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A new legal framework for M&A control

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The recently approved Antitrust Act provides a new legal framework in Uruguay for antitrust, including M&A control, which must be taken into account when doing business in Uruguay, or when executing transactions that impact on the Uruguayan market.

The governmental agency in charge of the Act's enforcement is the Commission of Promotion and Defence of Competition. In the case of sectors of the economy under control of specific regulatory authorities (e.g. financial institutions, telecoms, energy, utilities) such as the Central Bank of Uruguay, Ursea and Ursec, the enforcement of the Antitrust Act – including M&A control – is in the charge of these specific authorities, instead of the Commission.

According to the Act, all markets are subject to the principles and rules of free competition – with the exception of the limitations established by law due to reasons of general interest – and the antitrust regulations apply to all individuals and legal entities, public or private, national or foreign, which perform economic activities, lucrative or not, in the Uruguayan territory. In addition, the Act applies to those who perform economic activities abroad, if these activities have total or partial effects in the Uruguayan territory.

The Act forbids "the abuse of a dominant position, as well as all practices, conducts or recommendations, either individual or coordinated, which have the effect or purpose to restrict, limit, hinder, distort or obstruct the current or future competition in the relevant market". According to the Antitrust Law, "one or various agents have a dominant position in the market when they can substantially affect its relevant variables independently of the conduct of its competitors, buyers or suppliers", and there is abuse when these agents act "in a wrongful manner with the purpose of obtaining advantages or causing damages to others, which they could not have obtained or caused if they did not have a dominant position".

The Act indicates certain factors which should be analyzed, among others, when determining the relevant market, to evaluate whether a practice is anticompetitive: the existence of substitute goods or services, and the geographical area comprised by the market.

Prior notification

In this context, one of the Act's greater innovations with respect to the previous legal regime is the obligation to notify the Commission (or the relevant specific agency) of certain acts of economic concentration 10 days before their execution.

The Act provides that those transactions that imply a modification of the control structure of the participating companies could be considered acts of economic concentration. This change of control could be caused by mergers; acquisitions of shares; quotas or participation in companies; acquisitions of commercial, industrial or civil concerns; total or partial acquisitions of a company's assets; and all other kinds of legal transactions which imply the change of control of the whole or part of economic units or companies.

According to the Act, transactions that involve at least one of the following characteristics require prior notification:

(i) When, as a consequence, participation equal to or above 50% of the relevant market is obtained.

(ii) When the gross annual invoicing in Uruguayan territory of the participants in the operation is equal to or above $Ur750 million ($53.9 million) in any of the last three financial years.

The following transactions (even if they meet the above requirements) are exempted from the obligation of prior notification:

(i) The acquisition of companies in which the buyer already has at least 50% of the shares.

(ii) The acquisition of bonds, debentures, obligations or any other debt certificate of a company, or shares with no voting rights.

(iii) The acquisition of just one company by a foreign company which previously did not possess assets or shares of other companies in the country.

(iv) The acquisition of companies, whether they are declared bankrupt or not, which have not registered any activity within the country in the last year.

Finally, certain transactions require prior authorization from the Commission (or by the relevant specific agency) if their execution implies the creation of a *de facto* monopoly in the market. If the Commission (or the relevant specific agency) does not decide within 90 days of this request, the transaction will be considered authorized.

Penalties for breaching the Antitrust Act are between $Ur100,000 and either $Ur20 million, 10% of the offender's annual invoicing, or three times the damage caused by the anticompetitive practice, whichever is highest.

Financial and corporate

Recommended firms
Tier 1
Ferrere Abogados
Guyer & Regules
Hughes & Hughes
Tier 2
Jiménez de Aréchaga Viana & Brause
Posadas Posadas & Vecino
Tier 3
Estudio Bergstein
Olivera & Delpiazzo
Sanguinetti Foderé Bragard Abogados

After Tabare Vazquez and his left-wing coalition won the 2004 elections in Uruguay, there was uncertainty about which way the administration would take the country. From a business point of view, it seems to have been much ado about nothing. The current government has maintained good relations with multilateral lending agencies and the US, and is quite receptive to the business community.

