

Cartel Regulation

The application of competition regulation
in 48 jurisdictions worldwide

2013

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Spain

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Legislation and jurisdiction

1 Relevant legislation

What is the relevant legislation and who enforces it?

Legislation

Spain's main piece of competition legislation is the Spanish Competition Act 15/2007 (the LDC) which entered into force on 1 September 2007.

The LDC replaced the Competition Act 16/1989 of 17 July 1989, which had been in force for almost two decades and was Spain's first effectively enforced competition law. Before the Competition Act 16/1989, Spain had a 1963 competition law (Law 110/63 of 20 July) which never became truly effective due to the lack of resources devoted to enforcing it.

Since its entry into force the LDC has been amended by: (i) Law 39/2010 of 22 December 2010, which revised the administrative fees for filing a merger control notification; and (ii) Law 2/2011 of 4 March 2011, which, among other things, revised the merger control notification thresholds and modified some provisions governing the interaction between the Spanish Competition Commission (the CNC) and the sector regulators. Neither of these amendments affected the substance or procedure of Spain's cartel legal framework as set out in the LDC.

Royal Decree 261/2008 of 22 February 2008, approving the Defence of Competition Regulation, develops some of the LDC provisions on cartels including those dealing with the CNC inspection powers; cooperation with the European Commission and EU National Competition Authorities; fines; treatment of confidential information; the CNC's investigation process; access to the file; preliminary measures; and the leniency process.

In terms of soft law, the following two guidelines have been adopted by the CNC:

- the Notice on the Calculation of Fines of 6 February 2009, which lays out the methodology that the CNC intends to follow when imposing fines for breaches of article 101 and 102 of the Treaty for the Functioning of the European Union (the TFEU), and the equivalent LDC articles 1 and 2 (as well as article 3 LDC which deals with unfair conduct that distorts competition against the public interest); and
- the Guidelines on the Immunity and Reduction of Fines Process, which set out the requirements for immunity and reduction of the fine applications. Specifically, they indicate that applications can be submitted in written form, electronically or orally; they also contain a list of the information that needs to be included in an immunity application, a marker immunity application, and a simplified immunity application (in case the applicant has applied or is intending to apply for immunity with the European Commission); and provide information on the practicalities of leniency applications, such as the address and opening hours of the CNC's registry, the telephone numbers of the CNC unit in

charge of processing leniency applications, and the necessity of submitting applications in a closed envelope.

Enforcers

The bodies in charge of enforcing the Spanish Competition Law and cartel regulations are:

The CNC

The CNC incorporates the functions of both the former Service for the Defence of Competition and the Tribunal for the Defence of Competition. The functioning and composition of the CNC is governed by the CNC statutes, approved by Royal Decree 331/2008 of 29 February 2008. The CNC consists of:

- the Investigations Division, which is in charge of the 'Instruction Phase' of a cartel investigation. Its main functions include gathering evidence, drafting the statement of objections, and proposing decisions to the Council;
- the Council, which adopts final decisions;
- the Advocacy Division, which is in charge of research, and drafts sector studies and reports on the impact of legislative and regulatory proposals on competition;
- the Chief Economist Unit, which provides economic analysis support;
- the Secretariat General, which is responsible for the administration of the CNC; and
- the president of the CNC, who is also the president of the Council and oversees the functioning of all the CNC units.

Competition authorities of the Spanish autonomous communities Spain has a decentralised competition law system, and its autonomous communities have the power to apply LDC provisions against infringements (including cartels) if their effect is restricted to their territory. Most autonomous communities, such as Galicia, the Basque Country, Aragon, Catalonia, Valencia, Andalusia, Extremadura or Castile and León have created their own competition authorities, some of which have been particularly active. Andalusia, Catalonia and Galicia had over a dozen open cases in 2011. Madrid and Castile-La Mancha created competition authorities which have been closed down recently as a result of austerity plans.

The courts

The Spanish courts can apply the antitrust provisions of both the TFEU and the LDC, and the commercial courts are specifically designated in the LDC as the Spanish judicial body with jurisdiction over private actions based on competition law.

2 Proposals for change

Have there been any recent changes or proposals for change to the regime?

In September 2012 the Spanish government submitted to Congress a plan to reform and merge the CNC with several sector-specific regulators, which should be approved before the end of 2012.

