

Merger Control in the Absence of FDI Screening in Latin America

By: Mariana Camacho Ordóñez & Francesca Chocano Villanueva



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I. Introduction

Most Latin American countries review foreign acquisitions for their effects on competition, but few have dedicated foreign direct investment (FDI) screening mechanisms to assess their national security implications. In this setting, competition authorities may face demands to address concerns about strategic assets, critical inputs, or foreign state influence through merger review, even where those concerns fall outside their statutory mandate.

This article asks three related questions: whether merger control performs a security-screening function in practice where no dedicated screening regime exists; whether competition authorities may lawfully perform that function; and, perhaps most importantly, whether they should. It addresses these questions through a brief analysis of ten merger reviews of transactions involving Chinese state-owned enterprises (SOEs) in

Brazil, Argentina, Chile, Mexico, and Peru between 2010 and 2025.

The ten reviews show varying scrutiny of state ownership, but no decisions resting on national security as an independent ground. The cases also point to a less visible consequence of the way authorities define SOE groups: a finding of a single economic unit adopted to assess an acquisition may later be invoked to place coordination among commonly owned enterprises outside of cartel enforcement.

The article makes three contributions: (i) it provides decision-based comparative evidence from a region that has received little attention in comparative works on the interaction between FDI screening and merger control;³ (ii) it proposes a classification and a sufficiency test that separate competition remedies with wider protective effects from security screening conducted through merger control; and (iii) it examines the enforcement consequences of SOE group definitions. Section II distinguishes the two review functions, Section III sets out the method, Section IV presents the national findings, Section V assesses the reach of merger control, Section VI turns to findings of a single economic unit, and finally Section VII discusses Mexico's 2026 proposal.

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³Comparative work on the relationship between merger control and investment screening, and on Chinese SOEs

in merger control, has concentrated on the European Union: see, e.g., Marc Bungenberg and Angshuman Hazarika (2019), *Chinese Foreign Investments in the European Union Energy Sector: The Regulation of Security Concerns*, 20(2-3) Journal of World Investment & Trade 375–400, <https://doi.org/10.1163/22119000-12340136>; Alexandr Svetlicinii (2021), *Chinese State Owned Enterprises and EU Merger Control* (Routledge); Alexandr Svetlicinii (2024), *Chinese Investments in the European Energy Sector: From Merger Control to Investment Screening*, 48(2) Asian Perspective 227–252, <https://doi.org/10.1353/apr.2024.a928615>. For Latin America, see Felipe Irrázabal (2022), *What should a competition agency do in a country that has a mandatory merger control but lacks FDI screening? The case of Chile and Latin America*, CentroCompetencia, <https://centrocompetencia.com/mandatory-merger-control-lacks-fdi-screening/>.

II. Merger Control and FDI Screening in Latin America

Merger control asks whether a transaction is likely to substantially lessen competition. FDI screening asks whether a foreign investment threatens national security or another essential interest of the State. Both may apply to the same transaction and examine the same ownership chain, and each answers its own legal question. A clearance on competition grounds leaves the security risk unassessed, and a security approval leaves the competitive effects unassessed.⁴

Jurisdictions that screen investment on security grounds do so under an express legal basis. The United States built its review system through successive statutes administered by CFIUS, the European Union coordinates national screening under Regulation (EU) 2019/452, and the United Kingdom adopted a standalone regime in the National Security and Investment Act 2021. Some systems also allow for public-interest considerations within merger procedures, but that power rests on statute, and the absence of a separate screening regime cannot supply it.

Latin America followed a different path. Merger control spread across the region, while dedicated security screening did not. Foreign ownership limits, border restrictions, and sectoral authorizations exist, while their coverage varies. Peru's Constitution bars foreigners from acquiring energy sources and other assets within fifty kilometers of the borders, subject to exceptions declared by

supreme decree,⁵ while its merger-control law aims to promote effective competition and economic efficiency for consumers' benefit.⁶ Neither Peru, Chile, nor Brazil has a general procedure for screening foreign investment on security grounds. Mexico's Foreign Investment Law empowers the National Foreign Investment Commission (CNIE) to block acquisitions on national security grounds, but provides no procedure, thresholds, or criteria for doing so.⁷ Sectoral authorizations, such as approval for a change of control in an electricity concession, look at compliance with the sector's regulatory regime; whether they also assess the security implications of foreign ownership depends on the sector and its applicable rules.

