



Concurrences

REVUE DES DROITS DE LA CONCURRENCE | COMPETITION LAW REVIEW

Merger Control in Latin America

A Jurisdictional Guide

Paulo Burnier da Silveira, Pamela Sittenfeld

Introduction by Ivo Gagliuffi | Foreword by Cani Fernández

Merger Control
in Latin America
A Jurisdictional Guide

Presentation by
Ivo Gagliuffi

Foreword by
Cani Fernández

Editors
Paulo Burnier da Silveira
Pamela Sittenfeld

PRESENTATION

IVO GAGLIUFFI*

*Former President of the Peruvian Competition Authority
(Instituto Nacional de Defensa de la Competencia
y de la Protección de la Propiedad Intelectual)*

It is my greatest pleasure to write a short presentation to *Merger Control in Latin America: A Jurisdictional Guide* edited by Pamela Sittenfeld and Paulo Burnier da Silveira. Both editors are leading competition experts in the region and they have managed to put together an excellent list of authors to write the chapters of this book.

The book provides a comprehensive overview of merger control in Latin America, which has today 17 merger control regimes. Each one of these jurisdictions is subject to a detailed analysis through the chapters of this book. In addition, a final chapter provides a glance at merger control in the Caribbean countries, completing the full picture of the topic in the region.

The publication is also very timely: many jurisdictions in the region are still in their early days of merger control. The introductory chapter written by the co-editors highlights this recent proliferation of merger regimes in the region. It is also the case that Peru, my home country, adopted new legislation in 2019 which is expected to enter into effect during 2021.

The adoption of merger control represents a great challenge for the countries of the region. This includes challenges for governments and competition authorities related to the implementation of the new legislation, as well as to companies that will have to comply with the new rules. In this context, the book also provides useful reflections on the rules and practices of competition authorities, which may add to efforts around the world to promote greater convergence in the field of competition law.

* Ivo Gagliuffi is former president of the Peruvian Competition Authority (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI). He holds a law degree from the University of Lima and a postgraduate degree in corporate law from the University of Salamanca, specialising in competition law and intellectual property.

Presentation

Furthermore, because of the economic crisis generated by the COVID-19 pandemic, there is an expectation that a lot of businesses will have to leave markets, increasing concentrations and making merger control assessment harder for the competition authorities. Moreover, it is feasible that, to survive, undertakings will seek to merge with companies in stronger positions, thus stepping up the number of operations to review. Likewise, I think that authorities would address more frequently “failing firm defences” in their merger control cases, which will require an incredibly careful analysis.

In sum, the book offers a complete jurisdictional guide to practitioners and any other interested audience. It is a must-read for anyone who wishes to understand or learn more about merger control in Latin America and the Caribbean.

I wish you a great read!

FOREWORD

CANI FERNÁNDEZ

*President, National Commission for Markets
and Competition (CNMC, Spain)*

Competition enforcement benefits significantly from international cooperation among agencies – thanks to forums such as the OECD or ICN, or the ECN at a more regional level – an unstoppable trend witnessed over the last two decades in all enforcement areas, particularly mergers. Cooperation among national competition authorities has become essential to ensure consistency in our respective decisions, allowing for the creation of a global level playing field.

In our increasingly interconnected world, with the explosion of the digital economy, international cooperation in the analysis of merger control is more necessary than ever before, given the scope, dynamism and scale of the digital revolution. I am convinced that sharing the experience gained in the enforcement of competition policy and advocacy in this area, in a timely and fluid way, will also benefit companies operating globally.

Many of the issues that digital mergers raise are not entirely new; it is often the actual scale and the speed of change that can be challenging. In this regard, features such as multisided markets, network effects and economies of scale are not new, but digitalisation greatly broadens their scope. The same can be said for innovation, which often plays a very relevant role in these markets and can be a key parameter for competition. In this context, there is enormous potential for competition authorities – regardless of their respective size and level of maturity – to join forces in sharing approaches, best practices, studies and experiences on competition enforcement issues.

The experience of international cooperation at a regional level gained by the Member States of the European Union, between themselves and with the EU Commission, provides food for thought, from the perspective of both the formal and informal mechanisms of cooperation.

