

Law 26876, Antimonopoly and Antioligopoly Law of the Electrical Sector and its Regulation, issued on November 19, 1997.

Article 1 of Law 26876 provides that acts of vertical or horizontal concentration occurring in the activities of generation and/or transmission and/or distribution of electricity shall be subject to a proceeding of prior authorization, with the objective to avoid operations that diminish, harm or hinder competition and the free concurrence markets of the aforementioned activities and the related markets.

Article 2 of Law 26876 states that the following are considered as concentration acts:

- Mergers
- The establishment of *joint ventures*
- The direct or indirect acquisition of control over other companies through the acquisition of equity shares or through any other contract or legal form that gives direct or indirect control of a company, including joint venture partnerships contracts, or any other similar business cooperation agreement, with similar consequences.
- The acquisition of productive assets¹ from any company that develops activities in the relevant sector.
- Any other contract or legal form including legacies that concentrate companies, associations, shares, equity, trusts or assets in general that are made between competitors, suppliers, customers, shareholders or any other economic agents.

The relevant assessment in a concentration activity is the action of taking control over a company that carries out businesses in the electricity sector².

Article 3 of Law 26876 provides that mergers involving directly or indirectly companies that develop activities of generation and/or transmission and/or distribution of electricity owned before or after the act which caused the request for authorization, shall be subject to prior approval by the Commission for the Defense of Free Competition:

- Jointly or separately, a percentage equal to or greater than 15% market share in horizontal concentration acts.
- A percentage equal to or greater than 5% of any of the markets involved, in acts of vertical concentration.

Article 5 of Law 26876 states that if the Commission or the Competition Defense Board of the Tribunal of Indecopi conclude that the act of concentration could have the effect to diminish, harm or hinder competition and the free occurrence, they may:

- Condition the completion of the merger to the fulfillment of certain conditions.

¹ **Reglamento de la Ley 26876.-**

Artículo 10.- Adquisición de activos productivos. Se consideran como activos productivos aquellos bienes que a la fecha de realización de la operación se encuentren bajo el control de las Empresas que desarrollan Actividades, ya sea porque son de su propiedad o debido a cualquier acto, contrato o figura jurídica que así lo permita. La adquisición de activos productivos sólo se encuentra sujeta a procedimiento de autorización previa si los mismos permiten mediante su adquisición incrementar la participación de la empresa o grupo que los adquiere en el desarrollo de las Actividades, considerándose el valor de mercado de los mismos en la fecha en que se realice la Notificación.

² As provided in Article 37 of the Law 26876, to define "control", corresponds to take as reference the special rules on linking and economic groups, adopted through Resolution SBS 445-2000. In this sense, control is the ability to influence in a continuous and preponderant manner, the adoption of strategic decisions regarding the govern bodies of a legal person.

- Order the partial or total scatter of what had been unduly concentrated, the suspension of control or suppression of those acts, as appropriate. In this case, the direct or indirect control over voting rights of shares or of any legal act which confers control over the company object of concentration shall be suspended until the scatter mandate is definitely fulfilled.

Article 9 of Law 26876 legislatively enshrines the " theory of effects" under which are included within the scope of the Law 26876, mergers that despite that are carried out abroad, its effects involve companies that directly or indirectly perform activities of generation and/or transmission and/or distribution of electricity beneath the Peruvian territory.