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# M&A transactions to face greater regulatory scrutiny in Latin and South America in 2016

**A**mong the many important legal developments for businesses operating in Latin and South America last year was an increased focus on the regulatory review of significant M&A transactions. In this article, we briefly discuss notable developments arising in Brazil, Chile and Colombia in 2015 that are indicative of increased regulatory scrutiny in the region to come in 2016.

**Brazil**

In 2015, the Conselho Administrativo de Defesa Econômica ('CADE') continued to play a very active role in reviewing high-profile domestic and international transactions. Following lengthy reviews, CADE reached notable agreements with merging parties in the GlaxoSmithKline/Novartis global consumer healthcare joint venture<sup>1</sup> and with Continental and Veyance Technologies in their proposed merger. This approach was in part adopted due to amendments to the merger control legislation in 2011, which streamlined somewhat the framework for negotiating merger remedies. The result in both of those matters was notable as they involved CADE's clearance of both transactions based on remedies to be implemented outside of Brazil.<sup>2</sup>

However, befitting its reputation as one of the world's most active antitrust enforcers, CADE nevertheless took aggressive action where it deemed necessary. An example was blocking Tigre's proposed acquisition of Condor Pincéis, which would have combined the two largest producers of paint brushes in Brazil.<sup>3</sup> Moreover, CADE signalled its willingness to oppose major global transactions by initiating litigation challenging Halliburton Corporation's proposed acquisition of Baker Hughes in December of 2015. That action is especially notable as Brazil, along with Australia (which

initiated similar litigation in October), took a leading role in challenging the merger of two US companies before the United States Department of Justice or the European Commission decided whether to take similar steps. (Both of those agencies are still reviewing the transaction.)

CADE also issued guidelines on its 'gun-jumping' laws — which restrict parties from implementing transactions before receiving regulatory approval — and imposed material gun-jumping fines of BRL3m (approximately US\$732,000) and BRL90,000 (approximately US\$22,000) in two transactions.<sup>4</sup>

**Chile**

In 2015, Chile introduced new legislation, the Bill Amending DL 211 - Competition Act (the 'Bill'), to amend its competition laws, and particularly the merger review provisions. Perhaps most notably, the Bill would transform Chile's current voluntary merger pre-notification regime into a mandatory system that requires merging parties to notify and seek prior approval of all transactions that surpass the new notification thresholds (which have not yet been published). The proposed new law would seemingly also apply to the acquisition of minority shareholdings, as it also requires a notification where one party acquires 'decisive influence' — a term which is not defined — over another entity.<sup>5</sup> This concept is rich ground for potential disputes about the scope of the Bill.

We understand that the Bill received approval from the Chamber of Deputies in 2015, and is currently before the Chilean Senate, which is likely to vote on the amendments in the first half of 2016. These changes arise in the context of a government which has been quite vocal in its commitment to ongoing economic and legal reforms.

## Colombia

In Colombia, the Ministry of Commerce, Industry, and Tourism submitted proposed legislative amendments to the Congress of Colombia (Bill 038 of 2015), making significant changes to the domestic merger review provisions. Among other things, the new law would require that the only two sectoral regulators (ie, the Civil Aviation Authority and the Financial Authority) with independent merger review powers be obligated to consult with the general competition law regulator, the Superintendencia de Industria y Comercio ('SIC'), on merger reviews, with SIC holding the ultimate decision-making authority.

The SIC also issued new merger control regulations in March 2015. Notable changes include the adoption of merger notification thresholds with a greater local nexus to Colombia that focus on the parties' domestic assets and/or revenues (save for transactions involving no local subsidiaries, in which case the former thresholds, based on worldwide assets/revenues, may still apply).

Taken together, these changes are indicative of the Colombian authorities 'putting their house in order' as a precursor to greater merger control enforcement activity. These actions are consistent with the approach taken elsewhere in the Americas with a trend toward harmonisation of substantive requirements as well as coordinated enforcement processes.

These developments show that Latin and South America are very much part of the growing global trend towards greater regulatory scrutiny of transactions. With more than 100 jurisdictions now applying some form of merger control law, and many jurisdictions – including Brazil – adopting stricter gun-jumping laws, merging parties must ensure they are well aware of the filing requirements in all affected jurisdictions.

### Notes

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- 1 Bill Amending DL 211 Competition Act, article 47(b).
  - 2 Conselho Administrativo de Defesa Econômica, New Release, 'CADE approves, with restrictions, joint venture between GSK and Novartis' (27 February 2015) available online at [www.cade.gov.br/Default.aspx?af8290996ba077bc49f6481c361a](http://www.cade.gov.br/Default.aspx?af8290996ba077bc49f6481c361a).
  - 3 Conselho Administrativo de Defesa Econômica, New Release, 'Veyance acquisition by Continental is approved by CADE' (29 January 2015) available online at [www.cade.gov.br/Default.aspx?ac9f6ebb55ca21e2370457ed4406](http://www.cade.gov.br/Default.aspx?ac9f6ebb55ca21e2370457ed4406).
  - 4 Conselho Administrativo de Defesa Econômica, New Release, 'CADE blocks merger between Condor and Tigre' (3 September, 2015) available online at [www.cade.gov.br/Default.aspx?7db041c858cd22e1340152ef4001](http://www.cade.gov.br/Default.aspx?7db041c858cd22e1340152ef4001).
  - 5 See Conselho Administrativo de Defesa Econômica, New Release, 'Brasfrigo and Goiás Verde will pay BRL 3 million for gun jumping' (23 April 2015) available online at [www.cade.gov.br/Default.aspx?78cb5aaf41d62df603300350e168](http://www.cade.gov.br/Default.aspx?78cb5aaf41d62df603300350e168); and Conselho Administrativo de Defesa Econômica, New Release, 'Gás Local and Gasmig to pay BRL 90,000 for gun jumping' (29 June 2015) available online at [www.cade.gov.br/Default.aspx?b98c9a6e879c73b045f2441e3414](http://www.cade.gov.br/Default.aspx?b98c9a6e879c73b045f2441e3414).

# New Paraguayan law on international contracts

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## Introduction

Paraguay has recently enacted a law on international contracts, drawn upon two forward-looking instruments: the Hague Principles approved in 2015 and the Mexico Convention of 1994. In this contribution, its author briefly presents the new Paraguayan law in the context of its sources.

## Background

### *The Hague Principles*

The Hague Conference on Private International Law, undoubtedly the most prestigious organisation in the world codifying conflict or choice of law rules, has