In the area of merger control, cooperation under the framework of the EU Merger Regulation and, in particular, through the referral system within the EU has been extremely useful in overcoming some of the challenges that characterise digital mergers. Referrals give flexibility to the European system, where merger review at EU level coexists with national merger reviews, allowing for the best-placed authority to undertake the analysis of the transaction, even when the authority did not have initially jurisdiction to do so. This is, for instance, the case of the acquisition by Apple of Shazam, which did not meet the EU merger control threshold but was referred to the European Commission for review by a number of national competition authorities, whose merger control regimes captured the transaction under market-share thresholds, and decided to refer the case

to the European Commission in view of its cross-border effects¹. The referral mechanism also allows the notifying parties themselves to request that a case be referred. One such case was *Facebook/WhatsApp*²; again, the case met market-share thresholds in certain Member States and the parties requested the merger review to be referred to the EU Commission during the pre-notification phase.

For all competition matters, the European Competition Network (ECN) constitutes the main cooperation framework between the EU national competition authorities and the Commission for the enforcement of EU competition policy. It also provides a good forum for more informal but continuous cooperation.

In this context the ECN+ Directive – adopted on 11 January 2019, and to be transposed into national legislation of Member States by 4 February 2021 – will empower the competition authorities of Member States with the means to apply the rules on competition more effectively and guarantee the proper functioning of the internal market, helping to consolidate a level playing field through equivalent powers of enforcement of EU (and, consequently, national) competition law.

On a broader international level, both the OECD and the ICN have played a decisive role in facilitating cooperation between competition authorities, creating fertile forums for discussion and promotion of best practices.

Merger control in Latin America and the Caribbean will certainly benefit from closer cooperation between their competition authorities – either by sharing public information at different stages of an investigation, sharing theories of harm, obtaining appropriate waivers or studying the most suitable remedies to apply, or even adopting consistent best practices. Some of the merger control regimes in the region are quite young, and their authorities will certainly learn from the experience of more established ones. Getting to know and understand the characteristics, similarities or differences of other neighbouring regimes will help not only companies, but authorities as well, paving the way for consistent merger control in the region. To this end, this work I have the honour to introduce is a timely, useful and necessary tool: a thorough, practical and complete view provided by knowledgeable professionals of the actual status of merger control regimes in the region.

¹ *Apple/Shazam* (Case M.8788) Commission Decision C(2018) 5748 final

² (Case Comp/M.7217) Commission Decision C(2014) 7239 final.

