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Merger Control 2025

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Guatemala: Law & Practice

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Mayora & Mayora, S.C



GUATEMALA



Law and Practice

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port to clients seeking legal assistance across multiple jurisdictions. The team at Mayora & Mayora specialises in various areas of law, including administrative, banking, civil, corporate, commercial, financial, immigration, labour, tax, and litigation, among others. Its attorneys are recognised for their excellence, ethics and client-focused approach.

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ABOGADOS & NOTARIOS

1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The Guatemalan Congress enacted the Competition Act (Decree 32-2024) at the end of 2024. It is the first legislation of its kind in Guatemala. Its provisions on the Competition Authority (Superintendence of Competition) entered into effect on 1 January 2025, with the purpose of appointing the first officials during 2025. The Act's substantive provisions, including those on merger control, will come into effect in December 2026. An administrative regulation further developing the Act must be issued by 1 January 2026. The Superintendence will also be able to issue further rules and guidance on all matters under its purview. However, as of May 2025, only the Act has been enacted. Therefore, the content of this chapter is based solely on the Act.

1.2 Legislation Relating to Particular Sectors

Other relevant legislation includes the Foreign Investment Act (Decree 9-98) and the Act to Foster Investment of Foreign Capital (Decree 46-2022). Some sector-specific legislation contains certain basic rules on competition and/or mergers and acquisitions, such as the General Telecommunications Act (Decree 94-96), the General Electricity Act (Decree 93-96), and the Banks and Financial Groups Act (Decree 19-2002).

However, only the Bank and Financial Groups Act contains provisions on merger control, further developed by regulations issued by the Monetary Board (the Central Bank Authority). Such regulations are not designed from a competition law perspective, but are instead rooted in financial and banking law.

1.3 Enforcement Authorities

The Superintendence of Competition will enforce the merger control rules from the Competition Act. The Act calls for co-ordination and co-operation with sector-specific authorities, such as those in the banking, telecoms or Electricity sectors, through methods and mechanisms that are yet to be enacted.

2. Jurisdiction

2.1 Notification

Notification is compulsory for all operations exceeding the thresholds established by the Competition Act, which also provides the following exceptions:

- financial sector mergers whose purpose is to prevent systemic risks arising from the risk of insolvency or bankruptcy;
- corporate restructuring within a same economic group;
- increase of participation by an already controlling owner;
- acquisitions by investment firms;
- acquisitions in stock exchange markets below 10%;
- acquisitions by investment funds without investments in companies or assets participating or used in the same relevant market; and
- concentrations in disputed or contestable markets, as defined by law.

2.2 Failure to Notify

The Competition Act allows the Superintendence to impose fines as penalties for failing to notify and in other related cases categorised as “irregular concentrations”. However, it does not state the amounts of the fines that may be imposed. The Act also allows penalties to be made pub-

lic, with such publication being an additional type of penalty. However, it does not state in which cases publication may be imposed. These are legal deficiencies that could be corrected through amendments, before or after the entry into force of those provisions. If not corrected, they will cause basic limitations to the enforcement of merger control rules.

2.3 Types of Transactions

A concentration is defined in the Competition Act as the integration of two or more economic agents, previously independent from each other, through any act, contract or agreement resulting in (i) the transfer of control of one of the economic agents to another or to others, or (ii) the creation of a new economic agent under the individual or joint control of others. The Act's forthcoming Regulation, which has not yet been enacted, could further specify the types of transactions falling within this definition.

Internal restructurings or reorganisations are exempt from notification when the economic agents belong to the same economic interest group and no third party participates in the concentration.

Operations not involving transfer of shares or assets, such as shareholders' agreements, can be caught, according to the definition of "control" under the Act.

2.4 Definition of "Control"

Control is defined in the Competition Act as the ability of one economic agent to exercise decisive influence over one or more other economic agents, through:

- the exercise of share or participation rights;
- agreements, contracts or conventions which allow decisive influence over the composition,

- voting or decisions of the organs or activities of the economic agents; and
- the exercise of property rights or rights of use over the assets of economic agents.

2.5 Jurisdictional Thresholds

The Competition Act establishes the same thresholds regardless of sector. A transaction is subject to notification if it meets the following criteria:

- the combined total assets in Guatemalan territory of at least two of the economic agents involved exceed 7,000,000 times the daily minimum wage for non-agricultural activities, as shown in the financial statements of the last exercise or annual tax period; and
- the combined total turnover in Guatemalan territory of at least two of the economic agents involved exceed 9,000,000 times the daily minimum wage for non-agricultural activities, considering all revenue excluding discounts, as shown in the financial statements of the last exercise or annual tax period.

