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The Argentinian Government files a complaint before the Supreme Court challenging an appellate ruling that suspends an interim measure in a telecom merger control case (*Telecom / Telefónica*)

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In the framework of the Telecom/Telefónica case, on September 14, 2025, the National Government filed a complaint before the National Supreme Court of Justice (“Supreme Court”) due to the denial, by the Court of Appeals in Federal Civil and Commercial Matters, of the extraordinary appeal brought against the decision dated June 5, 2025.

By that decision, the Court granted with suspensive effect the appeal filed by Telecom against Resolution No. 63/2025 of the Secretariat of Industry and Trade, which—under Article 44 of Law No. 27,442 (the “Law”)—had ordered an interim protective measure suspending the effects of the transaction for six months or until completion of the notification procedure, whichever occurred first, in order to prevent integration or consolidation between the companies. In addition, an independent monitoring agent had been appointed to oversee compliance with the measure.

In the appealed decision, the Court held that the Civil and Commercial Procedure Code provides for the suspensive effect as the general rule for appeals, absent a legal provision to the contrary, and considered that the appellate regime under the Law adheres to that principle. It further stated that the Law departs from this rule only with respect to the situations set out in Article 66(b)–(e), as well as in the case of daily fines and precautionary measures under Article 44.

On that basis, the Court considered that the challenged acts did not fall within a case warranting non-suspensive effect, since Article 44 is included in Chapter VI of the Law (anticompetitive conducts) and is not extendable to Chapter III concerning merger control, thereby concluding that the Resolution wrongly imposed a suspensory effect on the transaction.

Finally, the Court also ruled against the appointment of the monitoring agent, arguing that access to the parties’ sensitive information could lead to irreparable consequences.

Among its grievances, the State emphasized that, by granting the appeal with suspensive effect, the Court altered the nature of the preventive measure ordered by the administrative authority, departing from the

guiding principle governing appeals against orders imposing precautionary measures, which are to be granted with non-suspensive effect unless expressly provided otherwise by law.

The State further argued that the judgment failed to weigh the public interest at stake and departed from the text and purpose of the Law to the detriment of users and consumers, who are constitutionally protected. Consequently, the denial of the extraordinary appeal validated an interpretation that conflicts with the Constitution and federal laws, thus raising a federal question.

The State also warned that, by suspending the effects of Resolution No. 63/2025, the Court enabled the de facto integration of the corporate structures of Telecom and Telefónica during the pendency of the appeal, thereby undermining the efficacy of the administrative review procedure under the Law and distorting subsequent judicial oversight. In this regard, it stressed that, during that period, the companies could consolidate operations, exchange competitively sensitive information, and adopt joint commercial decisions—precisely the outcomes that the suspended measure sought to prevent.

Finally, the State underscored that the public interest in this case prevails over the companies’ private interests, since the reported economic concentration gravely jeopardizes the general economic interest, the legally protected interest under the Law. It also noted that the rights of users and consumers enshrined in the National Constitution would be affected, given that the transaction concerns the basic public telephone service as well as information and communication technology services and telecommunications services, all of which are classified as matters of public interest. Lastly, it added that the challenged decision unduly affects the radioelectric spectrum, a public domain asset essential to the provision of such services.

In sum, the State’s complaint places before the Supreme Court the definition of the appellate standard applicable to measures under Article 44 of the Law in merger control proceedings. The criterion that prevails—whether it reinforces or restricts the system’s ex ante effectiveness—will directly affect

the management of complex integrations and the protection of the general economic interest, at least

until the merger control procedure becomes pre-closing.

See also: The Argentinian Federal Civil and Commercial Court annuls injunctive measures pausing a telecom acquisition (*Telefónica / Telecom*) – 5 June 2025, Art. 126210

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