Sectoral regulators and, in Mexico, the CNIE are gatekeepers too, but the former decide within their own regulatory remit and the latter has no procedure. Where pre-closing merger review is mandatory, the competition authority may therefore become the most visible gatekeeper, which explains the pressure placed on it, while the scope of its mandate remains set by its statute.

III. Methodology and Analytical Framework

Our analysis comprises ten reviews of acquisitions by Chinese SOEs or their subsidiaries, two in each jurisdiction (Table 1). The eight reviews in Brazil, Chile, Mexico and Peru were examined through the authorities' published decisions. The Argentine account draws on the competition commission's opinion in *Sinopec/Occidental-Vintage* and

⁴OECD (2022), *The Relationship Between FDI Screening and Merger Control Reviews*, OECD Competition Policy Roundtable Background Note, https://www.oecd-ilibrary.org/en/publications/the-relationship-between-fdi-screening-and-merger-control-reviews_8bcc96f0-en.html.

⁵Peru (1993), *Constitución Política del Perú*, Article 71, [https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/9C1C43653C97169D052578C300776BC1/\\$FILE/Constituci%C3%B3n_Pol%C3%ADtica_delPer%C3%BA_1993_art.58-77.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/9C1C43653C97169D052578C300776BC1/$FILE/Constituci%C3%B3n_Pol%C3%ADtica_delPer%C3%BA_1993_art.58-77.pdf).

⁶Peru (2021), *Ley No. 31112, Ley que establece el control previo de operaciones de concentración empresarial*, Article 1, https://leyes.congreso.gob.pe/Documentos/2016_2021/A_DLP/Texto_Consolidado/31112-TXM.pdf.

⁷Mexico, *Ley de Inversión Extranjera*, Article 30, Diario Oficial de la Federación, 27 December 1993, <https://www.ordenjuridico.gob.mx/Documentos/Federal/html/wo14.html>.

principally on research summaries in contextual evidence for the pressure being placed on merger review. *ChemChina/Syngenta*. A complaint filed with Brazil's competition authority in 2025 provides

Table 1. Merger reviews examined

Country	Transaction	Proceeding	Year	Outcome	Category
Brazil	State Grid / CPFL Energia	AC 08700.006319/2016-39	2016	Unconditional	Competition-only (provisional)
Brazil	CTG / Duke Energy's Brazilian assets	AC 08700.007003/2016-64	2016	Unconditional	Competition-only (provisional)
Argentina	Sinopec / Occidental-Vintage	Conc. 683	2014	Unconditional	Competition-only
Argentina	ChemChina / Syngenta	Conc. 1465	2021	Unconditional	Competition-only
Chile	State Grid / Chilquinta-Eletrans	F219-2019	2020	Unconditional	Competition-only
Chile	State Grid / CGE	F255-2020	2021	Unconditional	Competition-only; express boundary
Mexico	ChemChina / Syngenta	CNT-083-2016	2017	Conditional	Legitimate grey zone
Mexico	CTG-Kinich / solar assets	CNT-152-2021	2022	Unconditional	Competition-only (provisional)
Peru	CYPI / Luz del Sur	007-2020/CLC	2020	Conditional	Legitimate grey zone
Peru	CSGI / Enel Distribución and Enel X	014-2024/CLC	2024	Conditional	Legitimate grey zone

The comparative analysis uses three categories. 'Competition-only review' covers decisions grounded in competition law, including those that examine state ownership because it affects control or incentives. 'Legitimate grey zones' cover competition remedies that also address part of a wider investment concern without exceeding the authority's mandate. 'Off-label antitrust' covers the use of merger control to pursue security or other objectives the competition mandate does not support. The first label differs from the OECD's concept of competitive neutrality, which concerns a level playing field between state-owned and private enterprises.⁸ A procurement obligation that prevents a distributor from favoring affiliated generators belongs in the grey zone if it also reduces dependence on those generators; the same obligation imposed only to limit a foreign

state's influence over supply would be off-label.

