



Uruguay

Global merger control handbook – update

APRIL 2020

Merger control legislation updates since 1 July 2018

On April 12, 2020 a significant reform on merger control entered into effect established by Act No. 19.833 (approved on September 20, 2019).

Every economic consolidation act must be authorized by the CPPC prior to its execution or the facto modification of control, when the annual gross invoicing of all participants to the transaction (which in case of a corporate acquisition includes the seller), in the Uruguayan territory in any of the three previous fiscal years, equals or exceeds 600.000.000 UI (adjustable index units; the equivalent amount in US Dollars varies depending upon the rate of exchange).

Possible economic consolidation acts are defined as those transactions which imply a modification in the control structure of the companies involved by means of: merger of companies,

acquisition of shares or quotas, transfer of ongoing business concern, partial or total acquisition of business assets and all other types of legal transactions which entail a partial or total transfer of the control of economic units or companies.

CPPC administrative decision on the authorization request shall be rendered within the term of 60 days, counted as from the authorization request filing date (along with all necessary documentation). If the analysis is not rendered within the term the transaction would be considered tacitly authorized by CPPC.

Upon the filing of the authorization request in due form, CPPC may decide to: (i) authorize the transaction, (ii) reject the authorization, and/or (iii) to make conditional or subordinate the transaction to the fulfillment of certain requisites or recommendations established by CPPC in its decision.

The analysis shall include (among other factors) a consideration of the relevant market, external competition and improvements in efficiency. If the CPPC does not issue clearance within a term of 90 days as from the notification date, the act shall be deemed tacitly authorized.

In the cases in which the economic consolidation act implies the formation of a “de facto monopoly” such process shall also be authorized. by the CPPC.

Such clearance does not limit the access of other agents to the market or implies that a monopoly right has been created by Law upon the authorization.

The following transactions are excluded from the authorization requirement:

- a) The acquisition of companies in which the acquirer already possessed more than 50% of their stock.
- b) The acquisition of bonds, debentures, any other debt instrument of the company or shares with no voting rights.
- c) The acquisition of one company just by one foreign entity which did not maintain any assets in Uruguay before then.
- d) The acquisition of companies declared bankrupt or with no activity in the country within the previous year.

Landmark cases since 1 July 2018

On March 30, 2020, CPPC decided that the merger of the two biggest supermarket economic groups in the country entailed, at least in certain areas, a de facto monopoly. Therefore, such a transaction was subject to a prior authorization from CPPC in accordance with Art. 9 of Act. No. 18.159. Such a decision had the effect to hinder the transaction, in view of the CPPC decision the parties decided to drop the deal.

CPPC decision was grounded in the legal definition of relevant market. CPPC found that, although the transaction was taking place at a national level, in certain areas of Montevideo, Punta del Este and Atlántida (these are relevant cities and resorts in Uruguay), the consumer will not have a real choice, competition could be affected and a monopoly will be created. Given the conclusions reached by the CPPC, a prior authorization was necessary, even if the new merger regulations were not in effect (Act. No. 19.833 entered into effect on April 12, 2020).

Web link to the national competition authority

Comisión de Promoción y Defensa de la Competencia:
<https://www.mef.gub.uy/578/5/areas/defensade-la-competencia--uruguay.html>

Your merger contacts in Uruguay

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