

# Peru

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## Electricity industry merger control

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Merger control in Peru applies only to those transactions that concentrate power companies operating in Peru. The Anti-monopoly and Anti-oligopoly Law for the Electricity Sector, Law 26876 (in force since November 1997) and its Regulation, Supreme Decree 017-98-ITINCI (in force since October 1998), establish that before the execution of transactions that involve vertical or horizontal concentrations in the markets of electricity generation, transmission and/or distribution (the activities), it is mandatory to obtain the Peruvian Competition Authority's (Indecopi's) authorisation. The purpose of this law is to avoid those concentrations that will diminish or impede competition and free concurrence in the Peruvian electric market or related markets, such as natural gas or telecommunications.

According to Law 26876, if the transaction fulfils the following three requirements it is mandatory to notify it to Indecopi in order to obtain its prior authorisation.

### Electricity firms involved

The transaction must involve two or more Peruvian electricity firms that are independent and that belong to different economic groups. For this purpose, an electricity firm is defined as a natural or artificial person, a Peruvian or foreigner that holds a concession or authorisation to undertake any of the activities.

### Threshold for notification

The Peruvian electricity firms involved in the transaction must exceed, individually or jointly, the following percentages, before or after the transaction: (i) 15% of the market for horizontal concentrations; or (ii) 5% of any of the markets involved for vertical concentrations. The law defines a horizontal concentration as a

transaction that involves electricity firms that only undertake one activity, and a vertical concentration as a transaction that involves electricity firms that undertake more than one activity.

### Concentration

The transaction must result in a concentration, which means that as a result of the transaction the previously independent Peruvian electricity firms become controlled by only one economic group. For this purpose, control is defined as a continuous and predominant influence over the main decisions of a corporation or enterprise. There is direct control if one person can exercise more than half of the voting rights in the general shareholders' meeting through direct or indirect property of shares, pledge, trusts, syndication contracts or by other means. There is indirect control if one person has: (i) the right to designate, remove or veto the majority of the members of the board of directors; (ii) the right to exercise the majority of votes in the board of directors; or (iii) the right to direct the operative and/or financial policies even if the person does not exercise more than half of the voting power in the general shareholders' meeting.

Indecopi has defined the continuous and preponderant influence over the main decisions of a firm as a position that predominates over the opinion of the other shareholders, and that maintains its predominance continuously over time. This influence can be exercised over strategic decisions adopted in the general shareholders' meeting, the board of directors or even by the main management departments.

According to Law 26876, a concentration could be produced by any of the following transactions: (i) mergers; (ii) joint ventures; or (iii) direct or indirect acquisitions of control over other firms through the acquisition of shares or any other contract or legal structure that allows the direct or indirect control of a company, the acquisition of productive assets of any Peruvian electricity firm or any other acts, contracts or legal structures, including

legacies, that produce the concentration of corporations, associations, shares, trusts or assets in general between competitors, providers, clients, shareholders or other economic agents.

On the other hand, the following cases are not considered concentrations: (i) direct or indirect acquisitions of productive assets of a Peruvian electricity firm that represent less than 5% of the total value of the acquiring firm's productive assets; (ii) direct or indirect acquisition of less than 10% of the shares with rights to vote within a Peruvian electricity firm, unless that percentage allows having the direct or indirect control of the concessionaire; and (iii) the acquisition of control over a Peruvian electricity firm as a consequence of a temporary mandate obtained under legislation related to the expiration or denouncement of concessions, to bankruptcy or another analogous process. In addition, it is important to note that the growth of a firm through its own investment or financed with the resources of third parties that has no direct or indirect participation in the activities does not constitute a concentration.

Once a transaction is notified with all the required information, Indecopi should decide to grant the authorisation within a period of 30 days. If Indecopi does not take a decision within that period, its silence is considered by Law 26876 to be a negative decision and the transaction will not be authorised. However, Indecopi can also decide to extend the decision period for an additional 30 days, which will require Indecopi to adopt a decision regarding the transaction.

The evaluation of the authorisation involves the typical competition analyses applied abroad in similar cases. Indecopi evaluates or defines: (i) the relevant market involved; (ii) if the transaction increases relevant market concentration; (iii) if the transaction facilitates collusion, or if it allows potential exclusion of competitors in related markets; and (iv) if the transaction produces efficiencies that can be transferred to consumers and if those efficiencies are enough to compensate for the potential anti-competitive effects.

