

JULY 17, 2025



## REFORM TO THE MEXICAN FEDERAL ECONOMIC COMPETITION LAW: CREATION OF THE NEW NATIONAL ANTITRUST COMMISSION AND KEY AMENDMENTS

On July 16, 2025, the Mexican President published in the Official Daily of the Federation (“DOF” or *Diario Oficial de la Federación*) the decree that amends the Mexican Federal Economic Competition Law (“LFCE” or *Ley Federal de Competencia Económica*), as well as the Federal Law of Parastatal Entities (*Ley Federal de las Entidades Paraestatales*) (the “Reform”). The Reform mandates the elimination of the current Federal Economic Competition Commission (“COFECE” or *Comisión Federal de Competencia Económica*) and the Federal Telecommunications Institute (“IFT” or *Instituto Federal de Telecomunicaciones*), transferring their legal authority (in the case of the IFT, only regarding competition matters in the telecommunications and broadcasting sectors) to a new authority called the National Antitrust Commission (the “CNA” or *Comisión Nacional Antimonopolio*).

The Reform entered into force on the day following its publication in the DOF, i.e., on July 17, 2025, which starts the process of appointment process for the commissioners who will form the new Board of Commissioners (*Pleno*) of the CNA. Until the Board of Commissioners of the new CNA is established, both COFECE and the IFT will continue to perform their duties in accordance with the legal framework in effect prior to the Reform. The following is a summary of the key aspects of the Reform:

### 1 New Authority: the CNA

The CNA is a decentralized public agency, grouped under the Ministry of Economy (*Secretaría de Economía*), with legal personality and its own assets, and endowed with technical and operational autonomy. Notwithstanding the stated management autonomy and technical and operational independence of the CNA, the Reform does eliminate important authority that COFECE currently has to issue opinions on laws and initiatives of laws, regulations and preliminary drafts of regulations and administrative acts in general. The CNA does not have such authority.

The Board of Commissioners of the CNA will be composed of five commissioners (as opposed to the seven commissioners that currently form COFECE's Board), appointed by the Federal Executive and ratified by the Senate, including the President commissioner who will be appointed by the Mexican President. Regarding the Board's composition, the Reform maintains the functional separation between the investigative authority in charge of antitrust investigations and the Board of Commissioners of the new CNA, which will decide on the findings of any such proceedings. The CNA consolidates the legal authority of COFECE and IFT in competition matters, becoming the sole competition authority in Mexico.

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## **Revamped Authority and Sanctions**

### **(i) Increased Powers of investigation**

The investigative powers of the CNA are strengthened compared to those currently held by COFECE, granting the CNA authority to perform inspections or collect statistical data using any available tools, in addition to providing mechanisms for international cooperation and coordination.

The Reform also introduces amendments to the immunity program and the procedure for waiver and reduction of fines. For example, under the immunity program, only the first economic agent to provide sufficient elements of conviction, prior to the initiation of a market investigation, and which, in the CNA's judgment, allows a presumption of the existence of an absolute monopolistic practice (*práctica monopolística absoluta*), may be granted full immunity. Also, the procedural stage in which full exemption or reduction of fines may be requested for relative monopolistic practices (*prácticas monopolísticas relativas*) or unlawful concentrations (*concentraciones ilícitas*) is limited to before the investigative authority extends the investigation period for the third time.

A procedure for the designation of privileged information is introduced, whereby economic agents may request the exclusion of information and documents containing communications with the economic agents' legal counsel, the purpose of which is to obtain legal advice in the context of a proceeding before the CNA. It is important to note that the Reform clarifies that only communications exchanged with attorneys with whom the requesting economic agent does not have an employment relationship shall be deemed eligible for protection.

The Reform establishes that the activities carried out by state-owned enterprises (such as PEMEX or CFE) do not constitute monopolies (as these are equated to the functions exclusively exercised by the state in the strategic areas defined in the Mexican Constitution).

