**Brief**

**Bill to amend, add and repeal various provisions of the Federal Economic Competition Law.**

---

1. On December 20th, 2024, the Decree amending, adding, and repealing several provisions of the Political Constitution of the United Mexican States regarding organic simplification ("**Decree**") was published in the Official Gazette of the Federation.

2. The Decree modified the constitutional regulation of competition in Mexico, including the legal status of the antitrust authority, which will depend on the federal government rather than being an agency with constitutional autonomy.

3. The Decree states that the new competition agency will be endowed with legal personality, will have its own assets, as well as technical and operational independence in its decisions, organization, and operation. It is also mentioned that the authority that investigates and the one that resolves the proceedings will be separated.

4. The Tenth Transitory Provision of the Decree establishes that the Mexican Congress will issue secondary laws on competition and on telecommunications. However, the Decree does not establish a deadline for the issuance of such secondary laws.

5. On February 18, 2025, the *Initiative to enact the Federal Antitrust and Economic Competition Law* ("**LFACE**"), signed by Congressman Alfonso Ramírez Cuéllar, of the Morena Parliamentary Group ("**First Bill**"), was published in the Parliamentary Gazette of the Lower Chamber of Congress (*Cámara de Diputados*).

Edificio Reforma Plus,
Paseo de la Reforma,
#2620 interior: 304,
Col. Lomas Altas,
Alcaldía Miguel Hidalgo,
C.P. 11950,
Ciudad de México.

contacto@azizkaye.com
+52 (55) 5985 6605

6. On March 12, 2025, the *Bill with Draft Decree that amends, adds and repeals several provisions of the Federal Economic Competition Law and the Federal Law of Parastatal Entities* was published in the Preliminary Projects Portal of the National Commission for Regulatory Improvement (CONAMER). However, it was withdrawn shortly after and was published again on March 13. Subsequently, it was also withdrawn.

7. On the evening of April 24, 2025, the Bill with Draft Decree that amends, adds and repeals several provisions of the Federal Economic Competition Law and the Federal Law of Parastatal Entities signed by the Mexican President and that will be presented to the Senate started circulating in different sources ("**the Bill**").

8. Given the above, *Aziz & Kaye Abogados, S.C.* ("**A&K**") analyzed the Bill, which is divided into three sections: (i) Relevant modifications proposed in the Bill, (ii) Next steps and considerations related to institutional changes, and (iii) Comparative analysis highlighting the main modifications to the thresholds for notifying mergers, amounts of enforcement measures and fines.

## I. Relevant modifications

### 1. National Antitrust Commission[1]

The Bill creates the National Antitrust Commission ("**CNA** or **Commission**"), as a **decentralized agency under the Ministry of Economy**, endowed with legal personality, its own assets, as well as technical and operational independence in its decisions, organization, and operation.

The functions and legal powers of the Commission under the Bill are basically the same as those of the Federal Economic Competition Commission ("**COFECE**"), including the separation between the enforcement and resolving bodies, as well as the collegiate composition of the Board of Commissioners ("**Board**"), except for some considerations that are specified below.

[1] Article 10 of the Bill.

## 2. Board of Commissioners[2]

The Bill provides for a renewal of the Board, reducing the number of commissioners from 7 to 5, who will serve for 7 non-renewable years. The requirements to be appointed commissioner are similar to those established for COFECE.

As established in the Bill the appointment of the commissioners will be made directly by the Mexican President, providing a suitability justification for ratification by the Senate. Additionally, the Mexican President will appoint the Chairperson of the Commission directly for a period of three years, which may be extended once.

It is important to highlight that the proposal in the Bill removes selection mechanisms through Evaluation Committees or similar, which grants the Executive Branch broader discretion in appointing members of the Board.

## 3. Investigative Authority

The Bill preserves the Investigative Authority ("**IA**") with powers and investigative tools remarkably similar to the ones currently used by COFECE, except for those considerations developed below.

It is important to note that, under the terms of the Thirteenth Transitory Provision of the Bill, COFECE's Head of the Investigative Authority would continue in his position in the new CNA. It follows from such Transitory Provision that he will remain in office, at least, for the remaining time of his first term, that is, until September 1, 2025.

Article 31 of the current Federal Economic Competition Law provides that the Head of the Investigative Authority may be reelected for a second term of four additional years.

To appoint him/her, a majority of 3 out of 5 votes of the Board is required, including the favorable vote of the Chairperson.

[2] Articles 13 to 23 of the Bill.

4. **Preponderance, Asymmetric Regulation and Cross-Ownership**[3]

The Commission is granted powers related to the determination of preponderant undertakings in the telecommunications and broadcasting sectors, as well as to determine the existence of firms with substantial market power in relevant markets belonging to said sectors, as well as to analyze cross ownership.

In addition, it is endowed with powers to impose measures to avoid hindering competition and free market access, including end users, and to establish asymmetric regulation to preponderant/dominant undertakings. The content of these provisions is similar to that currently established in the Federal Law of Broadcasting and Telecommunications ("**LFRT**").

It is important to consider that determinations of preponderant undertakings made by the Federal Telecommunications Institute ("**IFT**") will be preserved until the procedure established in the Bill for the lifting of such designation is conducted.

5. **Economic Activities Exempt from the Application of Competition Law and their Implications**[4]

The Bill establishes that activities exclusively conducted by the State in strategic areas, as determined by the Constitution, shall not be considered monopolies.