The economy is expanding, the fourth year in a row of positive GDP growth. This is a turnaround from the period during the Argentine economic crisis that ended in 2002. Many Argentines had kept money in safe harbour in Uruguay, which they withdrew when liquidity became a problem in Argentina. This led to a modest run on Uruguayan banks and left Uruguay's economic confidence shaken. The consensus is that the country has mostly moved on from this period, with dynamic improvements in certain industries.

Foreign investors have been buying up real estate, and there is also considerable interest in the forestry and meat processing industries. Land is the hot investment at the moment, used by investors for projects in agribusiness and biofuels, or for tourism developments. Inevitably, real estate has become expensive by Uruguayan standards, but is still a bargain for Euro-powered acquirers.

There have also been important acquisitions of retail credit companies. Local consumer lenders are being acquired by larger, mostly foreign banks. Consumer lending is slowly starting to overcome the lending restrictions that previously made it difficult for consumers to obtain credit. Banks have an excess of liquidity, as deposits have increased since the crisis. In the past year, banks have begun to focus on the retail sector as an income source instead of relying only on corporate accounts. Exposure to the typically overlooked medium- and lower-income populations has increased, and it is this trend that has attracted the attention of foreign banks looking for new markets.

The M&A market has been very busy lately. Some of the most recent highlights include Petrobras buying out the Shell Oil's distribution system; the state oil company (Ancap) acquiring Texaco's distribution stations, and BankBoston selling it operations to Banco Itaú. The big deals are mostly international companies buying Uruguayan ones.

The most important event for Uruguay was the implementation of its initial personal income tax in the country, effective July 1 2007. This controversial but populist change had as much of a psychological effect on the country as any real effect the tax might actually have. At the time of this writing, the markets appear to have absorbed the implementation smoothly. This is good news for the economy, as foreign investors had been holding back until the new system was in place. Market insiders expect those investors to be pumping money into the economy now.

Ferrere Abogados

The largest law firm in Uruguay, Ferrere Abogados added two more attorneys to its rolls. The firm now houses 62 lawyers in its offices in Uruguay, Paraguay and Bolivia. Besides the flagship office in Montevideo, the firm also maintains offices in Asunción and La Paz; it also opened an office in Bolivia's commercial capital of Santa Cruz.

Ferrere's size and client list ensures that the firm is always involved in key Uruguayan transactions. In one of the more significant strategic transactions, Ferrere represented Brazil oil company Petrobras in its acquisition of Shell Oil operations in Uruguay. The June 2006 deal was part of the Brazilian company's three-pronged expansion into Colombia and Paraguay in a cumulative $140 million action. Petrobras had actually started moving into Uruguay a few years earlier when it took over some distribution stations but this was the main thrust.

A few months later the firm again landed in a cross-border deal, representing Clorox as it purchased the Latin American bleach business of rival Colgate-Palmolive. Ferrere handled the Uruguayan end of the February 2007 $126 million worldwide deal. This deal ensured that Clorox entered the Uruguayan market attached to a leading brand, the Agua Jane label.

Forestry has emerged as a key industry in the country, and another of Ferrere's international clients, Weyerhauser, has made several moves in this area. The company controls 300,000 acres in Uruguay, and has invested some $200 million in the country over the past decade. A new plywood manufacturing plant in Tacuarembó began operations in May 2007. The company is still considering the possibility of opening several other such plants in Uruguay as part of its strategic investment.

Although not the firm's largest deal, its April 2007 representation of Leadgate Investment was important for national reasons. The investment consortium acquired a 75% stake in Uruguayan national airline Pluna for $70 million (the total value is actually $177 million; the consortium agreed to purchase new planes for Pluna). Daniel Ferrere led the team that worked with Leadgate to negotiate with the government. This deal is meant to provide Uruguay with a national airline that will be modernized and more efficiently run.

Leading lawyers

Andrés Cerisola
Martín Cerruti
Daniel Ferrere
Alejandro Hernández Maestroni
Laura Ramón

Guyer & Regules

One of Uruguay's largest firms, Guyer & Regules has its traditional strong point in the banking world. The firm handles some of the largest corporate transactions but is at its best working on some of the country's biggest loans.