The new entity will be called the National Commission for Markets and Competition (CNMC). It will absorb the functions of the CNC and six sector regulatory bodies, namely the National Commission for Energy, the Telecommunications Commission, the Committee for the Regulation of the Railway Sector, the National Commission for the Postal Sector, the Airports Economic Regulation Commission, and the State Advisory Board for Audiovisual Media.

The principal reasons given by the Spanish government for this structural change are the need for more legal certainty, increased efficiency in the allocation and spending of public resources and an overall better standard of supervision from the new regulatory body in terms of quality, technical knowledge and competence in the various sectors.

The CNC has officially objected to the plan due to, among other things, the lack of consultation with the affected regulatory bodies, as well as other potentially interested parties and stakeholders; because it does not contemplate having two separate bodies one in charge of investigations and the other with decisional functions as the CNC currently has; and because its funding model does not ensure the independence of the future authority. Similar concerns in relation to independence have been raised informally by the European Commission.

3 Substantive law

What is the substantive law on cartels in the jurisdiction?

The LDC defines a cartel as a 'secret agreement between two or more competitors with the object of fixing prices, production or sales quotas, allocating markets, including bid rigging, or imposing import or export restrictions'.

Cartels fall within article 1(1) of the LDC, which prohibits all agreements, collective decisions, recommendations, or concerted practices which have as their object or effect the prevention, restriction, or distortion of competition in all or part of Spain and, in particular, those which consist of:

- the direct or indirect fixing of prices or any other trading or service conditions;
- the limitation or control of output, distribution, technical development or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions, thereby placing some competitors at a disadvantage; or
- subordinating the conclusion of contracts to the acceptance of additional obligations which, by their nature or according to commercial usage, have no connection with the subject of these contracts.

The following are exempted from article 1(1) of the LDC: (i) agreements that contribute to improving the production or distribution of goods or the provision of services, or promote technical or economic progress, and (ii) allow consumers a fair share of the resulting benefit; (iii) are indispensable to achieving those objectives, and (iv) do not eliminate competition in respect of a substantial part of the products or services in question. It would be very difficult for a cartel to meet any of the above criteria.

An agreement in breach of article 1(1) of the LDC is null and void. The LDC qualifies cartels as 'very serious' infringements, attracting the highest fines (up to 10 per cent of the infringing company's revenues), and are subject to a longer statutory limitation

period (four years from the time the conduct ended).

4 Industry-specific offences and defences or antitrust exemptions

Are there any industry-specific offences and defences or antitrust exemptions?

The EU block exemption regulations apply in Spain not only with respect to article 101 of the TFEU but also with respect to article 1 of the LDC.

The LDC also contains a de minimis provision that exempts from article 1 agreements between actual or potential competitors which are not restrictive of competition by object, if the parties' combined share of the relevant market does not exceed 10 per cent, as well as agreements between non-competitors if their share of the relevant market does not exceed 15 per cent, provided they do not contain any hard-core restrictions. When competition is restricted in a relevant market by the cumulative effect of parallel agreements, the market share percentage threshold is lowered to 5 per cent. A cumulative effect will not be found if less than 30 per cent of the relevant market is covered by parallel networks of agreements.

Further, the LDC exempts from the application of its articles 1 and 2, conduct, agreements or practices that result from the application of a law. This exemption is interpreted very narrowly and does not cover infringements carried out by, or with the support or knowledge of the public administration or of any entity in the exercise of its administrative duties.

5 Application of the law

Does the law apply to individuals or corporations or both?

The LDC provisions against cartels apply to companies, which are defined as 'any person or entity that carries out an economic activity, irrespective of the legal statute of the organisation and its form of financing'. As a separate sanction, a company's officers or directors can be fined up to €60,000 for their participation in a cartel or other form of agreement or decision violating the LDC.

6 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what legal basis does the authority claim jurisdiction?

The regime governing cartel behaviour can extend to actions outside Spain provided they are capable of having an effect on competition in Spain.

Investigation

7 Steps in an investigation

What are the typical steps in an investigation?

Initiation of investigation

The CNC's Investigations Division can initiate a cartel investigation following a complaint or on its own initiative. In cartel cases most investigations are initiated ex officio following a leniency application. During the initial investigative phase the CNC will typically send out information requests to the investigated parties, the complainant (if there is one) or other interested third parties. The CNC can also conduct dawn raids to gather evidence.

