

South America: Overview of antitrust regimes



An interactive guide to antitrust activity in South America

Many jurisdictions in South America have enhanced their enforcement of antitrust rules in the past decade. Brazil has consolidated its position as a significant jurisdiction in terms of antitrust enforcement globally. Argentina, Colombia and Chile are also important jurisdictions in the region and are moving toward more effective competition law enforcement. This interactive map provides a general overview of the quickly evolving competition law regimes in the region.

This map is based on knowledge built up through White & Case's long-standing presence in the region, its close relationships with local counsel in the area, and on publicly available sources. Should you require more detailed information on a jurisdiction (or additional jurisdictions not included in the map), please contact **Jacquelyn MacLennan**, **George Paul**, **Henri Capin-Gally**, **Antonio Cárdenas**, **Joao Lacerda** or your usual White & Case contact. This page was created in October 2021 and will be updated annually.

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Description of categories:

- Active:** Relatively sophisticated competition regimes with increasingly experienced competition authorities ensuring strong enforcement.
- Up-and-coming:** Increasing appetite for competition enforcement, thanks to newly introduced or recently amended competition law regimes.
- Dormant:** Competition law has often been on the books for several years, but its enforcement faces serious challenges such as the lack of implementing rules or of skilled personnel in the authorities.
- No competition law:** Competition law has not yet been effectively introduced.

Overview of jurisdictions

Jurisdiction	Tier	Summary
Argentina	Active	<p>In May 2018, a new competition law entered into force in Argentina. The law created a new authority with powers of investigation – the <i>Autoridad Nacional de la Competencia</i> ("ANC"), replacing the old <i>Comisión Nacional de Defensa de la Competencia</i> ("CNDC") – and the <i>Secretaría de Comercio Interior</i> ("SCI"), with adjudicatory powers. The new institutional set-up aims at providing the ANC with more independence from politics.</p> <p>However, the Argentinian parliament has been considering a bill which would, among other matters, give the government more discretion with ANC appointments, potentially limiting the authority's independence. In 2019, a selection process for ANC members was carried out, but a subsequent government withdrew the candidates proposed by the previous administration before they could be approved by the Senate. Therefore, the ANC is still not operative and antitrust enforcement is still carried out by the Secretary of Commerce of the Ministry of Production, with technical assistance from the CNDC.</p> <p>The new competition law created a leniency program, introduced per se illegality for price-fixing, output-fixing or market allocation cartels and bid-rigging, and increased the fines for infringements.</p> <p>Between 2016 and 2018, the CNDC initiated more than 120 antitrust investigations. During these years, the CNDC issued more decisions than the number of newly-opened investigations, thus halving the stock of pending cases to less than 100 in 2018. In 2019, 23 investigations of anticompetitive practices were initiated – 22 were closed and one resulted in fines.</p> <p>The two largest cartel cases in Argentina occurred before 2005, in the cement and liquid oxygen sectors. In the past decade, relevant cases include an investigation against a credit card operator and several banks, which was settled with structural commitments, and an investigation against the Argentine society of music authors and composers for excessive pricing, which resulted in a fine of around US\$1.5 million.</p>
Bolivia	No competition law	There is no competition law in Bolivia.