On the corporate side, the firm participated in the largest private sale in Uruguay. The Brazilian meat packing company Marfrig Group acquired Uruguay's meat packer Frigorífico Tacuarembó. The October 2006 sale gave Marfig control of a company that exported more than 8% of Uruguay's meat exports.

In another important international transaction, Guyer represented client Bank of America when it sold its Uruguayan operations to Brazil's largest privately owned bank, Banco Itaú. This was part of a $633 million cross-border transaction that included BofA's Brazilian and Chilean operations. The original sale in Brazil allowed Banco Itaú to purchase Bank of America's subsidiary, BankBoston. The deal also included the rights to buy out BankBoston operations in Uruguay, which Itaú did in this rights exercise that was completed in February 2007.

Nicolás Herrera and Alvaro Tarabal, two of the leading partners along with Nicolás Piaggio, led the team that put together the largest credit facility in Uruguayan history. The firm represented Nordic Investment Bank – part of the lending group including the International Finance Corporation and a lending syndicate led by Calyon and Nordea – in establishing a $ 470 million secured facility for the Finnish pulp maker Botnia. This is a key deal because of the importance of the forestry industry but also because it is part of a border dispute between Argentina and Uruguay over Botnia's construction of its mill on the Uruguay River.

National transactions are also part of Guyer's deal makeup. The firm advised Puerta del Sur, the concessionaire of Montevideo's international airport, on the issuance of $87 million notes. This was the largest domestic notes issuance, and was used for the development of a new airport terminal. The structure was completed with two trusts, a guarantee trust and an administration trust.

The firm also represented Citibank in a couple of financing deals. One such deal was for the bank as lead underwriter in the syndicate that granted the Uruguay's electric transmission company an $Ur86 million ($3.72 million) financing arrangement. The deal was guaranteed by the national government. The firm advised Citibank in several debt exchange offers with the Uruguayan government, as well as underwriting a $Ur9.56 billion bond offering for the state.

It is because of deals like these that Guyer & Regules really shines. One of the firm's clients said: "Guyer & Regules have an excellent and trustworthy team. Nicolás Herrera and Álvaro Tarabal stand out in the small Uruguay market."

Leading lawyers
Nicolás Herrera
Nicolás Piaggio
Álvaro Tarabal

Hughes & Hughes

Never the largest but historically among the most prominent firms in Uruguay, Hughes & Hughes has grown over the past year, adding five lawyers in 2006. The 26-lawyer firm took a hit when its client Shell sold off its Uruguayan operations to Petrobras of Brazil. Despite sitting across the table – or perhaps because of it – Petrobras has since retained Hughes & Hughes for corporate legal work. The market, however, has its doubts about the firm's viability but recent transactions should belay that concern.

Representing its new client Petrobras, the firm advised on establishing in Uruguay. Regulatory matters such as contract reviews and compliance with Uruguayan laws in the oil, gas and energy industries were handled, as well as taking over any pending litigation matter. During 2007, Hughes & Hughes has been assisting the Brazilian energy company in obtaining financing from a syndicate of local lenders. Citibank, ABN Amro, BBVA and Lloyds put together a package for $15 million to help increase the distribution capabilities of the new subsidiary, Petrobras Uruguay Distribución.

An indication of the firm's ability to participate in the biggest transactions was advising Finnish pulp manufacturer Botnia in the largest credit facility in Uruguayan history. The company received a $470 million loan for its pulp mill project. This is part of Botnia's continuous developmental operations in the country, and is the largest foreign direct investment in Uruguay.

Another international deal saw the firm represent Ultramar Network, a Chilean port operator. The company acquired a 50% stake in the local port operator Schandy Group to create a joint venture for 90% of Montevideo port container operator Montecon. The deal allowed Hughes & Hughes's client Ultramar to expand its presence in Chile by proposing to build a new container facility in the port of Montevideo.

Banking deals are no less important to the firm than corporate transactions. Marcela Hughes led the team representing Société Générale in granting a revolving credit agreement to Imcopa, the Uruguayan subsidiary of the eponymous Brazilian soybean producer. The credit agreement was for $15 million.