Additionally, it proposes an exemption from the application of competition law for activities conducted by State-owned enterprises, as well as other economic activities determined by Congress through applicable regulations. According to the Bill, this exemption would also apply to firms participating in such activities.

It is important to note that, based on the Decree—specifically the amendments to Articles 27 and 28 of the Constitution—it can be preliminarily identified that economic activities related to radioactive minerals, lithium, the electric power industry, hydrocarbons, and, more broadly, the energy sector, could be exempt from the application of the competition law[5].

In this regard, COFECE was known for playing an active role, including conducting multiple investigations in various energy markets. These matters

[3] Articles 140 to 145 of the Bill.
[4] Article 6 of the Bill
[5] Constitutional Articles 27 and 28 of the Decree

included gasoline, LPG, jet fuel, and electricity, among others—even issuing rulings against State-owned enterprises.

It is noteworthy that the Bill also eliminates the powers of the new Commission to issue opinions on provisions, rules, agreements, programs, and policies, among other acts of authority. Such opinions were tools frequently used by COFECE to promote competitive conditions, particularly in the energy sector.

However, it can be anticipated that due to the exemptions defined in both the Decree and the Bill, as well as the new structure that subordinates the CNA to the Executive branch, the new competition authority may have a more limited role in the energy sector.

As a result, companies operating in the various energy markets in Mexico could face a new regulatory landscape, with fewer opportunities for the promotion of pro-competitive policies or actions by the State, potentially favoring State-owned entities.

## 6. Anticompetitive conducts[6]

- Absolute Monopolistic Practices or cartels ("**AMP**")

The Bill maintains the definition of cartels under current FECL. However, there is a key modification when referring to firms as **potential competitors**. We consider that this approach could pose certain risks, since there are no criteria to determine such character and it may result in arbitrary determination of participants in the same market as potential competitors without considering duly justified business strategies for which, for example, a company refrains from competing in the provision of a good or service.

- Relative Monopolistic Practices or unilateral conducts[7] ("**RMP**")

The Bill includes as an object and/or effect of unilateral conducts to **limit the capacity of other firms to compete in the market** or to **generate exploitative transaction conditions.**

[6] Articles 53 and 54 of the Bill.
[7] Considering conducts defined in other jurisdictions as abuse of dominance and vertical restraints.

The Bill introduces to the law some applicable criteria for the definition of Relevant Markets and determination of Substantial Power, including regulatory barriers, previously contained in Regulatory Provisions issued by COFECE. It is important to highlight that the Bill refers to criteria for the determination of joint substantial power (Article 59 Bis).

- Unlawful mergers and legally notifiable mergers

The statute of limitations to investigate unlawful mergers that did not require prior notification but may have anticompetitive effects is extended **from one to three years following their completion**.

In addition, it is foreseen under the Bill that when an investigation into an unlawful merger is initiated, the IA will be the one to pursue the failure to notify a merger when legally it should have been done.

## 7. Investigation Procedure [8]

- Initiation of investigations

The Bill does not modify the means that the competition agency has to initiate an investigation. Which is, by complaint, ex officio or at the request of the Executive Branch, through the Ministry of Economy ("**Ministry**" or "**SE**"). However, the complaints filed by the SE must be analyzed by the IA even if they do not meet the formal requirements set forth in the LFCE, and it is not possible to consider them as not filed or to dismiss them.

- Statutory investigation timelines

The Initiative reduces the period for investigations from four to three extensions that can last up to 120 business days each.

- Investigative powers

In relation to dawn raids, the Bill establishes that the companies must allow **immediate access** to their facilities. Otherwise, the Bill proposes that the Commission may impose a fine as an enforcement measure which could amount up to **$1'155,669.05 USD**[9]

[8] Articles 69 to 77 of the Bill.

[9] This calculation is based on an exchange rate of 19.58 pesos per US dollar (USD) considering the official exchange rate published by the Bank of Mexico on April 22nd, 2025, according to the daily value for 2025 of the *Unidad de Medida y Actualizacion (UMA)*. All subsequent amounts throughout the document will be converted using this same rate for convenience of our clients.

The Bill includes the possibility for the IA to conduct surveys to gather information. Until now, the use of surveys by COFECE has been limited to sectoral studies or efforts to promote competition, without being submitted as evidence. It will be important to ensure that such surveys meet robust technical standards if they are to be considered as valid evidence in proceedings regulated by the new law[10].

It is particularly noteworthy that among the powers granted to the Commission—and specifically to the investigative authority—it is stated that data may be collected through any tool to obtain information for investigations[11] [12]. This approach is ambiguous and potentially risky, as it could be interpreted to mean that, under the terms of the Bill, the IA may obtain information from companies using any tool, without proper legal basis or justification.

This could include digital forensic techniques, automated tools such as artificial intelligence, or, in an extreme scenario, even accessing personal communications using tools like those employed by security agencies.

Therefore, it is essential that clear criteria are established and made publicly available to ensure maximum transparency and define strict boundaries for the use of such tools to gather information.

- Exercise of Powers Related to Criminal Complaints for Alleged cartel conduct.

