

The Feasibility Consultation in Panama's Antitrust Law

The Feasibility Consultation is a valuable mechanism that allows economic agents to obtain from Acodeco a pronouncement on whether or not a practice or contract, which is intended to be carried out, would violate the Antitrust Law for being considered a Monopolistic Practice.

In Panama, the legislation on Antitrust was introduced with **Law 29 of February 1, 1996**, representing a significant change in business-related matters since, until that date, there was no regulation on monopolistic practices.

After more than 20 years of that historical milestone, there is now great progress on the matter and on the culture of doing business, with a significant knowledge at a business level of the current regulations contained in **Law 45 of October 31, 2007** "Which dictates rules on consumer protection and defense of competition" (Antitrust Law). However, aspects such as Monopolistic Practices and the consequences or penalties for incurring in these, are still considered something complex, as I have been able to observe in my professional practice and when providing training to companies about this topic.

Although the current regulations on Antitrust Law cover what are considered Absolute or Relative Monopolistic Practices, in practice the application and interpretation of such regulations in the face of specific acts, facts or situations may generate doubts as to whether or not such acts, facts or situations are considered a Monopolistic Practice.



Precisely due to the above, the Antitrust Law establishes in its article 20 the legal concept of the Feasibility Consultation, which allows the economic agent who wishes to establish whether or not a certain act, contract or practice that it intends to carry out constitutes an absolute or relative monopolistic practice prohibited by Law, may make a written inquiry to the Administrator of the National Authority for Consumer Protection and Defense of Competition (Acodeco).

The Feasibility Consultation is a valuable mechanism that allows economic agents to obtain a pronouncement from Acodeco on whether or not a practice or contract, which is intended to be carried out, would violate the Antitrust Law for being considered a Monopolistic Practice.

In this way, the economic agent has prior legal certainty about the act or conduct it intends to carry out and thus avoids the risk of it being interpreted or considered to be illegal after it has been carried out.

Steps to submit the consultation

Pursuant to the Antitrust Law and its regulation, the Feasibility Consultation must be submitted together with the information and documents that allow Acodeco to verify whether or not the conduct that is the object of the consultation constitutes a monopolistic practice in violation of the Antitrust Law.

In case Acodeco requires additional information, it must request it to the economic agent within fifteen (15) days following the submission of the feasibility consultation.

Acodeco shall decide the Feasibility Consultation within thirty (30) days following its submission. If additional information has been requested, the thirty (30) day term begins to run from the date Acodeco issues a resolution stating that the additional information and documents requested have been satisfactorily provided. If the thirty (30) day term expires without an express answer from Acodeco, then it shall be understood that the consulted act is lawful.

If the economic agent disagrees with the decision of the Feasibility Consultation, it may file a petition for reconsideration before the Administrator of Acodeco.

In our experience, Acodeco processes and answers the Feasibility Consultation in a timely manner, and the economic agents should take advantage of this opportunity established by the Antitrust Law to, in case of doubt, consult whether or not a certain act, contract or practice that is intended to be carried out constitutes a monopolistic practice.

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