

International Legal Partners

Actualidad Legal / Legal News

Chile • Ecuador • Germany • Mexico • Peru • Spain



Chile: Consolidation Fusions or Acquisitions

On June 1st entered in force the new Title IV of the Chilean Antitrust Law (Decree Law 211), incorporated by Law N° 20.945, which regulates the kind of concentration operations that must be consulted to the National Economic Prosecutor's Office prior to their improvement and the respective procedure.

[Read more](#) |  4,5 minutes

Chile: Operaciones de Concentración

El 1 de junio en curso, entró en vigencia el nuevo título IV del Decreto Ley 211 que fija normas para la Defensa de la Libre Competencia, incorporado por la Ley N° 20.945 y que regula el tipo de operaciones de concentración que deben ser consultadas a la Fiscalía Nacional Económica en forma previa a su perfeccionamiento y el procedimiento respectivo.

[Leer más](#) |  4,5 minutos

Germany: Joint European Prosecutors Office is approaching

[Read more](#) |  2 minutes

Alemania: Se aproxima la Fiscalía Europea

[Leer más](#) |  2 minutos

The Opposition Trademark System in Mexico

[Read more](#) |  2,5 minutes

Sistema de Oposición de Marcas en México

[Leer más](#) |  2,5 minutos

Reconstruction: Peruvian Government is going to invest US \$ 6.4 billion in 4 years

[Read more](#) |  3,5 minutes

Reconstrucción: Gobierno peruano invertirá US\$ 6,400 millones en 4 años

[Leer más](#) |  3,5 minutos

Chile: Consolidation Fusions or Acquisitions

Estudio Jurídico Otero

Chile

On June 1st entered in force the new Title IV of the Chilean Antitrust Law (Decree Law 211), incorporated by Law N° 20.945, which regulates the kind of concentration operations that must be consulted to the National Economic Prosecutor's Office prior to their improvement and the respective procedure. According to it, these operations must be previously approved when fulfil the following two copulative conditions:

- a) That the sum of the sales in Chile of the economic agents that are planned to concentrate (with some deductions) has reached during the year prior to that in which the notice of the operations has been made to the Prosecutor's Office, amounts equal or superior to 1,800,000 Unidades de Fomento (Chilean tax-indexed units) (approximately US\$ 70 million); and,
- b) That, in Chile, separately, at least two of the economic agents planning to concentrate have generated sales (with some deductions), during the year prior to that in which the notice has been made, for amounts equal or superior to 290 thousand Unidades de Fomento (approximately US\$ 11 million).

For these purposes, concentration operation means any act or convention that has as a result that two or more economic agents which are not part of the same business group and are previously independent from each other, cease to be independent through any of

the following means:

- a) merger
- b) acquisition by one or more of them, directly or indirectly, of rights that will allow them, individually or jointly, to have a direct influence on the other party's administration
- c) association under any form to create an economic agent other than them
- d) one or more of them acquiring control over the assets of the other party in any capacity

The notice of the operation to the Prosecutor's Office must be accompanied by the necessary background to identify the operation and the economic agents that are part of it; records allowing to evaluate preliminarily the possible risks the operation may imply for fair competition and others.

Once notified of a concentration operation, the National Economic Prosecutor has ten days to decide whether it is a complete notice. If he deems it is, he will order the investigation to be initiated and will communicate it to the interested party. If this communication is not made within the term, the investigation will be understood to start the day following the expiration of the term.

If the Prosecutor decides that it is incomplete, he must communicate it to the interested party within the same term of 10 days. This communication must identify the errors or omissions of the notice. In this case, such errors or omissions identified by the Prosecutor must be corrected within the term of 10 days. If they are not

corrected within that term, the notice will be deemed not to have been submitted.

If the errors or omissions are corrected within the time limit, the following periods begin to count from that moment on and not from the original notice.

The resolution ordering the initiation of the investigation shall be published, safeguarding the confidential information of the interested parties.

The interested party may always request from the Prosecutor information about the status of the investigation and has a right to be informed, based on the background of the investigation and before any decision has been issued, about the risks the notified operation may have for fair competition.

The interested party has also the right to be heard and to express his opinion to the Prosecutor regarding the notified concentration operation, the records provided by third parties to the investigation, the investigation itself and the information provided according to the aforesaid.

Likewise, the interested party has the right to offer to the Prosecutor the measures he deems fit to mitigate those risks the notified operation may produce for fair competition. The measures must be offered in writing and will in no case constitute an acknowledgment of the existence of the risks that are intended to be mitigated through them.

If the National Economic Prosecutor deems it advisable, he may make known to the third interested par-

ties the measures offered to hear their opinions.

Within thirty days from the date the investigation was started, the Prosecutor must:

- a) Purely and simply approve the notified operation if he is convinced that the operation is not able to substantially reduce competition;
- b) Approve the notified operation, provided that the measures offered by the interested party are fulfilled, if he is convinced that, subject to such measures, the operation is not able to substantially reduce competition, or
- c) Through a reasoned decision, extend the investigation for a maximum of ninety additional days, if he considers that the notified operation may substantially reduce competition.