In a trans-national project, the Quiport Project is developing the new international airport in Quito, Ecuador. Sophisticated project finance dealing has been required, and financing was obtained through a syndicate including IDB, Ex-Im Bank, ABN Amro and Deutsche Bank. Several Uruguayan companies have been involved in the project, and therefore required a local law firm to handle the Uruguayan portion of the $340 million deal. The lending syndicate was represented by Hughes & Hughes in Uruguay.

Leading lawyers
Conrado Hughes
Marcela Hughes

Jiménez de Aréchaga Viana & Brause

Celebrating its 65th year since its founding, the firm of Jiménez de Aréchaga Viana & Brause is doing its best to keep up with the times. Competitors have noted that the efforts the firm is making to transition from a family-run firm to a modern one that is looking to grow, particularly in the commercial and banking markets.

The firm has been involved in several leading deals this past year. In the largest private acquisition, Jiménez represented Uruguay's leading meat packing company, Frigorífico Tacuarembó, which is responsible for more than 8% of the country's meat export volume. Hector Viana helped his client through the selling procees as Frigorífico was bought out by Brazilian meat packing company Marfrig Group in an October 2006 sale for an undisclosed amount.

The most significant deal, however, was representing New Zealand agricultural company PGG Wrightson. The oft-praised Fernando Jiménez de Aréchaga – called a "first-class lawyer" by one client – led the Jiménez team advising the company in its acquisition of land. This has become an important industry, as the Uruguayan government hopes to attract new investors to develop real estate. PGG Wrightson invested $100 million in what is expected to be the first tranche of investment activity. The land is expected to be developed into farms – for Uruguay, this means the direct impact of the investment dollars. There is the additional benefit of employment opportunities, and the social impact as these lands become productive.

Even deals that turn up empty demonstrate the typical client profile of the firm as well as the potential it offers them. The firm represented General Electric Healthcare in a failed bid to acquire the worldwide diagnostics business of Abbott Laboratories. The companies were unable to come to terms, but the deal was estimated at $8.2 billion.

Jiménez de Aréchaga Viana & Brause maintains a diverse international client list, including banks, corporate and industrial companies. Banco Santander, ABN Amro and Goldman Sachs are representative of the former; McDonald's, Ericsson, Four Seasons Hotel, and SanCor are some of the others.

Leading lawyers
Alberto Brause
Fernando Jiménez de Aréchaga
Héctor Viana

Other notable firms

One of the smaller firms in the rankings, **Estudio Bergstein** is led by the efforts of Jonás Bergstein in the international corporate markets. The firm celebrates its 50th anniversary this year, and is proud that it is small enough to provide personal attention to its clients. It's not too small though – the firm represented Boston Scientific in its worldwide acquisition of cardiac product maker Guidant for the Uruguayan segment of the $27.2 billion sale. Boston Scientific has since retained Bergstein's services as counsel in the country. Bergstein also advised Allflex Europe in a successful $3 million bid to supply electronic identity markers for cattle to the Ministry of Agriculture. The firm assisted international whiskey maker Diageo acquire local whiskey brand Old Times as Diageo expands from premier brands into the local brands market, for an undisclosed amount. The firm also represented Abbott Labs in the attempted sale of Abbot's diagnostics division to GE Healthcare. The sale was estimated at more than $8 billion until both parties failed to come to terms, ending the deal.

When referring to **Posadas Posadas & Vecino**, one client said: "They are a very good firm which seems to focus on international clientele." Indeed, the firm's client list reads like a corporate and financial Who's Who – Axa, AmBev, the US Embassy, Citibank, Votorantim Cementos, and Parmalat are but a few. The firm advised private-equity firm Advent in its acquisition of Nuevo Banco Comercial. The Brazilian bank Banco Itaú turned to Posadas for local counsel when the bank acquired the Uruguayan operations of Bank of America. According to market experts, the firm's main work is with offshore companies, particularly those of Brazilian registry. The 81-year old firm is home to 21 lawyers.