Contributors

Cynthia Andino

Independent Consultant

Favio Batres P

BLP

Paula Bauer

C.R. & F. Rojas Abogados

Paulo Burnier da Silveira

OECD

Virginia Campás Alcalde

Creel, García-Cuéllar, Aiza y Enriquez

Vinicius Carvalho

Vinicius Marques de Carvalho Advogados

Camila Chamorro Poma

DiezCanseco

Luis Diez Canseco Núñez

DiezCanseco

Marvin Francisco Discua Singh

*Commission for the Defence and
Promotion of Competition of Honduras*

Alejandro Gallotti

LEGA

Luis García Santos Coy

Creel, García-Cuéllar, Aiza y Enriquez

Marc Jones

CARICOM Competition Commission

Natalia Jul

Uruguayan Competition Authority

Luciana Macedo

Uruguayan Competition Authority

Pablo Márquez

Márquez Barrera Castañeda Ramírez

Marcela Mattiuzzo

Vinicius Marques de Carvalho Advogados

Carlos Mena Labarthe

Creel, García-Cuéllar, Aiza y Enriquez

Jorge Molina Mendoza

Fabrega Molino

Darío Morales Herrera

DiezCanseco

Angélica Noboa Págan

Noboa Pagán Abogados/Baker McKenzie

Ernesto Rizo Pallais

BLP

Diego Rojas

C.R. & F. Rojas Abogados

Maria Eduarda Scott

Vinicius Marques de Carvalho Advogados

Mauricio Serralde Rodríguez

Creel, García-Cuéllar, Aiza y Enriquez

Pamela Sittenfeld

Ministry of Trade of Costa Rica

David A. Sperber Vilhelm

AntiTrust Consultores & Abogados

Taimoon Stewart

The University of West Indies

Pablo Trevisán

Instituto de Derecho de la Competencia

Regina Vargas

Competition Authority of El Salvador

Uri Weinstok

BLP

Mario Ybar

Garrigues

TABLE OF CONTENTS

| | |
|---|-------|
| Presentation | V |
| Foreword | VII |
| Contributors | VII |
| Table of Contents | XI |
| Biographies | XXIII |
| INTRODUCTION | 1 |
| <i>Paulo Burnier da Silveira (OECD)</i> | |
| <i>Pamela Sittenfeld (Ministry of Trade of Costa Rica)</i> | |
| I. Overview of Merger Control in the Region..... | 2 |
| II. Particularities of Merger Control in the Region..... | 3 |
| 1. <i>Evolution From Ex Post to Ex Ante Regimes</i> | 3 |
| 2. <i>Special Provisions to Certain Economic Sectors</i> | 4 |
| 3. <i>Tailored Provisions Related to Small Economies</i> | 5 |
| 4. <i>Procedural Differences in Assessing Simple Transactions</i> | 5 |
| III. Future Perspectives..... | 6 |
| ARGENTINA | 7 |
| <i>Pablo Trevisan (IDC – Instituto de Derecho de la Competencia)</i> | |
| I. Introduction..... | 8 |
| 1. Brief Overview..... | 8 |
| 2. Institutional Set-Up..... | 10 |
| 3. Type of Merger Control..... | 11 |
| II. Scope of Application..... | 14 |
| 1. Definition of Notifiable Transaction..... | 14 |
| 2. Material Scope..... | 14 |
| 3. Geographical Scope..... | 14 |
| 4. Thresholds..... | 14 |
| III. Procedure..... | 15 |
| 1. Launch of Procedure..... | 15 |
| 2. Development of Procedure..... | 15 |
| 3. Conclusion of Procedure..... | 16 |
| 4. Sanctions..... | 16 |
| IV. Substance..... | 17 |
| 1. Competition Analysis..... | 17 |
| 2. Statistics..... | 17 |
| 3. Case Law Illustration..... | 17 |

| | |
|---|----|
| BOLIVIA | 21 |
| <i>Paula Bauer and Diego Rojas (C.R. & F. Rojas Abogados)</i> | |
| I. Introduction | 22 |
| 1. Brief Overview | 22 |
| 2. Institutional Set-Up | 22 |
| 3. Type of Merger Control | 23 |
| II. Scope of Application | 24 |
| 1. Definition of Notifiable Transaction | 24 |
| 2. Material Scope | 25 |
| 3. Geographical Scope | 26 |
| 4. Thresholds | 26 |
| III. Procedure | 27 |
| 1. Launch of Procedure | 27 |
| 2. Development of Procedure | 27 |
| 3. Conclusion of Procedure | 28 |
| 4. Sanctions | 28 |
| IV. Substance | 29 |
| 1. Competition Analysis | 29 |
| 2. Case Law Illustration | 30 |
| | |
| BRAZIL | 33 |
| <i>Vinicius Marques de Carvalho, Marcela Mattiuzzo and Maria Eduarda Scott (VMCA)</i> | |
| I. Introduction | 34 |
| 1. Brief Overview | 34 |
| 2. Institutional Set-Up | 34 |
| 3. Type of Merger Control | 36 |
| II. Scope of Application | 36 |
| 1. Definition of Notifiable Transaction | 36 |
| 2. Material Scope | 38 |
| 3. Geographical Scope | 39 |
| 4. Thresholds | 39 |
| III. Procedure | 42 |
| 1. Launch of Procedure | 42 |
| 2. Development of Procedure | 43 |
| 3. Conclusion of Procedure | 44 |
| 4. Sanctions | 45 |
| IV. Substance | 48 |
| 1. Competition Analysis | 48 |
| 2. Statistics | 49 |
| 3. Case Law Illustration | 50 |

