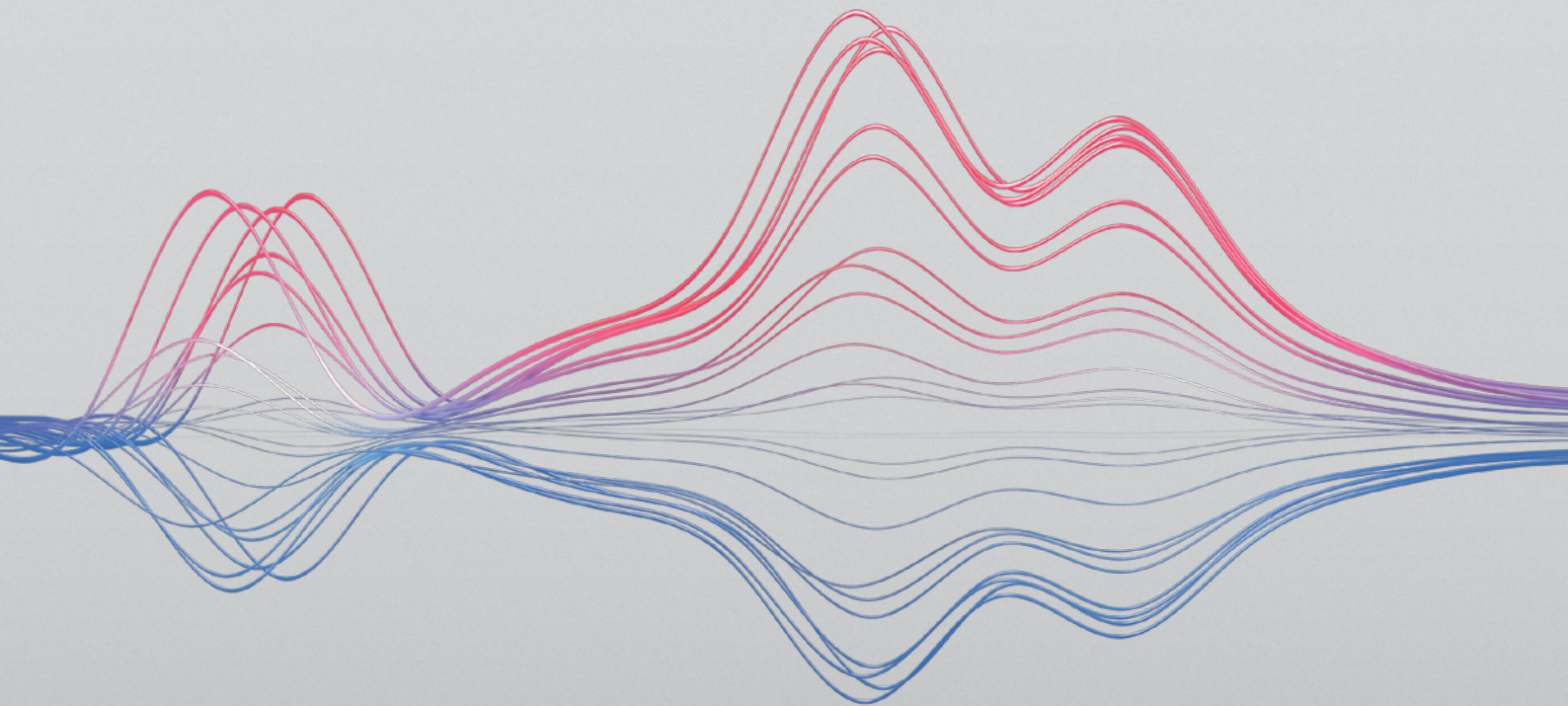


Cartel enforcement  
Global review – 2022



## Global cartel enforcement sees new momentum after the pandemic crisis

Although competition authorities around the world did not suspend their operations during the Covid-19 pandemic, the pandemic did affect day-to-day enforcement activities. Authorities were forced to reprioritize and most decided to focus on primary needs. Competition authorities in turn adopted a more relaxed approach to those cooperation agreements which were struck in response to shortages of certain goods during this time.

Now that the height of the pandemic seems to be past us, 2022 is bringing new momentum to anti-cartel enforcement activity. Authorities are focusing on sectors including technology and the digital economy, health and life sciences, agriculture and food, construction, transport, energy and industrials.

In 2021, the European Commission imposed cartel fines totaling EUR1.8 billion. Total fines imposed in Europe (excluding the UK) by national competition authorities exceeded EUR2.7 billion.

Total cartel fines reached GBP111.5 million in the UK in 2021 and USD529 million in the US in 2020, both five-year records. Similarly, the 29 individuals charged in 2021 also marked a five-year record.

In Mexico, Peru, China, India, Indonesia, Taiwan and South Africa, cartel fines have significantly increased in the past two years. The first half of 2022 appears to continue this trend.

The criminal prosecution of cartels is an important tool in many jurisdictions. In the US, the number of convicted individuals rose from 15 in 2019 to 22 in 2020, and 29 in 2021. The list of jurisdictions where criminal penalties for cartels apply is growing.

After a significant reduction during the pandemic, the number of dawn raids is back on the rise in almost every jurisdiction. Meanwhile, legal frameworks have evolved to give authorities more effective enforcement tools.

In the EU, Directive (EU) 2019/1 (ECN+ Directive) has been adopted in almost all Member States, paving the way for a significant strengthening of the powers of national competition authorities.

In China, a new amendment to competition law has introduced practical changes to the law on horizontal and vertical agreements. It broadens the definition of unlawful conduct, introduces “safe harbour” cases and strengthens the sanctions that can be imposed.

Meanwhile, tech solutions for cartel detection are becoming more effective, both for enforcers and for undertakings.

# Table of contents

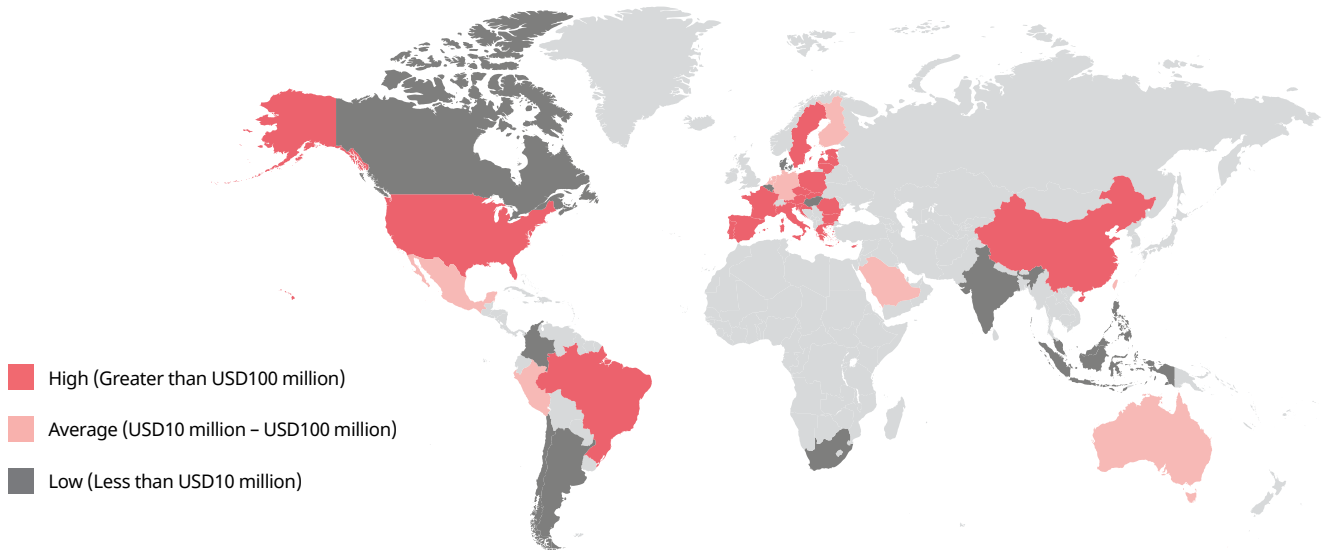
<b>GLOBAL CARTEL ENFORCEMENT ACTIVITY .....</b>	<b>5</b>
2021 global penalties .....	5
Penalty trends around the world .....	6
Criminal enforcement.....	8
<b>THE GLOBAL ENFORCEMENT MIX – EMERGING TRENDS .....</b>	<b>9</b>
Criminal liability.....	9
Private enforcement .....	9
Cartel investigations, leniency programs and international cooperation.....	10
Compliance programs .....	10
Covid-19 temporary frameworks.....	10
Technology solutions .....	10
Focus sectors.....	11
<b>COUNTRY SNAPSHOT.....</b>	<b>12</b>
<b>EUROPE.....</b>	<b>13</b>
European Union .....	13
Austria.....	15
Belgium.....	16
Denmark.....	17
Finland .....	18
France .....	19
Germany.....	21
Hungary.....	23
Ireland.....	25
Italy .....	26
Netherlands .....	28
Norway .....	30
Poland.....	32
Portugal.....	34
Romania.....	36

Slovakia .....	37
Spain.....	38
Sweden .....	39
United Kingdom .....	40
<b>AMERICAS.....</b>	<b>41</b>
United States .....	41
Argentina.....	42
Brazil.....	43
Canada.....	44
Chile.....	45
Colombia .....	47
Mexico .....	49
Peru .....	50
<b>ASIA PACIFIC .....</b>	<b>51</b>
Australia .....	51
China .....	53
Hong Kong .....	54
India .....	55
Indonesia .....	56
Japan.....	57
Malaysia .....	58
New Zealand .....	59
Philippines.....	60
Singapore .....	61
Thailand.....	62
Taiwan .....	63
<b>MIDDLE EAST .....</b>	<b>64</b>
Kingdom of Saudi Arabia.....	64
<b>AFRICA.....</b>	<b>65</b>
South Africa .....	65
<b>MORE INFORMATION .....</b>	<b>66</b>



# Global cartel enforcement activity

## 2021 global penalties



### AMERICAS

Argentina	ARP5.9 million
Brazil	BRL1.3 billion
Canada	CAD0
Chile	UTA8,000
Colombia	COP21,116,129,300
Mexico	Approx. MXN1,430,350,000
Peru	PEN66,258,676
United States	USD151 million

### ASIA PACIFIC

Australia	AUD24 million
China	RMB1.31 billion
Hong Kong	HKD5.6 million
India	INR8,741.59 million
Indonesia	IDR14.273 billion
Japan	N/A
Malaysia	RM3,234,529.93

New Zealand	NZD236,000
Philippines	PHP0
Singapore	N/A
Taiwan	NTD1.51 billion
Thailand	THB0

### AFRICA

South Africa	ZAR40,784,469
--------------	---------------

### MIDDLE EAST

Kingdom of Saudi Arabia	SAR57,510,000
-------------------------	---------------

### EUROPE

Austria	EUR108,060,000
Belgium	EUR1,104,310
Denmark	DKK7,071,000
European Union	EUR1,746,254,000

Finland	Approx. EUR24,000,000
France	EUR151,898,229
Germany	Approx. EUR65 million
Hungary	HUF16,200,000,000
Ireland	N/A
Italy	EUR174,532,555
Netherlands	EUR33,013,000
Norway	NOK0
Poland	Approx. PLN124 million
Portugal	EUR137.7 million
Romania	RON377 million
Slovakia	EUR1,177,394
Spain	EUR205 million
Sweden	SEK1 130 000
United Kingdom	GBP111.5 million

## Penalty trends around the world

COUNTRY	2020	2021	TREND (2020-2021)
<b>EUROPE</b>			
European Union	EUR288,080,000	EUR1,746,254,000	^
Austria	EUR294,000	EUR108,060,000	^
Belgium	EUR0	EUR1,104,310	N/A
Denmark	DKK8,725,000	DKK7,071,000	∨
Finland	No proposed fines	Approx. EUR24,000,000	^
France	EUR97,851,000	EUR151,898,229	^
Germany	EUR349 million	EUR65 million	∨
Hungary	HUF1,075,000,000	HUF16,200,000,000	^
Ireland	N/A	N/A	N/A
Italy	EUR228,125,992.57	EUR174,532,555	∨
Netherlands	EUR125,000,000	EUR33,013,000	∨
Norway	NOK766 million	NOK0	∨
Poland	Approx. PLN 158 million	Approx. PLN 124 million	∨
Portugal	EUR389,800,000	EUR137,700,000	∨
Romania	RON356 million	RON377 million	^
Slovakia	EUR7,160,632.80	EUR1,177,394	∨
Spain	EUR4.3 million	EUR205 million	^
Sweden	SEK575,000	SEK1,130,000	^
United Kingdom	GBP48,828,679	GBP111,500,000	^
<b>AMERICAS</b>			
Argentina	ARP153,400,000	ARP5,900,000	∨
Brazil	BRL138.4 million	BRL1.3 billion	^
Canada	CAD6.15 million	CAD0	∨
Chile	UTA46,422	UTA8,000	^
Colombia	COP322,000,000,000	COP21,116,129,300	∨
Mexico	Approx. MXN 786,192,721.00	Approx. MXN 1,430,350,000	^
Peru	PEN33,834,851	PEN66,258,676	^
United States	USD529 million	USD151 million	∨

ASIA PACIFIC			
Australia	AUD0	AUD24 million	^
China	RMB29.5 million	RMB1.31 billion	^
Hong Kong	HKD14.4 million	HKD5.6 million	∨
India	INR0 <sup>1</sup>	INR8,741.59 million	^
Indonesia	IDR7.948 billion	IDR14.273 billion	^
Japan	JPY4.32 billion	N/A	N/A
Malaysia	RM173,655,300	RM3,234,529.93	∨
New Zealand	NZD4,394,000	NZD236,000	∨
Philippines	PHP0	PHP0	=
Singapore	SGD451,112.00	N/A	N/A
Taiwan	NTD603.73 million	NTD1.51 billion	^
Thailand	THB0	THB0	=
MIDDLE EAST			
Kingdom of Saudi Arabia	N/A	SAR57,510,000	N/A
AFRICA			
South Africa	ZAR69,242,731	ZAR40,784,469	∨

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

*\*Data for US and Kingdom of Saudi Arabia based on fiscal year from 1 October to 30 September; data for Japan and South Africa based on fiscal year from 1 April to 31 March.*

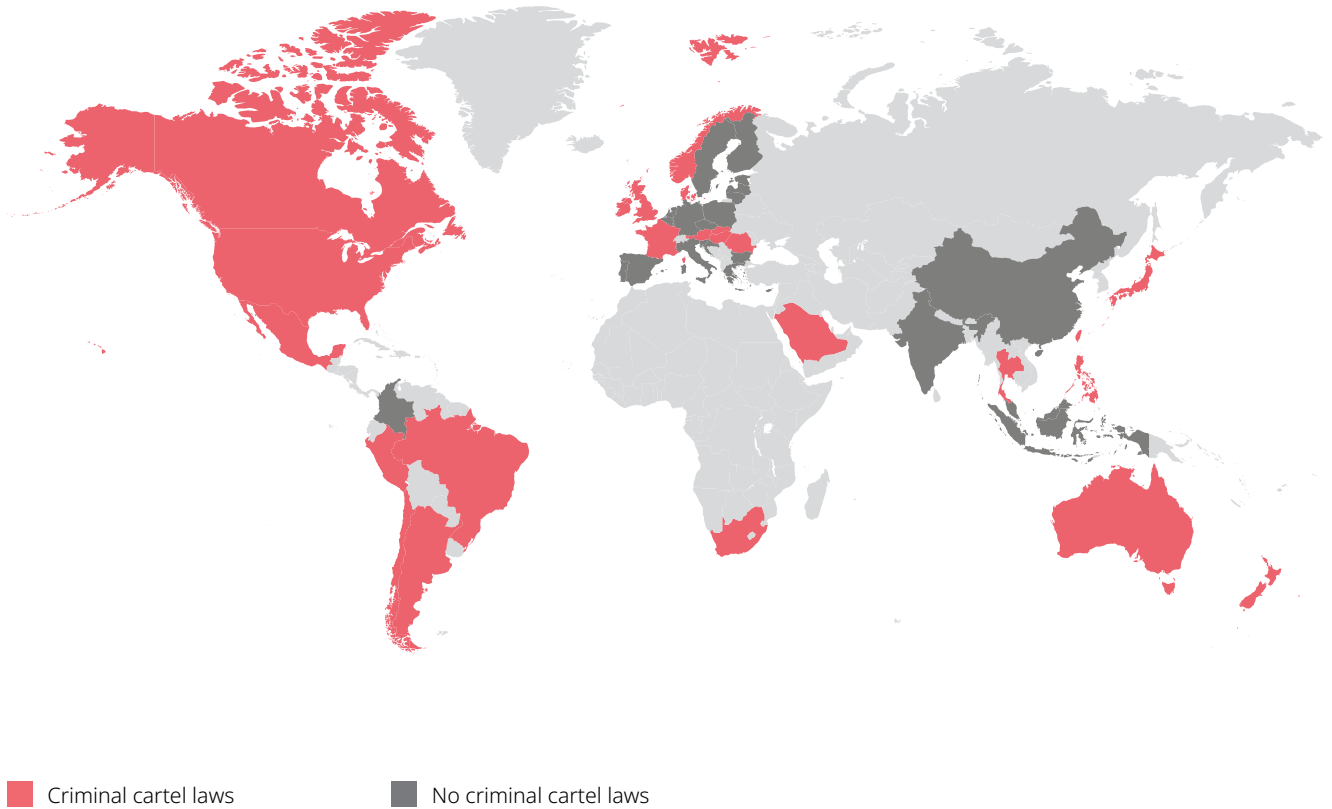
<sup>1</sup> Although in 2020, the Competition Commission of India ("CCI") decided several cartel related cases, and found violation in certain cases, it did not impose any monetary penalties. The CCI acknowledged hardships due to the pandemic, especially in cases involving micro, small and medium enterprises and took a lenient view.

<sup>2</sup> There was one cartel penalty imposed in New Zealand in 2020, which was NZD 150,000.

<sup>3</sup> There are a number of confidential cartel investigations that were commenced in 2020 and which remain ongoing in 2021 and 2022.

## Criminal enforcement

### Jurisdictions with criminal cartel laws:



*Some jurisdictions (such as Colombia, Hungary, Italy, Poland and Spain) have only criminalized some aspects of cartel conduct, such as bid rigging.*



# The global enforcement mix – emerging trends

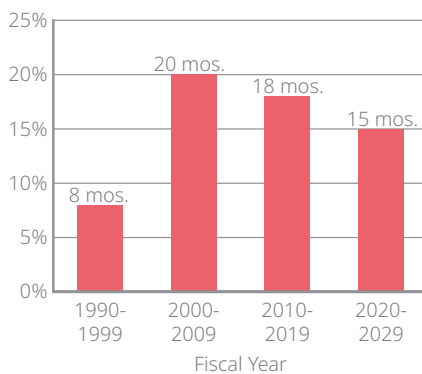
## Criminal liability

Prosecuting individuals (as well as the corporations they act for) remains a key factor of cartel enforcement activity around the world.

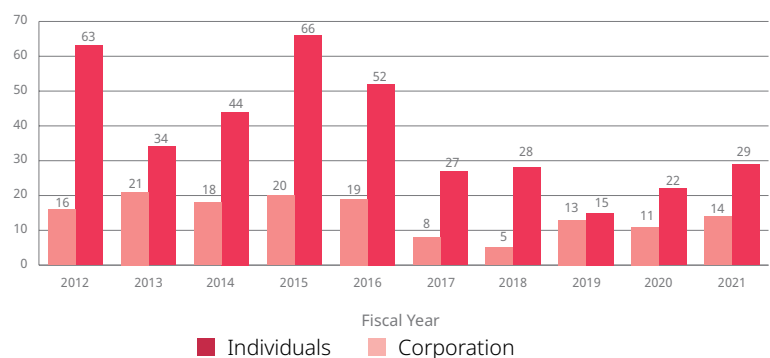
In the US, for example, 22 individuals were charged with violating the Sherman Antitrust Act in 2020. This rose to 29 in 2021. The average sentence imposed over the two years was 15 months. The statutory maximum sentence is 10 years.

