition sector had participated in a cover pricing practice. The case has been opened following a leniency application according to which the demolition undertakings involved in the case had been sharing information on the calculation of price regarding tenders on demolition assignments. The undertakings involved in the case were fined for the infringement.

It is remarkable that in 2019 the DCCA established a new Center for Digital Platforms, which has its object to strengthen the enforcement of competition rules against digital platforms. In particular, the task of the Center is to investigate whether such platforms constitute a cartel under the Danish Competition Act.

According to the Danish competition legal framework, the application for leniency programs – which are open to horizontal restrictions only – could result in immunity or reduction of fines: the first applicant gains complete immunity, the second applicant gets a 50% reduction of the fine, the third applicant gets a 30% reduction, while subsequent applicants may have their fines reduced by up to 20%. In order to qualify for leniency, the applicant is required to enable the authorities to detect a cartel or provide significant added value to the authorities’ investigation. Further, the applicant must ensure full and loyal cooperation as well as having ceased participation in the cartel and not having compelled others to participate in the cartel activity.

Compliance programs are accepted by the Courts as a mitigating factor when assessing the amount of the fine.

The Directive 2014/104/EU (EU Damages Directive) on actions for damages was implemented in Danish law and the implementing act entered into force in late December 2016. In November 2016, the Danish Maritime and Commercial Court passed a judgment in a case where a Danish municipality sued a construction company convicted in a major complex of criminal cases regarding bid rigging between several companies in the construction industry. The municipality was partly successful in its claims and was awarded compensation.

Though cases for antitrust damages are normally settled outside Court, an interesting case in 2018 is that of a car dealer that has successfully enforced his right to be re-admitted to a selective distribution system, after the competition authorities had refused to open a case, following review of his complaint.

COVID-19 related issues

No temporary Danish cartel legislation has been adopted in relation to the COVID-19 outbreak.

The DCCA has joined a statement with the other competition authorities in the European Competition Network regarding the application of competition law during the corona crisis.
The Danish Competition Counsel has also made its own statement regarding the COVID-19 outbreak. The statement is similar to the European Competition Network’s statement. The Danish Competition Counsel recognizes that joint initiatives may be necessary to protect consumers and a reliable supply. The Competition Counsel provides as examples a stable supply of essential protective equipment, mitigation of hoarding and mitigation of the infection risk.

Co-operations towards the mentioned objectives will, according to the statement, often not amount to a restriction of competition or generate efficiency gains that outweigh the restriction of competition. The DCCA will therefore not actively pursue cases regarding necessary and temporary co-operations following such objectives. The DCCA will, on the other hand, according to the statement, focus on co-operations which take advantage of the COVID-19 situation.
European Union

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<td>European Union</td>
<td>EUR1.95 billion</td>
<td>EUR801 million</td>
<td>EUR1.48 million</td>
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Amount of fines is not adjusted for court judgments in 2017. In 2019 it includes the period until September 27, 2019. No fine seems to be issued after that date.

Cartel enforcement continues to be a main priority of the European Commission. Within the reference period, the cartel enforcement activity of the European Commission has been focusing on the following sectors:

- **Automotive sector:** The European Commission charged three major German car manufacturers for restricting competition in the emission cleaning technology market. The investigation is on-going;
- **Food sector:** the European Commission is investigating possible collusion between two grocery retailers in France. Unannounced inspections were conducted at the premises of several companies in the farmed Atlantic salmon sector;
- **Financial sector:** the European Commission is investigating a potential sovereign bonds cartel. This follows a number of decisions relating to interest rate manipulations, which were litigated in EU courts; and
- **Chemicals:** the European Commission is investigating potential cartels in relation to ethylene and styrene monomers.

In the reference period, these are the landmark cases of the Court of Justice:

- Skanska (C-724/17) – upholding a broad interpretation of parental liability in private damages claims;
- Cogeco (C-637/17) and Tibor Trans (C-451/18) – extending the effectiveness of private enforcement.

Furthermore, with reference to the legislative initiatives, it is interesting to note the adoption of Directive (EU) 2019/1 of the European Parliament and of the Council (ECN+ Directive) aimed at making national competition authorities (NCAs) more effective enforcers, which will empower the NCAs and enhance cooperation between the EC and NCAs in cartel cases.

The Commission Notice on Immunity from fines and reduction of fines in cartel cases (2006 – Leniency Notice) provides for the possibility of obtaining immunity or reduction of fines. The Leniency Notice does not cover vertical restrictions. In March 2019 the European Commission introduced the new eLeniency tool, designed to make the submission of leniency-related documents less burdensome. The platform is open to undertakings and their legal representatives and ensures confidentiality.

The cartel settlement procedure can provide companies with certain discounts on potential fines in exchange for cooperation.

With reference to compliance programs, the current position of the European Commission, confirmed by the Court of Justice, is that the mere adoption of a compliance program does not automatically justify a reduction of fines.

In addition to Directive 2014/104/EU (EU Damages Directive) on actions for damages, in August 2019 the European Commission adopted the guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser. The guidelines intend to provide national courts and other parties with more clarity and practical tools for estimating damages at different levels of the supply chain.
The overall trends of the European Commission seem to be the following: strengthening the private enforcement regime and monitoring digital transition of the market.

The European Commission recently formed a special unit to discover cartels by using computer experts and monitoring the internet for signs of illegal action. The EC also created a centralized intelligence network, which aims to facilitate the gathering of information from other Commission services, other EU institutions and non-competition national enforcers.

“Europe’s businesses need to be able to pool data, so they can compete to develop advanced artificial intelligence. And that sort of cooperation is good news for Europe – just as long as it doesn’t become a cover for cartels”.

— M. Vestager, Vice-President of the Commission, speech of March 2, 2020

COVID-19 related issues
The general antitrust rules, including various guidelines on the potential cooperation between competing or non-competing companies continue to apply. The European Commission’s joint statement of March 23, 2020 and International Competition Network’s statement of April 8, 2020 recognize the need to respond to the potential shortages of supply.

On April 8, 2020 the European Commission adopted a “Temporary framework for the assessment of anti-competitive practices in the cooperation set up between companies to react to emergency situations arising from the current COVID-19 pandemic”.

The rules are applicable to essential products in all sectors, but focus on the health sector. The framework provides guidance and criteria for assessing cooperation projects, which should: (i) be designed to genuinely increase production; (ii) be temporary; and (iii) not exceed what is necessary to increase output. All exchanges and agreements should be documented.

On April 8, 2020 the European Commission issued a comfort letter to Medicines for Europe approving coordination in the pharmaceutical industry in order to increase production and improve supply of the hospital medicines urgently needed to treat COVID-19 patients. The European Commission expressed its willingness to provide feedback or assurances on the legality of specific cooperation initiatives.
Finland

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<td>EUR300 thousand</td>
<td>✓</td>
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Based on fines proposed by the Finnish Competition and Consumer Authority

Cartel enforcement is one of the main priorities of the Finnish Competition and Consumer Authority (FCCA).

In the reference period, the FCCA has been especially focusing on the taxi market. Previously, the taxi market was heavily regulated and was opened for competition in July 2018. In July 2019, the FCCA informed that it had performed several dawn raids in the taxi market.

We expect the interest of FCCA for transportation, especially the taxi market, to continue; the FCCA also seems to have a growing interest in actions of trade associations.

There has been some amendments to Finnish Competition Act, which entered into force on June 17, 2019. The most relevant amendment relating to cartels is that the FCCA now has a right to continue the inspection related to dawn raid in its premises.

Important developments come from a landmark case which concerned the asphalt market. The cartel – involving several companies, including Lemminkäinen Oyj, Sata-Asfaltti Oy, Interasfaltti Oy, Asfalttineliö Oy and Asfaltti-Tekra Oy., agreed on dividing up contracts, prices and tendering for contracts – covered whole Finland between 1994 and 2002 and was also liable to affect trade between Member States.

With regard to this case, a request for a preliminary ruling was made to the European Court of Justice (case C-724/17).

The judgment of the European Court of Justice – that was given on March 14, 2019 – established that economic continuity applies also to damages actions and not only to penalty payment.

Pursuant to this, the Finnish Supreme Court returned the case to Court of Appeal.

COVID-19 related issues

Companies are permitted to coordinate more to allow them to manage the crisis in accordance with the Joint Statement by the European Competition Network (ECN) on March 23, 2020. According to the FCCA, this extraordinary situation may cause a need for companies to cooperate in order to ensure the sufficient supply and fair distribution to all consumers. In the current circumstances, the FCCA will not intervene against necessary measures put in place in order to ensure sufficient availability.

On the other hand, in accordance with the Joint Statement by the ECN, the FCCA will strictly intervene against cartels aimed at raising prices to the detriment of consumers.

The FCCA has also stated that it applies the competition law in accordance with the Temporary Framework given by the European Commission for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak. In this regard, the FCCA has also indicated that it is ready to provide instructions and guidance concerning the permissibility of cooperation relating to COVID-19 outbreak.
Cartel enforcement continues to be an enduring priority for the French Competition Authority (FCA).

From a cartel enforcement perspective, the main legislative change expected in 2020 is related to the transposition of the Directive (EU) 2019/1 (ECN+ Directive), aiming to provide competition authorities of the Member States with the means to implement more effectively the competition rules and to guarantee the proper functioning of the internal market. Indeed, for the FCA the directive involves a strengthening of its powers of action, and for companies, even more dissuasive sanctions. Specifically, it will provide the FCA with new tools to be more effective in implementing competition law, such as:

• the possibility to optimize its resources by allocating them to cases “recognized as a priority”;
• the ability to start proceedings ex-officio to impose interim measures, which is an asset to address the challenges of the digital economy;
• the power to impose structural remedies to companies in case of anticompetitive practices;
• the suppression of the EUR3 million ceiling which was applicable to «bodies» and associations of undertakings, such as trade unions or bar associations, which can henceforth be sanctioned up to the total amount of their members’ resources.

It can be noted that the FCA has increasingly used dawn raids in its investigations. Indeed in 2019, the FCA conducted nine dawn raids, compared to five in 2018 and only three in 2017.

As it is the case since the last few years, the FCA has confirmed once again in 2020 the particular attention it gives to the digital sector, with the creation of a specialized digital economy unit in January 2020, that will be in charge notably of the investigation of anticompetitive practices in the digital economy sector, and the publication of its joint study with the Bundeskartellamt on algorithms and competition in November 2019.

Among the detection tools at disposal of the FCA, there is one that is particularly effective: leniency. Most of the cartels are dismantled by the FCA through the leniency procedure, such as the national cartel between the main fruit-compote manufacturers sanctioned in 2019 (19-D-24). The leniency procedure enables companies which are participating or participated in a cartel to reveal its existence to the FCA and to benefit, under certain circumstances, from a partial or total exemption of the fine, depending on the order in which they referred the case to the FCA, on the added value of the evidence brought forward and their cooperation during the investigation.

In principle, the anticompetitive practices concerned are only horizontal agreements between competing companies in the same market, consisting for example of fixing prices, production quotas or sales quotas, and dividing up their markets or customers, including during calls for tender, etc.

Companies that consider setting up a compliance program or improve an existing program by implementing the good practices recommended by the FCA, within the framework of the settlement procedure and/or commitments procedure, used to see their fines reduced (by up to 10% for the settlement procedure, and up to 5-15% for the commitment procedure). However, these reductions used to not apply in cases where the infringement of public economic policy required the imposition of financial penalties, in particular cartel cases.

As the annual report for 2019 has not been published by the French Competition Authority when the estimate was provided in 2020, this estimate is only based on the decisions publicly available.
In 2017, the FCA has clearly considered that since the implementation of compliance programs has become part of the day-to-day management of large companies, the existence and/or implementation of such a program would no longer justify the reduction of a fine of any kind whatsoever.

Cartel damage actions have remained relatively low in France. This is mainly due to the difficulty for consumers to establish their damage and to the rules governing limitation periods. Indeed, the effects of the transposition at the end of 2017 of Directive 2014/104/EU (EU Damages Directive) which aims, in particular, to encourage the introduction of damage actions by providing victims of anticompetitive practices with a renewed and adapted legal framework, is yet to be seen.

**COVID-19 related issues**

In the context of the COVID-19 outbreak, the FCA stated that "no company can abuse its market power or agree with other companies to the detriment of consumers and the community. It is notably of the utmost importance to ensure that products considered essential remain available at competitive prices". The FCA further declared: "the current situation is also leading to temporary cooperation movements between companies, notably to guarantee the production and fair distribution of essential products to all consumers. The FCA supports this type of initiative and is ready to assist them."

Furthermore, given the health situation in France, the FCA has been forced to put in place extensive preventive measures. Following the adoption of the law of March 23, 2020 on the state of health emergency and the ordinance of March 25, 2020, the deadlines relating to the procedures before the FCA have been adapted. Indeed, the time limits applying to various procedures have been suspended since March 12, 2020, the date on which the health emergency period started in France.

According to the Decree No. 2020-423 of April 14, 2020 establishing the travel restrictions would be lifted on May 11, 2020, the FCA announced the reinstatement of deadlines as of May 12, 2020 for responding to statements of objections, reports, and leniency procedure. Concerning the time limits for implementing commitments, injunctions and urgent interim measures, it will start to apply again as of June 24, 2020.

Apart from a timeline impact, no temporary framework nor ad hoc procedure has been set since the services of the FCA have proceeded to their investigations remotely.
Germany

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<tbody>
<tr>
<td>Germany</td>
<td>EUR66 million</td>
<td>EUR376 million</td>
<td>EUR848 million</td>
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After moderate years in 2017 and 2018 with imposed fines in the amount of just, EUR66 million and EUR376 million respectively, the administrative fines imposed by the Federal Cartel Office (FCO) surged upwards again in 2019, amounting to EUR848 million. The FCO’s emphasis on cartel enforcement clearly remains an enduring priority.

As a general trend, the FCO notes a strong increase in the number of antitrust damage actions. Virtually every fine proceeding is followed up by a large number of damage actions. This effect can largely be attributed to the implementation of the Directive 2014/104/EU (EU Damages Directive) which led to many changes to the German regime, particularly in relation to the procedural situation of indirect purchasers, limitation periods and disclosure requirements.

