

Competition & Antitrust Bimonthly Newsletter

May - June

MAY

The Federal Economic Competition Commission (“COFECE” for its acronym in Spanish) has preliminarily identified barriers to competition in the federal passenger transportation market.

On May 13, 2024, COFECE’s Investigative Authority published in the Federal Official Gazette (“Official Gazette”) the Preliminary Ruling of the investigation, processed under file number IEBC-003-2022, which preliminarily identifies barriers to competition in the national market of federal passenger transportation that uses terminals for boarding and alighting passengers, as well with related services.

The Investigative Authority sought the opinion and collaboration of the General Directorate of Federal Motor Transport, the sector’s regulatory authority, during the investigation and for the development of proposed corrective measures.

According to the Federal Economic Competition Law (“FECL”), barriers to competition encompass any structural characteristic of the market, fact, or action by economic agents aimed at

hindering competitors from entering the market or constraining their capacity to compete. They also encompass legal provisions issued by any government authority that unduly hinder or distort the competition process.

In its press release, COFECE stated that federal passenger transportation is the most used mobility option among Mexicans. In 2022, nearly 20% of Mexican families’ expenditures were allocated to this service.

Federal passenger transportation services are classified into six modalities based on vehicle characteristics, amenities offered, and service delivery methods, namely: (i) Luxury; (ii) Executive; (iii) Premium; (iv) Economy; (v) Mixed; and (vi) Land transportation of passengers to and from seaports and airports.

Through the Preliminary Ruling, the Investigative Authority established the following:

- Insufficient competition exists in the Luxury, Executive, Premium and Land transportation of passengers to and from seaports and airports modalities across all regions of the country.
- There is a lack of competition in the Economic modality, specifically in the Northwest region (Baja California, Baja California Sur, Sinaloa, and Sonora).

The Investigative Authority has identified the following barriers to competition:

- 1. Relationships among competitors:** The Investigative Authority identified the presence of partnerships, joint ventures, and horizontal relationships among competitors in the passenger transportation sector. Nearly all major transportation companies in the country have common links or business interests, which reduces rivalry and incentives to compete, facilitating anticompetitive behaviors.
- 2. Cross boards and contact spaces:** Several individuals are members of the management bodies of competing companies, and there are numerous spaces where the directors of these companies interact, particularly in passenger terminals and within the National Chamber of Passenger Transportation and Tourism (“CANAPAT”, for its acronym in Spanish). These interactions may facilitate the exchange of sensitive information, promote anticompetitive agreements, and harm market competition.
- 3. Obligation to use passenger terminals at origin and destination:** Current regulations mandate the use of terminals for passenger boarding and alighting. Nevertheless, this service could be provided at alternative locations if specific safety criteria are met,

thereby diversifying passenger access.

4. Restriction of permits to specific routes:

Limiting motor carrier permits to a single authorized route hinders companies’ ability to adapt to market changes, reducing their competitive capacity and market dynamism.

5. Discretion and opacity in the operation of passenger terminals:

The lack of clarity regarding the timing and requirements for providing motor transportation services has hindered the entry of new economic agents into the market, creating advantages for existing companies.

6. Restriction on using vehicles other than buses:

Companies are required to use buses with a capacity of more than 30 passengers in Economy, Premium, Luxury, and executive modalities. Allowing the use of smaller vehicles could reduce operating costs and enable a greater variety of routes and passengers to be served.

COFECE’s Investigative Authority has indicated, on a preliminary basis, that these barriers to competition could be eliminated if the following actions are taken:

- Competing companies terminate their co-investments in passenger transportation services.
- Individuals are prevented from making decisions in multiple competing companies.
- Large companies and CANAPAT implement compliance programs to prevent violations of the FECL.

The Ministry of Infrastructure, Communications and Transportation, the Chamber of Deputies, and the Chamber of Senators follow COFECE’s recommendations to modify regulations, thereby providing greater dynamism to the passenger transportation service markets.

COFECE sanctions six companies for failing to notify two mergers.

On May 16, 2024, COFECE announced via a press release, that it had sanctioned for the first time a non-notified merger involving a series of related acts-succession of acts-

COFECE’s Board of Commissioners imposed fines for over \$58,000,000.00 pesos to six gas stations, which sell gasoline and diesel to final consumers. COFECE determined that Servicios Gasolineros de México, S.A. de C.V. (“Segamex”) made two acquisitions that exceeded the thresholds established in Article 86 of the FECL.