This classification turns on one question: would the stated justification for intervention remain legally sufficient without the identified risk to competition? If the measure depends on a competition rationale, any security benefit is overlap. If national security supplies independent grounds for action, the authority is screening and its legal basis must be examined. The test applies to documented reasoning and makes no claim about officials' motives.

The design has limits. Silence on national security leaves open the question of whether a risk was examined and rejected, and whether any other institution considered it. The two Brazilian decisions, adopted under a summary procedure, contain limited discussion of their reasoning, and redactions limit the public

⁸OECD (2021), *Recommendation of the Council on Competitive Neutrality*, OECD/LEGAL/0462,

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462>.

version of one Mexican decision; the classification for these cases is provisional. Colombia was considered at the design stage but is not included because no merger decision by the Superintendencia de Industria y Comercio concerning an acquisition by a Chinese SOE was identified for the period. The article considers no acquisitions by other state-owned investors or by privately owned Chinese firms, so it cannot separate the effect of nationality from that of state ownership. Finally, all ten transactions were authorized, and abandoned or unnotified transactions fall outside the sample.

IV. Findings from the National Merger Reviews

A. Brazil

CADE's General Superintendence cleared State Grid's acquisition of CPFL Energia and China Three Gorges' purchase of Duke Energy's Brazilian generation assets in 2016, without restrictions and under the summary procedure.⁹¹⁰ The CPFL transaction, worth about USD 4.5 billion, was among the largest Chinese investments in Brazil. The Duke assets, valued at about USD 1.2 billion, comprised ten hydroelectric plants. In both decisions, Chinese state ownership serves to identify the purchasers and plays no further role in the standard applied. The CPFL transaction also required authorization from ANEEL, the electricity regulator, granted in December

2016 as a sectoral approval of the change of control in a regulated concession. Neither decision asks whether SASAC could coordinate the conduct of otherwise separate Chinese enterprises, and nothing in them presents sectoral regulation as an assurance on national security. In 2025, Corex Holding asked CADE to review MMG's proposed acquisition of Anglo American's Brazilian nickel business, invoking common Chinese state control, supply-chain vulnerability, and Brazil's policy on strategic minerals.¹¹ The complaint shows an attempt to broaden the matters placed before the authority, and the record contains no indication that CADE accepted that invitation.

B. Argentina

The Argentine reviews examined state ownership more closely. In Sinopec's acquisition of Occidental's Argentine oil and gas assets, the competition commission's opinion devotes a section to the control exercised by the Chinese State through SASAC, drawing on European Commission precedents, and treats CNOOC's interest in Bidas as part of the same state-owned group.¹² According to the research summary, the assessment also considered the inclusion of oil and gas among the industries China regards as strategic. The stakes were significant: the acquiring group would hold about 48 percent of Argentina's proven oil reserves and become the second-largest crude producer, behind the state-controlled YPF, but the CNDC concluded that

⁹CADE, Superintendência-Geral (2016), *Ato de Concentração No. 08700.006319/2016-39*, State Grid Brazil Power Participações Ltda. and CPFL Energia S.A., Despacho SG No. 1.154, Diário Oficial da União, 22 September 2016, <https://pesquisa.in.gov.br/imprensa/servlet/INPDFView.r?jornal=1&pagina=28&data=22/09/2016&captchafield=firstAccess>.

¹⁰CADE, Superintendência-Geral (2016), *Ato de Concentração No. 08700.007003/2016-64*, China Three Gorges (Luxembourg) Energy S.à r.l. and Duke Energy International Group S.à r.l., Despacho SG No. 1.341, Diário Oficial da União, 4 November 2016, <https://pesquisa.in.gov.br/imprensa/servlet/INPDFView.r?jornal=1&pagina=27&data=04%2F11%2F2016&captchafield=firstAccess>.

¹¹Corex Holding (2025), *Denúncia de Ato de Concentração* concerning the acquisition of Anglo American's Brazilian nickel business by MMG Singapore Resources, submitted to CADE on 27 June 2025, https://static.poder360.com.br/2025/08/CADE_Denuncia-de-Ato-de-Concentracao-Yildirim.pdf.