If following this first phase the Investigations Division concludes that the case has no merit, it will propose to the Council to close the investigation. The Council will then decide whether to accept the Investigations Division's proposal, or instruct the Investigation Division to formally open up proceedings.

Instruction phase

The formal opening of proceedings initiates the instruction phase. The Investigations Division is the CNC body in charge of handling this phase, and has 12 months from the date on which the proceedings were formally opened to conclude its investigation.

Opening of proceedings

The formal opening of proceedings will be notified to the investigated parties, who will also receive a copy of the complaint where applicable. The notification will describe the facts on which the decision is based, and the names of the Investigations Division officials in charge of the case. The CNC will post on its website a press release reporting that proceedings have been opened, and briefly outlining the reasons for the investigation and identifying the investigated parties.

Access to the file

Once proceedings are formally open, the investigated parties and the interested parties (eg, the complainant) will be given access to the file. The CNC will typically hand over an electronic copy of the file, which will include all documents contained in the CNC's file, with the exception of those considered confidential. Nevertheless the parties can request access to non-confidential versions of the documents in which business secrets and other confidential information is redacted.

Statement of objections

During the instruction phase the CNC will send requests for information to gather additional facts and evidence to substantiate its case. During this phase, the investigated parties and other interested parties have a right to provide their views and make submissions in their defence. They can also request the Investigations Division to conduct specific fact-finding exercises, such as sending out specific requests for information to third parties.

Once the Investigations Division considers that it has sufficient evidence to support its case it will issue a statement of objections. Upon receipt of the statement of objections, the investigated parties and interested parties will be given 15 working days to reply. During this period they can also request the Investigations Division to carry out additional fact-finding exercises.

Decision proposal and report

After the investigated and interested parties have been given a chance to express their views on the statement of objections, the Investigations Division will proceed to adopt a decision proposal. The investigated and interested parties will again be given the right to provide their views on that proposal within 15 days. The Investigations Division will then submit its decision proposal together with the submissions made by the investigated and interested parties to the CNC Council. This submission ends the Instruction Phase.

Decision phase

Further gathering of information and evidence

The decision phase is conducted by the CNC Council. Once the Council receives the Investigations Division's decision proposal it can, ex officio or at the request of the investigated and interested parties, instruct the Investigations Division to gather additional information or evidence to clarify the conduct under investigation. The investigated parties and interested parties will be given the opportunity to comment on the result of these activities.

Hearing

The Council can also conduct a hearing at the request of the investigated or interested parties, or on its own initiative if it considers it necessary to reach a conclusion on the case.

Final Decision

The Council must adopt its final decision within 18 months from

the date on which proceedings were formally opened by the Investigations Division. The Council will decide whether the investigated conduct constitutes a breach of Spanish or EU competition law, whether the conduct is de minimis and thus exempt from the application of the law, or whether the existence of a breach has not been sufficiently substantiated. If the Council finds an infringement it can impose fines and order the parties to cease their conduct.

Article 52 of the LDC provides for the possibility of early termination of proceedings if the parties offer remedies that address the CNC's concerns. However, this is not applicable to cartel cases.

8 Investigative powers of the authorities

What investigative powers do the authorities have?

The CNC's investigative powers are similar to those of the European Commission. The CNC can gather evidence and information by sending out mandatory information requests. Its powers also include:

- (i) accessing a company's premises as well as the private homes of company employees to conduct an unannounced inspection (dawn raids);
- (ii) reviewing a company's books and records, obtaining copies or extracts of them and retaining them for a period of up to 10 days;
- (iii) sealing a company's premises, books or records for as long as is necessary to carry out the inspection; and
- (iv) questioning company personnel on documents and facts related to the subject matter of the investigation, and recording their responses.

If the investigated company does not consent to the exercise of the CNC's powers listed under (i) to (iii) above, the CNC will need to obtain a judicial order beforehand.

International cooperation

9 Inter-agency cooperation

Is there inter-agency cooperation? If so, what is the legal basis for, and extent of, cooperation?

Interplay between agencies takes place at two levels. Interplay at EU level is governed by EU Regulation 1/2003 and the European Commission Notice on cooperation within the Network of Competition Authorities (2004/C 101/03). EU member state national competition authorities can apply article 101 of the TFEU to cartels that may affect trade between member states. However, where the European Commission initiates proceedings (usually in cartel cases with effects in more than three member states), the national authorities are relieved of their jurisdiction to apply article 101. The European Commission and the national authorities will consult each other and coordinate from the early stages of proceedings to ensure a proper allocation of cases. The European Commission may also request assistance from the CNC to conduct inspections in Spain. Finally, the European Commission can assist in the application of EU competition law by Spanish courts through *amicus curiae* letters.