In the UK, five company directors were disqualified in each of 2020 and 2021. Director disqualification is not a cartel punishment in the UK; it is a personal civil penalty for individuals involved in competition law infringements.

### Average Prison Sentence in Months



### Corporation & Individuals Charged



Source: US Department of Justice, <https://www.justice.gov/atr/criminal-enforcement-fine-and-jail-charts>

In the Asia Pacific region, New Zealand introduced criminal penalties for cartels, with the law coming into force on 8 April 2021.

In Australia, individuals found guilty of cartel conduct face maximum sentences of up to 10 years, and/or fines of up to AUD444,000 for each offense. Corporations face a maximum penalty of either AUD10 million, three times the value of the financial gain, or 10% of annual turnover – whichever is greater.

## Private enforcement

Private actions are another important aspect of cartel enforcement.

At European Union level, the national implementation of the Directive 2014/104/EU (EU Damages Directive) has led to an increase in the private damages' actions for cartels in many Member States, even though the real impact of the EU Damages Directive provisions will probably be seen in the coming years.

The EU Damages Directive aims to remove obstacles to compensation, including by providing private parties with easier access to evidence and establishing a rebuttable presumption that cartels cause harm. The EU Damages Directive aims to remove obstacles to compensation for private parties, by giving them easier access to evidence, and establishing a rebuttable presumption that cartels cause harm.

The Americas have seen intense class-action activity, Canada and the US in particular. In Peru, the competition authority has adopted its Guidelines on the Compensation of Damages Caused to Consumers as a Consequence of Anticompetitive Conducts. These aim to establish the conditions under which the authority will file a claim to seek compensation for damages on behalf of consumers affected by anti-competitive practices (in a similar model to class actions).

## Cartel investigations, leniency programs and international cooperation

Leniency programs grant immunity, or reduce fines, for applicants providing evidence of cartels to competition authorities. They remain a key tool for detecting cartels, but generally apply to horizontal, not vertical, cartels.

Several jurisdictions have updated their leniency guidelines recently. The Belgian Competition Authority did so in May 2020. Meanwhile, the Netherlands adopted the Leniency Decree in 2021, which replaced the previous Clemency Policy.

In 2020, the Chinese competition authority published its Guidelines for Application of the Leniency Program, which refined the program's scope and application procedure. During the same year, Hong Kong's authority revised its Leniency Policy for Undertakings Engaged in Cartel Conduct; and adopted a new Leniency Policy for Individuals Involved in Cartel Conduct.

Dawn raids are an increasingly important cartel enforcement instrument. Numbers of dawn raids have increased in recent years in almost every jurisdiction.

In the EU, competition authorities' ability to investigate cartels should be reinforced by Directive (EU) 2019/1 of the European Parliament and European Council. This strengthens authorities' powers and enhances cooperation between the European Commission and national authorities in cartel cases. The Directive has been implemented in almost all Member States.

## Compliance programs

A number of jurisdictions look at firms' compliance programs when assessing fines for cartel activity. And some will accept the existence of a compliance program as a mitigating factor when setting fines.

That said, simply establishing a compliance program won't be enough to justify a reduced fine in most jurisdictions. Compliance measures must be considered sufficiently effective.

This is the position of the European Commission, for example, as confirmed by the European Court of Justice, and followed by competition authorities in EU Member States.

Jurisdictions may also insist that organizations involved in cartel activity commit to adopting robust competition compliance programs. The Republic of Ireland's competition authority introduced this requirement in 2021. By contrast, the UK authority has removed compliance programs from the list of mitigating behaviors when setting cartel fines.

## Covid-19 temporary frameworks

In response to the challenges of the pandemic, many authorities adopted temporary frameworks and/or special ad hoc procedures.

These ushered in a more relaxed attitude to cooperation agreements between competitors, where the aim was to address production and supply shortages – especially in the healthcare, pharmaceutical and food retail sectors.

Authorities took the view that cooperation between competitors may be necessary to avoid supply bottlenecks and product shortages. So, they authorized agreements of this kind, rather than prosecuting them.

With the pandemic waning, however, many are now dropping their Covid-19 temporary frameworks.

## Technology solutions

Competition authorities are increasingly using advanced digital tools to support cartel investigation and enforcement.

The Australian authority, for example, has deployed such technology to bolster its whistleblowing facility. It now offers a reporting tool that lets whistleblowers get in touch anonymously. The Polish authority is developing an AI solution to identify bid-rigging.

Authorities also use digital solutions, algorithms and AI to better detect cartels, and review information and documentation collected during investigations – Canada being a prime example.

In this context, DLA Piper has developed Aiscension: an AI-powered, cartel risk-management service. Aiscension speeds up document reviews, putting users in the best position to spot potential issues and deal with them appropriately.

You can find out more about Aiscension [here](#).

### Focus sectors

We expect the following sectors to be a continuing focus for cartel enforcement activity around the world in 2022:

- health and life sciences
  - technology and the digital economy
  - construction
  - retail and e-commerce
  - transportation
  - financial services
  - agriculture and food
  - energy
- 





# Country snapshot



# Europe

## European Union

	2020	2021	TREND (2020 – 2021)
European Union	EUR288,080,000	EUR1,746,254,000	^

EU institutions have handed down some important judgments over the past two years:

### *European Court of Justice*

- **Sumal case** (2020): A subsidiary may be held liable for damages caused by its parent company, when the latter is sanctioned for cartel activity – if the two entities are part of the same economic unit.
- **Printeos case** (2021): The Commission must pay default interest on repaid fines after a decision has been annulled by the General Court.
- **Power Cables case** (2020): Over two judgements in this case, the court:
  - Confirmed that the EC's conduct during dawn raids was appropriate
  - acknowledged its discretion in making electronic copies of documents, as an intermediate step to analyse the data and continue its investigation on its premises.

### *European Commission (EC)*

- **Celanese, Orbia, Clariant** (2020). The EC imposed fines totalling around EUR260 million on Celanese, Orbia and Clariant. The companies had agreed to buy ethylene for the lowest possible price on the ethylene markets in Germany, France, the Netherlands and Belgium. A fourth participant, Westlake, was not fined, as it reported the cartel to the authorities.
- **Brose and Kiekert** (2020). The Commission sanctioned Brose and Kiekert, two German suppliers of closure systems for cars, for participating in two cartels that

were coordinating prices. Total fines amounted to about EUR18 million. Magna received full immunity for reporting both cartels. This is one in a long series of Commission decisions concerning the car-components market.

- **CCPL Group** (2020). The Commission readopted a decision fining CCPL Group EUR9.4 million for participating in three separate retail food-packaging cartels. The decision addressed procedural errors made in its original 2015 decision. This has been challenged and partially annulled by the General Court in 2019. The judgment did not question CCPL's responsibility for participating in the cartel.

Cartel enforcement activity by the EC has focused on the following sectors:

- automotive
- banking
- wood pulp

### **Covid-19 related issues**

On 8 April 2020, the Commission adopted the *Temporary Framework for the assessment of anti-competitive practices in the cooperation set up between companies to react to emergency situations arising from the current Covid-19 pandemic*.

The framework applies to essential products in all sectors, with a particular focus on the health sector. It provides guidance and criteria for assessing cooperation projects, which should:

- be designed to genuinely increase production;
- be temporary in nature; and
- not exceed what is necessary to increase output.

All exchanges and agreements should be documented.

The framework also foresees the possibility of providing ad hoc ‘comfort letters’ to companies, on specific cooperation projects falling within its scope. On 8 April 2020, the EC issued a comfort letter to Medicines for Europe, approving coordination in the pharmaceutical industry. The project aimed to increase production and improve the supply of medicines urgently needed to treat Covid-19 patients. In the letter, the EC made clear that it would provide feedback or assurances on the legality of specific cooperation initiatives.

On 25 March 2021, the EC issued another comfort letter, this time to the co-organisers of a pan-European matchmaking event. This initiative aims to address bottlenecks in the production of Covid-19 vaccines and accelerate the use of additional capacities across Europe. The letter spelled out conditions under which matchmaking and exchanges between companies, including direct competitors, could take place at the event, without breaking EU competition rules. These included the following:

- Exchanges of confidential business information between companies must be limited to what’s necessary to resolve supply challenges linked to the Covid-19 pandemic.

- Exchanges of information between direct competitors cannot be related to competing products (in particular, prices, discounts, costs, sales or commercial strategies).

When it comes to dawn raids, the Covid-19 pandemic greatly reduced their frequency after March 2020.

But on 22 June 2021, the EC announced its first raid since the beginning of the pandemic. This concerned a potential competition infringement in the clothing manufacturing and distribution sector. The Commission emphasized that the raid had been carried out in line with all health protocols, to ensure the safety of those involved.

*“In the last couple of years, the pandemic has made it hard to carry on some of our work at full speed. Like organizations throughout Europe – and beyond – we’ve managed to shift a lot of work online. But there are some things – like dawn raids – that you can’t do online. And for nearly two years, it’s been practically impossible to do coordinated raids in many countries at once. But our commitment to tackling cartels has never wavered... And now, as the pandemic starts to recede, our work on collecting evidence is gathering pace. Last week, we carried out our first international dawn raid in two years, when we inspected companies in several EU countries, on suspicion of a cartel in the wood pulp industry.”*

M.Vestager – Vice President of the Commission and Competition Commissioner, speech of 22 October 2021 at the Italian Antitrust Association Annual Conference.



## Austria

	2020	2021	TREND (2020 – 2021)
Austria	EUR294,000 2020	EUR108,060,00	^

On March 28, 2022, Austria's Federal Competition Authority (FCA) filed an application with the Cartel Court for infringement of Section 1(1) of the Austrian Cartel Act (KartG). The application was against Fürst Möbel GmbH and its parent company (collectively, "Fürst"), as part of an investigation into the construction and furniture joinery sector.

Fürst filed a leniency application and cooperated extensively with the FCA. The company was first to provide information and evidence, enabling the FCA to expand its investigation on the cartel.

In separate proceedings, the Cartel Court fined PORR Group EUR62.35 million at the FCA's request, for a violation of European and Austrian antitrust law. PORR and some of its subsidiaries were involved in price-fixing, market-sharing and information exchanges with competitors relating to public and private tenders in Austria's building construction and civil engineering sector.

The FCA has also launched an investigation into the Austrian fuel market, following numerous complaints.

An important innovation to Austria's legislative framework has been the introduction of a 'green' exemption from the ban on cartels.

A new version of KartG Section 2(1) expands the exemptions to the cartel ban, to those whose profits make a significant contribution to an ecologically sustainable or climate-neutral economy. This creates legal certainty and a free space for entrepreneurial cooperation, in favor of sustainable agreements that would otherwise be prohibited.

In addition, Section 11b of the Competition Act was amended in 2021. An ordinance was added to Paragraph 4, allowing the Federal Minister for Digitalization and Economic Affairs to issue more detailed provisions on the application of the leniency program.

The Federal Law Gazette II No. 487/2021 issued this eleven-paragraph ordinance of the Federal Minister for Digitization and Economic Affairs on the application of the leniency program of the Competition Act (Leniency Ordinance). The ordinance regulates:

- leniency applications
- markers
- short applications
- the form of the application
- the leniency applicant's obligation to cooperate
- the reduction of fines
- the notification of leniency status in accordance with the requirements of Directive (EU) 2019/1.

### Covid-19 related issues

In line with the joint statement from the European Competition Network (ECN), and the EC's Temporary Framework, the FCA took the view that:

- Cooperation initiatives between competitors in the context of the pandemic crisis may be necessary to safeguard supply.
- Such initiatives would not constitute a restriction of competition where they were relevant to the security of supply.

In this context, the Authority clarified that the non-discriminatory receipt of products to protect health is a priority. As such, companies exploiting the pandemic by engaging in practices that violate antitrust law, such as excessive prices, artificial supply shortages and cartel agreements, can expect action from the Authority.

The FCA has also taken far-reaching organizational measures to maintain its operations during the pandemic.

## Belgium

	2020	2021	TREND (2020 – 2021)
Belgium	EUR0	EUR1,104,310	^

Cartel enforcement in Belgium has focused on the digital economy, energy, pharmaceutical and telecommunications sectors, as well as public procurement.

The Belgian Competition Authority (BCA) issued no fines for cartel activity in 2020.

However, the Authority announced two interim decisions, concerning Proximus and Orange.

These two telecommunication companies announced that they would share mobile access networks in Belgium. Interim measures were imposed following a complaint filed by Telenet, a competitor. The BCA suspended execution of the agreement for a limited time. It has not yet decided on the substantive merits of the complaint.

The Authority also considered that the commercial service agreement between Brussels Airlines and Thomas Cook Belgium contained anticompetitive clauses. According to the Authority, specific non-compete clauses risked shutting customers out of the market for the wholesale supply of airline

seats to tour operators. They also allowed the exchange of commercially sensitive information. These clauses were never implemented, and the agreement was terminated, so the BCA imposed no fine.

On 1 October 2021, the BCA submitted a proposal for a decision on alleged anticompetitive practices by Philip Morris and British American Tobacco. The investigation started in 2017 and centred on repeated exchanges on information on future prices through wholesalers.

In terms of damages actions, a class action was filed against Apple in 2020, by Belgian consumer association Test-Achats. The action alleged planned obsolescence of iPhones through software updates.

On 25 May 2020, the BCA published an update of its leniency guidelines. While making no substantial changes, the main purpose was to align them with changes to the Belgian Economic Code made in 2020.

### Covid-19 related issues

Due to Covid-19 measures, the BCA conducted no dawn raids in 2020.

## Denmark

	2020	2021	TREND (2020 – 2021)
Denmark	DKK8,725,000	DKK7,071,000	∨

In 2020, the Danish Competition and Consumer Authority (DCCA) brought cases against three digital platforms. Two of these concerned Hilfr ApS and Happy Helper A/S: intermediary digital platforms that match cleaning services with customers. Both applied minimum hourly fees for cleaning services, which according to the DCCA, risked creating a price floor. Both cases were settled with commitments.

The third case concerned the platform Ageras, which lets accountants, bookkeepers, and lawyers bid for assignments. The platform would inform bidders of the estimated market price for an assignment via a pop-up prompt – only if they submitted bids below that price. The DCCA judged that this practice infringed the Danish Competition Act. Ageras was fined DKK1,275,000 in 2021.

The ECN+ Directive was implemented in Denmark on 4 March 2021. This led to several adaptations to procedural rules in Danish competition law. Most importantly, the DCCA can now impose fines against legal entities in civil legislation. Fines for legal entities were previously imposed in criminal court prosecutions, by the State Prosecutor for Serious Economic and International Crime.

The DCCA has since imposed its first civil penalties, against 18 nightclubs for market-sharing. The clubs received combined fines of DKK1,526,000. The low amounts reflect the fact that fines can only amount to 10% of a company's revenue for the previous year. Due to Covid-19, the clubs were mostly closed during 2020.

### Covid-19 related issues

The DCCA created no temporary cartel legislation in response to the Covid-19 outbreak.

In 2020, the Authority made a joint statement with other ECN authorities, on the application of competition law during the Covid-19 outbreak. It also made its own announcement on the pandemic, which was similar to the ECN's statement.

Danish cartel enforcement is no longer affected by Covid-19.

## Finland

	2020	2021	TREND (2020 – 2021)
Finland	No proposed fines.	Approx. EUR24,000,000.00	^

*Based on fines proposed by the Finnish Competition and Consumer Authority.*

Cartel enforcement is a key priority of the Finnish Competition and Consumer Authority (FCCA).

The FCCA is focusing its antitrust activity on; housing management; forestry; and transportation (especially taxis and public transport). It also has a growing interest in trade associations.

On 24 June 2021, the Finnish Competition Act was amended in line with the ECN+ Directive. A key change was to the assessment of fines for trade associations: the turnover of an association's member firms can now be taken into account. In addition, members may, in some circumstances, be liable to pay a fine imposed on an association, if it cannot pay itself.

Another important provision is that fines can be imposed on companies not just for restraint of competition; but also for procedural infringements during inspections and other investigative measures by the FCCA.

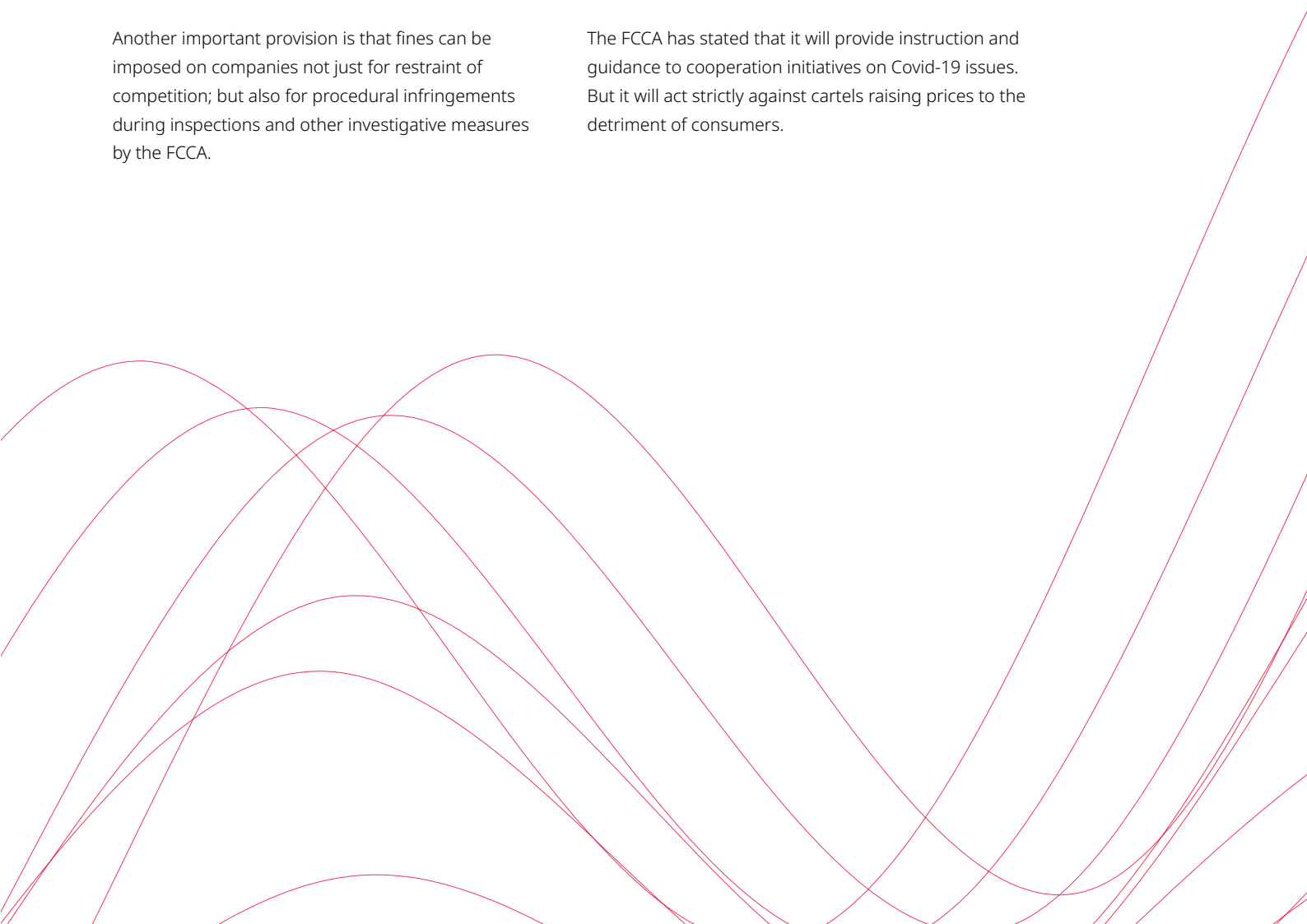
In addition, the FCCA now has the power to recommend that the Market Court imposes structural corrective measures on a firm. These could include the obligation to sell certain business operations or shares.