The first acquisition took place in 2015 when Segamex acquired control of 14 service stations owned by Gasolinera Boquilla, S.A. de C.V., Combylub, S.A. de C.V., and Servicio Camionero de Jiménez, S.A. de C.V. The second acquisition occurred in 2017 when Segamex acquired control of two service stations owned by Alamillo Promotora e Inmobiliaria, S.A. de C.V., and Gasolinera Mirasierra, S.A. de C.V.

Both transactions should have been notified due to the amounts involved and the revenues of the companies concerned. The lack of notification hindered a proper analysis by COFECE.

Segamex had previously made merger notifications to COFECE for similar transactions, indicating its awareness of the nature of its actions and the associated legal obligations.



The Federal Telecommunications Institute (“IFT”, for its acronym in Spanish) has initiated an investigation into potential barriers to competition and/or essential inputs in the market for mobile telecommunications services.

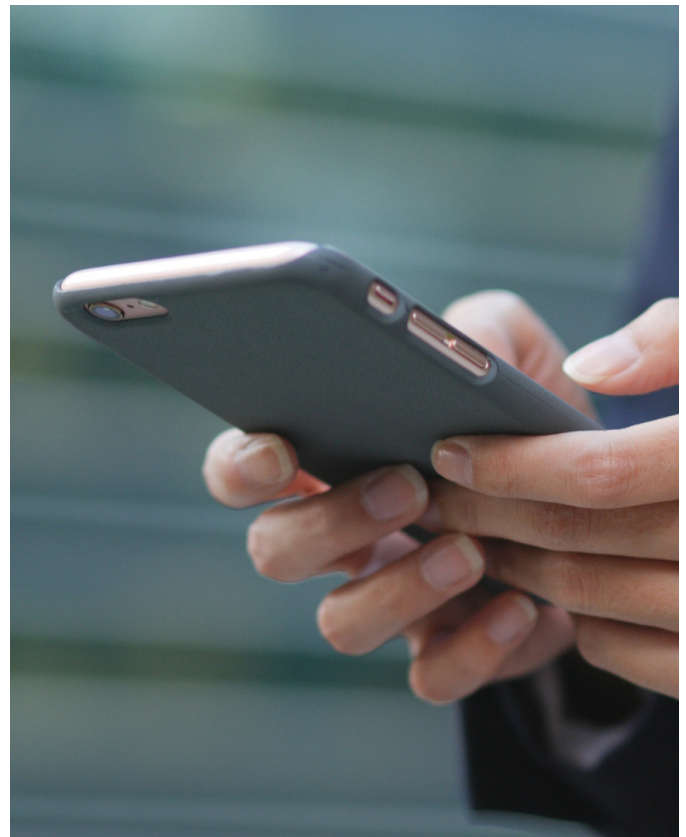
On May 21, 2024, the IFT’S Investigative Authority issued a notice excerpt in the Official Gazette, formally declaring the initiation of an *ex officio* investigation under file number AI/DC-001-2024. This investigation aims to identify barriers to competition and/or essential inputs that could potentially cause anticompetitive effects in the market of supply and distribution of mobile telecommunications services and its associated services throughout the national territory.

According to the FECL, barriers to competition encompass any structural characteristic of the market, fact, or action by economic agents aimed at hindering competitors from entering the market or constraining their capacity to compete. They also encompass legal provisions issued by any government authority that unduly hinder or distort the competition process.

On the other hand, the FECL defines essential inputs as resources controlled by one or more companies (such as infrastructure, networks, or rights) that are crucial for one or more markets, where their supply determines competitive conditions.

The IFT’S Investigative Authority has a period of 30 to 120 business days as from the publication date in the Official Gazette to carry out the investigation processed under file number AI/DC-001-2024, which may be extended up to two times for an equal period.

Upon conclusion of the investigation, the IFT’S Board of Commissioners may take the following actions: (i) order the involved economic agent to eliminate the barriers to competition; (ii) issue recommendations to public authorities if legal provisions are found to impede or distort competition¹; (iii) ascertain the existence of essential inputs and, if necessary, establish guidelines for their regulation; and (iv) order the divestiture of assets, rights, social parts, or shares of the involved economic agent.



¹ Failure to comply with such order may result in a penalty of up to 10% of the income of the obligated economic agent.

JUNE

COFECE investigates the possible execution of collusive conducts in the market for comprehensive medical services for neonatal metabolic screening tests.

