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PARTNER IN THE SECTOR

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COMPETITION & ANTITRUST NEWSLETTER

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JULY

COFECE initiates investigation into possible abuse of dominance in the digital services market.

On July 3, 2023, the Investigative Authority of the Federal Economic Competition Commission ("COFECE" for its acronym in Spanish) published in the Federal Official Gazette ("DOF") the initiation of an investigation as a result of a complaint, processed under file number DE-023-2022 (the "Notice"), for the possible abuse of dominance, in the market for the development and commercialization of digital goods and/or services, as well as related services.

According to the Notice, the investigated conducts consist of: i) the sale or transaction conditioned to buy, acquire, sell or provide another good or service, normally different or distinguishable or on the basis of reciprocity; and ii) the action of one or several economic agents whose object or effect, directly or indirectly, is to increase the costs or hinder the productive process or reduce the demand faced by another economic agent or agents.

This investigation is focused in the development and commercialization of digital goods and/or services, including e-books, software, video games, photographs, music and online movies, among others. These types of goods and services, as well as applications, are created by developers and commercialized to end users through various channels.

If the existence of the abuse of dominance is proven in accordance with the Federal Economic Competition Law ("FECL"), the responsible economic agents may be sanctioned with fines of up to 8% of their income. On the other hand, individuals who participate in the execution of this conduct may be sanctioned with up to 5 years of disqualification to act as a director of a company and with economic fines.

As part of its investigative tools, COFECE may request information in writing, and conduct verification visits to economic agents, as well as summon individuals related to such markets to appear before it. The economic agents that are required in terms of the FECL have the obligation to provide the information requested by the authority.

The Notice opens the possibility for any economic agent that participates in the market under investigation to take part in it and provide the elements they deem convenient. [Read more.](#)

COFECE published preliminary draft amendment to the DRUMES for public consultation.

On July 5, 2023, COFECE launched the public consultation of its Preliminary Draft to Amend the Regulatory Provisions on the Use of Electronic Means ("DRUMES"). The purpose of the DRUMES is to regulate procedures before COFECE using the Electronic Procedures System ("SITEC").

As background, the DRUMES were published in the DOF on December 8, 2017, and amended by means of an Agreement published in the DOF on July 18, 2019 and October 1, 2021, respectively.

The most important changes proposed in the Preliminary Draft are as follows:

- **COFECE faculties.** Will run from the day following the date of the electronic acknowledgement of receipt issued by SITEC.
- **Economic agents' address.** The requirement that economic agents must provide their address in order to complete SITEC's registration has been reduced. Currently, the DRUMES establish that the address must be in Mexico City.
- **Mandatory electronic signatures.** It is no longer an optional requirement that the authorized persons who have access to SITEC must provide the certificates of the electronic signatures that they would use in SITEC to consult the electronic file, file promotions or receive notifications.
- **Electronic Acknowledgements of Receipt in the OPE.** The Electronic Acknowledgement of Receipt will no longer be generated automatically. When the promotions or pleadings are filed through the Electronic Official Office of Parties ("OPE"), the Electronic Acknowledgment of Receipt will be generated once the information has been verified by COFECE. However, the OPE will issue an acknowledgement on the date of the information's submission. The submissions filed will be considered received on the date of their submission for purposes of the computation of deadlines.
- **File consultation.** It leaves open the possibility for COFECE to decide the date on which a file may be consulted once a proceeding has been finished. With the proposed amendment, the electronic file may be consulted for a period of 6 months after the date of the official communication that ends the proceeding initiated through SITEC or until COFECE cancels the electronic file in SITEC.
- **E-mail address revocation.** The possibility that persons using SITEC may revoke and indicate new e-mail addresses for communications to be sent to them is indicated.
- **Public Authorities.** Notifications to Public Authorities by e-mail will take effect the day after the e-mail has been sent, instead of when they have been made as indicated in the DRUMES in force.
- **E-mail notifications.** The Preliminary Draft proposes that when, although economic agents that have not given their express consent for the use of electronic means in the corresponding file, notifications may be made by e-mail. COFECE will consider the e-mail addresses it has in its records, as well as those in public sources. In this case, it will be necessary that the receipt of such notification be confirmed. If the confirmation is not received within the corresponding term (within the day following the day in which COFECE has sent the notification by e-mail), the notification will be made by traditional means. In the event that COFECE does not receive the confirmation, the notification will be made by list of agreement and will be considered as personal for all legal purposes.
- **SITEC notifications.** It is proposed to shorten the term to be notified through SITEC, indicating that Users are obliged to enter SITEC every day and to obtain the notification letter within the day after COFECE entered an official communication to be notified in the system. If the consultation is not made within the day after the respective agreement has been entered in SITEC, the notification shall be deemed to have been made upon expiration of such term and shall be fully effective on the same day.

It is important to note that the public consultation began on July 3 and ended on July 22, 2023. During said period, economic agents, the private sector and/or society in general had the opportunity to make the contributions and comments they deemed pertinent. [Read more](#).

AUGUST

IFT launches investigation in the telecommunications network markets for the probable existence of economic agents with relevant market power.

On August 2, 2023, the Investigative Authority of the Federal Telecommunications Institute ("IFT") launched an ex officio investigation, processed under file number AI/DC-001-2023, for the probable existence of economic agents with substantial power in the telecommunications network market(s) that provide voice, data or video services at the national, state, regional and/or local level.

The IFT states that this investigation should be considered of social interest and public order to protect the general interest and the process of free competition and concurrence in the telecommunications and broadcasting sectors in which economic agents such as América Móvil, Totalplay, Megacable, AT&T, Izzi, among others, participate.

The Federal Telecommunications and Broadcasting Law establishes that the Investigate Authority of the IFT will carry out this investigation in a period not exceeding 90 calendar days. [Read more.](#)

Sincerely,

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