Brief

Decree amending, adding, and repealing various provisions of the Federal Law on Economic Competition

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I. Summary

On July 16th, 2025, the Reform to the Federal Economic Competition Law ("New FECL") was published in the Official Gazette of the Federation ("DOF"), it will enter into force on July 17th, 2025, the day after its publication. The New FECL represents a structural shift in Mexico's competition regime. Its entry into force redefines the rules of the game for market participants by profoundly reshaping the institutional framework, procedures, sanctions, and material scope of competition policy.

Key changes include:

- The creation of the National Antitrust Commission ("CNA") as the new authority, with expanded powers, including jurisdiction over sectors such as telecommunications and broadcasting.

- The lowering of thresholds for merger notification, which will increase the number of transactions subject to prior approval.

- The expansion of sanctioning powers and a more stringent penalty regime, with fines reaching up to 15% of the offender's revenues in cases of cartels.

- The introduction of legally ambiguous concepts such as "potential competitor" or "joint substantial market power," which broaden the authority's discretionary interpretative margin.

- The inclusion of competition policy exceptions for strategic state activities such as energy, thereby limiting the reach of competition enforcement in these sectors.

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- The consolidation of new procedural and technological tools for investigations, including surveys and the ability to gather information through any means.

- Key procedural changes, such as the binding effect of CNA decisions even if not yet final in court, enabling civil damages actions or the finding of repeat offenses at the administrative stage.

- The establishment of a certified compliance program as a mitigating factor for sanctions, reinforcing the value of preventive compliance frameworks.

These elements represent a more demanding environment, with significant legal risks and areas of regulatory uncertainty. In response, companies must strengthen their internal compliance capabilities, adjust corporate policies, and anticipate the potential impact of their strategic decisions under the new legal framework.

This Brief outlines the most relevant elements identified through an in-depth analysis of the New FECL. In light of this new regulatory landscape, Aziz & Kaye Abogados, S.C. ("A&K") reiterates the importance of adopting a preventive and comprehensive approach to competition law compliance. This document is intended to serve as a starting point for informed decision-making.

II. Relevant modifications

A. Institutional Aspects

a. National Antimonopoly Commission

With the entry into force of the New FECL, the CNA is created, as a **decentralized body sectored to the Ministry of Economy**, with legal personality and its own assets, management autonomy, endowed with technical and operational independence in its decisions, organization, as well as operation.

Although the functions and powers of the CNA are, in essence, the same as those of the Federal Economic Competition Commission ("**COFECE"),** including the separation between the instance that investigates from the one that resolves and the collegiate nature of the Plenary, there are some key considerations that are analyzed below.

i. Entry into functions

The COFECE will continue to operate until the Board of the new CNA is integrated[1]. There are two considerations for this: i) There is no deadline that mandates the Mexican President to propose the Commissioners of the CNA. ii) The Senate has a maximum period of thirty calendar days after receiving the proposals for the appointment of Commissioners by the President[2].

This situation is different from what was proposed in the Bill, which established June 30, 2025, as the deadline for integrating the CNA Board.

The lack of integration of the CNA Board as a result of the pending appointment of Commissioners has several implications:

1. The Board of the current COFECE will continue to process the corresponding matters such as Trial-Like Procedures and merger control[3];

2. The investigations currently conducted by COFECE and the Federal Telecommunications Institute ("**IFT**") will remain suspended, and will be resumed by the Investigative Authority of the new CNA the day after the Board is integrated[4], and

3. All legal acts that COFECE and the IFT issue before the day following the integration of the CNA Plenary will continue to have all their legal effects[5].

Once the Board of the CNA is integrated, the new Commission will have a period of 180 calendar days to issue its Statute and the Regulations of the New FECL.[6] Until then, the entire regulatory body (Statute, Provisions, Criteria and Guidelines) of COFECE and IFT will remain in force for the corresponding effects that are not opposed to provisions of the New FECL or its Publication Decree[7].

ii. Main institutional changes

- **Board:** A new Board will be formed with 5 Commissioners who will last in their position for seven non-renewable years appointed by the Mexican President and ratified by the Senate. The Presidency of the CNA will be appointed

[1] Second Transitory Article.
[2] Article 13 bis.
[3] Second Transitory Article.
[4] Fourth Transitory Article.
[5] Seventh and Eighth Transitory Articles.
[6] Ninth Transitory Article.
[7] Tenth Transitory Article.

directly by the Executive for a period of three years extendable to a single occasion.

