



## NOVEMBER

1. **The Federal Economic Competition Commission ("COFECE", for its acronym in Spanish) summons an economic agent for the probable execution of abuse of dominance practices in the digital advertising services market.**

On November 8, 2023, COFECE announced that it had summoned a legal entity for potential engagement in abuse of dominance practices within the digital advertising services market and related services in Mexico, under file number IO-003-2020.

COFECE stated that the Investigative Authority found evidence suggesting that the summoned economic agent may have engaged in practices involving conditioned sales, where the sale is tied to the purchase, acquisition, sale, or provision of another normally unrelated good or service, or based on reciprocity. These practices, commonly referred to as "tied sales" or "bundling," are alleged to have occurred in the market of digital advertising services and related services, potentially qualifying as an abuse of dominance conduct under Article 56, Section III of the Federal Antitrust Law ("FECL"). These practices were attributed in the Statement of Probable Responsibility issued by COFECE's Investigative Authority.

It's worth noting that the United States, the United Kingdom, the European Union, France, and Australia have initiated investigations against Google for alleged anticompetitive practices in the digital advertising market.

COFECE highlighted that, from the consumer's perspective, digital advertising has expanded options for internet users to research content, compare information, and make convenient purchases. On the supply side, advertisers benefit from new media with broader audience reach for their campaigns.

Digital advertising services, encompassing commercial communications provided by digital media and platforms, are crucial for advertisers aiming to inform, persuade, or solidify brand recognition. In Mexico, digital advertising holds a prominent position as the most widely used advertising medium, and its global adoption has steadily increased in recent years.

Given the growing economic significance and benefits for Mexican entrepreneurs and consumers, these services are part of digital marketplaces, identified as a priority sector in COFECE's Strategic Plan 2022-2025 due to their substantial impact on the welfare of the Mexican population and economy.

This notification represents the beginning to the trial-like proceeding conducted by COFECE. The summoned economic agent, upon receiving the summons, has a non-extendable period of 45 business days to review the file, submit its statements, and offer the evidence it deems pertinent.

If the existence of abuse of dominance is proven, the responsible legal entity could face fines of up to 8% of its income. Additionally, individuals involved in representing the responsible economic agent could be subject to disqualification for up to 5 years from acting as company directors, along with administrative fines of up to approximately 20 million pesos.

## **2. COFECE issues an opinion with recommendations to boost the competition process in card payment services.**

On November 29, 2023, the COFECE's Board of Commissioners issued the opinion, processed under file number OPN-002-2023, by means of which it formulated recommendations to promote the improvement of competition conditions in the card payment reception market. These recommendations were issued in collaboration with the Mexico's Central Bank ("Banxico", for its acronym in Spanish) and the National Banking and Securities Commission ("CNBV", for its acronym in Spanish).

As background, on September 14, 2023, COFECE made public its resolution regarding the existence of barriers to competition in the card payment processing market operated by the Clearing Houses for Card Payments, within the file IEBC-005-2018.

In the process of accepting card payments, merchants often engage the services of acquirers or aggregators that act as intermediaries between them and card issuers. Each transaction involves two types of commissions: (i) the interchange fee, paid by the acquirer to the issuer during commercial transactions, and (ii) the discount rate, paid by the merchant to the acquirer or aggregator, proportional to the value of the purchase and according to the type of business.

Regarding the services offered to merchants, COFECE identified several areas of opportunity, including the observation that interchange fees are higher for those merchants that do not properly register their line of business. In addition, it noted that the information on these fees and rates published by Banxico may be difficult for businesses to access, making it difficult for them to make informed decisions about service providers.

COFECE's Board of Commissioners recommended that Banxico and the CNBV, within the scope of their powers: (i) flexibilize the mechanism to implement the natural rate by exception, which would allow lower interchange fees to translate into lower discount rates for merchants; (ii) guarantee that the established mechanisms provide legal certainty to aggregators in case of controversy; and (iii) generate mechanisms to promote information in order for merchants to make more informed decisions on the prices and benefits associated with the services of aggregators and acquirers.

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## **DECEMBER**

### **3. COFECE submits to public consultation draft amendment to the Regulatory Provisions of the Federal Economic Competition Law ("FECL").**

On December 14, 2023, COFECE announced the public consultation of its Preliminary Draft of amendments to the Regulatory Provisions of the FECL in order to strengthen the current competition regulations, particularly in relation to the issuance of injunctive relief and the request of surety bonds.

The public consultation period is 20 calendar days, which began on December 14, 2023, and ended on January 2, 2024.

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### **4. IFT modifies and approves the reference offers of the preponderant economic agent in the telecommunications sector.**

On December 20, 2023, the Board of Commissioners of the Federal Telecommunications Institute ("IFT", for its acronym in Spanish) announced the modification and authorization of the reference offers of the wholesale services provided by the Preponderant Economic Agent ("PEA") in Mexico in the telecommunications sector. These modifications are aimed at promoting fair competition in the sector, one of the main duties of IFT.

The main amendments include:

- A reduction of up to 20% in the tariffs for the indirect access service ("SAIB", for its acronym in Spanish) of the Unbundling Offer. This service allows PAE's competitors to access PAE's local network to offer fixed broadband services. The reduction in tariffs will allow competitors to offer higher quality services at more competitive prices.
- A 12% reduction in the price of poles for the Infrastructure Shared Use and Access Offer. This service allows PAE competitors to access poles, ducts and other infrastructure elements of the PAE network. The price reduction will facilitate the rollout of telecommunications networks by competitors.
- Improvements in the terms and conditions of the Dedicated Link Offers. These offers allow PAE's competitors to access telecommunications links to connect their networks. Improvements in the terms and conditions provide greater certainty and security to competitors when contracting these services.

The amendments to the reference offers have a significant impact on competition in the telecommunications sector in Mexico. In particular, the reduction in tariffs for the SAIB of the Unbundling Offer will allow PAE competitors to offer fixed broadband services at more competitive prices. This could lead to greater fixed broadband penetration in Mexico, benefiting end users.

The reduction in the price of the poles of the Infrastructure Sharing and Access Offer will also have a positive impact on competition. This will facilitate the rollout of telecommunications networks by competitors, which could lead to greater coverage and availability of telecommunications services in Mexico.

Improvements in the terms and conditions of the Dedicated Link Offerings provide greater certainty and security to competitors when contracting these services. This could lead to greater use of these services by competitors, which could also benefit end users.

These offers will be the reference framework that other concessionaires will have in 2024 to access, under clear, transparent and non-discriminatory conditions, to the wholesale services provided by the PAE.

Sincerely,

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