One of the FCO’s key focus topics in 2018 and 2019 remained digitalization and its effects on competition and competition law, and political discussions. In this regard, the FCO published several articles and studies in relation to digitalized markets, the latest one in collaboration with the French competition authority about the possible effects of algorithms on competition.

This general focus involved an intensive examination of the network-specific competitive conditions and included a proceeding against Facebook, which was completed in January 2019 but successfully challenged by Facebook before the Higher Regional Court of Düsseldorf.

The two most prominent fine decisions of 2018 and 2019 by the FCO concerned the manufacture of steel, but in general the FCO has not had a specific industry focus in terms of cartel enforcement, and has imposed fines in a range of sectors. For example, landmark cases in Germany in 2018 and 2019 included the following:

- The FCO imposed fines in the amount of EUR291.7 million on companies active in the manufacture and distribution of stainless steel for price coordination and exchange of competitively sensitive information.
- Two manufacturers of lead-acid battery and their responsible management were fined with EUR27.6 million for coordination in relation to a significant price component.
- For agreeing on prices and sharing sensitive information, the FCO imposed fines amounting to EUR646 million on three steel manufacturers and three individuals.

An amendment to the Act against Restraints of Competition came into force in the second quarter of 2017. The key aspects of the reform are the introduction of a new transaction value threshold in the context of the merger control regime, the implementation of the EU Damages Directive, the facilitation of cooperation between publishing companies and the incorporation of provisions that should guarantee corporate liability.

Moreover, a new amendment to the Act against Restraints of Competition aiming to implement the Directive (EU) 2019/1 (ECN+ Directive) has recently entered the legislative process and is expected to come into force in late 2020. A key element of the amendment is the strengthening of abuse control for powerful digital companies. Other planned changes include the raise of the second domestic turnover threshold and an adjustment of the minor market clause.
In 2018 the FCO received 25 leniency applications in 20 proceedings. With the assistance of the criminal investigation departments and public prosecutors, the authority carried out seven dawn raids at a total of 51 companies and five private homes. It seized a total of 1,335 files and approx. 15.1 terabytes of electronic evidence.

COVID-19 related issues
The FCO has now adapted to the specific challenges of the COVID-19 outbreak and is ensuring normal business operation – as appropriate to the circumstances – by working from home and using only (or as much as possible) electronic forms of communication.

Regarding cartel enforcement, markets that have gained particular importance as a result of the COVID-19 outbreak, such as the sale of protective masks or the manufacture of disinfectants, may be subject to increased scrutiny by the FCO. Thus, the authority will be particularly sensitive for price increases and any other behavior that may indicate illegal conduct in these markets. With regard to the assessment of cooperation agreements, priority will be given to agreements involving a “critical industry” in relation to the COVID-19 outbreak (e. g. pharmaceutical sector, food retail sector, etc.).

Due to the strict contact restrictions in Germany that are in force since mid-march 2020, the FCO is currently not conducting any dawn raids. This is unlikely to change as long as the strict contact restrictions are not lifted or considerably eased.

Cartel investigations are still being conducted, however, considerable delays may occur. On the one hand, the current situation (working from home, etc.) generally affects the FCO’s normal workflow. In addition, in cases where the FCO needs the cooperation of third parties for an investigation (such as competitors or customers of an involved company) it is faced with considerable delays in response time to its inquiries as most companies have limited their business activities. In view of these circumstances, the German government has addressed the merger control regime by proposing an amendment that extends the deadlines for the examination of notifiable mergers that have been or will be received between March 1, 2020 and May 31, 2020. Cartel proceedings, however, are not yet subject to any new (COVID-19 induced) legislation.

There is currently no temporary framework or ad hoc procedure in place.
Hungary

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<tr>
<td>Hungary</td>
<td>HUF81.3 million</td>
<td>HUF5 million</td>
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No aggregate information is available at the date of publication for the year 2019.

One of the main priorities of the Hungarian Competition Authority (GVH) is cartels. The landmark case of 2019, in which the GVH has imposed fines for a total amount of EUR4.8 million, has regarded a collusion in the public procurement of diagnostic imaging equipment.

The GVH established that several undertakings producing and distributing diagnostic imaging products (namely MRI, CT and X-ray equipment) had engaged in unlawful conduct related to the EU tender ‘Supporting the procurement of health equipment aimed at saving energy’ issued for the public procurement of diagnostic imaging equipment.

The GVH's investigation found that in 2015 the undertakings concerned had shared among each other the public procurement tenders issued in the Environment and Energy Program. Their single and continuous anti-competitive conduct constitutes one of the most serious infringements in competition law.

Several undertakings actively co-operated with GVH in the proceeding. Three undertakings voluntarily announced their unlawful conducts for which they also handed over evidence. The GVH offered immunity from the imposition of a fine to the first undertaking to apply for leniency. Another applicant was granted a fine reduction of 40%. While the GVH did not accept the leniency application of one of the undertakings concerned, it did, nonetheless, reduce the fine imposed on such undertaking by 30% because the company had admitted its involvement in the infringement and had also waived its right to seek a legal remedy. Further significant fine reductions were granted by the GVH to a number of undertakings pursuant to the settlement procedure.

It should be noted that the two methods of fine reduction, namely through an application for leniency and participation in the settlement procedure, are combined. Consequently, one of the undertakings involved in the case at issue benefited from a total fine reduction of 70% as a result of its co-operation.

The GVH terminated the proceeding against all the other undertakings under investigation.

According to the Hungarian competition legal framework, the application for leniency programs – which are open both to horizontal and vertical restrictions – could result in immunity or reduction of fines. Furthermore, compliance programs are acknowledged as a legal ground for reduction of fines.

In 2018, the GVH has closed 12 cartel cases.

Dawn raids are a key instrument of the cartel enforcement activity of the GVH, as shown in the table below:

<table>
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<tr>
<th>YEAR</th>
<th>COMPETITION PROCEEDINGS WHERE DAWN RAID WAS APPLIED</th>
<th>LOCATIONS OF DAWN RAIDS</th>
<th>UNDERTAKINGS THAT WERE COVERED BY DAWN RAIDS</th>
<th>SMALL AND MEDIUM Sized UNDERTAKINGS THAT WERE COVERED BY DAWN RAIDS</th>
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<tbody>
<tr>
<td>2017</td>
<td>8</td>
<td>29</td>
<td>27</td>
<td>18</td>
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<tr>
<td>2018</td>
<td>10</td>
<td>38</td>
<td>38</td>
<td>27</td>
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COVID-19 related issues
There are no impacts yet of COVID-19 outbreak on Hungarian cartel enforcement, no temporary framework and/or ad hoc procedures are provided.
Ireland

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<tbody>
<tr>
<td>Ireland</td>
<td>EUR55 thousand</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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In Ireland, serious competition law infringements are subject to criminal sanction.

The Competition and Consumer Protection Commission (CCPC), Commission for Communications Regulation (ComReg) and the Irish Courts do not currently have the power to impose civil fines for EU competition infringements. Civil fines refer to financial penalties imposed by a non-jury court to a civil standard of ‘on the balance of probabilities’.

For these reasons, EU Directive 2019/1 to empower the competition authorities of the Member States (ECN+ Directive) is likely to result in significant changes in Irish competition law enforcement to the extent that it will permit national authorities to be more effective enforcers and to ensure the proper functioning of the internal market.

Among various measures introduced by the ECN+ Directive to empower more effective competition enforcement, two measures are worth mentioning in the context of cartels.

First, the ECN+ Directive requires Ireland to adapt its legal system to allow either the CCPC or the Irish Courts impose non-criminal financial penalties for breaches of EU competition law (Article 13).

Second, the ECN+ Directive requires Ireland to introduce a graduated leniency program for secret cartels which will align the existing Cartel Immunity Program more closely with the immunity/leniency regimes of the European Commission. In particular, this will allow parties that do not presently qualify for immunity the possibility of receiving a reduction in fines if they provide significant added value evidence to assist proving cartel behavior (Articles 17-23).

With regard to enforcement activity, in 2017 a company director was convicted for impeding the apprehension or prosecution of a cartel. The director had tried to persuade another cartel member to delete emails which were subject to investigation by the CCPC. This resulted in a three month suspended sentence. This was the first time that an individual was convicted for impeding a CCPC cartel investigation.

As a continuation of the CCPC’s 2019 activity, we expect investigations and other market scrutiny in the following industry sectors in 2020: restaurant, motor insurance, concert and event ticketing, nursing homes, and procurement for publicly funded transport.

Finally, we note that – even if Irish law does not provide for an operational system of class actions – there are currently a significant number of actions for damages progressing through the Irish Courts in relation to the European Commission’s 2016 Trucks decision.

At present, we are not yet aware of actions that have progressed to final judgment. In particular, we note that the Irish Courts were awaiting a ruling on the interpretation of the jurisdictional rules in the Brussels Regulation (recast) 1215/2012 which was handed down by the CJEU on July 29, 2019 in Tibor-Trans (C-451/18). The Tibor-Trans ruling (also stemming from the Trucks decision) somewhat relaxes the interpretation ‘the place where the harm occurred’ to include the possibility for a claimant to sue in the ‘place where the market prices were distorted and in which the victim claims to have suffered damage’.

COVID-19 related issues

There has been no suspension or changes to the rules on cartel enforcement in connection with the pandemic outbreak.

In Ireland, the CCPC has aligned itself with the ECN Joint Statement of March 23, 2020 which highlighted that "this extraordinary situation may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers". The ECN joint statement noted that its members would "will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply".

On the other hand, we anticipate that the CCPC will challenge anticompetitive behavior which results in consumer harm (e.g., price gouging or collusion which goes beyond alleviating temporary supply issues).
The fight against cartels continues to be a priority in the enforcement policy of the Italian Competition Authority (ICA).

The highest fines in the reference period were imposed in the cases I811 regarding financial products for the purchase of cars, that was concluded at the end of 2018, I805 regarding corrugated card board sheets (EUR285,426,559) and I808 regarding facility management services (EUR234,375,055,91), that were concluded in 2019.

In the I811 case, initiated following a leniency request, the ICA found that several so-called “captive banks” of the main car manufacturers operating in Italy and the related groups, as well as two trade associations, participated in a single, complex and continuous cartel involving an exchange of sensitive information on current and future quantities and prices. In particular, the ICA ascertained the existence of parallel exchanges of information, including (i) direct bilateral and multilateral information exchanges among captive banks, and (ii) indirect multilateral information exchanges among captive banks through trade associations. The ICA imposed in this case fines totaling approximately EUR678 million.

In the I805 case, the ICA ascertained – also on the basis of evidence provided by leniency applicants – the existence of two secret cartels between primary undertakings active in the manufacture and marketing of corrugated card board sheets and packaging materials, both implemented through intense exchanges of information between the parties. In particular, the first infringement consisted in the joint fixing of retail prices of corrugated card board and in the joint decision to reduce output, to the detriment of non-vertically integrated competitors. The second infringement consisted in the joint definition of price increases and other relevant commercial conditions (e.g. payment terms) for the sale of corrugated card board boxes, as well as in clients partitioning through non-aggression agreements.

In the I808 case, the ICA found that the undertakings involved coordinated their behavior in relation to a tender issued by Consip in 2014 for the provision of facility management services in real estate properties – mainly used for office purposes – owned by public authorities and public universities or research centers (Gara Consip FM4). The investigation carried out by the ICA evidenced the absence of competitive overlaps between the offers submitted by the parties for 18 regional lots to be awarded, in accordance with a “chessboard” scheme; moreover, even in the only two cases where the offers of the parties overlapped, one of the participating undertakings would have submitted an “offer of convenience”, used to mask coordination.

In line with a consolidated trend, a significant part of cartel cases treated by the ICA concern bid rigging practices in the context of public procurement. In this regard, ICA concluded investigations, among others sectors, into medical waste treatment services; workers’ health and safety services; forest fire-fighting services.

The ICA considers the challenge against collusion in public tenders a key factor not only to restore a fair competition in the affected markets, but also to reduce public expenditure, thus enabling public authorities to devote the saved resources to the elimination of social inequalities and to the national economic development.

New input for ICAs enforcement activity is expected from the final results of the Big Data Sector Inquiry carried out by the ICA in conjunction with the Italian Communications Authority and the Italian Data Protection Authority, whose final report was released on February 10, 2020.

The joint sector inquiry identifies several areas of potential risk deriving from Big Data, including the use of pricing algorithms which may facilitate collusion, and highlights the complementarity between antitrust, consumer and privacy law tools to protect competition in the digital ecosystem, with particular regard to the so-called data-driven zero-price markets.
COVID-19 related issues
In line with the joint statement released in March 2020 by the European Competition Network (ECN) and the Temporary Framework adopted by the European Commission of April 8, 2020, the ICA issued a communication (released on April 24, 2020) on cooperation agreements between undertakings within the framework of the coronavirus emergency.

The communication discloses the main criteria that will be followed while assessing temporary cooperation agreements aimed at facing issues linked to the scarcity, distribution and carriage of essential goods and service during the emergency, in particular within the healthcare, pharmaceutical and agricultural sectors. In this context, the ICA envisages the possibility of issuing at its own discretion exceptional comfort letters with respect to specific projects.

At the same time, the ICA has made clear that it will not tolerate any conduct which opportunistically seeks to exploit the crisis and use the emergency situation as a “cover” for non-essential restrictions, such as price fixing or the exchange of commercially sensitive information.
In the period of 2017–2019, the Dutch Authority for Consumers and Markets (ACM) has only in one case imposed a fine for a violation of the cartel prohibition, in relation to the so-called ‘battery cartel’ in 2017. The fines imposed were largely upheld on appeal.

This does not, however, mean that the ACM has failed to enforce the cartel prohibition during the reporting period. Enforcement has mainly taken the form of informal settlements and commitment decisions, of which some examples are provided below. The ACM has communicated that it considers informal settlements and commitments an effective way of quickly bringing about a lasting change in the market behavior of the undertakings involved.

