

Argentina's New Competition Law

The new Argentine competition/antitrust law was published on May 15 2018 under number 27,442 (the "Law").

The new Law will come into effect after the eight day of its publication, and introduces significant changes to the current system. The most significant changes are explained below.

Regarding the antitrust authority, the Law creates the National Authority of Competition ("ANC"), which comprises the Competition Tribunal ("TDC"), with 5 members, and a Mergers Control Secretary and an Anticompetitive Practices Secretary. The ANC would be, in principle, independent from government.

The selection process of the ANC could take long, and in the meantime the Commerce Secretary will continue being the authority.

The Law also creates a specialized appeal chamber within the Federal Civil and Commercial National Chamber for the City of Buenos Aires, and the federal courts of the provinces will also treat appeals related to the Law.

Regarding merger control notifications, the Law sets forth that the notification has to be done "before" the closing of the transaction (the previous law gave the possibility to notify within a week from closing). Nevertheless, for a period of one (1) year from the incorporation of the ANC, merger notifications can be done within a week from closing.

Also regarding merger control notifications, the Law has raised the threshold after which the transactions have to be notified. The joint Argentine turnover of the acquiring group and the target has to be more than Pesos 2,000 million (around USD 81.6 Million according to the May 15 exchange rate). It is noted that all thresholds will be updated annually.

Also, the exemption for "minor transactions" has been raised. Therefore, even if the Pesos 2,000 million threshold has been reached, those transactions or group of transactions in the same market within 12 months whose price (or allocated price) and value of the assets (or imports in case there are no assets in the country) is less than Pesos 400 million (around USD 16.3 million) or less of Pesos 1,200 million (around USD 48.9 million), if the group of transactions occurred during the last 36 months, are exempted from notification. Please note that the present criterion of the authority is that if any of the criteria (price or value of the assets) exceeds the thresholds, the transaction has to be notified.

Regarding hard-core coordinated antitrust practices, the Law has introduced in Argentina the leniency programs.

The first whistleblower that admits its participation and brings solid evidence of the cartel receives an exemption of 100% of the penalties and of the damages (damages are only paid by the whistleblower if the other members of the cartel –that are severally and jointly liable- cannot pay them).

The following whistleblowers that provide relevant information could obtain a reduction of 50% to 20% of the maximum of the penalty and of the damages (in the same conditions as the first whistleblower).

Finally, in connection with penalties, they have been drastically increased from Pesos 200 million of the previous law (around USD 8.1 million) to (i) 30% of the turnover in Argentina of products or services involved (in principle, the turnover of the party that carried out the violation of the law –this would be clarified in the development regulations) up to 30% of the turnover in Argentina of the whole groups of companies of the party that carried out the violation, or (ii) the double of the economic benefit obtained by the violating party, whatever is higher. In case none of those parameters can be calculated, the penalty could be up to Pesos 4,000 million (around USD 163.2 million), not being this last figure a cap.

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