The Bill establishes in Article 77 that the Investigative Authority, once it has issued the Statement of Probable Responsibility, becomes aware of possible criminal conduct and of the individuals who committed such acts for the purposes of Article 107 of the Federal Criminal Code ("FCC"). Based on this, the Investigative Authority would have a statute of limitations of one year from the submission of the Statement of Probable Responsibility to the Board to file a criminal complaint.

However, the CNA still needs to issue the corresponding Regulatory Provisions that will establish the criteria and circumstances under which the Investigative Authority may file a complaint with the Office of the Attorney General ("FGR").

[10] Article 28 of the Bill.
[11] Article 12 of the Bill.
[12] Article 28 and 73 of the Bill.

## 8. Trial-Like Procedure[13]

The Board has ten days after Investigative Authority presents its Statement of Probable Responsibility[14] to order the Trial-Like Procedure ("**PSFJ**"). In the case of closure of the files due to lacking evidence to sustain the infringement allegations, the Board also has ten days to decree after the IA has filed its Closing Statement.

This Bill also introduces a final oral hearing before the Board, during which the parties will be summoned to make statements and present their closing arguments. This is particularly relevant because the previous ten-day period for submitting final arguments will no longer apply, and such arguments must now be presented during the final oral hearing. Consequently, the date on which the case file is deemed complete will no longer be the date on which the arguments are submitted or the end of that period. Instead, according to the Bill, the file will be deemed complete the day after the final oral hearing is held.

This new draft also eliminates the ten-day period to request the oral hearing, meaning that the deadline for the CNA to issue its resolution will begin from the date the case file is considered complete. Notably, this deadline has also been reduced in the Bill from 40 to 30 days.

## 9. Fines and Penalties[15]

The percentages and amounts increase significantly, for example:

- **Cartels or AMP**: The fines for engaging in cartel conduct are increased from **10% to 20%** of the infringing firm revenues.

- **Unilateral conduct (RMP) and unlawful mergers:** The fine for engaging in abuse of dominance or unlawful mergers increases from a range of 8% to 15% of the infringing firm revenue.

- **Unauthorized mergers:** The penalties for conducting a merger that exceeds the thresholds established in Article 86 of the Bill, without due authorization from the Commission, have been modified. The fine was previously **5 thousand times the value of the UMA and** up to **5% of**

[13]Article 83 of the Bill.
[14] This document is issued by the Investigative Authority after it concludes the investigation and finds sufficient evidence to sustain the allegations of antitrust infringement. In other jurisdictions, these documents are defined as Statement of Objections.
[15] Article 127 of the Bill.

**the firm's income**, and now it has been raised from **100 minimum wages** up to **10% of the income**.

- **Aiding and abetting in anticompetitive conducts:** for those who have aided, abetted, or induced anticompetitive conducts, unlawful mergers, or any other restriction to the efficient functioning of markets. The fine for this infraction has been increased from 180 thousand times the minimum wage to 300 thousand times the UMA.

- **Disqualification from public contracting procedures:** This sanction will be applied to those who incur in cartel conduct in public procurement, with a period of disqualification that may vary between **six months and five years**.

A detailed comparison between the current law and the proposed reforms is included in Section III of this Brief. The equivalence in USD will be shown (whenever applicable).

According to Section I of Article 128 of the Bill, in cases where firms do not declare or have not been assigned taxable income, or where the Commission does not have access to such information, fines of up to three million times the daily value of the UMA may be imposed for engaging in Absolute Monopolistic Practices, failing to comply with conditions of a merger, or failing to comply with measures regulating access to essential inputs or interim measures.

In the case of Relative Monopolistic Practices, Illegal Mergers, or non-compliance with a resolution, fines of up to two million times the daily value of the UMA may be imposed for each fiscal year during which the infringement occurred.

Furthermore, Article 129 of the Bill states that the CNA will seek to ensure that fines are deterrent in nature. However, its second paragraph notes that the Commission must issue Regulatory Provisions that clearly, transparently, and predictably establish the methodology and criteria for imposing fines.

This point is undoubtedly key and will be important to monitor in the regulation of the FECL, to ensure there are no ambiguities in how the new CNA may impose the corresponding sanctions.

## 10. Enforcement measures[16]

The amendments proposed in the Bill significantly increase the fines for those firms that allegedly hinder or obstruct the functions of the Commission.

A main area of concern is the wording of the new sections, which is presented in a broad and ambiguous manner. This approach may lead to broad interpretations of the offenses, which, in practice, could result in possible abuses by the authority.

The lack of a precise definition in the new sections creates uncertainty about the limits of the conducts that are considered obstructions, which could result in an arbitrary or disproportionate application of fines.

For example, in addition to a fine for not attending a hearing without a justified cause, a fine of 30 thousand times the general daily minimum wage in force is provided for "not answering the questions or positions asked, or for answering with ambiguities or evasions". Likewise, fines are provided for those who impede or obstruct the development of a dawn raid.

A detailed comparison between the current law and the Bill is included in Section III of this document. The table also shows the equivalences in pesos for the fines whenever applicable.

## 11. Thresholds for reporting mergers[17]

The Bill significantly lowers the thresholds for triggering the obligation to obtain the Commission's authorization before conducting mergers.

This means that the number of transactions that must be notified to the new Commission will increase, having a significant impact on the closing times of a greater number of M&A transactions.

- The thresholds related to the value of the operation and annual sales of economic agents were reduced from 18 million times the value of the UMA to 16 million times the UMA[18].

