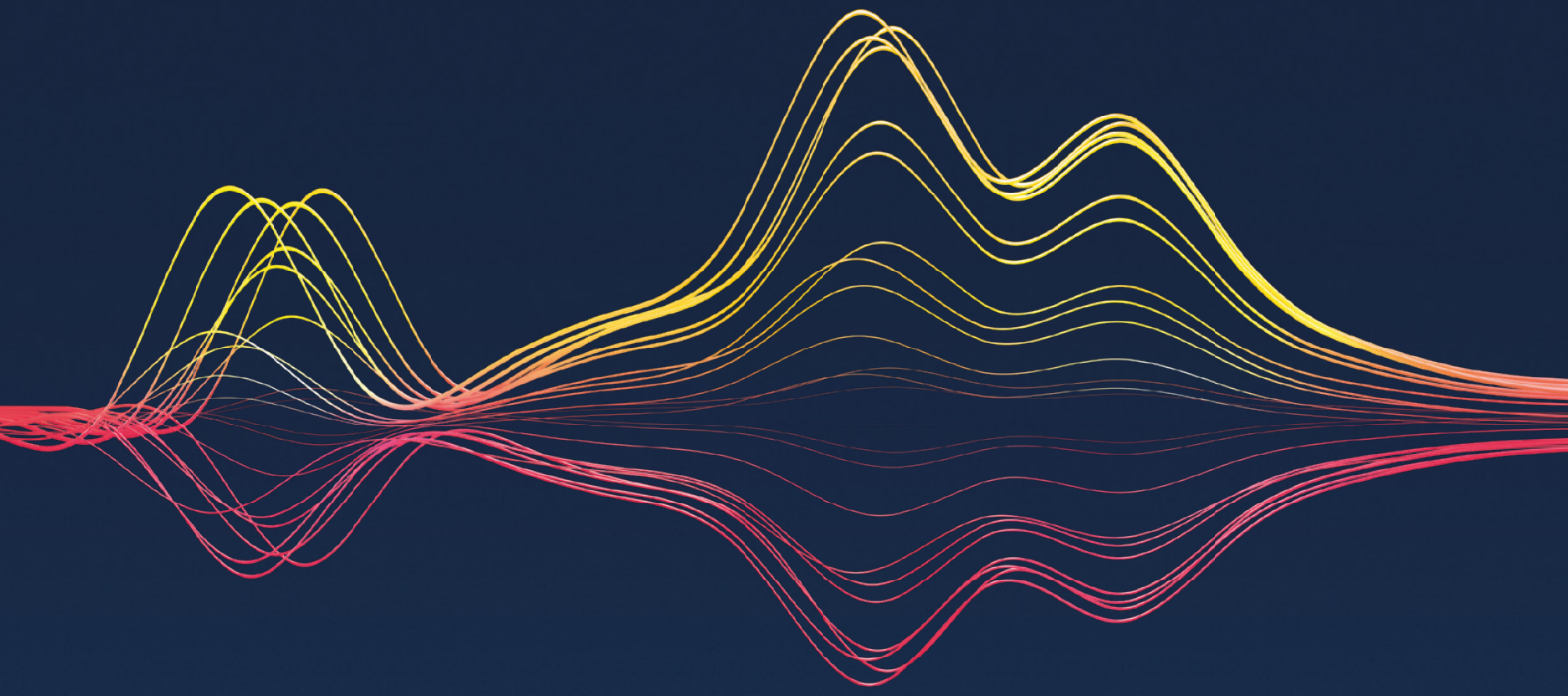
Global enforcement priorities in vertical agreements

SEPTEMBER 2020



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Introduction

Vertical restraints refer to restrictions of competition in agreements or contract terms between firms that operate at different levels of the supply chain, for example an agreement for the supply of goods between a manufacturer and a retailer or distributor, or an agreement for the supply of services. The vertical agreement can relate to final goods bought for resale, or for input products that the buyer processes into a final product for sale. Restrictions of competition in *vertical* agreements are generally considered less harmful to competition than *horizontal* anticompetitive agreements between competitors such as cartels, market allocation schemes or legitimate forms of collaboration between otherwise competing companies.

Vertical agreements are widespread, since few suppliers creating products or services sell directly to the end-user. Most use wholesalers, distributors and retailers, and distribution systems may be two-tiered, three-tiered or more, depending on the industry concerned. Suppliers use different forms of distribution systems, such as exclusive distribution (one buyer by territory), selective distribution (a network of authorized retailers), franchising, agency, and others. In addition to the traditional brick-and mortar distribution systems, on-line commerce has developed over the last decades, and there are mixed as well as pure online players. Some online players not only buy and resell products on their platform but also offer their platform as a marketplace, allowing a supplier to sell his products in a secured way to end users; in those cases the marketplace does not acquire title to the product but acts as an intermediary.

There are several "theories of harm" relating to competition restrictions in vertical agreements. They can obviously hit the consumer's wallet, the most universal theory of harm. Exclusivity, non-compete or resale maintenance clauses have the potential of making products more expensive for the consumer than they would have to be. Such restrictions limit intra-brand competition, i.e. the alternatives of choice for a buyer who wants a product of one particular supplier. Arguably, the limitation of intra-brand competition only harms the consumer where there is an insufficient level of inter-brand competition. That is why market shares may matter when assessing most restrictions of competition in vertical agreements. Some restrictions, however, are almost always prohibited, and almost everywhere, such as resale price maintenance, which is verticalized price fixing. In the US, where markets are well-integrated nationwide, resale price maintenance has long been the more or less most prominent per se restriction (but policy has relaxed in recent years). In the European Union, competition law protects the consumer not only by watching over supra-competitive pricing, but also through the creation of a Single Market without internal boundaries, in the hope that the price levels in different Member States may converge. This translates into hostility as to territorial restrictions with the EU/EEA, which are generally prohibited per se and only allowed under fairly narrow circumstances. With the rapidly advancing digitalization of the economy, novel concerns have emerged such as the possibly "collusive" effect of price-adjusting algorithms, or the use of MFN clauses by different forms of online platforms.

In the 2005-2015 decade, enforcement interest was low, at least in Europe. This has changed with the European Commission's E-commerce Sector Inquiry (2015-2017), a massive information gathering exercise that laid the ground for a number of investigations targeting individual companies. At national level, competition authorities are active as well.

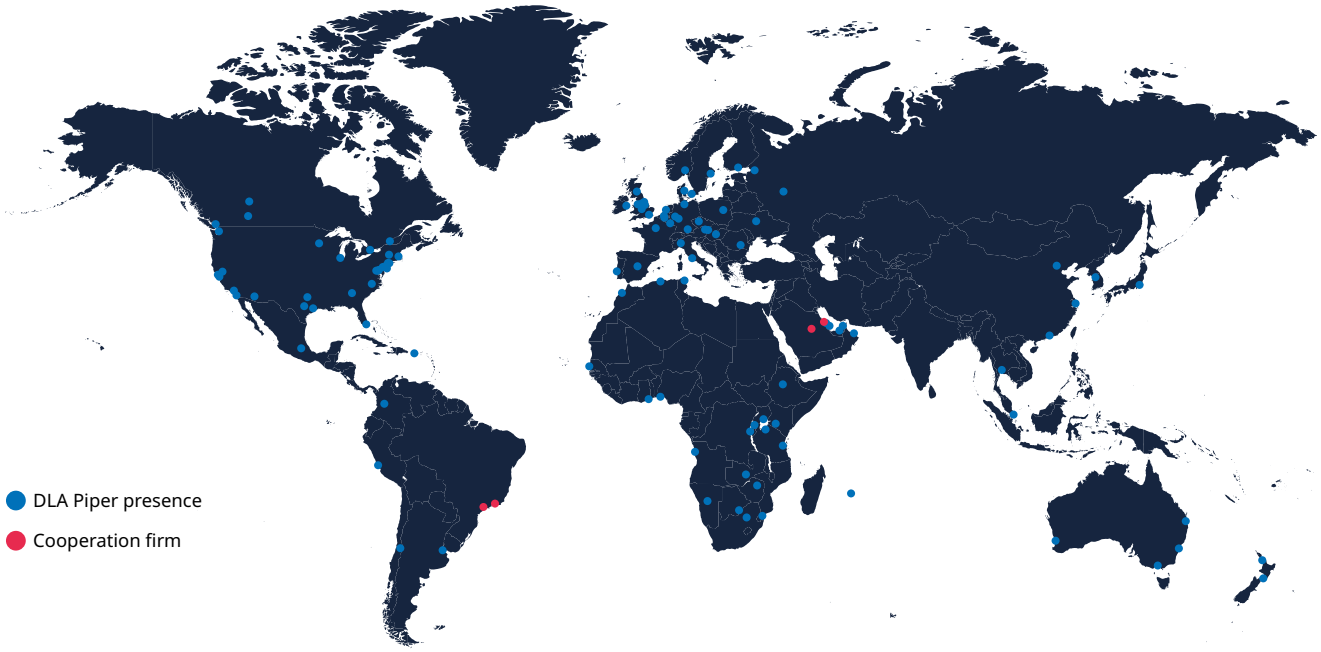
The numerous recent cases clearly signal that vertical restrictions, in particular where they relate to the "new economy", are back on the radar. So there is a need to be mindful about how products are marketed.

EU Rules on vertical agreements are currently reviewed by the European Commission. On 8 September 2020, it published a Staff Working Document that summarises the findings of the evaluation of the Vertical Block Exemption Regulation.

Note: This Guide, which covers a number of important jurisdictions, provides you with some basic information on the current enforcement appetite. It is NOT legal advice but may give you some high-level information where the enforcement risks are bigger. If you need legal advice, please reach out to one of our experts.

For more information, please refer to the **Global Antitrust and Competition key contacts**.

Global enforcement priorities – vertical restraints



Jurisdiction

Argentina	European Union	Mexico	Sweden
Australia	Finland	The Netherlands	Switzerland
Austria	France	Norway	United Kingdom
Belgium	Germany	Peru	US
Brazil	Greece	Poland	
Canada	Hungary	Portugal	
Chile	Ireland	Romania	
Colombia	Italy	Russia	
Croatia	Latvia	Slovakia	
Czech Republic	Lithuania	South Africa	
Denmark	Malta	Spain	

DLA Piper assessment of the priority level of vertical restraints and distribution in key jurisdictions, based on stated enforcement priorities and recent enforcement proceedings:

High Average Low

Vertical agreements in major jurisdictions

Argentina

Block Exemption/Safe Harbour

Subject to rule-of-reason evaluation. There are no block exemptions or safe-harbor mechanisms.

Selective Distribution

Generally considered valid.

Exclusive Distribution

Generally considered valid under Article 1503 of the Civil and Commercial Code. They may be objected to in highly concentrated distribution markets.

Franchising

Considered generally valid under Article 1523 of the Civil and Commercial Code. They may be objected to if they include certain restrictive clauses, such as tying agreements.

IP Agreements

Subject to general antitrust rules. Article 38 of the Patent Law includes certain clauses that may be objectionable, such as grant-back and no-contest clauses.

Agency Agreements

Considered generally valid, even if they include exclusivity clauses, under Articles 1480 and 1481 of the Civil and Commercial Code.

Notification/clearance?

N/A

RPM

Not generally allowed when a fixed or minimum price is imposed. Maximum price clauses may be acceptable.

MFNs

Generally allowed, but they may be objected to when they create obstacles to competition in connection with a dominant firm.

Advertised Pricing

May be objected to if it is part of the implementation of a forbidden RPM strategy.

On-line selling

Generally subject to the same competition rules as marketing from traditional formats.

ARGENTINA				
Estimation of total penalties for vertical anti-competitive practices	**2017**	**2018**	**2019**	**2020**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	Yes.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	New antitrust legislation was issued in 2017. It includes a system that is similar to per se prohibitions against certain types of horizontal restraints. Vertical restraints have traditionally been subject to rule-of-reason analysis, and the new law maintains that approach. The competition authorities follow a generally permissive position towards vertical restraints. Exclusivity clauses are generally not objected. Clauses most commonly objected to are minimum or fixed-resale-price clauses. Vertical restraints may be subject to closer and more severe scrutiny when they are imposed by a dominant firm, particularly if they strengthen such firm's dominant position or if they are intended to limit competition against such firm. Competition authorities are unlikely to approach vertical restraints with more severe scrutiny in the near future. Such restraints are not viewed as having a significant negative effect on the competition of Argentinian markets. The Civil and Commercial Code, which came into effect in 2015, generally tries to preserve distribution agreements, including franchising, from competition law objections, especially regarding exclusivity clauses.			
Recent landmark cases	One of the most relevant competition law cases is YPF, which was decided in the 1990s and involved restraints imposed on foreign buyers and distributors on the reimportation of exported goods. A large fine was imposed, which was ratified by the Supreme Court. However, this stark treatment was primarily due to the dominant position held locally by the exporter, which was protected and reinforced by the reimportation restraints.			

Austria

Block Exemption/Safe Harbour

EU block exemptions apply.

Additionally, the Austrian Cartel Act (CA) also contains a de minimis exception, which provides a safe harbour for undertakings whose market share does not exceed the thresholds set out in Section 2 of the CA, provided that the vertical restraints do not amount to a hard-core restriction.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Austrian competition law follows the same principles as EU competition law regarding agency agreements.

However, any provision in an agency agreement that may prevent a principal from appointing new agents in respect to a given type of transaction as well as single branding provisions may infringe Section 1 of the CA.

Notification/clearance?

N/A

RPM

RPM is generally considered to be a hardcore restriction under the CA and has been heavily fined (see SPAR case 16 Ok 8/15), though under certain circumstances recommended maximum resale prices may be allowed (see also the guidelines published by the Austrian Competition Authority on RPMs).

MFNs

There have been only very few decisions in Austria regarding MFNs. In a recent decision (see SPAR, 16 Ok 8/15), the Appellate Cartel Court declared the MFN-Clause used by SPAR to be anti-competitive.

A new paragraph has been added to the annex of the Act against Unfair Competition, which states that Online Booking Platforms are not allowed to force hotels to accept "best price clauses".

Advertised Pricing

In a decision in which the Appellate Cartel Court dealt with minimum advertised pricing, the stance of the court was not entirely clear. However, the decision seems to imply that minimum pricing policies by themselves are not considered to be problematic.

On-line selling

Austrian competition law follows EU competition law with regard to restrictions on online selling.

AUSTRIA			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**
	Approx. EUR14.8 million	Approx. EUR328,000	Approx. EUR580,000
Can participants to vertical agreements benefit from leniency?	Yes. The same rules for any other violation against Art 1 CA apply to anticompetitive behaviour using vertical restraints. Undertakings which have been fined for anticompetitive behaviour based on vertical agreements and that accept the fine may benefit from a so-called settlement discount (up to 20% of the fine). Cooperation with the authorities will also reduce the fine.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	The Austrian Competition Authority (ACA) has stressed on several occasions (e.g. at the European Competition Day in September 2018 as well as during competition talks) that the ACA is particularly interested in e-commerce and the digital economy. All fines imposed in 2018 in connection with vertical agreements concerned e-commerce companies. In the context of RPM, the ACA intends to focus more on pricing algorithms and developments regarding the digital economy in general. In connection with RPM through pricing algorithms, Lufthansa AG and its subsidiary, Austrian Airlines, were investigated in 2018, as fares for some routes had risen at an above-average rate.		
Recent landmark cases	**SPAR** • In 2013 the Austrian food retail group SPAR was dawn raided on suspicion of price fixing in 17 different product categories. • In 2014 SPAR and various dairy manufacturers were fined for price fixing dairy products using both RPM and an MFN-Clause to collude on purchase and resale prices. • SPAR appealed unsuccessfully against the decision. Hub and spoke collusion using RPM and MFN was confirmed by the Appellate Cartel Court and the fine for SPAR was raised ten-fold from EUR3 million to EUR30 million. • In 2016 SPAR was fined yet again (based on the dawn raid from 2013) for price fixing of snack products and ready meals. Due to the previous decision, SPAR was fined EUR10.2 million.		

Belgium

Block Exemption/Safe Harbour

EU block exemptions apply by analogy.

Selective Distribution

EU block exemptions apply by analogy.

Exclusive Distribution

EU block exemptions apply by analogy.

Franchising

EU block exemptions apply by analogy.

IP Agreements

EU block exemptions apply by analogy.

Agency Agreements

EU block exemptions apply by analogy.

Notification/clearance?

N/A

RPM

Prohibited

- Belgium Competition Authority ("BCA") Decision of 24 January 2019, HM Products Benelux NV, BMA-2019-I/O-03-AUD.
- BCA's Decision of 22 March 2017, Algist Bruggeman, BMA-2017-I/O-07-AUD.

MFNs

MFN clauses are anticompetitive.

(Decision of AT.40153 E-books MFNs and related matters)

MFN clauses can constitute either an object or effects restriction.

- BCA's Decision of 7 November 2016, Immoweb, ABC-2016-I/O-31-AUD.

Advertised Pricing

No case law. Potentially by object restriction under the vertical guidelines as it indirectly constitutes RPM.

On-line selling

In principle, no restrictions are allowed.

BELGIUM				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	N/A	EUR5,489,000	N/A	EUR98,000
Can participants to vertical agreements benefit from leniency?	No.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	The Belgian Law of 4 April 2019 amending the Belgian Code of Economics stipulates that it is prohibited to abuse an undertaking's position of economic dependency which may affect competition on the relevant Belgian markets. An abuse of economic dependency will exist when there is (i) a refusal of a sale, a purchase or other transaction terms, (ii) direct or indirectly imposing unfair treatment of buying or selling prices or any other unfair trading conditions, (iii) limitation of production, marketing or technical development to the detriment of consumers, (iv) applying unequal treatment to economic partners in cases of equivalent performances, distorting competition, and (v) making the award of a contract conditional upon the acceptance of additional services which by their nature or commercial usage do not relate to the subject matter of these agreements. (Article 4). This law applies to unilateral and bi- and multilateral conducts. The aforementioned law provides further guidance on the scope of unlawful terms and unfair market practices prohibited in Belgium.			
Recent landmark cases	**Case *C-230/16 Coty Germany* related to online selling restrictions.** In Coty, the ECJ ruled that up to a market share of 30%, suppliers can prohibit buyers from reselling products on market places, because the supplier has no contractual relationship with the marketplace that allows them to protect their brand reputation. While Coty applied to luxury goods sold in a selective distribution network, the ECJ's reasoning applies to any products sold in any type of distribution network, as long as marketplace sales remain a relatively small portion of internet sales.			

Brazil

Block Exemption/Safe Harbour

Block exemptions do not apply in Brazil.

The safe-harbor exemption applies to vertical agreements entered into by and among parties holding no more than a 20-percent market share in the relevant market (ie, the 20% Exemption).