### Covid-19 related issues

Like other European countries, the FCCA followed the line taken by the Joint Statement of the European Competition Network, and the EC's Temporary Framework.

Firms were permitted to coordinate more closely to allow them to manage the Covid-19 crisis, and particularly to ensure sufficient supply and fair distribution of products to all consumers.

The FCCA has stated that it will provide instruction and guidance to cooperation initiatives on Covid-19 issues. But it will act strictly against cartels raising prices to the detriment of consumers.



## France

	2020	2021	TREND (2020 – 2021)
France	EUR97,851,000	EUR151,898,229	^

One of the main legislative changes to French competition law has been the implementation of the ECN+ Directive. This was brought in on 26 May 2021, by Ordinance N°2021-649.

The Ordinance allows the French Competition Authority (FCA) to apply competition law more quickly and effectively. It provides new legislative tools to address challenges raised by the emergence of large digital platforms.

**The Ordinance introduces several major advances, such as:**

- the power to optimize FCA resources, by allocating them to cases seen as a priority
- the ability to start proceedings ex-officio to impose interim measures
- the power to impose structural remedies on companies
- the enshrinement of leniency procedures into law
- the power to access the data (and encryption keys) of companies under investigation, wherever the data is stored
- a broadening of the scope of admissible evidence, by applying the 'freedom of evidence' standard seen in criminal cases
- an increase in maximum fines on trade associations, from EUR3 million to the total of their members' resources

- the strengthening of cooperation between European competition authorities – in the form of mutual information obligations; extension of assistance; notification of procedural documents; and recovery of penalties.

The FCA also revised its procedural notice, to harmonize its fines with the EC Temporary Framework and ECN+Directive. The FCA plans to severely punish the cartel by providing for the possibility of adding to the basis amount a sum of between 15% and 25% of the value of sales, in the hope of discouraging such practices.

The procedural notice includes other important changes, including:

- a revision of the coefficient used when setting fines, to take the duration of an infringement into account – each full year of infringement will now be factored in
- the power to fine a professional body either:
  - up to 10% of its turnover
  - 0% of the total worldwide turnover of each member active in the market affected by the infringement – where the infringement relates to the activities of members

On decision-making practices, the FCA fined several eyewear brands and manufacturers – including the world's leading supplier – for imposing retail prices on opticians and preventing them from selling their products online. The fines amounted to EUR125,804,000.

The Authority is working on a case concerning the manufacture and retail of food products, which have had contact with materials that may contain, or may have contained, bisphenol A or its substitutes (endocrine disruptor). The FCA has raised objections to 14 professional organizations, and 101 companies, for agreeing not to communicate the presence or composition of certain materials that have come into contact with food products.

Also, in May 2022, the FCA issued a new framework document on competition compliance programs. The framework sets out three objectives for programs to be effective (there were previously two). These are:

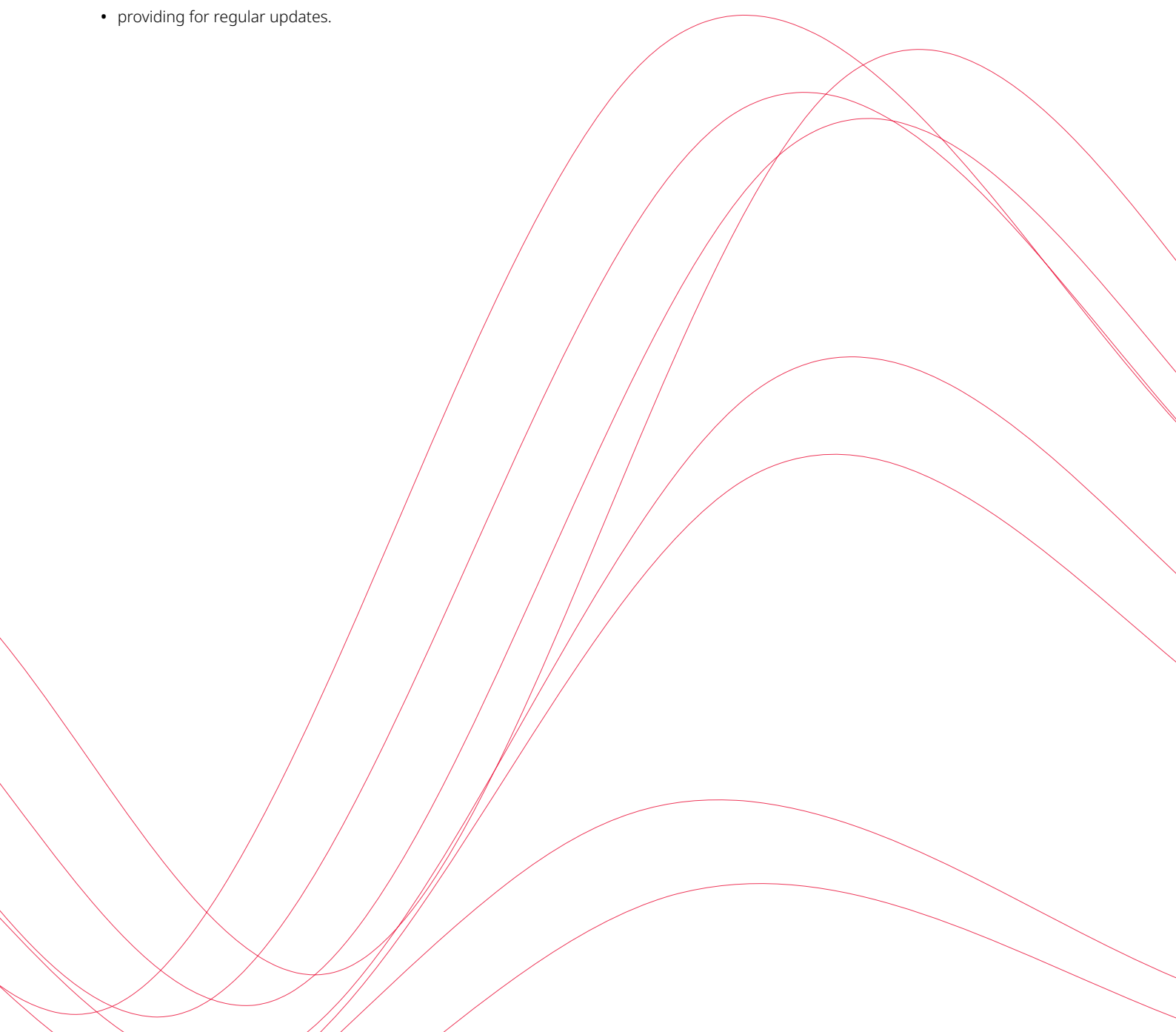
- preventing infringements
- providing the means to detect and deal with infringements that can't be prevented
- providing for regular updates.

However, it doesn't allow for reductions in fines for companies implementing such a program.

The implementation of the ECN+ directive has also enshrined leniency procedures into law. Leniency can result in immunity or a reduction of fines.

### **Covid-19 related issues**

The FCA introduced no temporary framework or ad hoc procedures in response to the pandemic. In early 2021, investigations moved to being conducted remotely. Since May 2021, the Authority has resumed dawn raids on companies' offices.





## Germany

	2020	2021	TREND (2020 – 2021)
Germany	EUR349 million	EUR65 million	∨

On 19 January 2021, the 10th amendment to the GWB (the German Competition Act) came into force.

Among other changes, this introduced s.19a GWB, which as a modernization for the digital industry addresses undertakings of paramount significance for competition across markets – principally, large digital platforms.

The amendment is intended as a quick, targeted enforcement tool against large digital companies. It provides the Federal Cartel Office (FCO) with a two-tier enforcement mechanism:

- ‘Paramount significance’ must be determined for the particular addressee. This is an innovative concept and is different from market dominance.
- The addressee can be barred from certain behaviours considered detrimental to competition (these are listed in the Act).

Shortly after its introduction, the FCO initiated proceedings under the provision against Facebook, Amazon and Google.

Beyond s.19a GWB, the amendment broadened the FCO’s market abuse controls; brought in changes to merger controls; implemented the ECN+ Directive; and strengthened cartel prosecution.

The 10th amendment also codified Germany’s Leniency Program, in ss.81hpp. This only applies to horizontal cartels. But the FCO has also waived fines due to cooperation and whistleblowing by participants in vertical cases (for example, RPM between beer breweries and food retailers in 2016).

According to the Office, leniency applications have declined significantly in recent years, from 76 in 2015 to 13 in 2020. This is due to the growing risk of companies facing large-scale, follow-on damages claims. The FCO’s president described this development as “worrying”.

The 10th amendment also codified the possibility of taking compliance programs into account when setting fines (in ss.81d, Sec. 1, No. 4-5). The FCO will consider compliance measures introduced before and after an infringement, with a view to potentially reducing fines.

In terms of cartel investigations, the steel and aluminium industries were a major focus for the FCO in 2020 and 2021. The FCO found cases of illegal information exchange, concerning passing rising costs onto customers. These allegations led to significant fines.

In addition, the FCO fined wholesalers of crop-protection products for an agreement on price lists and discounts over 17 years. The cases ended in settlements with the accused parties.

Two newspapers, *Berliner Morgenpost* and *Der Tagesspiegel*, approached the FCO for an antitrust assessment of a proposed cooperation agreement. This included joint marketing, distribution, call-centres and promotional activity, and partial cooperation in procurement. The editorial teams were not affected by the agreement. The FCO did not object to it.

In spring 2021, the FCO began operating its competition register: a central database of competition law infringements by potential bidders in public procurements. Contracting authorities must access the register during procurement exercises, to identify potentially unreliable bidders, which should be excluded from the process.

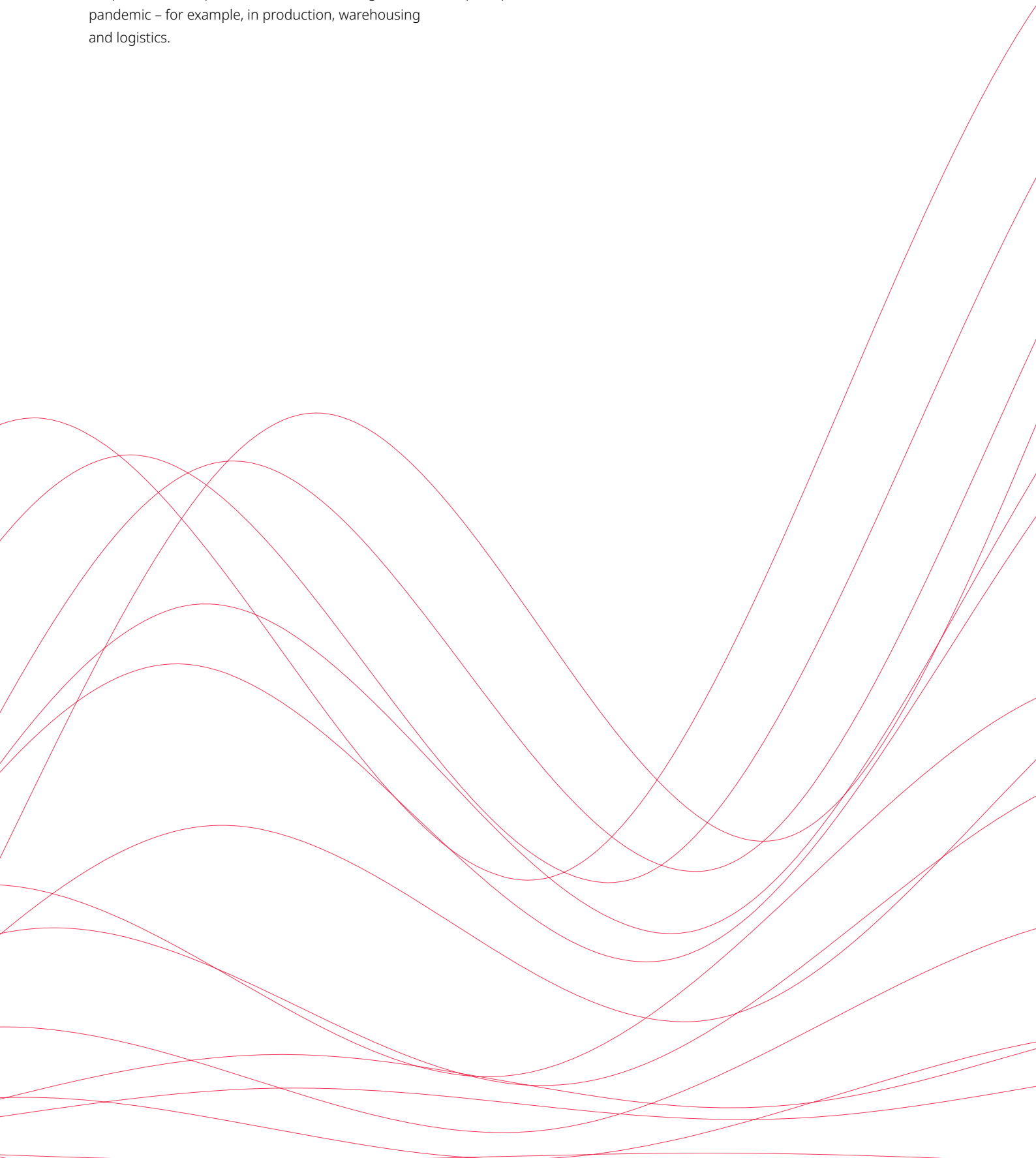
The Ministry of Economics, led by a minister from the Green Party since December 2021, recently announced its agenda for a social-ecological competition policy. This commits to open markets and the guiding principle of undistorted competition. But it also endorses the green transformation of energy markets, as well as sustainability targets. Concrete legislative proposals to enact the policy are yet to be set out by the government.

## Covid-19 related issues

Temporary changes to the timeframe of merger control, brought in during the first half of 2020, have now expired. The FCO has resumed on-site inspections.

In keeping with the ECN, the FCO acknowledged that companies in many sectors would have to rely on cooperation to respond to bottlenecks during the pandemic – for example, in production, warehousing and logistics.

Though antitrust law had not changed in Germany, the FCO took the view that it is flexible enough to allow useful and necessary cooperation in such circumstances. However, these must comply with antitrust requirements, and be limited in time. Since March 2022, the FCO has applied similar principles to issues faced due to the war in Ukraine.



## Hungary

	2020	2021	TREND (2020 – 2021)
Hungary	HUF1,075,000,000	HUF16,200,000,000	^

### The main cartel cases in Hungary have been:

#### FERTILISER CARTEL

Nitrogénművek Vegyipari Zrt., Hungary's only fertilizer producer, set resale prices and allocated customers among itself and its resellers. To restrict imports, it set high annual minimum-purchase quantities and exclusivity obligations for resellers. The firm also threatened companies deviating from its scheme with high penalties.

At the same time, Nitrogénművek entered the retail market, becoming a direct competitor to its resellers.

Nitrogénművek used this dual distribution system to coordinate with resellers at retail level and punish those that diverged from this strategy. It also entered into customer-allocation agreements at retail level.

In total, nine Hungarian businesses were found to be in breach of competition law in this case, two of which admitted the infringement (one being an immunity applicant). A record HUF14,100 million in fines was imposed – HUF11,000 million on Nitrogénművek alone.

#### ELECTRICITY GRID AND SYSTEM CONSTRUCTION BID-RIGGING CARTEL

SMVH, MVM and a number of smaller electricity-grid constructors were found to have engaged in market-sharing and price-fixing arrangements over three years. These concerned tenders for high and low-voltage system construction and maintenance. Most participants were single-product SMEs. Fines of HUF130 million were imposed; compensation paid by one of the parties was deducted from its fine.

#### ELECTRICITY METER REPLACEMENT CARTEL

In 2014 and 2016, SMVH, MVM and a number of smaller companies allocated among themselves tenders from electricity distributors for the replacement of residual electric meters. Again, most participants were single-product SMEs. Fines of HUF337 million were imposed.

#### AGRICULTURAL MACHINERY CARTEL

Two Hungarian and one Slovak distributor coordinated bids for 16 public tenders for agricultural and other machinery. Two of the firms involved submitted immunity applications within a few days of each other – but did not cooperate in good faith. They provided misleading interpretations of the facts, and denied the existence of written evidence that was later discovered by the Hungarian Competition Authority (HCA). The parties lost their leniency status, and were given fines of HUF135 million.

#### NEUROMODULATORS

Distributors of neuromodulators participated in market-sharing arrangements on a central tender. The contracting authority requested extensive technical support from potential bidders, so that it could shape its requirements more precisely. This extended to drafting exclusionary technical specifications, effectively allocating the market among the individual product categories of the tenderers. Fines of HUF658 million were imposed.

Key legislative changes affecting anticartel enforcement include the following:

- Secretly made private audio or video recordings may now be used as evidence (unless no other evidence is available).
- Markers are available for leniency, as well as immunity, applications.
- Detailed procedural rules have been introduced for assisting other countries' competition authorities.

- Accelerated, short-deadline sector inquiries have been brought in.

- New, less predictable sentencing guidelines have replaced the previous mathematical approach.

### **Covid-19 related issues**

No temporary framework or ad hoc procedures for cartel enforcement were brought in during the pandemic in Hungary.

## Ireland

	2020	2021	TREND (2020 – 2021)
Ireland	N/A	N/A	N/A

On 31 January 2022, the Irish Government published the Competition (Amendment) Bill 2022. The Bill is now undergoing legislative review in the Oireachtas (Irish Parliament) and will likely be passed during 2022.

The Bill enshrines the ECN+ Directive in Irish law and gives the country's Competition and Consumer Protection Commission (CCPC) a range of increased powers, many of them relating to cartel enforcement.

Most notably, the Bill will empower the CCPC to impose civil fines on firms for engaging in cartels, bid-rigging and abusive market practices.

The process will involve the Commission carrying out an investigation and referring the case to an Adjudication Officer. The Officer will have the power to investigate further and set the appropriate fines. Fining decisions will be subject to limited review in the Irish High Court.

There had been fears that protections in the Irish constitution would rule out civil fines. And it should be noted that the process has not yet been tested in Irish law. However, the provisions are expected to drive increased enforcement activity in Ireland.

The Bill will also introduce a new leniency regime. This will allow the CCPC and Adjudication Officers to grant immunity from fines, or reduce them, if a cartel member provides evidence to assist the Commission.

The Bill will also enable the CCPC to carry out covert surveillance when investigating cartel behavior.

If passed, Irish law will allow for fines of up to EUR50 million, or 20% of a firm's turnover in the last financial year (whichever is greater).

In terms of enforcement action, 2020 saw the CCPC assisting the Director of Public Prosecutions on a potential bid-rigging case. This concerned a procurement process for publicly funded transport services.

In 2021, the Commission secured commitments from six motor-insurance firms following an investigation into price signalling. The insurers pledged to reform their internal compliance, and adopt robust programs with independent expert oversight.

It is likely that insurance, food, retail, public transport, procurement, pharmacy, banking are sectors likely to be a continuing focus in cartel enforcement activity in Ireland in future.

### Covid-19 related issues

Covid-19 certainly affected on-the-ground enforcement in Ireland, but the CCPC now appears to be returning to business as usual.

Indeed, in November 2021, it was reported that the Commission conducted a dawn raid relating to a pyramid-selling scheme. This reflects its focus on consumer issues during Covid-19, when it examined 47 websites in response to emerging consumer issues. Competition enforcement activity is expected to increase during the coming months.

## Italy

	2020	2021	TREND (2020 – 2021)
Italy	EUR228,125,992.57	EUR174,532,555.00	∨

In line with local practice, the Italian Competition Authority (ICA) focuses its cartel enforcement on bid-rigging practices, particularly in public procurement.