- As for the threshold related to the percentage of assets or shares to be accumulated, the Commission's review will be conducted starting at

[16] Article 126 of the Bill.
[17] Article 86 of the Bill.
[18] From $104'010,214.00 to $92,446,418.90 USD.

30%, compared to the 35% of assets or shares that should be accumulated, under the current LFCE.

- Finally, with respect to the threshold for the accumulation of assets or capital stock in the national territory, it was reduced from 8 million 400 thousand times the value of the UMA to 7 million 400 thousand times the UMA in effect[19]. In addition, the threshold for the calculation of annual sales originating in the national territory or assets located in the national territory, both jointly and separately of the firms involved in the merger, decreased from 48 million times the value of the UMA to 40 million times the UMA in effect[20].

A detailed comparison between the current law and the proposed reforms is included in Section III of this document. The table also shows the USD equivalents for both the old and new thresholds.

**12. Procedure for verifying compliance with the obligation to notify a merger[21]**

Currently, the existing legal framework does not regulate the procedure to determine whether a merger should have been legally notified. In this regard, the Bill proposes to include such procedure.

**13. Leniency Program and Waiver Procedure[22]**

However, although Article 103 of the Bill mentions a distinction between fine percentages, it is not clear what the text means by "total benefit" or whether this specifically implies criminal immunity as well as immunity from being disqualified to participate in public procurement processes. It is considered essential that the CNA, at the appropriate procedural stage, clarify these aspects in the corresponding Regulatory Provisions, given that the absence of immunity would undermine the incentives to adhere to the Leniency Program.

Regarding the procedure for exemption or reduction of fines, two scenarios are established. On one hand, companies who submit the corresponding request before the Investigative Authority extends the investigation period for a second time may obtain the "totality of the benefit," while it may also be requested during the PSFJ before the case file is integrated, in which case the fine may be reduced by 50%.

[19] From $48'538,100.00 to $42,747.192.03 USD
[20] From $277'360,572.00 to $231,086,812.010 USD.
[21] Article 93 Bis of the Bill.
[22] Articles 100 and 103 of the Bill.

Likewise, it will be important that, as part of the regulation of the new Law, the CNA sets out clear criteria for the application of this Procedure.

## 14. Attorney-client privilege[23]

The Bill includes in the text of the Law the procedure to guarantee the protection of attorney-client communications. This is significant because, although COFECE has already established a procedure to qualify information subject to protection through Regulatory Provisions, its inclusion in the FECL grants it greater legal weight.

In this regard, the qualification procedure defined in Article 77 Bis is similar to the one currently used by COFECE, except for any additional criteria that may be established in the Provisions.

However, it is important to note that the Bill takes a restrictive approach by considering as protected only the information exchanged with a lawyer with whom there is no employment relationship.

In Mexico, attorney-client privilege is not regulated as a unified legal concept nor under that specific name. However, various legal provisions and principles do recognize professional secrecy as a legal guarantee linked to the rights to privacy, adequate legal defense, and due process. This recognition is dispersed across different legal norms and judicial criteria and does not distinguish between in-house and external counsel. This is particularly relevant considering COFECE's practice, based on its Regulatory Provisions and procedural framework, of limiting such protection exclusively to attorneys with no employment relationship with the advised party.

From a comparative standpoint, it is relevant to refer to the National Code of Criminal Procedure ("**CNPP**"), which makes no distinction between "types" of legal advisors and recognizes the confidentiality of the attorney-client relationship. Article 17 of the CNPP provides that, to exercise the fundamental and inalienable right to a defense, such right must be exercised with the assistance of a licensed attorney or law graduate[24]. Additionally, Article 113, Section XI, of the CNPP establishes the accused's right to adequate defense by a licensed attorney or law graduate and emphasizes that they may meet or communicate with such attorney in strict confidentiality.

[23] Articles 77 Bis to 77 Bis 1 of the Bill.

[24] In Mexico, there is no mandatory bar admission to practice neither state specific restrictions. Persons that successfully graduate with a law degree (*Licenciatura en Derecho*) from university and obtain their professional license or *cédula profesional* are qualified to practice law in all the country.

Furthermore, Article 244 of the CNPP clearly states that communications and any information exchanged between the accused and persons protected by professional secrecy, such as attorneys, may not be seized or used as evidence. This protection only yields when there is a well-founded indication that the attorney engages in criminal conduct under investigation, thereby affirming that professional confidentiality is the rule, with narrowly defined exceptions. Notably, no distinction is made regarding the employment status of the attorney; it is sufficient for them to be certified legal professionals.

At the professional level, Article 36 of the Regulatory Law of Article 5 of the Constitution establishes that attorneys, like any other professionals, must maintain confidentiality regarding facts learned during their professional practice. This duty of professional secrecy is mandatory, and the regulation does not differentiate based on whether the legal advisor has an employment relationship with their client (i.e., whether they are in-house or external counsel) [25].

Based on the foregoing, it is essential that, in issuing the relevant regulation by the new authority intended to govern procedures for ensuring attorney-client privilege, it is acknowledged that excluding in-house counsel from professional secrecy protections lacks legal basis and undermines the right of legal entities to adequate defense. None of the applicable provisions, including those at the constitutional level, establish any distinction between internal and external attorneys.