Once the term of the investigation is completed without the Prosecutor having taken any of the above three decisions, it is understood that the operation has been approved. In this case, the authorization will be considered granted in the terms offered by the interested party, including the measures that he himself has offered.

In the case of the decision referred to in letter c) above (that in which it is decided to extend the investigation), the Prosecution must communicate it along with its text or the public version of it to the authorities directly concerned and to the economic agents who may have an interest in the operation. Those receiving such



communication, as well as any third party interested in the concentration operation, including suppliers, competitors, clients or consumers, may provide information to the investigation within twenty days following the publication of the resolution ordering its extension.

The file will be public as of its publication, without prejudice that the Prosecutor may decide, ex officio or at the request of the interested party, that certain parts of the file are reserved or confidential.

Within the period established in the resolution ordering to extend the investigation, the Prosecutor must:

- a) Purely and simply approve the notified operation;
- b) Approve the notified operation, provided that the measures offered by the interested party are fulfilled, or
- c) Prohibit the notified operation if he reaches the conclusion that it has the capacity to substantially reduce competition.

Once the deadline established in the resolution ordering the extension of the investigation has been reached without the Prosecutor having taken any of the above three decisions, the operation in question is deemed to be approved.

Against the decision of the National Economic Prosecutor prohibiting an operation, the interested party may, within a period of ten days from notice of the aforesaid resolution, file a claim against it through a

well-founded remedy of special review before the Tribunal of Defense of Fair Competition.

All deadlines are on business days, which means all those that are not Sundays, Saturdays or holidays.

By common agreement, the Prosecutor and the interested party may suspend some deadlines. These are also suspended on certain special circumstances.

Germany: Joint European Prosecutors Office is approaching

ILP Global Mertens Thiele

Alemania

The Council of European Ministers of Justice has resolved on the 8 of June 2017 in Luxembourg the “General Alignment” towards the establishment of a Joint European Prosecutors Office.

The Council of European Ministers of Justice is composed by the Ministers of Justice and Ministers of the Interior of all EU memberstates.

It seems to have been overdue that finally, after long lasting negotiations, the “General Alignment” towards the establishment of a Joint European Prosecutors Office has been resolved. Thereby, a mayor step towards the creation of an autonomous European investigative authority has been accomplished. This means: **For the first time an EU Agency is beeing established, which is entitled to take over criminal investigations on its own in the member states.** This will make it a lot easier to trace fraud, defalcation and crimes of corruption against the EU Budget, bunding effectivly the know-how of investigators of different member states.

The Joint European Prosecutors office is – for now – intended to basically trace crimes to the detriment of the financial interest of the European Union, especially fraud, defalcation and corruption, in case the EU budget is affected. The investigative work of the Agency shall be carried out locally by national prosecutors from the corresponding member country. Hence, it for instance will be german prosecutors conducting house or office searches with the support of german police, should those measures be carried out in Germany.

However, these so-called “Delegated Prosecutors” will in a certain way have a double function. As a ma-

tter of fact, they are subject to the supervision of the head office of the Joint European Prosecutors Office, which is intended to guarantee that the criminal prosecution works under the same consistant standards in all member states. And: Their investigative activity will be carried out on the ground of the resolution just resolved with the aforementioned “General Alignment” towards the establishment of a Joint European Prosecutors Office.

19 memberstates have supported the outlined resolution, giving thereby way to a much more consistant, effective and vigorous cross-border law enforcement within the European Union. By doing so, they have shown that the European Union remains capable of acting to the benefit of its members even in dire times and a difficult international environment. Bringing law enforcement to a supranational level at least regarding issues realted to the Union itself, is self-explaining and forward-looking, all the more in times when narrow minded economical and political nationalism seem to take the upper hand in large parts of the world.

The outlined resolution now has to be approved by the European Parliament, before than being formally adopted by the Council of European Ministers of Justice. Investigations under this new approach are sheduled to start in 2020.

The Opposition Trademark System in Mexico

Bitar Abogados

Mexico

On August 30, 2016, the Brand Opposition System came into force, a new system of application in Mexico, but in other member countries of the World Intellectual Property Organization (WIPO), it was already a “Modus Operandi” of the daily in the procedures of Trademark Registrations.

The IMPI (Mexican Institute of Industrial Property) advertised this System as a snobbery for this topic, explains succinctly it as a way to inhibit unfair practices, for a person who try to be owner of a trademark, concerned the rights of third-parties trademark holders to get a benefit.

The purpose of this system is to provide legal security to owners of industrial property rights, through a legal instrument that will allow to any person to oppose a request for registration of a new trademark, when there is a risk of imitation or appropriation of a trademark set in the Ley de Propiedad Industrial (Industrial Property Law) in Articles 4, 90 and 120.

From an economic and competitive point of view of our country the trademarks it's relevant for the owners, therefore the application of this system is a great step to encourage foreign investment and give legal certainty of trademark rights holder's.

