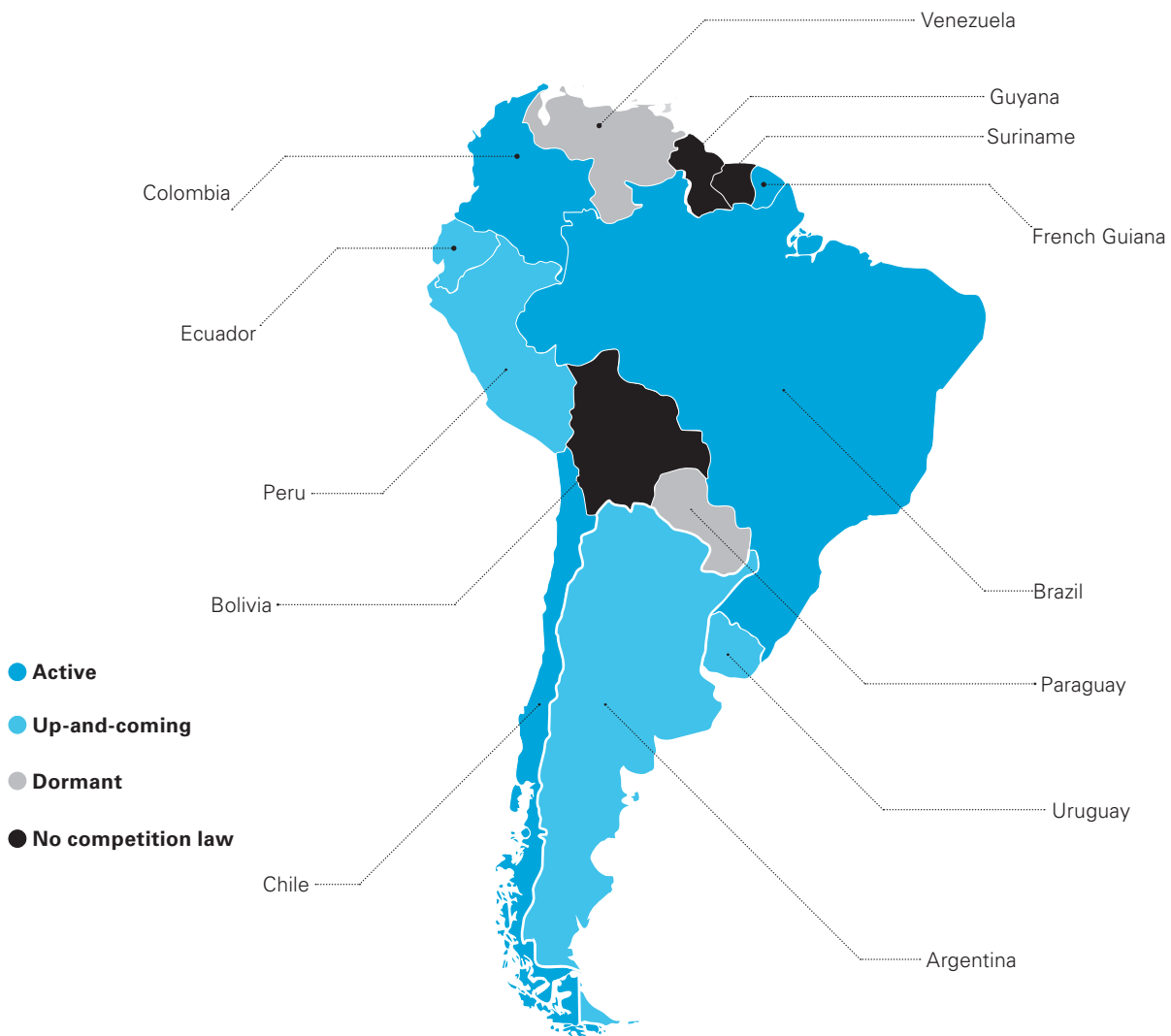


# South America: Overview of merger regimes



## An interactive guide to merger control activity in South America

Merger control in South America is on the rise, with many new jurisdictions having adopted and started to enforce stricter pre-closing merger control laws over the past decade. This interactive map provides a general overview of merger control activity in the region and highlights the most important recent developments in each jurisdiction.