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<p>Brazil</p>	<p>In Brazil, the <i>Conselho Administrativo de Defesa Econômica</i> (“CADE”) is responsible for antitrust cases. CADE has two main internal enforcement bodies, which are autonomous: the <i>Superintendência-Geral</i> (“SG”) and the <i>Tribunal</i>. SG is responsible for starting and conducting antitrust investigations and the <i>Tribunal</i> is responsible for ruling on the cases, taking into account the SG's opinion. CADE is among the most active global competition authorities and has been repeatedly recognized as the best competition authority in the Americas (e.g., by the journal <i>Global Competition Review</i>).</p> <p>CADE has a leniency program and a settlement program for antitrust infringements. The leniency program is only available for the first participant to report an infringement and can result in administrative and criminal immunity, whereas the settlement program is available for subsequent applicants and can result in a fine reduction in cartel cases (up to 50% for the first company to settle). Since 2015, CADE has entered into more than 60 leniency agreements and 320 settlement agreements.</p> <p>In 2020, CADE ruled on 17 infringement proceedings, out of which 13 were cartel cases, two were concerted practice cases, and two related to abuse of dominance. 11 cases resulted in convictions, totalling fines of approximately US\$54 million (including fines paid in settlements). The largest fine (around US\$10 million) was imposed on Brazilian suppliers of medical equipment accused of bid-rigging in public procurement. CADE also applied fines to foreign companies in two cases in 2020, involving submarine/ underground cables and refrigeration compressors. Since 2015, CADE's fines in antitrust cases amount to around US\$1.4 billion (including fines paid in settlements).</p> <p><i>White & Case does not practice local law in Brazil. The authors would like to thank Pinheiro Neto Advogados (Brazil) for their contributions to this guide.</i></p>
<p>Chile</p>	<p>Two entities are in charge of antitrust enforcement in Chile: the <i>Fiscalía Nacional Económica</i> (“FNE”), an independent administrative entity responsible for antitrust cases, and the <i>Tribunal de Defensa de la Libre Competencia</i> (“TDLC”), which reviews the procedures initiated by FNE.</p> <p>In 2020, two cartel cases were concluded, both resulting in fines totalling over US\$1 million. In 2019, two other cartel cases resulted in fines totalling over US\$17 million. In the past 5 years, the TDLC imposed fines in 14 cartel cases. The average length of a cartel investigation in Chile is just over 2 years. The Chilean authorities fined foreign companies in two cartel cases: one in the refrigerator compressors industry in 2010 and another in the shipping industry in 2015.</p> <p>Chile has a leniency program for cartel cases, granting administrative and criminal immunity for the first leniency applicant and a fine reduction of up to 50% for the second applicant. Since 2016, price-fixing, output-limiting, market allocation and bid-rigging cartels are also considered criminal offenses in Chile. Criminal prosecution can only start after the TDLC issues an administrative infringement decision. To date, no criminal conviction has been imposed in relation to cartels.</p> <p>Since 2015, the TDLC decided on 22 abuse of dominance cases, out of which 4 resulted in fines. The average length of an abuse of dominance case in Chile is just over 1 year.</p>

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<p>Colombia</p>	<p>In Colombia, antitrust policy is enforced by the <i>Superintendencia de Industria y Comercio</i> ("SIC"). The SIC is an independent administrative agency responsible for investigating antitrust cases, including anticompetitive agreements and abuse of dominance. In 2019, the staff allocation showed a focus on antitrust enforcement, as three-quarters of the SIC's staff worked on cartel and abuse of dominance cases, whereas only 6% worked on merger reviews. The SIC stated that its enforcement priorities for 2020 were competition in the transportation sector and bid-rigging in public procurements.</p> <p>From August 2019 to July 2020, the SIC started 13 investigations and imposed sanctions in 12 antitrust cases, totalling approx. US\$174 million. Moreover, in 2020, in the context of the COVID-19 pandemic, the SIC issued 182 requests for information and held 57 virtual hearings to investigate potential anti-competitive behavior.</p> <p>In 2019, the SIC ruled on 10 cartel cases and 9 concerted practices cases, all of which resulted in fines totalling around US\$63 million. The average length of a cartel investigation in Colombia is less than two and a half years. Moreover, in 2019, the SIC decided on five abuse of dominance cases, dropping all of them without fines or remedies.</p> <p>The SIC has a leniency program for antitrust infringements. Settlement is available for applicants reporting an infringement and can result in administrative and criminal immunity for the first applicant and in fine reduction between 30% and 70% for subsequent applicants. In 2019, the SIC received one leniency application.</p>
<p>Ecuador</p>	<p>In Ecuador, the <i>Superintendencia de Control del Poder de Mercado</i> ("SCPM") is responsible for investigating antitrust cases. The agency started operations in 2012.</p> <p>In 2020, the SCPM issued only one infringement decision, which related to a bid-rigging cartel in the pharmaceutical sector. In this case, the SCPM imposed fines totalling around US\$4 million and required the infringing companies to adopt compliance programs. Between 2014 and 2019, the SCPM initiated 30 investigations into restrictive agreements and issued twelve final decisions, eleven of which concerned bid-rigging. In the same period, the SCPM issued three decisions on abuse of dominance; two were overturned by the courts.</p> <p>The SCPM works with a leniency program for antitrust infringements. Settlement is available for applicants reporting an infringement and can result in full immunity for the first applicant and in fine reduction of up to 50% for subsequent applicants. Between 2014 and 2019, the SCPM entered into 35 settlement agreements.</p>
<p>Guyana</p>	<p>The Competition and Consumer Affairs Commission ("CCAC") is the enforcer of antitrust policy in Guyana. Among the seven cases that the CCAC has decided since 2017, six related to consumer protection and one to competition. In 2019, the CCAC concluded that an agreement between a shipping association and five terminal operators constituted an antitrust infringement and imposed a fine of around US\$18,000 on each terminal operator.</p>
<p>Paraguay</p>	<p>In Paraguay, antitrust policy is enforced by the <i>Comisión Nacional de la Competencia</i> ("CONACOM"), which was established in 2013 and became operational in 2015.</p> <p>CONACOM has not been a very active authority. Since its creation, CONACOM has launched two antitrust investigations, out of which one was closed and the other is pending. It has thus far not issued any antitrust infringement decisions. Paraguay does not have a leniency program.</p>