At the international level—for example, in the United States and even in other Latin American countries such as Brazil—no such distinction is made between in-house and external counsel to ensure protection of privileged attorney-client communications.

From a functional perspective, in-house attorneys perform the same ethical and legal duties as their external counterparts. In many cases, they serve as the first point of legal advice, lead defense strategies, and coordinate

[25] The Third Collegiate Civil Court of the First Circuit, under the title "Professional secrecy. Waiver of the obligation to testify about third-party matters," isolated precedent establishes that professional secrecy is closely linked to the right to privacy and protects certain individuals — among them, attorneys — from being compelled to disclose information obtained during their professional practice, unless there is express consent from the holder of such information. This criterion reaffirms that confidentiality is not merely an ethical expectation, but a legal protection against third parties, including authorities.

regulatory compliance within companies. Their exclusion constitutes an artificial distinction with no legal foundation that places companies at a procedural disadvantage and undermines their right to effective legal defense and legally protected confidentiality.

Moreover, the legal profession is not limited by the contractual or employment relationship an attorney may have with their client. These professionals are subject to the same responsibilities, obligations, and disciplinary measures in cases of misconduct.

For all the above reasons, any regulatory proposal that seeks to exclude in-house attorneys from the protections afforded to attorney-client communications in the field of competition law are not only inconsistent with the current legal framework but also contravenes fundamental principles of due process and the right to adequate legal defense.

## 15. Effects of resolutions and recidivism

This Initiative establishes that the resolutions and actions of the CNA will be valid until their invalidity has been declared final by the Federal Judiciary.[26]

With respect to mergers, it stipulates that among the measures that the Commission may order to ensure conditions of competition is the restoration to the state they were in before the series of acts.[27]

On the other hand, in order to consider an undertaking as a recidivist, it is sufficient that (i) any violation to the FECL is incurred; (ii) at the beginning of the second or subsequent proceeding there is a previous resolution that has caused status in administrative proceedings, that is, before the Commission; and (iii) that no more than 10 years have elapsed since the beginning of the investigation and resolution.[28]

The Bill proposes that, in order for individuals or groups to bring individual or collective actions before the Federal Judiciary for damages caused by an anticompetitive practice or unlawful concentration, it would be sufficient for the National Antitrust Commission, in this case an administrative authority, to issue the corresponding resolution[29]. This change is inconsistent with the standard currently established in the Federal Economic Competition Law, which requires that the resolution issued by the Federal Economic

[26] Article 120 of the Bill.
[27] Article 90 of the Bill.
[28] Article 131 of the Bill.
[29] Article 134 of the Bill.

Competition Commission be final and binding before such actions can be brought.

The current proposal in the Initiative regarding the legal effects of resolutions and recidivism may undermine the legal certainty of economic agents. The fact that it would no longer be necessary for the prior resolution issued by the National Antitrust Commission to be final in order to determine potential recidivism—or even to initiate civil actions—represents a serious violation of fundamental rights, due process, and could potentially open the door to prolonged litigation across multiple fronts.

In this regard, we consider that the fact that the prior resolution issued by the CNA is not required to be unchallengeable implies serious violations to the fundamental rights of due process and legal certainty.

### 16. Importance of having antitrust compliance programs in place

The Initiative establishes as a mitigating factor for penalties the implementation an antitrust compliance program, which has been previously certified by the CNA.

Such certification, although it will be regulated in the Regulatory Provisions and the Regulations, will allow the Commission's favorable opinion on compliance programs to be binding in nature.

## II. Next steps and considerations related to institutional changes [30]

This Bill introduces a series of significant changes in the field, making it important to understand the transition process to the new competition authority. The following points should be kept in mind:

### 1. Entry into Force and Application of the new Law

The new FECL will enter into force on the day of its publication in the Official Gazette (DOF). However, the amendments to paragraphs Fifteenth to Twentieth of Article 28 of the Constitution will enter into force the day after the Board of the CNA is formally constituted.[31]

[30] First to Seventh Transitory Articles of the Bill.
[31] First Transitional Article of the Bill.

The Bill states that the COFECE will continue to operate under the current legal framework until the CNA Plenary is fully integrated.

Regarding the appointment of the new Board, its effects will take place the day after publication, in accordance with Article 14, paragraphs two to eight.[32]

**2. Appointment and Functions of the New Board of Commissioners**

The current Board of COFECE will continue to operate under the existing legal framework until the Board of the CNA is constituted. The Board will be considered constituted once five commissioners have been appointed and ratified, and a chairperson has been designated. This must occur no later than June 30, 2025.

Once the new commissioners are appointed, they will assume office upon the entry into force of the new FECL, with staggered terms lasting until the years 2028, 2029, 2030, 2031, and 2032. The President shall appoint the Chair of the Board within ten business days following the appointment of the Board[33].

**3. Institutional Replacement: Transition from COFECE and IFT to CNA**

a. Ongoing Proceedings

As for the entry into force of the new Law, all deadlines in all ongoing investigative procedures conducted by the investigative authorities of COFECE and the IFT will be suspended. Accordingly, the respective suspension orders must be issued and published in the Official Gazette (DOF). The investigations will be restarted on the day after the Board[34].

The CNA will replace COFECE in all proceedings pending as of the effective date of the new LFCE. However, legal acts and resolutions issued by COFECE prior to the new law coming into force will continue to have legal effect[35].