Finally, the firms involved in the transaction that fail to notify Indecopi are subject to a maximum penalty of approximately \$590,000 (500 Tax Units). In addition, if a transaction that requires Indecopi's authorisation is conducted without it or in contradiction to a negative decision by Indecopi, the firms involved in the transaction are subject to a maximum penalty of 10% of their previous year's gross income, in addition to the legal annulment or invalidation of the transaction by Indecopi.

## Banking and capital markets

Recommended firms	
<b>Tier 1</b>	Estudio Echecopar Miranda & Amado Rodrigo Elías & Medrano
<b>Tier 2</b>	Muñiz Ramírez Pérez-Taiman & Luna-Victoria Payet Rey Cauvi Rebaza Alcázar & De Las Casas Rubio Leguía Normand & Asociados
<b>Tier 3</b>	García Sayan Abogados Hernández & Cía Rosselló Abogados
<b>Tier 4</b>	Estudio Grau Estudio Olaechea

## Mergers and acquisitions

Recommended firms	
<b>Tier 1</b>	Estudio Echecopar Rodrigo Elías & Medrano
<b>Tier 2</b>	Miranda & Amado Muñiz Ramírez Pérez-Taiman & Luna-Victoria Payet Rey Cauvi Rebaza Alcázar & De Las Casas
<b>Tier 3</b>	Estudio Grau Hernández & Cía Rubio Leguía Normand & Asociados
<b>Tier 4</b>	Estudio Ferrero Abogados Estudio Olaechea

## Project finance

Recommended firms	
<b>Tier 1</b>	Estudio Echecopar Muñiz Ramírez Pérez-Taiman & Luna-Victoria Rodrigo Elías & Medrano
<b>Tier 2</b>	García Sayan Abogados Miranda & Amado Payet Rey Cauvi Rosselló Abogados Rubio Leguía Normand & Asociados
<b>Tier 3</b>	Estudio Olaechea Hernández & Cía

Peru has all the good things a South American country can have going for it – vast natural resources, tourist destinations and a strong economy – as well as all the bad things that come with the territory – a spotty political history, poverty, industrial pollution and inadequate infrastructure development. But the recent economic downturn has been favourable for the country as investors look to the more stable nations like Peru, Chile and Brazil to set up operations and make investments. As one lawyer puts it: “I think from an economic standpoint Peru is kind of the prized part of the region.”

The Peruvian government is using its newfound leverage to promote infrastructure projects throughout the countryside. While private capital has dried up in many of the neighbouring countries, Peru has been able to organise public-private partnerships (PPPs) with multilateral lenders and development institutions. In 2008, President Alan García Pérez signed a law to promote local and regional PPPs, and the government is now handing out concessions at a rapid pace. Last year the state agency for promoting private investment, ProInversión, awarded the concession to develop the port of Paita – Peru's second-largest port – to a consortium of Portuguese and Peruvian companies for \$227 million. Several other concessions for toll roads and water treatment plants have been awarded or are being developed.

While oil and gas projects are being developed at breakneck pace, financial lawyers note the country is lagging behind many of its neighbours in developing renewable sources of energy. One explanation for this, some sources propose, is that there is a good deal of private investment for gas and oil development, while wind and hydroelectric production generally require a greater participation of government financing. Recently-awarded LNG pipeline concessions point to a further dependence on petroleum for Peru, at least in the short-term

outlook. As renewable energy projects in other jurisdictions begin to turn profit, Peru's attorneys expect the market to grow.

The government's promotion of private investment has not been met with complete acceptance by Peru's populace. A protest in June led to the cancelling of two controversial laws that would have opened portions of the Amazon rainforest to private development. Emerging reports of longstanding pollution by foreign mineral and oil companies in Peru's remote areas is putting pressure on the government to enforce more stringent oversight on foreign operators and to hold companies accountable for past behaviour. Financial lawyers see “social responsibility” as a catchphrase for foreign investors in 2010.

## Estudio Echecopar

Peru's lawyers don't have a hard time naming partners at Estudio Echecopar that stand out. “In terms of quality of lawyers they are the best,” one attorney says. Peers point to Ismael Noya de la Piedra as one of the strongest attorneys in project finance in the country. Jorge Ossio Gargurevich and José Ramírez Gastón Roe are similarly admired for their work in corporate matters. In banking and capital markets – perhaps the firm's strongest area of practice – rivals mention Javier Tovar Gil's work in securities as solid. “Tovar is very proactive and deal oriented,” a rival attorney states.

