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When Financial Collaterals Become Control: The Mexican Competition Authority fines Rappi and Banorte for implementing a trust arrangement without prior merger clearance (VCN-003-2025, Rappi/Banorte)

The Mexican National Antitrust Commission (*Comisión Nacional Antimonopolio*, “CNA”) has adopted a substance-over-form approach to a security trust linked to the strategic alliance between Rappi and Banorte. In its decision of 12 May 2026, the CNA found that the parties had implemented a reportable concentration before obtaining merger clearance and imposed a fine of MXN 19,938,625.84 on each party.¹

The decision addresses a question familiar to merger-control practitioners across jurisdictions: **when does an arrangement designed to protect a creditor cease to be merely ancillary and instead confer legally relevant influence over a business or its assets?** The CNA’s answer was that the label “security trust” is not decisive. The relevant inquiry is whether the beneficiary’s rights are confined to protecting the value of collateral and securing repayment, or whether their scope allows the beneficiary to influence commercially relevant decisions concerning the assets held in trust.²

The case is significant for three reasons. First, it suggests that security, financing and governance arrangements must be assessed as a single economic structure rather than as legally isolated documents.³ Second, it indicates that the relevant value for merger-notification thresholds may derive from the economic substance of the transaction -including financing commitments and internal valuations- rather than a conventional purchase price alone.⁴ Third, it confirms that Mexican gun-jumping enforcement is directed principally at preserving the authority’s ability to conduct *ex ante* merger review, rather than at establishing actual competitive harm.⁵

Because substantial portions of the public version of the decision are redacted, this comment is limited to the reasoning that is visible in the public record. Any conclusions concerning the specific content of the parties’ governance rights should therefore be understood as limited to what can be inferred from that public version.

Background and procedural context

The matter arose in connection with the broader commercial alliance between Rappi and Banorte⁶ concerning Tarjetas del Futuro (“TDF”), the vehicle through which the parties operate the RappiCard

¹ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Page 130.

² Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 48-68.

³ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 48-68.

⁴ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 29-48.

⁵ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 114-123.

⁶ Rappi is a multi-service digital platform that combines on-demand delivery, advertising, and selected financial services, while Banorte is one of the largest financial groups in Mexico.

business. Based on the public version of the decision, the arrangement included: (i) a credit facility granted by Banorte in favour of TDF; (ii) the execution of Security Trust F/751899, under which TDF's shares were transferred as collateral; and (iii) subsequent agreements relating to the parties' strategic alliance and their participation in TDF.

The following table summarizes the relevant chronology of facts for the case:

Action	Date
Granting of a credit facility by Banorte in favor of TDF and execution of security trust F/751899 to guarantee the payment of the credit (where the shares of TDF were transferred as collateral).	178 days before the authorization granted on file CNT-091-2020 (around 20/07/2020).
Filing of case CNT-091-2020 by Rappi and Banorte, to notify the framework agreement of the alliance before the CNA.	31/08/2020.
Authorization of the alliance notified in file CNT-091-2020.	14/01/2021
Filing of case CNT-073-2023 to notify further acquisitions by Banorte of interest in TDF.	5/07/2023
Authorization of the transaction notified in file CNT-073-2023.	21/09/2023
Filing of case CNT-066-2025 to notify further acquisitions of interest over TDF by Banorte.	12/05/2025
Start of the case VCN-003-2025 (gun jumping file).	4/12/2025
Authorization of the transaction notified in file CNT-066-2025.	11/12/2025
Ruling on file VCN-003-2025.	12/05/2026

Source: Final decisions on cases: VCN-003-2025;⁷ CNT-091-2020;⁸ CNT-073-2023⁹ and; CNT-066-2025.¹⁰

As it is possible to see from the table above, the parties notified the operation to the authority as a concentration before the execution of the framework agreement and then brought additional aspects of the alliance before the authority through notification procedures conducted in 2023 and 2025. However, the decision states that, during the 2020 notification process, the parties provided a "draft" version of the trust agreement even though the trust had already been executed. The CNA also noted that it requested the executed trust agreement, but that the signed version was not submitted until a later procedure in 2025. On that basis, the authority concluded that the parties had failed to disclose that the trust had already been formalized and implemented before clearance.¹¹

A security trust may fall outside the statutory exemption

For readers outside Mexico, a *fideicomiso* is a flexible trust arrangement under which specified assets or rights are transferred to a trustee and administered for a defined purpose. A security trust is commonly used to secure performance of an underlying obligation, including through the transfer of shares or other assets to the trust estate. The significance of *Rappi/Banorte* is that the CNA did

⁷ Available at: <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>.

⁸ Available at: <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Concentraciones/V6068/3/5357955.pdf>

⁹ Available at: <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Concentraciones/V6082/1/5998235.pdf>

¹⁰ Available at: <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Concentraciones/V6087/23/6475767.pdf>

¹¹ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 114-123.

not treat that collateral function as dispositive. It examined whether the trust arrangement also allocated governance rights capable of affecting decisions concerning the underlying business.¹²

The central issue was the interpretation of Article 93, section III, of Mexico's Federal Law on Economic Competition (*Ley Federal de Competencia Económica*, "LFCE"). This provision exempts certain trusts established for the administration of assets or to secure the performance of obligations from the ordinary merger-control rules.