Selective Distribution

Based on a rule-of-reason analysis involving an assessment of the parties' dominant position as well as a market power exercise.

In addition to the market power assessment, the antitrust analysis takes into consideration (i) the agreement duration – CADE's case law usually takes a 5-year term as a proxy for the maximum limit – and (ii) whether the conduct is likely to substantially lessen or prevent competition.

Exclusive Distribution

Based on a rule-of-reason analysis involving an assessment of the parties' dominant position as well as a market power exercise.

In addition to the market power assessment, the antitrust analysis takes into consideration (i) the agreement duration – CADE's case law usually takes a 5-year term as a proxy for the maximum limit – and (ii) whether the conduct is likely to substantially lessen or prevent competition.

Franchising

Based on a rule-of-reason analysis involving an assessment of the parties' dominant position as well as a market power exercise.

In addition to the market power assessment, the antitrust analysis takes into consideration (i) the agreement duration – CADE's case law usually takes a 5-year term as a proxy for the maximum limit – and (ii) whether the conduct is likely to substantially lessen or prevent competition.

IP Agreements

Based on a rule-of-reason analysis involving an assessment of the parties' dominant position as well as a market power exercise.

In addition to the market power assessment, the antitrust analysis takes into consideration (i) the agreement duration – CADE's case law usually takes a 5-year term as a proxy for the maximum limit – and (ii) whether the conduct is likely to substantially lessen or prevent competition.

Special attention must be paid when the involved IP rights may be considered essential facilities or standard essential facilities (SPEs).

Agency Agreements

Based on a rule-of-reason analysis involving an assessment of the parties' dominant position as well as a market power exercise.

In addition to the market power assessment, the antitrust analysis takes into consideration (i) the agreement duration – CADE's case law usually takes a 5-year term as a proxy for the maximum limit – and (ii) whether the conduct is likely to substantially lessen or prevent competition.

Notification/clearance?

No. Vertical agreements are not subject to notification in Brazil.

RPM

Prohibited. It may be considered per se illicit (see the SKF Bearings case).

MFNs

An MFN clause may be analyzed as an implicit exclusivity if it is able to provoke a lock-in effect.

Advertised Pricing

No case law currently exists.

Double care is needed when pricing may indirectly constitute RPM.

On-line selling

No case law currently exists. In principle, no restrictions are allowed.

However, restrictions may be accepted when needed to protect brands (eg, luxury products, following the example of the ECJ re. Coty dated December 6, 2017 – C230/16).

BRAZIL				
Estimation of total penalties for vertical anti-competitive practices	**2017**	**2018**	**2019**	**2020**
	N/A	BRLR5,761,411.17 (Tecon Suape/ Rodrimar case) CADE condemned Tecon Suape and Rodrimar S.A. for abuse of a dominant position in the container storage market at the Port of Santos and Port of Rio Grandes in the states of São Paulo and Rio Grande do Sul due to the irregular collection of a THC2 fee for the release of containers from independent customs facilities. CADE's Tribunal concluded the conduct had potential to discriminate and increase the costs of rivals, expel agents from the market, decrease the incentive for new entrants and increase the general price level of that market. • Rodrimar S.A. (BRL972,961.17) • Tecon Rio Grande S.A. (BRL4,788,450)	BRL7,158,415.27 (Tecon Suape case) CADE condemned Tecon Suape for abuse of a dominant position in the container storage market at the Port of Suape in the state of Pernambuco due to the irregular collection of an ISPS fee which artificially increases the costs of bonded premises, generating losses to competition in the market.	N/A The only investigation reviewed by CADE's Tribunal in 2020 was closed due to a lack of evidence (Genzyme/EMS).
Can participants to vertical agreements benefit from leniency?	Yes. Leniency applications are available for any kind of conduct (ie, cartels and/or unilateral conducts).			

Key cases and trends/ developments or particular sectors of interest in relation to verticals	Abuse of dominance investigations are less common than cartel investigations in Brazil. There were no legislative or policy changes in 2019, and none are expected in 2020.
Recent landmark cases	One of the most important cases discussing exclusivity (implicity) was the Ambev/Tô Contigo case (2009). Such case investigated a fidelity program called Tô Contigo, created by Ambev, a leading brewery company in Brazil. The program was built to grant advantages to retailers purchasing Ambev products, including discounts per volume and points that could be exchanged for prizes. The CADE Tribunal's final decision concluded that the fidelity program created artificial exclusivity in the market, inducing the point of sales to only buy Ambev beers in order to be granted prizes and discounts. Considering Ambev's high market power, CADE's Tribunal concluded that Ambev's fidelity program increased competitors' costs and foreclosed their access to the market, therefore restricting competition. CADE's Tribunal condemned Ambev for antitrust infringement, imposing a fine of BRL352 million. Ambev challenged CADE's decision in the Federal Court and, in July 2015, reached an agreement with CADE, agreeing to pay a fine of BRL229 million. Another relevant investigation in Brazil related to vertical practices was the SKF case (2013), which analyzed SKF's resale price maintenance agreements, particularly those that prescribe minimum or fixed prices. After fining SKF 1 percent of its gross turnover in 2000, CADE's Tribunal stated that it would start to review RPM's cases in Brazil under a per se illicit approach.

Canada

Block Exemption/Safe Harbour

There are no requirements under the Competition Act for vertical agreements to be pre-approved by the Competition Bureau, although vertical agreements maybe reviewed under the civil provisions of the Competition Act. There are no block exemptions available but advisory opinions may be sought in certain circumstances.

There are a few general exemptions from the application of the Competition Act.

Provisions in the Competition Act relating to price maintenance, exclusive dealing, tied selling and market restriction do not apply where the supplier and the customer are affiliated.

Selective Distribution

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially.

Exclusive Distribution

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially.

Franchising

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially.

IP Agreements

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially. Certain defences for conduct involving IP.

Agency Agreements

No order can be made pursuant to the price maintenance provision of the Competition Act where the supplier and customer are principal and agent. However, the Competition Bureau will consider relevant legal principles in determining whether a valid agency relationship exists.

Notification/clearance?

N/A

RPM

Based on a form of rule of reason analysis involving an assessment of whether the conduct is likely to affect competition adversely.

MFNs

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially.

Advertised Pricing

Resale price maintenance (RPM) is defined to include influencing upwards or discouraging the reduction of advertised resale prices. Further, the publication of an advertisement by a supplier that mentions a resale price of product is by default proof that the supplier is engaged in RPM unless the advertisement makes it clear that the product could be sold at a lower price.

On-line selling

Based on a form of rule of reason analysis involving an assessment of the market and whether the conduct is likely to lessen (or prevent) competition substantially.

CANADA			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**
	No penalties were imposed. However, in the Commissioner of Competition's application against the Toronto Real Estate Board (TREB) for abuse of dominance, TREB was ultimately ordered to pay CAD1.8 million in legal costs, disbursements and expert fees.	0	0
Can participants to vertical agreements benefit from leniency?	Vertical agreements between suppliers and customers are not assessed under the criminal conspiracy provisions of the Competition Act. As such, the Immunity and Leniency Programs, which are available to parties involved in a horizontal criminal conspiracy, do not apply to participants to a vertical agreement.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	Between 2016 and 2017, the Competition Bureau closed a series of investigations related to abuse of dominance after not having found sufficient evidence to suggest that the alleged conduct led to substantial lessening of competition in the market. A complaint was made by Aequitas Innovations Inc. against TMX Group, which operates the Toronto Stock Exchange, that certain clauses contained in the contracts between TMX Group and investment dealers prevent the dealers from sharing private market data with third parties such Aequitas. Aequitas planned to launch a low priced, consolidated market data product for traders. The Bureau found that TMX has indeed refused requests by investment dealers to share private market, but such conduct would be unlikely to violate the abuse of dominance provisions of the Competition Act.		

	The Bureau concluded an abuse of dominance investigation of a grocery chain (Loblaw) without filing an application to the Competition Tribunal. Loblaw imposed policies that sought compensation from suppliers when its profitability decreased due to other retailers' competitive activities, such as when they sold products at lower prices. During the Bureau's investigation, Loblaw ended several of the impugned policies. The Bureau has filed an application with the Competition Tribunal against the Vancouver Airport Authority (VAA). The Bureau alleged that the VAA abused a dominant position by refusing to allow new in-flight catering suppliers to operate at the Vancouver International Airport by denying them airside access and tying access to the leasing of airport land. The hearing is scheduled to commence in October, 2018. On 7 March 2019 the Competition Bureau issued more comprehensive, non-binding Abuse of Dominance Enforcement Guidelines, replacing the 2012 version. The changes include elaboration of what constitutes anti-competitive conduct (exclusion, predation and disciplining competitors and in certain instances, refusals to deal); reformulation of the market share screen by removing the 35% market share safe harbour and replacing it with a more flexible approach: the Bureau will not examine a firm with less than 50% market share except where there is other evidence that the firm possesses a substantial degree of market power or will realize such ability in a reasonable time by engaging in the anti-competitive conduct; and potential enforcement activities against firms which control but do not participate in down-stream markets. Firms now may be found to be jointly dominant even where they are not coordinating their anti-competitive conduct but where there is other evidence that competition is not sufficient to discipline their exercise of market power. There is also discussion of multisided markets and their implications for barriers to entry
Recent landmark cases	Competition Bureau triumphs over the Toronto Real Estate Board (TREB) – The case against TREB has been ongoing since 2011, where the Bureau filed an application challenging TREB's practice of restricting its members' ability to use and display certain Multiple Listing Service (MLS) information over the internet. TREB is the largest real estate board in Canada, with over 31,000 members. It owns and operates the MLS system which contains current property listings and historic purchase and sale information of residential real estate not available o n other public websites. MLS is an essential tool for real estate agents to help customers buy and sell homes. While agents can provide MLS listing information to its customers by hand, mail, fax or email, TREB has restricted its members from using more innovative ways to share the information such as password protected Virtual Office Websites (VOW), citing privacy concerns and intellectual property claims. The Competition Tribunal initially dismissed the Bureau's Application in 2012, based on a narrow interpretation of the abuse of dominance provisions of the Competition Act. The Federal Court of Appeal overturned the Tribunal's ruling and the matter was sent back to the Tribunal for rehearing. In the final decision released in May 2016, the Tribunal found that TREB's actions amounted to anti-competitive practices that have resulted in substantial harm in competition. TREB was ordered to remove the restrictions on its member agents' access to important data for display online through VOWs. In December 2017, the Federal Court of Appeal upheld that order. In 2018, TREB sought leave to appeal to the Supreme Court of Canada.

Chile

Block Exemption/Safe Harbour

Subject to rule-of-reason evaluation. There are no block exemptions or safe-harbor mechanisms.

Selective Distribution

Analyzed under the rule of reason.

Exclusive Distribution

Analyzed under the rule of reason.

Franchising

Analyzed under the rule of reason.

IP Agreements

Analyzed under the rule of reason.

Agency Agreements

No special rules.

Notification/clearance?

N/A

RPM

Analyzed under the rule of reason.

MFNs

Analyzed under the rule of reason.

Advertised Pricing

Analyzed under the rule of reason.

On-line selling

Treated similarly to other sales channels.

CHILE				
Estimation of total penalties for vertical anti-competitive practices	**2017**	**2018**	**2019**	**2020**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	N/A			

Key cases and trends/ developments or particular sectors of interest in relation to verticals	The national competition authority (FNE), which is the administrative body in charge of investigating and prosecuting competition cases before the Tribunal for the Defence of Competition (TDLC), has not prosecuted vertical restraint cases since 2016. This is mainly because the FNE has focused on cartels and the implementation of the mandatory merger control procedure. The current head of the FNE, Ricardo Riesco, has increased the thresholds for mandatory merger control, initiated the prosecution of cartels and prosecuted several new infractions incorporated in the modification to the Competition Act (D.L. 211) in 2016, such as interlocking and gun jumping. Nonetheless, there has not been a shift in the prosecution of the FNE in terms of vertical restraints or abuse of dominant position. Furthermore, private actors have not been successful in securing a conviction of vertical restrains from the TDLC in recent times. In October 2019, President Sebastián Piñera announced an anti-abuse agenda that included an increase in investigative faculties for the FNE. The initiative could motivate further investigation of abuses of a dominant position within the framework of vertical restraints.
Recent landmark cases	In the so-called Tobacco Case (Judgment No. 26 of 2005), a local tobacco holding was condemned for abuse of dominant position. The dominant tobacco company imposed a series of vertical restraints, such as exclusivity agreements, rebates and other incentives, on supermarkets, gas stations and small kiosks to exclude entrants from expanding in the market. The TDLC sanctioned the tobacco company and imposed an obligation to include the competitor in certain advertising installations they provided for stores. After the Tabaco Case, many companies with a dominant position ended exclusivity agreements and promoted other form of incentives, such as loyalty discounts. In the Matches Case (Judgment No. 90 of 2009), the dominant matches company replaced exclusivity agreements with tailored loyalty discounts, which had an exclusory effect. The TDLC sanctioned the dominant matches company in 2009. This resulted in a wave of prosecution of exclusory fidelity discounts, which ended in prosecution, sanction or settlement agreements in various industries, such as the beer, soda, ice cream and detergent industries. Since these landmark cases, the FNE analyzes fidelity discounts within the framework of vertical restraints as both can have exclusory effects to the detriment of competition. Other relevant cases include a telecommunications case (Judgment No. 88 of 2009), where the dominant incumbent was sanctioned for arbitrary price discrimination against entrants. The incumbent used its dominant position in the upstream mobile telephony market to strangle the margins of competitors downstream in the fixed-mobile (on-net) call termination services market. The TDLC ordered the dominant company to refrain from discrimination based on the characteristics of those who access its services in the future, unless it is based on objective circumstances and is applicable to anyone in the same conditions. Overall, the jurisprudence of the TDLC shows that dominant companies cannot engage in conduct – including vertical restraints – that excludes or limits the expansion of competitors or that increase their costs, unless they exhibit a reasonable and proportionate justification for doing so.

China

Block Exemption/Safe Harbour

Vertical restraints found to eliminate or restrict competition under Article 14 of the AML may be exempt from prohibition under Article 15 of the AML.

Selective Distribution

Draft Auto Sector Guidelines suggest that many customer, territorial, and other restrictions in dealership agreements are generally permissible, but certain restrictions may violate the AML.

Guidelines suggest the possession of "significant market power" by the supplier may be relevant, even if the market power is not sufficient to confer dominance.

Exclusive Distribution

Exclusivity generally addressed under the AML rules against abuse of dominance.

Franchising

See comments on selective distribution.

IP Agreements

Draft guidelines identify potentially anticompetitive licensing practices.

Agency Agreements

Draft guidelines on Antimonopoly Enforcement in Automobile Sector suggestthat restrictions on agents are not vertical restraints, with analysis focusing on the commercial substance rather than form of the relationship with the agent.

Notification/clearance?

The AML does not provide procedures for individual exemptions.

RPM

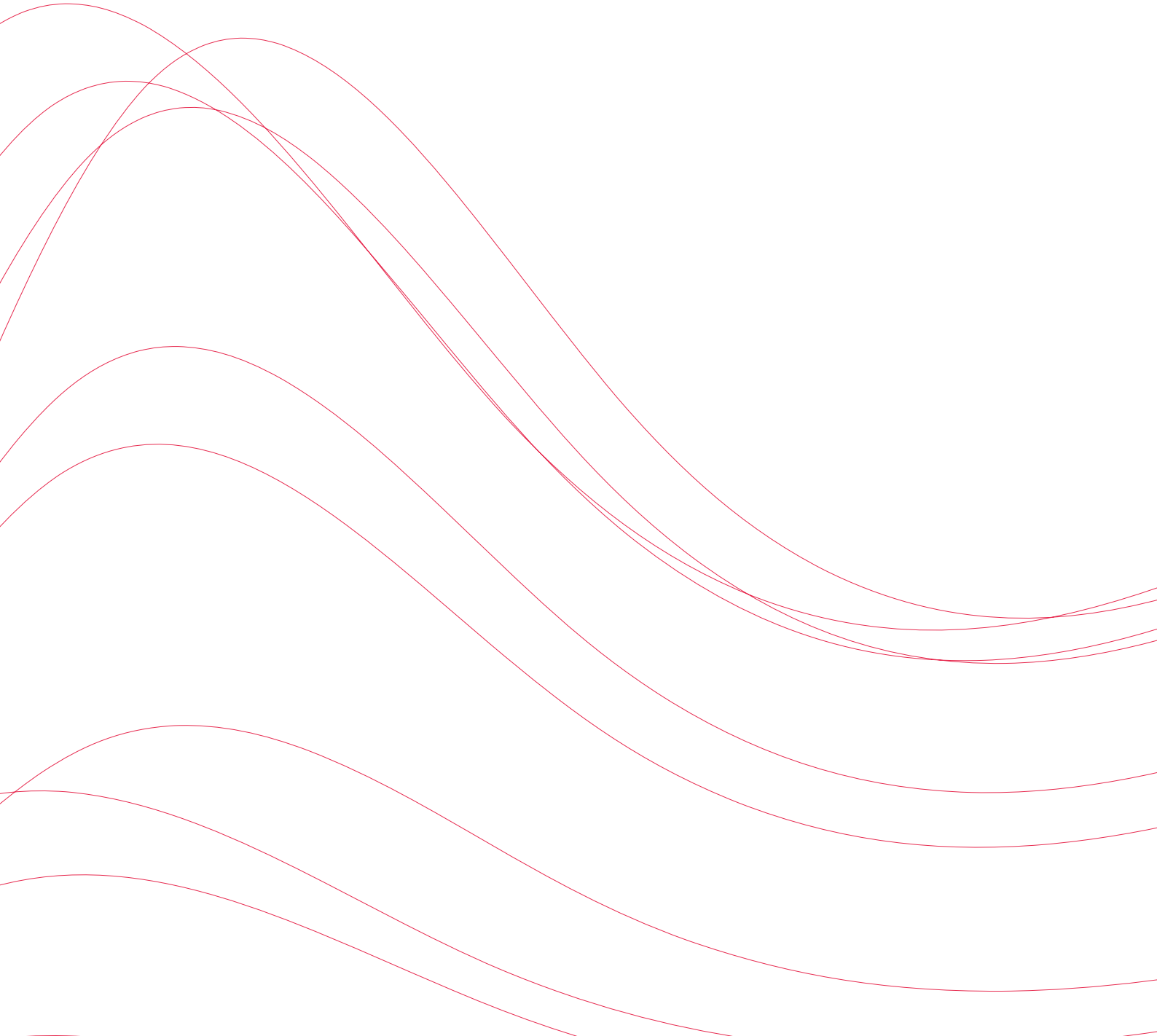
Administrative and judicial precedent suggests that minimum RPM is almost always illegal.

