

## ***Antitrust and Antioligopoly Law for the Electricity Sector***

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THE CONGRESS OF THE REPUBLIC

The following Law has been given:

Antitrust and Antioligopoly Law for the Electricity Sector

### **Article 1º.** ➡

Both types, vertical or horizontal mergers that will take place on generation and/or transmission and/or distribution activities of the electric energy will be subject to a prior permission procedure according to the terms established in this Law, in order to avoid acts of concentration that tends to diminish, lessen, damage or prevent competition and the free concurrence in the markets of the activities mentioned before or on the related markets.

### **Article 2º.** ➡

According to this Law, term concentration is related to the realization of any of the following actions: the fusion; the setting-up of a company in common; the direct or indirect acquisition of control on other companies through the acquisition of stock shares, participation, through any contract or legal figure that confers the direct or indirect monitoring of a company including the celebration of joint venture associations "contracts", association in participation. Use or usufruct of actions and/or syndication and management, participation, management contracts, of actions or any other business collaboration similar, similar, and/or similar and similar consequence contract. Likewise, the acquisition of productive assets of any company that develops activities in the sector; or any other act, contract or legal figure including legacies, by virtue of which societies, associations, shares, social partners, trusts or general acts of concentration, that are made between competitors, suppliers, clients, shareholders or anyone other economic operators.

It is not considered the existence of concentration when a person acquire the control in virtue of a temporary mandate given (conferred) by the legislation related with the end (expired-termination) or report of the concession, patrimonial restructurattion or any other similar procedure.

### **Article 3º** ➔

Before the realization of concentration actions in the activities of generation and/or transfer and/or distribution with the conditions and characteristics established in the following paragraph, prior permission from the Free Competition Commission of the National Institute of Defence of the Competition and the Protection of Copyright - INDECOPI, will have to be requested without whose approval they could not be carry out, neither will take any legal effect.

Prior permission will have to be requested in reference to the acts of concentration that, directly or indirectly involve companies that develop activities of generation and/or transmission and/or distribution of electrical energy that account previous or afterwards the action that motivated the request authorization, in a joint or separate way, a market share equal or greater to 15% in the cases of horizontal concentration. In the case of acts of vertical concentration, those that involve, directly or indirectly companies that develop activities of generation and/or transmission and/or distribution of electrical energy that account previous or afterwards the act that caused the request for authorization a market share equal or greater to 5% of any of the involved markets.

Prior permission of the Free Competition Commission of INDECOPI will not be necessary, in the following cases:

If the concentration imports, in an act or succession of acts, the direct or indirect acquisition of productive assets of a value below 5% of the total value of the productive assets of the company purchaser, calculated in agreement with the criteria that are established in the Regulation of this Law, considering the influence and the conditions of competition in the market.

If concentration implies, in an act or succession of acts, the direct or indirect accumulation by the purchaser of less than 10% of the total of the actions or participation with rights to vote of another company.

Despite what is put forward, it will be necessarily required authorization, if the act of concentration permits acquire the direct or indirect management of the company that develops any of the electrical activities mentioned.

### **Article 4º** ➔

The authorization of the acts of concentration will have to be requested both by the companies that take part in the fusion, or by the person or company that acquires, directly or indirectly, the entire or part of one or more companies that develop any of the electrical activities mentioned, as correspond.

### **Article 5º** ➔

If as result of the investigation or the correspond procedure it stemmed that the acts of concentration might produce effects that diminish, damage or prevent competition and the free concurrence, the Free Competition Commission or the Court of Defense of Competition will, where appropriate, be able to adopt the following measures.

Subject (constrain) the realization of that act to the fulfillment of the conditions that it determines;

Order the partial or total devolution of what had been concentrated illegally, the termination of the control or the removal of the acts, as it corresponds. The direct or indirect exercise of the control through the exercise of the right to vote actions or any other legal act that confers the control on the forming company object of concentration, will be in suspense until the final fulfillment of the devolution mandate.

### **Article 6º.** ➡

the Free Competition Commission of INDECOPi will be able to impose to the people or companies Article 4 of this Law refers, fines for a non greater amount of 500 ITU when: they omit the presentation of the authorization request for of an act of concentration before carrying it out, if they provide inexact information in the request presented either in response to the requirements of the Commission, or if they not provide the information within the established periods.

Notwithstanding what is indicated in the preceding paragraph, the Commission will be able to impose fines of up to 10% of the sales or gross income perceived by the companies that develop some electrical activity in the national territory involved directly or indirectly in concentration - in the terms established in Article 3º of this Law, corresponding to the immediate year before the decision of the Commission, to the people or companies to that Article 4 of the latter refers, that. They make the act of concentration omitting to request his prior permission or they carry it out, after presented the request but before the decision of the Commission or the Court, they make an act of concentration declared incompatible to have as an effect to lessen, damage or prevent competition and the free concurrence by decision of the Commission or do not comply with the measures arranged by decision adopted by the Commission.

### **Article 7º.** ➡

Notwithstanding what is set out on the previous article, the breach of the resolution that establishes devolution will authorize to INDECOPi to establish and begin the actions that are necessary, including the ones of a legal nature, in order to leave without effect the act of concentration made, such as: the sale of the productive assets or the stocks shares, the declaration of invalidity of the act of concentration that harm public order regulations, among others, in agreement with which we have in the regulation this Law.

### **Article 8º.** ➡

Will Correspond the Commission of Free Competition and the Court of Defense of the Competence of the National Institute of Defense of the Competition and the Protection of Copyright - INDECOPi to know and resolve in the first and second instance respectively, the procedures that are begun subject to this Law.

To the Organization Supervisor of the Investment in Energy - OSINERG will correspond the twice-yearly resolution of the percentages of participation on the market of the companies that develop activities of generation and/or transmission and/or distribution of electrical energy, on the basis of the sworn declarations that to him aforementioned companies will twice-yearly have to present.

### **Article 9º.** ➔

Within the area of this Law, those acts of concentration Are included that however to be made abroad, involve directly or indirectly companies that, develop activities of generation and/or transfer and/or distribution of electrical energy in the national territory. The or shareholders of the company resident of the country, linked the companies that take part directly in the act of concentration, obliged to the fulfillment of this Law, will be finding itself subject to the sanctions considered in the latter.

### **Article 10.** ➔

Within the scope of the Law N° 26844, to the Companies of Electrical Energy, dedicated the generation and/or transfer and/or distribution of energy.

### **Article 11º.** ➔

Will Be applicable to the procedures that are begun subject to this Law, in which, the definitions, faculties, pressures and responsibilities is pertinent, contained in the Legislative Decrees N° 701 and N° 807.

### **Article 12º.** ➔

The procedures that are begun subject to this Law, will be subject to the payment of an administrative rate equivalent to 0.1% of the total value of the operation up to a 50 limit ITU.

### **Article 13º.** ➔

Amended Article 122º of the Decree Law N° 25844, in the following terms:

Article 122º. the activities of generation and/or transfer pertaining to the principal System and/or distribution of electrical energy, could not be carried out by a common holder or whom it exercises directly or indirectly the the latter control, except for what is set out in this Law.

From that prohibition, the acts of concentration of a vertical or horizontal type are excluded that happen in the activities of generation and/or transfer and/or distribution, that do not imply a decrease damage or restriction to competition and the free concurrence in the markets of the activities mentioned or in the related markets.

***Article 14º. ➡***

The Regulation of this Law will be issued by the Executive Power, in a maximum period of 90 days counted from the date of its entry in validity.

Communicate to the President of the Republic for its promulgation.

In Lima, to the five days of November thousand nine hundred ninety-seven.