This is one of the main differences with the previous competition regime since the Commissioners of COFECE and IFT were selected based on a technical evaluation process.

- **Investigative Authority ("IA"):** The current Head of COFECE's IA will automatically move to the CNA to continue in his position until at least September 1, 2025[8]. The Head of the IA may be re-elected by the Board of the CNA for a second term of four additional years[9].

- **Functions in telecommunications and broadcasting:** As it will be explained later, the CNA assumes a series of functions as a competition authority as well as regulatory powers in telecommunications and broadcasting. Therefore, the IFT's human and material resources, and systems related to issues of competition, preponderance and cross-participation will be transferred[10] [11].

  However, it is not clear how such a transfer will be carried out and operational complications may arise. The Organic Statute of the CNA will be issued up to 180 calendar days after the Plenary is integrated and the structure of COFECE will remain in force, for the time being.

  However, it is important to note that COFECE does not have specific areas or units that conduct activities related to telecommunications, or that have the necessary technical knowledge to perform such functions, unlike the IFT.

B. Substantive aspects

a. Powers and attributions related to the telecommunications and broadcasting sectors: Preponderance, Asymmetric Regulation and Cross-Ownership[12]

The powers of the CNA related to the telecommunications and broadcasting sectors must be exercised in coordination with the Telecommunications Regulatory Commission ("CRT") and, where appropriate, with the Digital Transformation and

[8] Thirteenth Transitory Article
[9] Article 31.
[10] Fifteenth Transitory Article
[11] Article Sixteen.
[12] Article 12, sections XXX to XXXVII, as well as Book Four, "On Telecommunications and Broadcasting", Articles 140 to 145.

Digitalization Agency ("**ATDT**"), which will issue technical opinions during the procedures, especially for the analysis of corrective measures.

However, among the powers conferred on the CNA in the New FECL in these sectors the following stand out:

- **Limits on concentration and cross-ownership:** The CNA may impose limits on national or regional concentration of frequencies, the granting of concessions and cross-ownership between telecommunications and broadcasting concessionaires operating in the same market or geographical coverage area.

- **Regulation of preponderant companies:** The CNA will be empowered to determine the existence of preponderant companies when their participation in the national market exceeds 50% (measured by users, subscribers, audience, traffic, or network capacity) and may impose corrective measures to prevent distortions of the competition process.

- **Imposition of structural and functional measures:** The New FECL allows the CNA to order measures aimed at preserving competition, such as the effective unbundling of local networks or the structural separation of preponderant operators.

These provisions reflect criteria similar to those provided for in the previous Federal Telecommunications and Broadcasting Law ("**LFTR**")[13]. The designations of preponderant companies previously made by the IFT will remain in force, until the review procedure provided for in the New FECL for their eventual lifting is completed.

These new powers imply a relevant institutional redesign for telecommunications and broadcasting operators in Mexico, who will have to adapt their compliance structures and actively monitor the procedures conducted by the CNA as well as the CRT and, where appropriate, the ATDT.

b. **Economic activities exempt from the application of antitrust regulations and implications**[14]

[13] It is important to consider that as part of the Reforms approved during the extraordinary period of the Congress of the Union in June 2025, a series of modifications to said regulatory framework were included, with certain functions and complementary aspects to competition law.
[14] Article 6.

The New FECL establishes that those functions exclusively by the State in strategic areas determined by the Constitution may not be considered as monopolies.

In addition, an express exemption from the application of the New FECL is proposed to activities conducted by public companies, as well as in other economic activities that Congress determines through specific provisions.

It is important to note that in the New FECL, a paragraph of Article 6 was eliminated that was included in the original Bill and that would have allowed the exclusion from the scope of the competition law of economic agents that "are in charge of the functions and activities" in strategic areas. The deletion of this paragraph is positive, as it reduces the risk that certain participants in strategic sectors will be completely exempted from the application of competition law.

Based on the Constitutional Decree, and in particular, the amendments to Articles 27 and 28 of the Constitution, it can be preliminarily identified that the economic activities of the State related to radioactive minerals, lithium, the electricity industry, as well as hydrocarbons and, in general, in the energy sector, will be exempt from the application of the competition law. This implies that the activities of state-owned companies such as *Petróleos Mexicanos* ("**PEMEX**") and the *Comisión Federal de Electricidad* ("**CFE**") will also be outside the jurisdiction of the New LFCE.