MFNs | Advertised Pricing | On-line selling

No specific guidance.

CHINA				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	RMB336,743,124	RMB4,675,516	RMB84,060,000	RMB162.8 million
Can participants to vertical agreements benefit from leniency?	Current regulations suggest formal amnesty/leniency program limited to horizontal monopoly agreements. However, penalty guidelines suggest reductions in fines for vertical restraints for voluntary disclosure, investigation cooperation and remediation.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	China's principal competition law is the Antimonopoly Law (AML), which took effect in 2008. Chapter II of the AML addresses horizontal and vertical restraints of competition between multiple firms as monopoly agreements. Chapter III of the AML, in turn, addresses exclusionary and predatory practices by firms with substantial market power as abuse of dominance. The State Administration of Market Regulation (SAMR) enforces the AML through administrative investigations and penalties; parties injured by AML violations may also sue for damages. Under the AML, restrictive provisions of agreements between manufacturers and distributors are evaluated as vertical monopoly agreements. Art. 13 defines a monopoly agreement as any "agreement, decision, or concerted effort that eliminates or restricts competition." Art. 14 broadly prohibits any vertical monopoly agreements as identified by the enforcement authorities. Art. 15, in turn, exempts monopoly agreements from prohibition if they are shown (i) to advance at certain beneficial public purposes (notably including economic efficiency), (ii) not to substantially restrict competition in the relevant market, and (iii) to enable consumers to share the resulting benefits. Amendments to the AML proposed in January 2020 would further require that the restrictions be "necessary" for realizing the relevant public purposes. The Interim Provisions on Prohibiting Monopoly Agreements, which took effect on 1 September 2019, articulate SAMR's general approach to assessing vertical restraints under the AML. Additionally, the Antimonopoly Commission of the State Council released for public comment draft Antimonopoly Guidelines for the Automotive Industry in 2016. Although never formally adopted, these Draft Auto Sector Guidelines describe the application of the AML to a number of vertical restraints not addressed by the AML, the Interim Provisions, or any published enforcement actions.			

	Significantly, the only vertical monopoly agreements specifically proscribed by the AML and its implementing regulations or prohibited in published enforcement actions involved resale price maintenance (RPM). Under current judicial practice, RPM is almost always illegal in China.
Estimation of total penalties for vertical anti-competitive practices	Resale price maintenance remains the focus of Chinese enforcement of rules against vertical restraints. Numerous prominent domestic Chinese companies and multinational companies have been penalized for RPM. In 2016, a major medical devices supplier was fined RMB118 million for RPM. The manufacturer included RPM terms in written distribution agreements, issued price guidance, adopted internal measures to monitor compliance, acted to revoke bids submitted below guidance prices and punish violators.



Colombia

Block Exemption/Safe Harbour

Block exemptions provided by Article 1 of Law 155 of 1959, according to which the Superintendency of Industry and Commerce (SIC) may authorize certain agreements that, despite causing restrictions to competition, allow to stabilize a specific sector or industry which is considered basic for the production of goods or services that are relevant to the economy.

Moreover, Article 1 of Law 1340 of 2009, sets a specific block exemption for the agricultural sector. In this case, the agreement requires a prior concept issued by the Ministry of Agriculture.

Selective Distribution

Under an analysis similar to the rule of reason, assessed based on the pro- and anti-competitive effects. Typically, agreements for selective distribution may generate efficiencies in the market and, therefore, they are considered pro-competitive.

Vertical distribution of markets is analyzed on a case-by-case basis.

These agreements shall not have the object or effect of limiting market access. If such is the case, they would breach Section 10 of Article 47 from Decree 2153 of 1992.

Exclusive Distribution

Assessed under an analysis that is similar to the rule of reason.

The Unfair Competition Statute (Law 256 of 1996) specifically forbids exclusivity agreements that have the object or effect of limiting market access, restricting market entry or monopolizing the distribution of goods or services. In addition, restrictive exclusivity agreements may breach Section 10 of Article 47 from Decree 2153 of 1992.

Franchising

Franchises have no written legal background to fall back upon. Therefore, no legal disposition exists that either forbids or allows these agreements.

RPMs, instructions for the use of assigned or licensed trademarks and knowhow, and exclusivity of territory or product clauses will be analyzed on a case-by-case basis under the rule of reason.

However, franchise agreements in which the franchisor assumes higher risks than the franchisee may include RPM clauses.

IP Agreements

Agreements that limit the progression of technical developments are considered restrictive under Section 6 of Article 47 of Decree 2153 of 1992.

- On the other hand, Article 49 of Decree 2153 of 1992 states that companies may cooperate in the research and development of new technologies.
- There is an obligation to commercially exploit patents once they have been granted, either directly or indirectly (*eg,* through licensing or assignment).
- Agreements that have the object or effect of affecting the levels of production of a good or service are considered restrictive under Section 8 of Article 47 of Decree 2153 of 1992.

Agency Agreements

Assessed under an analysis that is similar to the rule of reason.

Agency agreements are subject to Articles 1317 and above of the Colombian Code of Commerce (Decree 410 of 1971, or the CCC).

Agent exclusivity is presumed under Article 1318 from the CCC. Territorial exclusivity may be agreed upon.

Notification/clearance?

There are no notification or clearance requirements for vertical restraints under competition law.

RPM

According to Section 1 of Article 47 of Decree 2153 of 1992, price-fixing agreements are deemed as restrictive; this provision may also apply to vertical agreements. Furthermore, under Sections 2 and 3 of Article 48 of Decree 2153 of 1992, influencing a company to increase the prices of its goods or services or to desist from its intention of lowering them, or refusing to sell to a company or discriminating against it as a retaliation to its pricing policies, is additionally considered as anti-competitive. However, the SIC has determined that the rule of reason should apply in RPM cases (*see* Resolution 48092 from 2012 and Resolution 40598 from 2014).

The SIC further developed this doctrine by clarifying that setting maximum is prices is allowed (*see* Resolution 40598 from 2014 and Resolution 16562 from 2015).

MFNs

Assessed under an analysis that is similar to the rule of reason, involving an assessment of the market and whether the conduct is likely to substantially lessen – or prevent – competition.

Advertised Pricing

Breaching the provisions on advertisements set forth in the Consumer Protection Statute is considered as an anti-competitive act. An agreement of this kind could be deemed restrictive under the general prohibition clause contained in Article 46 of Decree 2153 of 1992.

Furthermore, influencing upwards or discouraging the reduction of advertised resale prices may lead to the breach of Sections 2 and 3 of Article 48 of Decree 2153 of 1992. An advertisement should clarify that the product may be sold at a lower price (*see* RPM).

However, retail price suggestions are allowed.

On-line selling

There are no relevant rules applicable to online selling. It is assessed in the same manner as sales made by any other channel.

COLOMBIA				
Estimation of total penalties for vertical anti-competitive practices	**2017**	**2018**	**2019**	**2020**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	Yes. The leniency regime included in Article 14 of Law 1340 of 2009 and Decree 2896 of 2010 does not set any restrictions regarding the structure of the cartel of which members may benefit from the leniency programs. Please note that the promotor or instigator of the cartel cannot benefit from the leniency program.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	Policy changes	The SIC has not prosecuted vertical restraint cases since 2015. There has not been a shift in the prosecution of the SIC in terms of vertical agreements or unilateral conducts with vertical effects. It is unlikely that the SIC more severe scrutinize vertical restraints in the near future. Such restraints are not viewed as having a significant negative effect on the competitiveness of Colombian markets.		
	Legislative changes	Under Decrees 482 of 2020 and 569 of 2020, during the coronavirus disease 2019 (COVID-19) pandemic, transporters may enter into agreements if such agreements generate efficient logistical synergies for the transport of people and/or things. Please note that the SIC may investigate undertakings that enter into agreements that do not generate efficiencies in the market.		
Recent landmark cases	In the Bavaria Case (Resolution 33361 of 2011), the SIC assessed whether exclusivity clauses that were included in distribution agreements by Bavaria, the largest beer manufacturer in Colombia, were restrictive. In this case, the SIC found that these agreements had not restricted market access as the impact of the exclusivity clauses was not strong enough. Bavaria and specific high-end bars and restaurants had entered into the exclusivity agreements. In the Rice Mills Case (Resolution 16562 of 2015), Molinos Roa and Molinos Florhuila (the Rice Mills) were fined for the infringement of the antitrust regime by influencing distributors to refrain from passing on the discounts granted by the Rice Mills to end customers, thus controlling the prices of rice. The Rice Mills attempted to maintain resale prices through threats of commercial retaliation, termination of contracts and suspension of rice supply. The SIC stated that RPM could be justified under efficiency reasons, which was enough to counter the restriction. In the Colmotores Case (Resolution 26129 of 2015) the Superintendency investigated General Motors Colombia for including exclusivity clauses in their distribution agreements. These clauses were deemed appropriate as General Motors invested in its distribution chain and exclusivity agreements would foster such investment.			

EU

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

EU block exemptions apply.

Notification/clearance?

N/A

RPM

Prohibited

MFNs

MFN clauses are anticompetitive.

AT.40153 e-books MFNs and related matters.

MFN clauses can constitute either an object or effects restriction.

Advertised Pricing

No case law. Potentially an object restriction under the vertical guidelines as it constitutes indirectly RPM.

There is an open investigation against consumer electronics manufacturers.

On-line selling

In principle no restrictions are allowed.

However, the decision of the ECJ re. Coty dated 6 December 2017 (C230/16) allows for certain restrictions re. online sales at least in case of selective distribution systems relating to luxury products.

EU				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	EUR0	EUR0	EUR151,064,000	EUR18,777,000
Can participants to vertical agreements benefit from leniency?	No, vertical agreements are not covered by leniency.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	After a decade of disinterest, the European Commission (DG COMP) is again focusing on vertical restraints. One priority is to encourage e-commerce in all its aspects, which is seen as an instrument to foster both the Single Market without internal borders and technological innovation. In May 2017, the Commission published its Final Report on the e-commerce sector inquiry (together with a detailed staff paper: https://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html). It identifies a number of anti-competitive practices and should be considered as the blueprint for enforcement actions in years to come. The Commission has launched a number of inquiries into vertical agreements attacking, inter alia, • resale price maintenance; • limitations on internet sales (online sales ban); • territorial restrictions; • cross-selling within selective distribution networks; • geo-blocking in relation to video games; and • exclusionary practices and harm to innovation in the airline ticket reservation industry. More generally, the Commission's policy priorities have been detailed in the report "Competition Policy in the digital era" of March 2019. In October 2018, DG COMP launched the review of the Vertical Block Exemption Regulation (VBER), which expires on 31 May 2022. The review is divided in two phases: the Evaluation phase (approx. 18 months, publication of Staff Working Document planned for Q2/2020), followed by the Impact assessment (approx. 24 months, until expiry of the VBER). Focus of the review is the increased importance of online sales and the emergence of new market players such as online platforms, and issues such as resale price maintenance, exclusive distribution, selective distribution, and dual distribution. EU Rules on vertical agreements are currently reviewed by the European Commission. On 8 September 2020, it published a Staff Working Document that summarises the findings of the evaluation of the Vertical Block Exemption Regulation.			

	Main conclusions are as follows: • Some provisions lack clarity (e.g. agency agreements) or are difficult to apply or are no longer adapted to the current business environment; • Some gaps are identified in the rules, such as a lack of guidance on how to assess retail parity clauses or restrictions on the use of price comparison websites, and areas that do not refer to case law issued since the adoption of the rules; • There remains significant scope for diverging interpretations of the rules by national competition authorities and national courts, which is an important issue of concern for stakeholders, as it reduces the benefit of the rules; • There is also room for simplification and further cost reduction, notably by reducing the complexity of the rules.
Recent landmark cases	**Case C-230/16 *Coty Germany* related to online selling rest rictions.** In Coty, the ECJ ruled that up to a market share of 30%, suppliers can prohibit buyers from reselling products on market places, because the supplier has no contractual relationship with the marketplace that allows them to protect their brand reputation. While Coty applied to luxury goods sold in a selective distribution network, the ECJ's reasoning applies to any products sold in any type of distribution network, as long as marketplace sales remain a relatively small portion of internet sales.

Finland

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Public enforcement in few cases, e.g. in Iittala-case referred to below.

MFNs | Advertised Pricing | On-line selling

No examples of public enforcement.

FINLAND				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	No.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	A new Finnish Competition Act came into force on 17 June 2019. Among other things, the new Act amended the Finnish Consumer and Competition Authority's (FCCA) power to conduct dawn raids. The new Act is meant to make dawn raids more effective by allowing the FCCA to conduct the investigaztions of electronic material also at the FCCA's office instead of the target company's premises.			
Recent landmark cases	**Case *Iittala Group Oy Ab* (the Market Court, 20 December 2011)** • Iittala operated a distribution system. • Iittala's conduct constituted price fixing as it set resale prices to the resellers for its products. • The Market Court ruled that RPM was an established and systematic method that appeared in all of Iittala's activities for at least two and a half years. • The Market Court imposed a fine of EUR3 million on Iittala for resale price maintenance.			

France

Block Exemption/Safe Harbour

EU and national block exemptions apply.

French national rules: sector exemptions for agriculture (quality signs and crisis measures).

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A but for agriculture exemptions.

RPM

Prohibited

18-D-26 Canna France, General Hydroponics Europe, Bertels, Biobizz, Hydro Factory/ Hydro Logistique and C.I.S.

MFNs Advertised Pricing On-line selling

Prohibited by the French Commercial Code.

18-D-23 Andreas Stihl SAS and Stihl Holding AG & CO KG.

19-D-14 Bikeurope B.V. and others.

FRANCE			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**
	EUR9,013,000	EUR3,200	EUR7,355,000
Can participants to vertical agreements benefit from leniency?	Yes, verticals covered.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In its fight against anticompetitive agreements, the French Competition Authority (FCA) gives special attention to negotiated procedures. The revision of the settlement and leniency procedures in 2015 has illustrated the FCA's willingness to make them more attractive for undertakings. The new guidelines on settlement procedures and compliance programs were issued in October 2017. Guidelines on the settlement procedure's conditions of implementation are still to come. The FCA now considers that the implementation of compliance programs must be part of companies' day-to-day management. Therefore, commitments to implement such programs can no longer justify a reduction of the penalties imposed, especially in cartel cases. The working group of the European Competition Network met on 5 March and 18 September 2018 in Brussels. The discussions within the working group focused mainly on digital platforms with regard to vertical restraints. Recent decisions of the Court of Justice (ECJ,C-230/16 – Coty) as well as those of national courts related to the prohibition of resale on online platforms were the subject of extensive discussions. Discussions also focused on the prohibited practice of resale price taxation on digital platforms and the impact of the use of algorithms in the commission of the practice. The working group also deeply discussed the issue of agreements and concerted practices in cases of vertical restraint.		

Recent landmark cases	**Decision 18-D-23 of 24 October 2018 related to practices implemented in the distribution of outdoor power equipment sector.** • Following an investigative report from the DGCCRF, the FCA fined Stihl (EUR7 million) for demanding, between 2006 and 2017, hand-delivery of certain products such as chainsaws, brushcutters, pole-saws or electric pruners by the distributor to the buyer. Stihl de facto forbade the sales of its products on its distributors' websites. • However, the FCA does not call into question the use of selective distribution for products, which, like the ones sold by Stihl, justify the setting up of assistance and consultancy services in order to preserve their quality and ensure their proper use. • But the terms of online sales established by Stihl disproportionally limit competition. By imposing this hand-delivery, Stihl removed any interest in online retail for distributors and consumers, who could not benefit from competition between distributors and benefit from more attractive prices (up to 10% cheaper). **Decision 19-D-14 of 1 July 2019 regarding practices implemented in the sector of high-end bicycle retail.** • Following documents sent by the DGCCRF and dawn raids, the FCA imposed penalties of EUR250,000 on Bikeurope for having prohibited its authorised retailers from selling its bicycles online from 2007 to 2014. • In the general terms and conditions of sale, Bikeurope inserted provisions setting out, first, that any online sale of its bicycles must be followed by a delivery to “the authorised place of sale” – in other words, that delivery must be made to the retailer's store – before, second, explicitly prohibiting any online sale. This prohibition restricted the commercial freedom of retailers and prevented consumers from taking advantage of the competition between retailers in terms of price or products.

Germany

Block Exemption/Safe Harbour

EU block exemptions apply.

German national rules:

The FCO may exercise its discretion and refrain from prosecuting vertical restraints where the parties' individual market shares do not exceed 15%. However, in case of concerns in relation to cumulative market foreclosure effects due to a multitude of similar agreements covering at least 30% of a specific market, the de minimis threshold is lowered to 5%.

Sector exemptions (i.e. certain competition law rules and requirements do not apply) for:

- Agriculture
- RPM for books, newspapers, magazines
- Public supply of water

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Market share is calculated on the basis of sales to dealers only while direct sales are not relevant. Thus, when competitors are strong in direct sales, caution need to be applied when calculating the 30% threshold.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules insofar as potential restrictions relate to the brokerage services.

Notification/clearance?

N/A.

RPM

Prohibited

MFNs

- MFN clauses have been deemed anti-competitive by courts and the FCO but may be exempted if Vertical Block Exemption Regulation applies.
- Influencing advertised pricing may be deemed RPM, specifically Minimum Advertised Price (MAP) policies, common in the US, are seen highly critical. Maximum prices and non-binding recommendations can be ok like in the EU block exemptions.

On-line selling

A ban of online sales is a hardcore restriction. FCO is highly protective re free pricing and free customer approach in online sales. Platform bans are seen as critical.

The FCO appears to interpret the Coty-decision narrowly, expressing the view that the decision only applies to "luxury" products and not also to high-quality branded products. The FCO has announced that it will continue to prevent platform bans (considered having the effect of limiting online sales).

Dual pricing online/offline (i.e. rebates granted offline higher than online) is prohibited unless insignificant or justified, damages claims have been successful.

In selective distribution systems restrictions re marketplace and online requirements may be possible, if they are based on criteria established in the Metro case (in short, the distributors must be chosen based on (i) objective and (ii) qualitative criteria, which should be used in a (iii) uniform and (iv) proportionate manner).

GERMANY				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	EUR90 million	EUR15.3 million	EUR13 million (the Federal Supreme Court overruled a penalty of EUR30 million due to formal errors).	EUR13.4 ZEG bicycles-RPM
Can participants to vertical agreements benefit from leniency?	No for vertical agreements. However, cooperating with the FCO can result in a reduction of fines.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	Tenth amendment of the Act against Restraints of Competition (likely to be implemented in 2020). Key elements: • Focus on adaption to the challenges of digitization • Control of abuse regime to be modernized, particularly re the role of digital platforms and essential facilities doctrine in relation to data as well as eased requirements for interim measures by the FCO – these new rules aim specifically at controlling the market power of dominant digital companies • In general, however, the 10th Amendment does not bring any major change in relation to verticals In addition, RPM and specifically online RPM is heavily targeted. Platform ban will likely continue to be an issue.			