Brazil has firmly established itself as a significant global merger control jurisdiction. In addition, following the establishment of a pre-closing merger control regime in 2017, Chile has been increasing its visibility in this space and so has Colombia. With new or amended laws in Argentina, Peru and Uruguay we expect that the number of active merger control regimes in South America will increase.

This map is based on knowledge built up through White & Case's long-standing presence in the region, its close relationships with local counsel in the area, and on publicly available sources. Should you require more detailed information on a jurisdiction (or additional jurisdictions not included in the map), please contact [Jacquelyn MacLennan](#), [George Paul](#), [Henri Capin-Gally](#), [Antonio Cárdenas](#), [Joao Lacerda](#) or your usual White & Case contact. This page was created in October 2021 and will be updated annually.

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## Description of categories:

- Active:** Relatively sophisticated competition regimes with increasingly experienced competition authorities ensuring strong enforcement.
- Up-and-coming:** Increasing appetite for competition enforcement, thanks to newly introduced or recently amended competition law regimes.
- Dormant:** Competition law has often been on the books for several years, but its enforcement faces serious challenges such as the lack of implementing rules or of skilled personnel in the authorities.
- No competition law:** Competition law has not yet been effectively introduced.

## Overview of jurisdictions

Jurisdiction	Tier	Summary
Argentina		<p>In May 2018, a new competition law entered into force in Argentina and established a pre-closing merger control regime. The new law also created a new authority, the <i>Autoridad Nacional de la Competencia</i> ("ANC"), replacing the old <i>Comisión Nacional de Defensa de la Competencia</i> ("CNDC"), with powers of investigation, and the <i>Secretaría de Comercio Interior</i> ("SCI"), with adjudicatory powers. The new institutional set-up aims at providing the ANC with more independence from politics.</p> <p>The new law suspends the application of the new pre-closing merger control regime until up to a year after the new ANC becomes fully operational. In 2019, a selection process for ANC members was carried out, but a subsequent government withdrew the candidates proposed by the previous administration before they could be approved by the Senate. Therefore, the ANC is still not operative and the transitional period has not yet started running. However, the Argentinian parliament is currently considering a bill which would accelerate the application of the new pre-closing merger control regime by decreasing the transitional period to 90 business days after the bill's approval. In addition, this bill makes the government's appointment of the ANC's members more discretionary, potentially limiting the authority's independence.</p> <p>Therefore, Argentina currently still has a post-closing merger control regime. Currently and during the transitional period, merger notifications shall be submitted to the old CNDC no later than seven calendar days after the transaction closes. Along with Paraguay and Ecuador, Argentina is one of the rare countries in South America that imposes a filing deadline (most jurisdictions require notification and clearance before closing, but do not establish a deadline to file).</p> <p>Between 2019 and 2020, around 50 transactions per year were notified to the CNDC. The average review period was 9 months in 2019, and 10 months in 2020. In 2019 and 2020, the authority unconditionally approved all transactions it reviewed.</p> <p>The SCI has imposed fines for late notification in the past and has recently increased the number of such investigations. In December 2020, it imposed a fine of US\$8,500 on an Argentinian bank for an 8-day delay in filing. In addition, in 2006, the CNDC fined two European pharmaceutical companies approximately US\$270,000 for a late notification. The fines for late notification (under the current post-closing regime) or failure to notify a transaction (once the pre-closing regime comes into force) go up to 0.1% of the parties' combined Argentinean annual turnover.</p>

