

Chile: New rules for the Merger Control Procedure of the Ministry of Economy enter into force on November 2



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With the aim of updating and strengthening the merger control regime, the National Economic Prosecutor's Office (“FNE”) today published the new rules for the merger control procedure of the Ministry of Economy, approved by Supreme Decree No. 41 of May 7, 2021 (“**New Regulation**”), which enter into force on November 2 of this year.

The New Regulation reflects the opinions and assessments of potential notifiers in the 2019 public consultation done for the previous regulation. The main changes are:

- Defines the subjects obliged to provide information during merger control proceedings.
- Reduces the requested information in the ordinary and simplified procedure, for example, the information related to entities of the business group is narrowed only to those with activities in Chile.
- In the ordinary procedure, it extends the request for information on plausible relevant markets with smaller horizontal, vertical, or conglomerate overlaps, applying simplified procedural rules for those plausible, non-affected markets.
- Sales and databases of notifying parties are requested for the purpose of calculating thresholds.
- It expressly references the failing firm defense, and the need to provide proof in such cases.
- Establishes new grounds for the application of the simplified procedure, including, for example, when an economic agent goes from having joint to sole control, and in cases where a *joint venture* is created which intends to develop activities other than the activities of its parents.
- Creates a special notification procedure in cases where there is no horizontal or vertical overlap between the economic agents.

On this last point, the FNE has called this new procedure a "*fast track*", as it requires less information than a common simplified procedure and is focused in the preliminary assessment of the risks of the operation. Specifically, corporate meshes and information on relevant markets are not requested. However, the parties will still have to provide the information, databases, calculations, and elements of conviction leading to prove the assumptions that allow the procedure.

We hope this information is of interest to you.

Contacts

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