Recent landmark cases	**Vertical price fixing** One of the enforcement priorities of the Federal Cartel Office (FCO) in relation to vertical constraints remains vertical price fixing. Most recently, the FCO has imposed 2019 fines totaling around EUR13.4 million on the bicycle wholesaler ZEG Zweirad-Einkaufs-Genossenschaft eG (ZEG), Cologne, and its representatives for fixing prices with 47 bicycle retailers. According to agreements concluded between retailers and ZEG representatives, the retailers were not to undercut the minimum sales prices (also referred to as "low price") set by ZEG for seasonal bikes. The proceeding was triggered by a tip-off from the trade. In general, the FCO has repeatedly taken action against vertical price fixing in the recent years, most notably in the cases against various food manufacturers and retailers (Confectionery, Coffee, Beer) where it imposed fines in the total amount of approx. EUR250 million. **Online Sales Restrictions** As regards online sales restrictions, the FCO took a detailed position on the subject in the Asics decision. Asics had – within a selective distribution system – prohibited its dealers from using price comparison engines for their online presence and from using ASICS brand names on the websites of third parties to guide customers to their own online shops. Additionally, distributors were prohibited without exception from using online marketplaces such as eBay. In the eyes of the FCO, these restrictions unlawfully restricted online sales and thus constituted a violation of competition law. This view was ultimately upheld in court by the Federal Supreme Court in 2018. **'Best price' clauses violate German and European competition law** The prohibition decisions against online platforms for hotel bookings such as Booking.com and HRS for the use of so called best price clauses remains a prominent example of the FCO's enforcement activity in relation to vertical restraints. The most favoured customer clauses in the contracts concluded between HRS and its hotel partners oblige the hotels to always offer their lowest room price, maximum room capacity and most favourable booking and cancellation conditions available on the Internet also via the HRS portal. According to the FCO, such clauses restrict competition between existing online portals as well as making the market entry for new platforms considerably more difficult and thus prohibited them. This decision was upheld on appeal by the Higher Regional Court of Düsseldorf. However, slightly different clauses, so called "narrow" best price clauses, which were initially prohibited by the FCO as well, do not violate competition law according to the Higher Regional Court. "Narrow" best price clauses prohibit hotels from offering lower prices on their own websites only (and not also on other booking portals).

Hungary

Block Exemption/Safe Harbour

EU and national block exemptions apply.

Selective Distribution

EU and national block exemptions apply.

Exclusive Distribution

EU and national block exemptions apply.

Franchising

EU and national block exemptions apply.

IP Agreements

EU and national block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Prohibited

MFNs

Not automatically illegal. Narrow MFN clause can be applied.

Sector Inquiry Report of the HCA on Hotel online booking platforms is available at the Authority's website.

Advertised Pricing

No recent case-law.

On-line selling

A total ban on online selling is a hardcore restriction.

The contact lenses case concerned discrimination among distribution channels (online vs. offline). The HCA established that the objective of the discount criteria was to disadvantage those retailers that operated over the internet to allow a general price increase acceptable to brick and mortar retailers.

It must be noted, however, that the Supreme Court of Hungary recently annulled the decision and ordered the HCA to repeat the investigation.

HUNGARY			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2019**
	HUF44 million	at least HUF44,219,000	HUF111million first half of 2019
Can participants to vertical agreements benefit from leniency?	Yes, but only RPM is covered.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	• The HCA's focus is on digital markets. • The HCA has recently adopted a mid-term digital strategy expressly focuses on the digital economy on a consumer protection perspective. • The HCA has recently launched a market analysis procedure to assess the operation of digital comparison tools. ◦ The interplay between the traditional competition law regime (VBR) and the new geo-blocking regulation (Regulation (EU) 2018/302) has attracted a lot of interest, it is worth mentioning that it is not the HCA but the consumer protection body that was appointed for the application of the geo-blocking regulation.		
Recent landmark cases	**Investigation against Netpincér – closed with commitments in April 2018** The HCA launched an investigation against the operator of the biggest online food delivery platform, as it had allegedly been applying competition restrictive clauses in its contracts concluded with restaurants. In the course of the investigation Netpincér undertook to modify its contracts with the restaurants. The commitment offer was accepted by the HCA, therefore the restaurants were obliged to offer their services under the same conditions (e.g. prices, reductions, delivery conditions) on Netpincér as applied on their own distribution channels (websites, pre-booking/pre-ordering via phone, leaflets). As a result of accepting the proposed commitments by the HCA, no competition infringement was established in the case, and therefore no fines were imposed. **Investigation against Husqvarna Magyarország Kft. – HUF111 million fine for RPM in May 2019** The HCA imposed a fine of HUF111 million (EUR 330,000) on Husqvarna Magyarország Kft. because the undertaking, in collaboration with a number of its distributors, unlawfully set the online retail prices of Husqvarna, Gardena and McCulloch brands. Husqvarna Magyarország Kft. indirectly set the minimum online prices of its products by also fixing the maximum level of discount that distributors could grant from the recommended prices. Taking into account the company's application for leniency and settlement submission, the level of the fine was reduced significantly (by 75%) compared to the amount that could have been imposed. While the HCA did not impose any fines on the concerned online distributors, it obliged them to adopt measures in order to ensure compliance with competition rules. Husqvarna Magyarország Kft. also agreed to further develop its compliance program.		

Israel

Block Exemption/Safe Harbour

Several types of block exemptions:

- block exemption for non-horizontal agreements with no price restrictions which does not contain market share thresholds
- block exemptions for exclusive distribution/ exclusive supply/franchising agreements/joint ventures, which include:
  - market share thresholds; and
  - certain additional specific criteria.

de minimis block exemption:

- combined market share thresholds of up to 15%; and
- certain additional specific criteria

If outside the block exemptions-individual notification and authorisation process available.

Selective Distribution

Block exemption available.

Exclusive Distribution

Block exemption for exclusive distribution or exclusive supply is available; block exemption for nonhorizontal agreements may also apply to distribution agreements.

Franchising

Block exemption for Franchising Agreements is available.

Agency Agreements

Block exemption for exclusive distribution (which also applies to agency agreements) or exclusive supply is available.

On-line selling

No special rules.

IP Agreements

- Antitrust Law excludes agreements which restrict the right to use patents, tradenames, copyrights and similar IP from constituting restrictive arrangements under certain conditions.
- Block exemption for execution of R&D agreements is available.

Notification/clearance?

Notification process for transactions which are not covered by a block exemption.

RPM

Some block exemptions allow maximum prices.

Minimum prices are not covered under the block exemptions and will likely be prohibited under individual authorisation according to existing case laws.

MFNs

Block exemptions do not apply to MFN provisions.

MFNs may be approved under individual authorization on a case-by-case basis.

Advertised Pricing

Suppliers may recommend a resale price to a reseller but the recommendation may not be enforced by the supplier.

ISRAEL			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**
	None	Vertical penalties imposed in one restrictive arrangement case: ILS25 million (imposed on the corporation). ILS150,000 (imposed on two officers of the corporation).	Vertical penalties imposed in one restrictive arrangement case: Approx. ILS9 million (imposed on the corporation).
Can participants to vertical agreements benefit from leniency?	An immunity program is reserved only for horizontal anticompetitive agreements (Cartels)		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	A policy statement of the Antitrust Authority published in June 2017 stated that in the retail market, RPM Fixed Prices and RPM Minimum Prices shall be considered restrictive arrangements unless: (a) the arrangement is related to a market in which there is sufficient competition between different brands and suppliers; and (b) the arrangement is required to promote inter-brand competition in a way which is meant to benefit the consumers. In addition, this policy states that such vertical arrangements will be subject to a stricter examination than other vertical arrangements. As for Maximum RPM, in general the policy may have a certain pro-competitive effect but should be evaluated on a case-by-case basis to verify that they have not turned into de facto RPM Fixed arrangements. A policy statement regarding the Antirust Authority's considerations in determining the amount of penalties was published in October 2016. As for corporations: after determining the maximum possible penalty under the law, the Authority evaluates the severity of the offence. The first criterion to be examined is the harm to the competitive market and its impact on the public and the market. Another criterion is the duration of the breach. The third criterion is the specific circumstances of the breach. This criterion can lower the penalty by 50% or increase it by 20%. The fourth criterion is the outside circumstances that are related to the breach: for example, former breaches may lead to an increase of up to 30% of the penalty. As for individuals: in general, the Authority will impose penalties on an officer of a breaching corporation which has been identified as performing the breach or responsible for its performance, only if the breach has the potential to materially harm competitiveness in the market. In the event the breaching party is a person who managed a non-incorporated business, the breach doesn't have to have such a potential. The sum of the penalty shall be calculated based on the person's salary; the severity of the breach; the potential it has to harm the competition, the specific circumstances and the outside circumstances. Additional criteria shall be: the time passed since the breach ended to the point the breach was discovered. If at least three years have passed, there may be a decrease of 20% in the penalty; if the person has a personal interest in the breach, the penalty may be increased by 15%.		

	In January 2019, the Israeli Antitrust Law was amended in order to strengthen the Antitrust enforcement. Among the changes made was increasing the maximum penalties under the law to ILS100 million. In addition, the names of the Antitrust Authority and the Antitrust Law were changed to the Economic Competition Authority and Economic Competition Law. A significant trend of the Authority, which has increased in recent years, is related to self-assessment. In 2018 the Authority published amendments to two block exemptions, one of which is the block exemption for Joint Ventures, in which an option for self-assessment was added. Such amendments allow the parties to inspect by themselves whether they are in compliance with the requirements of the Antitrust Law, by determining whether the following cumulative conditions exist in their case, based on past interpretation of such conditions in case law, decisions and studies: (i) the objective of the arrangement is not to reduce or eliminate competition, and that the arrangement does not include any restraints which are not necessary to fulfil its objective, and (ii) the restraints in the restrictive arrangement do not limit competition in a considerable share of a market affected by the arrangement, or if, they are liable to limit competition in a considerable share of such market, they are not sufficient to substantially harm the competition in that market.
Recent landmark cases	The Tnuva case: the Antitrust Authority has been investigating Tnuva (the largest food conglomerate on Israel, with a significant market share in the dairy produce market) for six years. Tnuva is under suspicion of dictating prices to major retail chains. Following such investigation, the Antitrust Authority and Tnuva signed a settlement order in which Tnuva agreed to pay ILS25 million (and two of its officers would pay ILS75,000 each). According to the settlement, Tnuva admitted that it has been dictating the prices of certain products to major retail chains, and that such action constitutes restrictive arrangements. The Antitrust Authority on its part agreed not to file criminal charges against Tnuva and any of its officers in this matter. In a plea agreement from 2019, a company and its CEO were convicted of failing to provide data to the Antitrust Authority and this was the first time such conviction was made. Until then, companies and their executives who failed to provide data requested by the Antitrust Authority were subjected to the State Treasury monetary sanctions under administrative proceedings, which did not include conviction or imprisonment. The case began in 2016 when the Antitrust Authority requested documents and data from a company and its CEO after receiving complaints of Antitrust violations by the company. After receiving a few documents pursuant to such request, the Authority suspected that the company and its CEO had refrained from providing many additional documents, and in a search of the company's offices dozens of relevant documents were seized. Under the plea agreement, the company and its CEO pleaded guilty to not providing data as requested by the Authority. It was decided to initiate a criminal proceeding in this case since in the investigation indicated that the failure to provide the documents was intentional.

Italy

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

Possibility to notify agreements for review under national competition law by the competition authority in theory available (rarely used).

RPM

Legal presumption that it isunlawful.

Possibility of individual exemption in theory available.

MFNs

Not automatically illegal.

Recently the Italian Competition Authority investigated certain broad MFN for online booking platforms, but the proceeding has been closed through a commitment decision.

Advertised Pricing

Agreements on Minimum Advertised Prices have to date not been reviewed by the Italian Competition Authority.

Recently, the Italian Competition Authority investigated the conduct of stove producers involving prohibiting online distributors to expose prices to the public, but the proceeding has been closed through a commitment decision (see below).

On-line selling

Online selling restrictions have to date not been reviewed by the Italian Competition Authority.

ITALY				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	EUR0	EUR0	EUR0	EUR0
Can participants to vertical agreements benefit from leniency?	Generally speaking the Italian Competition Authority (ICA) considers that vertical restrictions are less difficult to investigate and therefore for such infringements leniency programs are not applicable. However, the ICA recognizes that participants to cartel which presented some vertical elements may apply for leniency program.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In the proceeding I779 – *Mercato dei servizi turistici-prenotazioni alberghiere online* of 2016 the ICA analysed the vertical restraint of competition caused by the use of MFN clauses by Booking and Expedia in contractual relations with their hotel partner and the negative effects of these clauses on hotel prices to final customers. The ICA has closed this proceeding through a commitment decision, rendering legally binding the commitments offered by Booking and Expedia, consisting in the elimination of those clauses. In 2016 the ICA closed the proceeding I789 – *Agenzie di modelle*. With this proceeding the ICA investigated an agreement between nine model agencies and a fashion house. Despite the claim of some of the parties to the proceeding that this agreement had a vertical nature, the ICA has found that it had a horizontal nature and could not be considered a vertical agreement. In fact, as explained by the ICA, "the parties to a vertical agreement relevant for antitrust purposes must 'each' operate at a different level of the supply chain: it is obviously not possible to classify as a vertical agreement an agreement involving nine subjects operating at the same level of the supply chain (and therefore, among them competitors) and one subject who is a client of them." In 2017 no proceeding concerning vertical agreements was closed by the ICA. In 2018, the ICA closed three proceedings concerning vertical agreements: **1) I813 – *Restrizioni alle vendite online di stufe*:** the ICA opened this proceeding in order to ascertain a possible infringement of Article 101 of the TFEU and Article 2 of Law No. 287/90 (prohibition of anticompetitive agreements) by Cadel, MCZ Group and Zanetta Group, three producers of stoves, in relation to their online distribution channel. More specifically, according to the ICA the producers would have adopted, in the context of vertical relationships with their online active distributors, conduct that could lead to the imposition of minimum retail prices, as well as other online sales restrictions apparently not justified by qualitative needs. The ICA closed this proceeding through a commitment decision, rendering legally binding the commitments offered by Cadel, MCZ Group and Zanetta Group, consisting in binding commitments not to: (i) fix – either directly or indirectly – the resale price of their products; (ii) unduly limit the online promotion or sale of their product to the Italian territory; and (iii) not to apply in a discriminatory way commercial warranties.			

	2 and 3) I801A – Servizio di prenotazione di trasporto mediante Taxi – Roma and I801B – Servizio di prenotazione di trasporto mediante Taxi – Milano: these two parallel proceedings were opened by ICA in order to ascertain a possible breach of art. 101 TFEU and art. 2 of Law No. 287/90 (prohibition of anticompetitive agreements) by the main radio-taxi service companies active in Rome (Radiotaxi 3570 Soc. Coop., Cooperativa Pronto Taxi 6645 S.c., Samarcanda S.c.) and Milan (Taxiblu S.c., Yellow Tax Multiservice S.r.l., Autoradiotassi Soc. Coop.). The proceedings focused on the exclusivity clauses contained in the radio-taxi service companies' by-laws that set up the conditions according to which taxi drivers can access to their services. The investigations, in addition, concerned the initiatives undertaken by radio-taxi service companies in order to prevent the introduction of the "unique phone number," an instrument for the collection and sorting of taxi requests developed by municipal authorities of Rome and Milan. Furthermore, the investigation into radio-taxi service companies active in Milan also covered the countermeasures taken by such companies against taxi drivers operating in Milan who began to use MyTaxi. With its infringement decisions issued in 2018, the ICA concluded that the exclusivity clauses contained in the by-laws represent a network of anticompetitive vertical agreements contrary to Article 101 TFEU. The ICA, considering the peculiarity of the cases, did not consider the infringement serious and did not impose any sanction on the radio-taxi companies. The decisions were annulled in 2019 by the Administrative Court, according to which the ICA failed in providing evidence on the definition of the relevant product markets and on the anticompetitive effects of the agreements. In 2019 no proceeding concerning vertical agreements was closed or opened by the ICA. In 2019 the ICA opened an investigation in order to ascertain a possible breach of Article 101 TFEU and/or Article 2 of Law 287/90 against the main radio-taxi service companies active in Naples (Consortaxi, Taxi Napoli S.r.l., Radio Taxi Partenope S.c. a r.l. e Desa Radiotaxi S.r.l.) for conduct similar to the one investigated in proceedings I801A and I801B above. In this case, however, the ICA objected the existence of a horizontal anticompetitive agreement between Consortaxi, Taxi Napoli S.r.l., Radio Taxi Partenope S.c. a r.l. e Desa Radiotaxi S.r.l. and not of a network of vertical agreements between radio-taxi services companies and taxi drivers.
Recent landmark cases	In the proceeding I720 – **Carte di credito** of 2010, the ICA implemented the principle already stated by the EU Commission on its Guidelines on Vertical Restraints (2010/C 130/01), paragraph 121. As a matter of fact the ICA, in the assessment of the vertical agreement infringing competition law, gave particular attention to the “cumulative effect.” The cumulative effect concerns the anti-competitive effects that may have occurred following the existence of parallel networks of vertical agreements with similar effects that significantly limit competition within the same market.

Japan

Block Exemption/Safe Harbour

In the Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act, issued by JFTC (the Guidelines), an "enterprise which is influential in a market" is prohibited from having the effect of eliminating market competition (e.g. resell price maintenance etc.). Also, according to the Guidelines, if a supplier's market share exceeds 20%, the supplier will be deemed as an "enterprise which is influential in a market." Therefore, a supplier whose market share is less than 20% is exempted from these regulations. (The Exemption).

Selective Distribution

In the Guidelines, Selective Distribution is generally not problematic in itself to the extent that the criteria are deemed to have plausibly rational reasons from the viewpoint of the consumer and that such criteria are equally applied to other distributors who want to deal in the product.

Exclusive Distribution

Exclusive Distribution might be prohibited by the Antimonopoly Act if the party is deemed as an "enterprise which is influential in a market."

Franchising

The Exemption does not apply.

IP Agreements

The Exemption does not apply.

Agency Agreements

The agreements might be regulated by the Antimonopoly Act if the party is deemed as an "enterprise which is influential in a market."

Notification/clearance?

N/A

RPM

The Exemption does not apply.

MFNs

MFN might be caught by the Antimonopoly Act if the party is deemed as an "enterprise which is influential in a market."