| | |
|--|--------|
| CHILE | 51 |
| <i>Mario Ybar (Garrigues)</i> | |
| I. Introduction..... | 52 |
| 1. Brief Overview..... | 52 |
| 2. Institutional Set-Up..... | 52 |
| 3. Type of Merger Control..... | 53 |
| II. Scope of Application..... | 53 |
| 1. Definition of Notifiable Transaction..... | 53 |
| 2. Material Scope..... | 54 |
| 3. Geographical Scope..... | 54 |
| 4. Thresholds..... | 54 |
| III. Procedure..... | 55 |
| 1. Launch of Procedure..... | 55 |
| 2. Development of Procedure..... | 55 |
| 3. Conclusion of Procedure..... | 56 |
| 4. Sanctions..... | 57 |
| IV. Substance..... | 57 |
| 1. Competition Analysis..... | 57 |
| 2. Statistics..... | 58 |
| 3. Case Law Illustration..... | 58 |
| COLOMBIA | 61 |
| <i>Pablo Márquez (Márquez Barrera Castañeda Ramírez)</i> | |
| I. Introduction..... | 62 |
| 1. Brief Overview..... | 62 |
| 2. Institutional Set-Up..... | 62 |
| 3. Type of Merger Control..... | 63 |
| II. Scope of Application..... | 63 |
| 1. Definition of Notifiable Transaction..... | 63 |
| 2. Material Scope..... | 64 |
| 3. Geographical Scope..... | 65 |
| 4. Thresholds..... | 65 |
| III. Procedure..... | 66 |
| 1. Launch of Procedure..... | 66 |
| A. <i>Fast-Track Procedure</i> | 66 |
| B. <i>Pre-Evaluation Procedure</i> | 67 |
| 2. Development of Procedure..... | 67 |
| A. <i>Notification or Fast-Track Procedure</i> | 67 |
| B. <i>Pre-Evaluation Request</i> | 68 |
| C. <i>Information and Confidentiality</i> | 68 |
| D. <i>Third Parties</i> | 69 |
| 3. Conclusion of Procedure..... | 70 |
| 4. Sanctions..... | 71 |
| 5. Remedies..... | 72 |

Table of contents

| | |
|---|-----|
| 6. Information Exchange and Cooperation..... | 74 |
| 7. Carve-Outs..... | 74 |
| IV. Substance..... | 75 |
| 1. Competition Analysis..... | 75 |
| 2. Market Definition..... | 76 |
| 3. Defences..... | 78 |
| A. <i>The Efficiency Defence</i> | 78 |
| B. <i>The Failing Firm Defence</i> | 78 |
| 4. Statistics..... | 79 |
| 5. Case Law Illustration..... | 80 |
| COSTA RICA | 83 |
| <i>Uri Weinstok (BLP)</i> | |
| I. Introduction..... | 84 |
| 1. Brief Overview..... | 84 |
| 2. Institutional Set-Up..... | 85 |
| 3. Type of Merger Control..... | 86 |
| II. Scope of Application..... | 86 |
| 1. Definition of Concentration..... | 86 |
| 2. Material Scope..... | 87 |
| 3. Geographical Scope..... | 88 |
| 4. Thresholds..... | 88 |
| III. Procedure..... | 89 |
| 1. Launch of Procedure..... | 89 |
| 2. Development of Procedure..... | 90 |
| 3. Conclusion of Procedure..... | 92 |
| 4. Sanctions..... | 93 |
| 5. Special Note on the Financial Sector..... | 93 |
| IV. Substance..... | 94 |
| 1. Competition Analysis..... | 94 |
| 2. Statistics..... | 96 |
| 3. Case Law Illustration..... | 96 |
| DOMINICAN REPUBLIC | 99 |
| <i>Angelica Noboa Págan (Noboa Pagán Abogados Baker McKenzie)</i> | |
| I. Introduction..... | 100 |
| 1. Brief Overview..... | 100 |
| 2. Institutional Set-Up..... | 101 |
| 3. Type of Merger Control..... | 102 |
| II. Scope of Application..... | 103 |
| 1. Definition of a Notifiable Transaction..... | 103 |
| 2. Material Scope..... | 104 |
| 3. Geographical Scope..... | 105 |
| 4. Thresholds..... | 105 |