Clients praise Pablo Berckholtz Velarde as having international communication skills. “He is very US oriented, so he's easy to work with,” one interviewee notes. In 2008, Berckholtz represented Citibank on behalf of bondholders for Inkia Energy's \$200 million limited bond issuance. Lima's stock exchange has been active throughout the economic downturn and Echecopar has been part of the action. In April 2009 the firm advised Grupo Arias, a consortium of mining companies, when it acquired 50% of Minera Poderosa on the stock exchange. Arias's participation in the gold mining company, partially financed by Canada's Summa investment fund, was purchased from Minera Milpo for \$52 million.

Concessions are a big part of Echecopar's practice, and last year the firm advised Minera Cerro Norte and the local arm of Australia's Hampton Mining in the purchase of three mining concessions in the Torata District of Mariscal Nieto.

### Leading lawyers

Pablo Berckholtz Velarde  
Javier Castro Salinas  
José Ramírez Gastón Roe  
Ismael Noya de la Piedra  
Jorge Ossio Gargurevich  
Javier Tovar Gil

### Rodrigo Elías & Medrano

In terms of Peru's full-service firms, Rodrigo has developed a solid reputation as being one of the only outfits in Lima with even quality across its practices. "In my opinion, they are actually on top of all of the other firms," a competitor says. Peers single out Jean Paul Chabaneix as one of Rodrigo's most important partners in banking and corporate transactions. While lawyers have mixed emotions regarding the firm's competitive nature, clients appreciate Juan Del Busto's judgement in matters before the government. "He understands when to concede the point and when to fight the point," one interviewee states.

The calibre of Rodrigo's corporate clients brings the partners to the borrowing side of some of Peru's largest financial transactions. In 2008, Chabaneix's team represented Dubai Ports World subsidiary DP World Callao in a \$300 million syndicated loan led by HSBC for its container terminal project in the southern port of Callao. Cornering the port development market, the firm also advised a joint venture between Portugal's Tertir Terminais and several Peruvian companies in their successful \$227 million bid to develop container dock and yards at Peru's northern port of Paíta.

Rodrigo's presence in the mining and energy sectors is lauded by rivals as one of the top two in the nation. The consolidating energy market has led to several landmark transactions, including last year's \$900 million sale of Peru's third-largest oil producer Petro-Tech Peruana to the Korea National Oil Corporation and Colombia's Ecopetrol. The firm represented Korea Oil in its 50% participation in the deal, which was the largest in Peru's oil and gas industry since 2004.

#### Leading lawyers

Juan Del Busto  
Jean Paul Chabaneix  
Alex Morris  
Diego Peschiera  
Luis Carlos Rodrigo Prado  
Gino Sangalli

### Miranda & Amado

Competitors admit that when Miranda & Amado split from Estudio Echeopar ten years ago they represented the young talent of one of Peru's strongest firms. In the subsequent decade the partners of Miranda have established themselves on a par with Echeopar in banking matters and have carved a niche in Peru's energy sector. Still, rivals believe the firm has some way to go in terms of developing its M&A practice and could use the reputation only a veteran statesman can contribute. "They are lacking the grey hair experience that older partners bring," a peer notes.

Miranda's transaction-driven banking practice has put the firm on the lending side of some of Peru's largest financing deals. In 2008, a team led by Enrique Felices advised Fortis Bank on its co-arrangement of a cross-border syndicate that presented a \$300 million loan to the mining company Cormin, a subsidiary of commodities trader Trafigura Beheer. The one-year term revolving facility is secured by the company's mineral inventory.

The firm's leadership in the energy arena is exemplified by its participation in the largest infrastructure project ever developed in Peru. Acting on behalf of Peru LNG – a joint venture formed by Hunt Oil, Repsol YPF and the Korean investment conglomerate SK Energy, among others – the firm negotiated financing for the construction of a 250-mile pipeline from the Camisea gas fields in the Amazon region to the Pacific coast. The \$2.2 billion financing is composed of several tranches and involves several large multilateral lenders and international bank syndicates.

