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# Merger Control 2022

Peru: Trends & Developments  
Carlos A. Patrón and David Kuroiwa  
Payet, Rey, Cauvi, Pérez Abogados

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## Trends and Developments

**Contributed by:**

*Carlos A. Patrón and David Kuroiwa*

*Payet, Rey, Cauvi, Pérez Abogados see p.4*

### Merger Control Law

The new merger control regime (Merger Control Law – “MCL”) came into force on 14 June 2021, following the issuance of its complementary regulations.

Pursuant to the MCL, the Phase 1 review period is 30 business days. Said period commences only after a notification is deemed complete. The Competition Commission has up to 25 business days to determine the completeness of the notification (including, if information is requested, a ten business days period for the filing party to provide such data, otherwise their application will be deemed not filed). If the Commission concludes that the transaction may potentially raise “serious concerns” in generating restrictive effects on the competition, it can initiate a Phase 2 review that may last up to a maximum of 120 business days (90 business days and an extension of 30 business days).

### INDECOPI Decisions

As of late May 2022, nearly a year after the regime came into force, the National Institute of the Defence of Competition and Intellectual Property Protection (INDECOPI) had issued and published nine decisions. Eight of these were clearance decisions issued after a Phase 1 review. The ninth decision was to initiate a Phase 2 review in a pharmaceutical concentration. Four of these cases originated with the filing of a simplified notification form (which requires less information than the ordinary long form notification).

In addition, while not explicitly regulated in the MCL, INDECOPI has established a pre-filing procedure, where it will review draft

notifications before they are formally submitted. The Peruvian authority has limited stoppage powers once a notification is filed, so this informal procedure seeks to afford the possibility to coordinate information required for review without triggering completeness deadlines. Also, during these preliminary discussions, the authority may provide information concerning complementarity request for information that it deems will be required once formal clearance procedures commence. While pre-filing is not mandatory nor binding, the authority is actively promoting the use of these mechanisms to prevent any potential delay or risk of the filing being dismissed. On average, these preliminary procedures have approximately taken one or two weeks.

To date, all Phase 1 clearance decisions have been issued, on average, between 40 to 50 business days from the date of the notification was filed. However, in cases where a pre-filing was prepared, clearance decisions were issued in approximately 36 business days.

Additionally, all Phase 1 clearance decision have been issued without conditions. The markets involved in these cases included warehouse facilities, electronic payment, mining, industrial solutions to mining companies, medical laboratories, services to electric companies, telecommunications, informatic solutions and processed foods.

As previously mentioned, as of late May 2022, the only Phase 2 review initiated by the Peruvian authority involves a concentration related to the pharmaceutical sector, an operation in which one Peruvian laboratory pursued the acquisition of

another laboratory that participates in the same market (particularly in five specific categories of medicines). According to INDECOPI, said concentration raised concerns regarding restrictions that could result in those specific markets. INDECOPI is expected to issue a final decision on this matter in the second half of 2022.

### **Sensitive Markets**

The aforementioned Phase 2 case may reveal that the Peruvian authority will tend to be cautious when issuing clearance decision related to particularly “sensitive” markets, such as the health and pharmaceutical markets, which are prioritised in their enforcement agenda. Other markets that are commonly viewed as “sensitive” by the Peruvian authority include products that conform the basic consumption basket, fuels and COVID-related products and services. INDECOPI may require more time to conduct a detailed analysis about the effects of concentrations occurring in these markets.

Considering that almost all the cases have been solved in the first phase without conditions and have demonstrated that none of those operations could generate any anticompetitive effect on the market, it is worth discussing if the current thresholds are low and should be raised. If there is an increase in the thresholds, it is more likely that INDECOPI would probably focus on operations that may possibly generate any anticompetitive effect on the market. According to the MCL, the thresholds may only be changed by law after any suggestion or recommendation from INDECOPI. To date INDECOPI has not suggested any increase to the thresholds.

On the other hand, INDECOPI is entitled to act ex officio in cases where reasonable indications of a concentration operation that may generate a dominant position or affect competition in the market are identified. This power allows the authority to review a concentration regardless of whether mandatory notification thresholds have been met or not. To date, no ex-officio investigation has been initiated.

### **Thresholds**

Finally, regarding the thresholds, the MCL has two concurrent financial thresholds that are determined by the value of a Peruvian Tax Unit (UIT). It is important to note that in the case of the thresholds, the applicable UIT is the one corresponding to the fiscal year prior to the year of notification (even though the MCL and its regulations are not clear regarding this matter, this has been clarified in the Thresholds Guidelines issued by INDECOPI). Hence, if an operation is notified in 2022, the UIT from 2021 would be applicable (equivalent to PEN4,400 or USD1,189 using an exchange rate of PEN3.70 per US dollar). The value of the UIT is updated each year. Likewise, if an operation is notified in 2023, the UIT from 2022 would be applicable (equivalent to PEN4,600 or USD1,243 using an exchange rate of PEN3.70 per US dollar). The value of the UIT is updated each year.

The filing fee has been set at PEN91,629.40 (approximately USD24,764.70 using an exchange rate of PEN3.70 per US dollar). This fee is applicable to any concentration regardless of the value of the operation or the income or assets of the parties involved.

# PERU TRENDS AND DEVELOPMENTS

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*Contributed by: Carlos A. Patrón and David Kuroiwa, Payet, Rey, Cauvi, Pérez Abogados*

**Payet, Rey, Cauvi, Pérez Abogados** is a leading full-service firm with extensive experience in both the analytical and regulatory aspects related to competition and consumer law, covering a wide variety of industries such as energy, oil and gas, telecommunications, financial services, healthcare, pharma, construction, transportation, new technologies, retail, education, automotive, airline, shipping, food and beverages, and personal care, among others. Regularly ranked as the top competition and antitrust practice in Peru, Payet, Rey, Cauvi, Pérez Abogados prides itself on its unmatched

credentials, having successfully represented clients in leading antitrust lawsuits and leniency procedures before local authorities, in matters involving domestic and cross-border price-fixing and other restrictive practices, refusals to deal, exploitative practices, strategic barriers to entry and exclusive dealing agreements. The firm has advised a wide variety of national and international companies on principal pre-authorisation merger control procedures, both under the current general regime as well as the prior electricity sector regime.

## AUTHORS



**Carlos A. Patrón** is a partner of Payet, Rey, Cauvi, Pérez Abogados, specialising in antitrust, regulatory law, telecommunications, energy, corporate law and civil law. He

has extensive experience in both the analytical and regulatory issues related to Peruvian competition law, covering a wide variety of industries. He has participated in leading antitrust cases, including the most emblematic price-fixing investigations carried out in Peru (ie, tissue paper, shipping conferences, PCC, LPG, drugstores).



**David Kuroiwa** is a principal associate of Payet, Rey, Cauvi, Pérez Abogados, specialising in antitrust law, intellectual property, administrative law and corporate law. He has extensive

experience in both the analytical and regulatory issues related to Peruvian competition law, covering a wide variety of industries. He has participated in leading antitrust cases, including the most emblematic price-fixing investigations carried out in Peru (ie, tissue paper, shipping conferences, drugstores).

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## Payet, Rey, Cauvi, Pérez Abogados

Av. Victor A. Belaúnde 147  
Torre 3, Piso 12  
San Isidro, Lima 15073  
Peru

Tel: +51 1 612 3202  
Email: [lexmail@prcp.com.pe](mailto:lexmail@prcp.com.pe)  
Web: [prcp.com.pe](http://prcp.com.pe)





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