An example of an informal settlement concerns a complaint submitted to the ACM by a Dutch legal services internet platform against the Dutch Bar Association, over a rule that seemed to restrict lawyers’ use of commercial platforms. After the Bar Association had clarified that this rule did not prevent lawyers from using commercial (comparison) platforms, the ACM dismissed the complaint.

A commitment decision entails that undertakings suspected of a possible violation undertake to do (or not to do) particular things. The ACM can declare such commitments binding on the undertakings involved. With this decision, the investigation is closed and no final decision is taken on the question whether the cartel prohibition was violated. Should the commitments not be observed, the undertakings can be fined for breaching their commitments, regardless of whether the behavior in question is or is not allowed under competition law. Some examples of commitment decisions include the following:

- Schiphol Airport and the Netherlands’ largest airline KLM committed to refrain from discussing the expansion possibilities of other airlines at Schiphol Airport. The airport also committed to take any decisions on investments, tariffs and marketing independently.

- Two providers of harbor towing services had set up a joint venture to provide towing services in the port of Amsterdam. After the ACM had expressed its concerns that this could lead to unlawful price coordination between the parties, they committed to terminate the joint venture. The undertaking that acquired the relevant assets further committed not to increase its prices beyond a correction for inflation for a four year term.

While the ACM may be considered lenient in relation to penalties, it is strict on procedural matters, including undertakings’ obligation to cooperate with investigations. In December 2019, the ACM imposed a fine of EUR1.84 million on a company due to the fact that during a dawn raid, employees of the company deleted WhatsApp messages from their mobile phones and left app groups.

According to the Netherlands competition legal framework, the application for leniency programs – which are open exclusively to horizontal restrictions – could result in immunity or reduction of fines. The first party that makes notice of a cartel (before the ACM started an investigation) may receive immunity from fines. Subsequent applications may be rewarded with a fine reduction between 10% and 50%. In May 2018, the highest court for administrative law (Trade and Industry Appeals Tribunal) decided that the ACM cannot impose a fine of EUR0 on a successful leniency applicant. Instead, the ACM should decide that it refrains from imposing a fine.

The Netherlands generally is considered a favorable jurisdiction for bringing cartel damage claims (either as a single or a class action), resulting in a number of cases being tried before the Dutch Courts. The possibility to
bring class actions was further enhanced by the entry into force in July 2019 of specific legislation (Settlement of Large-scale Losses or Damage (Class Actions) Act).

Some examples of on-going cartel damage actions are the following:

- **Truck cartel** – Cartel Damage Claims (CDC) brought an action for compensation against MAN, Volvo/Renault, Daimler, Iveco and DAF before the District Court of Amsterdam. In this case, CDC is pursuing the claims from more than 700 large companies and SMEs throughout Europe. On May 15, 2019, the Amsterdam District Court dismissed the argument of the truck manufacturers that the writs of summons of the claimants should be declared null and void for a lack of substantiation of (the grounds of) the claim. Regarding the merits of the claim, the Court invited the claimants to provide more specific information on the individual truck purchases, leases and/or uses, even if the final damage will be established in a damage assessment procedure. Therefore, the legal proceedings shall continue.

- **Lift cartel** – East West Debt, that accumulated the claims of 144 hospitals and other care institutions, brought an action for damages against lift builders UTC, Otis, KONE, Schindler, Mitsubishi Elevator Europe and ThyssenKrupp. This action was dismissed in first instance and on appeal to the Arnhem-Leeuwarden Court of Appeal, as East West Debt had insufficiently substantiated the damages suffered by the hospitals and care institutions in question. More specifically, the Court of Appeal of Arnhem-Leeuwarden denied the claim as East West Debt had not submitted the invoices and agreements in relation to the elevators to which the claim related.

- **Gas insulated switchgear cartel** – the Dutch electricity network operator TenneT is bringing damage actions against ABB and Alstom for the overcharge it payed when purchasing equipment during the period when the cartel was active. The parties first litigated on the responsibility of ABB and Alstom up to the Dutch Supreme Court, in which proceedings TenneT prevailed. Currently the litigation focuses on the extent of damages. In this regard, the Gelderland District Court by judgement of March 29, 2017 rejected the passing-on defense brought forward by ABB. While recognizing that this defense can in principle be brought, the Court decided that in the particular circumstances of this case it would lead to an unjust outcome, as it would imply that damages had been passed on to each individual electricity user in the Netherlands and it would be unrealistic to suppose that they would be able to sue ABB for the – at individual level – very small amount of damages they had suffered. ABB’s appeal against this judgement is pending.

**COVID-19 related issues**

In a press release on March 18, 2020, the ACM indicated that the outbreak of COVID-19 may necessitate certain forms of cooperation between competitors in order to prevent damage to society. In a second press release on March 23, 2020, the ACM expressed its support for the Joint Statement issued by the European Competition Network (ECN) on application of competition law during the coronavirus crisis. This statement particularly emphasizes that no active intervention will take place against temporary measures that are necessary to avoid shortages of supply and to ensure the supply and fair distribution of scarce products to consumers. The ACM actively invites undertakings and branch associations that wish to informally consult on particular measures to contact them.

The ACM further expressed that outside of the context of necessary cooperation, it will continue to enforce the competition rules, in particular when the interests of consumers are at stake.
Section 10 of the Norwegian Competition Act (2004 – Competition Act), prohibits cartel, and is an implementation of article 101 TFEU (and article 53 of the EEA Agreement).

The Competition Act applies to undertakings, both corporations and individuals, exercising commercial activities, and while cartel investigations can be initiated ex officio by the Norwegian Competition Authority (NCA), it is generally more practical for investigations to be initiated after a complaint or on the basis of a leniency application.

In the reference period, key developments are the following:

- Certain amendments in the Competition Act to facilitate cooperation between the Nordic authorities, and the transition of a case from phase I to phase II.
- The NCA notified in June 2019 two house alarm companies that it intends to fine them respectively NOK784 million and NOK424.8 million for allocation of customers. The investigation was opened following a dawn raid on June 20, 2017.
- The NCA has for a long period focused on the Norwegian groceries sector. In 2019 the NCA has imposed fines for NOK6.5 million in this sector. The NCA dawn raided the main retailers in April 2018, and have for a long period required information on prices from the biggest suppliers and retailers in order to map potential differences in purchasing prices. This led to another dawn raid on November 12, 2019 before the biggest grocery wholesaling group and two suppliers.
- The Norwegian Ministry of Trade and Industry has on several occasions pressed the NCA to be more offensive regarding the reporting of private individuals for breach of the Competition Act. Even though the NCA has confirmed that it will adjust its practice to comply with the instructions, to date the instructions have not given rise to actual increased reporting.
- Directive 2014/104/EU (EU Damages Directive) has not yet been incorporated into the EEA Agreement and, accordingly, not implemented in the Norwegian legal framework. The timeframe is still currently uncertain as the EU Damages Directive is under discussions in the EFTA countries for incorporation into the EEA Agreement. The directive is expected to require some changes, in particular regarding the rules for limitations and burden of proof. It is expected that the directive will lead to an increase in damages claims under Norwegian courts.

Dawn raid seems to be a key instrument of the cartel enforcement activity of the NCA, as shown by the latest case of dawn raid listed below:

- November 12, 2019 – Groceries dawn raid;
- October 2, 2019 – Dawn raid in fuel sector;
- January 2018 – Dawn raid in publishing sector;
- June 2019 – Dawn raid into waste management market.

According to the Norwegian competition legal framework, the application for leniency programs – which are open both to horizontal and vertical restrictions – could result in immunity or reduction of fines.

With reference to the private enforcement activity, it is interesting to note that, following the European Commission decision of the Trucks case (AT.39824) dated July 19, 2016, Bring (a subsidiary of Norwegian Mail, who handles packages on market conditions) have brought claims against a number of truck manufacturer groups (MAN, Volvo/Renault, DAF, Daimler and Iveco).
Since 2018 the parties have argued over whether Norwegian Courts have jurisdiction over the matter. Such issue was finally decided by the Supreme Court on November 27, 2019, who concluded that the cause could be brought before the Norwegian courts.

**COVID-19 Related Issues**

Due to the COVID-19 outbreak the Norwegian government has passed a regulation granting the transportation sector a three months temporary exception from the prohibition against anticompetitive agreements and practices (the Norwegian competition act section 10, implementing article 101 of the TFEU). The Norwegian Competition Authority must be notified if the exception will be relied on. As of June 2, 2020, the only notification received by the authority was from the airline companies SAS and Norwegian regarding the domestic traffic schedules.

The Competition Authority has stated that ongoing investigations continue at the outset as normal, although all work-related travel, both domestically and internationally has been temporary suspended.
Among the cartel cases treated by the Office of Competition and Consumer Protection (UOKiK) in the reference period, it should be mentioned the investigation on a consortium created by undertakings for tendering in the market for vaccine baits to eradicate fox rabies, that was qualified as a bid-rigging agreement. In Poland, competition law allows this form of cooperation, but if entities are able to perform a contract on their own, then cooperation with other entities may restrict competition. The same applies when it is possible to provide certain services with fewer entities than those belonging to a consortium. In this case, UOKiK found that the entities could participate in the tender proceedings alone (or with fewer consortium members), and therefore the arrangement lessened the competition on the market of vaccines for foxes and lead to higher prices. The consortium members were fined a total of PLN2.7 million.

Other cases were initiated in 2019 based on the information obtained in the context of dawn raids, that are still one of the main sources of information for the President of UOKiK about anti-competitive arrangements. These include an investigation on the possible division of thermal energy market in Warsaw and an investigation on a possible exchange of information within a branding and marketing agency.

An important enforcement trend regards the growing number of decisions issued under the immunity regimes in 2019. These proceedings are conducted not only against entities (potential fine of up to 10% of the turnover), but also managers involved in the collusion (potential fine of up to PLN2 million). The UOKiK frequently finds that the practices in question have an impact on trade between EU countries and therefore conducts proceedings in connection with the violation of both Polish and EU regulations.

With regard to legislative developments, under the latest amendments to the Polish Civil Procedure Code, it is now possible to conclude a settlement agreement with the President of UOKiK in the course of appeal proceedings.

In December 2019, UOKiK launched a new platform on which anyone can anonymously submit information about potential breaches of competition law using a simplified form available on-line. To encourage more people to come forward (including former and current employees of companies infringing the law), UOKiK declared that the system guarantees that the identity of whistleblowers will not be disclosed.

In January 2020, Tomasz Chróstny was announced as the new President of the UOKiK. It is expected that he will balance UOKiK's previous policy, that was mainly focused on consumer-related matters, and concentrate more on pure antitrust cases.

Fighting bid-rigging is and will remain one of the main priorities of UOKiK, whose President monitors public tender proceedings that are being conducted in Poland (and analyses signals coming from the market) on a daily basis and initiates new proceedings if any breaches of competition rules are detected. Moreover, the draft law on the new status of UOKiK introduces a separate department dedicated to combat bid-rigging.

COVID-19 related issues
As a result of the COVID-19 outbreak, UOKiK has taken a more proactive approach, especially in sectors of particular importance in the time of a pandemic, such as pharmaceutical, medical devices (respirators, masks) and food.

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As a member of the European Competition Network, UOKiK is a signatory to the joint statement given by the European Commission, EU and National competition authorities on the application of competition law during the COVID-19 crisis.

In this context, UOKiK has set up a dedicated mailbox, where the undertakings can seek guidance on the new forms of cooperation, and obtain UOKiK’s informal opinion on whether the temporary measures planned by the enterprises due to the COVID-19 crisis are compatible with competition law.

When forming its opinion, UOKiK will – in particular – take into consideration whether (i) the positive effects of the cooperation outweigh any anti-competitive consequences, (ii) the measures are necessary to combat the effects of COVID-19 and help achieve the stated aims, e.g. increasing production, optimizing the supply chain, etc.

UOKiK may conditionally accept the proposed form of cooperation and at the same time impose additional obligations (e.g. to inform UOKiK about the course of the cooperation or report on possible further arrangements). On its website, UOKiK states that it will respond as soon as possible (depending on the specific case).
Portugal

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Over the past three years cartel investigations have been the main priority of the Portuguese Competition Authority (PCA).

Since the beginning of 2017, the PCA has carried out 19 down raids in 43 facilities, namely in the sectors of tourist river transport, driving schools, distribution and large distribution, insurance, food sector, advertising and telecommunications.

In recent years the PCA has particularly investigated the financial sector, with record penalties. In 2018, the PCA fined two big insurance companies EUR12 million for market sharing through customer allocation and price fixing, in the segment of insurance contracted by large corporate clients, covering work accidents, health and vehicles. In 2019, the PCA has applied to 14 banks the highest penalty ever in a cartel case (EUR225 million). The banks participating in the concerted practice have been charged of exchanging sensitive information regarding the offer of credit products in retail banking, namely mortgage loans, consumer loans and loans to companies.

Another significant case has been the rail maintenance services cartel, which has resulted in high penalties in 2018 and 2019. The investigation started in 2016, following a complaint under PCA’s campaign “Combating Collusion in Public Procurement”, to raise awareness of collusion practices in public procurement procedures.

More recently, the PCA has carried out down raids in eight locations of nine entities active in the health sector in the areas of Greater Lisbon, Oporto and Algarve due to suspected anti-competitive practices damaging the consumer’s freedom of choice.


Furthermore, a new bill is expected to be adopted in Portugal in the course of 2020, which will amend the Competition Act by transposing into national law Directive (EU) 2019/1 (ECN+ Directive).

According to the Portuguese competition legal framework, the application for leniency programs – which are open exclusively to horizontal restrictions – could result in immunity or reduction of fines.

It is expected that in 2020 the PCA will continue to focus its cartel enforcement activity in the following sectors: telecommunication services; private surveillance services; advertising services; health services; food distribution and food and beverage/retail distribution.

**COVID-19 related issues**

The PCA declared to be particularly vigilant in the mission of detecting possible abuses or anti-competitive practices that exploit the COVID-19 pandemic situation, to the detriment of people and the economy, for example, in terms of price fixing or market sharing. The PCA highlighted that suppliers, distributors, resellers from any sector of the economy, including goods and services necessary for health protection, supplying families and businesses or living in community, must adopt responsible business behavior at any level of the supply chain, including in e-commerce.