The daily minimum wage for non-agricultural activities is currently GTQ122.40 in the department of Guatemala (including the capital city) and GTQ116.73 in the rest of the country. This is set annually by the Executive Branch and, since they vary by territory, regulations will have to specify the parameters of applicability, for example, depending on the location of the economic agents involved in the concentration or of the relevant market, etc.

2.6 Calculations of Jurisdictional Thresholds

The Competition Act refers to the financial statements of the last exercise or annual tax period for calculating thresholds. Under the Com-

mercial Code, merchants must apply generally accepted accounting principles (GAAP) when preparing their statements. Further details on how to calculate the thresholds should be contained in the Regulation to the Act, which has not yet been enacted.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

The Competition Act refers to the total combined assets or turnover of “at least two of the economic agents involved” in the concentration.

An economic agent is defined in the Act as any individual or entity, economic group, public or private entity, local or foreign, for-profit or non-profit, carrying out an economic activity, which in turn is defined as all forms of production and/or commercialisation of goods and/or provision of services aimed at generating economic benefits.

An economic group is defined as two or more economic agents that co-ordinate their activities through common share control or common administrative control.

Further details on how to calculate the thresholds should be contained in the Regulation to the Act, which has not yet been enacted.

2.8 Foreign-to-Foreign Transactions

All transactions involving assets or turnover in Guatemalan territory are subject to control, if they meet the applicable thresholds. The Competition Act specifically mentions operations that take place abroad but have legal or material effects in Guatemalan territory. Further details on how to calculate the thresholds should be contained in the Regulation to the Act, which has not yet been enacted.

2.9 Market Share Jurisdictional Threshold

The Competition Act does not establish market share thresholds. However, market share is one of the elements that must be considered when examining the proposed operation.

2.10 Joint Ventures

Based on the broad language of the Act’s definition of an economic concentration, a joint venture could be considered as a way of achieving such concentration and therefore be subject to merger control provisions. Further details on specific operations subject to control and how to calculate the thresholds should be contained in the Regulation to the Act, which has not yet been enacted.

2.11 Power of Authorities to Investigate a Transaction

The Superintendence can investigate “irregular concentrations” based on a formal complaint or ex officio. However, concentrations are deemed irregular only if they exceed the thresholds, therefore transactions that do not meet the thresholds cannot be subject to penalties. The investigation may reveal that the concentration did not meet the thresholds and, consequently, may not be legally considered as irregular.

2.12 Requirement for Clearance Before Implementation

The Competition Act requires authorisation to be requested before:

- executing the legal act;
- acquiring or exercising direct or indirect factual or legal control;
- formalising a merger agreement;
- another authority issues a decision; or
- a transaction made abroad produces legal or material effects in Guatemala.

It further states that the acts related to a concentration cannot be publicly or privately formalised, recorded in corporate books or before public registries, before obtaining favourable or conditioned clearance from the Superintendence.

2.13 Penalties for the Implementation of a Transaction Before Clearance

A concentration that exceeds the thresholds, implemented without prior authorisation from the Superintendence, is considered irregular and therefore subject to penalties. However, the Competition Act does not state the applicable penalties and its substantive provisions are not yet in force.

2.14 Exceptions to Suspensive Effect

Exceptions to suspensive effect are not addressed in the Competition Act.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

The only circumstance foreseen by the Competition Act in which the authorities may permit closing before clearance is, as mentioned at **2.1 Notification**, financial sector mergers whose purpose is to prevent systemic risks arising from the risk of insolvency or bankruptcy. The other cases listed in that section are exceptions, ie, not technically subject to the Act.

The other issues referred to in the questions are not addressed in the Competition Act. Further details on specific operations subject to control and how to calculate the thresholds should be contained in the forthcoming Regulation to the Act.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

Deadlines for notifications are not addressed in the Competition Act. These and other further details should be contained in the forthcoming Regulation to the Act.

3.2 Type of Agreement Required Prior to Notification

The type of agreement required prior to notification is not addressed in the Competition Act. These and other further details should be contained in the forthcoming Regulation to the Act.

3.3 Filing Fees

The Competition Act provides that filing fees will apply to merger control procedures. The amounts will be set by the Directorate of the Superintendence and are yet to be enacted.

3.4 Parties Responsible for Filing

The Competition Act does not specify which party is responsible for filing, it only broadly places the obligation on the economic agents involved in a concentration. These and other further details should be contained in the forthcoming Regulation to the Act.

3.5 Information Included in a Filing

The information, level of detail, documents and other filing requirements are not specified in the Competition Act. These and other further details should be contained in the Regulation to the Act.

The Act does state generally that all matters before the Superintendence are subject to the Act for Simplification of Administrative Requirements and Procedures (Decree 5-2021), which provides as follows:

- signatures on petitions or forms will not require notarisation, unless involving a settlement or waiver of rights;
- documents issued by public officials will not require any notarisation or additional certification; and
- documents granted abroad, legalised before a Guatemalan official or duly apostilled, are valid without need of further accreditation.