**(ii) Amendments relating to Absolute Monopolistic Practices and Relative Monopolistic Practices**

With respect to absolute monopolistic practices, the Reform eliminates the requirement set forth in Article 53 of the LFCE, which previously required proof of a prior agreement to penalize the exchange of information among competitors, so that now the mere exchange of information could be penalized if the rest of the requirements set forth in said Article are met, which also now refers not only to current competitors but also to potential competitors. Moreover, the Reform broadens the scope of relative monopolistic practices to include, as an object or effect to establish any such relative monopolistic practice in accordance with Article 54 of the LFCE, the unlawful limitation of the ability of other economic agents to compete in the markets. Furthermore, the maximum time period to investigate monopolistic practices (or unlawful concentrations) is reduced from 600 to 480 business days.

**(iii) Amendments relating to merger control**

The Reform generally reduces the values of the economic thresholds and the percentage of accumulation of assets or shares to determine whether a transaction must obtain prior authorization from the CNA. Now, a transaction will require prior approval from the CNA if any of the thresholds set forth under Article 86 of the LFCE and described below are triggered:

**First Threshold:** When the originating act or sequence of acts, notwithstanding the place of performance, are worth within Mexican territory, directly or indirectly, an amount in excess to the equivalent of **sixteen** million times the daily Unit of Measure and Actualization ("UMA") **(1)** in effect at the time of calculation.

In this first threshold, the transaction value is reduced from 18 million UMAs (currently equivalent to MXN\$2,036,520,000 and approximately USD\$108,801,248.01) to 16 million UMAs (currently equivalent to MXN\$1,810,240,000 and approximately USD\$96,712,220.45).

**Second Threshold:** When the originating act or sequence of acts, imply the accumulation of **thirty percent** or more of the assets or stock of an economic agent, whose annual sales originating in Mexican territory or assets in the country, are worth an amount in excess of the equivalent of **sixteen** million times the daily UMA in effect on the date of calculation.

**(1)** Please consider that the daily value of the UMA for the year 2025 is MXN\$113.14 pesos and that the exchange rate used for calculation purposes is the amount of MXN\$18.7178 Mexican pesos per Dollar, corresponding to the exchange rate to settle obligations denominated in foreign currency payable in the Mexican Republic, published by the Bank of Mexico in the Official Gazette of the Federation on July 17, 2025.

This threshold is modified in two aspects, by reducing the percentage of accumulation of assets or stock of an economic agent from 35% to 30%, whose sales or assets in the Mexican territory are reduced from 18 million UMAs (currently equivalent to MXN\$2,036,520,000 and approximately USD\$108,801,248.01) to 16 million UMAs (currently equivalent to MXN\$1,810,240,000 and approximately USD\$96,712,220.45).

**Third Threshold – First part:** When the originating act or sequence of acts, imply an accumulation within Mexican territory of assets or capital stock in excess of the equivalent to **seven million four hundred thousand** times the daily UMA on the date of calculation.

This threshold for accumulation of assets or capital stock in Mexico is reduced from 8.4 million UMAs (currently equivalent to MXN\$950,376,000 or approximately USD\$50,773,915.74) to 7.4 million UMAs (currently equivalent to MXN\$837,236,000 or approximately USD\$44,729,401.96).

**Third Threshold – Second part:** Two or more of the economic agents participating in the concentration have annual sales originating in Mexican territory or assets in Mexican territory which are worth, jointly or separately, an amount in excess of **forty** million times the daily UMA in effect on the date of calculation.

This threshold for annual sales or assets in Mexican territory is reduced from 48 million UMAs (currently equivalent to MXN\$5,430,720,000 or approximately USD\$290,136,661.36) to 40 million UMAs (currently equivalent to MXN\$4,525,600,000 or approximately USD\$241,780,551.13).



In addition, the general maximum period for the CNA to issue a resolution regarding notified concentrations is reduced from 60 to 30 business days. This period may be extended in exceptionally complex cases by up to 20 additional business days (compared to the 40 days previously provided for prior to the Reform). Please note, however, the initial 30-day period may not be extended in cases where the Federal Executive has informed the CNA of a matter relevant to the national interest and there is a statement in accordance with the “Federal Executive Notice Procedure” regulated under the new Article 110 Bis of the LFCE.