At a national level, the interplay between the CNC and the competition authorities of the autonomous communities is governed by Act 1/2002, which establishes that the CNC retains sole competence for cartels that have an effect beyond the territory of a single autonomy, as well as for the application of articles 101 and 102 of the TFEU. This legal framework also puts into place an information and communication system between the CNC and the competition authorities of the autonomous communities to ensure coordination as well as an arbitration process to resolve disputes over jurisdiction.

10 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in the jurisdiction?

Please see response to question 9 above.

11 Adjudication

How is a cartel matter adjudicated?

The CNC and the competition authorities of the autonomous communities are responsible for investigating and adjudicating on cartel matters.

Although commercial courts do not have investigatory powers and cannot impose fines, they may declare void an agreement breaching competition law, issue cease-and-desist orders or award damages.

12 Appeal process

What is the appeal process?

The resolutions adopted by the CNC can be reviewed by the courts. More concretely, they can be appealed before the National Court of Spain. Judgments issued by the National Court can in turn be appealed before the Spanish Supreme Court.

The decisions adopted by the competition authorities of the autonomous communities can be appealed before a regional court of first instance. The judgment of this court can in turn be appealed before the provincial courts of appeal and ultimately before the regional High Court.

13 Burden of proof

With which party is the burden of proof?

Proceedings are initiated by the CNC ex officio following a complaint. The burden of proof rests with the CNC. Parties claiming that their agreements are exempted from article 1(3) of the LDC or article 101(3) of the TFEU will have to demonstrate that the conditions for the application of those articles are met.

Sanctions

14 Criminal sanctions

What criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions? Do individuals face imprisonment for cartel conduct?

The LDC does not provide for criminal sanctions for competition law infringements. However, certain provisions of the Spanish Criminal Code (Act 10/1995 of 23 November) could theoretically apply to some competition infringements. Article 284, for instance, provides for criminal sanctions for altering prices through violence, intimidation or deceit. Similarly, articles 262 and 281, impose criminal sanctions for manipulating prices in public tenders or fraudulently limiting the output of raw materials or products of basic need. Criminal sanctions have not, however, ever been imposed for cartel conduct.

15 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

The LDC enables the CNC to impose fines on companies or trade associations that intentionally or negligently infringe its provisions. Additionally, directors or legal representatives can be fined up to €60,000 if they had an active role in the cartel.

16 Civil and administrative sanctions

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

Criminal and administrative sanctions can be imposed for the same anti-competitive conduct, although only individuals are subject to criminal sanctions, which, as indicated above, have never been imposed.

17 Private damage claims and class actions

Are private damage claims or class actions possible?

Individuals and companies that have suffered damages as a result of a cartel can file damage actions against the cartel participants before the commercial courts. Under Spanish law not only individuals but also consumer associations can bring damage actions.

To date, only a small number of damages actions based on competition law breaches have come before the Spanish courts, mostly relating to abuses of a dominant position (article 2 of the LDC, article 102 of the TFEU).

One example of a private damages claim against cartel participants is the action by various chocolate and biscuit manufactures against ACOR, a member of the Spanish sugar cartel investigated and fined by the former Spanish Competition Tribunal (Case 426/98). Initially, the Court of First Instance of Valladolid (judgment 248/2009 of 20 February 2009) rejected the claim, but the Provincial Appeals Court of Valladolid admitted the appeal and held ACOR liable for €1.1 million in damages (judgment 261/2009 of 9 October 2009). Recently, the Supreme Court upheld this decision (judgment of 8 June 2012). In relation to the same cartel, the Court of First Instance of Madrid condemned Ebro Foods SA to pay €2 million in damages (judgment 59/2010 of 1 March 2010). Ebro Foods filed an appeal against this ruling and was acquitted by the Provincial Appeals Court of Madrid (judgment of 3 October 2011). An appeal to this acquittal is pending before the Spanish Supreme Court.

18 Recent fines and penalties

What recent fines or other penalties are noteworthy?