| | |
|--|-----|
| III. Procedure | 106 |
| 1. Launch of Procedure..... | 106 |
| 2. Development of Procedure | 107 |
| 3. Conclusion of Procedure..... | 109 |
| 4. Sanctions | 110 |
| IV. Substance..... | 110 |
| 1. Competition Analysis..... | 110 |
| 2. Statistics..... | 111 |
| 3. Case Law Illustration..... | 112 |
| ECUADOR | 115 |
| <i>David A. Sperber Vilhelm (AntiTrust Consultores & Abogados)</i> | |
| I. Introduction | 116 |
| 1. Brief Overview..... | 116 |
| 2. Institutional Set-Up..... | 117 |
| 3. Type of Merger Control | 117 |
| II. Scope of Application..... | 118 |
| 1. Definition of Notifiable Transaction..... | 118 |
| 2. Material Scope | 118 |
| 3. Geographical Scope | 118 |
| 4. Thresholds | 118 |
| III. Procedure | 119 |
| 1. Launch of Procedure..... | 119 |
| 2. Development of Procedure | 120 |
| 3. Conclusion of Procedure..... | 121 |
| 4. Sanctions | 121 |
| IV. Substance..... | 122 |
| 1. Competition Analysis..... | 122 |
| 2. Statistics..... | 122 |
| 3. Case Law Illustration..... | 123 |
| EL SALVADOR | 125 |
| <i>Regina Vargas (Superintendencia de Competencia)</i> | |
| I. Introduction | 126 |
| 1. Brief Overview..... | 126 |
| 2. Institutional Set-Up..... | 127 |
| 3. Type of Merger Control | 128 |
| II. Scope of Application..... | 129 |
| 1. Definition of a Notifiable Transaction | 129 |
| 2. Material Scope | 130 |
| 3. Geographical Scope | 130 |
| 4. Thresholds | 130 |

| | |
|--|------------|
| III. Procedure | 131 |
| 1. Launch of Procedure..... | 131 |
| 2. Development of Procedure | 132 |
| 3. Conclusion of Procedure..... | 133 |
| 4. Sanctions | 135 |
| IV. Substance..... | 136 |
| 1. Competition Analysis..... | 136 |
| 2. Statistics..... | 137 |
| 3. Case Law Illustration..... | 137 |
| HONDURAS..... | 141 |
| <i>Marvin Francisco Discua Singh (Commission for the Defence and Promotion of Competition)</i> | |
| I. Introduction | 142 |
| 1. Origins of the Competition Legislation | 142 |
| 2. The Law for the Defence and Promotion of Competition | 143 |
| 3. The Commission for the Defence and Promotion of Competition..... | 144 |
| 4. Mergers: Control of a Preventive Nature..... | 145 |
| II. Scope of Application..... | 145 |
| 1. Definition of Merger..... | 145 |
| 2. Material Scope | 146 |
| 3. Geographical Scope | 146 |
| 4. Thresholds | 146 |
| III. Procedure | 147 |
| 1. Compulsory <i>Ex Ante</i> Notification and Verification | 147 |
| A. <i>Ordinary or Relative Procedure of Mergers as Prescribed in the Law</i> | 147 |
| B. <i>Special Procedure to Authorise Mergers in Article 13 of the Regulation</i> | 148 |
| C. <i>Payment for Verification of Mergers</i> | 149 |
| D. <i>Limitation in the Requests for Mergers</i> | 149 |
| E. <i>Publicity Related to Mergers</i> | 150 |
| 2. Development of Procedure | 150 |
| A. <i>Merger Decisions</i> | 151 |
| B. <i>Corrective Measures</i> | 151 |
| C. <i>Third-Party Participation</i> | 151 |
| D. <i>Participation of National and Foreign Entities</i> | 152 |
| 3. Conclusion of Procedure..... | 152 |
| A. <i>Authorisation or Approval of the Planned Merger</i> | 153 |
| B. <i>Denial or Prohibition of a Merger</i> | 153 |
| C. <i>Authorisation with Conditional Measures</i> | 153 |
| D. <i>The Commission: Sole Administrative Authority</i> | 154 |
| E. <i>Judicial Hearing</i> | 154 |
| F. <i>Fulfilling or Monitoring of Conditions</i> | 154 |