As outlined in its 2018 Annual Report, the Authority sees fighting collusion in public tenders as crucial to:

- restoring fair competition in the markets affected
- reducing public spending
- investing the money saved in economic development and social equality

As such, monitoring competition in public tenders takes up a high proportion of the ICA's activity.

A good example of this is its investigation into tenders for the supply of professional clothing and specialist accessories to public bodies (including police forces). The case saw fines of EUR36,785 imposed early in 2022 (case number I846 – *Gare per la fornitura di vestiario professionale e accessori tecnici*).

The ICA is also focusing on the telecommunications sector. Indeed, the highest fine for cartel activity in 2020 – some EUR228 million – was seen in this industry (case I820 – *Fatturazione mensile con rimodulazione tariffaria*).

Also in the digital economy, new consumption and production patterns emerging during the pandemic caught the ICA's attention. In 2021, the Authority imposed a fine of EUR173,274,411 in the e-commerce sector (case I842).

Bid-rigging, telecommunications and digital markets are likely to remain the ICA's main areas of intervention in 2022.

In 2020 and 2021, the ICA closed a number of investigations by accepting commitments from the accused parties. These were case I853 (*Raccolta diritti di copia privata nel settore audiovisivo*); case I854 (*SOFAR/fornitura integratori alimentari*); case I844 (*Progetto Antifrode ANIA*); and case I838 (*Restrizioni nell'acquisto degli accumulatori al piombo esausti*).

The main regulatory development in Italy has been the introduction of Legislative Decree No. 185.

Enacted on 14 December 2021, this implements the ECN+ Directive, and introduces significant changes to the Italian Competition Act. It aims to strengthen the investigative and sanctioning powers of the ICA, and harmonize them at EU level.

The main changes introduced by the decree concern:

- the ICA's independence guarantees
- the strengthening of the ICA's powers of investigation and inquiry, including the provision of the ICA's power to:
  - carry out inspections not only on premises, land, means of transport of undertakings, but also on any other premises, land or means of transport in which the ICA reasonably believes that documents related to the undertaking and subject matter of an investigation are located. This includes the homes of directors, managers and other members of staff of undertakings or associations of undertakings, with prior authorization by the judicial authority;
  - seal premises, books and business records;
  - summon any representative of an undertaking or association of undertakings and other legal persons and natural persons who may possess relevant information, with an obligation to attend the hearing



- the adoption of interim measures and a commitment procedure
- the strengthening of the ICA's sanctioning powers
- the regulation of the leniency procedure
- investigative cooperation between competition authorities of the Member State
- the suspension of the limitation period for sanctions or penalties for late payment.
- Tribunal of Milan, judgment of 25 May 2021, no. 4491. Follow-on action for compensation of antitrust damages based on the EC's decision of 19 July 2016 in a trucks cartel case.
- Tribunal of Naples, judgment of 22 October 2021. Follow-on action for compensation of antitrust damages in the same case.
- Tribunal of Venice, judgment of 7 July 2021. Class action brought against a vehicle manufacturer relating to vehicles' emissions in the so-called Dieselgate case.

The Decree aims to promote access to leniency programs. In certain conditions, it excludes from punishment directors, managers and other employees found guilty of participating in a cartel, where they have applied for leniency.

The leniency rules apply to horizontal cartels, but those with vertical elements are not excluded. However, the ICA has recognized that horizontal agreements which are not cartels, and vertical restraints, are more easily identifiable, and so don't generally justify a leniency application.

The ICA considers the adoption of an appropriate compliance program, in line with national and European best practice, a mitigating circumstance. This is set out in the Authority's *Guidelines on the method of setting pecuniary administrative fines*.

In October 2018, the ICA published its *Antitrust Compliance Guidelines*, which provide detailed guidance for firms that are subject to antitrust investigations. Following them can result in a reduction of up to 15% of any fines.

Class actions for competition infringements have been very limited so far in Italy. Recent cartel damages claims brought by consumer associations include:

However, on 19 May 2021 new civil standards for class actions entered into force in Italy. These may have an impact on this trend in the future.

### Covid-19 related issues

In line with the EC's temporary framework and ECN joint statement, the ICA issued a communication on cooperation agreements between businesses during the pandemic. This is still in force.

Its sets out the main criteria to be followed while assessing temporary cooperation agreements that address the scarcity and distribution of essential goods and services during the pandemic. It applies particularly to the healthcare, pharmaceutical and agricultural sectors.

The communication states that the ICA may, at its discretion, issue exceptional comfort letters to specific projects.

At the same time, the ICA has made clear that it will not tolerate conduct which seeks to exploit the crisis and use it as a cover for non-essential restrictions – such as price-fixing, or the exchange of commercially sensitive information.

## Netherlands

	2020	2021	TREND (2020 – 2021)
Netherlands	EUR125,000,000	EUR33,013,000	∨

In 2020 and 2021, anticartel enforcement remained high on the agenda of the Consumers and Markets Authority (ACM). The Authority has demonstrated that it will no longer turn a blind eye to more unorthodox cartel behavior, and that it is willing to impose heavy fines – as the following cases illustrate:

### Indirect information exchange

In 2020, the ACM imposed fines totalling over EUR82.1 million on the four largest cigarette manufacturers in the Dutch market. In the opinion of the ACM, the manufacturers restricted competition by exchanging information through their customers about future changes in cigarette prices.

Interestingly, this was the first time the ACM acted with no evidence that the offenders had direct contact about price adjustments. Clearly, the Authority takes a hard line on indirect information exchange and sees no objection to imposing large fines.

### Vertical price coordination

In 2021, the ACM fined Samsung more than EUR 39 million. Between 2013 and 2018, Samsung had exerted undue influence on the online prices of its television sets at seven retailers.

The Authority established that Samsung had observed, bundled, analysed and monitored price data from retailers on its sets, through so-called ‘web crawler’ and ‘spyder’ software. The firm then took coordinated action when the recommended retail price wasn’t being charged. The retailer in question would be contacted via WhatsApp or e-mail and urged to change its price.

The ACM considered these actions to be agreements or concerted practices with an anticompetitive aim. It judged Samsung’s actions as going beyond providing indicative price lists or non-binding price recommendations – which is permitted in principle. Rather, Samsung had de facto determined the retail prices, according to the ACM.

Because Samsung often provided information from one retailer to another, its practice ensured that retailers would not be put at a competitive disadvantage if they used the price the firm insisted on. Therefore, Samsung directly intervened in the competitive dynamic between retailers, with no other goal than to protect its margins, and those of the retailers. The ultimate effect was to drive up prices for consumers.

This was another landmark decision by the ACM. It was the first time it had fined a company for vertical price coordination.

### Purchasing cartel

Also in 2021, the ACM imposed fines totalling almost 4 million euros on two major collectors of used cooking oil.

The Authority found that the companies colluded to keep purchase prices as low as possible to improve their margins. They also shared suppliers among each other and exchanged competitively sensitive information. This took place between 2012 and 2018.

Again, The ACM viewed these practices as anticompetitive. It judged that the companies coordinated their market behaviour, and deliberately replaced the risk of competition with a form of cooperation. This significantly disrupted competition in the procurement of cooking oil.

On dawn raids, The ACM has adapted its approach to the hybrid working era. It has announced that when conducting raids, it will visit not only offices, but also private residences if necessary.

With sustainability a key priority, the Authority has prepared draft Guidelines on Sustainability Agreements. These set out the circumstances in which competitors can work together to help combat the climate crisis, and for other sustainability objectives.

In this respect, the ACM is taking a leading role on sustainability. Its guidelines, among other initiatives, have led to discussions on sustainability in competition rules at the EU. For example, sustainability is now being discussed as part of the revision of the Horizontal Block Exemption Regulation and associated guidelines.

The ACM has warned employers that non-recruitment and non-poaching arrangements among employers harm employees and society as a whole. As such, they're prohibited under European and Dutch competition rules.

The Authority believes that such arrangements disrupt the proper functioning of the job market. This leads to lower wages, and less favourable employment terms and working conditions. They can also have a wider impact, especially in the long term. For example, they may reduce technological innovation, and weaken the incentive to drive efficiencies.

## Covid-19 related issues

The ACM stressed that during the pandemic, it would provide guidance on the scope for cooperation between businesses to combat the crisis.

Examples of this guidance include:

- general guidance for sectors that wish to set up voucher schemes for cancellations and refunds.
- collective arrangements between health insurers to offer financial support to healthcare providers
- the promotion of bespoke solutions between hotels and travellers for cancellations of bookings made through websites (such as voucher or rescheduling options.)

In an appeal against a cartel fine, the Netherlands' highest administrative court (the Trade and Industry Appeals Tribunal, or CBb) reduced the penalty by 99%. Unusually, the ACM had itself asked the Court to reduce this fine due to special circumstances, including the impact of Covid-19. The judgement shows how the effects of the pandemic have been taken into account when fining firms for cartel behaviour in the Netherlands.

## Norway

	2020	2021	TREND (2020 – 2021)
Norway	NOK766 million	NOK0	∨

On 24 September 2020, The Norwegian Competition Authority (NCA) issued a statement of objections which announced fines totalling NOK502 million. These included four publishers – Cappelen Damm, Forlagshuset Vigmostad & Bjørke, Gyldendal and Aschehoug – and book database company Bokbasen.

The Norwegian grocery market has been under significant scrutiny for many years. On 15 December 2020, the Authority issued a statement of objections against grocery retailers NorgesGruppen, Rema 1000 and Coop. The NCA had conducted a dawn raid at the firms' headquarters in 2018.

This time, the fines totalled a record NOK21 billion; the legal maximum of 10% of the annual turnover of the companies involved. The NCA's preliminary assessment is that the three firms cooperated in a way that may have led to higher grocery prices, through so-called price-hunting practices.

The findings and fines are preliminary, and all three companies strongly deny the allegations. They have been invited to submit comments to the NCA in early 2022.

On 21 May 2021, the Norwegian Supreme Court issued a judgement in the case between the NCA and the publishers Gyldendal and Cappelen Damm. The Authority had issued a fine under section 29 of the Competition Act to four publishers, for violation of section 10 of the Act.

It alleged that cooperation between the publishers had a restrictive purpose. They had exchanged information and agreed a collective boycott of a mass-market book distributor. The Supreme Court concluded that the co-operation – which had removed the uncertainty the publishers had about the market's function in the new situation – had a restrictive purpose.

On 16 June 2021, the NCA announced that an investigation against Orkla, Modelez and NorgesGruppen had closed. The Authority had examined whether differences in purchase prices violated the Competition Act but saw insufficient grounds to continue the investigation.

The Norwegian Ministry of Trade and Industry has repeatedly urged the NCA to report private individuals for breaches of the Competition Act more proactively. The NCA recently disclosed that one or more individuals have been reported for such breaches. At this stage, there is no further public information on this.

On 15 October 2020, the NCA announced that it had closed its investigation of Circle K Norge AS and YX Norge AS. The companies had agreed to end their practice of publishing recommended list prices for retail fuel on their websites. The Authority had been concerned that publishing these encouraged national price increases at the pumps.

On 3 February 2021, the NCA announced the results of its survey of algorithms. This showed that an increasing number of companies in Norway use pricing and price-monitoring algorithms. The NCA stressed this practice may harm competition, and lead to higher prices for consumers.

On 21 September 2021, the Authority announced that it had carried out dawn raids as part of an investigation into the relocation services market. The NCA wanted to establish whether companies in the sector had exchanged competitively sensitive information.

## Covid-19 related issues

The NCA monitored price increases on certain products during the pandemic and assessed whether prices should be regulated.

The NCA has the power to apply the Price Policy Act in times of crisis. The Act bans unreasonable prices and business terms and allows the Authority to regulate prices of important goods and services.

This was considered in response to rising facemask prices in 2020. The NCA's evaluation showed that the sharp increase was due to higher upstream prices, and that pharmacies' profit margins had actually fallen during the relevant period. So, the Authority concluded that pharmacies had not taken advantage of the crisis to set facemasks prices unreasonably high. As such, there was no need to regulate the price.

On 30 October 2020, The Authority announced that it was investigating an industry association for exchanging competitively sensitive information during the pandemic.

Post-pandemic, the NCA has been considering whether dawn raids should be extended to personal property, in response to the increase in homeworking.

Following few new investigations in 2020, the NCA recently opened cases against companies in the healthcare and relocation services markets, for allegedly exchanging competitively sensitive information.



## Poland

	2020	2021	TREND (2020 – 2021)
Poland	Approx. PLN158 MLN	Approx. PLN124 MLN	∨

Directive (EU) 2019/1 is in the process of being implemented into the Polish legal system.

The relevant bill introduces some key changes to Polish anti-trust rules – one of the most important being parental liability.

Polish competition regulation has previously been independent from EU jurisprudence in this respect. But now, in line with EU law, a parent company can be held liable for restrictive practices by its subsidiaries. And a fine of up to 10% of the turnover of the entire group may be imposed.

In terms of enforcement activity, bid-rigging remains one of the main priorities of Poland’s Office of Competition and Consumer Protection (UOKiK). Indeed, in 2020, UOKiK set up a Department for the Prevention of Bid Rigging, to increase the efficiency of its enforcement actions in the area.

In 2020, UOKiK imposed fines on managers directly involved in anticompetitive practices for the first time (this only became possible under Polish law in 2015). This happened in two cartel cases:

- **Warsaw heating market.** One of the parties involved in bid-rigging (market-sharing and price-fixing) submitted a leniency application, avoiding a penalty of almost PLN 500 million. Another was fined nearly PLN 120 million, and the manager involved PLN 200,000. UOKiK ruled that the president of the management board intentionally restricted market competition, by actively participating in illegal practices.
- **Polish fitness services market.** Penalties of over PLN 32 million were imposed on 16 firms, while six managers were fined about PLN 800,000. The case involved market-sharing between the largest Polish fitness club chains and a multisport card

operator. As part of the arrangement, the companies communicated about market-sharing via written correspondence, phone calls and face-to-face meetings. The decision was based on both Polish and EU competition law.

UOKiK is also becoming increasingly active in the digital and IT sector. In response to the rapid growth of omnichannel sales in Poland, UOKiK is analyzing the activity of online platforms. It is also scrutinizing cooperation between IT service providers, and particularly the potential exchange of confidential information between them.

For example, in late 2021, UOKiK initiated explanatory proceedings over the supply of hospital information systems, and on the exchange of information in the outdoor advertising market in Warsaw. The latter case was resolved without a fine: the participants were obliged to change the practices suspected of breaking competition law.

Another important development has been an increasing number of cases where competition and labor law meet, particularly in the sports sector. In 2021, UOKiK announced anti-monopoly proceedings on suspected coordination by the Polish Basketball League, and its member clubs, against their players. The aim of the collusion was, among other things, to agree the terms of termination of players’ contracts, and to withhold payment of their salaries.

In 2021, it became clear that UOKiK is more open to implementing soft measures (soft calls) – that is, without imposing fines. These include requests for clarification, or for the change or elimination of barred activities. The number of soft calls rose from 63 in 2020, to 93 in 2021.

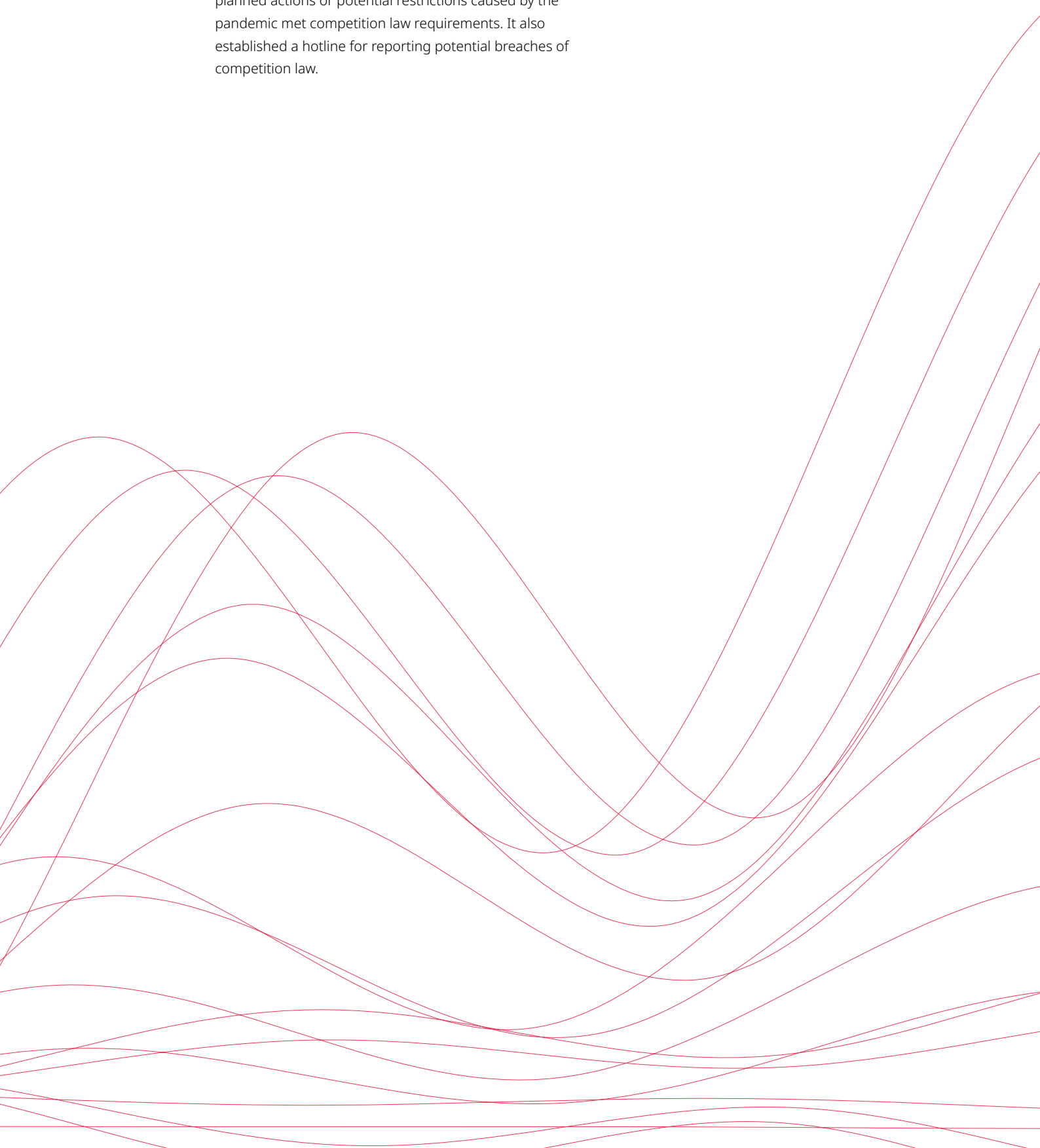


## Covid-19 related issues

UOKiK has been especially active in key sectors during the pandemic – for example, agriculture, pharmaceutical and medical devices (respirators, masks and laboratory test reagents).

The Authority set up a dedicated website and email address, to give firms informal advice on whether any planned actions or potential restrictions caused by the pandemic met competition law requirements. It also established a hotline for reporting potential breaches of competition law.

Also, where firms involved in anticompetitive behavior operated in sectors affected by the pandemic (e.g. fitness clubs), UOKiK took this into account when calculating fines.



## Portugal

	2020	2021	TREND (2020 – 2021)
Portugal	EUR389,800,000	EUR137,700,00	∨

In recent years, the Portuguese Competition Authority (PCA) has focused on alleged hub-and-spoke practices in the food distribution and retail sector. For example:

- In two decisions made in 2020, the PCA imposed a record total fine of EUR304 million for indirectly coordinating retail prices. The companies involved were beverage suppliers Sociedade Central de Cervejas and PrimeDrinks; and supermarket groups Modelo Continente, Pingo Doce, Auchan, Intermarché, and (in one of the decisions) Lidl and E. Leclerc.
- In three decisions from 2021, the PCA ruled against beverage suppliers Super Bock and Sogrape; bakery products supplier Bimbo Donuts; and supermarket groups Modelo Continente, Pingo Doce, Auchan, Intermarché and E.Leclerc. The Authority imposed fines totalling EUR134.8 million.

