



Newsletter
Antitrust Practice Group

Initiative for a new Federal Antitrust and Economic Competition Law

On February 18th, the project for the Decree that enacts the Federal Antitrust and Economic Competition Law (Ley Federal Antimonopolio y de Competencia Económica) was published in the Congressional Gazette. This proposal, presented by Congressman Alfonso Ramírez Cuéllar (the "Initiative"), fully modifies the regulatory framework for competition in Mexico.

The Initiative includes an extensive statement of reasons (preamble) that recaps data related to economic competition in our country over recent years, as well as the actions taken in various markets thereto.

While this Initiative aims to abrogate the current Federal Economic Competition Law, its content remains similar in many ways. However, the Initiative proposes significant changes to the economic competition system that has been developing in recent years, including the following among others:

1. Creation of a New Authority.

The Initiative proposes the creation of the National Agency for Competition and Economic Welfare, with its own assets, technical and operational independence, that will lose its independent nature regarding budget allocation, which would replace the Federal Economic Competition Commission and would be governed by a five-member board.

This agency would also include an antitrust prosecutor's office, which would be the agent responsible for conducting investigations and participating as a party to the trial-like procedure.

Additionally, this new agency would consolidate all competition-related authorities into a single body, including the telecommunications and broadcasting

markets, which were previously granted to the Federal Telecommunications Institute.

2. Thresholds for Merger Notifications.

The Initiative proposes a decrease of the economic thresholds that trigger the legal obligation for economic agents to request and obtain the prior authorization for mergers, and, therefore, a new additional section is introduced, which explicitly refers to joint venture agreements.

3. Changes in the Definition of Anticompetitive Practices.

The new legislation includes additions to the descriptions of both, absolute monopolistic practices (cartel practices) (particularly by stating that these can also occur between potential competitors) as well as relative monopolistic practices (abuse of dominance), therefore expanding the catalogue of such conducts.

Furthermore, a new concept of "abuse of dominant position" is introduced alongside the concept of relative monopolistic practices and the investigation timelines for the commission of monopolistic practices are also shortened.

4. Increased Penalties.

The proposed penalties reflect a significant increase compared to those currently imposed by the existing authority.

If approved, the penalties for carrying out absolute monopolistic practices could reach up to 20% of revenue (previously 10%), and up to 10% for abuse of dominance (previously 8%), moving to up to

10% for illegal mergers (previously 8%). Furthermore, the Initiative establishes that in these cases, the revenue calculations will consider the entire economic interest group, not just the specific agents involved in the corresponding practice or merger.

Finally, it is important to mention that in the list of sanctions the possibility of ordering an administrative arrest of up to 36 hours is introduced, for the individuals who obstruct public officials' access or hinder verification visits, notwithstanding other applicable penalties and/or criminal liability that may be applicable to them.

The Initiative also increases the general penalty for failing to comply with an authority's order and introduces specific penalties for non-compliance with orders to appear before the authority or undergo the corresponding visit.

Finally, it is important to note that while the Initiative has been introduced for discussion in the coming days, it is subject to modifications during the legislative process and could even be replaced by a different initiative.

Our team of specialists in economic competition is at your disposal to address any questions regarding this matter.

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