| | |
|--|-----|
| 4. Sanctions | 154 |
| A. <i>Infringement Related to Articles 13 (last paragraph), and 15 of the Law</i> | 154 |
| B. <i>Infringements Related to Articles 37(2) and 41(3) of the Law</i> | 155 |
| IV. Substance..... | 155 |
| 1. Competition Analysis..... | 155 |
| 2. Statistics..... | 156 |
| 3. Case Law Illustration..... | 159 |
| MEXICO | 161 |
| <i>Virginia Campás Alcalde, Luis Garcia Santos Coy,</i> | |
| <i>Carlos Mena Labarthe and Mauricio Serralde Rodríguez</i> | |
| <i>(Creel, García-Cuéllar, Aiza y Enriquez)</i> | |
| I. Introduction | 162 |
| 1. Brief Overview..... | 162 |
| 2. Institutional Set-Up..... | 162 |
| 3. Type of Merger Control | 163 |
| II. Scope of Application..... | 164 |
| 1. Definition of Notifiable Transaction..... | 164 |
| 2. Material Scope | 164 |
| 3. Geographical Scope | 166 |
| 4. Thresholds | 166 |
| III. Procedure..... | 167 |
| 1. Launch of Procedure..... | 167 |
| 2. Development of Procedure | 169 |
| 3. Conclusion of Procedure..... | 170 |
| 4. Sanctions | 171 |
| IV. Substance..... | 172 |
| 1. Competition Analysis..... | 172 |
| 2. Statistics..... | 173 |
| 3. Case Law Illustration..... | 174 |
| NICARAGUA | 175 |
| <i>Favio Batres P and Ernesto Rizo Pallais (BLP)</i> | |
| I. Introduction | 176 |
| 1. Brief Overview..... | 176 |
| 2. Institutional Set-Up..... | 177 |
| A. <i>Procompetencia and its Members</i> | 177 |
| B. <i>The System</i> | 178 |
| 3. Type of Merger Control | 178 |
| II. Scope of Application..... | 178 |
| 1. Definition of Notifiable Transaction..... | 178 |
| 2. Material Scope | 179 |
| 3. Geographical Scope | 180 |
| 4. Thresholds | 180 |

| | |
|--|-----|
| III. Procedure | 181 |
| 1. Launch of Procedure..... | 181 |
| 2. Development of Procedure | 182 |
| A. <i>Phase I</i> | 182 |
| B. <i>Phase II</i> | 183 |
| 3. Conclusion of Procedure..... | 183 |
| 4. Sanctions | 184 |
| IV. Substance..... | 184 |
| 1. Competition Analysis..... | 184 |
| 2. Statistics..... | 185 |
| 3. Case Law Illustration..... | 185 |
| | |
| PANAMA | 187 |
| <i>Jorge Molina Mendoza (Fabrega Molino)</i> | |
| I. Introduction | 188 |
| 1. Brief Overview..... | 188 |
| 2. Institutional Set-Up..... | 189 |
| A. <i>Administrative Government of Panama Antitrust</i> | 190 |
| B. <i>Judicial Component of the Antitrust System</i> | 192 |
| 3. Type of Merger Control | 192 |
| II. Scope of Application..... | 193 |
| 1. Definition of Notifiable Transaction..... | 193 |
| 2. Material Scope | 195 |
| A. <i>Objectives of Panamanian Antitrust</i> | 195 |
| B. <i>Subjective Scope of Panamanian Antitrust</i> | 195 |
| 3. Geographical Scope | 196 |
| 4. Thresholds | 196 |
| III. Procedure | 196 |
| 1. Control Executed by ACODECO through the Verification Process..... | 196 |
| A. <i>Launch of Procedure</i> | 197 |
| B. <i>Development of Procedure</i> | 198 |
| C. <i>Conclusion of Procedure</i> | 198 |
| D. <i>Sanctions</i> | 199 |
| 2. Judicial Trial for Merger Challenge..... | 199 |
| A. <i>Launch of Procedure</i> | 199 |
| B. <i>Development of Procedure</i> | 199 |
| C. <i>Conclusion of Procedure</i> | 200 |
| D. <i>Sanctions</i> | 200 |
| IV. Substance..... | 201 |
| 1. Competition Analysis..... | 201 |
| 2. Statistics..... | 202 |
| 3. Case Law Illustration..... | 202 |