In this context, it is foreseeable that the CNA, unlike COFECE, will not assume an active role in the energy sector or in other strategic areas reserved for the State. This institutional configuration eliminates the scope of competition policy in these sectors.

This does not favor the development of the energy sector under competitive conditions, since several factors converge: the regulatory exclusion from the application of the New FECL, the restriction of powers to the competition authority to issue opinions related to regulations and public policies, and a reconfiguration of the regulatory environment in favor of parastatal companies.

This institutional redesign could translate into an environment with adverse conditions of competition, affecting the possibility of efficient development of energy markets and other strategic industries.

c. Mergers[15]

[15] Article 86.

The New FECL significantly reduces the thresholds that trigger the obligation to notify and obtain authorization from the Commission before executing a merger. This modification implies that the number of transactions subject to review will be increased, which will have a direct impact on closing times, as an authorization will be required in a greater number of M&A operations.

In particular, the main changes to the thresholds are as follows:

- Regarding the **value of the operation** and **the joint annual sales** of the companies involved, the threshold was reduced from **18 million UMA** to **16 million UMA[16],** which is equivalent to a decrease of approximately **$2,036,520,000 pesos** to **$1,810,240,000 pesos**, based on the estimated value of the UMA for 2025.

- Regarding the threshold linked to the **percentage of assets or shares to be accumulated**, the Commission's intervention will be activated when **30% or more** is acquired, in contrast to the 35% previously established in the LFCE in force, and the threshold was also reduced from **18 million UMA** to **16 million UMA.**

- Regarding the **accumulation of assets or capital stock in the national territory**, the threshold decreases from **8.4 million UMA** to **7.4 million UMA,** which is equivalent to a reduction from **$951,576,000 pesos** to **$837,236,000 pesos**. Likewise, the threshold for the calculation of **annual sales generated in Mexico or assets located in the country**, either jointly or separately among the agents involved, is reduced from **48 million UMA** to **40 million UMA,** that is, from **$5,431,000,000 pesos** to **$4,525,600,000 pesos**.

Section IV of this Brief includes a detailed comparison between the thresholds in force and those provided for in the New LFCE, with the corresponding equivalences in pesos, to facilitate their technical and quantitative analysis.

d. Anticompetitive conducts[17]

i. Absolute Monopolistic Practices ("**PMAs**")

As warned by the Bill, the New FECL retains the classification of Absolute Monopolistic Practices but introduces a relevant modification by including within its scope the Economic Agents that are considered **potential competitors**.

This approach is **legally risky**, as it does not establish an objective or verifiable criterion to determine the character of "potential competitor". Such ambiguity could allow the behavior of agents participating in the same market to be classified as

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[16] 1 UMA per day is equivalent to $113.14 pesos.
[17] Articles 53 and 54.

collusive, without considering legitimate commercial strategies, such as the decision not to actively participate in certain market segments for business reasons.

ii. Relative Monopolistic Practices ("**PMRs**")

In relation to PMRs, the New FECL maintains a new object and/or effect of such conduct: to **limit the ability of other Economic Agents to compete in the markets**.

Some applicable criteria for the definition of Relevant Markets and determination of Substantial Power, including regulatory barriers, previously contained in Regulatory Provisions, are elevated to the rank of Law. Of note is the incorporation in the Initiative of criteria for the determination of joint substantial power (Article 59 Bis).

iii. Unlawful mergers and mergers that should have been legally notified

Regarding illegal mergers, the New FECL establishes that the **statute of limitations** for their investigation will be **three years from their completion**, in cases where the operation has not required prior notification but may generate effects contrary to the competition process.

In addition, it is provided that, in the event of an investigation for an unlawful merger, it will also be up to the Investigative Authority to determine whether there was a breach of the obligation to notify a concentration that, according to the law, should have been subject to prior authorization.

iv. Considerations on regulatory changes related to anticompetitive conduct

These amendments introduce **new areas of legal uncertainty** that could expand the discretion of the investigating authority, particularly by incorporating concepts such as "potential competitor" without clear parameters, or by extending assumptions of joint substantial power.