In the case, the CNA did not accept that the formal classification of the arrangement as a security trust was sufficient to trigger the exemption. Instead, it considered the nature, scope and economic effect of the rights granted to the beneficiary of the trust.

The authority's approach appears to distinguish between two categories of rights in security trusts.¹³

- First, a secured beneficiary may hold rights that remain genuinely collateral in nature. Such rights may be necessary to preserve the value of the collateral, monitor the debtor's compliance or protect repayment under the underlying financing arrangement. Those rights do not necessarily alter the economic allocation of control over the assets placed in trust.
- Second, a trust may give the beneficiary governance rights capable of influencing, conditioning or determining relevant decisions concerning the assets held in trust. Where that occurs, the arrangement may no longer be merely instrumental to the financing relationship. In the CNA's view, it may instead amount to a transfer of rights that falls outside the exemption provided in Article 93, section III and is capable of constituting a reportable concentration.

The public version of the decision does not disclose the complete catalogue of rights associated with Security Trust F/751899. It nevertheless indicates that the CNA attached significance to governance arrangements involving a technical committee in which Banorte participated and to rights that, in the authority's assessment, went beyond the preservation of collateral value.¹⁴

This is the most important lesson of the decision. Ownership of the shares, or the formal legal classification of a transaction document, does not exhaust the merger-control analysis. A trust may remain formally a guarantee mechanism while, in substance, producing effects that are functionally equivalent to a transfer of control or legally relevant influence over a business.

The decision resonates with a familiar question in merger-control systems that assess control over assets through rights. Creditor-protection rights may be consistent with an ordinary financing relationship where they are limited to preventing a material deterioration of the collateral or facilitating enforcement following default. However, rights that extend to strategic commercial decisions -such as business plans, budgets, senior management, material assets, financing policy or market conduct- require closer scrutiny because they may allow the beneficiary to influence the competitive behaviour of the underlying undertaking.

¹² Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 48-68.

¹³ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 48-60.

¹⁴ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 60-68.

The public version of *Rappi/Banorte* does not disclose the complete set of trust rights and should not be treated as creating a direct equivalence with foreign control tests. It nevertheless provides the same practical warning: merger-control analysis must follow the substance and effect of governance rights, not the legal label of the instrument that contains them.

For transaction counseling, the practical implication is clear: the merger-control analysis should cover not only the principal acquisition, joint-venture or commercial agreement, but also related financing documents, security arrangements, shareholders' agreements, committee rules, information rights, veto rights, default provisions and enforcement mechanisms. The key question is whether the secured party can only protect the value of its collateral or can also shape decisions concerning the relevant business.

A practical screening exercise may distinguish among three broad categories of rights. First, collateral-preservation rights -such as monitoring compliance, preventing unauthorized disposals of pledged assets or enforcing the security following default- will generally be less likely to raise merger-control concerns. Second, protective governance rights -such as limited vetoes over actions that could directly and materially impair the value of collateral- require a fact-specific assessment of their scope, duration and exercise conditions. Third, business-influence rights -such as rights over budgets, business plans, senior management, material financing, asset disposals or strategic commercial decisions- present a materially higher merger-control risk. This is not a restatement of the CNA's legal test; rather, it is a practical compliance framework derived from the decision's substance-over-form reasoning.

Thresholds: economic substance over formal values

Once the CNA treated the trust as part of an integrated transaction rather than as a standalone collateral arrangement, the valuation analysis also moved beyond the nominal value of the shares transferred to the trust. The CNA also addressed the value relevant to determine whether the notification thresholds were met.

The decision rejects a purely formalistic approach under which the "price" or "commercial value" of a transaction is limited to a purchase price expressly negotiated by the parties or to an accounting value assigned to the transferred shares. Instead, the CNA considered the broader architecture of the *Rappi/Banorte* arrangement. According to the public decision, the authority reviewed the credit facility, the security trust, the governance arrangements and Banorte's internal economic analysis of the transaction. The authority concluded that the commercial value of the transaction could be identified from the parties' own economic commitments and valuations, even in the absence of a conventional acquisition price.¹⁵

The public version suggests that the committed credit facility was treated as a particularly relevant indicator of the commercial value attributed to TDF and its shares. The CNA's reasoning appears to have been that the financing was not an isolated banking service, but part of an integrated arrangement under which TDF's shares were transferred as collateral and rights relating to those shares were allocated through the trust structure.¹⁶

This aspect of the decision should not be read as to establish that every loan amount equals the value of the collateral or of the underlying business. Rather, the case indicates that, where financing,

¹⁵ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 29-48.