In all of these cases, the retailers (acting as the spokes in the network) exchanged information through their suppliers (the hubs) to align retail prices.

The telecommunications sector also came under scrutiny. In 2020, MEO was fined EUR84 million for market-sharing and price-fixing with NOWO in the mobile and fixed telecoms services market. NOWO brought the arrangement to the PCA's attention under Portugal's leniency program.

In 2021, the PCA turned its focus to labor markets, namely no-poach and wage-fixing agreements between competitors. The Authority published a report and best-practice guide on anticompetitive agreements in the labor market and vowed to keep a close eye on these practices in 2022.

In June 2021, the PCA, carried out joint dawn raids together with the Spanish Competition Authority. They visited companies providing business and financial intelligence services, to investigate suspected market-sharing and price-fixing agreements.

In terms of legislative developments, the process of implementing Directive (EU) 2019/1 is still ongoing, despite the deadline (11 December 2018) having passed. The relevant bill isn't expected until sometime in 2022.

Elsewhere, the PCA has developed a cartel-screening tool for public procurement procedures. Portugal has a public e-procurement system, with extensive data from the last 10 years on the end-to-end procedure, from notice publication to contract closure. The Authority carries out statistical tests on these datasets to detect any collusive tendering.

### Covid-19 related issues

Although the digital economy was already a priority for 2020, the PCA paid closer attention to this sector during the pandemic.

Lockdown measures imposed during this period boosted e-commerce and digitalization in many sectors. In the PCA's view, this meant an increased risk of market abuse and collusion in the digital space. So in 2020, the Authority created an interdepartmental digital taskforce, aimed at protecting competition in the digital economy. As such, investigating possible market abuse and collusion in digital environments remained a priority for the PCA throughout 2021 and 2022.

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

*“In the current context, anti-cartel enforcement is more important than ever... We are, at present, in a context that may induce collusive behavior. Therefore, we must maintain high vigilance for so-called crisis cartels. Crisis cartels... are those in which firms affected by a crisis agree to reduce overcapacity and maintain high prices. All of this occurs when many households and firms are in a financially vulnerable situation. We must therefore do our best so that the efforts of taxpayers –households and firms – are not misappropriated by members of a cartel.”.*

*“The fight against cartels is at the heart of antitrust enforcement. This is why, at the PCA, we have maintained anti-cartel enforcement as our core priority. In the past 5 years, we have sanctioned dozens of companies and associations. Of the total of more than EUR900mn in fines, over 80% were applied for illegal horizontal practices”.*

— Margarida Matos Rosa,  
President of the PCA – Opening  
Remarks at the ICN Cartel Workshop  
2021 (17 November 2021)

## Romania

	2020	2021	TREND (2020 – 2021)
Romania	RON356 million	RON377 million	^

In 2021, the Romanian Competition Council (RCC) imposed a number of significant fines on participants in horizontal cartel agreements. These include:

- RON353,393,694 (c.EUR71 million) on five foreign suppliers of immunoglobulins and drugs derived from human plasma; and the Belgian trade association representing plasma protein therapy manufacturers. The penalty was for limiting and interrupting the supply of immunoglobulin products to the Romanian market. This was the first time the RCC had sanctioned non-Romanian companies based on their global turnover.
- RON13,471,039 (c.EUR2.78 million) applied to five producers and marketers of eggs to consumers, and the trade association representing them. This was for coordinating trade policies on the supply of products, to artificially increase prices or prevent them from falling.
- RON6.9 million (c.EUR1.4 million) on six public catering providers at the Airport Henri Coandă Bucharest International. The penalty was for price fixing.
- RON2,521,087 (c.EUR521,000) applied to six companies for rigging an auction organized by Societatea Complexul Energetic Oltenia SA, and Centrala Electrică de Termoficare Govora SA.

Looking ahead to legislative changes in 2022, the RCC is expected to focus on:

- implementing EU regulation on establishing a framework for examining foreign direct investment into the EU.
- implementing the ECN+ Directive
- introducing penalties for the abuse of bargaining power into Romania's competition law.

The Authority will also complete a big data implementation. The solution will be used for, among other purposes, cartel screening and identifying bid-rigging.

The RCC completed 11 investigations into competition law breaches in 2021 (two more than in 2020) – six of these were related to cartels. Total fines imposed amounted to RON407 million (c.EUR82.73 million), which is the Authority's third-highest annual total.

At the end of 2021, the RCC was in the process of conducting 37 investigations, more than half of which concerned potential cartel agreements.

The Authority carried out 19 dawn raids at 102 locations during 2021.

### Covid-19 related issues

As of 8 March 2022, all Covid-19 related restrictions were lifted in Romania. As a result, Covid-19 should not impact the RCC's activity going forward.

## Slovakia

	2020	2021	TREND (2020 – 2021)
Slovakia	EUR7,160,632.80	EUR1,177,394	∨

On 1 June 2021, the Act on the Protection of Competition<sup>4</sup> came into force in Slovakia. The Act implements Directive 2019/1 of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure proper functioning of the internal market. The new Act also deals with the impact of the Covid-19 pandemic.

Where cartel enforcement is concerned, the main changes introduced by the Act are:

- a new definition of 'entrepreneur' (in line with EU competition law)
- the power to issue interim measures
- the power to issue behavioral and structural remedies
- enhanced cooperation among EU Member States' competition authorities.

In 2020, Slovakia's Antimonopoly Office imposed a fine of c.EUR6.7 million to 18 firms selling Volkswagen passenger and light commercial vehicles. The Antimonopoly Office and (subsequently) the Council of the Antimonopoly Office granted two of the companies full immunity under Slovakia's leniency program.

### Covid-19 related issues

The Act on the Protection of Competition sets out provisions for 'Exceptional Situations', such as a state emergency, if declared by the Slovak Government. It also allows the Antimonopoly Office to pause operations during such situations. All time periods are paused.

<sup>4</sup> Act No. 187/2021 Coll. on Protection of Competition, which repealed the previous Act No. 136/2001 Coll. on Protection of Competition, as amended.

## Spain

	2020	2021	TREND (2020 – 2021)
Spain	EUR4.3 million	EUR205 million	^

In April 2021, Royal Decree-Law 7/2021 came into force in Spain, implementing EU Directive 2019/1. Amendments introduced by the decree include:

- the power to interview any representative of a company, trade association or other legal entity, who may have information needed to apply the Spanish Competition Act (SCA)
- additional detail on the powers of inspection of the Spanish Competition Authority (CNMC<sup>5</sup>) – including the documentation to be made available to inspectors during a dawn raid
- the legal or economic successors of the natural or legal persons who carry out the actions or omissions typified as infringements of competition rules are expressly considered as offenders
- upgrading certain behaviors that obstruct CNMC’s investigations, from minor to serious infringements. E.g. breaking seals; failing to attend an interview with the CNCC; and giving incomplete, inaccurate or misleading answers to questions asked by the CNMC
- linking the calculation of fines to the total global turnover companies found guilty of infringements
- the extension of exemptions available to whistleblowers under Spain’s leniency program – to include the ban on contracting with the government

In May 2020, the CNMC published a guide for compliance programs. This guide aims to help companies ensure transparency around the criteria that the Authority considers necessary for an effective program.

### Covid-19 related issues

The CNMC adapted its work to the special circumstances of the pandemic during 2020. It set up a dedicated email address to register competition concerns and complaints related to Covid-19 – particularly in the sectors most affected by the pandemic (e.g. pharma, insurance, funeral services and financial services).

The investigations arising from these complaints aren’t directly related to cartel infringements. But the CNMC has investigated other anticompetitive actions – including:

- whether financial institutions behaved unfairly when granting Instituto de Crédito Oficial (ICO) loans. The alleged infringements relate to the cross-selling and restructuring of products, and the payment of upfront costs as a condition for granting loans. In June 2021, the CNMC opened sanctioning proceedings against Banco Sabadell, SA; Banco Santander, SA; Caixabank, SA; and Bankia, SA. (S/0016/20 - PRESTAMOS ICO Covid)
- DKV, an insurance provider, for a potential infringement of article 3 of the SCA. This concerns the unilateral removal of temporary disability coverage from self-employed policyholders, during the Covid-related state of emergency. Formal sanctioning proceedings were opened in December 2020. (S/0030/20 DKV Coberturas Autónomos)

<sup>5</sup> Comisión Nacional de Los Mercados y la Competencia

## Sweden

	2020	2021	TREND (2020 – 2021)
Sweden	SEK575 000	SEK1,130,000	^

During 2020, the Swedish Competition Authority (SCA) investigated potential horizontal restraints of competition within the furniture, dairy, and professional haircare products markets.

An administrative fine was issued in the case of a pricing cartel in the furniture industry. The SCA found that two competing retailers had agreed over email to set their regular sales prices for products from a specific brand.

The year 2021 saw an increase in dawn raids by the SCA.

Also in 2021, the Authority investigated suspected anticompetitive cooperation in public procurement between insurers and insurance brokers, that was written off in its entirety in February 2021.

It also completed an investigation into suspected anticompetitive cooperation between companies selling paint and construction products. This was terminated, as the alleged actions didn't appear to lead to unauthorized coordination. One firm had quickly and clearly distanced itself from the arrangement, considering it a breach of competition rules. Several others followed suit.

A further investigation concerned suspected anticompetitive cooperation, or abuse of a dominant position, in aviation fuel management at Arlanda Airport. The allegation was that the firm managing

aviation fuel infrastructure (and/or its parent company) limited access to that infrastructure to a number of fuel suppliers. In closing the case, the SCA stated that the Swedish Transport Agency, through sector legislation, was responsible for overseeing conditions and compensation surrounding access to airport infrastructure.

The SCA is focused on the digital economy and has recently carried out several market studies and reports on digital platforms and e-commerce in the Swedish market.

In legislative terms, the SCA was given increased powers on March 1 2021, particularly when it comes to closing cases. The Authority may now determine whether restrictive cooperation, or the abuse of a dominant position, has taken place. And it may set administrative fines without going to court. These decisions can be appealed in court.

### Covid-19 related issues

The SCA provided informal guidance to companies considering temporary cooperation measures during the crisis, in line with the ECN joint statement.

## United Kingdom

	2020	2021	TREND (2020 – 2021)
UK	GBP48,828,679	GBP111,500,000	^

Two sectors have continued to attract attention for potential cartel activity in the UK: construction materials and pharmaceuticals.

There are numerous cases ongoing in the pharma industry, with the Competition and Markets Authority (CMA) issuing large fines for anticompetitive agreements and abuses of dominance. The Authority issued fines of GBP5.7 million in 2020, and GBP111.5 million in 2021, for cartel activity (and more still for abuses of dominance). It also disqualified two directors in 2020, and another in 2022.

In the construction materials space, the CMA imposed fines of GBP24 million in 2020 and ordered five director disqualifications in 2021.

The Authority has also required firms to make additional payments in some cases. In two pharmaceuticals decisions, it demanded a total of GBP9 million in *ex gratia* payments to the National Health Service. In a vertical case involving PayPoint, GBP12.5 million was paid into a voluntary redress scheme to compensate consumers. The scheme provides vouchers during winter to customers on prepayment gas and electric meters (who tend to be less affluent and more vulnerable).

The launch of the CMA's Digital Market Unit reflects its continuing focus big tech.

Another sector of interest is payment services. Following dawn raids, the Payment Services Regulator issued a fine of GBP33 million in early 2022, having led its own cartel investigation under its sector regulatory powers.

### Covid-19 related issues

During the pandemic, the CMA published several Competition Act exemption orders. These allowed information exchange and capacity-sharing in several sectors. The aim was to maintain essential services affected by panic buying (e.g. groceries), or by sharp falls in demand due to lockdown (e.g. ferry services). One order allowed the Premier League (England's top football league) to extend its broadcast agreements for three years, without conducting its normal tender process.

Elsewhere, the CMA paused its timetable for two pharmaceuticals investigations. It launched a Covid-19 taskforce to manage the impact on competition of the pandemic. And it reallocated staff to some of its most urgent priorities.

The Authority also published an open letter to the pharmaceutical and food-and-drink industries. This advised that it would use powers laid down in competition and consumer law to tackle certain practices. The letter was a response to reports that businesses were charging unjustifiably high prices for goods or making misleading claims.

The CMA also launched – but quickly shelved – several excessive-pricing cases investigating sellers of hand sanitiser.



# Americas

## United States

	2020	2021	TREND (2020 – 2021)
US	USD529 million	USD151 million	∨

2020 saw landmark developments in the U.S. Antitrust Division's ongoing air cargo investigation.

Maria Christina "Meta" Ullings was extradited from Italy to the U.S. after almost 10 years as a fugitive. Ullings, a Dutch national, is the former senior vice-president of cargo sales and marketing for Martinair Cargo.

She pleaded guilty to involvement in a long-running, air cargo price-fixing cartel conspiracy. She was sentenced to 14 months in prison and ordered to pay a USD 20,000 fine. Her sentence is the longest imposed in the case.

Alongside Ullings, 22 airlines and 21 executives have been charged by the Department of Justice (DOJ). To date, more than USD1.8 billion in fines have been imposed, and eight executives have been given custodial sentences.

Also in 2020, the Third Circuit Court of Appeals held that the Federal Trade Commission (FTC) lacked the authority to secure disgorgement of profits as a remedy in antitrust cases (*Federal Trade Commission v. AbbVie* – 3rd Cir. 2020). The Court found that section 13(d) of the Federal Trade Commission Act, which allows courts to enjoin antitrust violations, does not confer the power to secure disgorgement.

In the same year, the DOJ and FTC filed cases against Google and Facebook for monopolizing search and online advertising and suppressing competition from rivals. In addition, federal prosecutors joined forces with state attorneys general to bring sweeping lawsuits against tech giants.

The largest cartel fine in 2021 was USD107.9 million, imposed on Pilgrim's Pride Corp. The company pleaded guilty to conspiring to fix the price of broiler chicken products in the U.S., to suppress sales and secure lucrative supply deals with fast-food chain KFC.

In July 2021, President Biden set out his administration's broad antitrust policy in an Executive Order. This instructed antitrust agencies to increase enforcement, so as to prevent a rise in consumer prices and competitive harm to labor markets, and to preserve emerging competition.

A number of legislative proposals were brought forward in 2021, following a House of Representatives report on its Investigation of Competition in Digital Markets (conducted in 2020).

One proposal, the American Innovation and Choice Online Act, aims to prevent tech firms from giving preference to their own products on their platforms. Another, the Platform Competition Opportunity Act, focuses on M&A activities, aiming to prevent large platforms from pursuing M&A. Both proposals focus on companies with USD550 billion or more market capitalization; 50 million or more active users; or 100,000 or more monthly active business users.

### Covid-19 related issues

The DOJ announced a focus on supply-chain disruption caused by Covid-19, in a statement on 17 February 2022. The Antitrust Division announced "*an initiative... to deter, detect and prosecute those who would exploit supply-chain disruptions to engage in collusive conduct*".

## Argentina

	2020	2021	TREND (2020 – 2021)
Argentina	ARS153,400,000	ARS5,900,000	∨

Cartel enforcement in Argentina remains weak. Most of the regulator's activities are concerned with M&A.

A bill including major amendments to competition law was put before Congress in 2020 and received Senate approval. But it has not advanced any further in the legislature, and is unlikely to be enacted in the near future.

The implementing authority has been increasingly investigating highly concentrated sectors, though no major action has yet been taken.

Argentina's leniency program and immunity regime, though enshrined in law, have not been actively applied. Compliance programs are possible but have not been used much in recent years. Cartel damages claims are permitted in law, but rare.

### Covid-19 related issues

The Covid-19 outbreak resulted in major changes to the implementation authority's practices. Procedures are now conducted electronically and will remain so permanently.

## Brazil

	2020	2021	TREND (2020 – 2021)
Brazil	BRL138.4 million	BRL1.3 billion	^

Notable cartel cases in Brazil during 2021 include:

- the closure of an investigation into the sanitation market, due to the recognition of a void attestation (May 2021)
- fines totalling BRL31.2 million for four firms, seven individuals and one trade association, in the international air and maritime freight-forwarding market (for cargo to or from Brazil)
- fines totalling BRL192.2 million for five companies and six individuals involved in bid-rigging, in the supply of PVC pipes and connections for sanitation infrastructure and civil construction. The investigation was initiated through a leniency agreement.

Brazilian antitrust legislation (12.529/2011) makes leniency applicants eligible for full administrative and criminal immunity.

Fines can be discounted by the Administrative Council for Economic Defence (CADE), for companies found guilty of cartel activity that adopt compliance programs. The scale of reduction is at CADE's discretion and decided on a case-by-case basis.

### Covid-19 related issues

Cartel investigation was seriously affected by the Covid-19 pandemic as it was impossible for CADE to carry out dawn raids. However, CADE did open a major investigation in 2021 into an international pharmaceutical cartel which were coordinating scopolamine prices.

## Canada

	2020	2021	TREND (2020 – 2021)
Canada	CAD6.15 million	CAD0	∨

In May 2021, Canada’s Competition Bureau updated its Competitor Collaboration Guidelines – the update since they were originally issued in 2009.

The Guidelines are not binding. But they provide valuable instruction on the Bureau’s likely approach to enforcing criminal and civil conspiracy and cartel provisions.

Among others, the changes to the Guidelines confirm that:

- the Competition Bureau may investigate buy-side cartels only under the civil (and not ) conspiracy provisions
- in rare instances, non-compete arrangements in M&A transactions may be investigated under the cartel provisions
- pricing algorithms are recognized as a possible means of cartel conduct.

The Competition Bureau’s enforcement activity against cartels has focused on the public infrastructure and construction sectors, and the digital economy. In 2021, the Bureau received a budget increase of 30%. The Commissioner of Competition announced that the Bureau will spend some of the extra funds strengthening enforcement.

In the April 2022 Federal Budget, the Government announced that there would be initial amendments to the Competition Act, as a first step in modernizing the legislation. These haven’t yet been tabled, but they’re expected to include:

- the criminalization of wage-fixing and other cartel activity affecting workers
- an expansion of the penalties that can be imposed for cartel behavior.

Several class actions are ongoing in Canada. These include a case brought against suppliers of roll-on/roll-off vehicle carrier services, and capacitor manufacturers, in British Columbia, Quebec and Ontario. There’s also a proposed class action in Federal Court against manufacturers of generic pharmaceuticals.

In 2021, two decisions in proposed class actions in the Federal Court concluded that criminal conspiracy provisions in the Competition Act apply only to supply-side agreements, and not to buy-side or no-poach agreements. The cases were *Mohr v. National Hockey League et al*; and *Latifi v. The TDL Group Corp*. The outcome is consistent with a view expressed by the Competition Bureau in November 2020.

### Covid-19 related issues

The cartel provisions in the Competition Act remained in full force during the Covid-19 pandemic.

In a statement released on April 8 2020, the Competition Bureau signalled that it would generally refrain from scrutinizing good-faith competitor collaborations required to respond to the crisis. That is, provided that they were agreed and executed in good faith and did not go further than necessary.

The Bureau cautioned that it would not tolerate abuse of this policy, as a cover for unnecessary conduct that breaches the legislation.

The Bureau also offered to give rapid, time-limited guidance on specific proposed collaborations. To qualify for guidance, parties had to present detailed descriptions of how their arrangements were needed to achieve a Covid-19 related objective that was in the public interest.

Currently, there appears to be no continuing policy impact related to Covid-19.