| | |
|--|-----|
| PARAGUAY | 205 |
| <i>Cynthia Andino (Independent Consultant)</i> | |
| I. Introduction..... | 206 |
| 1. Brief Overview..... | 206 |
| 2. Institutional Set-Up..... | 207 |
| 3. Type of Merger Control..... | 208 |
| II. Scope of Application..... | 208 |
| 1. Definition of Notifiable Transaction..... | 208 |
| 2. Material Scope..... | 209 |
| 3. Geographical Scope..... | 209 |
| 4. Thresholds..... | 209 |
| III. Procedure..... | 209 |
| 1. Launch of Procedure..... | 209 |
| 2. Development of Procedure..... | 210 |
| 3. Conclusion of Procedure..... | 211 |
| 4. Sanctions..... | 211 |
| IV. Substance..... | 212 |
| 1. Competition Analysis..... | 212 |
| 2. Statistics..... | 213 |
| 3. Case Law Illustration..... | 213 |
| V. Conclusion..... | 218 |
| | |
| PERU | 219 |
| <i>Camila Chamorro Poma, Luis Diez Canseco Núñez and Dario Morales Herrera (DiezCanseco)</i> | |
| I. Introduction..... | 220 |
| 1. Brief Overview..... | 220 |
| 2. Institutional Set-Up..... | 221 |
| 3. Type of Merger Control..... | 221 |
| II. Scope of Application..... | 222 |
| 1. Merger Control Law..... | 222 |
| A. <i>Definition of Notifiable Transaction</i> | 222 |
| B. <i>Material and Geographical Scope</i> | 223 |
| C. <i>Thresholds</i> | 223 |
| 2. Concentrations Law in the Electricity Sector..... | 224 |
| A. <i>Definition of Notifiable Transaction</i> | 224 |
| B. <i>Material and Geographical Scope</i> | 224 |
| C. <i>Thresholds</i> | 224 |
| III. Procedure..... | 225 |
| 1. Merger Control Law..... | 225 |
| A. <i>Launch of Procedure</i> | 225 |
| B. <i>Development of Procedure</i> | 225 |
| C. <i>Conclusion of Procedure</i> :..... | 226 |
| D. <i>Sanctions</i> | 227 |

Table of contents

| | |
|---|-----|
| 2. Concentrations Law in the Electricity Sector | 227 |
| A. <i>Launch of Procedure</i> | 227 |
| B. <i>Development of Procedure</i> | 228 |
| C. <i>Conclusion of Procedure</i> | 229 |
| D. <i>Sanctions</i> | 229 |
| IV. Substance..... | 230 |
| 1. Competition Analysis..... | 230 |
| 2. Statistics..... | 230 |
| 3. Case Law Illustration..... | 230 |
| URUGUAY | 233 |
| <i>Natalia Jul and Luciana Macedo (Uruguayan Competition Authority)</i> | |
| I. Introduction..... | 234 |
| 1. Brief Overview..... | 234 |
| 2. Institutional Set-Up..... | 235 |
| 3. Type of Merger Control | 235 |
| II. Scope of Application..... | 236 |
| 1. Definition of Notifiable Transaction..... | 236 |
| 2. Material Scope | 236 |
| 3. Geographical Scope | 236 |
| 4. Thresholds | 236 |
| III. Procedure | 237 |
| 1. Launch of Procedure..... | 237 |
| 2. Development of Procedure | 237 |
| 3. Conclusion of Procedure..... | 238 |
| 4. Sanctions | 238 |
| IV. Substance..... | 239 |
| 1. Competition Analysis..... | 239 |
| 2. Statistics..... | 239 |
| 3. Case Law Illustration..... | 239 |
| VENEZUELA | 241 |
| <i>Alejandro Gallotti (LEGA)</i> | |
| I. Introduction..... | 242 |
| 1. Brief Overview..... | 242 |
| A. <i>Venezuelan Economic Regulation in the Second Half of the 20th Century ...</i> | 242 |
| B. <i>Venezuelan Economic Regulation in the 21st Century</i> | 243 |
| 2. Institutional Set-Up..... | 245 |
| 3. Type of Merger Control | 245 |
| II. Scope of Application..... | 245 |
| 1. Definition of Notifiable Transaction..... | 245 |
| 2. Material Scope | 246 |
| 3. Geographical Scope | 248 |
| 4. Thresholds | 248 |

