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COFECE's position with respect to the COVID-19 health emergency

The Federal Commission of Economic Competition (“COFECE” or the “Commission”), as a result of the current health emergency, has joined the efforts of various agencies of the Mexican Federal Government to reduce the risk of the spread of the virus, by issuing a ruling published in the Official Gazette of the Federation on March 24, 2020, establishing that no deadlines or legal terms will apply to proceedings before the Commission, except for those related to (i) merger control review, (ii) opinions or resolutions in connection with the granting of licenses, concessions, permits and other similar procedures, and (iii) gun jumping-related investigations. Despite this suspension, the filing desk of COFECE will remain open during regular business hours. However, filings submitted after March 23, 2020 in connection with proceedings affected by the suspension will be deemed to have been submitted as of April 20, 2020, when the legal deadlines and terms will resume.

In addition to the above, on March 27, 2020, in order to help avoid that supply chains are disrupted or that supply is artificially restricted and prices of goods and services increase, the Commission announced that:

- It will not pursue collaborative arrangements between economic agents which, in the present context, are necessary to maintain or increase supply, meet demand, protect supply chains, avoid shortages or hoarding of goods, and which are not intended to foreclose competitors.
- Taking into consideration that the current circumstances could result in price increases, it determined that such increases should be an individual and independent decision of each company.
- It will keep under review the markets where it observes indiscriminate price increases, in order to rule out the existence of undue barriers or agreements between competitors that result in such increases. Otherwise it will initiate an investigation procedure to prosecute and sanction the economic agents involved, since in the present circumstances any agreement between competitors that affects competition would be considered as particularly serious.
- It will expeditiously carry out merger review proceedings leading to synergies and to increased production capacities, in order to meet in a timely and adequate manner the needs of the population arising from this health emergency.

Notwithstanding the above, COFECE’s communiqué does not provide sufficient clarity and legal certainty to economic agents as to how collaborative arrangements between economic agents that are necessary to maintain or increase supply, meet demand, protect supply chains, avoid shortages or hoarding of goods will be analyzed and interpreted in practice, in the context of the current health emergency.

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The antitrust and economic competition team at Ritch Mueller is available to provide advice on these matters to assess the scope of any collaborative arrangements that may be required between economic agents in the context of the current health emergency and to provide advice and assistance to mitigate the risks inherent in such arrangements.

Should you require additional information or legal advice on antitrust and competition law-related matters, do not hesitate to contact Octavio Olivo Villa (oolivo@ritch.com.mx), James E. Ritch (jritch@ritch.com.mx), José Miguel Ortiz Otero (jmortiz@ritch.com.mx) or Marta Loubet Mezquita (mloubet@ritch.com.mx), members of the competition and antitrust practice at Ritch Mueller.

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