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Antitrust: amendments regarding concentrations

Through Agreement No. CFCE-181-2019, published in the Federal Official Gazette on August 1, the Federal Economic Competition Commission (COFECE) amended and added the Regulatory Provisions of the Federal Economic Competition Law in order to efficiently prevent and counteract illicit concentrations.

Such amendments, in force as of August 2, include the following main aspects:

1. Where COFECE considers that there are potential risks to competition due to a concentration, the Technical Secretary will no longer need to summon the parties for an interview to inform them but rather issue an agreement communicating such risks to them directly, so that they submit their condition proposal. The agreement will not prejudice the decision regarding the concentration.
2. On the other hand, the parties will have more time to amend their initial proposal, as they will be able to do so until the day after the matter is listed for approval of the board of COFECE and not before, as formerly provided.
3. Where an investigation of an illicit concentration has been initiated, the Investigative Authority will be in charge of any possible breach of the obligation to notify it where it was mandatory to do so, as well as of any possible involvement of a notary public in the unauthorized concentration. In such cases, the Investigative Authority will proceed as provided by the Federal Economic Competition Law ("FECL") regarding the investigation and administrative procedures.

If the investigation of the illicit concentration has not yet been initiated, the Technical Secretary shall be responsible for such breach, and will proceed in accordance with the procedure laid down in the Regulatory Provisions of the FECL for that purpose.

In the latter case, the Technical Secretary must give notice to the Investigative Authority for him to decide on the matter. On the other hand, if the Technical Secretary considers that there are signs and indications that the concentration is illicit or learns that the transaction is being investigated, he shall terminate the proceedings and send the file to the Investigative Authority.

4. In both scenarios, whether the investigation has initiated or not, the amount of the transaction to be analyzed shall be determined in accordance with the Regulatory Provisions of the FECL.

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