The size of the fine will vary depending on whether the infringement is regarded as minor, serious or very serious. The LDC qualifies cartels as very serious infringements, which can attract fines of up to 10 per cent of the total turnover of the infringing company in the business year immediately preceding the year the fine was imposed. In those instances where the exact turnover cannot be calculated, the CNC may impose a fine of up to €10 million.

The method for calculating fines, as established in the LDC and the Notice on Calculation of Fines, follows three basic steps:

- first, determining the base amount, which is a percentage of the sales affected by the infringement. To determine the base amount, the CNC will take into consideration a series of criteria such as: the size and characteristics of the market, the market share held by the responsible company, the scale and scope of the infringement, its duration and its effects;
- second, applying an adjustment factor to the base amount, based on aggravating (eg, if the company was the cartel's instigator, if it obstructed the investigation, or if there is recidivism) and mitigating (eg, adopting actions intended to repair the damage caused) circumstances; and
- third, adjusting the amount obtained from the second step to the 10 per cent ceiling set out in the LDC and to the illicit gains obtained as a result of the infringement.

In 2011, the CNC levied a total of €155,734,027 in fines for anti-competitive conduct not limited to cartels. Historically, the CNC's

policy has been to deter companies from cartel-like behaviour through heavy fines. For instance, in a recent case, members of a cartel for professional hair care products (Peluquería profesional, S/0086/08) received an aggregate €60.9 million in fines.

Besides sanctions on infringing companies or trade associations, individuals (ie, officers and directors) may be subject to fines of up to €60,000 if they are deemed to have actively participated in the anti-competitive conduct. To date, there have been no cases where individuals have been fined under the LDC. However, on 21 September 2011, the Council of the CNC fined Trasmediterránea (in case SNC/0014/11) for obstructing an investigation and consequently requested the Investigations Division to assess if it was necessary to open proceedings against the company's regional director and the director of its subsidiary, Europa Ferries.

Sentencing

19 Sentencing guidelines

Do sentencing guidelines exist?

As indicated in answer to question 1, the CNC has adopted a set of guidelines on the calculation of fines for competition law infringements and on the leniency process.

20 Sentencing guidelines and the adjudicator

Are sentencing guidelines binding on the adjudicator?

The above-mentioned guidelines are not binding on the CNC. The CNC has stated, however, that it will deviate from them only when such deviation is duly justified, and always in accordance with the LDC.

21 Leniency and immunity programmes

Is there a leniency or immunity programme?

The LDC established a leniency programme on the basis of which the CNC can grant complete immunity as well as a reduction of the fines in cartel cases. Royal Decree 261/2008 further develops the leniency programme. As already mentioned, the CNC has issued a set of guidelines on the practicalities of a leniency application.

22 Elements of a leniency or immunity programme

What are the basic elements of a leniency or immunity programme?

Immunity and reduction of the fine applications can be submitted before the CNC or the competition authorities of the autonomous communities. Both the applicant company and its officers and directors may benefit from immunity and a reduction of the fine.

The CNC will grant total immunity to the first infringing company that applies for leniency where either: the information and evidence submitted by the company enables the Investigations Division to verify an infringement of article 1 of the LDC or 101 of the TFEU, or to carry out dawn raids.

A reduction of the fine is available to companies which submit evidence representing significant added value with respect to the evidence already in the CNC's possession. Immunity and fine reductions are also subject to the company immediately stopping any activity linked to the cartel (unless doing so may interfere with the investigation), cooperating with the CNC throughout the entire process, not destroying evidence and not disclosing information about its application to third parties other than the European Commission or other national competition authorities. The obligation to cooperate is also binding on the applicant's officers and directors who wish to benefit from the leniency process.

Companies who have coerced other companies into participat-

ing in the cartel will not benefit from immunity but they can still apply for a fine reduction.

In 2011 the CNC adopted six resolutions under the leniency programme.

23 First in

What is the importance of being 'first in' to cooperate?

The 'first-in' leniency applicant will benefit from full immunity from fines if the above described conditions are met.

24 Going in second

What is the importance of going in second? Is there an 'immunity plus' or 'amnesty plus' option?

The second company to provide evidence of the alleged infringement (provided the evidence represents significant added value with respect to the evidence already in the CNC's possession) can obtain a 30 to 50 per cent reduction in the fine, the third company a 20 to 30 per cent reduction, and successive companies up to a 20 per cent reduction.

The LDC does not provide for 'immunity plus' or 'amnesty plus' options.