Furthermore, the Reform extends from one to three years the term to investigate those transactions that, despite not being subject to merger control notification, may generate negative effects on competition.

The Reform eliminates two exceptions to the obligation to notify a concentration from Article 93 of the LFCE which, in our experience, have not had significant practical relevance given the generality of their terms and the rigor of COFECE in interpreting them. These exceptions are related to foreign acts that do not result in a modification in the shareholding structure of a company established in Mexico, nor the accumulation of assets in Mexico; and to the acquisition of shares or other securities that are performed by investment funds for purely speculative reasons and that do not participate in the same market.

#### **(iv) Increase in fines and penalties for violations of the LFCE**

The Reform significantly increases the amounts of the enforcement measures, fines, and penalties, and incorporates new categories of fines. For example:

1. the commission of absolute monopolistic practices may entail fines of up to the equivalent of **15%** of the total turnover of the fined economic agent (as opposed to the previous 10% of the total turnover of the fined economic agent);
2. the commission of relative monopolistic practices and unlawful concentrations may entail fines of up to **10%** of the total turnover (instead of the previous 8%); and
3. consummating a transaction without obtaining prior authorization from the CNA when legally required may entail fines of up to the equivalent of **8%** of the total turnover (instead of the previous 5%).



Regarding the new categories of fines, the following are introduced: (i) fines for failing to attend depositions by the CNA without justified cause, refusing to answer questions or positions presented, or responding ambiguously or evasively; (ii) fines for obstructing or hindering the conduct of a dawn raid; and (iii) fines for failing to comply with a disqualification order issued by the authority. Additionally, complementary sanctions are introduced, such as temporary disqualification from participating in public procurement procedures for a period ranging from six months to five years.

The Reform also facilitates the filing of claims for damages resulting from monopolistic practices or unlawful concentrations, which may be pursued once the CNA has issued the corresponding resolution, regardless of whether such resolution is final or remains subject to legal challenge.

The Reform provides that the CNA may certify compliance programs implemented by economic agents aimed at preventing and detecting conduct in violation of the LFCE, and the existence of a duly certified program may be considered as a mitigating factor.

### **3** Transitional Regime

As noted, the Reform entered into force the day following its publication in the DOF, i.e., on July 17, 2025. The new CNA will formally begin after the five Commissioners of its Board of Commissioners are appointed and ratified, and its Chairperson has been designated. Until the Board of Commissioners is formed, COFECE will continue to perform its functions under the legal framework in force prior to the Reform.

As of the day following the appointment of the Board of Commissioners, all provisions that contradict the provisions of the Reform shall cease to have effect, and any reference in federal or local regulations to COFECE shall be understood as a reference to the CNA. Legal acts issued by COFECE prior to the day following the appointment of the CNA's Board of Commissioners, as well as any act or authorization issued by COFECE's Board of Commissioners, shall continue to have all their legal effects.

Any proceedings initiated before COFECE or the IFT (solely in matters of economic competition, preponderance and cross participation) prior to the day following the appointment of the CNA's Board of Commissioners, shall continue to be processed in accordance with the legal provisions in force at the time such proceedings were initiated, before the administrative units established by the Organic Statute of the CNA (*Estatuto Orgánico de la CNA*) to be issued pursuant to the Reform.

The Reform provides for the suspension of all terms applicable to investigation proceedings conducted by the Investigating Authority of COFECE and the IFT, suspension that shall be resumed the day following the day in which the CNA's Board of Commissioners is appointed. This means that, during this transitional period, statutory deadlines in investigations will be paused, without affecting other procedural or decision-making stages, like, for example, merger control proceedings.

Finally, the Reform establishes that, within 180 calendar days following the appointment of the Board of Commissioners, the Organic Statute of the CNA and the Regulations of the new LFCE shall be issued to harmonize the internal regulatory framework with the new institutional structure.

Ritch Mueller has extensive experience in competition and antitrust matters, with a team of experienced professionals available to provide advice to economic agents with ongoing merger control or other proceedings before the COFECE and the IFT that may be impacted by the Reform, as well as in respect of proceedings to be initiated before the CNA.

If you require additional information, please contact our Competition and Antitrust team leaders.

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