In this new regulatory context, it will be key for companies to have **continuous competitive risk assessments**, adjust their compliance policies, and strengthen their merger analyses, even those that do not require *ex-ante* notification, to anticipate questions of legality or sanctions. The convergence between economic and legal interpretation will be essential to design defensive and business strategies that will withstand the scrutiny of the new authority.

e. **Investigative Procedure**[18]

i. Initiation of investigations and deadlines

The New FECL does not modify the circumstances under which the CNA can initiate an investigation: ex officio, by complaint or at the request of the Federal Executive through the Ministry of Economy ("**Secretariat**" or "**SE").** However, it introduces a relevant change: the complaints filed by the Secretariat must be analyzed by the IA, even if they do not comply with the formal requirements provided and may not be dismissed or considered as not presented.

Likewise, the reduction in the number of extensions of the investigation period from four to three is confirmed, maintaining the period of up to 120 working days for each one.

ii. Investigative Tools

In terms **of Dawn Raids**, the New FECL expressly establishes that the companies must allow **immediate** access to their facilities. In case of refusal, the Commission could impose a fine as an enforcement measure, which could amount to $22,628,000 pesos based on the value of the UMA for 2025[19].

In addition, the power of the IA to conduct surveys as a mechanism for gathering information is recognized. Until now, the surveys have been conducted by COFECE in competition studies or market research, with no evidentiary value in formal proceedings. Therefore, it will be crucial that their use in investigations observes robust technical standards, especially if they are to be admissible as evidence.

It is noteworthy that the New FECL expands the powers of the IA by allowing it to obtain information through **any available tool**.

This wording, due to its ambiguity, generates concern, since it could be interpreted that the IA can obtain information from undertakings without adequate justification or motivation. This would include everything from digital forensic analysis techniques or automated tools (such as algorithms and artificial intelligence), to, in an extreme case, accessing private communications with methods like those used by security institutions.

[18] Articles 69 to 77.
[19] Article 126, Section II Bis 1.

Consequently, it is essential that **clear limits and public and transparent criteria** be established that regulate the use of such tools, to guarantee respect for due process and the fundamental rights of the companies and individuals under investigation.

iii. Exercise of powers related to criminal complaints for incurring in alleged Absolute Monopolistic Practices

In accordance with Article 77 of the New FECL, the IA may file criminal complaints with the Attorney General's Office ("**FGR"**) when, when issuing the Statement of Objections or *Dictamen de Probable Responsabilidad* ("**DPR**"), it identifies indications of the commission of a PMA. The statute of limitations for the filing of the complaint will be one year from the presentation of the DPR before the Plenary.

However, it will be necessary for the CNA to issue the corresponding Regulatory Provisions, which establish the criteria, evidentiary standards, and specific assumptions under which the IA may exercise this criminal power before the FGR.

iv. Leniency Program and Waiver Procedure[20]

The New FECL establishes that the full benefit of the **Leniency Program** may only be granted to companies who apply to join before the formal initiation of the investigation. Those who do so later, and until the third extension of the investigation, will be able to access minor fine reductions.

However, Article 103 does not clearly specify what is meant by "total benefit": whether it implies exclusively the exemption from administrative fines, or whether it also includes leniency from prosecution and the non-imposition of disqualification sanctions.

Given that uncertainty about these scopes can neutralize the incentives to join the program, it will be essential for the CNA to define these aspects in its secondary regulations.

Regarding the **Procedure for Exemption or Reduction of Fines**, two scenarios are established:

- If the application is filed **before the IA orders a third extension** of the investigation period, the applicant will be able to access the "full benefit" (not yet defined); and

[20] Articles 100 and 103.

- If the application is filed during the Trial-Like Procedure ("**PSFJ"),** but **before the integration of the file**, a 50% reduction in the amount of the fine may be obtained.

As in the case of the Leniency Program, it will be key that the regulations issued by the CNA clearly define the **criteria, scope, and specific benefits** of each modality, to provide legal certainty to the companies interested in collaborating with the authority.

f. Trial-like Procedure[21]

At the conclusion of the investigation, the IA will have a period of no more than thirty days to present the DPR or a Closing Opinion. Subsequently, the Board will have a period of ten working days either to order the summons or decree the closure of the File[22].

One of the main novelties of the procedure is the incorporation of a final oral hearing before the Board, in which the parties will be able to make statements and present their arguments. This modification replaces the ten-day period that was previously granted for the written presentation of pleadings, so they must now be presented during said hearing. Consequently, the formal integration of the File is no longer linked to the expiration of the period for pleading, but it will be considered integrated the day after the final oral hearing is held.