On June 6, 2024, COFECE's Investigative Authority published in the Federal Official Gazette the initiation of the *ex officio* investigation, processed under file number IO-003-2023, for the possible execution of collusive conducts in the market of integral medical services of neonatal metabolic screening tests and products related to the application of the neonatal metabolic screening, as well as goods, services and procedures related to these, contracted by health institutions of the public sector in the national territory.

Since 1998, neonatal metabolic screening has been a mandatory test for all newborns in Mexico. This test is crucial for the early detection of hereditary or congenital diseases, enabling timely treatment to prevent irreversible damage such as mental retardation. Metabolic screening involves taking a blood sample from the newborn's heel within the first two to five days after birth.

In its press release, COFECE emphasized that potential collusion in the procurement of these tests could profoundly impact the general population. This collusion could directly affect the quality of life of children and even contribute to the infant mortality rate in Mexico.

If the existence of a collusive conduct is proven, the responsible economic agents could be sanctioned with fines of up to 10% of their income. On the other hand, individuals who participate in the execution of these conducts could: (i) be sanctioned with imprisonment for up to 10 years under the Federal Criminal Code; and (ii) be sanctioned with up to 5 years of disqualification to act as an officer of the company and with economic fines of up to approximately \$21,714,000.00 pesos.

As part of its investigative tools, COFECE may request information in writing, conduct dawn-raids, and summon individuals related to such markets to attend hearings. The economic agents requested to cooperate in terms of the FECL are obligated to provide the information requested by the authority.

The notice of this investigation opens the possibility for any economic agent related to the market under investigation to participate in the investigation and provide the elements it deems convenient.



IFT authorizes acquisition of SKY Mexico by Grupo Televisa

On June 10, 2024, the IFT announced via a press release that it had authorized the merger notified by Grupo Televisa and SKY Mexico.

The transaction involves the indirect acquisition by Grupo Televisa, S.A.B. (“Grupo Televisa”) of approximately 41.3% of the capital stock of Innova Holdings, S. de R.L. de C.V. (“Innova Holdings”) and Innova, S. de R.L. de C.V. (together with Innova Holdings and its subsidiaries, “SKY Mexico”). This acquisition increases Grupo Televisa’s equity interest in SKY Mexico from 58.7% to 100%.

The IFT’s Board of Commissioners authorized the transaction as it means AT&T, Inc. will no longer have an indirect interest in SKY Mexico. This change does not change the market structure, as Grupo Televisa already controlled SKY Mexico with its 58.7% indirect participation. Therefore, the Board of Commissioners ruled that the transaction does not adversely affect the competition process, as it only consolidates Grupo Televisa’s control in SKY Mexico.



COFECE imposes sanctions for collusive conducts in marine diesel sale.

On June 12, 2024, COFECE announced via a press release that it had sanctioned Combustibles Puerto de Abrigo Dzilam de Bravo, S.A. de C.V., along with three individuals, for manipulating the retail price of marine diesel at service stations in Dzilam de Bravo, Yucatan.

COFECE pointed out that marine diesel is a type of fuel used in ships and other vessels and is sold at service stations near the coast or river mouths. This fuel is crucial for transporting goods and products both nationally and internationally and is also essential for tourist activity in coastal areas.

The procedure was conducted under file number DE-029-2019, resulting in fines totaling \$3,417,895.00 pesos imposed on the sanctioned entities.

These economic agents have the right to file a constitutional trial (amparo lawsuit) before the Federal Judiciary to review the legality of COFECE’s actions.



The IFT has launched an investigation into potential collusion in the market for terminating short message services (“SMS”).

On June 14, 2024, the Investigative Authority of the IFT published in the Official Gazette the Notice declaring the initiation of an investigation by complaint, under file number AI/DE-002-2024, regarding potential collusive conducts in the market for application-to-person (“A2P”) SMS termination services.

SMS is a text messaging service utilized across telephony systems, the internet, and mobile devices, employing standardized communication protocols facilitating short text message exchange among all mobile devices. The volume of SMS messages sent is rapidly increasing, driven by the expansion of A2P platforms: application-to-person and vice versa messaging. A2P services involve SMS transmission from applications to subscribers or from subscribers to applications. It is commonly used by companies, such as banks, to send SMS messages from their systems to their customers.

