

COVID 19: RELAXATION OF COMPETITION RULES FOR THE TRANSPORT SECTOR

Take into account the following considerations on the authorization to enter into agreements or arrangements between competitors in the transport sector under Decree 482 of 2020.

AUTHORIZATION FROM THE NATIONAL GOVERNMENT TO CELEBRATE ARRANGEMENTS

Article 1 of Law 155 of 1959 expressly entitles the Government to authorize the celebration of agreements or arrangements between competitors when their purpose is to preserve the stability of a basic sector of production of goods or services of the economy. Under normal conditions, said agreements or arrangements are considered to be anti-competitive and illegal.

Thus, within the framework of the State of Economic, Social and Ecological Emergency, Decree 482 of 2020 permits the celebration of agreements, arrangements or contracts of collaboration between competitors within the cargo transport sector to overcome the crisis and supply products throughout the national territory. In this special scenario, these agreements will not give rise to any reproach by the National Competition Authority.

CREATION OF A SPECIAL ENTITY DURING THE CRISIS

The National Government created the Logistics and Transport Centre (Centro de Logística y Transporte), an entity ascribed to the Ministry of Transport, which will operate as long as the conditions that gave rise to the economic, social and ecological emergency persist.

The Logistics and Transport Centre will be the authority responsible for, among others, assessing the viability and authorizing the celebration of contracts, concertation or collaboration agreements between competitors in the cargo transport sector, when such conducts generate efficiencies in the market and the logistics activities of the transport sector.

LIMITATION TO THE SANCTIONING POWERS OF THE NATIONAL COMPETITION AUTHORITY

Within the framework of the crisis faced by the country, contracts, concertation or collaboration agreements celebrated between competitors in the cargo

transport sector, may not be subject to investigation and sanctions by the Superintendence of Industry and Commerce, as the National Competition Authority. It should be recalled that, under normal conditions, any kind of practice, procedure or system tending to limit free competition and, particularly, agreements on price-fixing, market allocation or assigning manufacturing or supply quotas, among others, shall be investigated and sanctioned by the National Competition Authority. In this sense, those who engage in this type of behavior may face the imposition of substantial monetary penalties by the Superintendence of Industry and Commerce and the adoption of other measures against them.

PRECAUTIONS FOR COMPETITORS IN THE CARGO SECTOR

Although as long as the conditions that gave rise to the decree of the state of economic, social and ecological emergency persist, it is important that competitors in the cargo transport sector who are interested in entering into any type of contract, concertation or collaboration agreement, previously submit it to the Logistics and Transport Centre for approval.

Otherwise, there is a possibility that such conduct would be considered a transgression of the competition regime since it would be outside the framework of legality established in Decree 482 of 2020.

Likewise, it is important that, once the state of emergency has been overcome, competitors do not engage in conducts or enter into new agreements that restrict competition, since such actions could be punished by the Superintendence of Industry and Commerce as they are considered to affect competition and, therefore, illegal.

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CONTACT:

Jorge de los Ríos
Jorge.delosrios@phrlegal.com