The calculation of the period for the Board to issue a resolution will begin automatically on the day following the integration of the File. This period is also reduced from 40 to 30 working days, which significantly shortens the procedural times of the sanctioning procedure.

g. Fines and Penalties[23]

One of the most significant changes in the New FECL is the general tightening of the sanctioning regime, particularly in terms of anticompetitive conducts. Although specific reductions are identified with respect to the sanctions originally proposed in the Bill, the approved text maintains substantial increases in the percentages and thresholds applicable to various conducts. The main adjustments are summarized below:

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[21] Article 83.
[22] Article 78.
[23] Article 127.

- Absolute monopolistic practices: the maximum applicable fine **is increased from 10% to 15% of the offending company's income**. The Bill proposed a cap of up to 20%.

- Relative monopolistic practices and unlawful mergers: the maximum penalty **is increased from 8% to 10% of revenues**. The Bill contemplated up to 15%.

- Mergers without prior authorization: **a fine of up to 8% of income or up to $5,657,000 pesos (50,000 UMA) is established.** If the merger has been objected to, the penalty may amount to up to $22,628,000 pesos (200,000 UMA) and 15% of the income.

  These amounts represent a reduction compared to those provided for in the Bill, which set penalties of up to $11,314,000 pesos (100,000 UMA) or 10% of income, even for uncontested operations.

- Facilitation: The fine for those who contribute, induce or facilitate monopolistic practices or illegal concentrations is **set at up to $33,942,000 pesos (300,000 UMA), an** amount that coincides with what is proposed in the Initiative and that represents an increase compared to the $20,365,200 pesos provided for in previous legal framework.

- Disqualification in public procurement procedures: it is incorporated as an additional sanction in cases of PMAs linked to public procurement, with a duration that may range from six months to five years.

- Fixed fines in cases where income information is lacking according to Article 128 of the New FECL, in cases where companies have not declared income, have not been determined, or the Commission does not have elements to calculate it for reasons attributable to the offender, the following fines may be imposed:

  - Up to $339,420,000 pesos (3,000,000 UMA) for violations related to PMA, non-compliance with conditions in mergers, precautionary measures, or regulation of access to essential inputs (Art. 127, sections IV, IX, XIV and XV).

- Up to $226,280,000 pesos (2,000,000 UMA) in cases of PMR, unlawful mergers or non-compliance with resolutions (Art. 127, sections V, VII and XII).

- Up to $158,396,000 pesos (1,400,000 UMA) for not notifying mergers subject to prior authorization (Art. 127, sections VIII).

Unlike the Bill, the New LFCE eliminates the reference to these fixed fines being imposed for each fiscal year, which reduces their possible cumulative effect.

- Failure to comply with measures imposed as a preponderant undertaking (telecommunications and broadcasting): the fine for failing to comply with specific measures derived from the determination of preponderance or those provided for in Article 142 of the new Law is established from $113.14 pesos (1 UMA) and up to the equivalent of 10% of the income of the undertaking.

Finally, Article 129 introduces a general sanctioning policy clause, by establishing that the CNA must ensure that fines are effectively deterrent. It also imposes the obligation to issue regulatory provisions that define, in a clear, transparent, and predictable manner, the methodology and criteria applicable to the imposition of sanctions.

This last point will be particularly relevant during the implementation of the new regime since the legal certainty of economic agents and the legitimacy of the sanctioning system will depend mostly on the clarity and objectivity of this methodology.

Section IV of this Brief includes a detailed comparison between the previous sanctioning regime and the one provided for in the New LFCE, with monetary equivalences where applicable, to facilitate its comparative analysis.

h. Enforcement Measures[24]

The reforms contained in the New FECL significantly increase the fines applicable to companies that hinder the exercise of the Commission's powers. The central problem lies in the **broad and ambiguous wording** of several new sections, which opens the door to extensive interpretations and, potentially, to abuses of discretion.

The absence of clear definitions generates uncertainty as to what conduct constitutes "obstruction" and how far the limits of the sanction go. An illustrative

[24] Article 126.

example is the provision of a fine of $3,394,200 pesos (**30,000 UMA)** for not attending a compulsory interview without just cause, an amount that also applies to those who "do not answer the questions" or do so "with ambiguity or evasion." Similarly, fines are foreseen for those who prevent or hinder the development of a dawn raid, as mentioned of around twenty-two million pesos, without specifying levels or criteria of severity.