Additionally, it is established that acts issued by the IFT in matters of economic competition, market dominance, asymmetric regulation, and cross-ownership will remain valid until the CNA replaces them.[36]

---

[32] Third Transitional Article of the Bill.
[33] Third Transitional Article of the Bill
[34] Fourth Transitional Article of the Bill.
[35] Seventh Transitional Article of the Bill
[36] Eighth Transitional Article of the Bill.

The CNA's Internal Statute and its Regulations must be issued within 180 business days from the appointment of the new Board. Until then, COFECE's Internal Statute, Regulatory Provisions, criteria, guidelines, and other applicable regulations will remain in effect, insofar as they do not contradict the new Decree.[37]

Pending proceedings will continue before the new authority and will be taken up by the corresponding administrative units, based on COFECE's current structure. Once the new Internal Statute is issued, an institutional reorganization is expected[38].

b. Institutional Aspects

Human, financial, material, and technological resources will be transferred to the CNA and will continue to operate in the same manner as under COFECE until the new Internal Statute enters into force[39].

A Transfer Committee will be created, composed of the COFECE Board and eleven public officials. This committee will be responsible for managing the institutional transition of human, material, and financial resources. It will have a term of thirty calendar days.[40] The Bill mentions that the rights of the employees joining the CNA from COFECE will be respected [41].

The Lower Chamber of Congress (*Cámara de Diputados*) or the Ministry of Finance and Public Credit must ensure sufficient budgetary resources, as well as the necessary human, material, and financial resources for the CNA to conduct its functions[42].

The IFT's functions in the relevant areas will be transferred to the CNA, along with the corresponding staff positions, twenty business days after the entry into force of the Decree[43]

As previously mentioned, the Head of the Investigative Authority will remain in office at least until September 2025; the remaining term will be determined according to Article 31 of the new LFCE[44].

[37] Ninth and Tenth Transitional Articles of the Bill.
[38] Ninth and tenth Transitional Article of the Bill.
[39] Tenth Transitional Article of the Bill.
[40] Nineteenth Transitional Article of the Bill.
[41] Sixteenth Transitional Article of the Bill.
[42] Fourteenth Transitional Article of the Bill.
[43] Sixteenth Transitional Article of the Bill.
[44] Thirteenth Transitional Article of the Bill.

Information held by COFECE and the IFT will be transferred to the CNA and must be securely safeguarded, without access by third parties[45]

## III. Comparative analysis

### 1. Thresholds for notification of mergers

Regarding the timelines for the merger notification procedure, this Bill proposes a significant reduction in the period the CNA will have to issue its decision—from 60 days to 30 days—allowing for an extension only in exceptionally complex cases, except for relevant matters that have been expressly flagged by the Federal Executive.

The Initiative significantly lowers the thresholds for notifications in Sections I to III. This means that the number of transactions that must be notified to the new Commission will increase.

| | Federal Economic Competition Law in force | Initiative |
|---|---|---|
| **THRESHOLDS FOR NOTIFICATION OF MERGERS** | Article 86. The Commission must authorize the following mergers before they are carried out: | The Agency shall authorize the following mergers before they are carried out: |
| | **I.** When the act or series of acts that give rise to them, regardless of the place of their celebration, import in the national territory, directly or indirectly, an amount greater than the equivalent of **$104,010,214.504 USD;** | **I.** When the act or series of acts that give rise to them, regardless of the place of their celebration, import in the national territory directly or indirectly, an amount greater than the equivalent of **$92,446,418.90 USD;**[46] |
| | **II.** When the act or series of acts that give rise to them, imply the accumulation of **thirty-five percent** or more of the assets or shares of an Economic Agent, whose annual sales originating in the national territory or assets in the national territory amount to **more** | **II.** When the act or series of acts that give rise to them, imply the accumulation of **thirty percent** or more of the assets or shares of an Economic Agent, whose annual sales originating in the national territory or assets in the national territory amount to **more** |

[45] Fifteenth Transitional Article of the Bill.
[46] Equivalent to fifteen million times the Current Measurement and Updating Unit (UMA).

| | | |
|---|---|---|
| | **than $104,010,214.504 USD;** or | **than the equivalent of $92,446,418.90 USD;**[47] |
| | **III.** When the act or series of acts that give rise to them imply an accumulation in the national territory of assets or capital stock more than **$48,538,100.102 US** and in the merger of two or more Economic Agents participate whose annual sales originating in the national territory or assets in the national territory, jointly or separately, amount to **more than $277,360,572.012 USD;** | **III.** When the act or series of acts that give rise to them imply an accumulation in the national territory of assets or capital stock exceeding the equivalent of **$42,747.192.03 US**[48] and the merger involves two or more Economic Agents whose annual sales originating in the national territory or assets in the national territory, jointly or separately, **directly or indirectly**, amount to **more than $231,086,812.010 USD**[49] |
| | **No correlative** | **To determine whether a transaction meets any of the thresholds established in the sections of this article, the highest figure between the total value of the assets in the balance sheet and the commercial value of the assets must be taken, considering the daily value of the Unit of Measurement and Actualization in force on the day prior to the day on which the merger is notified.** |

**2. Measures of Apprehension**

Penalties for Economic Agents are significantly increased, and the wording of new fractions is open, which lends itself to potential abuses of authority in their imposition.