#### Leading lawyers

Juan Luis Avendaño C  
Roberto MacLean M  
Luis Marcelo De-Bernardis  
Luis G Miranda

### Muñiz Ramírez Pérez-Taiman & Luna-Victoria

Peru's largest firm in terms of staff, Muñiz has a reputation among competitors as focusing on developing longstanding client relations rather than chasing down big transactions. While rivals contend the firm has still not recovered its former presence in banking and capital markets transactions, its leadership in project finance is buoyed by strong contacts in the oil and gas industry.

In 2008 Muñiz's client Kuntur Transportadora de Gas won a \$1.35 billion bid to build a 674-mile natural gas pipeline from the Camisea oil field down the coast of Peru. The pipeline will provide access to natural gas for many less-developed areas of the country.

The firm has sat on the seller's side of the table in many large M&A transactions in the mining and energy sectors as well. Last year, Muñiz was retained to represent Minera Atacocha in the sale of a stake in Minera Poderosa for \$51 million. The shares were purchased by the family-owned Grupo Arias, which reclaimed the stake in Poderosa it had sold to Atacocha two years ago.

Muñiz has also carved an important niche in Peru's fishing industry, a distinction that allowed it to act on behalf of both sides of a merger between two of the nation's most important fishing operations. The merger between Pesquera Giuliana and Pesquera

Portobello – owned by several of Peru's largest investment groups – took place in September 2008 for \$100 million.

#### Leading lawyers

Jorge Muñiz Ziches  
Mauricio Olaya Nohra  
Sergio Oquendo Heraud  
Jorge Pérez-Taiman

### Rubio Leguía Normand & Asociados

While competitors contend Rubio seems not to have grown in recent years, all agree as to the firm's strength in the mining sector and the skill of its attorneys. "You can see them as loyal competition," one rival explains. "They will work with you but will not try to get between you and your client".

Both peers and clients single out Oscar Arrús as a leader in the financial markets. "He's really the top or among the top regional lawyers from Mexico all the way down to Brazil," a client says.

The firm counts some of the world's biggest private banking institutions among its clientele, including Merrill Lynch, WestLB and Credit Suisse. In 2008, a team of Rubio lawyers led by Juan García Montúfar advised Credit Suisse on arranging a syndicated loan to Minera Milpo for \$130 million. Minera Milpo used the loan to acquire a 70% stake in rival zinc mine operator Minera Atacocha.

One corporate client that has kept Rubio's lawyers busy is mine operator Newmont Mining, which the firm represented in an August 2008 sale of its stake (valued at \$33.3 million) in the Liam gold and silver mine project in south-western Peru. Earlier that year Rubio acted as local representatives in Newmont's transfer of mineral royalties to its controlled entity Franco-Nevada of Canada, amounting to approximately \$500,000 in capital.

#### Leading lawyers

Oscar Arrús B  
Emil Ruppert Yáñez

### Payet Rey Cauvi

Barely a decade old, Payet Rey Cauvi has established itself in Peru's capital markets and private finance transactions. The practice's close relationship with Spanish firm Uría Menéndez is the envy of peers for bringing in many lucrative European clients, such as Telefónica and BBVA. "They are a firm I would like to work with," one rival admits.

On the bond market Daniel Abramovich acted as counsel to European electricity powerhouses Enel and Acciona in joint mandatory

tender offers to acquire 24% of voting shares in both Edegel and Edelnor, two of Peru's leading energy generators and distributors, respectively. The transactions, totalling \$423 million, were the two most successful ex-post mandatory offers in terms of percentages and value.

Competitors note José Antonio Payet's leadership in managing Peru's diverse pension funds, having been the first advisor after privatisation. The firm's financing team, led by Payet, is currently counselling four Peruvian pension fund advisors in financing several infrastructure projects that total approximately \$300 million.

Many of Peru's mineral companies are making public placements, taking advantage of the strength of both the mining industry and the country's capital markets. Recently Payet and José Cúneo counselled Gold Fields La Cima in a \$500 million placement on the Lima Stock Exchange. The subsidiary of South Africa's Gold Fields owns the Cerro Corona gold and copper mining project in Hualgayoc.