# South America: Overview of merger regimes (continued)

<p><b>Bolivia</b></p>	<p>There is no general merger control regime in Bolivia and no competition authority. Nonetheless, specific sectoral regulation has established merger control in the following sectors: (i) electricity; (ii) hydrocarbon; (iii) transportation; (iv) telecommunications; (v) financial institutions, including banks, securities and insurance; and (vi) essential services. However, in practice, only transactions involving Bolivian companies active in the telecommunications or transportation sectors can be notified because other sectoral regimes are not (yet) operational. Mandatory notifications are only required for acquisitions of Bolivian telecommunications companies.</p>
<p><b>Brazil</b></p>	<p>In 2012, competition enforcement in Brazil went through significant reform, with the establishment of a pre-closing merger review system. The <i>Conselho Administrativo de Defesa Econômica</i> (“CADE”) is responsible for investigating and ruling on merger and antitrust cases. CADE has two main internal enforcement bodies, which are autonomous: the <i>Superintendência-Geral</i> (“SG”), responsible for reviewing notified transactions and, if appropriate, clearing them unconditionally, and the <i>Tribunal</i>, responsible for ruling on transactions not cleared by the SG or subject to further review by the <i>Tribunal</i>. In complex matters, CADE may also request an opinion from the Department of Economic Studies. CADE is among the most active global competition authorities and has been repeatedly recognized as the best competition authority in the Americas by the journal <i>Global Competition Review</i>.</p> <p>In 2020, CADE reviewed more than 450 transactions. Among these, more than 90% were unconditionally approved by the SG. Among the remaining transactions reviewed by the <i>Tribunal</i>, 2 were abandoned, 6 were unconditionally approved and 7 were approved with remedies. The average review period was 29.5 calendar days (17.5 calendar days for fast-track cases, which represent around 85% of all cases).</p> <p>In 2019, CADE started 14 gun-jumping investigations, which led to 4 fining decisions that resulted in the payment of a total of around US\$11 million. In 2020, CADE started 17 gun-jumping investigations, which led to 2 settlements that resulted in the payment of a total of around US\$270,000. The maximum fine that CADE can impose for gun-jumping is around US\$11 million.</p> <p><i>White &amp; Case does not practice local law in Brazil. The authors would like to thank Pinheiro Neto Advogados (Brazil) for their contributions to this guide.</i></p>
<p><b>Chile</b></p>	<p>Since June 2017, Chile has had a mandatory pre-closing merger control regime. Two entities are in charge of antitrust enforcement in Chile: the <i>Fiscalía Nacional Económica</i> (“FNE”), an independent administrative entity responsible for merger control, and the <i>Tribunal de Defensa de la Libre Competencia</i> (“TDLC”), which reviews certain decisions of the FNE.</p> <p>From June 2017 to February 2021, the FNE completed 140 merger reviews, of which around 60% followed a simplified procedure. 123 transactions were unconditionally cleared, 14 were cleared with remedies, and three were prohibited. Only 9 transactions were subject to an in-depth investigation, including the three prohibition cases and four unconditional clearances. The average review period ranged from 26 working days for the simplest cases to 121 working days for phase 2 investigations.</p> <p>As of February 2020, the FNE has prosecuted only one gun-jumping case, in 2018 against two Brazilian beef producers, in relation to a transaction that was cleared unconditionally. While the FNE requested a fine of approximately US\$19 million on each company, the case was settled with a combined fine of around US\$1 million.</p> <p>Failures to notify and closings before clearance can result in fines of up to 30% of the party’s turnover in the relevant product line/service or up to double the economic benefit gained by the infringement.</p>