No national temporary framework or ad hoc procedures have been adopted for competition procedures. However, the general legal rules adopted for the pandemic period provide for the suspension of legal deadlines that benefit private parties and to that extent, this suspension of deadlines also applies to competition cases and procedures both pending before the PCA and the specialized competition court.
Romania

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The Romanian Competition Council (RCC) maintained in 2019 its focus on practices concerning public procurement procedures. All of the three fines imposed for cartels in 2019 refer indeed to bid rigging practices.

An important and noticeable trend in the activity of the RCC shows a shift from investigations into vertical agreements to cartel cases. In addition, measures have been taken to improve the techniques of the RCC for detecting potential cartels. For example, the Big Data Project (Project) approved by the Romanian government is designed to ensure capabilities at the level of the RCC in five areas of cartel investigation and analysis: bid-rigging; cartel-screening; structural and commercial links between companies; sector inquiries and economic concentrations.

With reference to the bid-rigging, the Project aims to implement algorithms that are able to find correlations between structural screening indicators and behavioral screening indicators. The expected result is to be able to generate alerts based on which investigations can be opened. In the case of cartels, the objective is to apply data-mining techniques in order to detect cartel behavior aimed at limiting or eliminating competition between companies active in the same sector.

As for the future trends, it is expected:

- that the number of leniency applications will increase. In addition, given the benefits in terms of fine reduction triggered by the acknowledgement of anti-competitive practices (in 2018 almost 50% of the companies sanctioned opted to make a deal), it is expected that companies will continue to resort to this procedure in future RCC investigations;
- an increase in the number of investigations triggered by information from whistle-blowers, through the use of a dedicated platform that allows individuals to alert the RCC about secret cartels while maintaining their anonymity. In 2019, 45 messages were received by the RCC on this platform concerning various sectors (the hotel services market, the food retail market, the pharmaceutical products market, passenger transport services, auto parts, cable television services, the electricity market and others);
- a possible increase in private damages actions in Romania, following the transposition of the Directive 2014/104/EU (EU Damages Directive) into Romanian legislation;
- that the transposition of Directive (EU) 2019/1 (ECN+ Directive) will bring amendments to competition legislation as well as to the criminal code as regards the interplay between applications for immunity from fines and sanctions on individuals.

According to the Romanian competition legal framework, the application for leniency programs – which are open both to horizontal and vertical restrictions – could result in immunity or reduction of fines. In July 2019 RCC has adopted new guidelines relating to the conditions and criteria to apply for leniency program. The new guidelines replace the pre-existing ones dating from 2009. The main changes refer to a larger scope for leniency applications (no longer being limited to serious violations of the law). Compliance programs represent a legal ground for reduction of fines. The effective implementation of a competition compliance program is recognized under the Romanian competition legal framework law as a mitigating circumstance and can lead up to 10% fine reduction. The RCC has issued guidelines (“Guide on Compliance with Competition law Rules”) which lay down in detail the prerequisites for a competition law compliance program to be effective (and thus susceptible of being considered as a mitigating circumstance).
As for private enforcement, several follow-on damages actions – recently brought against truck manufacturers following the European Commission decision of the Trucks case (AT.39824) dated July 19, 2016 – are currently pending in front of the competent courts.

As regards dawn raids, in 2019 nine unannounced inspections were carried out at 44 premises.

COVID-19 related issues

COOPERATION AGREEMENTS DURING THE PANDEMIC

On March 23, 2020, the RCC issued a press release announcing that companies may cooperate to avoid shortages of basic products during the pandemic. For example, it was admitted that retailers can coordinate transportation efforts to ensure the supply of all basic products as well as home deliveries for people who cannot leave their homes.

On April 23, 2020 the RCC has acknowledged, in line with the European Commission’s Temporary Framework, that pharmaceutical companies can also cooperate to avoid shortages of medicines. It is admitted that companies may have to coordinate the production, management of stocks and, where appropriate, the distribution of medicines.

RCC GUIDANCE

Companies have the responsibility to evaluate themselves the legality of their agreements. However, the RCC has repeatedly expressed its availability to provide guidance to companies in case they are uncertain about the compatibility of some initiatives with the competition rules and therefore companies are encouraged to submit with the RCC any planned cooperation agreements.

The RCC President has publicly declared that discussions have taken place with e-commerce platforms as regards measures that they can take in relation to selling practices on their platforms (such as imposition of maximum resale prices or other measures aimed at limiting an unjustified increase of prices traded on the platforms).

IMPACT ON DAWN RAIDS AND INVESTIGATIONS

The RCC President has repeatedly declared that it is unlikely for the authority to perform dawn raids during the lockdown period.

As regards investigations, the RCC is willing to negotiate extended deadlines for companies in order to provide answers to requests for information, considering the existing logistical difficulties.

ENFORCEMENT PRIORITIES

RCC continues to closely monitor the market developments to identify companies that take advantage of this situation and engage in abusive practices (such as excessive prices) or cartel type behavior (such as exchanging sensitive information relating to pricing or trade policy). It also encourages consumers that suspect anticompetitive behavior to contact the authority via its whistle-blower tool.

Public statements of the RCC President are in the sense that several investigations will be opened and dawn-raids will be performed in the second part of the year. In addition, on-going investigations in the leasing sector, gas distribution, FMCG, pharmaceuticals are planned to be finalized this year.
Russia

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Information on total cartel penalties is not available. Total fines for competition law infringements (including cartels) amounted to RUB 3,588.8 million in 2017 and to 5,808.6 million in 2018. Information on total fines for competition law infringements for 2019 is not available yet.

It is expected that in 2020 the Russian Parliament will adopt amendments aimed at enhancing liability for cartels. The draft amendments provide, inter alia, for the following new features:

- members of board of directors and major shareholders (holding more than 50% of shares) participating in cartel agreements will be subjected to criminal liability;
- statute of limitations for investigating cartel violations containing signs of a criminal offence will be extended from three to six years;
- the Russian competition authority will maintain a register of participants of anticompetitive agreements and will publish such register on its website;
- a marker system for registering leniency applications will be introduced. The first leniency applicant in line will have an opportunity to enter into a cooperation agreement with the competition authority providing for terms for obtaining leniency.

In 2019 most cartel cases were investigated in the following sectors: (i) construction work (16.8%); (ii) supply of pharmaceutical and medical products (11.8%); (iii) food supply (7%); (iv) road construction (6%); (v) passenger transportation (4.2%). It is expected that these sectors will also remain under the focus of the competition authority in 2020.

Under the Russian legal framework, leniency programs – which are available both for horizontal and vertical restrictions – could result in immunity or reduction of fines.

Most cartel cases in Russia are related to bid rigging in public procurement tenders. According to the statistics of the Russian competition authority, approximately 85% of all cartel cases are related to bid rigging violations.

For example in 2018 and 2019 a total of 756 cartel cases were investigated, among which 655 cases were bid rigging cases.

**COVID-19 related issues**

As a reaction to COVID-19 outbreak the Russian competition authority implemented the following measures:

- the competition authority started daily monitoring of prices on socially important products (bread, grain, meat, eggs, etc.). After obtaining information that prices on some food products synchronically increased, the competition authority initiated scrutiny on potential cartel violations (as a result, in particular, a cartel investigation was initiated against retailers for increasing prices on bread);
- during COVID-19 outbreak the competition authority closely cooperates with the public prosecutor’s office, and in some cases the public prosecutor’s office (instead of the competition authority) sends warnings to companies not to increase prices on certain products (e.g. on medical face masks);
- all regular inspections scheduled for 2020 were cancelled;
- unscheduled inspections will be conducted only if there is a threat to the life and health of the public;
- hearings in competition investigations are held via video conference or postponed (where possible) until the end of COVID-19 outbreak;
- the competition authority provides deferred payment period for paying imposed fines in order to decrease financial burden on companies.
Slovakia

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Cartel enforcement in Slovakia is under the supervision of the Antimonopoly Office of the Slovak Republic (AOSR).

One of the notable decisions of the past years dealt with the coordination of two corporate entities in a bidding procedure of the undertakings operating in the area of construction works and the supply of equipment. The fine imposed by the AOSR in 2018 amounted to EUR307,546.

The subject matter of the contract at issue was the realization of the construction of a rehabilitation house with accommodation for pensioners. The documentation and information examined by the AOSR showed that in 2010 the undertakings involved in the proceedings coordinated about the process for submitting bids within the bidding procedure. The AOSR evaluated the conduct as an agreement restricting competition based on direct or indirect determination of the goods prices, market allocation and collusive behavior in the public procurement process.

In addition to construction, it is expected that in 2020 the AOSR will continue to focus its cartel enforcement activity in e-commerce sector, agriculture and food industry, information systems and information technologies sectors and in sectors affected by national regulation (for example, healthcare, network industries, financial and insurance services).

With the aim to implement the Directive (EU) 2019/1 (ECN+ Directive) to make national competition authorities more effective enforcers, the AOSR announced that it is preparing an amendment of the Act on Protection of Competition.

COVID-19 related issues

On March 23, 2020, the AOSR joined the other competition authorities cooperating within the European Competition Network (ECN) in declaring a joint statement on how to apply European competition rules during the crisis resulting from the spread of coronavirus. In line with the ECN joint statement, the AOSR recognizes the social and economic consequences of the crisis. It is necessary that medical accessories and protective material that are currently needed remain available at competitive
Moreover, on April 27, 2020, the AOSR issued a statement to the competition aspects and the protection of competition under the circumstances of the extraordinary situation declared in Slovakia ("Statement"). Pursuant to this Statement, the Office understands the reasons behind the closure of certain shops, however, it acknowledges that other shops (such as supermarkets) may grow under the current circumstances. This may lead to distortion of competition.

Due to the extraordinary situation, the AOSR also issued a new list of its priorities. Horizontal agreements remain among the top priorities due to their seriousness. Considering the actual situation and their potential impact, the AOSR will as a priority supervise any abuse of the extraordinary situation related to the spread of COVID-19, either by the abuse of dominant position or by prohibited agreements restricting competition with effects (including potential ones) on consumers or other market participants.
Within the reference period, one of the notable decisions of the Spanish Competition Authority (SCA) dealt with 15 companies active in railway infrastructure sector (electrification and electromechanics systems) sanctioned for bid rigging practices lasting for 14 years. The fine imposed by the SCA amounted to a total of EUR18,470,862 and it is the second largest (aggregated) fine imposed by the SCA to date. Furthermore, 14 directors were individually fined, for a total amount of EUR666,666, which is the largest (aggregated) fine imposed on individuals to date. Finally, this is the first case in which the SCA has actively pursued the possibility of imposing prohibitions to contract with the Administration. Pursuant to the Spanish Public Procurement Act, companies subject to a final decision for a serious infringement of Competition Law can be barred from contracting with the Administration for a period up to three years.

On November 21, 2019, the SCA has announced investigations into the real estate brokerage sector where the Authority intends to review the use of algorithms for anticompetitive purposes in relation to prices and commercial conditions.

As for the future trends, it is notable that several members of the management board of the SCA will be replaced during 2020. On June 1, 2020, the press announced that a former partner of a Spanish Law firm will be joining the Spanish Competition Authority as president, the announcement has been validated by the Spanish Congress and by the Government, together with the replacement of the members of the board whose mandate had expired.

Besides, the SCA has stated in its Strategic Plan for 2020, that it will pay special attention to markets linked to the digital economy: technological platforms, algorithms and pricing policies, access and use of data, e-commerce and online advertising.

According to the Spanish competition legal framework, the application for leniency programs – which are open exclusively to cartels – could result in immunity or reduction of fines. The Spanish leniency program is in general terms configured in a manner similar to that of the European Commission (Commission). Thus, the first “whistle-blower” may be fully exempted from the fine he would have been subject to as a result of the cartel sanctioning procedure; and the (i) second, (ii) third, and (iii) the following disclosing undertakings, may benefit of reductions in the sanctions imposed upon them ranging between (i) 30-50%, (ii) 20-30%, and (iii) 20%, respectively.

The SCA has stated in several decisions that the existence of compliance programs might constitute legal grounds for the reduction of fines when such a program (i) existed before the commission of the infringement, or (ii) was introduced following an infringement and the commencement of the sanctioning procedures by the SCA. For instance, in a recent decision of the SCA dated October 1, 2019, the SCA reduced fines to two undertakings by 0.20%, because they had commenced actions to introduce a compliance program. Furthermore, in May 2020, the SCA published its guide for compliance programs. This guide is intended to assist companies in ensuring the transparency of the basic criteria that the SCA deems relevant for a given compliance program to be effective.

As for the private enforcement activity, these are the most notable proceedings:

- damage claims following the Commission decision of the Trucks case (AT.39824) dated July 19, 2016. This is the most relevant cartel case that has been followed by damages claims brought before Spanish Courts;
- the proceeding dealing with damage claims brought against paper envelope manufacturers, following a decision of the SCA in 2013 sanctioning several companies for market-sharing and price-fixing practices (case Sobres de Papel);
• the proceedings following a decision of the SCA in 2015 (case Concesionarios Audi/Seat/VW) and dealing with lawsuits brought against car retailers.

**COVID-19 related issues**

On March 31, 2020 the SCA announced it had created a specific mailbox for queries and complaints related exclusively to competition rules in the current COVID-19 crisis. Since the launch of the mailbox, nearly 500 queries and complaints have been sent from individuals and companies, according to the authority.

As a result of the information analyzed, several investigations have been opened by the Spanish Competition Authority in the funeral, financial, health product distribution and marketing, and insurance sectors. Of all the complaints received, about half (45%) concerned the financial sector, while the remainder were distributed as follows: prices of health/food products (30%), funeral and insurance (5% and 1%, respectively).

The SCA has also received some consultations on cooperation agreements mainly in: the financial sector, the insurance sector, the health sector and the provision of assistance services. In these cases, the SCA has analyzed the proposals presented by the companies, the possible efficiencies and the risks in accordance with the doctrine and jurisprudence regarding the application of Article 101.3 of the TFEU, as well as in accordance with the guidance provided by the new temporary framework approved by the EC for the assessment of this type of agreements.