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<p>Peru</p>	<p>In Peru, the <i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i> (“Indecopi”) is responsible for antitrust enforcement, which is a priority for the authority. Around 85% of its competition enforcement staff is investigating potential anticompetitive agreements and abuses of dominance, whereas the remaining 15% are working on merger reviews.</p> <p>In 2020, Indecopi initiated antitrust investigations against 41 companies and imposed fines totalling around US\$9 million. In 2019, Indecopi ruled on two cartel cases, which resulted in fines totalling around US\$54 million. In 2018, the authority imposed fines in four cartel cases, which totalled around US\$175 million. The average length of a cartel investigation in Peru is less than 2 years.</p> <p>Indecopi has set up a leniency program for antitrust infringements. Settlement is available for applicants reporting an infringement and can result in administrative and criminal immunity for the first applicant and in fine reductions for subsequent applicants. In 2019, Indecopi received two leniency applications.</p> <p>In 2019, Indecopi implemented a whistle-blower program for cartels, which rewards informants with up to around US\$120,000. This is the first (and so far only) whistle-blower program in Latin America.</p>
<p>Suriname</p>	<p>There is no competition law in Suriname. We understand that a draft Competition Bill has been submitted for stakeholder consultation.</p>
<p>Uruguay</p>	<p>The <i>Comisión de Promoción y Defensa de la Competencia</i> (“Commission”) is responsible for general antitrust enforcement in Uruguay, while the regulators in the financial, telecommunications and energy sectors are responsible for antitrust enforcement in their respective sectors.</p> <p>In 2020, the Commission decided on five antitrust cases and did not impose any fines. In the past five years, the Commission has imposed two fines: one in 2016 for resale price maintenance in the electronics sector and another one in 2017 for exclusivity agreements in the beer sector.</p> <p>The Commission has set up a leniency program for antitrust infringements. Settlement is available for applicants reporting an infringement and can result in full immunity or fine reduction.</p>
<p>Venezuela</p>	<p>Venezuelan competition law includes a general prohibition of conduct that restricts competition. However, since the entry into force of the antitrust law in 2014, the <i>Procompetencia</i> (“Competition Authority”) has not published any antitrust decisions. The Competition Authority’s website has been inoperative since 2016.</p> <p>The general prohibition of anticompetitive conduct does not apply to grassroots organisations, public or mixed strategic companies, or national state-owned companies for the provision of public services. Moreover, an Organic Law on Fair Prices establishes maximum profit margins applicable to the whole economy. The President of Venezuela can grant exemptions to the antitrust rules if they are considered to be in the public interest.</p>
<p>French Guiana</p>	<p>As a French overseas department, French Guiana is subject to the jurisdiction of the French Autorité de la Concurrence (“ADLC”). Competition enforcement in the French overseas departments and territories was one of the ADLC’s priorities in 2020, with the ADLC focusing on the high cost of living in these territories and on reforms that would stimulate competition and benefit overseas consumers.</p> <p>Since 2018, the ADLC has issued eight antitrust decisions involving French overseas departments or territories, out of which four directly involved French Guiana.</p> <p>In 2020, in the context of the COVID-19 pandemic, the ADLC launched an investigation into exclusive import practices in the medical equipment sector for hospitals in French Guiana and the French West Indies. The investigation was closed within one week after clarifications were provided by the relevant companies.</p>

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