# South America: Overview of merger regimes (continued)

<p><b>Colombia</b></p>	<p>Merger control in Colombia was reformed in 2009 and is currently enforced by the <i>Superintendencia de Industria y Comercio</i> ("SIC"). Colombia has a mandatory pre-closing merger control system, which applies to all economic sectors except to transactions between financial institutions and transactions between aircraft operators, which fall under special sectoral regimes.</p> <p>A fast-track procedure applies if the parties' combined market shares in the relevant overlapping markets do not exceed 20%. Transactions that qualify for the fast-track procedure are deemed to be cleared on the day of the notification. All other cases are subject to the ordinary procedure.</p> <p>In 2020, almost 150 notifications were submitted to the SIC, of which more than 70% qualified for the fast-track procedure. Only one transaction was approved with remedies and none were prohibited. The average review period in the ordinary procedure was 60 calendar days, which is significantly lower than the 2019 average of 111 calendar days.</p> <p>In recent years, the SIC has imposed fines of up to US\$100,000 on Colombian companies for failure to notify. Historically, the highest fine was approximately US\$900,000 in a 2010 decision against Colombian companies (most gun-jumping fines are imposed on local companies). However, the SIC has also imposed fines on foreign companies or their local subsidiaries (latest in 2016). Gun-jumping fines were imposed on companies active in: agriculture, telecommunications, pharmaceuticals, engineering, real estate and information technology. In theory, failure to notify and closing before clearance may result in fines of up to approximately US\$24 million or 150% of the benefit obtained from the infringement.</p>
<p><b>Ecuador</b></p>	<p>Ecuador has a mandatory pre-closing merger control regime enforced by the <i>Superintendencia de Control del Poder de Mercado</i> ("SCPM") – an administrative agency that started operations in 2012.</p> <p>In 2018, the SCPM issued 16 merger control decisions, out of which 13 were unconditional clearances and 3 were subject to conditions. As of February 2021, the SCPM had only prohibited one transaction, a transaction in 2014 in the natural gas sector involving Ecuadorian and European parties.</p> <p>In 2019, the Ecuadorian subsidiary of a Peruvian cement group was fined around US\$130,000 for failure to notify. This is the only gun-jumping fine imposed in Ecuador so far. Closing a notifiable transaction without clearance may result in fines of up to 10% of the party's Ecuadorian turnover (or 12% if the merged entity has already started its operations).</p> <p>The parties must notify a transaction within eight calendar days from signing the agreement. Ecuador, Paraguay and Argentina are the only countries in South America with filing deadlines (most jurisdictions require notification and clearance before closing, but do not establish a deadline to file). A failure to notify within this deadline may result in fines of up to 8% of the party's turnover in Ecuador.</p>
<p><b>Guyana</b></p>	<p>There is no merger control regime in Guyana.</p>

# South America: Overview of merger regimes (continued)

<p><b>Paraguay</b></p>	<p>Paraguay has a mandatory merger control regime enforced by the <i>Comisión Nacional de la Competencia</i> (“CONACOM”), which was established in 2013. Filings should be made within 10 working days of the signing of the transaction agreement, publication of the purchase offer, or actual acquisition of control (along with Argentina and Ecuador, Paraguay is one of the few countries in South America imposing a filing deadline -- most jurisdictions require notification and clearance before closing, but do not establish a deadline to file -- but the law does not provide a specific penalty for late notification in Paraguay. CONACOM can only impose a fine if the transaction resulted in harm to competition, i.e., if it would have been prohibited or approved conditionally). In this context, many filings occur post-closing.</p> <p>CONACOM has not been a very active authority. Until April 2016, it did not have its own physical office space or a website. Since its creation, only 28 transactions have been notified, with CONACOM prohibiting one transaction and clearing five subject to remedies. In 2020, only 4 transactions were notified: three were cleared unconditionally and one was prohibited (the transaction related to the meat sector and was the first prohibition decision by CONACOM).</p> <p>So far, no company has been fined for failure to notify, which can result in fines of up to 150% of the benefit gained from the infringement or up to 20% of the turnover obtained in the relevant market, if the transaction results in harm to competition.</p>
<p><b>Peru</b></p>	<p>Peru has recently expanded the scope of its merger control regime to all economic sectors (it previously only applied to the energy sector).</p> <p>After some delay, the new law entered into force on 14 June 2021. The main novelty of the new regime is its general applicability to all economic sectors. Both the new and the old regimes require pre-closing notification.</p> <p>The <i>Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual</i> (“Indecopi”) continues to be responsible for merger control under the new regime. Since its creation in 1997, Indecopi has reviewed 22 transactions and cleared 3 conditionally (none were prohibited). The number of notifications is expected to increase with the new, broader regime that also applies outside the energy sector.</p> <p>In 2010, Indecopi imposed a gun-jumping fine of approximately US\$1.2 million on a European energy company, which is the only fine imposed so far. The new regime increased the theoretical maximum gun-jumping fine from 10% of the parties’ turnover to 12%.</p>
<p><b>Suriname</b></p>	<p>There is no merger control regime in Suriname. A competition bill has been drafted and is undergoing stakeholder consultation with the view of being submitted to the parliament of Suriname. There is no clear indication as to whether or when the bill might be approved by the parliament and become law.</p>

