

July 4, 2023

Argentina - New Guidelines for the Notification of Economic Concentrations

By means of Resolution No. 905/2023 (the “**Resolution 905**”) published in the Official Gazette on May 18th, 2023, the Secretary of Commerce approved the new Guidelines for the Notification of Economic Concentrations (the “**Guidelines**”).

Pursuant to Section 5 of Resolution 905, the Guidelines shall enter into force 30 (thirty) calendar days as from the date of its publication in the Official Gazette (e.g., June 17, 2023). However, the Antitrust Authorities¹ stated in its website that the Guidelines will enter into force as from **July 6, 2023** (e.g., 30 (thirty) business days).

The most relevant changes imposed by the Guidelines are as follows:

- A pre-notification stage is created. This stage is voluntary, informal, and confidential and is aimed at clarifying specific matters and/or issues that the notifying party may have regarding the mandatory notification procedures stated by the Guidelines.

- New notification procedures and forms are created.

(i) Summary procedure (also known as “**PROSUM**”) in which a Form F0 shall be filed. As to the criteria to when a PROSUM shall be applicable, we shall wait for some clarifications to be issued by the *Comisión Nacional de Defensa de la Competencia* (the “**CNDC**”) as stated in Section 3 of Resolution 905. However, the timeframe of 15 (fifteen) business days stated there has elapsed and no clarifications were issued by the CNDC in this regard. The PROSUM shall be used for transactions that do not raise anticompetitive concerns.

The Form F0 (which was supposed to be simpler) introduces some new information to be filed by the notifying party. For example, information regarding compliance programs and antitrust compliance programs; non-compete, confidentiality, exclusivity and/or non-solicitation, or associative agreements; and at least 2 (two) relevant market definitions.

If the CNDC decides that a certain transaction shall not be reviewed pursuant to the PROSUM, then it shall require the filing of the Form F1 and the transaction shall be reviewed pursuant to the ordinary procedure.

(ii) Ordinary procedure in which the Form F1 and/or Form F2 (if required) shall be filed. The notifying party is free to file both forms together to facilitate the analysis by the CNDC. The Form F1 contains general information of the parties, the transaction, relevant markets, and the functioning of the relevant market; and the Form F2 shall be required by the CNDC in case of more complex transactions. Pursuant to the Guidelines, the Form F3, mentioned in the previous guidelines (Resolution No. 40/2001), is no longer applicable.

¹ Please note that the *Comisión Nacional de Defensa de la Competencia* (the “**CNDC**”) issues a technical and non-binding report to the Secretary of Commerce, which is the authority that issues final resolutions regarding competition and antitrust matters in Argentina. Both the CNDC and the Secretary of Commerce are referred as the Antitrust Authorities.

In any event, the Form F2 shall be filed within 30 (thirty) business days as from the requirement made by the CNDC. The Form F2 now includes information regarding benefits of the economic concentration over employment creation, salaries, imports substitutions, investments, environmental, genre policies, etc.

- Mandatory obligation to provide complete, sufficient, and true information. Although this obligation already exists, in case the information provided in the Form F0, F1 and/or F2 is not complete and/or not filed, then the Antitrust Authorities shall require the notifying party to justify that. The justification must be executed by the president of the Board of Directors of the notifying party. This justification may also be filed by the attorney-in-fact of the company if the power of attorney includes such justification.

The request by the CNDC of the Form F1 and/or the Form F2 shall stop-the-clock of the 45 (forty-five) business days that the Antitrust Authorities have to approve, condition, or reject a transaction. This term shall be suspended when the CNDC issues requests for information to complete any of the forms. The filing of information and/or documentation by the notifying party without the prior request by the CNDC shall also stop the clock of the above-mentioned term.

The Guidelines are aimed to update the procedure (and information/documentation needed) and also to simplify the notification of economic concentrations in Argentina following more than 22 (twenty-two) years of experience due to the previous guidelines (Resolution No. 40/2001).

As Argentina is still a post-closing merger control regime², we shall wait to see the outcome of the implementation of the Guidelines to confirm whether the goal is achieved or not. Finally, another challenge in this regard will be faced by the Antitrust Authorities once the pre-merger control review is in force.

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² The pre-merger control review was established by Law No. 27,442 in 2018 but it is not implemented yet.

³ This article is for information purposes, general in nature and does not constitute legal advice.