

September 03, 2021

Antitrust Practice Group Newsletter



COFECE publishes a modification to the Regulatory Provisions for the Qualification of Information Derived from the Legal Advice Provided to Economic Agents

On August 24, 2021, the Mexican Federal Economic Competition Commission (COFECE) published in the Federal Official Gazette the Agreement Number CFCE-190-2021, by which the Regulatory Provisions of the Federal Economic Competition Commission for the Qualification of Information derived from the Legal Advice provided to Economic Agents (hereinafter, the "Regulatory Provisions") are amended. Said amendments include more specific rules regarding deadlines, extensions, notices and procedures for requesting a copy of the digital information obtained during a verification visit (Dawn Raid), which provide greater certainty to economic agents.

Likewise, a more detailed description was included regarding the clear and precise description of the documents and information that agents need to provide for its protection in case of electronic files. Although the way to identify such information is complex (e.g. data regarding the digital storage, path, extension, name, format, description of the type and content of the electronic file, name of the author, name of the recipient, date of the file, subject of the file and its description), COFECE indicated that the technical instructions with the indications and requirements of a technical nature regarding the data and information described will be published within 30 business days following the entry into force of the modifications to the Regulatory Provisions.

It is also worth noting that in terms of article 4 of the Regulatory Provisions, it was clarified in its section IV that the file containing the information to be protected can be identified, beyond prior wording relating to "the identification of the current case file".

The amended article 4 of the Regulatory Provisions continues to indicate that the qualification request must also contain the detailed description of the legal advice of which the communication object of the qualification request is part of, the relationship that exists between the Applicant and the legal advisor or economic agent (new requirement), as well as the reasons why the Applicant considers that it is information subject to protection, the full name of the legal advisor (new requirement), and certification of legal authorization to practice law or law graduate at the time of providing the corresponding legal advice, as well as the manifestation regarding the people with whom the communication has been shared (new requirement).

The modifications to the Regulatory Provisions indicate that the Qualifying Committee will also be assisted by personnel of the corresponding Administrative Unit who are not directly or indirectly subordinate to the General Director in charge of the applicable procedure, and clarifies the manner in which the Committee will be chaired.

It is also highlighted that a second paragraph was added to article 8 of the Regulatory Provisions that indicates that the file that the Committee integrates will have the character of "confidential" as said term is defined by the Mexican Federal Law on Economic Competition (that is, information that if disclosed may cause damage or harm to the competitive position of the person who provided it, contains personal data whose dissemination requires their consent, and which may put their security at risk or when disclosure is prohibited by law).

Regarding the filing of a new request for qualification for not having answered the official requests from the authority or complied with the applicable requirements made by the authority, the amendments to the Regulatory Provisions include a new term of 10 business days from the notice to the agents of an official communication from COFECE setting forth that the filing will be deemed as not filed derived from such lack of answer or compliance with the authority's requests.

In case of verification visits (dawn raids), the deadline for submitting a qualification request was reduced to 15 days from the date the visit concluded and the applicable minutes or records evidencing the visit have been drawn up, a term that may be extended once for an equal term, in duly justified cases.

It should be noted that said modifications came into force the day after their publication in the Federal Official Gazette, that is, on August 25, 2021, provided that the qualification procedures initiated prior to the

amendments will be processed in accordance with the provisions in force at the time of their commencement.

Our team specialized in antitrust and administrative litigation has extensive experience supporting clients involved in governmental actions in antitrust proceedings and administrative litigation. We are at your service to assist you in relation to the legal alternatives that best protect your commercial interests

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