#### Leading lawyers

Juan Antonio Egúez  
José Antonio Payet  
Eduardo Vega

#### Rebaza Alcázar & De Las Casas

Peru's attorneys characterise the relative newcomer to the market as aggressive, both at the bargaining table and in its hiring practices, and note Rebaza has quickly outgrown its financial boutique roots by making lateral additions to its tax, labour and restructuring practices. "They have realised that clients want lawyers who can do more than advise," one peer comments.

"Alberto Rebaza is clearly a leader," a competitor says of the name partner's presence in the M&A market. The attorney's prowess in cross-border deals was exemplified late in 2008 by advising on Peruvian conglomerate Soldexa's acquisition of several Colombian and Venezuelan welding companies for \$97 million. The firm has also been active with Peru's pension funds, advising Scotiabank in purchasing a stake of ProFuturo AFP, Peru's fourth-largest pension fund, for \$66 million.

The firm has a noted background in the debt restructuring markets, a distinction that has brought business in the recent economic climate.

In 2008, the firm helped Scotiabank refinance a \$16.5 million debt held by Los Portales, Peru's largest parking lot developer and operator. The transaction involved an out-of-court settlement and amendments to several of the original financing agreements.

While competitors dismiss the firm's presence in project finance deals, Rebaza has been

active with several clients in unsuccessful bids for government concessions, including a \$300 million bid to construct a waste water treatment facility in Taboada and a \$123 million bid to develop the port of Paita in northern Peru.

#### Leading lawyers

Rafael Alcázar  
Gonzalo De Las Casas  
Alberto Rebaza

#### Garcia Sayan Abogados

Known mostly for its finance work, Garcia Sayan is typified by rivals as a traditional Peruvian firm that has had trouble retaining young talent in the past few years. While peers may consider its partner-oriented structure as a negative trait, clients praise the firm's efficient use of lawyers. "They use associates when it is required but they don't put a lot of attorneys to work unnecessarily," one client explains. Luis Gastañeta Alayza is singled out by attorneys and clients as the firm's chief rainmaker.

Competitors note Garcia Sayan's relationship with the IFC is a boost to its financial practice and the firm was recently involved in an M&A deal on behalf of the multilateral lender. Late in 2008, Gastañeta and Alfonso Tola Rojas advised the International Finance Corporation (IFC) on its 16% acquisition of Protecta Compañía de Seguros, a broker of insurance policies for individuals and small and mid-sized companies. IFC's minority presence in Peru's first micro-insurance provider is in line with the lender's mission to support small-scale enterprise with capital and services.

Gastañeta and Tola also teamed up to represent Chilean retailer Cencosud in an innovative \$150 million bond placement in 2008. The offering, made among private banks led by Banco de Crédito del Perú, was swapped for Chilean notes pegged to the Chilean market. The placement represents a novel regional transaction that made use of Peru and Chile's relatively strong stock markets.

#### Leading lawyers

Luis Gastañeta Alayza

#### Other ranked firms

Peruvian lawyers overwhelmingly mention Estudio Ferrero Abogados as a traditional presence in the M&A market, with a strong list of corporate clients that includes shopping centre operator Aventura Plaza – a joint venture between Chilean retailers Falabella and Ripley – and the country's largest steel and iron producer Aceros Arequipa. Late in 2008, the firm represented leading explosives producer Orica in its buyout of joint venture partner Enaex's

stake in Samex for \$58.2 million, bringing Orica's ownership in the Peruvian explosives manufacturer to 99%.

The mixed reviews of peers reflect Estudio Olaechea's transitional position. While there is a consensus that the firm suffered from a series of spin-offs that took away a large portion of its market share, some attorneys feel that Olaechea has recovered some ground. "There was a period in time when they were kind of frozen," one competitor notes, "but they've been coming back in the last five years."

The firm showed prowess last year in representing computer service company ACS's successful bid to install and operate a contactless ticketing system for Lima's First Bus Rapid Transit Line. The concession was awarded for \$200 million.

With a recognised background in tax matters, Hernández & Cía has also made significant inroads in Peru's capital markets. Evidence of this can be seen in the firm being chosen by the government to advise on the \$1 billion sovereign global bond placement, completed in March 2009. The highly-successful placement took advantage of the increasingly active emerging economy debt market and was the first international bond offering by the Republic of Peru in two years. Competitors predict the lateral hire of Luis Rodríguez-Mariátegui will boost the firm's project finance practice.

Leading lawyers: Juan Luis Hernández and Luis Rodríguez-Mariátegui

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