¹²Secretaría de Comercio (2014), Resolution of 5 March 2014, Expediente No. S01:0064762/2011 (*Conc. 683*), adopting Comisión Nacional de Defensa de la Competencia, Dictamen No. 1047 of 28 February 2014, <https://cndc.produccion.gob.ar/sites/default/files/cndcfile/s/1047.pdf>.

sufficient competitors remained. The review took three years, from notification in February 2011 to authorization in March 2014. In *ChemChina/Syngenta*, the authority reached the opposite conclusion on independence: agrochemicals fall outside that strategic list, so ChemChina was assessed separately from Sinochem.¹³ Combined shares exceeded 50 per cent in some crop-specific segments, such as herbicides for vegetables, and the authority relied on the prevalence of off-patent active ingredients and the presence of strong global rivals. Both transactions were authorized without conditions. The CNDC used Chinese institutional arrangements to identify control and relevant business relationships and made no determination regarding Argentine national security.

C. Chile

The FNE approved State Grid's acquisitions of Chilquinta from Semptra in 2020, and of CGE from Naturgy in 2021 without conditions, after examining SASAC's structural powers and State Grid's links with other state-linked electricity businesses.^{14,15} In *Chilquinta*, the FNE also left possible breaches of sector-specific electricity rules out of its analysis, as they fall to the sectoral regulator. In *CGE*, industry participants raised national interest and security objections. The approval report records them and states that those

considerations are alien to the defense of free competition. The FNE had taken the same position before Congress. In January 2021, when the Chamber of Deputies Economy Committee discussed a constitutional reform bill that would require investments by foreign states in strategic companies to be authorized by a qualified-quorum law, the National Economic Prosecutor stated that the agency could not legally take geopolitical considerations into account and asked to be excluded from that function.¹⁶ The Chamber later convened a special session on the CGE sale for 6 July 2021.¹⁷ The Chilean cases provide the clearest evidence in the sample of an authority drawing the jurisdictional line itself, and they show that a demanding analysis of state control is compatible with a limited mandate.

D. Mexico

In *ChemChina/Syngenta*, COFECE identified possible risks in twelve herbicide and fungicide markets and, in April 2017, authorized the transaction subject to the divestiture of five Syngenta products, mainly herbicides for sugar cane and contact fungicides, to an independent buyer, with the authority taking part in the buyer's evaluation and an independent auditor overseeing implementation.¹⁸ The decision extends the obligations to ChemChina, its subsidiaries and

¹³Secretaría de Comercio Interior (2021), authorization of 18 February 2021, *Conc. 1465*, China National Chemical Corporation, China National Agrochemical Corporation and Syngenta AG, https://cndc.produccion.gob.ar/sites/default/files/cndcfile_s/Conc.%201465%20-%202021.pdf. The account of this case relies on the research summary prepared for this study.

¹⁴Fiscalía Nacional Económica (2020), *Informe de aprobación, Rol FNE F219-2019*, 27 February 2020, <https://www.fne.gob.cl/wp-content/uploads/2020/03/F219-2019-Informe-27.02.2020-VP.pdf>.

¹⁵Fiscalía Nacional Económica (2021), *Informe de aprobación, Rol FNE F255-2020*, 31 March 2021, para. 89, https://www.fne.gob.cl/wp-content/uploads/2021/04/inap1_F255_2020-1.pdf.

¹⁶Diario Estrategia (2021), *FNE participó en sesión legislativa sobre proyecto que busca exigir autorización a inversiones de estados extranjeros en empresas "estratégicas"*, 12 January 2021, <https://www.diarioestrategia.cl/texto-diario/mostrar/2258122/empresas-estrategicas-fne-expone-ante-comision-economia-sobre-proyecto-busca-exigir-autorizacion-inversiones-estados-extranjeros>.

¹⁷El Mostrador (2021), *Cámara de Diputados fija para el martes 6 de julio sesión especial por venta de CGE a la empresa china State Grid*, 2 July 2021, <https://www.elmostrador.cl/mercados/2021/07/02/camara-de-diputados-fija-para-el-martes-6-de-julio-sesion-especial-por-venta-de-cge-a-la-empresa-china-state-grid/>.