[47] Sixteen million times the UMA.
[48] Seven million four hundred thousand times the UMA.
[49] Forty million times the UMA.

| | Federal Economic Competition Law in force | Initiative |
|---|---|---|
| **MEASURES OF CONSTRAINT** | Article 126. The Commission, for the performance of the functions attributed to it by this Law, may apply indistinctly the following measures of constraint: | Article 126. The Commission, for the performance of the functions attributed to it by this Law, may apply **jointly, separately, or indistinctly** the following measures of constraint: |
| | I. Warning. | I. Warning; |
| | II. A fine of up to the amount of **$17,335.03 USD**, which may be applied for each day that elapses without complying with the order; | II. A fine of up to **$46,222.44 USD**[50] , amount that may be applied for each day that elapses without complying with the order. |
| | **No correlative** | **II Bis.** Fine up to **$173,319.15 USD**[51] **for not attending a hearing, without justified cause, for not answering the questions or positions asked or for answering with ambiguities or evasions.** |
| | **No correlative** | **II Bis 1. Fine of up to $1,155,812.06 USD**[52] **to the Economic Agent that impedes or obstructs the development of a verification visit in the terms set forth in Article 75 of this Law:** |

[50] Eight thousand times the UMA.
[51] Thirty thousand times the UMA.
[52] Two hundred thousand times the UMA.

| | | |
|---|---|---|
| | **No correlative** | **II Bis 2. A fine of up to $57,790.50 USD[53] for failure to comply with a disqualification order under section X of Article 127, an amount that may be applied for each day that elapses without complying with the order.** |

### 3. Fines and Penalties

The percentages and amounts are significantly increased. For the determination of fines, income in terms of income tax **for the fiscal years in which the alleged violation was incurred will be considered** (although it is not clear how it will be applied in practice).

In addition, the penalties for non-compliance with the measures ordered by the Commission are increased, for having conducted a merger that exceeds the notification thresholds, and a fraction related to the disqualification from participation in public contracting procedures is included.

| | **Federal Economic Competition Law in force** | **Initiative** |
|---|---|---|
| **FINES AND PENALTIES** | The Commission may apply the following sanctions: | The Commission may apply the following sanctions: |
| | III. A fine of up to **$1,011,210.418 USD**, for having falsely declared or delivered false information to the Commission, regardless of the criminal liability incurred. | III. A fine of up to**$1,155,812.06 USD[54]** , for having falsely declared or delivered false information to the Commission, regardless of the criminal liability incurred; |
| | IV. A fine of up to the equivalent of **ten percent of the revenues of the** | IV. A fine of up to the equivalent of **twenty percent of the revenues of** |

[53] Ten thousand times the UMA.
[54] Two hundred thousand times the UMA.

| | | |
|---|---|---|
| | **Economic Agent**, for having incurred in an absolute monopolistic practice, regardless of the civil and criminal liability incurred; | **the Economic Agent**, for having incurred in an absolute monopolistic practice, regardless of the civil and criminal liability incurred; |
| | V. A fine of up to the equivalent of **eight percent of the revenues of the Economic Agent**, for having incurred in a relative monopolistic practice, regardless of the civil liability incurred; | V. Fine up to the equivalent of **fifteen percent of the revenues of the Economic Agent**, for having incurred in a relative monopolistic practice. |
| | VII. A fine of up to the equivalent of **eight percent of the revenues of the Economic Agent**, for having incurred an unlawful merger under the terms of this Law, regardless of the civil liability incurred; | VII. A fine of up to the equivalent of **fifteen percent of the revenues of the Economic Agent**, for having incurred an unlawful merger in terms of this Law, regardless of the civil liability incurred; |
| | VIII. A fine of **$28,891.726 USD and up to the equivalent of five percent of the revenues of the Economic Agent**, for not notifying the merger when legally it should have been done; | **VIII. A fine of $577,904.95 USD[55] and up to the equivalent of ten percent of the revenues of the Economic Agent, for having conducted a merger that exceeds the monetary thresholds established in Article 86 without having previously obtained the corresponding authorization.**<br><br>**The fine established in this section shall be $1,155,812.05 USD[56] and up to the equivalent of fifteen percent of the** |

[55] One hundred thousand times the UMA.
[56] Two hundred thousand times the UMA.

| | | |
|---|---|---|
| | | **revenues of the Economic Agent when the Commission has previously objected to the execution of the corresponding merger; the foregoing, without prejudice to being able to order the partial or total divestiture, the termination of control or the suppression of the acts, as the case may be, of the corresponding merger.** |
| | IX. A fine of up to the equivalent of **ten percent of the revenues of the Economic Agent**, for failure to comply with the conditions set forth in the resolution of a merger, without prejudice to ordering the divestiture; | IX. Fine up to the equivalent of **fifteen percent of the revenues of the Economic Agent**, for failure to comply with the conditions set forth in the resolution of a merger, without prejudice to ordering the divesture. |
| | X. Disqualification to act as director, administrator, director, manager, executive, executive officer, agent, representative or attorney in a legal entity for a term of up to five years and fines of up to **$1,155,669.05 USD,** to those who participate directly or indirectly in monopolistic practices or illicit mergers, in representation or on behalf of and order of legal entities. | X. Disqualification to act as director, administrator, director, manager, executive, executive officer, agent, **advisor,** representative or attorney in a legal entity **in the market in question for** a term of up to five years and fines of up to **$2,022,585.29 USD**[57] , to those who participate directly or indirectly in monopolistic practices or illicit mergers , in representation or on behalf and order of another person; |