The opposition system has the following procedure

- 1) Publication of trademark applications in the Gazette of the Institute.
- 2) From the date of publication of the trademark application, the opponent party will have a period of one month for make his opposition to the trademark application before the IMPI.
- 3) If the opposition complies with the requirements set in the Law of the topic and its regulations, it will be published in the Gazette of the Institute.
- 4) Once the opposition has been published, the holder of the trademark application will have a period of one month to submit an answer to the opponent's arguments, if he wants.
- 5) Once the IMPI has the opposition as well as the answer of the opposition, in such a case, it will be able to realize the exam abovementioned of the proposed trademark for the record, for whom might take into consideration the manifestations advertised the opposition.
- 6) Finally, completed the exam the IMPI will approve or deny the requested trademark application, letting know to the opponent party the resolution by the IMPI between the trademark application.

Diagram of the opposition system process



Is loadable that the Industrial Property topic creates the required means to meet the needs of the time and the international standards, with the purpose of legal certain from the trademark owners giving the importance that belongs to this topic in our contry.

RECONSTRUCTION: Peruvian Government is going to invest US \$ 6.4 billion in 4 years

Estudio Laos, Aguilar, Limas & Asociados

Peru

According to official government sources, the recent flooding of rivers, floods and the fall of waterfowl, especially in the cities of the north coast of Peru due to the natural disaster named “Fenómeno del Niño”, caused more than 100 deceased persons, 185,000 victims, more than one million affected and 242,433 households affected.

In that context, Economy Minister Alfredo Thorne announced that the Peruvian government plans to invest 6.4 billion dollars between 2017 and 2020 in the reconstruction and construction work that modernize the country after the serious damages caused by the natural disaster.

After the events, the Executive Authority was able to approve two (2) bills of law: One to modify the fiscal deficit path that allows it to use resources without violating the Fiscal Transparency Law and the second, the creation of “the Authority for Reconstruction with Changes”, attached to the Presidency of the Council of Ministers, which will be in charge of leading the process of reconstruction of the affected areas.

On May 5, the Executive Authority appointed Mr. Pablo de la Flor, the Master of Public Administration by Harvard University as Executive Director of “the Authority for Reconstruction with Changes”, the same one that has the rank of Minister of State. Pablo de la Flor was manager of the Corporate Affairs Division of “Banco de Crédito del Perú”, the biggest bank in the country. De la Flor also served as vice president of Corporate Affairs and Environment of the Antamina Mining Company. He was also Deputy Minister of Foreign Trade and head of the team that was in charge of negotiating

the US FTA.

The Executive Director is the main coordinator of the reconstruction but has a board of directors composed of 4 ministers (Economy, Transport, Agriculture and Housing), which define the policies of reconstruction. They will work together for four years. They will also have a manager in each region, so that it is the link with the population.

The Directing Council and the Executive Director of the Change Reconstruction Authority have taken as priority the start of meetings in the affected regions with the aim of gathering information and expanding the dialogue with local authorities and building a work plan that will be ready in 70 days. The reconstruction is expected to begin in August of this year.

Recently, some members of the Board of Directors were in the Tumbes and Piura (on the border with Ecuador), La Libertad, Lambayeque and Ancash. Also in the region of Lima provinces that has suffered severe damages.

First works

The president of the Council of Ministers, Fernando Zavala, reported that in the first session of the Board,



it had been agreed that the first task, it will be working on immediate connectivity. That is to say, it will be starting to do some works without waiting for the conclusion of the overall reconstruction plan.



It has been approved [the list of 65 bridges to be rebuilt](#), of which 34 are from the national road and 31 from the departmental road. Also, this initial work includes [the immediate rehabilitation of 1,100 schools and 900 medical posts](#). All those activities are part of the Reconstruction Plan, which is under development on the inputs provided by regional governors, local authorities, and public sectors.



The executive director said that inter-agency coordination will be vital in this reconstruction effort with changes.

Participating Companies

About companies that may take part in the reconstruction, due to the LAVA JATO case, Odebrecht (a giant world company) has been excluded, as a consequence of the prohibition established by the government in Emergency Decree 03-2017. According to this disposition, companies that have been judicially convicted or that has voluntary accepted having

participated in acts of corruption; it cannot contract with the State.

Regarding the syndicated companies of Brazilian Odebrecht, such as Graña and Montero (GyM), JJC Contratistas Generales SA, ICCGSA – Ingenieros Civiles and Contratistas Generales SA, among others, the rule does not exclude them due to the presumption of innocence and the fact that they have not accepted their participation in cases of corruption. However, the Chief Ministerial Cabinet, Fernando Zavala, urged Peruvian companies that were partners of Odebrecht in projects in Peru to abstain from participating in the reconstruction works until the investigation about the Brazilian construction company come to an end.

Besides of above, there is a bill ready to discuss in Congress which aim to the exclusion of the mentioned enterprises of the reconstruction. If this measure is taken, the most prominent construction companies that have dominated the market in recent years will be unable to participate in this process, opening the market for the rest of the domestic and foreign corporations.