¹⁸COFECE, Pleno (2017), Resolution of 7 April 2017, *Expediente CNT-083-2016*, China National Chemical Corporation, CNAC Saturn (NL) B.V., China National

their successors. The remedy preserves an independent source of agricultural inputs, which may also matter for supply resilience, but its legal basis was market power, which places it in the legitimate grey zone. The acquisition of solar generation assets by China Three Gorges and Kinich Energía was authorized unanimously and without conditions in January 2022; redactions in the public version limit what can be said about its reasoning.¹⁹

E. Peru

INDECOPI's two electricity decisions turned on the incentive of a state-linked distributor to favor affiliated generators. In CYPI's acquisition of Luz del Sur in 2020, the Commission reasoned that SASAC could align the interests of the enterprises it supervises, without finding that all such enterprises form a single decision-making center.²⁰ In CSGI's acquisition of Enel Distribución and Enel X in 2024, SASAC-linked ownership defined the acquiring group, and the positions of related businesses already active in Peru were aggregated.²¹ Both decisions required the distributor to buy electricity from linked generators through tenders administered by Osinergmin or another transparent and competitive process, and the 2024 decision also barred post-award changes to the capacity, price, term or indexation of those contracts. Ownership explained the incentive, and the remedy

addressed the opportunity to act on it. The conditions leave the ownership structure intact, and nothing in the decisions weighs foreign influence as an energy-security risk. Participation in the proceedings was institutional: in 2020 the Ombudsman's Office requested access to technical opinions, and in 2024 competitors and consumer organizations commented on the proposed decision. Neither resolution refers to a broader public debate on Chinese investment or to any foreign investment review.

F. Comparative Findings

Seven of the ten reviews fall within competition-only review and three within legitimate grey zones. None relies on national security as an independent ground. The off-label category has no cases in the sample. A decision would fall within it if an authority conditioned an acquisition on divestitures or procurement obligations justified by dependence on a foreign state without identifying a risk to competition, or prohibited a transaction because of the acquirer's links to a foreign government. The absence of such decisions is relevant because the reviews combine strategic sectors, public objections, and the lack of a dedicated screening mechanism.

The comparison also cautions against reading national attitudes into different outcomes. The same global acquisition, ChemChina's

Agrochemical Corporation and Syngenta AG; see COFECE (2018), *Beneficio económico de las intervenciones de la COFECE 2017*, https://www.cofece.mx/wp-content/uploads/2018/11/Ex_ante_2017.pdf.

¹⁹COFECE, Pleno (2022), Resolution of 27 January 2022, *Expediente CNT-152-2021*, Kinich Energía Holding, S.A. de C.V., China Three Gorges Latam Holdings S.à r.l., X-Elio Energy, S.L.U., Coega Investments, S.L.U. and Mursolar 28, S.L.U., <https://www.cofece.mx/conocenos/pleno/asuntos-resueltos-2022/>.

²⁰INDECOPI, Comisión de Defensa de la Libre Competencia (2020), *Resolución 007-2020/CLC-INDECOPI*, 27 March 2020; INDECOPI, press release of

10 April 2020, <https://www.indecopi.gob.pe/-/el-indecopi-autoriza-la-adquisicion-de-luz-del-sur-siempre-y-cuando-la-empresa-se-abastezca-de-energia-mediante-licitaciones-o-concursos-competitivos->.

²¹INDECOPI, Comisión de Defensa de la Libre Competencia (2024), *Resolución 014-2024/CLC-INDECOPI*, 23 January 2024, provisional public version at <https://documents.bvl.com.pe/empresas/alertas/OPA%20Pluz%20Informacion%20adicional.pdf>; INDECOPI, press release of 5 February 2024, <https://www.gob.pe/institucion/indecopi/noticias/902252-el-indecopi-autoriza-con-condiciones-la-operacion-de-adquisicion-de-enel-distribucion-por-parte-de-china-southern-power-grid-international>.

purchase of Syngenta, was authorized with conditions in Mexico and without conditions in Argentina. The difference reflects the respective market assessments and the remedies each authority considered necessary and gives no indication of different degrees of security screening.