However, under the general provisions of the Judiciary Act (applicable not only to judicial procedures), documents executed in a foreign language must first be translated into Spanish by a sworn translator authorised in Guatemala. Furthermore, if the document is a power of attorney or must be registered before any Guatemalan registry, it must also be incorporated into the records of a Guatemalan notary; local offices will act based on the notarised copies issued by the recording notary.

3.6 Penalties/Consequences of Incomplete Notification

The Competition Act does not address specific requirements for filing notifications, nor does it set any penalties if the submissions are deemed incomplete. The conduct classified as breaches or violations subject to penalties does not include incomplete filings.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

Concentrations authorised based on false information are legally considered irregular and are subject to the penalties. However, as explained in **3.6 Penalties/Consequences of Incomplete Notification**, the Competition Act does not specify the applicable penalties, which may hinder enforcement if not amended.

3.8 Review Process

The review process, its phases and timeline are not specified in the Competition Act. These and other further details should be contained in the forthcoming Regulation to the Act.

3.9 Pre-Notification Discussions With Authorities

Apart from the hearings conducted within procedures established in the Competition Act (which does not regulate the procedure for merger control), the Directors of the Superintendence may only discuss matters under their purview with representatives of economic agents through formal interviews regulated by the Act.

The agenda for interviews is public, and includes the name of the economic agent and the scheduled time. Interviews must be held at Superintendence offices. A written record of each interview will be produced and made publicly available. Such record is called an “acta” and, based on Guatemalan practice, these will only contain a brief description of what occurred, rather than a detailed transcript of the conversation. However, the interviews will also be recorded in audio or video format; these recordings will be confidential, and only accessed by the economic agent involved.

3.10 Requests for Information During the Review Process

The review process is not specified in the Competition Act. These and other further details should be contained in the forthcoming Regulation to the Act.

3.11 Accelerated Procedure

The review process, or an expedited form of it, are not specified in the Competition Act. These and other further details should be contained in the forthcoming Regulation to the Act. However,

the Act does not specifically require an expedited procedure.

4. Substance of the Review

4.1 Substantive Test

The substantive test for examining concentrations is not specified in the Competition Act. This may be contained in the forthcoming Regulation to the Act or future guidelines issued by the Superintendence.

4.2 Markets Affected by a Transaction

The Competition Act requires the determination of the relevant market when examining concentrations. While it also contains general rules on the aspects to consider when determining the relevant market, more detailed criteria are not specified in the Act. While the Act contains a de minimis rule for anti-competitive practices, there is not one for concentrations. These aspects may be contained in the forthcoming Regulation to the Act or future guidelines issued by the Superintendence guidelines, which have not yet been enacted.

4.3 Reliance on Case Law

Since the Competition Act is recent, its authorities have not yet been selected, and its substantive provisions are not yet in force, it is not possible to submit a response.

4.4 Competition Concerns

The Competition Act sets general rules for examining concentrations, which include considering its possible effects in the relevant market with respect to competitors and consumers, as well as on related markets and economic agents. It also requires concentrations to be analysed on their ability to confer or increase a dominant position, create barriers to entry or to access,

or substantially facilitate anti-competitive practices. More specific criteria could be contained in the forthcoming Regulation to the Act or future guidelines issued by the Superintendence, which have not yet been enacted.

4.5 Economic Efficiencies

The Act allows the consideration of economic efficiencies, both as part of the elements to be examined by the Superintendence and as a defence to be raised by the parties. Since the Act is recent, its authorities have not yet been selected, and its substantive provisions are not yet in force, the extent to which this will be implemented is unknown.

4.6 Non-Competition Issues

The Competition Act does not expressly permit the consideration of non-competition issues. Although it is not yet possible to assess this from a practical standpoint, it seems unlikely that such elements will be considered, as their inclusion would likely be challenged by parties on the grounds that the Act does not expressly grant such power to the authorities. The Act has no specific rules relating to foreign direct investment.

4.7 Special Consideration for Joint Ventures

The Act has no specific rules or considerations for joint ventures. These aspects may be contained in the forthcoming Regulation to the Act or future guidelines issued by the Superintendence, which have not yet been enacted.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The Competition Act empowers the Superintendence to request the total or partial separation of an irregular concentration, through termination of control as defined in the Act. The Superintendence cannot order this independently but must request an order from a civil court.

5.2 Parties' Ability to Negotiate Remedies

The Act does not expressly state that parties may negotiate remedies. However, it does state that remedies (conditions) may either be accepted or imposed by the Superintendence, in language that mirrors the Mexican law, where parties are expressly allowed to propose or suggest remedies when concentrations are under examination. Therefore, it may be understood that the parties may submit proposed remedies; the details of which could be developed in the forthcoming Regulation to the Act.