Section IV incorporates a comparative table between the New FECL and the previous regime, with the equivalences in pesos that correspond to each fine, which allows the economic impact of these provisions to be measured.

C. Risks and opportunities

a. Attorney-client privilege[25]

The New FECL incorporates in its legal text a specific procedure to guarantee the protection of communications between clients and their lawyers. This regulatory provision represents an advance over the previous regime, in which COFECE had established a procedure through regulatory provisions. With the inclusion of Article 77 Bis, the mechanism for the classification and protection of information is given greater hierarchy, aligning this right with basic principles of due process and adequate defense.

The procedure envisaged is similar to the one used for years by COFECE, except for the additional criteria that will be established in the regulatory provisions of the CNA. However, **the New FECL confirms the express limit to the scope of this protection only to communications with lawyers with whom there is no employment relationship**, explicitly excluding in-house lawyers of companies.

This exclusion is worrying and legally unfounded. In Mexico, the client-attorney privilege is not regulated in a unified way, but there is a regulatory framework that recognizes professional secrecy as a **guarantee linked to the right to defense**. Neither the Constitution nor the secondary legislation, including the Regulatory Law of Article 5 of the Constitution related to the exercise of certain professions, make any distinction between internal and external lawyers. Article 36 of that law provides that lawyers must maintain secrecy about facts known in the exercise of their profession, without limiting their application to a particular modality of provision of services.

It should be reiterated that from the field of criminal procedure, the National Code of Criminal Procedure ("**CNPP")** recognizes this privilege without establishing

[25] Articles 77 Bis and 77 Bis 1.

differentiations. Article 17 guarantees the right to defend with the assistance of a person with a law degree or a qualified lawyer, while Article 113, section XI, recognizes the right of the accused person to meet and interview his or her defense attorney with strict confidentiality. In addition, Article 244 of the CNPP prohibits the securing and use of evidence of communications protected by professional secrecy, unless there are well-founded indications that the lawyer has participated in the facts under investigation. **In none of these cases is protection conditional on the type of contractual relationship between the lawyer and his client.**

At the international level, jurisdictions such as the United States and Brazil also recognize the privilege without distinguishing between internal and external lawyers. This vision is based on the **role that the lawyer performs**, not on his or her employment relationship. In practice, in-house counsel is the first legal point of contact within firms, advising in real-time, devising compliance and advocacy strategies, and are subject to the same ethical obligations and disciplinary sanctions as their external counterparts.

Therefore, the exclusion provided for in the New FECL constitutes an **artificial distinction without normative or functional support**, which weakens the right of defense of legal entities and generates an **unjustified procedural asymmetry** vis-vis authority. The practice of law does not depend on the hiring regime, but on the professional qualification and ethical responsibility that it entails.

It is particularly serious that the New FECL has maintained unchanged the restriction that excludes in-house lawyers from the protection of client-lawyer communications. This omission shows a worrying lack of alignment with international standards and with the institutional principles that govern the professional practice of law. By not recognizing the legal privilege without distinction between internal and external counsel, the new competition regime in Mexico departs from comparative best practices, weakens the right of defense of individuals, and perpetuates an artificial distinction without normative or constitutional support. This structural failure seriously compromises the principles of legality, due process and procedural fairness that should guide all actions of the authority in sanctioning procedures.

b. Effects of resolutions, recidivism, and the exercise of civil actions[26]

[26] Articles 131 to 134

The New FECL maintains provisions that raise substantial concerns in terms of legal certainty, especially regarding the validity of Commission decisions and the effects they have on other proceedings.

In the first place, it is established that the resolutions and actions of the CNA will be valid until their invalidity is definitively declared by the Judicial Branch. This normative design implies that the acts of the authority will have full effects even if they have been challenged, if there is no final judgment that invalidates them, which discourages effective access to means of defense and weakens the principle of presumption of innocence.

With respect to mergers, the Commission is empowered to order, within the corrective measures, that things be restored to the state prior to the execution of the acts, which could have the effect of automatic reversal before the legality of the resolution is confirmed by the competent judicial authority.

Likewise, the definition of recidivism provided for in the New LFCE represents a worrying change. To be considered as such, it will be sufficient that (i) the Economic Agent incurs in any violation of the Law; (ii) there is a previous resolution that has caused a status in the CNA; and (iii) no more than ten years have elapsed since the beginning of the investigation and the previous resolution.