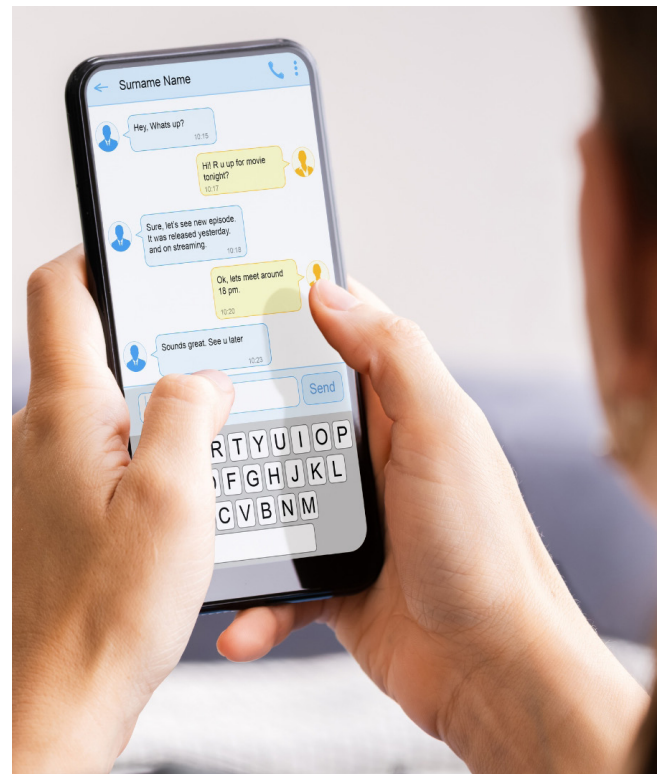
The period of investigation may not be less than 30 nor exceed 120 business days and may be extended up to four times for the same duration, if adequately justified, as determined by the Investigative Authority. This period began on April 30, 2024, with the issuance of the agreement of initiation of the investigation.

If the existence of a collusive conduct is proven, the responsible economic agents could be sanctioned with fines of up to 10% of their income. On the other hand, individuals who participate in the execution of these conducts could: (i) be sanctioned with imprisonment for up to ten years under the Federal Criminal Code; and (ii) be sanctioned with up to five years of

disqualification to act as an officer of the company and with economic fines of up to approximately \$21,714,000.00 pesos.

As part of its investigative tools, the IFT may request information in writing, conduct dawn-raids, and summon individuals related to such markets to attend hearings. The economic agents requested to cooperate in terms of the Federal Economic Competition Law are obligated to provide the information requested by the authority.

The notice of this investigation opens the possibility for any economic agent related to the market under investigation to participate in the investigation and provide the elements it deems convenient.

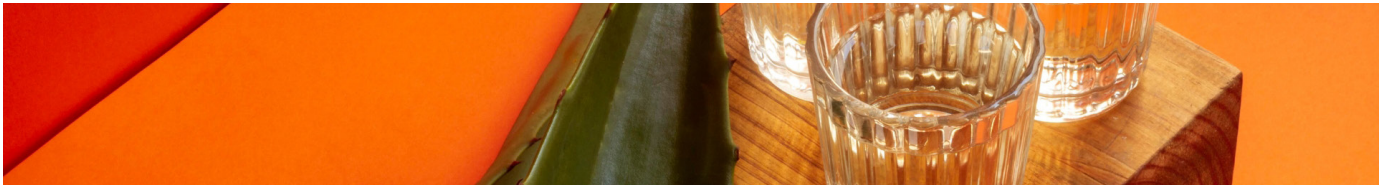


COFECE imposes fines and disqualifies an executive for abuse of dominance in the mezcal market.

On June 27, 2024, COFECE announced via a press release that it had sanctioned the Mexican Mezcal Quality Regulatory Council and an executive for abuse of dominance in the mezcal market. The misconduct involved unjustifiably denying certification services needed for several mezcal producers to sell their products between February 2018 and August 2021.

The fines amount a total of \$4,170,311.00 pesos, underscoring the deliberate nature of the actions. Additionally, the executive sanctioned is barred from holding a similar position in any company involved in certification according to NOM-070-SCFI-2016 for a three-year period.

COFECE highlighted that mezcal production -alongside tequila-, is a vital source of income and employment for small and medium-sized producers in Mexico. This sector accounts for 32% of alcoholic beverage production and exports its products to 81 countries, ranking as the second most significant economic activity in Mexico's alcoholic beverage industry.



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