V. The Reach of Merger Control

State ownership belongs in merger analysis whenever it explains a risk to competition. It can determine which businesses form the acquiring group, whether a rival is independent, how access to finance shapes conduct and which vertical incentives the acquisition creates. SASAC's powers over the enterprises it supervises, including the appointment of senior managers and performance evaluation, make that inquiry necessary,²² and the European Commission has examined whether SOEs have autonomy from the State in their strategy, business plans and budgets.²³ An authority that disregarded this evidence would be narrowing its own assessment.

The limits of merger control lie at three levels. Jurisdictional thresholds determine which transactions are reviewed, and an investment can raise a security concern without being a notifiable concentration. The substantive standard determines which risks justify intervention, and a security concern may persist where competition is unaffected. Remedial powers determine what the authority may impose: a procurement condition justified by a foreclosure risk cannot

be imposed merely to reduce dependence on a foreign state.

The legal question follows from the same analysis. Where the statute frames merger review around competition, as Peru's Law 31112 and Chile's competition statute do, national security cannot supply an independent ground for conditioning or blocking a transaction. An authority confronted with security objections can record them and point to the competent body, as the FNE did, but it cannot decide them. The case for a broader role rests on practical arguments: the competition authority is already reviewing the transaction, it has experience analyzing ownership and control, and a single gatekeeper reduces delays. Those arguments explain the pressure without resolving its legal basis. An implicit expansion would give the authority a function its statute does not assign, without the criteria, information channels or political accountability that a security review requires, and it would make merger outcomes less predictable for investors. It would also strain competition concepts, such as the single economic unit, that serve other purposes in the same legal system. The contribution of merger control is therefore conditional. Remedies such as the Peruvian procurement obligations may also protect supply resilience, but they depend on monitoring and compliance and leave ownership unchanged. Where a security concern remains once the competition analysis is complete, it needs its own legal basis and its own assessment.

²²State Council (2003), *Interim Regulations on Supervision and Management of State-owned Assets of Enterprises*, arts. 17–18, English version at https://www.chinaservicesinfo.com/s/200311/24/WS5c0768f5498eefb3fe46e2c5/interim-regulations-on-supervision-and-management_3.html. On the distinction between the central SASAC and regional-level SASACs, see European Commission (2011), *Case M.6082, China National Bluestar/Elkem*,

https://ec.europa.eu/competition/mergers/cases/decisions/m6082_20110331_20310_1967334_EN.pdf.

²³European Commission (2016), *Case M.7850, EDF/CGN/NNB Group of Companies*, decision of 10 March 2016, https://ec.europa.eu/competition/mergers/cases/decisions/m7850_429_3.pdf; see the summary in Global Law Office (2020), <https://www.glo.com.cn/Content/2020/02-24/1406113421.html>.

VI. The Single Economic Unit and Cartel Enforcement

Several reviews in the sample adopted broad group definitions. In *Sinopec/Occidental–Vintage*, the CNDC treated CNOOC’s interest in Bidas as part of the acquirer’s state-owned group; in *CSGI/Enel*, INDECOPI defined the acquiring group by reference to SASAC-linked businesses already active in Peru; and in the State Grid reviews, the FNE treated SASAC-linked electricity businesses as part of the acquirer’s group. In *EDF/CGN*, the European Commission treated CGN and other Chinese state-owned energy companies as a single economic entity for the first time.²⁴

Broad definitions help an authority test an acquisition, but they can have consequences later. Cartel rules generally require an agreement between independent undertakings. A finding that several SOEs form one economic unit could later be invoked to argue that coordination among them falls outside cartel enforcement, a possibility practitioners noted after the European Commission’s early decisions on Chinese SOEs.²⁵ The sample contains no case in which this happened, and whether the argument would succeed depends on each jurisdiction’s single-entity doctrine. Authorities can reduce the risk by distinguishing a definitive finding of common control from an analytical assumption used only to test the transaction.

Two drafting practices would help. Authorities can state whether a group definition is a

finding of common control or a working assumption for the competitive assessment, and they can identify which ownership links were decisive. The same precision matters for investors and their counsel, because positions taken in merger filings about the independence of state-linked affiliates may later be cited in conduct investigations.