This configuration eliminates the requirement of jurisdictional finality, which contravenes the principle of definitiveness of administrative acts before they produce aggravated consequences such as the duplication of sanctions.

It is particularly serious that the New FECL allows individuals to bring individual or collective actions for damages before the Judicial Branch based solely on a non-final administrative resolution. This breaks with the standard in force in the now repelled LFCE, according to which such actions only proceeded once the COFECE resolution had become final.

This new approach undermines elementary principles of administrative sanctioning law and the civil liability system, by allowing resolutions susceptible to judicial revocation to generate immediate and transversal effects. As prior finality is not required to trigger additional procedural or sanctioning consequences, a serious risk of simultaneous litigation, undue financial damage, and a structural weakening of the right to an effective defense is introduced.

In short, the approach adopted in the New FECL on the immediate effectiveness of administrative resolutions and the configuration of recidivism is regressive and contrary to standards of due process, legality, and legal certainty, as it allows far-reaching legal consequences without a firm resolution of the competent authority.

c. Importance of antitrust compliance programs[27]

The New FECL establishes as a mitigating circumstance of sanctions the implementation of a compliance program if this has been previously certified by the CNA. This certification, the regulation of which will be developed in the corresponding Regulatory Provisions, will give the favorable opinion of the Commission a binding nature for three years. This implies that, if a compliance program is approved under the criteria established by the authority, its existence must be considered as an element that mitigates the liability of the economic agent in the event of an infringement.

D. Final considerations

The entry into force of the New FECL marks the beginning of a much stricter regime, with high penalties, more agile procedures, and broad powers for the new competition authority. In this context, **prevention** becomes the essential axis to mitigate legal risks, protect the operation of companies and guarantee legal certainty. Compliance is no longer enough: anticipating is the best defense.

At **A&K** we are committed to **prevention**. We have decades of experience and an innovative perspective that translates into customized solutions for our customers. We provide support for our clients with services ranging from the design of competition compliance programs, specialized audits, risk analysis for anti-competitive practices, essential inputs, or barriers, to defense strategies against the new CNA.

Aware of the new regulatory environment and its implications, we reaffirm ourselves as strategic allies for organizations that seek to act responsibly, solidly and with a long-term vision. Prevention is not only a compliance tool, but an investment to avoid costly contingencies and build a business culture aligned with the standards of a new antitrust system in Mexico.

[27] Article 139

III. **Comparative analysis**

i. **Thresholds for Merger Reporting**

The thresholds for notifications are specified below[28]. This means that the operations that must be notified of to the new Commission will be increased.

	Federal Economic Competition Law Abrogated	**New FECL**
THRESHOLDS FOR REPORTING CONCENTRATIONS	Article 86. The following concentrations must be authorized by the Commission before they take place:	Article 86. The following concentrations must be authorized by the Agency before they take place:
	I. When the act or succession of acts that give rise to them, regardless of the place of their execution, import in the national territory, directly or indirectly, an amount greater than the equivalent of **$2,036,520,000.00**;	**I.** When the act or succession of acts that give rise to them, regardless of the place of their execution, import in the national territory, directly or indirectly, an amount greater than the equivalent of **$1,810,240,000.00**[29];
	II. When the act or succession 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 than $2,036,520,000.00**, or	**II.** When the act or succession 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 than the equivalent of $1,810,240,000.00**[30]**;**

[28] For reference, the amounts have been calculated in Mexican pesos throughout the document.
[29] Equivalent to sixteen million times the Current Unit of Measurement and Update (UMA)
[30] Sixteen million times the UMA.

	III. When the act or succession of acts that give rise to them imply an accumulation in the national territory of assets or capital stock greater than **$950,376,000.00** and two or more Economic Agents participate in the concentration whose annual sales originated in the national territory or assets in the national territory jointly or separately, amount **to more than $5,430,720, 000.00.**	**III.** When the act or succession of acts that give rise to them imply an accumulation in the national territory of assets or capital stock greater than the equivalent of **$837,236,000**[31] and two or more Economic Agents whose annual sales originate in the national territory or assets in the national territory jointly or separately participate in the concentration, amount, **directly or indirectly, more than $4,525,600,000.00**[32]**.**

ii. Enforcement Measures

	Federal Economic Competition Law in force	**New FECL**
ENFORCEMENT MEASURES	Article 126. The Commission, in order to carry out the functions attributed to it by this Law, may apply the following enforcement measures indistinctly:	Article 126. The Commission, to conduct the functions attributed to it by this Law, may apply **jointly, separately, or indistinctly** the following enforcement measures:
	I. Warning;	I. Warning;
	II. Fine up to **$339,420.00**, an amount that may be applied for each day that elapses without complying with the order;	II. Fine of up to **$905,120.00**[33], an amount that may be applied for each day that elapses without complying with the order;
	No correlative	**II** bis. Fine of up to **$3,394,200.00**[34] for not