The SCA has also stated that it will maintain extreme vigilance to prevent potential abuses or concerted practices that could hinder the supply or raise the prices of the products needed to protect public health and it is closely monitoring the evolution of food prices. Furthermore, it has also affirmed that it is working with the Ministry of Health to design appropriate measures, and it has made an appeal to the general public to cooperate in the detection of anti-competitive practices.

As a consequence of the COVID-19 crisis the SCA decided to review its Strategic Plan for 2020, to include all these matters.

Further, Spain has created a national temporary framework for State Aids based on which the Spanish authorities (at national, regional and local level) will be able to grant aid to support companies affected by the coronavirus outbreak. This temporary framework for State Aids has been approved by the European Commission.

Under this national temporary framework, the Spanish authorities will be able to provide liquidity support in the form of direct grants, repayable advances, tax and payment advantages, guarantees on loans and subsidized interest rates for loans.
Sweden

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Please note that this reflects legally binding judgments (in 2017, an administrative fine amounting to SEK8 million was paid to the Swedish Competition Authority following a judgment from December 2016.)

The Director General of the Swedish Competition Authority held a speech in November 2019 on the Authority's role and priorities.

In terms of cartels, the following remarks could be of interest:

- in terms of cartels and other horizontal anti-competitive agreements, the Authority is especially protective of procurement markets. The Authority has found that bid rigging arrangements not seldom are linked to corruption and financial crime. The Authority gives high prioritization to such matters;
- the Authority prioritizes matters with a leniency application;
- it is not the size of the market that is of importance when the Authority determines whether it will prioritize a matter. The Authority is not afraid to prioritize also smaller violations that have had a shorter duration.

The Authority has a general focus on digitalization and recently performed a market study of digital platforms. It has also announced that it will continue to investigate the competitive situation within the construction sector.

It is likely that the Authority will continue having a focus on bid rigging arrangements and other anti-competitive cooperation in procurements.

**COVID-19 related issues**

With regard to COVID-19, the Swedish Competition Authority made itself available for informal guidance for companies considering temporary cooperation measures during the crisis, in accordance with the joint statement by the European Competition Network.

This is due the fact that this extraordinary situation may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers.

On the other hand, the Authority has also stated that the competition rules continue to apply. There is no specific exception for cooperation between companies during a crisis and the assessment of whether a cooperation or practice restricts competition depends, as always, on the context.

If companies need to cooperate on socially important activities, it is important not to go further than what is necessary and to the greatest possible extent take the consumers' interest in account. Transparency towards customers and consumers may also be important in order to reduce the risks of negative impact on competition.

If the Authority receives indications that market players are engaged in overpricing, such matters will be prioritized.
In June 2019 the Antimonopoly Committee of Ukraine (AMCU) amended the regulation providing the requirements that should be taken into consideration in order to assess whether a concerted practice should be reported to the AMCU in order to obtain its approval. Subsequently to such amendment, exclusively the subject of the concerted practice at stake and the market shares of the participants are to be taken into consideration for such assessment; financial thresholds requirements (total and national assets and turnover concerned) are no longer to be taken into consideration.

Furthermore, in September 2019 the AMCU adopted recommendatory guidelines which help distinguish between mergers and concerted practices when analyzing JVs.

As for the future trends, two major draft laws relating to the Ukrainian competition law are currently being considered by the Ukrainian parliament (No. 0877 and No. 0969). Both draft laws relate to, among other things, concerted practices (cartels). In particular, the draft law No. 0877 proposes to eliminate special regulation regarding the concerted practices on supply and use of goods, as well as the concerted practices of SME (small and medium enterprises). The draft law No. 0969 will improve the procedure of the assessment of the cases by the AMCU and amend the rules on leniency.

In October 2019, the AMCU imposed a fine for UAH6.5 billion (around 80% of the total amount of all fines in 2019) on four major tobacco producers and one the largest distributor of tobacco products in Ukraine. The AMCU found that all the tobacco producers agreed to sell their tobacco products mainly to the distributor at issue, which as a result became the monopolist on the market.

The Ukrainian competition legal framework envisages the possibility to get immunity for one of the participant to the cartel, who was the first to report and to provide valuable information on the concerted practice at stake. Leniency program are open both to horizontal and vertical restrictions. The abovementioned draft law No. 0969 envisages the possibility for more than one of the participants to the cartel to apply for leniency program and to receive partial reduction of the fine.

In 2018 the AMCU has investigated 263 concerted practices (cartels) cases, 250 of which concerned anticompetitive collusion in public procurement tenders. Only 13 concerted practices (cartels) cases were related to price fixing and other violations, unrelated to public procurement tenders. Most of the concerted practices (cartels) cases in 2019 were related to collusion in public procurement tenders as well.

In 2019 there were 799 concerted practices (cartel) cases in total (compared to 263 cases in 2018), out of which 97% were cases on anticompetitive collusion in public procurement tenders (compared to 95% in 2018). Only 24 concerted practices (cartel) cases were related to price fixing and other violations, unrelated to public procurement tenders (compared to 13 cases in 2018).

**COVID-19 related issues**

Following the imposition of quarantine in Ukraine on March 17, 2020 to prevent the spread of COVID-19, the AMCU has taken several measures regarding enforcement of concerted practices (cartel) regulations, namely:

- In food retail sector:
  - On March 24, 2020 the AMCU announced that it will be closely monitoring the food retail sector considering the recent price spikes on certain food products (sugar, grains, vegetables, etc.);
  - On March 26, 2020 the Kyiv Regional Territorial Office of the AMCU (“Kyiv AMCU Office”) initiated a cartel investigation against largest grocery store chains operating in Kyiv City and Kyiv Region following alleged unjustified and coordinated price spikes on certain food products (sugar, grains, vegetables, etc.).
• In pharmaceuticals and medical goods sector:
  • On March 30, 2020 the Kyiv AMCU Office initiated a cartel investigation against producers and distributors of medical masks, as well as against pharmacy chains in light of price spikes on medical masks in Kyiv City. The Kyiv AMCU Office issued official recommendations to certain pharmacy chains suggesting them limiting price margins on medical masks. Such recommendations were followed by the largest pharmacy chains from April 21, 2020;
  • On March 31, 2020 the AMCU issued recommendations to certain pharmaceutical producers, importers, distributors and pharmacy chains in relation to anti-viral medications and various protective medical products. The AMCU recommended that the said market players abstain from actions which may lead to increase of prices on goods exceeding the increase of the foreign currency exchange rate.

Also, in light of the quarantine the AMCU amended the Regulations on the AMCU's Administrative Board on Public Procurement Appeals ("Board"). In particular, during the quarantine the parties shall submit their positions (explanations) to the Board in writing via electronic procurement platform. If the party cannot present its position in writing, it may submit a motion asking the Board to allow the party to participate in the Board's hearing online.
In 2019, the Financial Conduct Authority (FCA) imposed its first cartel fine on three asset management firms totaling GBP414,900 for isolated instances of information sharing during a placing and IPO. An individual asset manager was also fined GBP32 thousand. This case illustrates that it is not just the Competition and Markets Authority (CMA) taking enforcement seriously in the UK but other sectoral regulators with concurrent competition powers.

Individual accountability continues to be a key trend for the CMA as discussed in the 2019 speech of Andrew Tyrie, Chair of the CMA. The CMA is now routinely seeking director disqualifications orders for directors of companies found to have committed serious infringements of competition law. This is where an individual is disqualified from being a director of any company in the UK, for a period of up to 15 years, as a result of their involvement in a competition law infringement.

For example, the CMA fined a number of firms for anticompetitive conduct in the supply of precast concrete. Behavior included coordinating their prices, allocating customers and exchanging competitively sensitive information. In December 2019 FP McCann filed an appeal in the Competition Appeal Tribunal against the findings and penalty. The CMA has secured two director disqualification undertakings from one company involved in the conduct and is currently seeking the disqualification of two directors from another company that participated in the cartel.

The CMA is also increasingly seeking to impose fines on companies for procedural violations in investigations. In the CMAs musical instruments investigation, a fine of GBP25 thousand was imposed for concealing evidence during a dawn raid.

The UK exited the European Union on January 31, 2020. Under the terms of the Withdrawal Agreement, there will be a transitional period until December 31, 2020 where EU competition law will continue to apply.

The effect of the UK exiting the EU on competition law enforcement is that the CMA will have responsibility for cases which were previously the remit of the European Commission. This means that after the UK withdraws from the EU, the CMA and UK Courts will be tackling more cases, namely those which previously would have been dealt with by the Commission.

The CMA has declared that it has already opened its first case related to issues arising as a result of the UK leaving the EU. This is the investigation of the Atlantic Joint Business Agreement. In 2010 the Commission accepted commitments in relation to six airline routes to address competition concerns arising from a revenue sharing joint venture between a number of airlines. These commitments, which included agreeing to make slots at certain London airports available to other competitors, are due to expire in 2020. Five out of six of these airline routes were from London to the US. As a result of this, and the uncertainty as to which body will be responsible for competition enforcement upon expiry, the CMA has decided to review the case, with a decision pending on whether to issue a statement of objections.

In 2020, new proposals and reforms to the UK competition regime as part of the implementation of Brexit are expected.

COVID-19 related issues
The CMA has temporarily relaxed the rules and prohibitions contained in Chapter 1 of the Competition Act 1998 for certain types of agreements in some sectors such as grocery, health services and maritime.
For example, in relation to groceries coordination between two suppliers that aims to limit purchases by consumers of particular groceries during the disruption period, and is done so for the purpose of preventing or mitigating disruption to the supply of groceries to consumers in any part of the UK caused by coronavirus, shall not be classed as a prohibition within the meaning of Chapter 1 of the Competition Act 1998. It should be stressed that there is a continuing obligation on suppliers not to share any information regarding costs/pricing.

In light of the above the CMA has also launched its own Taskforce in order to monitor sales and pricing practices adopted by businesses and to ensure that the relaxation of the rules is not being abused. The Taskforce has already announced it is investigating complaints received by customers regarding weddings/private events, holiday accommodation and nurseries and childcare providers.
Enforcement of cartel provisions is relatively weak in Argentina.

A major investigation on price fixing and work assignment related to building contracts with the public sector, comprising most major participants in that market, is pending before the antitrust agency, together with criminal law ramifications.

Cartel enforcement in Argentina is focused on public works, pharmaceutical products and supermarkets sectors.

A new law (Law 27,442) entered into effect in 2018. However, it has had no major impact on cartel law enforcement.

The new administration – as from December 2019 – has not stated any policy directed to more active enforcement of antitrust rules.

The new antitrust law has introduced a leniency program, focused on horizontal cartel restrictions only.

Even though cartel damages claims are unusual, a notable case is that of a lower court decision (appeal pending) granted compensation for the insolvency caused to a competitor by the dumping of imports by a major foreign manufacturer.

The Antitrust Law of 2018 has increased the sanctions applicable to cartels and has simplified the evidence necessary for the sanction on horizontal restraints. However, the antitrust agency is still weak and enforcement is not active. Dawn raids are unusual.

**COVID-19 related issues**

The Argentine antitrust authorities have not issued any specific regulations related to the COVID-19 emergency. Procedures have generally been suspended, while the general close-down is in effect, both at the administrative and judicial levels, including procedures related to M&A approvals.
At the beginning of 2019, the Organization for Economic Cooperation and Development (OECD) accepted Brazil's application for membership as an associate member of the entity's Competition Committee.

The entrance of Brazilian Competition Authority (CADE) in OECD's Competition Committee reinforces the Authority's efforts in the last years to enhance its international cooperation with other agencies and entities.

CADE has signed a number of cooperation agreements with other antitrust authorities in jurisdictions such as Argentina, Canada, Chile, Colombia, Ecuador, the EU, France, Japan, Peru, Portugal, South Korea, the US and the other BRICS members (Russia, India, China and South Africa). By means of these agreements the authorities may exchange non-confidential information regarding current antitrust investigations.

Landmark cases in 2019 include the following:

- **Subway cartel**: in July 2019, CADE imposed a fine of BRL535.1 million to 11 companies and 42 individuals for cartel practices in public bids for trains and subways carried out in the states of São Paulo, Minas Gerais, Rio Grande do Sul and Distrito Federal. At least 26 public bids were hampered by collusions, which lasted from 1999 to 2013;

- **Google investigations**: throughout 2019, CADE reviewed three investigations involving alleged anticompetitive conduct by Google, concluding no damage to competition in the internet search market. CADE also concluded that there is no evidence that Google would not have copied content from competitors or adopted unfair terms in your ad platform contracts;

- **Petrobras Settlements**: in 2019, CADE negotiated two historic settlements with Petrobras through which the company committed to sell natural gas and fuel transportation assets in addition to eight oil refineries. The settlements closed ongoing investigations conducted by CADE related to anticompetitive conducts practiced by the state-owned company;

- **Itaú and Rede**: in October 2019, CADE initiated an Administrative Procedure against Itaú and Rede to investigate alleged anticompetitive behavior in the market for payments. CADE also imposed an injunction in this case in order to determine the cessation of the bank domicile requirement at Itaú so that a commercial establishment lives up to the conditions most advantageous settlement offered by Rede;

- **Auto parts Settlements**: in 2019, CADE also approved eight settlement agreements in seven cartel investigations in the auto parts market. Under the agreements, the pledges acknowledged participation in illicit practices and committed to cease conduct anticompetitive and to collect pecuniary contribution in the amount total of BRL120,084,528.58.

There were no legislative or policy changes in 2019, but there is a draft bill under the Brazilian Federal Senate's analysis that proposes the following changes to the Brazilian Antitrust Act No. 12.529/2011:

- fines related to cartel conducts by companies or their economic groups to be proportional to the length of the wrongdoing;
- double reimbursement to the parties affected by an antitrust violation, with the exception of the defendants that executed leniency or settlement agreements;
- interruption of the statute of limitation during Administrative Procedure;
- providing CADE's final decision with automatic enforcement in relation to damage recovery lawsuits filed by third parties affected by the antitrust violation.
COVID-19 related issues

During the COVID-19 crisis, CADE’s staff continue to work remotely, dealing with cases and holding meetings through video and audio conferences. CADE also amended its Internal Regulations to make it possible to carry out online sessions.