[57] Three hundred and fifty thousand times the UMA

| | | |
|---|---|---|
| | XI. Fines of up to **$1,040,102.145 USD**, to those who have aided, encouraged, or induced the commission of monopolistic practices, illicit mergers, or other restrictions to the efficient operation of the markets in terms of this Law; | XI. Fines of up to **$1,733,191.52 USD**[58] , to those who have aided, encouraged, or induced the commission of monopolistic practices, illicit mergers, or other restrictions to the efficient operation of the markets in terms of this Law. |
| | XII. A fine of up to the equivalent of **eight percent of the revenues of the Economic Agent**, for failure to comply with the resolution issued in terms of Article 101 of this Law or in Sections I and II of this Article. The foregoing regardless of the criminal liability incurred, for which the Commission shall report such circumstances to the Public Prosecutor's Office; | XII. A fine of up to the equivalent of **fifteen percent of the revenues of the Economic Agent**, for failure to comply with the resolution issued in terms of Article 101 of this Law. |
| | No correlative | **XII Bis. A fine of up to the equivalent of ten percent of the revenues of the Economic Agent, for failure to comply with the provisions of sections I, II and VIII, third paragraph of this Article. The foregoing regardless of the criminal liability incurred, for which the Commission shall report such circumstance to the Public Prosecutor's Office.** |
| | XIII. Fines of up to **$1,040,102.145 USD**, to the public notaries that intervene in the acts related to a merger **when it has not been authorized by the Commission;** | XIII. Fines of up to **$1,155,669.05 USD**[59] , to public notaries who intervene in acts related to a merger **that exceeds the monetary thresholds in Article 86, without having** |

[58] Three hundred thousand times the UMA.
[59] Two hundred thousand times the UMA.

| | | |
|---|---|---|
| | | **previously obtained the corresponding authorization.** |
| | XIV. A fine of up to the equivalent of **ten percent of the revenues of the Economic Agent** that controls an essential input, for non-compliance with the regulation established with respect thereto and whoever does not obey the order to eliminate a barrier to competition, and | XIV. A fine of up to the equivalent of **fifteen percent of the revenues of the Economic Agent** that controls an essential input, for failure to comply with the regulation established with respect thereto and whoever does not obey the order to eliminate a barrier to competition or **divest assets in terms of article 94, section VII, of this Law**, and |
| | XV. A fine of up to the equivalent of **ten percent of the revenues of the Economic Agent**, for failure to comply with the precautionary order referred to in this Law. | XV. A fine of up to the equivalent of **ten percent of the revenues of the Economic Agent** for failure to comply with the precautionary order referred to in this Law. |
| | **No correlative** | **XVI. Temporary disqualification to participate, directly or through an intermediary, in public contracting procedures for a period of not less than six months nor more than five years, for having incurred in an absolute monopolistic practice in terms of article 53, section IV, of this** ordinance, **regardless of the administrative, civil and criminal liability incurred and the provisions of other ordinances.** |

| | | |
|---|---|---|
| | **Article 128.** In the case of those Economic Agents who, for any reason, do not declare or have not determined accruable income for Income Tax purposes, the following fines shall be applied to them: | **Article 128**. In the case of those Economic Agents that, for any reason, do not declare or have not been determined accruable income for Income Tax purposes **or the Commission does not have such income**, the following fines shall be applied to them: |
| | I. A fine of up to **$8,667,517.87 USD,** for the violations referred to in sections IV, IX, XIV and XV of Article 127 of the Law: | I. Fine up to**$ 17,331,915.16 USD**[60] , for violations referred to in sections IV, IX, XIV and XV of Article 127 of the Law: |
| | II. A fine of up to **$5,200,510.725 USD**, for the violations referred to in fractions V, VII and XII of Article 127 of the Law; and | II. Fine up to **$11,558,120.65 USD**[61] per each fiscal year in which the infraction occurred, for the violations referred to sections V, VII and XII of Article 127 of the Law; |
| | III. A fine of up to **$2,311,338.10 USD,** for the infraction referred to in section VIII of Article 127 of the Law. | III. A fine of up to **$8,089,823.93 USD**[62] , for the infraction referred to in section VIII of Article 127 of the Law<br><br>**This article may also be applicable when the maximum fine obtained by multiplying the cumulative income of the economic agent by the percentage established in Article 127 of the Law is less than the maximum fine established in this article for the corresponding infraction.** |

[60] Three million times the UMA.
[61] Two million times the UMA.
[62] One million four hundred thousand times the UMA.

Aware of the legislative changes, including the significant increase in fines, enforcement measures and powers of the new National Antitrust Commission, we at A&K reiterate our position as key allies for our clients.

We have decades of experience, as well as innovative tools, methods, and perspectives that we materialize in various products and services for our clients, to mitigate risks related to violations or situations arising from the upcoming entry into force of the new antitrust law.

This includes the development of comprehensive compliance programs, specialized audits of anti-competitive practice risks and other restrictions to the efficient functioning of markets such as barriers and essential inputs, and the development of defense strategies before the new competition authority, among other services.