¹⁶ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 29-48.

collateral and governance rights form part of a single transaction, the authority may use the economic substance of the arrangement and the parties' internal valuation materials to assess whether the applicable notification thresholds have been exceeded.

The lesson for practitioners is therefore not simply to identify the nominal consideration stated in transaction documents. Parties should also assess whether related financing commitments, guarantees, valuations, contingent arrangements or internal business cases provide evidence of the transaction's commercial value for merger-control purposes.

Gun jumping and the purpose of sanctions.

The same integrated-transaction approach also explains why the CNA characterized the implementation of the trust itself as the relevant gun-jumping event. In this regard, the CNA further confirmed its approach to the assessment of fines for implementation or failure-to-notify infringements.

Article 130 of the LFCE lists factors that may be relevant to the determination of sanctions, including the seriousness of the infringement, harm caused, intentionality, the infringer's market participation, the size of the affected market, duration and economic capacity.

In the CNA's view, factors such as actual harm to competition, market shares and the characteristics of the affected market do not play the same role in a gun-jumping case as they would in a case involving anticompetitive conduct or the substantive competitive effects of a concentration.¹⁷ The infringement lies principally in depriving the authority of the opportunity to review the transaction before it is implemented.

This reasoning is consistent with the procedural function of merger-control regimes. Notification and standstill obligations are designed to preserve effective *ex ante* review. A transaction that is later found to be competitively benign may nevertheless give rise to liability if it was implemented before clearance or if a reportable transaction was not notified.^{18 19}

The CNA placed considerable weight on what it characterized as intentional conduct. In particular, the authority found that the parties submitted a draft trust agreement during the 2020 procedure even though an executed version was already effective, and that the executed agreement was not produced until the 2025 proceeding.²⁰ The decision therefore illustrates that document accuracy and completeness are not peripheral compliance matters: they can substantially affect the authority's assessment of intent and the resulting penalty.

¹⁷ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 114-123.

¹⁸ For example, see VCN-001-2018 (Nestlé/Lala). (<https://cofece.mx/CFCResoluciones/docs/Condiciones/V111/0/4763434.pdf>), VCN-002-2022 (Neology Inc. y Otros). <https://www.cofece.mx/CFCResoluciones/docs/Condiciones/V202/4/5774324.pdf> VCN-004-2022 (Marhnos y Otros). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V227/0/6475449.pdf> VCN-005-2022 (AT&T/Warner Discovery). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V202/5/5800004.pdf> VCN-001-2023 (HP/Poly). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V203/0/5902201.pdf>

¹⁹ For the Nestlé/Lala case, it is important to point out that even though the authority determined that harm to competition and market shares were not elements to be considered for the evaluation of the penalty, when individualizing the fine, the authority made an exercise to estimate and allocate the risk derived from the failure to notify the operation. This exercise was based on the market shares of the parties and the conditions of the market. This methodology differs from the other precedents mentioned, including the Rappi/Banorte case.

²⁰ Mexican Competition Authority, Case No. VCN-003-2025 (*Rappi / Banorte*), Final Decision, 12 May 2026 (Spanish). <https://resoluciones.antimonopolio.gob.mx/CFCResoluciones/docs/Condiciones/V228/2/6608871.pdf>. Pages 116-118.

Finally, it is worth mentioning that the CNA imposed the same fine -MXN 19,938,625.84- on Rappi and Banorte. The public version redacts the parties' revenue figures and the complete individualization analysis. It is therefore not possible to reach a definitive view on the proportionality of the fines. The outcome nevertheless raises an open question under Mexican law: how should an authority reconcile identical fines with statutory criteria that include the economic capacity of each infringing undertaking?

Key takeaways

The *Rappi/Banorte* decision offers several practical lessons for merger-control practitioners in Mexico and other jurisdictions:

- A security trust is not automatically merger-control neutral. Its formal designation as a guarantee mechanism will not be decisive if the beneficiary receives rights that may confer legally relevant influence over the trust assets or the underlying business.
- Financing, collateral and governance arrangements should be analyzed together. A transaction cannot necessarily be divided into legally separate documents if, in economic substance, those documents form a single integrated structure
- Rights held by lenders, beneficiaries or creditors should be reviewed carefully. The decisive distinction is between rights that preserve collateral value and rights that permit participation in commercially relevant decisions.
- The absence of a conventional purchase price does not necessarily preclude notification. Authorities may examine financing commitments, guarantees, internal valuations and the broader economic logic of the transaction to determine commercial value.
- Gun-jumping risk is an independent compliance issue. The relevant harm may consist in preventing ex ante merger review, even where the transaction's substantive effect on competition has not been assessed or shown to be harmful.
- Parties should ensure that documents submitted to the authority accurately reflect the executed transaction. Submitting drafts where executed agreements already exist can create a separate and serious enforcement risk.

The decision's broader contribution is to reaffirm a functional proposition with international relevance: **an arrangement labelled as security or guarantee may still be a concentration if its governance architecture gives the secured party influence that exceeds the protection of collateral.**