The Provisional Measure No. 928 enacted by the Brazilian President on March 23, 2020, included in the list of exceptional measures to fight COVID-19 “the suspension of procedural deadlines imposed on defendants in administrative proceedings for as long as the state of calamity remains (...)

In this sense, CADE clarified that:

- the agency will prioritize the analysis of merger control cases in order to maintain the 2019 average time of analysis (16 and 90 days for fast track and regular proceedings, respectively).
- deadlines imposed on defendants in the following proceedings will be suspended:
  (i) Procedures with formal charges that can result in fines (cartel and unilateral conduct investigations).
  (ii) Procedures to investigate failure to comply with merger control rules; and
  (iii) Procedures that can result in fines for breach of incidental procedural rules.

There will be no changes to the deadlines in the following proceedings:
  (i) Merger control cases.
  (ii) Preliminary investigations.
  (iii) Leniency agreements negotiations.
  (iv) Settlement agreements and merger control agreements negotiations and compliance.
  (v) Consultations.

There are other draft bills being currently analyzed by the Brazilian Senate proposing the following amendments to the Antitrust Law. However, it is uncertain whether those bills will move forward.
Canada

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<tr>
<td>Canada</td>
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<td>CAD1.3 million</td>
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In October 2017, the Competition Bureau executed search warrants in respect of an alleged cartel for packaged bread that would have run between 2001 and 2015. The investigation is ongoing with no convictions. There has been litigation in respect of the warrants and the identities of informants. Follow-on class actions seeking in excess of CAD1 billion have commenced.

All of the (criminal) penalties imposed in 2019 related to the same matter – bid rigging in respect to public tenders for engineering services. In this context, four individuals have been convicted with conditional sentences of 19, 22, 18 and 12 months divided into house arrest and curfew.

The Bureau continues to investigate cartel and bid rigging in respect of public procurement at all levels of government. In addition, the Bureau has placed a priority on the digital economy. One expects it will be vigilant for cartel and other anti-competitive activity in that sector.

In September 2018 and March 2019, the Competition Bureau issued revised Immunity and Leniency Programs. The amendments imposed more onerous obligations on participants and increased uncertainty. Over the last two years, there has been a noticeable decline in the number of immunity and leniency applications compared with prior years.

With regard to actions for cartel damages, on September 20, 2019 the Supreme Court of Canada issued a significant decision regarding certification and scope of class actions. The case concerned an alleged cartel in the Optical Disk Drive industry. In September 2018, during trial, Microsoft settled a 14 year class action providing for a total payment of a maximum of over CAD500 million, including class counsel fees. There are many pending cases including those involving bread, automotive parts, vehicle carrier services, farmed salmon, capacitors, and lithium ion batteries.

COVID-19 related issues

The cartel provisions in the Competition Act remain in full force during the COVID-19 pandemic. In a statement released on April 8, 2020, the Competition Bureau signaled that it would generally refrain from scrutinizing good faith competitor collaborations required to respond to the crisis, provided that such collaborations were undertaken and executed in good faith and would not go further than what was needed. The Competition Bureau cautioned that it would not tolerate abuse of this policy as a cover for unnecessary conduct that would violate the legislation.

The Competition Bureau also offered to give expedited time-limited guidance on specific proposed collaborations to parties who applied with a detailed description of how the collaboration was necessary to achieve a COVID-19 related objective in the public interest. However, such guidance would not suspend the legislation or insulate conduct from potential private actions based on violations of the criminal cartel provisions. Nor would the Bureau’s guidance bind the Public Prosecution Service of Canada, which prosecutes violations of the criminal portions of the legislation.
Chile

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<td>Chile</td>
<td>UTA 20 thousand</td>
<td>UTA 32.4 thousand</td>
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Recently, as a response to social outburst during October 2019, President Sebastián Piñera has announced an Anti-Abuse Agenda which is focused on cartel enforcement, particularly in the case of basic goods. The President announced the strengthening of the Fiscalía Nacional Económica (FNE), with tools to prevent, investigate and combat anti-competitive behaviors, which include raising bank secrecy and protecting physical or digital evidence, as well as creating the figure of the anonymous whistle-blower, granting economic incentives for the informants of anticompetitive conduct.

The tissue paper case involving the two biggest national tissue paper producers is a landmark case, considering that it was a hard core cartel case where the first applicant got immunity and the second applicant got a reduction of the fine. The Supreme Court recently (January 2020) revoked the leniency benefit that was applied to the first applicant, considering it had instigated and organized the cartel, and therefore could not be exempted from the fine (UTA 20,000).

Another landmark case was the supermarket case, where the three biggest supermarket chains were sanctioned for a Hub-&-Spoke cartel, after the Tribunal de Defensa de la Libre Competencia (TDLC) had previously sanctioned fresh chicken meat producers for collusion. This is the first Hub-&-Spoke case sanctioned as such in our jurisdiction.

The FNE is focusing on cartels related to basic goods that have effects in the daily life of consumers, which are usually: retail, commodities, pharmaceuticals, transportation, among others.

Chile currently has leniency programs – open to both cartels and vertical restrictions – which allow an exemption of fines and criminal penalties to the first applicant and a reduction for the second informant.

Compliance programs are generally considered a legal ground for reduction of fines.

As for private enforcement, these are the most notable cases:

- Damage claims against CMPC (a paper company) ended in a conciliatory agreement between CMPC, SERNAC (National Consumer Service) and other consumer organizations, after the tissue paper cartel case was sanctioned by the TDLC. The agreement was approved in 2015, for a total amount of CLP 99,803 million.

- Damage claims against the main pharmacy chains of the country in a civil stance. The case started in 2013 and the first stance has just finished in late 2019, with a total compensation of CLP 2,021 million for consumers.

- Damage claims against the main fresh chicken producers, initiated by Consumer organizations. The case started in June 2019 and it is one of the first damage claims initiated at the TDLC and not at a civil tribunal (after the last amendment to the competition act). Consumer organizations requested damages for a total of USD 799,431,494 (the amount was expressed in dollars in the claim).

COVID-19 related issues

In a public declaration on April 3, 2020, the FNE stated that “DL 211 does not contemplate any exception in its application, not even in such extraordinary cases as the one we are currently experiencing”. However, it stated that, unlike cartels, collaboration agreements between competitors may be lawful under the Competition Act depending its effects, efficiencies, and risks. However, despite the fact that there could be collaboration agreements that in principle would be efficient in the current context, according to the Competition Act, neither the FNE nor any other authority would have the authority to review and/or authorize them on a mandatory basis, and before their implementation. Therefore, the FNE called to analyze these agreements with caution and to avoid the use of the outbreak as an excuse to carry out cartels or other anti-competitive acts.
On April 7, of 2020, the TDLC published an internal decision regarding COVID-19 (auto acordado N° 21/2020). Through this resolution, the TDLC stated that in qualified cases the facts, acts or conventions that are submitted to a consultation (pursuant to article 18 No. 2 of Competition Act) may be executed without a suspensory effect, without prejudice to the provision of the resolution. This is particularly applicable to consultations related to goods or services that are indispensable in the current context (e.g. related to transportation, or medical supplies).
Colombia

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Cartel enforcement in Colombia is under the supervision of the Superintendence of Industry and Commerce (SIC). Some of the landmark cases the SIC has pursued include the following:

- the “Soft Paper” Cartel: the SIC sanctioned four companies that maintained a cartel for over a decade (from 2000-2013), mainly to fix market prices for toilet paper, napkins, kitchen towels and handkerchiefs. The Superintendence also sanctioned several directors and board members for aiding in the commission of said conduct;
- the “Concrete” Cartel: in this case the SIC sanctioned three companies that through “conscious parallelism” fixed concrete prices for a six-month period in 2005;
- the “Diaper” Cartel: the SIC sanctioned three companies, for setting up a cartel that fixed the prices of baby diapers. It also sanctioned 16 directors of said companies for their involvement in the cartel;
- the “Sugar” Cartel: the SIC sanctioned three companies and 12 sugar mills for a corporate cartel that had the intention of restricting or impeding the importation of sugar to Colombia;

Regarding dawn raids, in Colombia they are commonly known as Administrative Visits and take place during a preliminary inquiry, which is made by the authority ex officio or once it receives a complaint to verify if there is evidence of the illegal conduct. During these procedures the SIC recollects information related to the investigation. Moreover, the authority has been known to start a different administrative investigation for companies that “obstruct” such visits.

According to the Colombia competition legal framework, the application for leniency programs – which are open both to horizontal and vertical restrictions – could result in immunity or reduction of fines. The Colombia leniency programs work on a first-come first-served basis, meaning only the first person to come forward and inform of a conduct contrary to antitrust rules will be granted immunity. However, partial reduction in fines are available for whoever can provide useful information after the first person. It should be mentioned that the instigator or promoter of the illicit conduct won’t receive any administrative benefits. Even though there is no leniency program for criminal liability, it is provided that whistle-blowers who have received full immunity during the administrative investigation for anticompetitive agreements (like cartels) by the SIC can obtain some of the following benefits: a reduction of a third of the criminal penalty; a 40% reduction on the criminal fine to be imposed; an inability to contract with state entities for only five years.

Furthermore, compliance programs are acknowledged as a legal ground for reduction of fines but it has never accepted any compliance program as sufficient to reduce fines.

As per cartel private enforcement, up to this date, there has not been any sentence ordering the compensation of damages caused by a cartel.

COVID-19 related issues
By means of a Governmental Decree of May 6, 2020 the state of economic, social and environmental emergency has been declared in Colombia as a consequence of COVID-19. The SIC issued a procedure to notify collaboration agreements between competitors.
Mexico

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Figures include civil and administrative penalties only. No criminal penalties were imposed in Mexico during these years.

Cartel enforcement continues to be an enduring priority for the Mexican Antitrust Commission ("COFECE").

In this regard, pharmaceutical sector is a market that remains in constant investigation and from which several fines arise. Likewise, activities surrounding food industry and the airport-aviation and taxi services are still a major target for the Authority.

According to the work plan launched by COFECE, several new investigations in the following markets and sectors are expected in the following months:

- Food Industry: raw milk, corn, poultry;
- Energy;
- Transportation: ground (airport taxis) and aviation;
- Pharmaceutical and health (there were two criminal actions against individuals involved in cartel behavior within the health sector in 2017 and 2019);
- Public Procurement;
- Financing/Banking: production, processing and commercialization of credit data; securities processing.

The goals set out by COFECE for 2020 include the following:

- as a result of the amendment to the Guide “Programa de Inmunidad y Reducción de Sanciones” (Program for Immunity or Reduction of Fines) in 2018, the update of the Regulatory Provisions to such program, in order to harmonize both documents;
- the conclusion of current investigations on six potential cartel behaviors;
- the review of guidelines and criteria of implementation of different procedures and legal provisions applicable to economic agents and individuals;
- the improvement of training programs to competition officers working in the COFECE.

COVID-19 related issues

COFECE announced that collaboration agreements between economic operators in the context of the current sanitary contingency will be supported by law and shall not be subject to investigation and/or persecution. Such agreements shall be temporary and aimed at maintaining or increasing the supply of goods and services, meet the demands, protect the supply chains, prevent the shortage or hoarding of merchandises and shall not have as purpose to foster the participation of other competitors selling goods or services within a relevant market.

For the above purposes, it is important to point out that (i) this is applicable to any collaboration agreement, entered either between competitors or among economic agents that are not competitors (ii) it is necessary to distinguish between collaboration agreements and mergers, that shall be notified in accordance to relevant thresholds and criteria set forth under the antitrust law.

This is not a waiver to collaboration agreements, since such agreements are not prohibited per se. What COFECE acknowledges in this case is that derived from the sanitary contingency provoked by COVID-19, it is possible to enter temporary agreements of this kind.
In 2019, the Peruvian Antitrust Authority (Indecopi) concluded two prominent cartel cases that got a high media profile for their direct impact on consumers. These cases were against the most prestigious pharmacies and gas providers companies in Peru and concluded with fines up to PEN382,440 (approximately USD111,700) and PEN49,383,306 (approximately USD14,500,000), respectively.

Moreover, in the same year, Indecopi focused their audits in the printing sector, starting a new proceeding against six entities because it seems like they have been acting as a sharing market cartel in the public procurements for the service of printing school texts. Currently, this procedure is still pending final resolution.

It is very likely that the following sectors will continue be the focus of the Authority’s investigations in 2020: i) public procurements sector (especially the procurement related to infrastructure development); ii) supply chain of medical devices sector; iii) financial sector (especially the companies who work with the final consumers), iv) private pension funds sector; v) supermarket sector (mainly essential/primary goods acquisitions); and hydrocarbons sector (especially the companies who provide their products and services to final consumers).

The reference period sees the following remarkable developments regarding to Indecopi’s activities against cartels:

- Peruvian Legislation has a Reward Program, in which individuals are economically rewarded for the information provided to Indecopi that allows this Authority to detect, investigate, or sanction infringements done by cartels. In order to access the Reward Program, the informers must follow the guidelines provided by Indecopi through the “Reward Program Guidelines” which are effective from December 2019;
- in 2018, the “Guide of Leniency Program” issued by Indecopi won an international prize –in the Soft Law Category – at the Antitrust Writing Award Contest;
- Indecopi has also issued a “Guide to Fight against Cartels in Public Tenders”, which provides guidelines on how to compete in the Peruvian market of public tenders without infringing Antitrust Law, which had been approved and is effective since March 2019.

COVID-19 related issues
To mitigate COVID-19 spread, Peruvian State has declared a State of Emergency which includes a Quarantine. Accordingly, Indecopi has implemented the following measures to allow the citizens to obey the state decision without been affected in their procedures:

- in administrative proceedings –which include issues involving cartels proceedings – the computation of the period has been suspended.
- until the end of 2020, all procedural documents can be submitted through the virtual platform enabled on the Indecopi website.