Advertised Pricing

There is no direct regulation on advertising pricing. However, when suppliers set up minimum advertising pricing, it might be regarded as resale price maintenance which is prohibited by the Antimonopoly Act even if such price is merely a notification to the resellers.

On-line selling

The Antimonopoly Act may apply to online selling if the party is deemed as an "enterprise which is influential in a market."

JAPAN		
Estimation of total penalties for vertical anti-competitive practices	**2018**	**2019**
	0	0
Can participants to vertical agreements benefit from leniency?	No. The leniency can be only applied the case of unreasonable restraint of trade (e.g cartel, rigging etc.).	
Key cases and trends/ developments or particular sectors of interest in relation to verticals	As of 30 December 2018, a new certification system in the Antimonopoly Act for a plan of elimination measures came into effect under TPP. Under this system, a payment order or cease and desist order is not issued when a firm formulates a plan to take elimination measures, etc. to correct the breach in an investigation of violations of the Antimonopoly Act, including vertical restraint of trade, and submits it to JFTC and obtains authorization from JFTC. As of 19 June 2019, the revised Antimonopoly Act (the revised Act) was passed by the Diet, and the calculation method of the surcharge was revised in relation to vertical restriction. Under the revised Act, the following matters were changed to increase the surcharge amount. • Previously, only the sales revenue of products violating the Antimonopoly Act was used as the basis for calculation. Under the revised Act, however, not only sales revenue of violating companies but also the sales revenue of its subsidiaries involved in the violation will also be used as the basis for calculation. • Previously, the calculation rates used to vary by enterprise size and industry (for example, large enterprises were applied to a 10% surcharge while small retailers were only subjected to 3%).The revised Act, however, uniformly applies 10% calculation rates on large enterprises. • The applicable period (i.e. period liable to penalty) was also changed from three years to ten years.	
Recent landmark cases	The judgement regarding Cease and Desist Order against QUALCOMM Incorporated (March 15 2019) QUALCOMM Incorporated (the Company) when concluding licensing contracts with domestic terminal distributors (the Distributors) on the intellectual property rights pertaining to CDMA mobile radio communications held by the Company (the Contracts), forced the Distributors to grant the license free of charge to the Company on the intellectual property rights held by the Distributors, and agreed not to assert rights based on the intellectual property rights held by the Distributors. On 28 September 2009, JFTC issued the cease and desist order (the Order) against the Company on assumption that the Contracts are the transactions with the Distributors under conditions unreasonably binding on the business activities of the Distributors and corresponds to a transaction with binding conditions. Later, however, JFTC ruled on 15 March 2019 that the examiner of JFTC did not fully prove the impediment to fair competition, which is a requirement for restrictive transactions, and revoked the Order.	

Mexico

Block Exemption/Safe Harbour

In principle, there are no safe harbors or block exemptions provided in Mexican antitrust law. The only exception is the provision contained in the Transitory Article 9 of the Federal Telecommunications and Broadcasting Law.

Due to the foregoing, vertical relationships shall be analyzed based on a potential abuse of dominance practice, potential concentration pursuant to the provisions set forth in the law or whether vertical relationships established by a certain firm may facilitate other forbidden practices downstream (*eg,* cartels).

The Commission investigates these practices under the rule of reason.

Selective Distribution

Restricting distributors from selling to specific customers or areas may be considered an anti-competitive practice if it is conducted by an economic agent that has substantial market power, has the purpose or effect of unduly displacing another economic agent, establishes benefits in favor of certain economic agents or impedes access to an essential input. An essential input is a resource or infrastructure that appears indispensable and irreplaceable in the production process of a good or service. In this sense, any market involving an essential input shall provide to all interested economic agents the possibility to access such relevant market in equal conditions in order to promote free competition.

The Commission investigates this conduct under the rule of reason.

Exclusive Distribution

Entering into exclusivity agreements by market, client or territory with distributors or suppliers may be considered an anti-competitive practice if conducted by an economic agent that has substantial market power, and if the conduct has the purpose or effect of unduly displacing another economic agent, impeding its access to an essential input or establishing benefits in favor of certain economic agents.

This conduct is investigated by the Commission under the rule of reason.

Franchising

There are certain precedents in which the Commission considers the franchisor and all franchisees the same economic agent for antitrust purposes. Hence, franchise agreements do not fall under vertical agreements.

IP Agreements

The licensing of IP may create a vertical relationship between the parties, depending on the integration of such parties in the relevant supply chain. For instance, if, by reason of such licensing, a distributorship is established in Mexico (*eg,* in the pharma sector), the IP license agreement would create a vertical relationship between the parties thereto.

In this respect, the Commission intends to change its criteria with respect to long-term license agreements and considers such agreements as concentrations, due to the fact that the granting of the right to use and enjoy certain assets in favor of third parties on a long-term basis may constitute an actual accumulation of assets. This intended approach is consistent with that adopted by the former Mexican Antitrust Commission, and currently by the Federal Telecommunications Institute, with respect to long-term lease agreements of radio electric spectrum frequency bands. Nevertheless, as of this date, we are not aware of the existence of a resolution issued by the Commission whereby it adopts the aforementioned new criteria, though one case currently under review by the Commission intends to follow this new approach.

Agency Agreements

No genuine agency agreements exist under Mexican law.

The most similar figure in Mexico is the *Comisión Mercantil* (Commercial Commission), which is not considered a vertical agreement given that the agent carries out activities either (i) on behalf and at the expense of the principal or (ii) on its own behalf and at the principal's expense.

In any case, by reason of a Comisión Mercantil, the agent acts on behalf of the principal or at its expense; thus, actions the agent carries out may be considered acts conducted by the principal. Therefore, a vertical relationship is not considered established through a Comisión Mercantil.

Notification/clearance?

In principle, it is not required to notify the Commission of vertical relationships or for the Commission to clear them. However, in the case of long-term license agreements, it is important to consider the Commission's intention to change the current criteria in order to consider such long-term licenses as an actual asset accumulation.

If a vertical agreement (*eg,* a joint venture) constitutes or materializes a business concentration, the Commission must be notified of and approve the agreement before it becomes effective.

RPM

Only suggested retail prices (SRP) are permissible, considering that they will serve only as recommendations and are not enforced in any manner whatsoever. Prices must be unilaterally set by relevant distributors or resellers in order to avoid incurring price-fixing behaviors, which may be sanctioned if conducted by an economic agent that has substantial market power, has the purpose or effect of unduly displacing another economic agent, impedes its access to an essential input or establishes benefits in favor of certain economic agents. Other forbidden practices include exclusive discounts, sales conditioning, price discrimination and price squeezes.

It is important to note that the Commission may investigate the relevant RPM to confirm that the price is a "suggestion" rather than a simulation of an actual maximum price.

If the relationship between the parties is strictly vertical and there is no substantial market power, the RPM should not be investigated by the Commission.

The Commission investigates this conduct under the rule of reason.

MFNs

Not expressly regulated under Mexican law, though discriminatory treatment is forbidden and sanctioned by the law. Therefore, most-favored-nation status could be deemed regulated a *contrario sensu* by the law.

However, there are certain cases in which sectorial regulation and/or competent authorities have imposed provisions regarding most-favored-nation status, such as interconnection matters in the telecommunications and railroad sectors, interconnection matters regarding pipes systems in the energy sector or certain measures imposed on dominant firms in the telecommunications and broadcasting sector.

If the relevant party does not have substantial power in the relevant market, discriminatory treatment shall not be investigated or sanctioned by the Commission.

The Commission investigates this conduct under the rule of reason.

Advertised Pricing

Establishing minimum or maximum advertised pricing may be considered an anti-competitive practice.

It is common practice in Mexico to avoid establishing advertised pricing.

The Commission investigates this conduct under the rule of reason.

On-line selling

To be determined on a case-by-case basis, depending on whether online selling is a sales channel directly operated by a relevant supplier or manufacturer, or if it is operated by a separate e-commerce platform.

It is important to determine whether the relationship of the parties is strictly vertical. If there are certain overlaps in online channel distribution, the agreement between the parties may potentially facilitate or procure other types of forbidden practices (*eg,* cartels).

Recently, the Commission has emphasized competition and merger analysis in the case of digital markets, especially when multi-sided platforms are involved. There is currently a task force reviewing how such markets should be analyzed under the Mexican Competition Law.

Please refer to landmark cases below.

MEXICO				
Estimation of total penalties for vertical anti-competitive practices	**2017**	**2018**	**2019**	**2020**
	MXN653.2 million	MXN126 million	MXN100 million	–
Can participants to vertical agreements benefit from leniency?	Please be informed that vertical relationships are not investigated per se under Mexican Law, and thus the leniency concept would not apply. However, there is a similar process whereby sanctions may be dispensed or reduced in case of abuse of dominance practices. To be entitled to such benefit, the relevant economic agent must appear before COFECE at any time within the investigation period, but in any case prior to the issuance of a statement of probable responsibility to express in writing its intention to attain the exemption and fine reduction benefit established in the Mexican Antitrust Law.			

Key cases and trends/ developments or particular sectors of interest in relation to verticals	Sectors of interest	• E-commerce: in force investigation regarding abuse of dominance within this market and its related services • Financing and banking: production, processing and commercialization of credit data, as well as securities processing (*ie,* credit bureaus) • Pharmaceutical • Energy and • Transportation: ground (*eg,* airport taxis) and aviation (*eg,* passenger commercial air transportation).
	Guidelines issued following the COVID-19 pandemic	• As a result of the COVID-19 pandemic, COFECE announced that collaboration agreements between economic agents 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, meeting demands, protecting supply chains and preventing the shortage or hoarding of merchandises and shall not be intended to foster participation of other competitors selling goods or services within a relevant market. The COFECE announcement is applicable to any collaboration agreement, entered either between competitors or among economic agents that are not competitors, and it is important to distinguish between collaboration agreements and mergers that shall be notified in accordance to relevant thresholds and criteria set forth under antitrust law. This is not a waiver to collaboration agreements as such agreements are not prohibited per se. In this case, COFECE acknowledges that, due to the sanitary contingency that the COVID-19 pandemic provoked, it is possible to enter temporarily agreements of this kind. However, lack of precision in the abovementioned decision has led to analysis on a case-by-case basis.

Landmark cases worth mentioning	Abuse of dominance practice sanctioned by COFECE: ground transportation from Mexico City International Airport	This case is notable given the significant, 5-year duration of the investigation and the substantial MXN127 million fine imposed on Mexico City International Airport (AICM). The primary concern was, as explained below, the restriction of access to an essential input: the airport. The AICM administration was in charge of granting the Ministry of Transportation the permits required for relevant suppliers to access ground transportation services to the airport, incurring in anti-competitive and abuse of dominance behavior through restricting such access to new companies in the market, therefore limiting the offer as well as granting different commercial conditions to economic agents in similar circumstances, which is considered discriminatory treatment under Mexican antitrust legal provisions. In addition, companies entitled to provide such service only oversaw transporting passengers whose journey began at the AICM. Therefore, the resources required for traveling back to the airport without transporting passengers would be transferred to the price imposed on individuals purchasing this service, which was significantly high.
	Abuse of dominance practice by PEMEX, sanctioned by COFECE	PEMEX-Refinación, a subsidiary of PEMEX, a state-owned oil company, made an inappropriate use of its substantial power in the market of wholesale supply of diesel oil in favor of service stations. It conditioned such supply to the purchase of the oil transportation services provided through PEMEX franchise contracts, deciding at its sole discretion the applicable modality for each service station, therefore displacing other competitors within the market of oil transportation. COFECE imposed the highest fine ever observed in an abuse of dominance case, equivalent to more than MXN653 million.

	Refusal of merger between Walmart and Cornershop	Walmart operates retail stores, memberships, drug stores and online stores. Cornershop is a Mexican company that provides logistic services for immediate delivery of products from various grocery stores and supermarkets through its website and app. In 2019, Walmart pretended to acquire 100 percent of Cornershop's capital stock and was required to file such merger before COFECE. Although, from a general standpoint, there may not be an overlap between the relevant markets' subject matter thereof, COFECE refused such merger, mainly due to the following reasons. Through the merger: • Cornershop could refuse to provide its services to Walmart's competitors. • Walmart could refuse to commercialize its products through online platforms other than Cornershop – that is to say, by means of Cornershop's competitors, and • The economic agent resulting from the transaction could lead Walmart's competitors to exit the Cornershop platform through the strategic use of the information provided and generated by such competitors by selling its products within such platform.

The Netherlands

Block Exemption/Safe Harbour

EU block exemptions apply.

A national *de minimis* exemption applies to agreements to which less than eight undertakings are a party, provided that their combined turnover is less than EUR5.5 million when they trade in goods, or less than EUR1.1 million in other cases.

A second national *de minimis* exemption applies to horizontal agreements, provided that the combined market share of the parties is less than 10% and the agreement has no appreciable effect on interstate trade.

The Dutch competition authority published a guidance document on vertical agreements in February 2019 (Leidraad afspraken tussen leveranciers en afnemers).

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Prohibited, with two exceptions:

- Dutch language books, for which the publisher may fix resale prices on the basis of a statutory exception (Wet op de vaste boekenprijs)
- Price promotion of short duration (< eight weeks) in retail chains (Besluit vrijstellingen samenwerkingsovereenkomsten detailhandel)

The only RPM enforcement decision to date was annulled as the ACM had not investigated the appreciability of the negative effect on competition.

RPM has successfully been relied upon in a number of civil cases, e.g. to have the termination of a distribution agreement annulled.

MFNs

No examples of public enforcement.

Advertised Pricing

No examples of public enforcement.

On-line selling

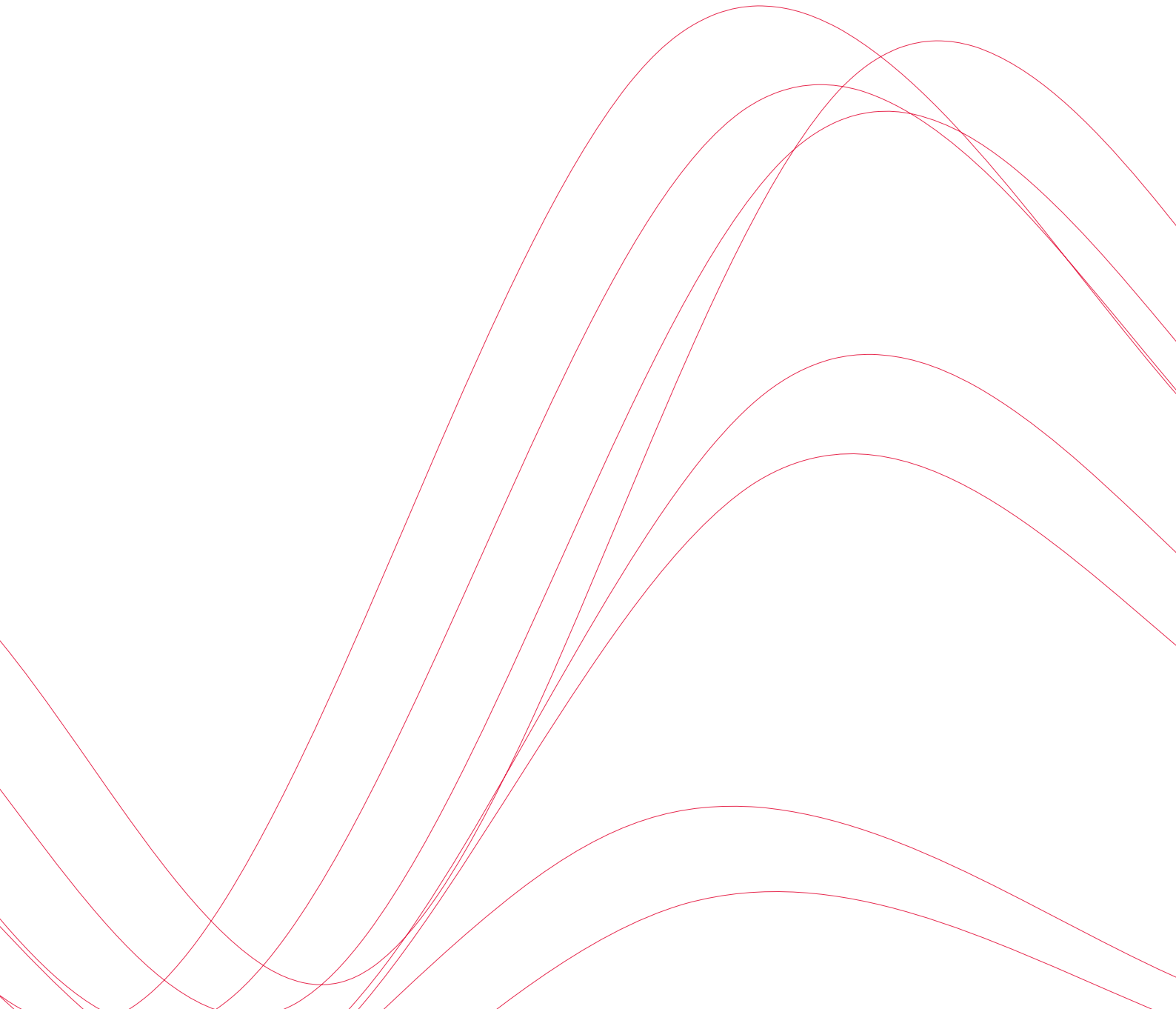
No examples of public enforcement.

Restrictions on online sales have been successfully relied upon in civil cases to have the termination of a distribution agreement annulled.

NETHERLANDS				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	No			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In February 2019, the Dutch Competition Authority (ACM) published a guidance document on the application of the cartel prohibition to vertical agreements between suppliers and buyers (Leidraad afspraken tussen leveranciers en afnemers). In this document, the ACM indicates which vertical agreements are exempted from the cartel prohibition and it describes and provides examples on reviewing non-exempted agreements for conformity with competition law. With regard to the Coty case before the CJEU (C-230/16, judgment 6 December 2017), the position of the Netherlands was that the restriction on resellers preventing them from using third-party platforms should not be regarded as a hardcore restriction. The outcome of this case confirmed the approach of the ACM.			
Recent landmark cases	Case BP/Benschop (Supreme Court, 20 December 2013) • The operator of a BP gas station had agreed to a 20-year exclusive purchasing obligation in the operating contract entered into with BP. • The station operator claimed this clause infringement competition law as it prevented the sourcing gas from another supplier at a lower price. • The Dutch Supreme Court ruled that the clause was null and void because it infringed EU competition law and that conversion was not possible, leading to a partial annulment of the operating contract entered into between the operator of the BP gas station and BP. • BP was obliged to pay damages. Case Nike/Action Sport (District Court of Amsterdam, 4 October 2017) • Nike had ended its selective distribution agreement with Action Sport (Sicily, Italy). • Selected distributors of Nike are restricted from using third-party platforms for the sale of the contract goods. • The court ruled that Nike products are luxury goods and that the prohibition at hand was valid (with reference to the opinion of AG Wahl in the Coty case Coty). • Nike could end the relationship with Action Sport without Action Sport being entitled to damages.			