25 Approaching the authorities

What is the best time to approach the authorities when seeking leniency or immunity? Are there deadlines for applying for leniency or immunity, or for perfecting a marker?

As indicated, to benefit from immunity, companies must apply for leniency before the CNC gathers evidence that is sufficient to either carry out an inspection or verify an infringement of article 1 of the LDC.

To benefit from a fine reduction, companies must submit evidence that represents significant added value with respect to the evidence already in the CNC's possession. The first and second companies to provide significant added value will benefit from bigger reductions.

It is therefore important to approach the CNC as soon as possible after conducting a proper internal investigation of the facts and a legal assessment of the pros and cons of applying for leniency.

26 Confidentiality

What confidentiality is afforded to the leniency or immunity applicant and any other cooperating party?

Leniency applications, including the applicant's identity, are kept confidential. For this purpose, the CNC will set up a separate file with all the data related to the application and any confidential documents.

However, once the CNC formally opens proceedings, other investigated parties will have access to the data and documents which, despite being part of the confidential file, are necessary to respond to the allegations made in the statement of objections. Confidential information and business secrets will still be redacted from those documents to the extent their disclosure is not necessary to respond to the statement of objections.

Access to oral statements is limited, and they can only be consulted at the CNC's premises and cannot be copied or reproduced.

Access to the file will only be granted on condition that the information contained in the file is only used within the framework of the CNC's proceedings.

27 Successful leniency or immunity applicant

What is needed to be a successful leniency or immunity applicant?

See questions 22 to 25.

28 Plea bargains

Does the enforcement agency have the authority to enter into a 'plea bargain' or a binding resolution to resolve liability and penalty for alleged cartel activity?

The CNC may terminate infringement proceedings if the investigated parties offer remedies. This process, however, does not apply to cartels. The LDC does also not provide for a cartel settlement procedure like the one introduced by the European Commission in 2008.

29 Corporate defendant and employees

What is the effect of leniency or immunity granted to a corporate defendant on its current and former employees?

The immunity or fine reduction granted to a company will also benefit its officers and the members of its management bodies, provided that they have cooperated with the CNC throughout the process. Otherwise, the LDC does not make any reference to former or current employees of a company, but, as mentioned, there are no cases where criminal law has been applied to individuals involved in cartel conduct.

30 Cooperation

What guarantee of leniency or immunity exists if a party cooperates?

An immunity or reduction of the fine applicant that complies with the requirements of the LDC and the Royal Decree has a right to be granted the requested immunity or fine reduction.

Update and trends

The most relevant development is the proposal to merge the CNC with the sector-specific regulatory agencies. If adopted, this reform could have a significant impact on how cartel regulation is enforced in Spain (see question 2).

31 Dealing with the enforcement agency

What are the practical steps in dealing with the enforcement agency?

Applications for leniency may be submitted in written or electronic form, or orally. Given that the order of receipt is crucial, the applicant may request the CNC to issue a receipt of submission, indicating the date and time the application was entered into the CNC's registry.

Applications for immunity should include evidence enabling the CNC to verify an infringement or to carry out dawn raids. However, the Royal Decree allows companies to apply for a marker and later submit the required evidence before a deadline – typically a few weeks later – set by the CNC. To obtain a marker, companies must identify themselves and the other participants in the cartel, provide a detailed description of the conduct, and indicate whether they have filed or intend to file immunity applications with other competition authorities in relation to the same cartel.

32 Ongoing policy assessments and reviews

Are there any ongoing or proposed leniency and immunity policy assessments or policy reviews?

Not that we are aware of.

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Defending a case

33 Representation

May counsel represent employees under investigation as well as the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

Unless there is a conflict of interest between the employees and the corporation, there are no provisions specifically limiting the type and number of entities and individuals that can be represented by a single legal counsel in a cartel proceeding. However, it is often not possible to determine at the outset whether such conflicts may arise, and depending on the circumstances, it may be advisable for present or former employees to be represented by separate legal counsel.

34 Multiple corporate defendants

May counsel represent multiple corporate defendants?

In theory, the same legal counsel may represent multiple corporate defendants if there is no conflict of interest; however in practice, each corporate defendant usually has its own counsel.

35 Payment of legal costs

May a corporation pay the legal costs of and penalties imposed on its employees?

There are no legal provisions that prevent a company from assuming the legal costs of its employees' defence in cartel proceedings.

36 Getting the fine down

What is the optimal way in which to get the fine down?

See question 21.

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