

Navigating Argentina's Merger Control Thresholds

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Argentina's merger control thresholds have been set forth following the principles of many other jurisdictions, thus contemplating both a combined net turnover threshold relating to the parties involved in the transaction, and also a "de minimis" threshold relating to the transaction itself in conjunction with certain past merger transactions within the same relevant market.

It is no secret that Argentina has been and is subject to high inflation rates on a regular basis, thus rendering the merger control thresholds low, which in the past resulted in a significant problem for all stakeholders, including the Argentine Antitrust Agency, among others.

Such a problem has been solved at least in a good part as from 2018, with the enactment of Law No. 27,442, a new Competition Law ("Competition Law") contemplating a threshold system fixed in adjustable units,

the value of which is determined on an annual basis, following the inflation rates. By way of example, on February 2022, the Argentine Secretariat of Domestic Trade updated the Adjustable Units' value to AR\$ 83.45 per each such Adjustable Unit, while the former unit value of those Adjustable Units had been AR\$ 55.29 as determined by the Argentine Secretariat of Domestic Trade back in February 2021.

However, an inflation scenario as the one Argentina is currently undergoing creates certain challenges for navigating merger control thresholds.

Both Section 9 of the Competition Law, which sets forth the net turnover threshold, and Section 11(e) of the Competition Law, which contemplates the "de minimis" threshold stipulate that the value of the Adjustable Unit to be used during each year for calculations of the thresholds is that of the last business day



of the prior year.

At the same time, Section 85 of the Competition Law indicates that the Adjustable Units shall be updated on the last business day of each year, and that the updated value will be effective as of its publication in the Official Gazette. During the last couple of years, the Adjustable Units' value update and publication thereof has occurred in February of each year, and therefore, some doubts may arise regarding interpretation of the thresholds. In that respect, the February 2022 value update and publication must be held as meeting the "last business day of the prior year" criteria as contemplated under Sections 9 and 11(e) of the Competition Law.

Therefore, when it comes to



transactions closed in 2022:

I. the net turnover threshold amounts to AR\$ 8,345 millions, relating to the Argentine combined revenue of the parties involved in the transaction (namely the purchaser's group and the target entity), including among other revenue, that as derived from imports to Argentina, and always excluding items such as value added tax, turnover tax and revenue obtained from sources beyond the ordinary course of business; and

II. the "de minimis" threshold amounts to AR\$ 1,669 millions either taking into account the consideration of the subject matter transaction or value of the underlying assets thereunder; and provided that

there have not been acquisition transactions closed by the purchaser's group in the same relevant market within the (i) 12 months prior to the subject matter transaction for an aggregate amount in excess of AR\$ 1,669 millions; or (ii) 36 months prior to the subject matter transaction for an aggregate amount in excess of AR\$ 5,007 millions.

For further calculation of the merger thresholds, US Dollar currency exchange must be calculated according to the US Dollar selling quotation ("dolar billete tipo vendedor") of the Banco de la Nación Argentina as of the last business day of the previous year when considering turnover thresholds, or as of the date of the closing of the transaction

when considering de minimis thresholds.

We hope that the foregoing may help in navigating Argentina's merger control thresholds. However, this is an article of interest not intended, and not to be held or construed as legal advice. If you wish to obtain further detail or legal advice on merger control thresholds and other Argentine antitrust matters, do not hesitate to contact us.

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