Case Franchisor/Franchisees (Court of Appeal's-Hertogenbosch, 5 June 2018)

- The franchisor enforced performance by five franchisees of the terms of the franchise agreement.
- The franchisees claimed that the franchise agreement contained resale price maintenance clauses and therefore should be considered null and void.
- The Court of Appeal ruled that the franchise agreement indeed included RPM clauses and that those clauses were null and void. However, this did not affect the validity of the remainder of the franchise agreement. The franchisor therefore could require performance by the franchisees of those terms.



Norway

Block Exemption/Safe Harbour

EU block exemptions are implemented in national law through the EEA Agreement and are applicable.

Selective Distribution

EU block exemptions are implemented and apply.

Exclusive Distribution

EU block exemptions are implemented and apply.

Franchising

EU block exemptions are implemented and apply (i.e. vertical guidelines effectively apply to franchising although not explicitly regulated).

IP Agreements

EU block exemptions are implemented and apply (including the block exemptions for Technology Transfer and R&D Agreements).

Agency Agreements

The EU principles apply; genuine agency agreements are not covered by competition law rules.

Notification/clearance?

Similar to the EU, there is no notification or clearance system in Norway.

RPM

Prohibited

MFNs

Not automatically illegal. Due to lack of cases, there is no guidance with regard to application of the current regulations in the Competition Act of 2004.

Former practice before the NCA in the following cases:

- KT-1998-18V (allowed)
- KT-2001-105V (more reserved)

The NCA will follow the developments of the EU authorities.

Advertised Pricing

Agreements on *Minimum* Advertised Prices have to date – to the best of our knowledge – not been reviewed by the Norwegian competition authority.

It is highly likely that such agreements are considered to have the same effect as RPM and will be considered unlawful.

Other Advertised Pricing arrangements should be assessed individually.

On-line selling

Total ban would probably, as in the EU, be considered a hardcore infringement; however, there is no particular case law.

Discriminatory pricing are prohibited; however, subsidising brick and mortar operations by having dissimilar prices in different geographical areas may be allowed.

Norway has not yet implemented the Geo-block Regulation 2018/302. (The Geo-block regulation was included as a part of the EEA-agreement 19 December 2019).

NORWAY				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	0	0	0	0
Can participants to vertical agreements benefit from leniency?	Yes			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	Vertical Agreements not seemingly prioritised by the Norwegian Competition Authority, nor legislative bodies.			
Recent landmark cases	No cases under current competition act.			

Peru

Block Exemption/Safe Harbour

Vertical restraints are subject to rule-of-reason evaluation. There are no block exemptions or safe-harbor mechanisms.

Selective Distribution

Analyzed under the rule of reason.

Exclusive Distribution

Analyzed under the rule of reason.

Franchising

Analyzed under the rule of reason.

IP Agreements

Analyzed under the rule of reason.

Agency Agreements

No special rules.

Notification/clearance?

N/A

RPM

Analyzed under the rule of reason.

MFNs

Analyzed under the rule of reason.

Advertised Pricing

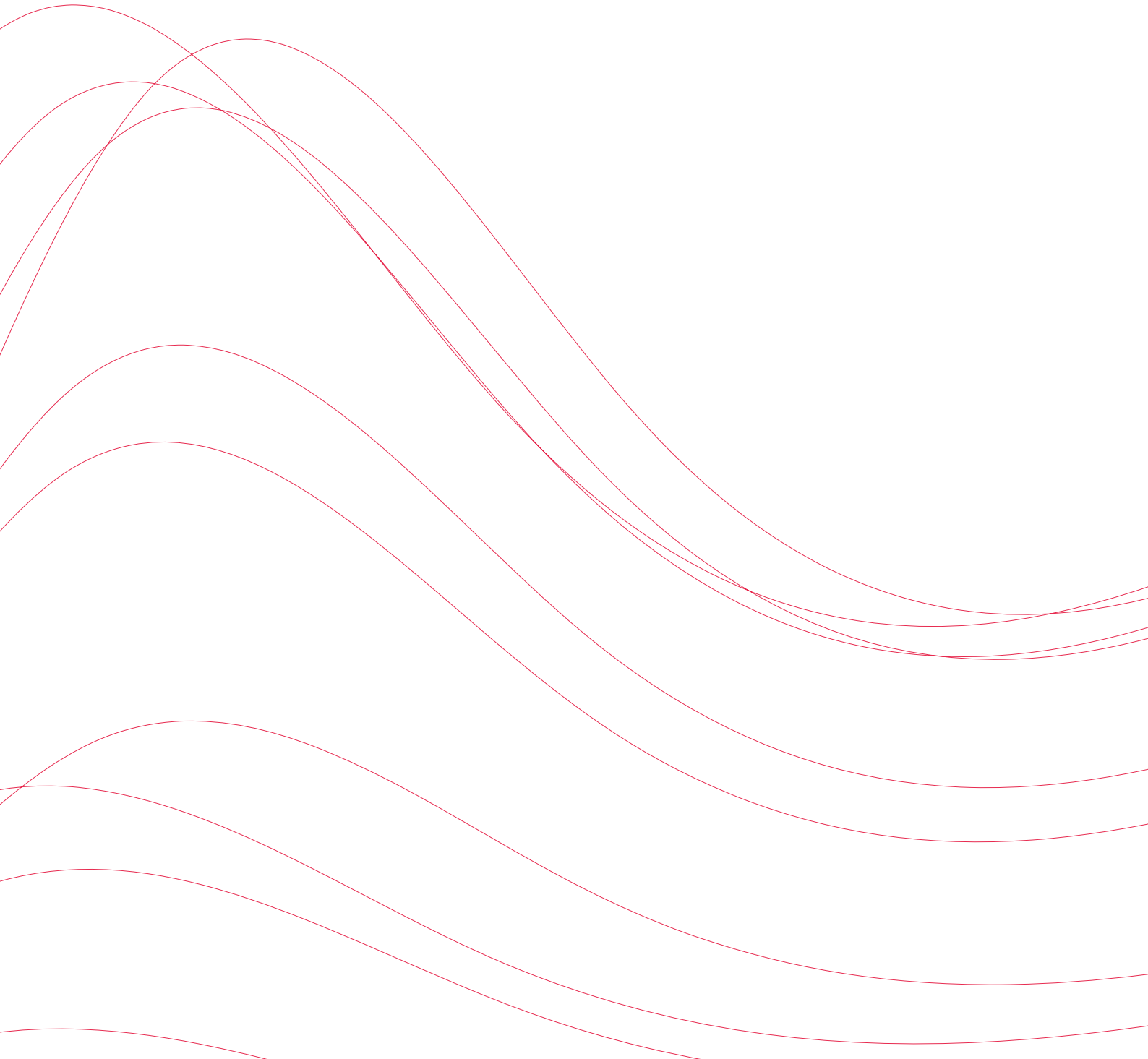
Analyzed under the rule of reason.

On-line selling

Treated similarly to other sales channels.

<table>
<tr><th colspan="5">PERU</th></tr>
<tr><td rowspan="2">Estimation of total penalties for vertical anti-competitive practices</td><td>2017</td><td>2018</td><td>2019</td><td>2020</td></tr>
<tr><td>0</td><td>0</td><td>0</td><td>PEN0</td></tr>
<tr><td>Can participants to vertical agreements benefit from leniency?</td><td colspan="4">No, the Peruvian Legislation Leniency Program is only available for horizontal cartels.</td></tr>
<tr><td>Key cases and trends/ developments or particular sectors of interest in relation to verticals</td><td colspan="4">• The Orderly Unique Text of Antitrust Law, approved by the Supreme Decree 030-2019-PCM (TUO), was enacted in February 2019. It gathers and orders already existing laws regarding antitrust matters.
• In June 2020, the Peruvian Antitrust Authority (Indecopi) issued the Guide for Compliance Programs. The guide establishes certain requirements and benefits of compliance programs, as well as guidelines as to how entities are expected to operate to prevent the breach of antitrust regulation, including vertical agreements.
• Regarding dawn raids and the regulator's focus on particular sectors, it is likely that, due to the economic effects caused by the COVID-19 pandemic, Indecopi will particularly focus on the following sectors: (i) financial and banking services; (ii) retail, mainly in the acquisition of essential or primary goods; and (iii) pharmacies and pharmaceutical laboratories.</td></tr>
<tr><td>Recent landmark cases</td><td>Indecopi cases</td><td colspan="3">• In 2009, Indecopi imposed a fine of PEN575,100 (approximately USD168,000) to companies that marketed bleach after discovering that these companies had entered into exclusive distribution agreements regarding the selling of bleach inputs, mainly sodium hypochlorite.
• Before Indecopi audited and fined these entities, the exclusive distribution agreement between them impacted the bleach market by making other competitors' manufacturing process more expensive, which reduced their production and, consequently, affected consumers by narrowing their bleach purchase options.
• In 2014, Indecopi imposed a fine of PEN6,135,138 (approximately USD1,790,000) to cement companies after discovering the parties had entered into agreements that entailed an unjustified refusal to satisfy the demand of purchase of cement.
• In this case, Indecopi proved how the parties – through agreements – implemented a punishment policy to retailers that sold their competitors' cement.</td></tr>
</table>

	Abuse of dominance practice by PEMEX sanctioned by COFECE	PEMEX-Refinación, a subsidiary of a state-owned oil company PEMEX, made an inappropriate use of its substantial power in the market of wholesale diesel oil supply in favor of service stations. It conditioned such supply to the purchase of oil transportation services provided through PEMEX franchise contracts, deciding at its sole discretion the applicable modality for each service station, therefore displacing other competitors within the market of oil transportation. COFECE imposed the highest fine ever observed in abuse of dominance cases, equivalent to more than MXN653 million.



Poland

Block Exemption/Safe Harbour

EU and national block exemptions apply.

Selective Distribution

EU and national block exemptions apply.

Exclusive Distribution

EU and national block exemptions apply.

Franchising

EU and national block exemptions apply.

IP Agreements

EU and national block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

No

RPM

Considered as restriction by object in all types of vertical agreements.

MFNs

Not automatically illegal.

Recent case before UOKiK concerned hotel online booking platforms.

Advertised Pricing

No recent case law.

On-line selling

A total ban on online selling is perceived as a hardcore restriction. Recent cases before UOKiK include a case concerning pet food manufacturer.

Royal Canin:

The requirement to collect an item from a retail store if there is no objective justification (e.g. arising from sector legislation) is also perceived as a restriction.

POLAND				
Estimation of total penaltie for vertical anti-competitive practices	**2015**	**2016**	**2017**	**2018**
	PLN2,129,834	PLN3,573,334	PLN0	PLN0
Can participants to vertical agreements benefit from leniency?	Yes, verticals are covered. However, the party abetting other parties in participating in an anti-competitive agreement cannot benefit from the full exemption.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	UOKiK perceives vertical agreements as a less serious infringement of competition law than horizontal agreements, although such agreements have been challenged in the last few years, especially concerning RPM. UOKiK closed several proceedings concerning vertical agreements in 2015 and 2016, in particular concerning RPM, although there were no fines for vertical agreements in 2017. In UOKiK's Policy for 2014-2018, taking action against vertical agreements was not indicated as a separate priority; however, in 2017 UOKiK announced the end of the era of "soft calls" (special procedure in which UOKiK, before initiating official proceeding, only asks entrepreneurs to refrain from certain behaviour) and declared more aggressive enforcement and that fines would be two or even three times higher than in recent years. In 2019 UOKiK has already initiated antimonopoly proceedings regarding price fixing on the dietary supplements market. Its latest approach is to conduct proceedings not only against companies but also against their managers. In Poland, managers involved in collusion may be fined up to PLN2 million. Another new practice introduced by UOKiK is to conduct proceedings in connection with a violation of both Polish and EU regulations (as the practice in question could have an impact on trade between EU countries).			
Recent landmark cases	**SCA Hygiene (2016)** UOKiK imposed fines of more than PLN3.2 million (EUR748,000) on SCA Hygiene sp. z o.o., SCA Hygiene Products sp. z o.o., and its distributors for participating in an agreement on the sale of cleaning cloths and hygienic materials (paper towels, liquid soaps, toilet paper). UOKiK found that the companies fixed the minimum resale prices for institutional customers (companies, agencies, hotels, shops, restaurants) from at least 2010 to 2013, when the practice was stopped. The fact that the practice was stopped was treated as a mitigating condition. One of the companies decided to cooperate with UOKiK under the leniency programme and was able to avoid being fined. The decision has been appealed and is not yet final.			

Royal Canin Polska sp. z o.o. (2013)

The pet food producer and its five distributors were fined for restricting the distribution channels of certain products (PLN3.2 million (EUR770,000) including a fine of PLN2 million (EUR480,000) for Royal Canin Polska. The companies agreed to restrict distribution to veterinary practices that did not sell online and subsequently only to distributors that guaranteed the supervision of a veterinarian. UOKiK considered that restrictions limiting distribution channels by requiring distributors to ensure supervision by a veterinarian were not necessary under applicable veterinary regulations, thus they were anti-competitive. UOKiK considered that a pet food manufacturer may advise prior consultation with a veterinarian; however, the choice of where to purchase should be solely the buyer's decision.

Sfinks (2018)

In July 2013, UOKiK imposed a fine of PLN462,000 (EUR98,000) on Sfinks (a network of restaurants) for limiting competition by introducing RPM among its franchisees. Sfinks appealed to the Court of First Instance in 2016 but the appeal was dismissed for procedural reasons. In January 2018, the Appeal Court changed the judgement of the Court of First Instance. The Appeal Court stated that the introduction of fixed resale prices by Sfinks in its franchise network constitutes an agreement restricting competition and although the company claimed that the use of RPM is necessary to ensure the uniformity of its online services, it did not provide the necessary evidence – especially marketing analyses. Nevertheless, the Appeal Court reduced the fine imposed on Sfinks as the agreement had limited impact on competition.

Portugal

Block Exemption/Safe Harbour

EU block exemptions apply, even when trade between Member States is not affected.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Prohibited

MFNs

European Commission's decisional practice is relevant.

Advertised Pricing

European Commission's decisional practice is relevant.

On-line selling

European Commission's decisional practice is relevant.

PORTUGAL				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	0	0	0	EUR24,000,000
Can participants to vertical agreements benefit from leniency?	No, article no. 75 of the Competition Act restricts leniency to agreements or concerted practices between two or more competing undertakings, meaning it solely applies to cartels and not vertical restrictions.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In 2016, the Portuguese Competition Authority (PCA) made the detection and investigation of vertical restraints as one of its priorities and adopted decisions in the car dealership and food retail sectors. In 2019, the PCA has as its main priority the reinforcement of its activity in the detection and investigation of anti-competitive practices, particularly by analysing targeted sectors such as liberal professions and transportation, as well as paying close attention to anti-competitive behaviour on the part of incumbents in sectors where innovation brings most benefit to consumers. Recently, the PCA adopted decisions and statements of objections (SOs) in the drinks sector. One key development was the SOs issued to six large food retail groups in Portugal and three beverage suppliers for taking part in practices equivalent to cartels artificially to determine the prices of the products; in addition to the companies, managers and directors were also accused of being allegedly involved in the infringements. This is the first "hub-and-spoke" case being investigated in Portugal, as retailers did not communicate directly with each other but they used bilateral contracts with suppliers to promote or ensure that they all applied the same retail price in the market retailer.			
Recent landmark cases	**Car Warranty Contracts (2016):** Car importers/dealers for the Peugeot, Ford, Fiat, Seat, Audi, VW and Skoda brands were investigated on the basis of both Article 101(1) and the equivalent legal provision of the Competition Act (CA), due to clauses in their car warranty extension contracts which prevented consumers from carrying out maintenance or repair operations in independent shops as, if they did so they would lose the benefit of the warranty. The investigated parties have offered commitments or voluntarily changed the clauses and eliminated the restrictions. No fines were applied by the PCA as concerns the conduct in question (but there were fines for alleged incorrect supply of info in the same proceedings).			

Dia Portugal (2016):

- Dia Portugal (a Portuguese multinational present in the food distribution sector) was investigated under Article 9 of the CA (the equivalent to Article 101(1) TFEU) regarding a potential unlawful arrangement with its franchisees.
- The PCA identified concerns related to the existence of information asymmetries that could induce the franchisees to understand that the recommended and maximum prices set forth by Dia Portugal were fixed prices. Dia Portugal offered a series of commitments according to which it would clarify that franchisees are free to practice retail prices lower than those it recommended.
- After a public consultation of the proposed commitments, the PCA terminated the proceedings and accepted the commitments while imposing conditions.

Drinks Distribution Case (2019)

- In August 2018, the PCA issued a Statement of Objections against a Portuguese undertaking on the basis of Article 9 of the CA (the equivalent to Article 101(1) TFEU). This investigation was initiated by the PCA in June 2016, after receiving complaints by distributors concerning unlawful conduct that had allegedly been ongoing since 2006. During the investigation the PCA performed unannounced inspections at the accused's premises.
- According to the PCA's press release, the accused is a "leader in the manufacturing and commercialization of drinks (notably beer, bottled water, soft drinks and cider in Portugal" and has allegedly fixed minimum resale prices in the on-trade channel, established distributors margins and other related remuneration and also provided for a sanctioning mechanism in case of non-compliance by the distributor.
- In July 2019, the PCA imported a fine of EUR24 million on the undertaking, one board member and one director of the company for fixing minimum resale prices and other commercial conditions of beverages in hotels, restaurants and cafes.

Romania

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Romanian competition law follows the same principles as EU competition law regarding agency agreements.

Notification/clearance?

No. As in the EU, there is no prior notification/ clearance procedure.

RPM

Prohibited

MFNs | Advertised Pricing | On-line selling

MFNs

MFNs are not automatically illegal but subject to a case-by-case analysis of anti-competitive effects. There is no relevant case-law at the level of the Romanian Competition Council (RCC), but the RCC has analysed MFNs in the context of the sector inquiry conducted with respect to the commercialization of food products (2009). The RCC recommended that MFN clauses be eliminated from commercial relations between suppliers and resellers, in the presence of shelf fees. The Romanian legislation on the commercialisation of food products prohibits traders from requesting suppliers to sell to other traders the same products at a purchase price lower or equal to the price of their acquisition.

Advertised Pricing

Agreements on Minimum Advertised Prices have to date – to the best of our knowledge – not been reviewed by the RCC. It is highly likely that such agreements would be considered as having the same effect as RPM and would be considered unlawful.