## Chile

	2020	2021	TREND (2020 – 2021)
Chile	UTA46,422	UTA8,000	^

During 2020, anticartel enforcement in Chile was impacted by the review of a landmark case by the Supreme Court. The review led to an increase in the fines applied by the Tribunal de Defensa de la Libre Competencia (TDLC), with a marked deference to the appeals filed by the national competition authority, the Fiscalía Nacional Económica (FNE).

The case involved a maritime car-transport cartel allocating the Indumotora (Kia) account in Asia between 2010 and 2013. The Supreme Court sanctioned Compañía Marítima de Chile; Eukor Car Carriers Inc.; and Kawasaki Kisen Kaisha. It also confirmed fines imposed on three other shipping companies: Compañía Sudamericana de Vapores; Mitsui O.S.K. Lines Ltd.; and Nippon Yusen Kabushiki Kaisha. This increased the total fines imposed in the case by UTA29,607.

The Supreme Court concluded that the statute of limitations involving the Kia account agreement was not applicable in this case, because the parties agreed not to compete for the Kia account in Asia until 2013. The TDLC had considered the statute applicable, as the agreement was struck back in 2009.

The Supreme Court also intervened in a supermarket cartel case, in which the three biggest supermarket chains in Chile were sanctioned for a hub-and-spoke arrangement. The Court increased the fines applied by the TDLC by UTA15,621. In the Court's view, Walmart's compliance program was insufficient; and the TDLC's fines did not reflect the effects of the conduct on the market as a whole.

The FNE has requested record fines in an ongoing cartel case against cash-and-valuable transit companies and their executives. This investigation began in October 2018, after an individual applied to Chile's leniency

program. Two months later, the FNE and police carried out dawn raids at the premises of the three firms involved, and the private residences of their general managers. The Authority confiscated an encrypted flash drive, which contained spreadsheets showing prices shared with competitors. It accessed these files with technical assistance from the FBI in the US.

In 2021, the TDLC ruled on the so-called Fire Cartel" (Cartel del Fuego), sanctioning FAASA Chile Servicios Aéreos Limitada (FAASA), and Martínez Ridao Chile Limitada (MR). Between 2009 and 2015, the two firms had agreed marketing conditions and contract prices for forest firefighting services provided by air tankers.

This decision established guidelines for differentiating bid-rigging collusion from legitimate consortia or joint bidding agreements. The TDLC clarified that:

- Consortia (aka Temporary Associations of Suppliers) are a common form of cooperation in some industries (e.g. construction of complex or large-scale infrastructure)
- They can generate both benefits and competitive risks in the markets where they operate.

However, the TDLC did consider the cooperation between FAASA and MR to be a consortium.

It determined that "it is not permitted, from the point of view of competition, for two competitors to coordinate their commercial conditions, or the prices to be presented - as they have done in this case - in a bidding process in which *ex ante* competition is fundamental".

The Tribunal fined FAASA up to UTA1,900 and MR up to UTA6,100 – which was more than the FNE had requested.

Legislative and policy changes expected in 2021-2022 include Congress approval of the long-awaited Anti-Abuse Agenda. This focuses on cartel enforcement, especially in markets for basic goods, and seeks to strengthen the FNE's investigatory powers.

The Agenda introduces tools to prevent, investigate and combat anticompetitive behaviors. These include strengthening banking secrecy; protecting physical and digital evidence; enabling anonymous whistleblowing; and providing economic incentives to informants.

Elsewhere, the FNE has established a new intelligence unit, which sits within its Cartels division.

### Covid-19 related issues

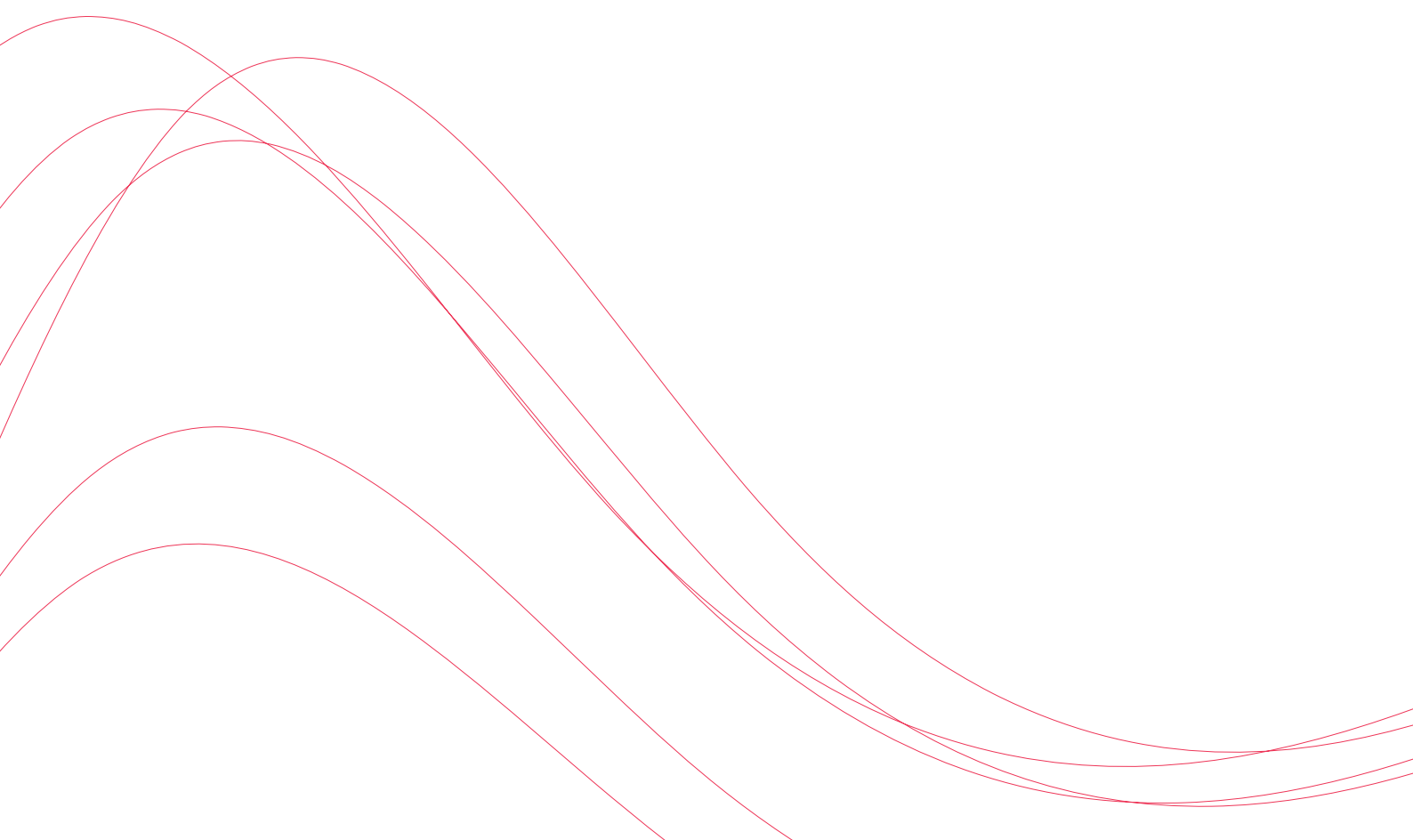
Covid-19 has not significantly affected cartel enforcement in Chile. The FNE has not stopped its investigation activities or procedures.

The only temporary framework for Covid-19 related issues was an internal decision by the TDLC, published on April 7 2020. This stated that in certain cases, the facts, acts or conventions submitted to a consultation may be executed without a suspensory effect (pursuant to article 18 No. 2 of Competition Act). This applies particularly to consultations on goods or services considered indispensable in context of the pandemic (e.g. transportation, medical supplies).

There are no ad hoc procedures for Covid-19 related issues.

TDLC President Enrique Vergara presented the public account of the work carried out by the Tribunal from May 2020 to May 2021. He stated that the digital economy is an *"unavoidable issue that has acquired first-order relevance with the pandemic"*. He also pointed to *"a 93% increase of the number of cases compared to the previous period"*.

In a newspaper interview in October 2021, Ricardo Riesco, head of the FNE, reinforced the need to let competition institutions do their work. He said that lessons must be learned from previous cartel cases, especially those affecting basic goods – highlighting landmark cases in the pharmacy, fresh chicken and tissue paper markets. He said: *"All these cases left a deep mark on the public, in the business sector, and questioned our economic market model. We have all had lessons. The State reacted by improving its legislation in 2016 (...) and we must let that rule work."*



## Colombia

	2020	2021	TREND (2020 – 2021)
Colombia	COP322 billion	COP21,116,129,300	∨

Colombia's Superintendency of Industry and Commerce (SIC) has focused primarily on bid-rigging cases.

In the Ruta del Sol II Case, the SIC investigated several firms and individuals, for allowing companies (including Odebrecht) to be awarded the Ruta del Sol II contract. Alleged infringements included bribery, reimbursements and irregular payments. In ruling on the case, the SIC thus found that acts of corruption can be considered anticompetitive, where they allow businesses to unlawfully benefit in public procurement processes. The SIC fined the parties involved a total of COP295,086,710,061.

On January 18 2022, the Congress of Colombia issued Law 2195, which modified some of the country's competition law regulations. Notable changes include:

- Leniency applicants who receive total or partial exoneration from fines will not be jointly and severally liable for damages caused by the anticompetitive agreement they were involved in. They will only be liable in proportion to their participation in the activities that caused the damages.
- Natural or legal persons engaging in anticompetitive behavior may face the following fines (whichever is higher):
  - up to 100,000 monthly minimum wages (c.USD27,000,000)
  - up to 20% of the company's turnover for the previous fiscal year
  - up to 20% of the company's equity
  - up to 30% of the value of the contract, where public resources are affected
  - 300% of the profit gained from the anticompetitive conduct.

- Natural or legal persons who collaborate, facilitate, authorize, execute or tolerate anticompetitive behaviors will face a fine of up to 2,000 monthly minimum wages (approx. 534,000).
- Introduction of new criteria for calculation of fines.

On January 24 2022, the Colombian Government issued Decree 092, which modified the structure of the SIC.

On February 23 2022, the Government issued Decree 253, which changed the country's leniency program. Notable changes include:

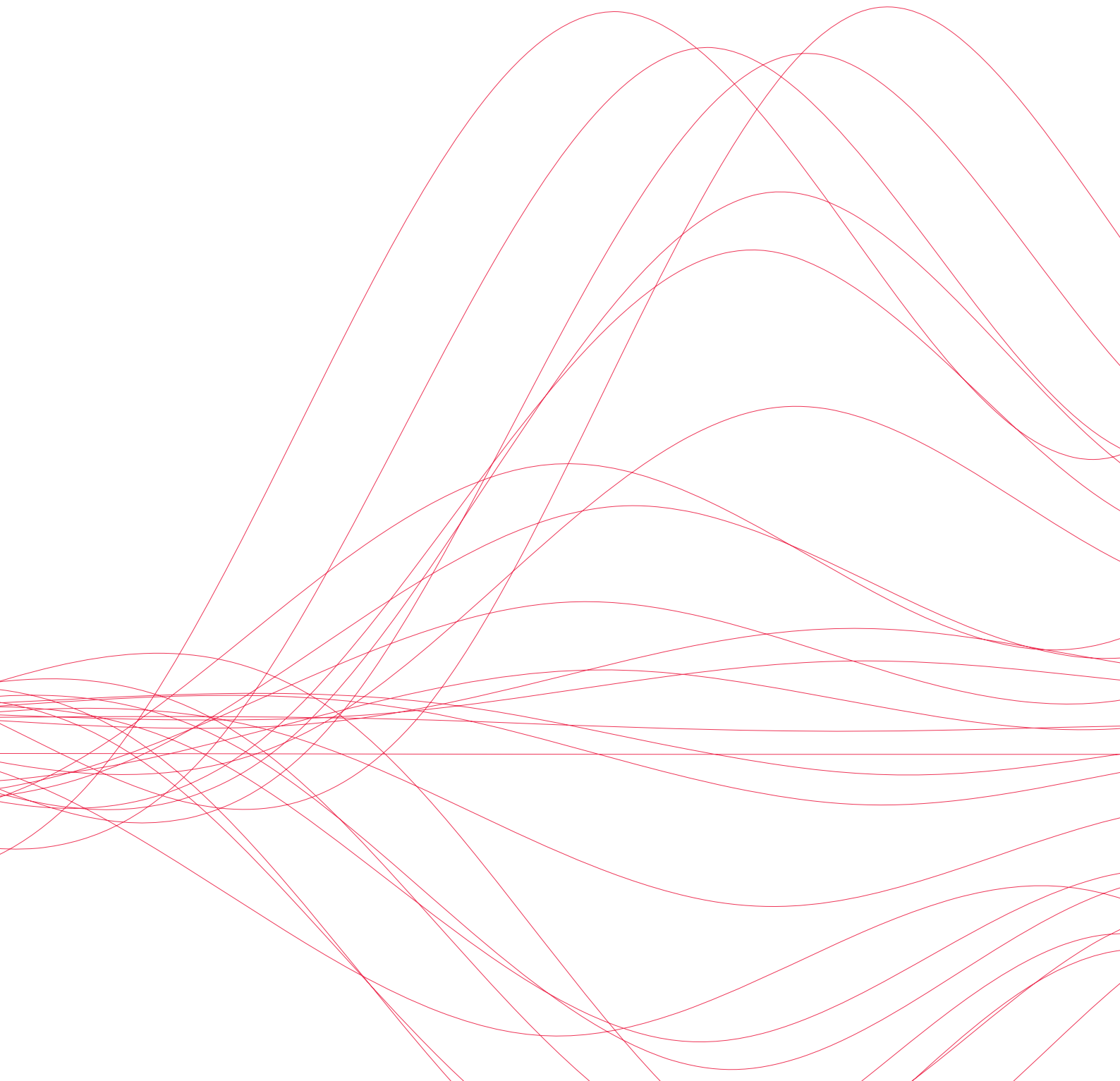
- Up to three firms may participate in the leniency program on any one investigation.
- If the applicants approach the authorities up to one day before indictment, then depending on the value of the information and relevance of the evidence submitted:
  - The first applicant may receive total exoneration from fines.
  - The second may receive a reduction in fines of between 30% and 50%.
  - The third may receive a reduction of up to 25%.
- If the applicant approaches the authorities after indictment, then depending on the value of the information and relevance of the evidence submitted:
  - The first applicant may receive a reduction in fines of up to 30%.
  - The second may receive a reduction of up to 20%.
  - The third may receive a reduction of up to 15%.
- The promotor or instigator of anticompetitive conduct will not be eligible for any benefits.

### **Covid-19 related issues**

In response to the health emergency caused by the pandemic, the Government declared a State of Social, Environmental and Economic Emergency on temporary basis aiming at preventing unusual variations in prices, by adopting measures to promote access to essential goods, drugs and medical devices.

To mitigate the effects of the pandemic on competition, the government also issued Decree 482 in 2020.

This allowed firms in the transportation sector to enter collaboration agreements, aimed at creating synergies to overcome the crisis and generate market efficiencies. It was particularly applicable to markets for goods and services considered essential to the general welfare of the population (food, sanitation, fuel, water supply). This decree is still in force.





## Mexico

	2020	2021	TREND (2020 – 2021)
Mexico	Approx. MXN786,192,721.00	Approx. MXN1,430,350,000.00	^

Given the number of cartels sanctions occurring in the pharmaceutical and healthcare sectors over recent years, these markets are an enforcement priority for the Mexican Antitrust Commission (COFECE).

In 2020, COFECE imposed a fine of more than MXN 600 million on firms and individuals in the market for laboratory services, blood-bank analysis and associated products and services. The cartel affected contracts with the Mexican national health system.

Another case concerned anticompetitive activity in the pharmaceutical distribution market. The companies involved were fined a total of MXN 903.5 million. Plus, ten executives were barred from acting as board members, administrators, directors, managers, executives, agents, representatives or attorneys in fact for the companies. The case caused estimated damages to the market of MXN 2,359 million.

Investigations were also launched (and some remain ongoing) in new sectors of interest, including real estate, energy, transportation, food and industrials.

This level of activity demonstrates COFECE's continuing commitment to protecting competition in priority markets such as energy, transport, health, labor, financial services and the digital economy. This was reflected in the Authority's publication, *Relevant Actions that strengthen competition in 2021*.

COFECE updated its Guide to the "*Programa de Inmunidad y Reducción de Sanciones*" (Program for Immunity or Reduction of Fines). Open to horizontal cartels, the program was designed based on international best practice. It's intended as a tool for learning and information on cartels, and a deterrent to them; and to provide transparency and certainty to businesses applying for immunity. It offers guidance on how COFECE receives, analyses and resolves applications to the program.

### Covid-19 related issues

One of the effects of the Covid-19 outbreak on cartel enforcement in Mexico was an investigation into possible absolute monopolistic practices in the country's commercial real-estate leasing market.

It's estimated that this market is worth around MXM 108 billion. It offers real-estate services to, among others, the commercial and tourism sectors, which were severely affected by the pandemic and lockdowns.

## Peru

	2020	2021	TREND (2020 – 2021)
Peru	PEN33,834,851.00 (c.USD8,458,712.00)	PEN66,258,676.00 (c.USD16,564,669.00)	^

Twenty-one service stations were sanctioned by the Peruvian Antitrust Authority (Indecopi) in 2020. The Authority determined that the businesses had colluded to agree the sale prices of diesel and gasohol. The fines imposed reached approximately PEN8,284,810 (c.USD2,071,202).

Similarly, three maritime transportation entities were sanctioned for market-sharing. They were fined around PEN25,550,041 (c.USD6,387,510).

In 2021, two printing companies were fined up to PEN66,258,676.00 (c.USD16,564,669) for allocating customers in the commercial printing market.

The same year saw the initial resolution of possibly the most famous cartel case in Peru’s history. Indecopi’s Antitrust Commission sanctioned around 30 construction companies, and 26 individuals, for sharing 112 public construction bids. Total fines amounted to PEN2,749,000,000 (c.USD687,250,000). However, this first-instance ruling has been appealed by the sanctioned parties and will be reviewed by Indecopi’s Antitrust Specialized Court (Peru’s highest administrative antitrust body).

It seems likely that the following sectors will be the focus of the Authority’s investigations in 2022:

- public procurement – especially for infrastructure development
- the medical devices supply chain
- financial services – particularly consumer-facing services
- private pension funds

- supermarkets – mainly relating to essential goods
- printing
- hydrocarbons – particular consumer-facing products and services

Meanwhile, recent legislative developments in Peru include the following:

- In June 2020, Indecopi published its Guide to Compliance Programs. This establishes the requirements for, and benefits of, compliance programs, and how they may lead to fine reductions. It should however be noted that Peruvian law does not expressly recognize compliance programs as a legal basis for reductions.
- Cartels were criminalized under Peruvian law in August 2020.
- In May 2021, Indecopi published its *Guidelines on the Compensation for Damages Caused to Consumers as a Consequence of Anticompetitive Conducts*. These establish the conditions under which Indecopi will use its powers to promote legal processes of civil liability for damages caused by anticompetitive practices, in defence of consumers.

### Covid-19 related issues

When the Peruvian Government declared a State of Emergency during the Covid-19 pandemic, Indecopi adapted its procedures as follows:

- Procedural documents and applications can now be submitted through a virtual platform on its website.
- Notifications can be served via e-mail or other digital channels.

# Asia Pacific

## Australia

	2020	2021	TREND (2020 – 2021)
Australia	AUDO	AUD24 million	^

The Australian Competition and Consumer Commission (ACCC), and Commonwealth Director of Public Prosecutions (CDPP) have shown a continuing focus on:

- prosecuting the most widespread, cross-border cartel activities
- securing guilty pleas from defendants, leading to significant fines

In this context, the ACCC and CDPP worked with prosecutors at home and overseas on an international shipping investigation. This led to convictions of three companies, and fines totalling AUD83.5 million. Following a guilty plea in June 2021, WWO was fined AUD24 million. Its co-conspirators, K-Line and Nippon Yusen Kabushiki Kaisha, had already been fined AUD35 million and AUD25 million respectively.