Regarding other impacts on dawn raids and investigation activities, we consider that it is most likely that, due to the economic effects caused by COVID–19, Indecopi will focus –especially – in: (i) financial entities, (ii) sector of private pension funds; and, (iii) supermarket sector (mainly in the acquisition of essential/primary goods).
United States

Criminal antitrust prosecutions continue to lag in the US, with a severe drop-off in large international cartels. Corporate criminal fines saw a slight uptick in FY 2019, but nearly a third of the total fines was due to single, USD100 million fine with Starkist.

This year, we saw several policy developments by the US Department of Justice (DOJ), Antitrust Division (Division):

- In July 2019, the Division announced that it could consider the existence of effective antitrust compliance programs in the charging and sentencing stages of criminal antitrust investigations. As a practical matter, it means that the Division may be more open to use of deferred prosecution agreements to resolve cartel matters.
- The Division also announced the creation of the Procurement Collusion Strike Force that will focus on investigating anticompetitive conduct in US government procurement and contracting processes. Going forward, the Division will use its power under section 4a of the Clayton Act to seek civil recovery when the US government is the victim of cartel conduct.
- Lastly, the Division continued to investigate and refine its approach to prosecuting “no poaching” agreements or agreements between employers to not recruit or hire each other's employees. That said, the Division has failed to bring a single criminal prosecution of any no poach agreement since 2016.

Leniency programs can result in immunity or reduction of fines with reference to criminal enforcement of cartels.

The US continues to have healthy class actions activity, much of which track public investigations or settlements by the DOJ, State Attorneys General, and other litigators.

The total number of corporations and individuals charged by the Division has steadily fallen since 2015. Not surprisingly, the total number of criminal cases filed has also fallen since 2015.

The magnitude of the cartel cases brought has also changed. The Division secured over USD1 billion in criminal antitrust fines and penalties in 2012, 2013, 2014, and 2015. After reaching its high water mark of USD3.6 billion in 2015, total fines and penalties have drastically fallen. Indeed, the Division only secured USD67 million in 2017, representing a 10 year low.

COVID-19 related issues
The COVID-19 pandemic has affected US antitrust enforcement as prosecutors struggle to do their jobs from home while federal grand juries and courthouses have closed. The (DOJ) has made clear, however, that it will hold accountable anyone who violates the US antitrust laws in connection with the manufacturing, distribution, or sale of public health products such as face masks, respirators, and diagnostics.

The DOJ’s recently announced Procurement Collusion Strike Force will also be on high alert for collusive practices in the sale of such products to federal, state, and local agencies.

The DOJ – along with the Federal Trade Commission – has announced an expedited procedure to review and approve certain business collaborations aimed to address public health and safety concerns. The DOJ’s top cop, Makan Delrahim, explained that the DOJ has worked overtime to commit to completing business review letters within seven days, a process that typically would take upwards of six months to one year.
Asia Pacific

Australia

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<td>AUD38 million</td>
<td>AUD46 million</td>
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The Australian Competition and Consumer Commission (ACCC), continues to focus on cartel cases and is increasingly working with federal prosecutors to bring criminal cartel proceedings. In 2020, we expect the Australian Courts to hear up to five criminal cartel cases brought by the ACCC, including the first contested criminal matter.

Moreover, the ACCC is pursuing higher penalties in its cartel cases. The highest ever civil penalty was imposed in 2018 against Yazaki (AUD46 million). This penalty was imposed on appeal, after the ACCC sought an increase in the original penalty of AUD9.5 million. The highest criminal penalty was imposed in 2019 against K-Line (AUD34.5 million). In setting the penalty against K-Line, the Court took into account K-Line’s early guilty plea and cooperation and stated that, but for those factors, it would have imposed a penalty of AUD48 million.

In October 2019, the ACCC updated its immunity & cooperation policy. Parties will need to take into account these changes in deciding whether to seek immunity or cooperate with the ACCC. The majority of the ACCC’s cartel investigations reportedly involve an immunity applicant. For example, JP Morgan has reportedly received immunity in the case the ACCC has brought against ANZ, Citigroup and Deutsche Bank, as well as six senior executives from the banks.

The ACCC is currently pursuing cartel cases in relation to shipping, assistive technology used in aged care homes, trading, foreign exchange services, flat steel products and construction. The ACCC will also continue to investigate new and continuing matters. Its likely areas of focus include essential services and commercial construction.

COVID-19 related issues

The ACCC has the power to authorize businesses to engage in certain conduct, including conduct that would otherwise constitute cartel conduct. Authorization by the ACCC removes the risk for parties of legal action under Australian competition laws in relation to that conduct.

Competitors in a number of industries have applied to the ACCC for authorization to collaborate in relation to issues arising from COVID-19. These issues have included stock or staff shortages, business shutdowns or difficulties with supply chains. The businesses which have made applications include supermarket, airlines, banks, private and public hospitals, private health insurers, shopping centers, medicine manufacturers and essential services (such as gas and electricity).

The ACCC has so far granted a number of interim authorizations. Interim authorization allows companies to engage in conduct while the ACCC is assessing the application for authorization.

The types of conduct which companies have applied for authorization to engage in have included joint procurement, revenue sharing, resource and information sharing, jointly working with other parties in the supply chain to ensure supply and, for supermarkets, jointly imposing purchasing limits for products. Much of this conduct would not normally be authorized by the ACCC in the relevant industries, as it would not meet the statutory test the ACCC is required to apply in deciding whether to grant authorization. However, in the current environment, the ACCC have recognized public benefits arising from the conduct.
Most of the interim authorizations granted to date have been conditional, including requiring the parties to cease the conduct once the effects of the pandemic dissipate.

Aside from the interim authorizations for collaborative conduct as outlined above, the current COVID-19 pandemic is unlikely to have a significant effect on other cartel enforcement activities. The Court proceedings which the ACCC had initiated before the outbreak for alleged cartel conduct continue. The Courts in Australia have largely moved to hearing matters via video technology.

The ACCC is also continuing to progress its cartel investigations despite the pandemic. However, it is likely that these investigations may take longer than normal, given the level of resourcing required by the ACCC to address the authorization applications and the difficulty the ACCC faces in conducting its normal inquiries, interviews and examinations in an environment in which most ACCC staff and businesses are now working from home.
China

Before 2018, the principal administrative enforcement authorities in anti-trust regime include (1) the National Development and Reform Commission (NDRC) and its local counterparts, and (2) the State Administration of Industry and Commerce (SAIC) and its local counterparts. In 2018, the State Council of China went through an institutional reform, under which the newly established State Administration of Market Regulation (SAMR) became the main anti-trust enforcement authority, in charge of enforcement against both price-related and non-pricing anti-trust violations.

The SAMR’s cartel enforcement focused on the sectors of automobile, construction & manufacturing, public utility, pharma and healthcare. In December 2018, SAMR imposed fines totaling CNY6.25 million on three pharma companies in Sichuan province for raising prices of the active pharmaceutical ingredient (API) of glacial acetic acid.

Meanwhile, the SAMR enforcement also focused on concerted practices in local markets. In May 2019, Quzhou SAMR imposed fines totaling CNY7,708,477 on eight local concrete manufacturers for reaching a cartel agreement to raise the prices of concrete products. In October 2019, Heze City SAMR imposed a fine of CNY300 thousand on the Automobile Association of Heze city for promulgating a self-discipline rule requiring its member enterprises to restrain from attending any vehicle exhibitions not organized by this trade association. Always in 2019, Chifeng City SAMR imposed fines totaling CNY650 thousand on four local restaurants and the local food industry association for collusion to fix the purchase price of raw food materials.

On January 2, 2020, the SAMR released for public comment a draft amendment to the current AML. The draft amendment made various changes to the current AML. The proposed amendments call for harsher penalties for cartel violations, including:

(1) Fine of up to CNY5 million for violation by a trade association in organizing or facilitating a monopoly agreement; (the maximum fines under the current AML is CNY500 thousand);

(2) Fine of up to CNY50 million for monopoly agreements that have been entered into but not yet implemented (the maximum fines under the current AML is CNY50 thousand).

**COVID-19 related issues**

To provide guidance on modifications of antitrust enforcement priorities and procedures in response to the COVID-19 outbreak, SAMR issued the Notice on Antitrust Enforcement to Support the Pandemic Prevention and Control and the Resumption of Work and Production on April 5, 2020 and official interpretations of the Notice on April 17. SAMR signaled its willingness to use the existing legal standards and framework for exemption of monopoly agreements under Article 15 of the AML to exempt horizontal and vertical arrangements advancing public interests in connection with COVID-19.

Examples include agreements for R&D involving new pharmaceuticals, vaccines, testing technology, medical devices, and personal protective equipment; new standards or specialization agreements related to pandemic response; disaster relief; and agreements promoting the efficiency and competitiveness of small and medium sized enterprises. As a corollary, SAMR is prioritizing enforcement actions against monopoly agreements (and abuse of dominance) involving products relevant to pandemic response, public utilities, and other sectors impacting “people's livelihood”. Enforcement actions against price-gouging under the 1997 Price Law have increased. SAMR has also expanded online channels for reporting potential violations during the COVID-19 response.

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China
Since its establishment, the Hong Kong’s Competition Commission (HKCC) – which enforces the Competition Ordinance (Cap 619), entered into force on December 14, 2015 – has focused on bid-rigging and collusion in the construction and renovation sectors.

In April 2018, the HKCC issued prospective guidance on antitrust compliance in human resources functions, including wage-fixing and non-poaching agreements.

The HKCC has also invested substantial efforts in competition advocacy and educational initiatives targeting trade associations and professional groups.

The HKCC has made substantial use of its compulsory evidence gathering powers in conducting its investigations.

With regard to the main cases of the reference period, on August 2017, the HKCC issued an infringement decision against ten contractors for market allocation. The Competition Tribunal issued a judgment finding infringement.

In September 2018, the HKCC initiated an enforcement action against five contractors for market sharing in the provision of renovation services for a public housing development managed by the Hong Kong Housing Authority. The Competition Tribunal issued a judgment finding infringement.

In July 2019, the HKCC initiated an enforcement action against nine contractors for market sharing and price fixing in the provision of renovation services for a public housing development managed by the Hong Kong Housing Authority.

In January 2020, the HKCC issued an infringement notice against a construction company for engaging in bidding misconduct under a prior manager, and subsequently accepted a remedial commitment from the company rather than bring an enforcement action. The remedial commitments required the implementation of an effective competition compliance program.
Indonesia

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<tbody>
<tr>
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<td>USD1.2 million</td>
<td>USD6.23 million</td>
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In the reference period, the Indonesian Business Competition Supervisory Commission (KPPU), in charge of the enforcement of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, principally targeted cases of bid-rigging and other manipulation of public tenders, often implicating foreign-owned vendors and state-owned purchasers (currently, more than 70% of KPPU's cases involve bid rigging).

Other important cases regard the motorcycles market. On February 20, 2017, the KPPU fined Yamaha Indonesia Motor Manufacturing and Astra Honda Motor IDR 25bn (USD1.87 million) and IDR22.5 billion, respectively, for allegedly fixing prices of 110 cc-125 cc automatic scooters. These two companies were widely reported to account for over 95% of the market, and the long running investigation drew substantial attention within Indonesia. In the context of this case, the KPPU conducted its first dawn raid. In December 2017, the North Jakarta District Court affirmed the KPPU's decision to fine Yamaha Indonesia Motor Manufacturing and Astra Honda Motor. The Supreme Court of Indonesia rejected the appeals of Yamaha Indonesia Motor Manufacturing and Astra Honda Motor. Currently, a group of consumers filed a class action lawsuit against Yamaha Indonesia Motor Manufacturing and Astra Honda Motor. The plaintiffs asked for compensation in the amount of IDR57.5 billion (approx. USD4.1 million).

In 2019, the KPPU formally changed its international name to the Indonesia Competition Commission (ICC). Other proposed amendments to Indonesian competition law have advanced through the relevant parliamentary committees as of early 2017, but the timing of their enactment remains uncertain. These proposed amendments would significantly expand the scope of Indonesia antitrust enforcement by introducing extraterritorial jurisdiction, establishing a leniency program, shifting from post-merger to pre-merger notification, and expanding antitrust coverage of IP-related abuses. The possible expansion of ICC's investigative powers is also under discussion.

COVID-19 related issues
The KPPU is prioritizing enforcement actions against cartels involving products relevant to pandemic response, public utilities, and other sectors impacting “people's livelihood” such as healthcare and food.

Specifically, the KPPU is currently investigating the high price of gasoline in Indonesia, especially when the crude oil price is reaching a low record worldwide and other Countries have decreased the price of gasoline.

The KPPU issued an ad hoc temporary procedure concerning merger filing in which the KPPU allows for filings to be submitted online and the notarization and legalization process could be done at a later stage after the filing.
Japan

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*Based on fiscal year April to March.*

Following an investigation launched in 2017, the Japan Fair Trade Commission (JFTC) found that the manufacturers of asphalt mixture substantially restrained competition in the field of sales of asphalt mixture by agreeing to increase the sales price and issued penalty order to these manufacturers of asphalt mixture. The total amount of the penalties to be paid is about JPY39.9 billion (the largest cartel penalty in Japan).

In the reference period, some important legislative developments took place:

- with regard to leniency program, a policy was introduced to allow the JFTC to reduce the amount of penalties when enterprises submit information and documents that contribute to the fact finding of the case, in addition to the reduction by the application for JFTC (enforcement date: within one and a half years from June 26, 2019).
- the basis of calculating the amount of penalty was increased and extended to cover more items (enforcement date: January 1, 2020);
- the maximum amount of criminal fine of juridical persons charged with the offense of obstructing investigation was increased (enforcement date: July 26, 2019).

In addition, amendments to privilege rules are currently under discussion. Under the new rules, investigators would not be able to access certain documents (e.g., the response letter from attorney) containing confidential communication between a company and its attorney regarding legal advice on unreasonable restraint of trade (Article 3 of the Antimonopoly Act), if the following requirements are confirmed to be met: (i) the enterprise shall apply for exemption under this privilege at the time it is ordered to submit the documents; (ii) the documents shall be treated appropriately by the enterprise and/or the lawyer (title of the document, place of storage, maintenance of confidence, etc.); (iii) the company shall submit a list stating the time and date when the documents are prepared, the name of the person preparing the documents, and a summary of each document within a specified period of time; (iv) if the exempted documents contain any out-of-scope subject, the company shall submit a separate of such subject or report its contents to the JFTC; (v) the company shall not apply for exemption for any illegal purposes.