The remedies (conditions) foreseen by the Act, that the Superintendence may accept or impose, include:

- carrying out or abstaining from certain behaviours;
- divesting certain assets, rights, participations or shares onto third parties;
- changing or eliminating terms or conditions in acts or agreements;
- carrying out actions aimed at fostering participation of competitors in the market, or at granting access, goods or services to competitors; and
- any other conditions whose purpose is to prevent the concentration from obstructing,

diminishing, damaging or preventing free competition.

The provision containing this list follows, almost verbatim, the Mexican law.

5.3 Legal Standard

The Act states that the Superintendence may only accept or impose conditions that:

- are directly related to correcting the anti-competitive effects of a concentration; and
- are proportional to the correction sought.

Therefore, conditions could not be required to address non-competition issues or concerns.

5.4 Negotiating Remedies With Authorities

The Superintendence may impose remedies not agreed by the parties. The procedural steps with respect to remedies are not addressed in the Competition Act. They may be contained in the forthcoming Regulation to the Act.

5.5 Conditions and Timing for Divestitures

Concentrations approved conditionally (ie, with remedies) become classified as irregular when the conditions are not fulfilled within the term established in the conditional authorisation. Therefore, they become subject to the same penalties applicable to any irregular concentration, including the limitation, previously explained in **2.13 Penalties for the Implementation of a Transaction Before Clearance**, that the Act currently does not state what these penalties are.

5.6 Issuance of Decisions

The Competition Act provides that a formal decision must be issued, either authorising, denying or conditioning the concentration. However,

if the Superintendence does not rule within 30 days of receiving the petition, the concentration will be considered authorised by virtue of no objection, in which case the Superintendent must issue a certificate of non-objection within ten working days. If the Superintendent fails to issue this certificate, the parties may file a writ for constitutional protection (*amparo*), whereby a judge will order the authority to comply, under penalty of removal from office.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

Since the Competition Act is recent, its authorities have not yet been selected, and its substantive provisions are not yet in force; therefore, it is not possible to provide a response.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

This is not addressed in the Competition Act, but could be contained in the forthcoming Regulation to the Act.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

This is not addressed in the Competition Act, but could be contained in the forthcoming Regulation to the Act.

7.2 Contacting Third Parties

Since the Competition Act is recent, its authorities have not yet been selected, and its substan-

tive provisions are not yet in force, it is not possible to provide a response.

7.3 Confidentiality

This is not addressed in the Competition Act, but could be contained in the forthcoming Regulation to the Act. Commercial information, including business secrets, may be kept confidential when requested by the parties, as guaranteed by the Guatemalan Constitution.

7.4 Co-Operation With Other Jurisdictions

The Competition Act allows the Superintendence to co-operate with other jurisdictions, including by sharing information. Since the Act is recent, its authorities have not yet been selected, and its substantive provisions are not yet in force, it is not clear how this is carried out in practice.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

Parties may seek administrative remedies within the Superintendence, seeking a decision from any office to be revoked by its superior, or asking the Directorate (highest authority) to reconsider its own decisions.

Once administrative remedies are exhausted, parties may seek judicial review of the act before the Contentious Administrative Court. This Court's decisions are, furthermore, subject to cassation before the Supreme Court, which is a special kind of review restricted to cases where ordinary courts have committed legal or factual errors in their handling of law or evidence, or certain procedural violations.

Lastly, a cassation ruling may be subject to a writ of constitutional protection (*amparo*) before the Constitutional Court, alleging that a right has been violated or unduly protected by the ordinary courts.

8.2 Typical Timeline for Appeals

Timelines for administrative remedies within the Superintendence are unknown, as it has not yet commenced operations. The timelines will depend largely on its own internal organisation and operation. Consequently, there are no practical examples of successful challenges.

Suits filed before the Contentious Administrative Court, and their eventual challenges before the Supreme Court and Constitutional Court, could take approximately three to six years in total.

8.3 Ability of Third Parties to Appeal Clearance Decisions

Administrative remedies, and their judicial and constitutional review, are normally available only to the parties involved in the specific administrative procedure.

There are some scenarios in which third parties may request to be involved in the proceedings before the Contentious Administrative Court, which would enable them to file for cassation and constitutional protection against the ruling. There are also some instances in which third parties may directly file for constitutional protection against decisions from cases in which they were not involved.

However, the admission of legal standing for such claims is complex and varies from case to case. It remains to be seen if and how they may be used in matters of competition law.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

The Foreign Investment Act (Decree 9-98) enshrines the principle that a foreign investor shall have the same rights and treatment as nationals, prohibiting any acts of discrimination against them, except in specific cases foreseen in the Constitution, sector legislation, or investments derived from treaties establishing economic or customs unions, common markets or free trade zones.

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