VALDES ABASCAL

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MEMORANDUM

Reform to the Federal Economic Competition Law

The Mexican Congress recently approved with modifications the initiative of the President through which several provisions of the Federal Economic Competition Law and the Federal Law of Parastatal Entities are amended, added and repealed ("**Reform**"), which was published yesterday in the Federal Official Gazette.

The Reform arises in compliance with the constitutional reform on organic simplification, which dissolves several autonomous constitutional entities, including the Federal Economic Competition Commission ("**COFECE**") and the Federal Telecommunications Institute ("**IFT**").

I. Organizational Aspects

The National Antitrust Commission ("**Antitrust Commission**") is created, which will replace COFECE and will assume the economic competition attributions of the IFT. Therefore, the new authority will have jurisdiction over all markets and sectors in the country.

The Antitrust Commission will be a decentralized agency, sectorized to the Ministry of Economy, will have legal personality, its own assets, and will be endowed with technical and operational independence.

This authority will maintain an internal separation between the Investigative Authority and the Board, which will be composed of 5 commissioners instead of 7. The commissioners will be nominated by the Executive and ratified by the Senate, eliminating selection mechanisms through the evaluation committee, which was integrated by autonomous constitutional entities. The commissioners' term is reduced from 9 to 7 years, while the presidency of the Board is reduced from 4 to 3 years, and the possibility of reelection for a single term is preserved.

vaasc.com +52 55 5950 1580 Prado Norte 225 Lomas de Chapultepec Miguel Hidalgo 11000 CDMX México

II. Substantive and procedural aspects

Merger control

The Reform reduces between 11% and 17% the thresholds for mandatory pre-merger notifications. In addition, the Reform eliminates the foreign-to-foreign transactions, as well as concentrations carried out by investment funds for speculative purposes and that do not have investments in companies or assets in the same relevant market, as exceptions for mandatory notification should they meet the thresholds. This leads to more transactions subject to review by the Antitrust Commission.

Moreover, the Reform increases the statute of limitations for investigating transactions that did not meet the thresholds but that produced anticompetitive effects from 1 to 3 years after closing.

Regarding transactions carried out through a succession of acts, the Reform establishes that the Antitrust Commission will analyze the entire succession of acts and, if the merger is objected, it may order the restitution of the *status quo* prior to the performance of the first act of the succession. We consider that this presents challenges from a constitutional and legal standpoint, since it is questionable that the authority may exercise this power in a merger notification proceeding and not in one of investigation and sanction of unlawful merger, even more so if its investigative powers are time-barred with respect to below-the-radar transactions.

As to the opportunity for the notifying economic agents to withdraw from the notification procedure, the Reform presents a limitation by establishing that such withdrawal may be filed prior to the beginning of the term for the Antitrust Commission to resolve the merger.

On another note, as a positive aspect, the Reform decreases from 60 to 30 days, counted from the receipt of the notification or, if applicable, of the additional documentation required, the term for the authority to issue a resolution.

Introduction of new types of cartel conduct and abuse of dominance.

The Reform includes new types of unlawful conducts. With respect to cartel conduct, it expressly includes potential competitors as economic agents among and/or with whom such conducts may occur. In addition, the Reform establishes the mere exchange of information as a configurative element of cartel conduct, without the need of a prior agreement.

For abuse of dominance, the Reform includes the undue restriction of the ability to compete as one of the objectives and/or effects that may render these conducts as unlawful.

Shorter investigation and resolution timelines

The Reform proposes a reduction in the maximum duration of investigations. With respect to investigations of monopolistic practices (cartel conduct or abuse of dominance) and unlawful mergers, the Reform reduces from 4 to 3 the maximum number of extensions of the investigation period. Also, the Reform reduces from 60 to 30 days the term for the Investigative Authority to submit to the Board its probable liability ruling or the proposal to dismiss the case once the investigation is concluded.

In the event that a probable liability ruling is issued, the Reform reduces from 40 to 30 days the term for the Board to resolve the administrative trial procedure.

Regarding investigations to determine essential inputs or barriers to competition, the Reform reduces from 60 to 40 days the terms for the Investigative Authority to issue the preliminary ruling or the proposal to dismiss the case, as well as for the Board to issue its resolution.

Leniency program and waiver procedure

The Reform limits the opportunity and eligibility with respect to the leniency program and the waiver procedure.

Regarding the leniency program, the Reform establishes that a minimum fine (historically considered by the competition authority as the equivalent of one Unit of Measurement and Update "**UMA**") will be imposed to the first economic agent that joins such program, but before the Antitrust Commission has initiated an investigation for cartel conduct. Under the law currently in force, this benefit is applicable even after an investigation has been initiated.

In the case of those who apply for admission to the leniency program after an investigation has already been initiated, or who do so in second or subsequent places, only a reduction of up to 50%, 30% or 20% of the sanction is applicable. In this regard, the Reform establishes that economic agents may join the immunity program until before the third extension of the investigation period, as opposed to what happens today, where they may join before the conclusion of the investigation.

On the other hand, the Reform establishes that economic agents that receive any of the benefits of the leniency program will not be subject to the suspension sanctions set forth in the Federal Economic Competition Law ("**LFCE**") nor will the Antitrust Commission be

able to exercise against them the class actions for the claim of damages, regardless of the actions that affected third parties may exercise for such purpose.