**COVID-19 related issues**

In response to the pandemic of COVID-19, the JFTC announced that it would take strict action against companies that take advantage of the tight supply and demand for hygiene products, such as masks, to conduct actions that impair consumers’ interests, such as cartels.
Malaysia

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Based on financial year April 1st to March 31st

Malaysia’s principal competition law is the Competition Act 2010, which took effect on January 1, 2012. The Malaysian Competition Commission (MyCC) enforces the Malaysian Competition Act.

Since its establishment in 2011 through 2018, the MyCC’s enforcement efforts have largely targeted straightforward cartel activity in local markets orchestrated by domestic trade associations. Since the election of 2018, the MyCC’s public education, competition advocacy, and public education efforts have intensified.

In September 2017, the MyCC accepted a remedial undertaking from thirteen suppliers of construction sand to discontinue coordinated sales practices.

In September 2019, the MyCC accepted a remedial undertaking from the Sabah Tourist Guides Association to terminate trade association policies setting uniform fees for tourism services following an MyCC investigation into a consumer complaint. No financial penalties were levied.

In October 2018, the MyCC fined seven day-care operators a combined total of MYR33,068.85 for price fixing.

The MyCC’s competition advocacy, public outreach, and industry study programs have focused on markets directly impacting daily lives of Malaysian consumers. Examples include life sciences, education services, public transportation, and construction.

Pursuant to the MyCC’s Guidelines on Leniency Regime, cartel participants that voluntarily admit the misconduct and provide information significantly assisting the investigation may receive up to a 100% reduction in penalties. The percentage of reduction in penalties is to be determined based on whether the applicant is the first cartel member to disclose the misconduct and the stage in the investigation at which the cooperation occurs.

Pursuant to the MyCC’s Guidelines on Financial Penalties, the MyCC may consider “existence of a corporate compliance program that is appropriate having regard to the nature and size of the business of the enterprise” as a mitigating factor in the calculation of penalties.

The Competition Act permits private actions for damages. A prior determination of infringement by the MyCC is not required to bring suit.

The MyCC’s enforcement program has historically been limited in the frequency of enforcement actions and magnitude of penalties. However, in October 2019, the MyCC issued a proposed decision against a leading ride-hailing service for abuse of dominance through the imposition of improper restrictions on drivers and proposed a penalty of over MYR86 million. Cartel enforcement may likewise intensify in the future.
New Zealand

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<tr>
<td>New Zealand</td>
<td>NZD1.05 million</td>
<td>NZD0</td>
<td>NZD400 thousand</td>
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*Based on financial year April 1st to March 31st*

The two penalties imposed over the last three years (one in 2017 and one in 2019) were both in relation to cartels in the real estate sector.

The Commerce Commission has published its enforcement priorities and target areas, which for the 2019-2020 period include increasing awareness of the impending criminalization and market studies (the first of which in the fuel market was completed at the end of 2019).

According to the available information, there are a number of confidential cartel investigations currently underway.

Sectors that are likely to be a focus for the Commerce Commission in 2020 include:

- the online retail sector;
- motor vehicle traders;
- the construction industry.

The Commerce (Criminalization of Cartels) Amendment Act 2019, which introduces criminal penalties for cartel conduct, comes into force on April 8, 2021. The new criminal penalties can be imposed against individuals and businesses: for individuals, penalties are up to seven years’ imprisonment and/or a fine of up to NZD500 thousand; for businesses, the maximum fine which can be imposed is the greater of NZD10 million, or either three times the commercial gain or 10% of turnover per year per breach for businesses.

**COVID-19 related issues**

In response to the COVID-19 pandemic, the Commerce Commission has publicly stated that it has no intention of taking enforcement action against businesses that are cooperating to ensure New Zealanders continue to be supplied with essential goods and services during this unprecedented time. However, the Commission has also noted that it would have no tolerance for “unscrupulous use of the COVID-19 pandemic as an excuse for non-essential collusion or anti-competitive behavior”. Guidelines have been issued setting out the factors that the Commission would consider to determine whether collaboration was legitimate in the circumstances.

Urgent legislation has been introduced to parliament to update a number of pieces of legislation to deal with the COVID-19 pandemic. The COVID-19 Response (Further Management Measures) Legislation Bill includes changes to the Commerce Act 1986 to amend the Commerce Commission’s powers to authorize conduct, such as business collaborations, during the COVID-19 pandemic and provides the ability for such authorizations to be considered on a ‘fast track’ or urgent basis.
Philippines

Since the beginning of its operations in 2016, the Philippine Competition Commission (PCC), which enforces the Philippine Competition Act (PCA) and the relevant Implementing Rules and Regulations, has received over 309 complaints and inquiries, including 135 complaints about potential cartels or abuse of dominance.

As of January 2020, the PCC has initiated 15 preliminary inquiries, of which two were discontinued at the preliminary phase, two were closed, two proceeded to adjudication, and nine were ongoing.

The PCC’s cartel cases include investigations in the rice, cement, and garlic industries.

In January 2020, the Supreme Court formally enacted new rules authorizing the PCC to conduct dawn raids in support of investigations of anticompetitive conduct.

In February 2020, the PCC charged a pool of insurance companies and the National Home Mortgage Finance Corporation (NHMFC) with entering into anti-competitive agreements for the exclusive provision of mortgage redemption insurance (MRI) to its account holders for almost four decades. The matter is currently pending.
Singapore

From April 2018, the Competition Commission of Singapore (CCS) has changed its name into Consumer Commission of Singapore (CCCS) and, in addition to the Competition Act (Chapter 50B), which took effect on January 1, 2006, enforces also the Consumer Protection (Fair Trading) Act (Cap. 52A).

In November 2017, the CCS fined three engineering firms a combined total of SGD626,118 for bid rigging in connection with tenders for electrical services for the Formula 1 Singapore Grand Prix races from 2015 to 2017.

In January 2018, the CCS fined five capacitor manufacturers a combined total of SGD19,552,464 for cartel activities including exchange of confidential and commercially sensitive business information, agreement on pricing policies, and agreement on rejection of customer proposals for lower pricing.

In September 2018, the CCCS fined thirteen competing poultry distributors a combined total of SGD26,948,639 for cartel activities in the market for fresh poultry, including agreements on pricing and the timing and amount of price changes. The investigation responded to an anonymous complaint.

In January 2019, the CCCS fined the operators of three hotels a combined total of SGD1,522,354 for the exchange of competitively sensitive information regarding corporate customers, such as confidential negotiated corporate rates and future pricing strategies.

For 2020, the CCCS is expected to broadly focus on services, retail, finance, and shipping sectors.

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<tr>
<td>Singapore</td>
<td>SGD626 thousand</td>
<td>SGD47 million</td>
<td>SGD1.5 million</td>
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COVID-19 related issues
The CCCS responded to the COVID-19 outbreak by emphasizing its online and telephonic channels for filing complaints or notifying transactions, and modified operations in compliance with the government’s social distancing and remote working guidelines. The CCCS issued an infringement decision against three construction companies, which were found to have put in place bid rigging practices in relation to tenders and quotations called by Wildlife Reserves Singapore (WRS) under these conditions.

On June 9, 2020, the Experts Group on Competition of the Association of Southeast Asian Nations (ASEAN), of which Singapore is a Member State, issued a statement underscoring the need for continued competition enforcement and compliance during the pandemic response: “Notwithstanding the challenges arising from the pandemic, competition law continues to play a fundamental role in the economy. Fair competition, in an economy will enhance economic efficiency, stimulate innovation and economic growth and increase consumer welfare. This will greatly contribute to the region’s efforts in overcoming the pandemic’s adverse impact.”
## Taiwan

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<tr>
<td>Taiwan</td>
<td>TWD200 thousand</td>
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<td>TWD60.4 million</td>
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Taiwan’s principal competition law is the Taiwanese Fair Trade Act (FTA), which took effect on February 5, 1999 (amended as of 2017). The Taiwanese Fair Trade Commission (FTC) enforces the FTA.

In June 2015, an amendment to the FTA came into effect, creating the “Antitrust Whistleblower Rewards Program”. Based on this new program, cartel whistle-blowers who provide high quality and sensitive information may become entitled to a finder’s fee. This indicates an inclination towards much more aggressive antitrust enforcement.

On April 21, 2016, with the assistance of a confidential whistle-blower, the FTC uncovered a cartel in the container yard services market, implicating twenty-one enterprises for imposing horizontal constraints through price fixing. The FTC paid the whistle-blower a lump sum of USD5,500. This program is expected to be a pivotal development in the FTC’s antitrust enforcement activities.

Recent cartel decisions include:

- **Taoyuan City Security Commercial Association promulgated a self-discipline code restricting its commercial members to make the prices of commercial security services lower than the recommendation prices provided by the Association.** On August 7, 2019, the Taiwan FTC held this to be a violation of the FTA and imposed a fine of TWD 400 thousand.

- **Five ready-mixed concrete manufacturers established a mutual understanding to raise the prices of ready-mixed concrete in Southern Taiwan.** On April 24, 2019, the FTC held this to be a violation of the FTA and imposed fines totaling TWD60 million.

- **Two warehousing and logistics companies made an agreement to raise the bidding price in an import goods unloading service project.** On May 18, 2018, the FTC held this to be a violation of the FTA and imposed fines totaling TWD600 thousand.

- **Taichung City Security Commercial Association promulgated a self-discipline code restricting its commercial members to make the prices of commercial security services lower than the recommendation prices provided by the Association.** On June 1, 2017, the FTC held this to be a violation of the FTA and imposed a fine of TWD200 thousand.

- **Under the Taiwan competition legal framework, an enterprise violating the cartel prohibitions under the FTA can be exempted or entitled to a reduction if one of the following is satisfied, and the FTC agrees in advance to grant such immunity or reduction: (i) before the FTC knows about the unlawful cartel activities or commences an investigation on its own initiative, the enterprise voluntarily reports in writing to the FTC the cartel activities, provides key evidence and assists the FTC in its subsequent investigation; or (ii) During the FTC investigation, the enterprise provides specific evidence to prove unlawful cartel activities and assists the FTC in its subsequent investigation. No more than five applicants can be eligible for immunity or reduction in a case. The first applicant coming to FTC can qualify for full immunity from a fine. The rest applicants can be reduced by 30-50%, 20-30%, 10-20%, and 10% or less, based on when they reported to FTC.**
Africa

South Africa

In the reference period, some important cases have been treated by competition Courts.

In one of the most high profile cartel cases in South Africa, 23 banks (local and foreign) are alleged to have fixed the price of the ZAR/USD exchange rate. The case gave rise to a dispute before the Tribunal, the Competition Appeal Court (CAC) and the Constitutional Court on the scope and timing of the access to the Commission's investigation record (Commission v Standard Bank of South Africa).

In the case Commission v Enviroserv Waste Management/Wasteman Holdings, the Tribunal was asked to decide whether firms who are competitors in a downstream market breached the anti-cartel provisions of the Competition Act when at board meetings of their upstream Joint Venture (JV) they appeared to agree to the prices that they would charge their own downstream customers. The Tribunal rejected Enviroserv's arguments and found that although the JV is a separate legal entity for company law purposes, it lacked independent decision making capacity given that i) the JV's board of directors were all appointed by its shareholders; ii) there was no evidence to suggest that the directors considered themselves as independent of the interests of the shareholder who nominated them; iii) the JV could only make a decision following a unanimous vote by the board of directors. Accordingly, the Tribunal found that the agreement reached between the two directors on the JV's board of directors constituted an agreement between its respective shareholders to fix the prices of the services they offered to their downstream competitors.

In the case Commission/Avusa and Primedia, the CAC confirmed that it is not necessary for the Commission to show an act of implementation for parties to be found to have breached of the anti-cartel provisions of the Competition Act. However, where a market allocation agreement was entered into before the commencement of the Competition Act and the case advanced by the Commission is that the agreement was implemented at the time of referral, parties could not be found guilty of contravening the anti-cartel provisions of the Competition Act if such agreement was never implemented following the commencement of the Competition Act.

On July 12, 2019 and February 13, 2020, certain provisions of the Competition Amendment Act, having a direct impact on the Commission's investigation of cartel cases and the adjudication by the Tribunal, came into effect. In particular: a maximum penalty of up to 25% of a firm's South African turnover can be now imposed in respect of repeat offenders; parental liability is provided in circumstances where the firms controlling the cartelists knew, or should reasonably have known that the cartelists was engaging in cartel conduct; in line with the strong public interest focus of the Competition Amendment Act, the competition authorities must now consider whether, and to what extent, the cartel had an impact upon small and medium businesses and/or firms owned or controlled by historically disadvantaged persons.

COVID-19 related issues

The South African Government announced a range of exemptions for designated sectors of the South African economy from the anti-cartel provisions of the Competition Act. This has been done in order to combat the financial impact of COVID-19. The block exemptions apply to the following sectors of the economy: banking, retail property, healthcare and the hotel industry.

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<td>South Africa</td>
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Based on administrative and civil penalties only for fiscal years April 1, 2016 to March 31, 2017, April 1, 2017 to March 31, 2018 and April 1, 2018 to March 31, 2019
The block exemptions have limited application and only apply where the agreement or practice between competitors is undertaken at the request of or in coordination with the relevant government department and for the sole purpose of responding to the COVID-19 pandemic.

The competition authorities announced that their resources will be focused on dealing with investigations relating to COVID-19. However, we have not observed an increase in the initiation of new complaints or dawn raids, which may be related to the coronavirus. In fact, the focus of the competition authorities has been on prosecuting firms which may have charged excessive prices for certain medical goods/services, basic food and consumer items.
More information

DLA Piper is a global law firm with lawyers located throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For more information, please contact a member of our Global Cartel team: