
Emergency decree establishing merger control

Lima Office

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Emergency decree 013-2019, establishing merger control in Peru, published on November 19, 2019

- Decree to come into force on August 20, 2020 (nine months after its publication).
- Ministry of Economy and Finance to issue corresponding regulation in next six months.
- Competent authority in Peru for authorizing business concentrations is Peruvian National Institute for the Defense of Competition and the Protection of Intellectual Property ("INDECOPI").



What is the purpose of merger control?

- > To assess the effects of a concentration to identify whether it will significantly restrict competition in the markets involved.
- > The authority has the burden of proving the anti-competitive impact.
- > The agents involved in the concentration have the burden of proving the economic efficiencies of the transaction.

What is considered an economic concentration?

- > It is any act or transaction involving a transfer or change in the permanent control of a company or part of it.
- > It can occur as a result of:
 - the merger of two or more economic agents;
 - the acquisition of two or more economic agents;
 - the incorporation by two or more agents of a joint venture; or
 - the acquisition of direct or indirect control over another party's operating assets.
- > Corporate growth resulting from transactions exclusively performed within the same economic group is not included within the scope of application of the regulation.

Who must apply for prior authorization?

- > Parties that implement an economic concentration action and transaction must apply for monitoring prior authorization if the following thresholds are met:
 - the total value of the annual sales or gross revenues in Peru of the companies involved is equal to or greater than 118,000 Peruvian tax units ("UITs")—approximately USD \$150 billion; and
 - the total value of the annual sales or gross revenues in Peru of at least two of the companies involved is equal to or greater than 18,000 UITs—approximately \$23 million.
- > In addition to INDECOP's merger control, the companies within the scope of the Peruvian Superintendence of Banks, Insurers and Private Pensions Funds ("SBS") require



authorization from SBS, each within the scope of its competences. Companies that receive deposits from the public or insurance companies are exempted from INDECOPI's merger control. In this case, only the SBS authorization is required.

- Companies within the scope of the Peruvian Securities Market Regulator ("SMV") require authorization from INDECOPI and from SMV, each within the scope of its competences.

What does the merger control procedure consist of?

- INDECOPI assesses the effects of the concentration to identify whether it will significantly restrict competition in the markets involved.
- The procedure can have two phases:
 - Phase one: in 30 business days, INDECOPI decides whether the concentration falls within the scope of the decree or has no restrictive effects on competition, in which case it authorizes the concentration.
 - Phase two: if concerns regarding the effects of the transaction on competition arise in the first phase, a second assessment phase starts within 90 business days, which may be extended for another 30 business days. Not meeting these deadlines results in the application of positive administrative silence. After the analysis, INDECOPI can: (i) authorize the transaction if the agents prove the existence of economic efficiencies; (ii) authorize the transactions with conditions aimed at preventing or mitigating the potential effects of the concentration; or (iii) not authorize the transaction.

What are the consequences of carrying out a concentration without authorization?

- A transaction without authorization has no legal effect. The non-effectiveness of a concentration does not require the issuance of an administrative order by the competent body.
- INDECOPI can establish corrective measures for agents to dissolve the business concentration. Not meeting these corrective measures entitles INDECOPI to impose coercive fines.
- In addition, INDECOPI can impose fines for over 1,000 UITs (approximately \$1.2 million) with a limit of 12% of the sales or gross revenues of the offender or its economic group.



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