With respect to the waiver procedure, the Reform also establishes that it will be until before the third extension of the investigation period, and not until the issuance of a probable liability ruling, the opportunity for economic agents to request the waiver and obtain the "full benefit", which is interpreted as the closing of the file without liability.

Once the aforementioned period of opportunity has elapsed, the economic agents may only submit their request during the administrative trial procedure, prior to the integration of the file. In such case, the Antitrust Commission may declare liability and the economic agents may only be entitled to a reduction of up to 50% of the sanction.

Increased sanctions

The Reform provides an increase in penalties for violations of the LFCE. For cartel conduct, the maximum fine increases from 10% to 15% of the infringing party's annual income, while for abuse of dominance the maximum fine increases from 8% to 10%.

Regarding merger control, the gun jumping sanction increases from 5% to 8% of the parties' income. For unlawful mergers, the maximum fine increases from 8% to 10%.

The Reform also establishes an increase in the sanctions for assisting or inducing the commission of monopolistic practices or unlawful mergers, false declarations, failing to comply with the conditions set forth in the merger clearance resolution, among others.

New sanctions are also established in the Reform, including the temporary suspension to participate in public bids for having incurred in collusion in such procedures; as well as a sanction of up to 15% of the infringing party's income for carrying out a merger previously objected by the Antitrust Commission.

Enforcement measures

The Reform increases the severity of the enforcement measures regime. In this regard, the Reform increases from 3,000 to 8,000 times the UMA the maximum amount of the sanction for failure to comply with an order or requirement of the Antitrust Commission.

In addition, three further grounds for the imposition of a sanction as an enforcement measure are included, namely, failing to comply with an order of suspension to exercise certain positions or functions within a legal entity; failing to attend an appearance without a justified

cause, not answering the questions asked or answering evasively; and hindering the development of a dawn raid. These grounds are subject to a fine of up to 10,000, 30,000 and 200,000 times the UMA, respectively.

Recidivism

The possibility of applying a fine of up to twice the fine determined by the authority in the event of repeated offenses is maintained.

However, according to the Reform, it will be sufficient that, at the beginning of the respective proceeding, the previous resolution has become final in the administrative venue, without the need to wait for the resolution of the *amparo* trial. This is also applicable for purposes of the sanction of disincorporation or alienation of assets, rights or shares.

Modifications in the individualization of fines

The Reform no longer considers the damage caused, intentionality, participation of the infringing party in the markets, size of the affected market, duration of the practice or concentration, economic capacity, and the affectation to the Antitrust Commission's powers, as elements that make up the severity of the infringement, and they become elements independent of the latter.

Compliance programs

The Reform introduces compliance programs adopted by the economic agents as an element to be considered by the Antitrust Commission for the reduction of sanctions. For this to apply, the compliance programs must have been previously certified by such authority.

Damages actions

Pursuant to the Reform, it will be sufficient that the resolution of the Antitrust Commission becomes final in the administrative venue for a damages action to be brought, without the need to wait for the resolution of the *amparo* trial.

State-owned companies

In the legislative process of the Reform, the exception contained in the initiative that the LFCE would not apply to State-owned companies was eliminated. Therefore, the Reform does not establish additional exceptions to those provided for in Article 28 of the Constitution with respect to State-owned companies.

III. Transitional regime

The Reform will become effective the day after its publication in the Federal Official Gazette, that is, on July 17th, 2025.

The COFECE and the IFT will be dissolved the day after the Antitrust Commission is integrated, which will occur with the appointment and ratification of the commissioners and the designation of the Board's president.

The terms of the investigations conducted by the Investigative Authority of the COFECE and the IFT will be suspended with the entry into force of the Reform and will be resumed on the day following the day in which the Board of the Antitrust Commission is integrated.

Proceedings initiated prior to the integration of the Board of the Antitrust Commission will be subject to the rules in force at the time of their initiation.

The organic statute of the Antitrust Commission and the Regulatory Provisions of the LFCE must be issued within 180 calendar days from the day following the integration of the Board of the Antitrust Commission. In the meantime, the regulations issued by COFECE will apply, insofar as they do not oppose the new legislation.

In summary:

The Reform brings important changes in the competition regime, although the structural basis of the current legal framework is preserved. In this regard, the changes consist of:

a. The transfer of powers from the current competition authorities, autonomous constitutional entities, to a decentralized agency of the Federal Executive Branch;

b. Substantive and procedural amendments to (i) increase the severity of sanctions for antitrust violations; (ii) strengthen the authority's intervention in the surveillance and prevention of such violations; and (iii) shorten proceedings and increase the effectiveness of the authority's enforcement.

c. Elevate to law status several rules established in the Regulatory Provisions of the LFCE and in the organic statute of the COFECE.

VALDES ABASCAL

Please do not hesitate to contact us for any inquiries on the above.

Rafael Valdés Abascal | Partner
rafael.valdes@vaasc.com

Enrique de la Peña Fajardo | Partner
enrique.delapena@vaasc.com

Juan Pablo Bueno Zarazúa | Associate
juanpablo.bueno@vaasc.com