



## Overview

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Promotion and protection of free competition issues in Venezuela are governed by the Law for the Promotion and Protection of Free Competition published in 1992 and its regulations, and rules over every person, public or private, that performs an economic activity.

The law created a public entity widely known as ProCompetencia, which forms part of the Ministry in charge of Light Industry and Commerce, and its main competences are: to conduct the necessary investigations to verify the existence of anti-competitive practices; determine the existence of prohibited practices or conduct and take the corresponding measures to stop them and impose sanctions; impose precautionary measures to avoid the harmful effects produced by the prohibited practices; and grant authorisations in those exceptional cases expressly established in the law.

### Anti-competitive practices and conduct

The law establishes a general prohibition which restrains the conduct, practices, agreements, pacts, contracts or decisions that impede, restrict, distort or limit free competition.

However, the law also prohibits certain specific practices, actions or agreements, among which we would mention:

- preventing or obstructing the entry or permanence of companies or services in all or in part of the market;
- manipulation of the means of production, distribution, technological development or investment, in detriment of free competition;
- agreements or pacts executed directly or by unions, associations, federations and other kind of associations, that restrain free competition among their members;
- agreements, decisions or collective recommendations or an arranged practice to:
  - fix prices and other conditions for commercialisation or services; or
  - allocate the markets, territories, sectors of supply or sources of provisions between competitors, among others.
- abuse of a dominant position, such as:
  - discriminatory imposition of prices and other conditions for commercialisation or services;
  - the application in commercial or service relations of unequal conditions for equivalent activities that place some competitors in a disadvantaged situation; or
  - unjustified denial to satisfy the demand of purchase or the rendering of services;
  - ProCompetencia can also investigate cases involving unfair competition that seeks to eliminate a competitor, by performing actions such as deceitful publicity, false information, commercial bribery, violation of industrial secrets and product simulation.

### Merger control

The law prohibits economic concentrations, especially those produced under the exercise of the same activity, when they generate restrictive effects over free competition or when they produce a dominant position in all or in part of the market.

This is an exception to the general rule established in the law, which does not sanction the presence of a dominant position per se, but instead the abuse of same. However, in mergers, the simple existence of a dominant position as a result of an economic concentration is prohibited, in order to prevent the abuse of such position in the future.

Advising ProCompetencia about a merger is not compulsory. In this sense, the merger process can advance and also be concluded without informing ProCompetencia, and in the case that the authorisation is requested, the process can conclude even in the absence of such authorisation.

However, ProCompetencia can study the merger after the process has concluded and impose the measures it deems necessary.

There is an exception to the rule in the telecommunications sector where it is mandatory to request authorisation from the National Telecommunications Commission (CONATEL)

in mergers between companies that operate in the sector.

In these cases, CONATEL shall request ProCompetencia's opinion and the merger will be approved if such opinion is positive. During 2008, this procedure was followed in the approval of the merger between BT Global (Venezuela) and Comsat Venezuela Comsatven.

### Sanctions and their judicial review

The violations determined by ProCompetencia are punished with the imposition of a fine of up to 20 per cent of the value of the sales of the offender. In case of second offences, the fine is increased to 40 per cent.

The decisions issued by ProCompetencia are final and can only be challenged in court.

If the interested party requests the suspension of the fine, it shall present sufficient guarantees in court. However, the suspension of any order issued by ProCompetencia only proceeds when the court has sufficient elements to justify it.

### Recent developments

In 2008, ProCompetencia issued 14 decisions and one merger authorisation.

The main disputes were between national and international pharmaceutical laboratories, the most relevant being:

- unlawful use of international scientific studies prepared by international pharmaceutical laboratories to promote new products of the national laboratories based on the same active principle (see *Productos Roche, SA v Zuoz Pharma, SA*); and
- unfair competition by false publicity and promotion of products and services based on false declarations (see *Yanbal de Venezuela CA v Grupo Transbel CA*).

However, the most important case was the dispute between an association of travel agencies (AVAVIT) and commercial airlines, where it was determined that there was collusion to avoid the permanence of the travel agencies in the commercial airline tickets market, specifically on international routes, by reducing, at the same time, the sales commission paid by the airlines.

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Our firm, a member of Macleod Dixon LLP, was opened in Caracas in 1997. The office currently comprises over 55 bilingual professionals (top five in market) and a staff of more than 100. Very quickly the firm has achieved very high rankings (eg, Chambers Global publication *The World's Leading Lawyers, Global Counsel 3000, Who's Who in Oil & Gas*, Euromoney plc and *Latin Lawyer*).

Macleod Dixon provides legal consultation to private businesses, public companies, joint ventures and non-profit organisations. Our clients are mainly large multi-national corporations. We make great efforts to understand the necessities and current trends for our clients, using technology and providing creative solutions that reflect the entrepreneurial spirit. We combine frequent contact with a wealth of experience. As an office which provides a complete service, we integrate a full range of professional specialists from diverse areas.

We have ample experience in the analysis of legislation governing regulated sectors, such as mines and hydrocarbons, electricity, environment, banking, telecommunications, air and maritime transportation and international commerce. Our expertise also extends to the legislation governing competition matters, expropriations, concessions, bidding, consumer protection, dumping and subsidies, and foreign investment regulations.

Luis Andueza, the partner in charge of the public law department, was recognised by *Chambers Latin America 2009* as a notable practitioner in the field of competition/antitrust.