Online selling

Online selling restrictions have to date not been reviewed by the RCC. A total ban on online sales would most probably be considered a hardcore infringement. Romanian Competition Law follows EU Competition law with regard to online sales restrictions.

ROMANIA			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**
	RON43,887,881	RON8,907,224	RON97,941,835
Can participants to vertical agreements benefit from leniency?	Yes, vertical agreements and/or concerted practices can benefit from leniency.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	**Priority sectors** Based on the RCC report "Competition developments in key sectors" (2018), the RCC defined the following as priority sectors/areas: • energy; • food retail; and • construction materials. The main sectors in which targeted investigations have been initiated in 2018 are: cement, electrical power, natural gas and healthcare. The pharmaceutical sector is also expected to remain in the focus of the RCC, with a sector inquiry concerning the OTC and food supplements market being launched in September 2018. The e-commerce sector has also attracted the particular interest of the RCC in 2017 which is likely to be maintained in the future in line with similar trends at the level of the EU and other jurisdictions. Among the actions taken so far by the RCC in this sector, we note that in 2018, the RCC released the results of its sector inquiry on ecommerce and opened proceedings concerning an alleged abuse of dominance by Dante International on the Romanian market for intermediation services through online platforms which is currently ongoing. **Significant legislative changes enacted in 2018/2019** The RCC adopted new guidelines relating to conditions and criteria for the application of its leniency policy in July 2019. The main changes refer to a larger scope for leniency applications (no longer being limited to serious violations of the law), the obligation not to destroy evidence is extended to the period when the entity is contemplating making its leniency application and a new requirement for current employees to be available for interviews and to use reasonable efforts to make former employees available.		

	Trends • We may expect an increased use of forensic procedure by the RCC during dawn raids, including in circumstances where: (i) the undertaking disputes that a particular document originated from one of the company's devices; or (ii) there is a risk of alteration of the data stored electronically. • The number of leniency applications is also expected to grow as the RCC is taking active steps to promote its leniency policy towards companies. • The number of cases where investigated parties acknowledge their alleged participation in an anti-competitive practice in order to receive reductions is also likely to remain significant. • The RCC will likely continue to focus on bid rigging in public procurement.
Recent landmark cases	Before 2017, vertical restraints cases were an important point on the RCC's agenda, as 57.1% of the sanctions applied in 2016 related to vertical agreements. Starting in 2017 there has been a shift in the RCC's enforcement focus from vertical agreements to cartels and abuse of dominance. As such, only 7.2% of the total fines applied by the RCC in 2017 concerned vertical agreements (based on the RCC 2017 Annual Report), increased to 22.2% in 2018 (based on the RCC 2018 Annual Report). Therefore, in 2018 the enforcement activity of the RCC was mainly focused on cartels, in particular bid rigging and exchange of commercially sensitive information between competitors (especially within trade associations). The most prominent case related to vertical restraints sanctioned by the RCC in 2018 concerns three retail chains (Auchan, Cora and Carrefour) and four of their suppliers, following a targeted investigation initiated by the RCC in 2014. The RCC found that, between 2010 and 2016, the retailers negotiated fixed or minimum prices with their suppliers, in particular during promotions, breaching both national and European competition rules. The suppliers asked retailers that during promotions products were not sold at a price lower than a certain level or that the products were sold at a fixed price. There were also cases in which the supplier included on the promotion form the resale price at which the retailer was to sell the respective product to its customers. The fines imposed amounted to approximately EUR18.8 million. Carrefour received a fine reduction following its acknowledgment before the RCC of the competition violations committed.

Russia

Block Exemption/Safe Harbour

The restrictions do not apply in cases where (a) one party controls the other or the parties are controlled by the same person; (b) the agreements relate to the exercise of IP rights; or (c) the agreement is concluded upon obtaining FAS prior approval.

The safe harbour exemption applies to vertical agreements that are commercial concession agreements (essentially franchise agreements) or agreements between parties each holding no more than a 20% market share in the relevant market ("20% Exemption"), or agreements involving businesses which may not be deemed dominant under the specific rules and had a combined revenue in the preceding calendar year not exceeding RUB 400 million (around USD 6.7 million).

If the agreement does not qualify for the above exemptions, it still may be considered exempt under the efficiency gains exemption (i.e. pro-competitive benefits of the agreement outweigh its anti-competitive effect) if it can be proved that (i) the agreement does not lead to the elimination of competition or impose excessive restrictions on the parties or third parties and (ii) the positive effects of the agreement, including its socio-economic effects, outweigh the negative consequences pursuant to the criteria set in Russian competition law. These criteria are as follows: (i) the agreement should result in an improvement of production, distribution of goods, etc, and (ii) customers should obtain benefits proportionate to the benefits obtained by the parties to the agreement.

In development of the efficiency gains exemption, the Russian Government adopted block exemptions for certain vertical agreements meeting the following criteria:(i) the seller sells to two or more buyers and its relevant market share is less than 35%; (ii) the seller and the buyer do not compete or compete in the market where the buyer buys the goods for resale; and (iii) the buyer does not produce goods interchangeable with the goods subject to the agreement.

Selective Distribution

Allowed under the safe harbour rules or under the uniform qualitative justified criteria.

Exclusive Distribution

Allowed under the safe harbour rules.

Franchising

Allowed under the safe harbour rules.

IP Agreements

Exempt

Agency Agreements

Vertical rules do not apply to agency agreements. However, vertical rules apply to vertical agreements entered via agency agreements.

Notification/clearance?

There is a voluntary mechanism for filing the agreement with FAS.

RPM

Allowed if falls under the safe harbour rules.

It is allowed to set the maximum resale price or recommended resale price (provided that such recommended prices are not *de facto* enforced by the seller).

MFNs

It should be analysed based on the facts, however, could be allowed under the safe harbour rules.

On-line selling

No special rules.

Advertised Pricing

It should be analysed based on the facts, however, could be allowed under the safe harbour rules.

RUSSIA				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	There is no public information on the total amount of penalties for vertical agreements.			
Can participants to vertical agreements benefit from leniency?	Yes, it is possible. Full immunity from fine is provided to the first person who submits a leniency application. The second and third applicants are subject to a minimum fine, unless such applicants are ring leaders.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	No changes to the applicable regulation have been made during the relevant period. In recent years, the FAS has been increasingly active in the digital markets sector. FAS senior executives repeatedly point out the need to consider the features of digital economy markets and the application of traditional competition law tools for the regulation of such markets. FAS has drawn attention to potential competition law violations resulting from the use of artificial intelligence and pricing algorithms. In particular on 18 March 2019, the FAS published on its website recommendations on the use of pricing algorithms (for more information please our legal update on the FAS' recommendations: https://www.dlapiper.com/en/russia/insights/publications/2019/05/recommendations-of-the-federal-antimonopoly-service-of-russia-on-the-use-of-information-technology/). • The FAS has prepared a draft amendment to the competition law to address the challenges raised by the digital economy (e.g. network effects, use of price algorithms). It is expected that the amendments will be enacted in 2020.			

Recent landmark cases	In 2018 the FAS investigated the reasons why various consumer electronics retailers applied the same resale prices for LG smartphones. During the investigation, it was revealed that the authorised importer of LG smartphones to Russia, published recommended resale prices on its website, and further monitored compliance of retailers with the recommended resale prices. Interestingly, managers of the authorized importer monitored the resale prices not only by regular collection of price data from resellers but also by using a special price analysis algorithm. For a failure to comply with the recommended prices, the Authorized Importer punished violating resellers by discontinuing supplies to them. As a result of the investigation, the FAS decided that the authorized importer violated Russian competition law by illegal coordination of commercial activities of the retailers. It should be noted that the FAS has qualified the activities of the authorized importer as coordination of commercial activities and not as a vertical agreement, since the Authorized Importer monitored and controlled not only the resale prices of the first tier resellers (i.e. resellers to whom the authorized importer directly sold the LG smartphones), but also the prices of the second tier resellers (i.e. the resellers who purchased the LG smartphones from the first tier resellers for further resale to end consumers). In its decision the FAS noted that the use of price algorithms is not a violation as such, but it may be used for committing a violation of competition law. This means that in similar cases, the FAS will investigate the mechanism for using relevant software to establish whether such software was used for illegal purposes. Currently, the FAS is conducting a similar investigation against Philips. This demonstrates that the FAS pays particular attention to resale price monitoring practices.

Slovakia

Block Exemption/Safe Harbour

EU and national block exemptions apply.[1]

Notification/clearance?

No obligation to notify.

Selective Distribution

EU block exemptions apply.

RPM

Prohibited

Exclusive Distribution

EU block exemptions apply.

MFNs

There is no national restriction. The illegality of the agreement depends on the circumstances.

Franchising

EU block exemptions apply.

Advertised Pricing

No recent case-law.

IP Agreements

EU block exemptions apply.

On-line selling

E-commerce case from 15 July 2019 – the company ags 92, s.r.o.,

Agency Agreements

EU block exemptions apply.

SLOVAKIA				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	EUR10 million	0	0	EUR20,632
Can participants to vertical agreements benefit from leniency?	No			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	On 1 September 2018, the NCA revised the Guideline on the procedure for determination of fines for the abuse of a dominant position and agreements restricting competition dated 11 August 2014. There are no expected legislative changes in 2019. In the context of the transposition process of the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, the NCA carried out a public consultation regarding changes to the Act on Protection of Competition. The consultation ended 31 March 2019. The NCA's focus is to continue to develop close cooperation with other State Authorities in order to effectively detect and punish violations of the competition rules. The NCA continues to focus on severe breaches having a significant impact on various sectors and monitor the development of competition in relevant markets and sectors that tend to coordinated behaviour. The NCA also intends to raise awareness about the rules on state aid at all levels of government and plans to develop cooperation with partner institutions in other EU Member States. In the nearest future, the NCA continues to consider the following sectors as its priorities: • e-commerce; • agriculture, food industry; • information systems, information technologies; and • sectors that are regulated by the state (healthcare, utilities, financial and insurance services, etc.). Within these sectors, the NCA has already opened or plans to open sector investigations in order to comprehensively map relevant markets, the level of competition on these markets, as well as factors capable of influencing their current state or future development. In 2018, the NCA initiated a sector investigation in e-commerce in the Slovak Republic.[1] The NCA will also continue to focus on cartel agreements, bid rigging in public procurement and un-notified concentrations.[2] In August 2018, there was a dawn raid regarding suspicions of re-sale price practices in e-shops regarding the company ags 92, s.r.o. (for further information see below).			

[1] The Plan of main tasks of the Antimonopoly Office for 2019 available under https://www.antimon.gov.sk/data/files/1047_plan-hlavnych-uloh-pmu-sr-2019.pdf

[2] Annual Report of the Antimonopoly Office for 2018 available under https://www.antimon.gov.sk/data/att/2044.pdf

Recent landmark cases	The NCA initiated five separate infringement proceedings following the investigations made in the area of providing after-sales services relating to selling motor vehicles for Mazda, Škoda, Toyota, Opel, HONDA brands. Based on the documentation gathered, the NCA suspected that undertakings might have infringed the law through vertical agreements which have a guarantee conditional to performing repair and maintenance only in service stations belonging to this authorized networks. Thereby independent (unauthorised) services would have been disadvantaged.[3] *** In a case against MIKONA s.r.o. (a company importing SUBARU motor vehicles to the Slovak Republic, the NCA identified an infringement. MIKONA created a distribution network consisting of authorised partners. The customers (purchasers of SUBARU motor vehicles) were often obliged to perform maintenance work only in the repair facilities which belonged to the authorised partners' network, as otherwise the warranty for their motor vehicles would have been unvalidated. MIKONA was not fined, but it had to inform customers that the requirement to use authorised partners for the warranty to remain valid was not enforceable. This information was posted on its official website. MIKONA also had to amend the relevant provisions of purchase contracts. *** In the case against the company ags 92, s.r.o. (which belongs to the largest seller of children's assortment in Slovak and Czech Republic), the NCA issued a decision dated 15 July 2019. During the period between February 2013 and June 2018 in the Slovak Republic and between May 2017 and February 2018 in the Czech Republic, the company was determining resale price of Chicco products sold by retail customers – operators of e-shops with children's products – assessed by the NCA as an agreement restricting competition under 101 (1) 1, par. a) TFEU. The NCA imposed a fine of EUR20 632.

[3] 2 Annual Report of the Antimonopoly Office for 2016 available under http://www.antimon.gov.sk/data/att/1887.pdf

South Africa

Block Exemption/Safe Harbour

No current block exemption regime.

Notification/clearance?

N/A

Selective Distribution

Analysed under the Rule of Reason.

RPM

Prohibited

Exclusive Distribution

Analysed under the Rule of Reason.

MFNs

Analysed under the Rule of Reason.

Franchising

Analysed under the Rule of Reason.

Advertised Pricing

Suppliers may recommend a minimum resale price to a reseller but the recommendation may not be enforced by the supplier.

IP Agreements

Analysed under the Rule of Reason.

On-line selling

No special rules.

Agency Agreements

No special rules.

SOUTH AFRICA				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	No information available.			
Can participants to vertical agreements benefit from leniency?	No. The leniency programme is for cartel conduct only.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	A provision (which is not yet in force) in the Competition Amendment Act requires the Minister to make regulations regarding the application of the restrictive vertical practices provision of the Competition Act. The following sectors are currently priority sectors for the South African competition authorities: healthcare; banking and financial services; retail; data and telecommunications; basic food products; and public passenger transport.			
Recent landmark cases	1. *Natal Wholesale Chemists (Pty) Ltd v Astra Pharmaceuticals (Pty) Ltd 98/IR/Dec00* – exclusive distribution. 2. *Bezuidenhout v Patensie Sitrus Beherend Ltd 66/IR/May00* – provisions of Patensie Sitrus's articles of association contravene the Competition Act in that they lock farmers, who are shareholders in the company, into an exclusive supply arrangement with Patensie Sitrus, thus excluding potential competitors from the market for the packing and distribution of citrus fruit. 3. *Mandla-Matla Publishing (Pty) Ltd v Independent Newspapers (Pty) Ltd 48/CR/Jun 04* – distinguishing supplier and distributor in the context of a distribution arrangement. 4. *The Competition Commission of South Africa and Federal Mogul Aftermarket Southern Africa (Pty) Ltd Federal Mogul Friction Products (Pty) Ltd T & N Holdings Ltd T & N Friction products (Pty) Ltd (08/CR/Mar01)* – minimum resale price maintenance. 5. *Competition Commission v South African Breweries and others (129/CAC/Apr14)* – minimum resale price maintenance and exclusive and dual distribution.			

Spain

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Spanish competition law follows the same principles as EU competition law regarding agency agreements.

Notification/clearance?

No. Like in the EU, there is no prior authorisation procedure.

RPM

Spanish competition law follows EU competition law.

MFNs

Spanish competition law follows EU competition law.

Advertised Pricing

No recent relevant case-law.

On-line selling

Spanish competition law follows EU competition law with regard to restrictions of online selling.

SPAIN				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	EUR5,821,951	0	N/A	N/A
Can participants to vertical agreements benefit from leniency?	No, leniency only applies to cartels (horizontal agreements).			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In its 2019 Action Plan, the Spanish Competition Authority (CNMC) has identified the following sectors as a priority: • health and sanitary products; • digital economy; • banking services; • railway transport; • funerary services; • maritime port activities; and • telecommunications.			
Recent landmark cases	In 2018 the CNMC closed some investigations into vertical practices without imposing fines. One of these cases concerns General Motors and its dealers. Autogarsa (dealer) filed a complaint against Opel (manufacturer) claiming that the distribution agreement with Opel infringed Competition Law. The agreement contained a clause preventing dealers, in certain circumstances, from being an Opel authorized repairer for 12 months from the cancellation of the distribution agreement. The CNMC took the view that these type of clauses can restrict effective competition, but in this particular case considered that there was no competition infringement because: • Opel offered the opportunity to cancel distribution agreements to become authorized repairers; • only one dealer had challenged that provision, so it appeared not to be a problematic restriction; and • Opel refused to apply the specific clause, so Autogarsa's claim had lost its object. Another case where the CNMC analysed vertical relationships and did not impose fines is the Alquicarp case, which involved software services provided to medium and small companies. SAP Business software is distributed in Spain by Seidor, and Alquicarp purchased some licenses from Seidor together with consulting and maintenance services. Alquicarp claimed that SAP and Seidor prevented it from freely choosing the software distributor because Seidor (the distributor of the software) had incorporated certain proprietary elements in the software which would force Alquicarp to incur increased costs to switch distributor. The CNMC shelved the investigation considering that even though SAP and Seidor had a vertical relationship, there was no illegal agreement between them and, owing to the reduced market shares, the conduct would be legally exempted and lacked sufficient interest to pursue.			

Sweden

Block Exemption/Safe Harbour

EU and national block exemptions apply.

Selective Distribution

EU and national block exemptions apply.

Exclusive Distribution

EU and national block exemptions apply.

Franchising

EU and national block exemptions apply.

IP Agreements

EU and national block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Prohibited

MFNs

Not automatically illegal.

See recent Booking.com case below, from 2019.

Advertised Pricing

No recent case-law.

On-line selling

Swedish competition law follows EU competition law with regard to restrictions on online selling.

SWEDEN				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	N/A	N/A	N/A	N/A
Can participants to vertical agreements benefit from leniency?	Leniency may be available for infringements of 2 Chap. 1 § of the Swedish Competition Act and article 101 TFEU.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	The Swedish Competition Authority has a strong focus on digitalization and is following the new developments in digital markets, e-commerce and online sales closely. For example, the Swedish Competition Authority recently launched a sector inquiry on digital platforms, see http://www.konkurrensverket.se/en/Competition/--ovrigt--/market-study-of-digital-platforms/			
Recent landmark cases	From recent case law, see the recent Booking.com case ("Booking") on narrow price parity clauses. The Patent and Market Court of Appeal found that it was not possible to conclude that the narrow vertical price parity clauses in Booking's agreements with Swedish hotels had as the object the prevention, restriction or distortion of competition. Furthermore, the Patent and Market Court of Appeal concluded that the evidence presented was not robust enough to show that the narrow parity clauses had anti-competitive effects on the relevant market. This meant that the Patent and Market Court of Appeal came to another conclusion than the Patent and Market Court, the latter ordering Booking not to use the clauses. The case was a private action and was not brought to the court by the Swedish Competition Authority. There was one dissident opinion in the Patent and Market Court of Appeal's judgment. Another recent case is the Bruce case. The Swedish Competition Authority made an interim decision that the company Bruce is prohibited to apply exclusivity clauses in its agreements with several fitness studios. Bruce is offering consumers one membership which includes the possibility for the consumer to visit several fitness studios without paying each fitness studio a separate membership fee. The Swedish Competition Authority found that the exclusivity clauses in Bruce's agreements with the fitness studios are likely to violate the Swedish Competition Act. It is unusual for the Swedish Competition Authority to make such an interim decision before the investigation is completed. The decision was later upheld by the Patent and Market Court. For more information, see http://www.konkurrensverket.se/en/news/exclusive-agreements-between-training-companies-are-prohibited/			

Switzerland

Block Exemption/Safe Harbour

EU block exemptions do not apply.

