

April, 2020

COMPETITION COURT PUBLISHES NEW DECREE (AUTO ACORDADO) NO. 21/2020 ON EXTRAORDINARY CONSULTATIONS MADE UNDER ARTICLE 18 NO. 2 OF LAW DECREE NO. 211

On April 7, 2020, the Chilean Competition Court published on its website Decree (Auto Acordado) No. 21/2020 on extraordinary consultations made under Article 18 No. 2 of Law Decree No. 211, effective as of the same date.

I. Introduction: Cooperation between Competitors in the Context of Covid-19

In the context of the health emergency caused by Covid-19, doubts have arisen among economic agents as to whether it would be lawful, under Chilean competition law, for competitors to collaborate with each other, in order to ensure the proper production, distribution and marketing of goods and the provision of services that are essential for the population.

II. Purpose of Decree No. 21/2020

In this scenario, the Competition Court issued Decree No. 21/2020, which aims to set rules regarding extraordinary consultations that may be initiated regarding facts, acts or agreements already executed or intended to be executed and that could eventually breach competition law.

The Decree does not limit its scope to horizontal cooperation agreements, but it is particularly relevant in these cases, where the line between what is licit (cooperation agreement) and what is illicit (collusion) may not be clear to the concerned economic agents.

III. New Rules regarding Extraordinary Consultations Proceedings

In particular, according to the Decree, **during the state of catastrophe declared on the occasion of the health emergency arising from Covid-19 and in the qualified cases determined by the Court**, the facts, acts or agreements subject to a non-contentious consultation procedure (Article 18 No. 2 of Law Decree 211) **may be entered into, executed or concluded, or continue to be executed, as the case may be, while the consultation is being processed**, without prejudice to the provisions of the corresponding final ruling.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

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The foregoing shall apply especially for consultations concerning facts, acts or agreements that seek to generate **efficiencies that exceed the anti-competitive risks** and that relate to **goods or services that are indispensable to maintain the supply chain, the continuity of transportation services and the delivery of medicines or medical supplies, among others that may also be indispensable.**

The consultation procedure may nevertheless be replaced by a contentious one, where an objection is made by a legitimate plaintiff or where a subsequent lawsuit or claim relates to the same facts.

In deciding whether to replace the procedure, the Court shall take into account the circumstances prevailing in the country, the urgency and importance of the consulted act or agreement and its nature. It shall also hear the consultant before deciding on the replacement. If the procedure is replaced, the facts, acts or agreements consulted may no longer be executed.

Finally, the Decree provides that procedure may not be replaced if the consultation relates to facts, acts or agreements that have not yet been entered into, executed or concluded at the date on which the consultation was initiated. In these cases, if an objection is presented by a legitimate plaintiff or if a lawsuit or claim is added to the process, the Court may suspend the execution of the consulted fact, act or agreement, for which it will hear the consultant beforehand.