

THE CARTELS AND
LENIENCY REVIEW

TENTH EDITION

Editors

John Buretta and John Terzaken

THE LAWREVIEWS

THE
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LENIENCY REVIEW

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CONTENTS

PREFACE.....	vii
<i>John Buretta and John Terzaken</i>	
Chapter 1	ARGENTINA..... 1
	<i>Camila Corvalán</i>
Chapter 2	BELGIUM 11
	<i>Stefaan Raes and Vincent Mussche</i>
Chapter 3	CANADA..... 22
	<i>Arlan Gates and Yana Ermak</i>
Chapter 4	CHINA..... 36
	<i>Wei Huang, Wendy Zhou and Bei Yin</i>
Chapter 5	CYPRUS..... 48
	<i>Nicolas Constantinides</i>
Chapter 6	EUROPEAN UNION 61
	<i>Philippe Chappatte and Paul Walter</i>
Chapter 7	GERMANY..... 74
	<i>Fabian Badtke, Alexander Birnstiel and Till Steinvorth</i>
Chapter 8	GREECE..... 92
	<i>Dimitris Loukas and Athanasios Taliadouros</i>
Chapter 9	HONG KONG 105
	<i>Felix K H Ng, Olivia M T Fung and Christina H K Ma</i>
Chapter 10	INDIA..... 121
	<i>Farhad Sorabjee, Vaibhav Choukse, Ela Bali and Aditi Khanna</i>

Contents

Chapter 11	INDONESIA.....	133
	<i>HMBC Rikrik Rizkiyana, Farid Fauzi Nasution, Vovo Iswanto and Anastasia Pritabayu R D</i>	
Chapter 12	ITALY.....	142
	<i>Gian Luca Zampa, Ermelinda Spinelli and Alessandro Di Giò</i>	
Chapter 13	JAPAN.....	156
	<i>Hideto Ishida and Yubki Tanaka</i>	
Chapter 14	MEXICO.....	168
	<i>Omar Guerrero Rodríguez and Martín Michaus Fernández</i>	
Chapter 15	NEW ZEALAND.....	188
	<i>Jennifer Hambleton, April Payne and Anna Percy</i>	
Chapter 16	POLAND.....	202
	<i>Małgorzata Szwał and Wojciech Podlasiński</i>	
Chapter 17	PORTUGAL.....	217
	<i>Tânia Luísa Faria and Margot Lopes Martins</i>	
Chapter 18	RUSSIA.....	234
	<i>Maxim Boulba and Kristina Potapova</i>	
Chapter 19	SAUDI ARABIA.....	243
	<i>Belal Hashmi</i>	
Chapter 20	SINGAPORE.....	252
	<i>Daren Shiau, Elsa Chen and Scott Clements</i>	
Chapter 21	SPAIN.....	264
	<i>Alfonso Gutiérrez and Jokin Beltrán de Lubiano</i>	
Chapter 22	SWITZERLAND.....	277
	<i>Monique Sturny and Michael Schmassmann</i>	
Chapter 23	TURKEY.....	287
	<i>Gönenç Gürkaynak</i>	

Contents

Chapter 24	UNITED KINGDOM	300
	<i>Philippe Chappatte and Paul Walter</i>	
Chapter 25	UNITED STATES	313
	<i>John Buretta and John Terzaken</i>	
Appendix 1	ABOUT THE AUTHORS	347
Appendix 2	CONTRIBUTORS' CONTACT DETAILS	365

PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcers. Some notable cartels have managed to remain intact for as long as a decade before being uncovered. Some may never see the light of day. However, for those that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from 25 jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. Stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

This book serves as a useful resource for the local practitioner, as well as those faced with navigating the global regulatory thicket in international cartel investigations. The proliferation of cartel enforcement and associated leniency programmes continues to increase the number and degree of different procedural, substantive and enforcement practice demands on clients ensnared in investigations of international infringements. Counsel for these clients must manage the various burdens imposed by differing authorities, including by prioritising and sequencing responses to competing requests across jurisdictions, and evaluating which requests can be deferred or negotiated to avoid complicating matters in other jurisdictions. But these logistical challenges are only the beginning, as counsel must also be prepared to wrestle with competing standards among authorities on issues such as employee liability, confidentiality, privilege, privacy, document preservation and many others, as well as considering the collateral implications of the potential involvement of non-antitrust regulators.

The authors are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations and many have served in senior positions in government. They know both what the law says and how it is actually enforced,

and we think you will find their guidance regarding the practices of local competition authorities invaluable. This book seeks to provide both breadth of coverage (with a chapter on each of the jurisdictions) and analytical depth for those practitioners who may find themselves on the front line of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the 10th edition of *The Cartels and Leniency Review*. We hope you will find it a useful resource. The views expressed are those of the authors, not of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

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Previously, John was director of criminal enforcement at the US Department of Justice (DOJ), Antitrust Division, where he had management responsibility for the Division's criminal investigations and litigation nationwide. During his tenure with the Antitrust Division, John investigated, litigated and presided over some of the largest global cartel investigations undertaken by the DOJ. He also served as the Division's primary liaison with state, federal and foreign law enforcement authorities, and as the Division's financial fraud coordinator for inter-agency prosecutions, investigations and information sharing. John's DOJ service earned him awards of distinction from the Attorney General of the United States and the Assistant Attorney General for the Antitrust Division.

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