# South America: Overview of merger regimes (continued)

<p><b>Uruguay</b></p>	<p>On 12 April 2020, a new competition law entered into force that substantially modified merger control in Uruguay. In mid-2020, an implementing regulation and a new filing form were published and, in December 2020, the merger guidelines were published. In contrast to the previous regime, the new competition law establishes a pre-closing merger control regime – all transactions meeting the set turnover thresholds now require prior approval by the <i>Comisión de Promoción y Defensa de la Competencia</i> (“Commission”). Under the previous regime, a non-suspensory filing was required for qualifying transactions and the Commission had no power to impose remedies or prohibit transactions.</p> <p>As of February 2021, there were 15 merger control decisions published on the Commission’s website (1 conditional and 14 unconditional clearances). Under the new regime, the Commission has 60 calendar days to issue its decision and the transaction cannot be closed before clearance. If the transaction cannot raise competition concerns, it may qualify for a fast-track procedure that takes 20 calendar days.</p> <p>So far, the Commission has not imposed any gun-jumping fine. Failure to notify may theoretically result in fines ranging from US\$12,000 to 10% of the party’s total annual turnover in Uruguay.</p>
<p><b>Venezuela</b></p>	<p>Venezuela has established a voluntary notification system with no mandatory filing requirements or sanctions for failing to notify a transaction.</p> <p>Due to the large devaluation of the Venezuelan currency over the past years, the turnover notification thresholds are now nominal (below US\$5), which means that essentially every transaction with one party active in Venezuela is formally notifiable.</p> <p>However, partially due to the political and economic difficulties that the country has been experiencing, the <i>Procompetencia</i> (“Competition Authority”) has not published a single merger decision since its creation in 2014. The last transaction was notified and investigated in Venezuela in 2009, when the previous authority prohibited a transaction in the food sector. The Competition Authority’s website has been inoperative since 2016.</p>
<p><b>French Guiana</b></p>	<p>As a French overseas department, French Guiana is subject to the jurisdiction of the <i>Autorité de la Concurrence</i> (“ADLC”) with special, lower notification thresholds applying to the French overseas departments. A mandatory pre-closing merger notification regime thus applies in French Guiana where the conditions are met.</p> <p>Since 2018, the ADLC has issued 10 decisions involving French overseas departments or territories, out of which 2 materially involved French Guiana. In addition, competition enforcement in the French overseas departments and territories was one of the ADLC’s priorities in 2020. The ADLC explains that it is focused on the high cost of living in French overseas territories and on reforms to stimulate competition and benefit overseas consumers.</p> <p>The ADLC has 25 working days to decide non-problematic transactions (phase 1) and an additional 65 working days if it decides to open an in-depth investigation (phase 2). The review period can be extended if the parties offer remedies during the process.</p> <p>Failure to notify may result in fines of up to 5% of their turnover in France. Individuals may be fined up to €1.5 million (approximately US\$1.8 million).</p>