VII. Mexico’s 2026 Proposal

On 28 August 2026, the Mexican Executive sent the Senate a bill that would replace Article 30 of the Foreign Investment Law with a suspensory screening regime.²⁶ As reported, filing would be mandatory when three conditions coincide: foreign participation above 49 percent of a Mexican company, activity in a listed sensitive sector, and target assets above a threshold the CNIE would set after the law takes effect. The listed sectors include strategic infrastructure, critical and dual-use technologies, critical inputs and sensitive data. The ministers of defense, the navy and security would join the CNIE as voting members, the review would take 60 business days subject to one suspension and one extension, and failure to decide in time would operate as a refusal.²⁷

The bill makes the allocation of a security function explicit, and the cases point to the design questions it raises. A 49 percent trigger is easy to apply, but the rights relevant to a security concern can arise below that level. An asset threshold limits the administrative

²⁴European Commission (2016), *Case M.7850, EDF/CGN/NNB Group of Companies*.

²⁵Clifford Chance (2011), *EU Merger Control and Chinese SOEs*, <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2011/10/eu-merger-control-and-chinese-soes.pdf>.

²⁶Henri Capin-Gally et al. (2026), *Mexico FDI: President Sheinbaum Proposes National Security Screening for Foreign Investment*, White & Case LLP, <https://www.whitecase.com/insight-alert/mexico-fdi-president-sheinbaum-proposes-national-security-screening-foreign>.

²⁷Patricio Martínez Osorio (2026), *Mexico’s Proposed National Security Screening Regime for FDI*, Pérez-Llorca, <https://www.perezllorca.com/wp-content/uploads/2026/09/Legal-Briefing-Mexicos-Proposed-National-Security-Screening-Regime-for-FDI.pdf>; Holly Swanson et al. (2026), *Proposed Reform to Mexico’s Foreign Investment Law: National Security Screening for Investments in Sensitive Sectors*, Foley & Lardner LLP, <https://www.foley.com/insights/publications/2026/09/proposed-reform-to-mexicos-foreign-investment-law-national-security-screening-for-investments-in-sensitive-sectors/>.

burden, but may leave out investments whose security significance exceeds their size. Deemed refusal avoids treating an incomplete assessment as approval and places the cost of administrative delay on the investor.

Coordination is the other open issue. The proposal provides no mechanism to coordinate the new review with merger control by the Comisión Nacional Antimonopolio, which replaced COFECE under the 2025 reform of the Federal Economic Competition Law and assumed its functions in October 2025.²⁸ Because merger review must conclude within a shorter period, security review would likely determine the closing date, and the two authorities could impose conflicting conditions. A workable regime needs clear grounds for each condition, a lawful basis for sharing information and a way for authorities to identify conflicts before their decisions become final.

Fines would apply to transfers made without clearance or despite a refusal, and to breaches of mitigation measures. The bill would take effect the day after publication, and its transitional provisions are reportedly silent on pending transactions, so deals signed before enactment but closing afterwards face uncertainty. For transactions with Mexican targets, this calls for mapping the target's activities against broad sector categories, national security conditions precedent, long-stop dates that allow for suspensions and extensions, and an allocation of the risk of prohibition or burdensome mitigation.

VIII. Conclusion

Merger control makes a real but bounded contribution to the review of foreign investment in Latin America. The authorities examined Chinese state ownership, decided

which enterprises belonged to the acquiring group and, in Mexico and Peru, imposed remedies whose protection may extend beyond competition. That protection, however, depends on a competitive risk that justifies intervention.

The case for screening in each country should start from a consideration of the risks that existing competition, investment, and sectoral regulations leave unaddressed. Where a material gap exists, the answer should be to establish an express and accountable mandate, coordinated with merger control. Where the power already exists, as Mexico's Article 30 shows, the task may be to give it a procedure. Stretching competition concepts to fill the gap would leave the security question unanswered and could weaken cartel enforcement.

²⁸Cuatrecasas (2025), *Entra en funciones la Comisión Nacional Antimonopolio de México*,

<https://www.cuatrecasas.com/resources/entra-en-funciones-la-comision-nacional-antimonopolio-de-mexico-68f297d3dd55e221097385.pdf>.