| | |
|---|------------|
| III. Procedure | 249 |
| 1. Launch of Procedure..... | 249 |
| 2. Development of Procedure | 250 |
| 3. Conclusion of Procedure..... | 250 |
| 4. Sanctions | 251 |
| IV. Substance..... | 251 |
| 1. Competition Analysis..... | 251 |
| 2. Statistics..... | 251 |
| 3. Case Law Illustration..... | 251 |
| CARIBBEAN COMMUNITY REGION | 253 |
| <i>Marc Jones (CARICOM Competition Commission)</i> | |
| <i>and Taimoon Stewart (The University of West Indies)</i> | |
| I. Introduction..... | 254 |
| 1. Brief Overview..... | 254 |
| A. <i>State of Play of Legislation</i> | 254 |
| B. <i>Legal Sources: Hard Law</i> | 254 |
| C. <i>Guidelines: Soft Law</i> | 257 |
| D. <i>Applicable Texts and Useful Links</i> | 257 |
| 2. Institutional Set-Up..... | 258 |
| A. <i>Structure of Agency</i> | 258 |
| B. <i>Procedure for Appointments and Link to Branch of Government</i> | 263 |
| C. <i>Links to Government Branch</i> | 264 |
| 3. Type of Merger Control | 265 |
| A. <i>Pure Ex Ante</i> | 265 |
| B. <i>Suspensory Effects of Transaction</i> | 266 |
| II. Scope of Application..... | 266 |
| 1. Definition of Notifiable Transaction..... | 266 |
| 2. Material Scope | 268 |
| 3. Geographical Scope | 268 |
| 4. Thresholds | 269 |
| III. Procedure | 270 |
| 1. Launch of Procedure..... | 270 |
| 2. Development of Procedure | 271 |
| 3. Conclusion of Procedure..... | 272 |
| 4. Sanctions | 274 |
| IV. Substance..... | 275 |
| 1. Competition Analysis..... | 275 |
| 2. Statistics (BFTC)..... | 277 |
| 3. Case Law Illustration..... | 277 |



Introduction by Ivo Gagliuffi
Foreword by Cani Fernández

Following significant reforms over the last 20 years, merger control regimes in Latin America now constitute around 20% of merger regimes worldwide. In regard to global transactions that may trigger the notification thresholds in many of these jurisdictions, it became necessary that an up-to-date book analyzing current legislation and case law be available for practitioners.

This book compiles for the first time the applicable law governing merger control in Latin America. More than 30 distinguished authors, from both private and enforcement backgrounds, cover 17 jurisdictions and the Caribbean Community (CARICOM). For each jurisdiction, the reader will find a presentation of the merger control system, a description of the applicable procedures, and an analysis of the most relevant case law on the subject.

In addition, the editors, Paulo Burnier da Silveira and Pamela Sittenfeld, provide an overview of the merger regimes in Latin America, as well as a synthesis of the particularities of the regimes addressed in the book.



Paulo Burnier da Silveira

is a senior competition expert at the Organization for Economic Cooperation and Development (OECD) and a visiting professor at Sciences Po Paris.



Pamela Sittenfeld

is an adviser to the Ministry of Foreign Trade of Costa Rica, and coordinator of the national team in charge of presenting to the Competition Committee of the Organization for Economic Cooperation and Development in the accession process of Costa Rica.

” *The book provides a comprehensive overview of the state of play of merger control in Latin America, where several recent reforms have taken place. It benefits from an excellent list of contributors who have a wide experience in competition enforcement in the region. Edited by leading experts from the region, this book is highly recommended to practitioners and policymakers, as well as to those interested in the topic in Latin America.* “

António Ferreira Gomes, Deputy Director - Head of Competition, Finance and Investment - Directorate for Financial and Enterprise Affairs - OECD

” *This publication reflects the diversity of legislations in Latin America to regulate mergers and acquisitions from a competition policy perspective. It is a very timely contribution to pave the way to convergence in this area, namely through increased regional and international cooperation. I congratulate Concurrences and the promoters and authors of this publication for an interesting and useful book that will be a reference to practitioners, academics and enforcers of Competition law and policy.* “

Teresa Moreira, Head, Competition and Consumer Policies Branch - UNCTAD – United Nations Conference on Trade and Development

DETAILS

Pages : 318
Price : €150 - \$165 - £125
ISBN : 978-1-939007-22-3

Send your order to
Institut de droit de la concurrence
19 avenue Jean Aicard
75011 - Paris

Institute of Competition Law
61 - 63 Rochester Place
NW1 9JU - London

Institute of Competition Law
106 W 32nd St - Suite 144
10001 - New York

ORDER

Full Name: _____

e-mail: _____

Institution: _____

Street: _____

City: _____

Zip Code: _____

Country: _____

www.concurrences.com
orders@concurrences.com

