

# Prior Review of Mergers and Acquisitions (Economic Concentrations)

Prior review of economic concentrations as a means to provide legal certainty in mergers and acquisitions between competitors or potential competitors.

## Economic concentrations concept and the effects of prior review.

Law 45 of October 31, 2007, “Which dictates Rules on Consumer Protection and the Defense of Competition”, establishes that an economic concentration is the merger, acquisition of control, or any act by which companies, associations, shares, quotas, trusts, commercial stores or assets in general, are grouped between suppliers or potential suppliers, between customers or potential customers, and other competing or potential competitors’ economic agents.

According to Law 45 of 2007, the parties that intend to carry out an economic concentration can voluntarily request its “prior review” before the Authority for Consumer Protection and Defense of the Competition (ACODECO) to verify the lawfulness of the economic concentration before it becomes effective.

If the transaction is granted the “favorable opinion” of ACODECO, the parties will be able to carry out the economic concentration without it being subject to challenge afterwards before the courts based on the verified elements.

On the other hand, if the economic concentration is not submitted to ACODECO’s prior review, it can be challenged within the following three (3) years.



## Prior review process before ACODECO.

The following stages must be considered for the prior review process:

1. Negotiation and signing of the transaction. The contract is one of the documents that must be submitted to request prior review.
2. Preparation of the prior review application of economic concentration, which must include the information and documents detailed in article 21 of Executive Decree No. 8-A of January 22, 2009, which regulates Law 45 of 2007, which can take approximately three (3) months.
3. After submitting the prior review application, ACODECO may require information or additional documents within the following twenty (20) calendar days.
4. If ACODECO does not request additional information or documents, ACODECO will decide on the prior review application within the following sixty (60) calendar days.
5. If ACODECO requests information or additional documents within the following twenty (20) calendar days, then the sixty (60) calendar day term to rule on the application will only start once ACODECO has confirmed it has received all the additional information requested.

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## Prohibited economic concentrations

Law 45 of 2005 prohibits economic concentrations the effects of which may diminish, restrict, damage, or unreasonably prevent free economic competition and free competition regarding equivalent, similar, or substantially related goods or services.

Join ventures carried out for a period to carry out a given project are not considered prohibited economic concentrations. Similarly, economic concentrations involving an economic agent that has systematically incurred losses and lost market share in a manner that threatens its presence in that market, are not considered prohibited economic concentrations, provided that such economic agent proves it has sought non-competitive buyers without success.

Law 45 of October 31, 2007, establishes that ACODECO could approve those concentrations that hurt the competition if the results are compensated by their contribution to efficiencies, such as:

1. Improvements in the systems of production or commercialization.
2. Promotion of economic or technical progress.
3. Increase in the industry's competitiveness levels.
4. If it promotes the interests of consumers.

Additionally, if, from the review and analysis of the economic concentration submitted for prior review, it is determined that there is one prohibited aspect, ACODECO may condition the execution of the transaction to the fulfillment of the necessary conditions or corrective measures in order to adjust the economic concentration to the law.

In the review of the effects of the economic concentration (acquisition or merger), the following may be taken into consideration: whether said economic concentration promotes and/or has, withing its objectives, the increase in production or distribution of goods and/or services for the domestic or international market, promotes the technical or economic

progress, or promotes the competitive development of an industry or sector.

In this regard, the fact that a concentration may be considered legal or illegal will depend on the analysis of its positive and negative effects on free competition, production, competitiveness, among other, in the relevant market.



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