The ACCC also secured its first guilty plea from an individual manager. This came in the Alkaloids/SNBB investigation, which is therefore set to see the first conviction of an individual for cartel activity in Australia. More recently, Alkaloids of Australia Pty Ltd. pleaded guilty to cartel conduct charges against it and is awaiting sentencing.

This case reportedly overlaps with a similar investigation by COMCO, the Swiss competition authority, and the European Commission. COMCO conducted dawn raids as part of this investigation in 2019. The case is said to involve eleven companies, including one Australian firm. It concerns overseas suppliers of final products imported into Australia over a period of nine years. The firms are accused of price-fixing and market-sharing.

There were developments in another important case, involving Australia and New Zealand (ANZ) Banking Group Ltd. This concerns the sale of new shares in the group in 2015, and the subsequent trading of those shares by the underwriters (Deutsche Bank, Citigroup and JP Morgan). The four banks allegedly agreed to retain any unsold shares, and keep their existence secret, to maintain the ANZ share price. Around AUD790 million in new shares went unsold (out of a total of AUD2.5 billion).

This is the first case to investigate an underwriting syndicate in Australia, and it has potential implications for the regulation of share sale practices in Australia and overseas.

Initial charges were brought in June 2018, against ANZ, Citigroup and Deutsche Bank, and six current or former executives (one from ANZ, three from Citigroup and two from Deutsche Bank). Since then, the CDPP has narrowed the case, reducing the number of counts and dropping charges against one of the Citigroup executives in August 2021. It also withdrew the main charges against ANZ and its executive in October 2021. One remaining charge of aiding and abetting a cartel offence remains. The CDPP filed a third revised indictment on 24 November 2021.

## Covid-19 related issues

The ACCC has the power to authorize exemptions for collaborations that might otherwise be unlawful. This applies if the likely benefits to the public outweigh the likely harm – particularly in times of crisis like the Covid-19 pandemic. It therefore avoids the need for businesses to assess the risk of a collaboration breaching competition law themselves.

Over 2020-21, the Commission reported a significant surge in applications for such authorizations, relating to risks arising from the pandemic. In six weeks from mid-March 2020, it received as many requests as it would typically get in a year.

The ACCC's approach was to issue interim authorizations within a few days, then conduct a full review of each one. As of January 2021, it had made 28 final decisions on interim authorization requests.

The Commission issued exemptions where needed to help industries meet the particular needs of the Australian public during the pandemic – permitting, for example:

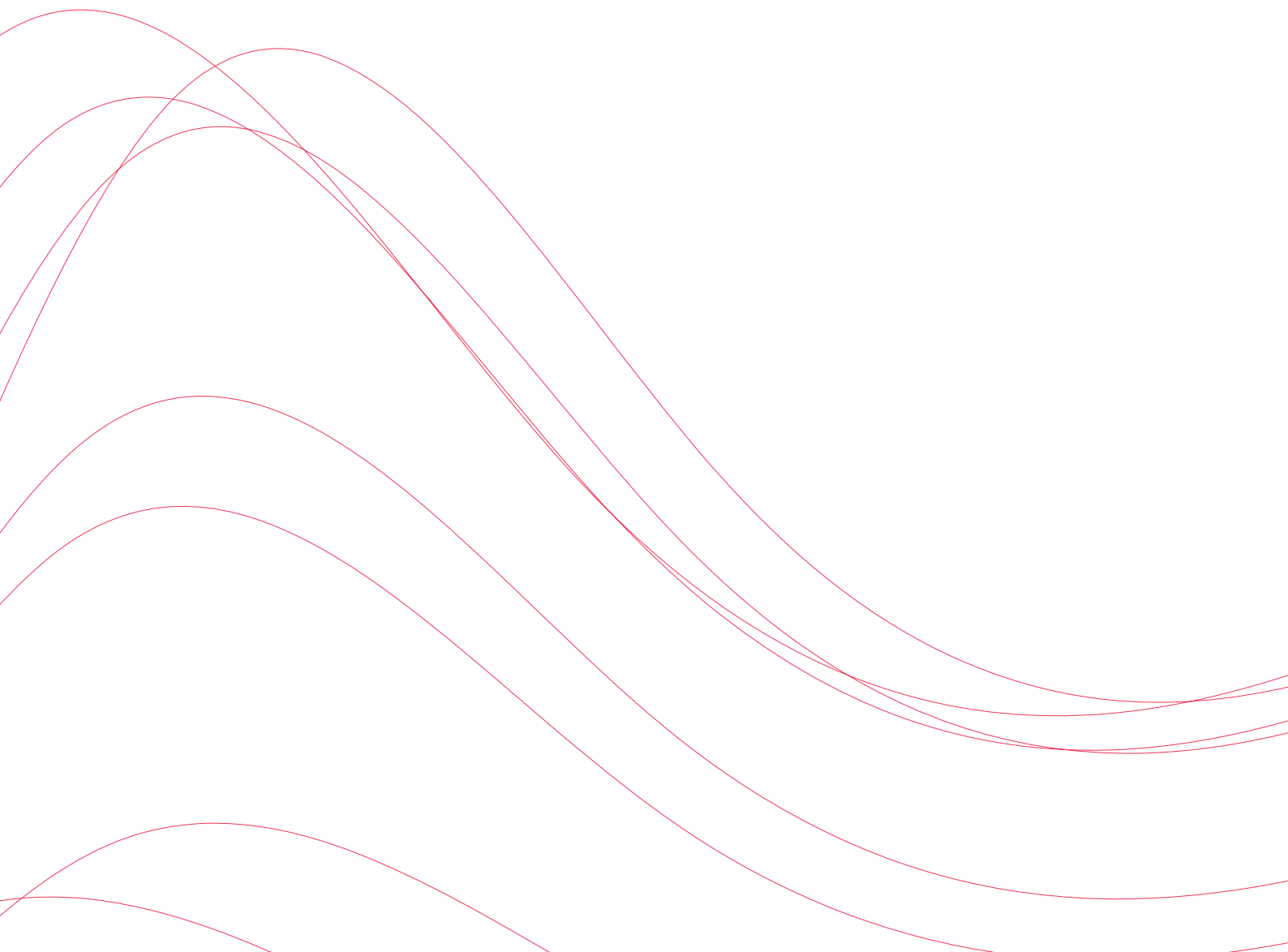
- banks to jointly provide debt relief to borrowers
- supermarkets to coordinate the supply of groceries
- medical equipment producers to coordinate manufacture and supply

However, it did not authorize businesses to discuss, negotiate or agree the prices of goods and services.

These exemptions were strictly limited in duration, with monitoring and reporting obligations imposed to ensure compliance and mitigate any unintended consequences.

Restrictions and disruptions due to the pandemic have caused delays in ongoing investigations and prosecutions. And in the courts, they've led to postponed hearings and longer timetables.

Also, the ACCC had to switch its focus to consumer and fair-trading issues, in response to the high volume of contact it received about these. This may have had knock-on effects on other priority areas, including cartels.



## China

	2020	2021	TREND (2020 – 2021)
China	RMB29.50 million	RMB1.31 billion	^

Legislative and enforcement efforts relating to cartels remained active in China during 2020 and 2021. Priority sectors focus included construction, automotive, gas and energy, life sciences, insurance and e-commerce.

On October 23 2021, the Standing Committee of the National People's Congress of China (SCNPC) released a new draft amendment to the country's Anti-Monopoly Law (AML), and invited comments from the public. The 2021 Draft Amendment replaced a previous draft from the State Administration of Market Regulation (SAMR).

The 2021 Draft Amendment includes substantive changes to laws on horizontal and vertical agreements, including:

- prohibiting hub-and-spoke arrangements
- making an offense of organizing an anticompetitive agreement, or providing material assistance in reaching one
- introducing safe-harbor provisions, by allowing agreements between business operators where there is no evidence that they'll have anticompetitive effects
- imposing personal liabilities on individuals who are directly responsible for offenses
- increasing fines by 200-500% for offenses considered extremely serious.

The amendment also imposes harsh penalties for cartel violations, including:

- fines of up to RMB3 million for trade associations found guilty of organizing or facilitating monopoly agreements (up from RMB500,000 under the current AML)
- fines of up to RMB5 million for monopoly agreements entered but not yet implemented; or where a party involved had no sales revenue the previous year (up from RMB500,000).

From March to December 2021, a number of provinces published non-mandatory guidelines on antitrust compliance – including Beijing, Sichuan,

Zhejiang and Jiangsu. These guidelines echo the Business Operator Anti-Monopoly Compliance Guidelines published by SAMR in September 2020. National and local guidelines require companies' antitrust compliance regimes to consider monopoly agreements as a risk.

Between January and December 2021, SAMR published details of nine enforcement cases on its website, all involving horizontal monopoly agreements. Total fines imposed in these cases reached RMB1.31 billion.

On November 18 2021, SAMR launched the National Anti-Monopoly Bureau, which is affiliated to SAMR. This illustrates China's continued dedication to antitrust regulation and enforcement. It's likely that action against price-fixing and price restrictions will continue to be aggressive in 2022.

A ruling from the Supreme People's Court in 2020 has implications for damages actions. The court held that a party to a cartel restricting the output of brick and tile products could not seek damages from other participants, for losses it claimed to have suffered from the reduced supply.

### Covid-19 related issues

On April 5 2020, SAMR issued a Notice on Antitrust Enforcement to Support Pandemic Prevention and Control and the Resumption of Work and Production. This offered guidance on changes to antitrust enforcement priorities and procedures in response to the Covid-19 outbreak. SAMR then issued an official interpretation of the Notice on April 17 2020.

The Notice and interpretation signalled that SAMR would use China's existing legal standards and exemption framework to allow horizontal and vertical arrangements that were in the public interest during the pandemic. The standards and framework are set out in Article 15 of the AML.

Now that the pandemic is well controlled in China, it's not clear whether this Notice is still in force, and whether companies may still contact SAMR regarding exemptions.

## Hong Kong

	2020	2021	TREND (2020 – 2021)
Hong Kong	HKD14.4 million	HKD5.6 million	∨

During 2020 and 2021, the Hong Kong Competition Commission (HKCC) exercised its wide-ranging enforcement powers, while the Competition Tribunal handed down some significant rulings.

Instead of bringing proceedings to the Competition Tribunal, the HKCC may issue infringement notices where:

- it has reasonable cause to suspect a breach of the Competition Ordinance prohibiting cartel conduct
- it has not previously brought proceedings before the Tribunal in the case in question
- alleged offenders commit to complying with the notices.

For example, the Commission issued infringement notices to six hotel groups and a tour-counter operator on 26 January 2021. This was for actively contributing to the implementation of a price-fixing agreement. The arrangement was made between two competing travel-service providers: Gray Line Tours of Hong Kong Limited and Tink Labs Limited.

In this case, the HKCC opted for infringement notices because the companies in questions didn't operate in the market affected by the cartel; and because they actively cooperated with the investigation. The notices required the firms to admit their breach of the Competition Ordinance, and immediately stop the illegal conduct.

This was HKCC's first enforcement action against cartel participants. It serves as a reminder that cartelists, and third parties who promote cartel conduct, can be subject to enforcement action.

2021 also saw two landmark cases brought before the Competition Tribunal:

- **First case resolved under Cooperation Policy**

On 25 November, the HKCC brought proceedings before the Tribunal against three businesses over the sale of

mail-inserter machines in Hong Kong.

All three companies cooperated with the Commission, under Hong Kong's cooperation and settlement policy. As a result, the Commission agreed not to pursue current and former officers and employees involved in the cartel. It also recommended reduced penalties to the Tribunal.

- **First case on obstruction of a Commission search**

On 14 December, the HKCC brought proceedings before the Tribunal against two companies, and three of their directors. The case concerned the Commission's search at the premises of one of the firms, during which staff attempted to delete:

- shortcuts linking their computers to the servers of the other party
- commercial documents that may have been relevant to the investigation.

The HKCC also referred this obstruction of its investigation to the Hong Kong Police for criminal investigation.

Under section 54 of the Competition Ordinance, obstructing the HKCC's execution of its powers is a criminal offence. It carries a maximum fine of HKD 1,000,000, and imprisonment of up to two years. Individuals who instruct or help others to obstruct the Commission are also liable.

In December 2021, HKCC set out the focus of its enforcement efforts for 2022. These are:

- anticompetitive behaviors that affect people's livelihoods – especially low-income or grassroots groups
- cartels that aim to take advantage of government or public funding – e.g. by targeting public procurement processes, government funding, or subsidy schemes for Hong Kong businesses

## India

	2020	2021	TREND (2020 – 2021)
India	INR0 <sup>6</sup>	INR8,741.59 million	∨

The Competition Commission of India (CCI) remains fairly active in its enforcement of competition law, including cartels.

The CCI has largely ruled in localised cartels and bid-rigging cases – especially relating to public procurement of railways, food protection materials and soil-sample testing services.

In 2021, the Commission ruled in an important cartel case involving United Breweries (UBL), Anheuser Busch InBev (AB InBev) and Carlsberg India (CIPL). All three beer companies filed leniency applications. AB InBev, the first applicant (whose application led to dawn raids), benefitted from a 100% fine reduction. The second applicant, UBL, was awarded a 40% reduction, with a net fine of INR751,000,000 (c.USD100.78 million). As the last applicant, CIPL received a 20% reduction, and was fined INR1,210,000,000 (c.USD16.23 million).

On the regulatory front, India has moved to amend its principal competition legislation, the Competition Act 2002. The Government is looking to bring in The Competition (Amendment) Bill 2021.

Among other changes, the Bill recognises the concept of buyers' and hub-and-spoke cartels. And it introduces a commitments-and-settlements regime, though this isn't expected to apply to cartels. The last publicly available copy of the proposed changes also set out a 'leniency plus' regime. This is intended to incentivise cartel participants who have already applied for leniency for participation in one cartel to disclose the existence of another cartel, by offering penalty reductions for both. It is hoped that the Bill will be passed by Parliament and come into force during 2022.

### Covid-19 related issues

At the onset of the Covid-19 pandemic in 2020, The CCI adjusted its approach to setting fines, to provide relief to the businesses involved – especially micro, small and medium-sized enterprises (MSMEs). As a result, no fines were imposed during 2020.

The Commission issued an advisory to businesses in April 2020, reinforcing its commitment to continue enforcing competition law in India despite the pandemic. The notice asserted that there are in-built safeguards to protect businesses from sanctions if their arrangements have pro-competitive elements. However, we've not seen the CCI take this into account in any cases to date.

Despite the pandemic, the CCI has been increasingly employing dawn raids as an enforcement tool, along with its office of the Director General (DG), which investigates cartel conduct. In fact, since the onset of the pandemic, the CCI and DG have made at least six dawn raids, which is about the same number as in the ten years *before* the pandemic (the CCI/DG took on enforcement powers in 2009).

<sup>6</sup> Although in 2020, the CCI decided several cartel related cases, and found breaches in some of them, it did not impose any fines. The CCI acknowledged hardships due to the pandemic, especially in cases involving MSMEs, and took a lenient view.

## Indonesia

	2020	2021	TREND (2020 – 2021)
Indonesia	IDR7.948 billion	IDR14.273 billion	^

During the fourth quarter of 2020, the Indonesian Government enacted the Omnibus Law, which amended provisions in Indonesian competition law.

One of the amendments relates to the criteria, types, and procedures for imposing sanctions, including for cartel infringements. The Omnibus Law changes the minimum fine to IDR1 billion without setting an upper limit.

The Government has also implemented Government Regulation No. 44 of 2021. This states that fines must not exceed 50% of a company's net profit, or 10% its total sales, in the relevant market during the relevant period.

In terms of enforcement activity, Indonesia's Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha, or KPPU) handed down six decisions related to cartels in 2020. This compares to nine decisions for anticompetitive activity unrelated to cartels during the same year.

Five of the six cartel cases involved allegations of bid-rigging in infrastructure construction projects. The other concerned suspected price-fixing by airlines.

Cartel conduct was proven in three of the cases. The KPPU imposed administrative sanctions, or ordered the businesses involved to cease unfair practices. For example, in a case in the airline sector, the carriers were instructed to report any business activities likely to cause price fluctuations to the KPPU.

In 2021, the KPPU made nine decisions on cartels. All nine involved bid-rigging on government infrastructure and public facilities projects. The KPPU found cartel infringements in seven of the cases, and imposed fines in six.

Civil actions have been generally limited, including class actions for damages for cartel activity.

Only one case such was heard in 2020, by the Central Jakarta District Court on 9 July 2020. The Court examined a follow-on, class-action lawsuit against Honda and Yamaha, following a KPPU decision on cartel allegations involving both companies. However, the Court decided it did not have jurisdiction over the case. On appeal, the Jakarta High Court and Supreme Court of Indonesia both agreed with the District Court's decision.

### Covid-19 related issues

The KPPU is focusing on the PCR testing services market as a likely target for cartel collusion.



## Japan

	2020	2021	TREND (2020 – 2021)
Japan	JPY4.32 billion	Data not yet published	-

*The estimate above is based on the fiscal year April 2020-March 2021.*

The Japan Fair Trade Commission (JFTC) searched the offices of some of the country's largest electricity providers on April 13 and July 13 2021.

The companies are suspected of agreeing not to target business customers in each other's geographical areas. The firms involved in the alleged cartel are Chubu Electric Power, Kansai Electric Power, Chugoku Electric Power and Kyusyu Electric Power.

Japan's Electricity and Gas Market Surveillance Commission puts the annual market value affected by the cartel at JPY 1.9 trillion.

Other recent cartel cases investigated by the JFTC include:

- **Price-fixing, clothing sector.** Six sellers of uniforms for Aichi Prefecture high schools agreed to raise their prices. No penalty was imposed, but the JFTC issued a cease-and-desist order.
- **Bid-rigging, clothing sector.** Companies bidding to supply police uniforms to Yamagata Prefecture decided in advance, and among themselves, which company would receive the orders. The JFTC issued fines totalling JPY 1.4 million.

- **Bid-rigging, construction sector.** Companies bidding to build new stations for the Central Railway decided in advance, and among themselves, which company would win the contracts. They were fined JPY 4.31 billion.
- **Bid-rigging, security service sector.** Companies bidding for government security services in Gunma Prefecture decided in advance, and among themselves, which company would receive the orders. Total fines amounted to JPY 14.8 million.
- **Bid-rigging, data print sector.** Businesses bidding for data print services for the Japan Pension Service decided in advance, and among themselves, which company would receive the orders. Fines imposed totalled JPY 1.74 billion.

### Covid-19 related issues

Early on in the Covid-19 outbreak, the price of facemasks and hand sanitizer rose in Japan, due to a shortage of supply. In April 2020, the JFTC stated:

"Restricting increases of the price of masks, sanitizer and other relevant pharmaceutical goods is problematic under antitrust law without justifiable grounds. However, if manufacturers force retailers not to set higher prices at certain periods, to prevent them from setting unreasonable prices, this won't be problematic under antitrust law. Preventing unreasonably high prices is deemed justifiable grounds".

## Malaysia

	2020	2021	TREND (2020 – 2021)
Malaysia	RM173,655,300.00	RM3,234,529.93	∨

During 2020-2021, the Malaysian Competition Commission (MyCC) indicated that it would focus on:

- amending the Competition Act 2010 to introduce merger control powers
- investigating bid-rigging in government procurement
- monitoring potential abuse of dominance in the technology and e-commerce sectors, as businesses become increasingly digital.

On 17 December 2021, the MyCC sanctioned three major roll-on, roll-off (ro-ro) vessel operators and their parent companies. The firms were found guilty of fixing fares for ro-ro vehicle transportation.

The MyCC held two of the parent companies responsible for the price cartel, based on the definition of an enterprise in section 2 of the Competition Act. This states that a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit, where the subsidiary lacks genuine autonomy in determining their actions on the market.