Swiss national rules:

Presumption of unlawfulness in case of (i) minimum/fixed resale prices, and (ii) restrictions of parallel imports into Switzerland/prohibition of passive sales.

No specific exemptions, guidance based on the Vertical Agreements Notice (28 June 2010) limited due to contradictory g court judgments.

Selective Distribution

EU block exemptions do not apply.

Generally, similar rules as in the EU.

However, the law is stricter on parallel import restrictions (e.g. restrictions on sales from outside EEA).

Exclusive Distribution

EU block exemptions do not apply.

Generally, similar rules as in the EU.

However, stricter on parallel import restrictions (e.g. restrictions of sales from outside EEA and purchase obligations).

Franchising

EU block exemptions do not apply.

No decision practice available, but generally similar rules as in the EU.

However, stricter on parallel import restrictions (e.g. restrictions of sales from outside EEA and purchase obligations).

IP Agreements

EU block exemptions do not apply.

Generally, similar rules as in the EU, but parallel application of TTBER has been excluded.

However, stricter on parallel import restrictions (e.g. restrictions of sales from outside EEA, purchase obligations, restrictions of sales into exclusive territory of licensor).

Agency Agreements

Genuine agency agreements are generally not covered by competition law rules.

More restrictive approach if agency agreements are used in order to refuse services to Swiss customers outside of Switzerland and/or if the agent was active for several parties.

Notification/clearance?

Possibility to notify agreements for review by the competition authority (rarely used due to procedural limitations).

RPM

Legal presumption of unlawful mess. Possibility of exemption in theory available.

MFNs

Recent decision by the Swiss competition authority has prohibited certain broad MFN for online booking platforms.

Narrower MFNs have (for the moment) been accepted in these cases:

- Expedia
- Booking
- HRS

Potential legislation prohibiting all MFN is under discussion.

Advertised Pricing

Agreements on Minimum Advertised Prices have to date not been reviewed by the Swiss competition authority.

It is highly likely that such agreements are considered to have the same effect as RPM and will be considered unlawful.

On-line selling

Based on the Swiss competition authority's decision, a total ban on online selling is generally unlawful (Electrolux and V-Zug).

The Swiss competition authority is observing how the EU courts decide on certain restrictions, such as platform bans, and has amended its guidance in 2018 in order to reflect the *Coty* judgement of the ECJ.

SWITZERLAND			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018/2019**
	Approx. CHF35,000 issued by the ComCo	Approx. CHF660,000 issued by the ComCo (with penalties of CHF161 million from previous decisions, which have come into effect in 2017 after rejection of appeals)	Approx. CHF285,000
Can participants to vertical agreements benefit from leniency?	Yes. Participants in vertical agreements may apply for leniency in Switzerland and may in theory get up to a 100% reduction in sanctions. However, manufacturers/suppliers are generally considered instigators, and do not qualify for full immunity.		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	The key development with regard to vertical agreements is the Gaba/ Elmex judgment that was rendered by the Federal Supreme Court in 2016. The judgment concerned a 2009 Competition Commission (ComCo) decision regarding a production and distribution licence agreement between Swiss company, Gaba and Austrian company, Gebro for the production and distribution of Elmex toothpaste. ComCo concluded that the licence agreement prohibited Gebro from exporting products out of Austria and, in particular, from exporting them into Switzerland. This qualified as a restriction of parallel imports into Switzerland and ComCo issued a fine of CHF4.8 million. ComCo's decision was confirmed in a 2013 Federal Administrative Court judgment. Contrary to Federal Supreme Court practice, in its 2013 judgment the Federal Administrative Court declared for the first time that the mere qualification as a hardcore restriction was sufficient to establish a significant restriction of competition. The Federal Administrative Court judgment has now been confirmed by the Federal Supreme Court. Based on this judgment, the ComCo revised the Verticals Notice, i.e. the guidelines regarding how the ComCo handles vertical agreements, and also issued an explanatory note regarding the Verticals Notice. These can be downloaded in German, French or Italian under https://www. weko. admin.ch/weko/de/home/dokumentation/bekanntmachungen—-erlaeuterungen.html. On 18 May 2018 the Federal Supreme Court of Switzerland (FSC) partially upheld a ComCo ruling relating to the case *Altimum SA/ Mountaineering equipment* holding that in dictating minimum sale prices for mountaineering equipment to its retailers Altimum SA, had concluded unlawful vertical price-fixing agreements. The FSC declared that retailers are parties to an unlawful agreement if they enter into a sales contract with a manufacturer on the condition that they comply with minimum retail prices even if they face not being supplied with goods *if they do not*. The FSC confirmed its practice according to the *GABA/Elmex* decision in holding that it is sufficient that the price fixing agreement aims to achieve a restraint of competition; an evaluation of its effects, in particular the extent to which the agreement is followed, is not required.		

	In 2019/2020 the Swiss parliament will discuss an amendment to the Cartel Act, which intends to facilitate actions against price discriminations and refusals to supply in cross-border transactions. This is seen as an extension of its abilities to review parallel import restrictions.
Recent landmark cases	a) The Gaba/Elmex judgment of the Federal Supreme Court of 28 June 2016: The Federal Supreme Court, the highest court in Switzerland, found that so-called hardcore restrictions such as price agreements or territory allocations are sufficient to establish a significant restriction of competition and are, consequently, only justifiable on grounds of economic efficiency. b) The Nikon judgment of the Federal Administrative Court of 16 September 2016: The Federal Administrative Court, the second highest court in Switzerland for federal administrative law matters, found that the scope of application of Art. 5 (4) CartA, which holds that territory allocations are unlawful, is not limited to just direct allocations of territories, but also includes indirect allocations such as exclusive purchasing obligations which oblige retailers to purchase goods only from within Switzerland. In the case at hand, such an obligation was qualified as unlawful indirect absolute territorial protection. c) The Hors List judgment of the Federal Administrative Court of 19 December 2017: The Swiss Federal Administrative Court, the second highest court in Switzerland for federal administrative law matters, annulled a decision of the Swiss Competition Commission in which it had fined three pharmaceutical companies for alleged resale price maintenance. The Swiss Competition Commission had found that the companies had issued recommended resale prices for certain medicines that had been adhered to by most of the pharmacies and that this constituted unlawful resale price maintenance pursuant to Art. 5(4) CartA. This decision was overturned by the Federal Administrative Court. The Federal Administrative Court noted that the rate of adherence was lower than had been alleged by the Competition Commission. Furthermore, according to the Federal Administrative Court, mere adherence to recommended resale prices without additional elements does not constitute resale price maintenance. The judgement of the Federal Administrative Court has been appealed and is now pending again before the Federal Supreme Court.

Ukraine

Block Exemption/Safe Harbour

EU block exemptions do not apply Vertical arrangements:

- where the market shares of the supplier and buyer on the markets where they, respectively, sell and buy the contract goods do not exceed 30%; and
- where they are established between an association of undertakings and its members or between such an association and its suppliers provided that (i) all members of such association are retailers and (ii) no individual member (taking into account the undertaking as a whole) of such association has a turnover in Ukraine exceeding EUR25 million for the previous financial year, fall within the safe harbour.

Selective Distribution

EU block exemptions do not apply.

Generally, similar rules as in the EC Regulation No. 330/2010.

Exclusive Distribution

EU block exemptions do not apply.

Generally, similar rules as in the EC Regulation No. 330/2010.

IP Agreements

EU block exemptions do not apply Generally, similar rules as in the EC Regulation No. 330/2010.

Agency Agreements

General requirements for concerted practices apply to agency agreements. The Guidelines provides definition and requirements as to the agency agreements.

Notification/clearance?

Possibility to notify agreements for review by the competition authority. Those arrangements which do not fall into block exemptions or safe harbours, shall be cleared by the Ukrainian competition authority prior to completion. Parties may apply to get preliminary conclusion of the AMCU whether the contemplated agreement/action would require clearance.

No post-notification procedure is established by law.

RPM

Generally, similar rules as in the EC Regulation No. 330/2010.

Franchising

EU block exemptions do not apply.

Generally, similar rules as in the EC Regulation No. 330/2010.

Advertised Pricing

No recent case-law.

MFNs

MFNs clauses have to date not been reviewed by the Ukrainian competition authority. However, as a general rule any agreement between seller and distributor on the price of the product falls within hardcore restrictions with few exceptions that are similar to rules set forth in the EC Regulation No. 330/2010.

On-line selling

No special rules on on-line selling.

No recent case-law.

UKRAINE				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	UAH5.2 million	UAH138 million	N/A	N/A
Can participants to vertical agreements benefit from leniency?	Yes, verticals covered.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	On 5 December 2017, a new regulation by the Antimonopoly Committee of Ukraine on typical requirements for vertical concerted actions of undertakings entered into force. The document aims to bring block exemptions in vertical concerted actions in line with the best European practices and is an attempt to implement these new rules into the national legislation of Ukraine, in order to align with the European Commission Regulation No. 330/2010 dated 20 April 2010. In addition, there are currently two draft laws that may be adopted in 2018 which will amend to certain extent rules on vertical agreements, namely: • draft Law No 6723 which, among other things, may modify the ambiguities in regulation of concerted actions with respect to (i) joint acquisition of goods by small and medium enterprises; (ii) supply and distribution of goods; and (iii) intellectual property rights; and • draft Law No 6746 which, among other things, may implement additional rules on leniency for the participants to concerted actions. For instance, the participants may be partially exempted from liability even if they were not the first to report the violation. Additionally, the draft law aims to reduce the amount of a fine that may be imposed on the participant to concerted actions.			

Recent landmark cases	**Servier Case (September 2016)** • Servier Group supplied its pharmaceuticals exclusively through its subsidiary LLC Servier Ukraine to five wholesale distributors in Ukraine. • The distribution agreements between LLC Servier Ukraine and the distributors prohibited export of Servier products. The agreements provided for different types of discounts, including commercial discounts and discount for participation in public procurement tenders. Moreover, certain agreements provided for individual terms and prices if the products were to be sold (i) to medical institutions in Donetsk oblast (region in East Ukraine); and (ii) to specific medical institutions via public procurement tenders. • AMCU determined that LLC Servier Ukraine and the distributors violated competition law by: (i) ensuring control over the market of Servier products in Ukraine, and (ii) by splitting the market on a geographical basis and by customers. • As a result, AMCU fined LLC Servier Ukraine for UAH1.7 million (equivalent of EUR59,811 as of 31 December 2016) and the distributors for UAH1.8 million (equivalent of EUR63,330 as of 31 December 2016).
	Sanofi Case (October 2017) • Sanofi Group imported pharmaceuticals through LLC Sanofi-Aventis Ukraine mainly to two wholesale distributors. AMCU analysed the provisions of the agreements with the distributors, which were applicable in 2010-2011. • The competition authority determined that the terms of such agreements, which for different discounts for different products, stimulated the distributors not to distribute in large volumes the pharmaceuticals of Sanofi's competitors. • Additionally, the discount mechanism stipulated in the agreements led to unlawful price increases for the products sold in public procurement tenders. The discounts were provided in the form of letter of credit and were not reflected in the tender documentation submitted by distributors for tenders. • Furthermore, the agreement with one distributor (LLC JV Optima-Pharm) provided for special discounts for certain products. The discount mechanism in fact ensured the exclusive distribution of the products by LLC JV Optima-Pharm). AMCU determined it to be a violation of the competition law because the parties split the market based on the range of products. • As a result, AMCU fined LLC Sanofi-Aventis Ukraine and its distributors for UAH138 million (equivalent of EUR4,315,658 as of 13 December 2017).

United Kingdom

Block Exemption/Safe Harbour

EU block exemptions apply.

Selective Distribution

EU block exemptions apply.

Exclusive Distribution

EU block exemptions apply.

Franchising

EU block exemptions apply.

IP Agreements

EU block exemptions apply.

Agency Agreements

Genuine agency agreements are not covered by competition law rules.

Notification/clearance?

N/A

RPM

Prohibited

Recent cases:

- Bathroom fittings
- Commercial catering equipment
- Light fittings
- Heathrow airport authority
- Digital pianos and keyboards

MFNs

Not automatically illegal.

Recent cases:

- Hotel online booking
- Private motor insurance
- ATG Media (auction services)
- Price comparison websites (market study)
- Home insurance

Advertised Pricing

Prohibited

- Mobility Scooters
- Commercial catering

On-line selling

Total ban = hardcore.

Recent cases include:

- Mobility scooters
- Booking.com/Expedia
- Posters
- Ping
- Light fittings

UK				
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2018**	**2019**
	GBP3.2 million Bathroom fittings – GBP786,668 Commercial Catering – GBP2,298,820	GBP4.25 million Light fittings – GBP2.7 million Ping – GBP1.45 million	GBP1.6 million Heathrow Airport Authority – GBP1.6 million	GBP3.7 million Digital pianos and keyboards – GBP3.7 million
Can participants to vertical agreements benefit from leniency?	Vertical arrangements can benefit from leniency as regards price fixing (for example, resale price maintenance cases), but not other stand-alone vertical restrictions of competition. However, leniency is available to parties to vertical behaviour if it may be facilitating horizontal cartel activity.			
Key cases and trends/ developments or particular sectors of interest in relation to verticals	In its draft Annual Plan 19/20, the CMA states that it will be guided by enforcement priorities that include promoting competition in online markets. It also indicates that it intends to strengthen its new Data, Technology and Analytics unit. Otherwise, the CMA is expected to continue its focus on infringements in the digital sector, particularly on restrictions on online sales and advertising. The UK government has also announced a wide-ranging review of the UK competition regime and appointed a digital competition expert panel to examine opportunities and challenges relating to e-commerce, online advertising and innovation. The CMA has recently opened a market study into online platforms and digital advertising. Brexit could lead to significant changes to the UK competition regime, although in the short term, the immediate impact in respect of the substantive antitrust law, including with respect to vertical agreements, may be limited. Much will depend on the terms of the UK's exit from the EU, which remain to be seen.			
Recent landmark cases	In April 2019, the CMA fined Casio GBP3.7 million for engaging in RPM by illegally preventing price discounts. Casio admitted that it broke competition law by implementing a policy designed to restrict retailer freedom to set prices online by requiring digital pianos and keyboards to be sold at or above a minimum recommended retail price. The infringement lasted for five years from 2013 to 2018. Casio used software to monitor prices (which allowed it to monitor compliance in real time) and then pressured retailers to raise their prices when they fell below a specified price. Retailers also notified Casio when their rivals offered discounts. Ultimately the fine was discounted under the settlement procedure to reflect that Casio admitted the illegal behaviour and agreed to cooperate. This is on the back of the CMA issuing 19 warning letters and 3 advisory letters about RPM in 2018, and the CMA issuing a number of other fines for RPM in the last few years, including: bathroom fittings – GBP786,668, commercial catering – GBP2,298,820, light fittings – GBP2.7 million and Heathrow Airport Authority – GBP1.6 million. According to the CMA, RPM is one of the most complained about practices and complaints are increasingly related to online platforms.			

US

Block Exemption/Safe Harbour

Certain statutory exemptions for particular sectors.

Selective Distribution

Analysed under the Rule of Reason.

Exclusive Distribution

Analysed under the Rule of Reason.

Franchising

Analysed under the Rule of Reason.

IP Agreements

Statutes govern formation/and operation but conduct assessed under usual standards.

Agency Agreements

No special rules.

Notification/clearance?

N/A

RPM

Analysed under the Rule of Reason but certain state laws restrict per se.

MFNs

Analysed under the Rule of Reason.

Advertised Pricing

Analysed under the Rule of Reason.

On-line selling

Treated similarly to other sales channels.

US			
Estimation of total penalties for vertical anti-competitive practices	**2016**	**2017**	**2019**
	0	0	0
Can participants to vertical agreements benefit from leniency?	N/A		
Key cases and trends/ developments or particular sectors of interest in relation to verticals	Although structural remedies are by far preferred in horizontal merger cases, the US antitrust authorities traditionally have also employed a full suite of behavioural remedies to allow merging parties to complete transactions that raise vertical issues. In November 2017, the newly appointed Assistant Attorney General in charge of the Department of Justice's Antitrust Division announced a more restrictive approach to allow mergers on the basis of behavioural remedies, as "[b]ehavioral remedies often require companies to make daily decisions contrary to their profit-maximizing incentives, and they demand ongoing monitoring and enforcement to do that effectively. It is the wolf of regulation dressed in the sheep's clothing of a behavioural decree." Shortly thereafter, the DOJ sued to block the proposed AT&T/DirecTV and Time Warner vertical merger, arguing that the merger would provide the merged company with the power to lessen competition and harm consumers in two separate markets and that there were no appropriate countervailing factors to warrant any sort of remedy. The District Court denied the DOJ's request to enjoin the merger. The DOJ advanced three theories of harm to competition, all of which the Court ruled did not meet the required standard under Article 7 of the Clayton Act. In particular, the Court disagreed with the DOJ's contention that Turner would be able to negotiate from a position of greater strength with AT&T's rival distributors for its "must-have" content, thereby increasing the cost for the ultimate consumers who would be charged more by those rival distributors. The Court also dismissed the DOJ's two other arguments according to which AT&T would substantially lessen virtual multichannel video programming distributors (such as DirectTV Now) through its ownership of Time Warner content and by restricting its competing distributors by blocking the use of HBO as a marketing service for those distributors to seek new customers. In February 2019, the US Court of Appeals for the DC Circuit affirmed the District Court's decision.		

Recent landmark cases	*Business Elec. Corp. v. Sharp Elec. Corp*., 485 U.S. 717, 735-36 (1988) (applying the rule of reason to non-price vertical restraints): "In sum, economic analysis supports the view, and no precedent opposes it, that a vertical restraint is not illegal per se unless it includes some agreement on price or price levels." *Leegin Creative Leather Products, Inc. v. PSKS, Inc*., 551 U.S. 877, 898-99 (2007) (expanding the rule of reason even to vertical price restraints): "The rule of reason is designed and used to eliminate anticompetitive transactions from the market. This standard principle applies to vertical price restraints. A party alleging injury from a vertical agreement setting minimum resale prices will have, as a general matter, the information and resources available to show the existence of the agreement and its scope of operation. As courts gain experience considering the effects of these restraints by applying the rule of reason over the course of decisions, they can establish the litigation structure to ensure the rule operates to eliminate anticompetitive restraints from the market and to provide more guidance to businesses."

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