

# The Mexican antitrust commission issues hollow guidance on the application of the Mexican antitrust statute during the corona pandemic

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On March 27, the Mexican Antitrust Commission (“COFECE”) issued a statement regarding the application of the Mexican Antitrust Statute during the coronavirus<sup>1</sup> pandemic (“Statement”).<sup>2</sup>

## Summary of the Statement

With the Statement, COFECE attempted to provide guidance on the following practices in the context of the coronavirus pandemic:

- Absolute monopolistic practices (*i.e.*, collusive practices, price-fixing and market allocation), which were considered per se illegal before the coronavirus pandemic, **remain illegal**.
- Collaboration agreements between competitors **that were lawful before the coronavirus pandemic, remain lawful**—namely, collaboration agreements undertaken to (1) preserve or increase supply; (2) satisfy demand; (3) protect the supply chain; and (4) avoid shortages or products and services hoarding.
- COFECE warned that it will be monitoring price increases in all markets that might lead to (1) the creation of unlawful barriers, and (2) agreements between competitors, which, pursuant the Mexican Antitrust Statute, require formal prosecution.
- COFECE will undertake an expeditious review of any pre-merger control notices pertaining to transactions with potential synergies to fight the coronavirus pandemic.

## Demystifying the Statement

The Statement represents COFECE’s attempts to follow antitrust agencies around the globe, which lately have been busy setting out guidance, temporary exemptions, safe harbor interpretations, or combinations thereof.

<sup>1</sup> *I.e.*, COVID-19 disease caused by the virus SARS-CoV2.

<sup>2</sup> Cfr. Postura de la COFECE en términos de la aplicación de la Ley Federal de Competencia Económica ante la emergencia sanitaria, March 27, 2020. Available at: <https://www.cofece.mx/postura-cofece-ante-emergencia-sanitaria/>

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Unfortunately, COFECE fell short of providing any meaningful guidance and shied away from establishing temporary exemptions or safe harbor interpretations. Accordingly, under the Statement, COFECE merely reaffirmed that it will continue to apply its antitrust statutory framework as written, regardless of the coronavirus pandemic.

In this context, economic agents should be cautious to continue interpreting the Mexican Antitrust Statute as they had done before the issuance of the Statement.

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