

CHILEAN FNE AND MINISTRY OF ECONOMY ISSUE NEW MERGER NOTIFICATION REGULATION

On September 6, 2021, the National Economic Prosecutor's Office ("FNE") and the Ministry of Economy announced a new regulation regarding the mandatory or voluntary merger control notification, as provided for in Title IV of Decree Law No. 211.

According to the FNE, this new regulation considers the opinions presented in the public consultation procedure held in March 2019 about the past merger control filing regulation, in force since 2016, and aims to simplify the analysis of transactions that do not raise significant antitrust risks, in order to focus resources on complex transactions.

Specifically, this new regulation incorporates the following modifications:

1. It specifies which entities are deemed to be part of the concentration and are therefore obliged to provide information to the FNE.
2. Information to be provided is simplified and reduced, for example, by indicating that the information on ownership structure and control ex-ante and ex-post the transaction must be limited to the parties' entities that are domiciled in Chile, or that, domiciled abroad, have goods or services that are commercialized in Chile.
3. Regarding the affected relevant markets' definition in the ordinary notification procedure, it is established that, for those that do not comply with the hypotheses established in the Regulation, and could plausibly be affected by the operation, the information to be provided will be the one required for the simplified procedure.
4. New hypotheses for the simplified procedure are incorporated: **(i)** when the transaction involves the acquisition of individual control over an economic agent in which the acquirer already had joint control; and **(ii)** when the transaction consists in a joint venture in which the new entity competes in a different market than the one where the constituents and their related parties are active or, when the latter entities participate in a vertically related market, and their individual or joint market share, considering the new entity and the constituent parties, does not exceed 30%.
5. For cases where there is no horizontal overlap or vertical relationships, a special notification procedure is created –like a fast track– that allows the parties to submit less information than the required in the simplified procedure.
6. Finally, it also incorporates a detailed list of documents that must be submitted in order to prove the failing firm defense, which was incorporated by the new Merger Analysis Guidelines as a defense the parties may argue during the investigation.

This new regulation will come into force on November 2, 2021.

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