The Commission imposed fines totalling RM 2,191,580.41. In setting the penalties, it took into account the economic impact of the global Covid-19 pandemic. It therefore set the fine at 50% less than it would otherwise have imposed. It also put a six-month moratorium on payment, then allowed the firms to pay in equal monthly instalments for up to six months.

On 6 August 2021, the MyCC released a decision against seven warehouse operators in Port Klang, for participating in a price-fixing cartel between May 2017 and December 2019. The operators breached Section 4 of the Competition Act, by agreeing to fix surcharges for handling long-length and heavy-lift import and export cargoes. The Commission imposed fines totalling RM 1,043,012.52.

On 25 September 2020, the Commission released a decision against the General Insurance Association of Malaysia (PIAM) and its 22 members. PIAM and the insurers applied trade discounts on automotive parts and labor for vehicle repairs, by workshops on PIAM's Approved Repairers Scheme.

The MyCC imposed fines totalling RM 173,655,300.00. Again, in view of the impact of the pandemic, this was a reduced penalty, this time by 25%. The Commission also granted the same moratorium and instalment conditions as in the ro-ro case.

An amendment to the Competition Act 2010, and the Competition Commission Act 2010, is currently under public consultation. This would extend the MyCC's jurisdiction to include a merger control regime.

## New Zealand

	2020	2021	TREND (2020 – 2021)
New Zealand	NZD4,394,000	NZD236,000	∨

Criminal penalties for cartel conduct came into force on April 8 2021 in New Zealand. They were introduced by the Commerce (Criminalization of Cartels) Amendment Act 2019.

One of the Commerce Commission's priorities is to educate businesses about the criminalization of cartel conduct. It has run a targeted advertising campaign to this end.

Further changes to the Commerce Act 1986 (Commerce Act) are also likely.

On 10 March 2021, the Commerce Amendment Bill was introduced to Parliament. Its most substantive changes are:

- the addition of an 'effects test' to section 36 of the Commerce Act
- the removal of exceptions in the Commerce Act relating to intellectual property rights.

Both amendments could lead significant changes in the enforcement landscape in New Zealand over the coming years.

The Commission has also completed a study of the supermarket industry. Its report, published on March 8 2022, outlines a range of options to address a potential lack of competition in this market.

In light of the study, the retail grocery sector will remain a focus for the Commerce Commission, together with financial services, construction, fuel and telecommunications.

### Covid-19 related issues

At the height of the pandemic in New Zealand, the Commerce Commission announced that it had no intention of taking action against businesses cooperating to maintain the supply of essential goods and services.

The Commission recently restated this position. But it maintained that it will not tolerate "unscrupulous use of the Covid-19 pandemic as an excuse for non-essential collusion or anticompetitive behavior". The Commission issued guidelines in May 2020 on the factors it will consider to determine whether collaboration is legitimate in the circumstances.

Urgent legislation was introduced to Parliament to update a number of laws in order to deal with the pandemic. The Covid-19 Response (Further Management Measures) Legislation Act 2020 came into force on May 16 2020. This included changes to the Commerce Act aimed at:

- amending the Commission's powers to authorize business collaborations during the pandemic
- allowing such authorizations to be fast-tracked.

These provisions remain in force under the Epidemic Preparedness (Covid-19) Notice 2020 Renewal Notice (No 4) 2021.

## Philippines

	2020	2021	TREND (2020 – 2021)
Philippines	0 PHP	0 PHP	-

In 2020, the Philippine Competition Commission (PCC) restructured its Enforcement Office. In doing so, it set up dedicated divisions for cartel and abuse-of-dominance cases, so as to investigate and punish anticompetitive conduct more aggressively.

In December 2020, the PCC launched the BRIGADE (Bid Rigging Intelligence Gathering and Detection for Enforcement) project. This aims to enhance the Commission’s ability to detect, and collect evidence of, bid-rigging in public procurement.

In 2020, the Commission received three verified complaints; opened 24 initial assessments, nine preliminary investigations and five administrative investigations; and filed 2 Statements of Objections.

In December 2020, it charged Greenfield Development Corporation and Leopard Connectivity Business Solutions for abuse of dominance. Greenfield is a condominium developer, and the owner of Leopard, an internet service provider (ISP). The firms made an exclusive agreement for Leopard to provide fixed-line internet services to Greenfield’s condominiums – preventing residents from using competing ISPs.

Section 45 of the Philippine Competition Act allows the filing of separate and independent civil actions, after the Commission has completed a preliminary inquiry. Class actions and consolidated actions are permitted under the Rules of Court. However, there have been no private, class or consolidated damages actions in the Philippines involving alleged breaches of the Act.

## Singapore

	2020	2021	TREND (2020 – 2021)
Singapore	SGD451,112.00	N/A	N/A

On March 16 2022, the Competition and Consumer Commission of Singapore (CCCS) issued a proposed infringement decision against four warehouse operators: CNL Logistic Solutions Pte. Ltd.; Gilmon Transportation & Warehousing Pte Ltd; Penanshin (PSA KD) Pte. Ltd.; and Mac-Nels (KD) Terminal Pte Ltd.

This was for fixing the price of warehousing services at the Keppel Distripark. The firms colluded to impose an FTZ (Free Trade Zone) Surcharge between 15 June 2017 and 19 November 2019. The CCCS will issue a final decision once the parties, including leniency applicants, have presented their cases.

On 14 December 2020, the CCCS issued an infringement decision against three contractors: CU Water Services Pte. Ltd.; Crystalene Product (S) Pte. Ltd.; and Crystal Clear Contractor Pte. Ltd. The Commission imposed total fines of SGD419,014 for bid-rigging in tenders by privately owned developments, for maintenance services on swimming pools and other water features. The infringements occurred between 2008 and 2017.

The CCCS found collusion between CU Water and Crystalene, and between CU Water and Crystal Clear, in tenders called for by private developments. One party would obtain a support quotation from the other, which was deliberately priced higher than the requesting party's bid. Or, where one party was the incumbent contractor, the non-incumbent supplier would confer with the incumbent to submit a higher bid.

The Commission found that this conduct led to an absence of competitive pressure between the parties to submit their best offers to potential customers.

On 4 June 2020, the CCCS issued an infringement decision against Shin Yong Construction Pte. Ltd.; Geoscapes Pte. Ltd.; and Hong Power Engineering Pte. Ltd. Total fines of SGD 32,098 were imposed, for bid-rigging in connection with tenders to Wildlife Reserves Singapore (WRS) for building, construction and maintenance services. The Commission found that the parties had exchanged bid information and coordinated their bids for eight tenders and quotations called for by WRS from 1 July 2015 to 6 October 2016. It ruled that this conduct distorted competition and prevented WRS from obtaining the best prices through independent competitive bids.

The CCCS adopted revised Guidelines on the Appropriate Amount of Penalty in Competition Cases, effective from 1 February 2022. These provide greater clarity on the circumstances where a fine for an infringement may be discounted under section 34 of the Competition Act (Cap. 50B).

To qualify for a discount, a company must provide evidence that:

- its involvement in the infringement was substantially limited
- while party to the agreement, it avoided applying it, by adopting competitive conduct in the market.

The CCCS has indicated that the "substantially limited involvement" standard will have a high threshold, in line with the position taken by the European Commission and European Court under the EC's 2006 Guidelines.

## Thailand

	2020	2021	TREND (2020 – 2021)
Thailand	THB0	THB0	-

As of January 2022, no enforcement actions against cartel behavior have been announced in Thailand. But as the Trade Competition Commission expands its enforcement program, consumer markets are likely to be a priority.

In this context, arrangements classified as “hardcore cartels” may result in criminal liabilities. These carry prison sentences of up to 2 years, and fines of up to 10% of the business’s revenue in the relevant financial year(s).

Third parties that suffer damages due to a breach of the Trade Competition Act may bring an action before the Intellectual Property and International Trade Court. This right is set out in Article 69 of the Trade Competition Act. However, there are no records of class actions being brought for damages resulting directly from cartel activity.

The Consumer Protection Commission, and other consumer associations recognized in law, may file class actions on behalf of consumers or their members. The Trade Competition Act requires such actions to be brought up to a year after the cause of the damages is, or should have been, known.

Civil claims for cartel damages are permitted in Thailand in tort and breach-of-contract cases, and in cases claiming various legal rights – e.g. concerning protection of consumers, the environment, labor, trade competition, stocks and stock markets.

## Taiwan

	2020	2021	TREND (2020 – 2021)
Taiwan	TWD603.73 million	TWD1.51 billion	^

The Taiwan Fair Trade Commission (TFTC) sustained its enforcement efforts targeting cartels and anticompetitive information exchange throughout 2020 and 2021.

In November 2020, the TFTC fined TDK Corporation (TDK), NHK Spring (NHK), and Magnecomp Precision Technology Public (MPTP) around TWD 600 million (c.USD1 million). This was for exchanging competitively sensitive information and fixing the prices of hard-disk drive suspension assemblies.

The Commission found that, from 2008 to 2016, TDK or its subsidiary, MPTP, regularly exchanged data on customer prices and sales volumes with NHK. These exchanges happened through face-to-face meetings, emails and phone calls, and was intended to align prices and maintain or expand market share.

In May 2021, the TFTC fined two pharmaceutical companies TWD 285 million (c.USD10.2 million) for unlawful concerted conduct. Though the firms were competing manufacturers of identical generic drugs, they entered into distribution agreements, where one paid the other an annual fee to be appointed as its exclusive distributor in Taiwan. The distributor then ordered nothing from its co-conspirator, effectively eliminating it as a competitor in Taiwan.

In June 2021, the Commission fined three airlines TWD 3.4 million (USD122,926.23), for concerted action to fix fares on routes to Penghu and Kinmen islands. It found that representatives of the airlines exchanged information on pricing during two meetings in 2019 and agreed to measures aimed at maintaining price levels.

In November 2021, the TFTC imposed TWD 65.25 million (c. USD2.35 million) in fines on 21 domestic container terminal firms for concerted action. The Commission found that in July 2014, these competing companies jointly decided to reintroduce fees for using cargo handling equipment on export cargo weighing less than 3 tons. The ruling effectively reinstated a 2016 decision, which was revoked after some of the parties won litigation challenging the penalties imposed at the time.

Also that month, the TFTC enhanced the incentives for whistle-blowers who provide evidence leading to the successful prosecution of anticompetitive conduct. These now range from TWD 50,000 and TWD 1 million.

Taiwan retains an individual exemption mechanism for prospectively allowing certain parties to engage in restrictive practices. This is the case where a concerted action which meets one of the requirements in Article 15 of the Taiwan Fair Trade Act, is beneficial. Between 2020 and 2021, the TFTC extended or expanded exemptions for cooperative activities such as grain import schemes, ferry services and a domestic credit card system.

### Covid-19 related issues

The TFTC is prioritizing enforcement against illegal pricing practices involving products that are relevant to pandemic response and public utilities. These practices potentially include cartel conduct, such as restricting and fixing prices.



# Middle East

## Kingdom of Saudi Arabia

	2020	2021	TREND (2020 – 2021)
Kingdom of Saudi Arabia	N/A	SAR57,510,000	N/A

Current competition legislation in the Kingdom of Saudi Arabia (KSA) came into force in September 2019. The Competition Law (approved by virtue of Royal Decree No. M/75 dated 29/6/1440H) is supported by the Implementing Regulations (approved by Resolution No. 337 of the Board of Directors of the General Authority for Competition, dated 25/1/1441H). It is enforced by the General Authority for Competition (GAC).

The Competition Law applies broad definitions to its scope and jurisdiction, granting the GAC broad discretion to conduct investigations into anticompetitive practices. The GAC issues an annual report that records, among other things, the sanctions it has imposed for anticompetitive practices.

A key observation from the GAC's 2020 Annual Report is that businesses and regulators in KSA are showing an increased awareness of what constitutes anticompetitive practices. This is illustrated by the fact that the GAC received 137 economic concentration applications (actions which result in a total or partial transfer of ownership of assets, rights, equity, stocks shares or liabilities of an entity to another, or the joining of two or more managements in a joint management) in 2020, compared to 57 in 2019 and 54 in 2018.

The GAC publishes the penalties imposed for breaches of the Competition Law on its Twitter account and website. This reflects its active role in enforcing the Competition Law. It is possibly the most active competition regulator in the Gulf Cooperation Council.

Analysis of economic concentration applications received in 2019-2020 shows that the following sectors are a focus for cartel enforcement activity in KSA:

- pharmaceuticals – the GAC works regularly with the Saudi Food and Drug Authority to study competition in the pharmaceutical and health products market
- wholesale and retail
- construction
- real estate
- information technology and communications – where the primary regulator is the Communication and Information Technology Commission
- health and social work.

The Competition Law introduced rules on leniency and settlement, including:

- Leniency may be requested only by one applicant per case, which must be the first entity to apply.
- Applicants must proactively provide evidence of parties violating the Competition Law.
- An application may be requested before or after a decision to investigate and collect evidence has been issued – but not after a decision to institute criminal proceedings.
- If the GAC approves an application for leniency or settlement, no proceedings shall be brought against the entity in question. The GAC may, however, take other measures set out in the Competition Law.
- If an entity accepts a settlement, it must pay the amount determined by the GAC, and any compensation to the affected parties imposed by the GAC.
- The GAC must notify an applicant of its decision on a leniency or settlement application within 120 days of submission.

# Africa

## South Africa

	2020	2021	TREND (2020 – 2021)
South Africa	ZAR69,242,731	ZAR40,784,469	∨

*Estimates are based on the Competition Tribunal's fiscal year, which runs from 1 April to 31 March.*

On 13 May 2021, South Africa's Constitutional Court heard a case on appeal from the Competition Commission (CC) against a judgment from the Competition Appeal Court. The CC was refused leave to reinstate a complaint before the Competition Tribunal regarding cartel provisions in the Competition Act.

The CC withdrew a cartel complaint to allow the parties to engage in settlement discussions. The matter was not settled, and the CC sought to reinstate the complaint. The respondents opposed reinstatement on the grounds that the Competition Act and Rules do not provide for a reinstatement, once withdrawn.

Section 67(2) of the Competition Act states: "A complaint may not be referred to the Competition Tribunal against any firm that has been a respondent in completed proceedings for the Tribunal under the same or another section of this Act relating to substantially the same conduct."

The Constitutional Court found that "completed proceedings" means the matter should have been finalized in respect of the merits of the complaint, and the CC was therefore entitled to reinstate the complaint.

In February 2022, the CC referred a possible cartel contravention to the Competition Tribunal for adjudication. The case concerned a joint venture whose parties agreed not to compete against each other. However, it is not clear whether the restraint is enforceable on the parents of the joint venture; the parents *plus* the joint venture itself; or both.

For 2022, the CC identified the following sectors as enforcement priorities for all aspects of the Competition Act (not just cartels):

- food and agro-processing
- healthcare
- intermediate industrial inputs
- construction and infrastructure
- banking and financial services
- information and communication technology
- energy.

### Covid-19 related issues

To combat the financial impact of the pandemic, the South African Government announced exemptions from anti-cartel provisions in the Competition Act for the following sectors:

- banking
- retail property
- healthcare
- hotels.

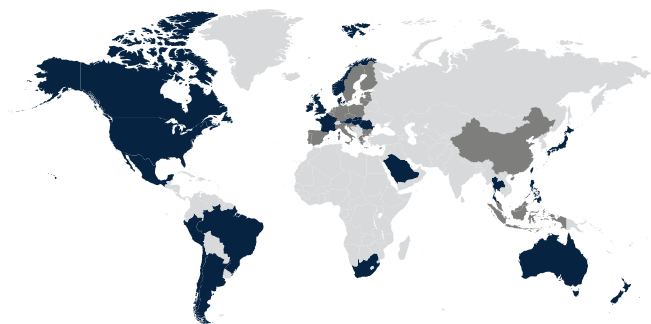
These exemptions have limited application. They only apply to agreements or practices between competitors undertaken at the request of, or in coordination with, the relevant government department. And they must be for the sole purpose of responding to the pandemic.

The CC announced that it would focus resource on dealing with investigations relating to the pandemic. However, we've not seen an increase in new complaints or dawn raids related to Covid-19. In fact, the Commission's focus has been on prosecuting firms that may have charged excessive prices for certain medical goods/services, and basic foods and consumer items.

## More information

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

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



### ARGENTINA

**Senior Partner**  
Guillermo Cabanellas

### AUSTRALIA

**Partner**  
John Fogarty  
Fleur Gibbons  
Simon Uthmeyer

### AUSTRIA

**Partner**  
Marc Lager  
Claudine Vartain

### BELGIUM

**Partner**  
Daniel Colgan  
Laurent Geelhand  
Joost Hans

### BRAZIL

**Partner**  
(Campos Mello  
Advogados)  
Luciana Martorano

### CANADA

**Partner**  
David Neave  
Catherine Pawluch  
Rebecca von Rüti  
Kevin Wright

### CHILE

**Partner**  
Felipe Bahamondez  
**Counsel**  
Sofia O'ryan

### CHINA

**Partner**  
Nathan Bush

### COLOMBIA

**Partner**  
Martínez Beltran  
María Claudia

### DENMARK

**Partner**  
Michael Klöcker

### FINLAND

**Partner**  
Mika Oinonen

### FRANCE

**Partner**  
Edouard Sarrazin

### GERMANY

**Partner**  
Justus Herrlinger  
Semin O

### HONG KONG

**Partner**  
Nathan Bush

### HUNGARY

**Partner**  
Gabor Fejes  
Zoltan Marosi  
András Nemescsófi

### IRELAND

**Legal Director**  
Darach Connolly

### ITALY

**Partner**  
Alessandro Boso Caretta  
Domenico Gullo

### JAPAN

**Partner**  
Tony Andriotis

### MEXICO

**Partner**  
Jorge Benejam

### NETHERLANDS

**Co-Chair, Global  
Antitrust and  
Competition Group**  
Léon Korsten

### NEW ZEALAND

**Partner**  
Alicia Murray  
Iain Thain  
Mark Williamson

### NORWAY

**Partner**  
Kjetil Johansen  
Line Voldstad

### PERU

**Associate**  
Daniel Flores

### POLAND

**Partner**  
Andrzej Balicki  
**Counsel**  
Michal Orzechowski

### PORTUGAL

**Partner**  
Miguel Mendes Pereira

### ROMANIA

**Partner**  
Alina Lacatus  
Livia Zamfiropol

### SINGAPORE

**Partner**  
Nathan Bush

### SLOVAKIA

**Partner**  
Michaela Stessl  
**Senior Associate**  
Daniela Koncierova

### SOUTH AFRICA

**Partner**  
Janine Simpson

### SPAIN

**Partner**  
Joaquín Hervada

### SWEDEN

**Partner**  
Erik Brändt Öfverholm

### UK

**Partner**  
Matt Evans  
Alexandra Kamerling  
Sarah Smith  
Sam Szlezinger

### UNITED ARAB

**EMIRATES**  
**Partner**  
Eamon Holley  
**Legal Director**  
Rami Zayat

### UNITED STATES

**CHICAGO**  
**Partner**  
John Hamill  
Jon King

### HOUSTON

**Partner**  
Allissa Pollard

### LOS ANGELES

(DOWNTOWN)  
**Partner**  
John Gibson

### NEW YORK

**Partner**  
John Hillebrecht  
Paolo Morante

### PHILADELPHIA

**Partner**  
Brian Boyle  
Ilana Eisenstein  
Courtney Gilligan Saleski

### SAN DIEGO

(DOWNTOWN)  
**Partner**  
Amanda Fitzsimmons  
Stan Panikowski

### SAN FRANCISCO

**Co-Chair, Global  
Antitrust and  
Competition Group**  
Lisa Tenorio-Kutzkey  
**Partner**  
Matt Jacobs

### WASHINGTON, DC

**Partner**  
David H. Bamberger  
Edward S. Scheideman