[31] Seven million four hundred thousand times the UMA.
[32] Forty million times the UMA.
[33] Eight thousand times the daily value of the UMA.
[34] Thirty thousand times the UMA.

		attending an appearance, without justified cause, for not answering the questions or positions made or for answering with ambiguity or evasion;
	No correlative	II Bis 1. A fine of up to **$22,628,000**[35] to the Economic Agent who prevents or obstructs the development of a verification visit under the terms indicated in Article 75 of this Law;
	No correlative	II Bis 2. Fine of up to **$1,131,400**[36] for failing to comply with a disqualification order in terms of section X of article 127, an amount that may be applied for each day that elapsed without complying with the order.

iii. Fines and Penalties

[35] Two hundred thousand times the UMA.
[36] Ten thousand times the UMA.

	Federal Economic Competition Law in force	New FECL
FINES AND PENALTIES	Article 127. The Commission may apply the following sanctions:	Article 127. The Commission may apply the following sanctions:
	III. A fine of up to **$19,799,500.00** for having falsely declared or provided false information to the Commission, regardless of the criminal liability incurred;	III. A fine of $113.14 to **$22,628,000**[37], for having falsely declared or delivered false information to the Commission, regardless of the criminal liability incurred;
	IV. Fine up to the equivalent **of ten percent of the income of the Economic Agent**, for having incurred an absolute monopolistic practice, regardless of the civil and criminal liability incurred;	IV. A fine of **$113.14 and up to the equivalent of fifteen percent of the income of the Economic Agent**, for having incurred in an absolute monopolistic practice, regardless of the civil and criminal liability incurred;
	V. Fine up to the equivalent **of eight percent of the income of the Economic Agent**, for having incurred in a relative monopolistic practice, regardless of the civil liability incurred;	V. Fine of **$113.14 and up to the equivalent of ten percent of the income of the Economic Agent**, for having incurred in a relative monopolistic practice;
	VII. Fine up to the equivalent of **eight percent of the income of the Economic Agent,** for having incurred in an illicit concentration in terms of this Law, regardless of the civil liability incurred;	VII. A fine of $113.14 and **up to the equivalent of ten percent of the income of the Economic Agent**, for having incurred an illicit concentration in terms of this Law, regardless of the civil liability incurred;

[37] From one to two hundred thousand times the daily value of the UMA.

	VIII. Fine of **<u>$565,700.00 and up to the equivalent of five percent of the income of the Economic Agent</u>**, for not having notified the concentration when it should have been legally done;	**VIII. A fine of <u>$5,657,000</u>[38] <u>and up to the equivalent of eight percent of the income of the Economic Agent</u>, for having carried out a concentration that exceeds the monetary thresholds established in Article 86, without having previously obtained the corresponding authorization.** **<u>The fine established in this section shall be $22,628,000</u>[39] <u>and up to the equivalent of fifteen percent of the income of the Economic Agent</u> when the Commission has previously objected to the realization of the corresponding concentration;** **The foregoing, without prejudice to the possibility of ordering the partial or total divestiture, the termination of control or the suppression of the acts, as appropriate, of the corresponding concentration.**
	IX. Fine up to the equivalent **<u>of ten percent of the income of the Economic Agent</u>**, for having failed to comply with the conditions set forth in the resolution of a concentration, without	IX. A fine **<u>of $113.14 and up to the equivalent of twelve percent of the income of the Economic Agent</u>**, for having failed to comply with the conditions set forth in the resolution of a concentration, without

[38] Fifty thousand times the UMA.
[39] Two hundred thousand times the UMA.

	prejudice to ordering the divestiture;	prejudice to ordering the divestiture;
	X. Disqualification from serving as a director, administrator, director, manager, director, executive, agent, representative or representative in a legal entity for up to five years and fines of up to **$22,628,000.00,** to those who participate directly or indirectly in monopolistic practices or illegal concentrations, on behalf of or on behalf of legal entities;	X. Disqualification from acting as a director, administrator, director, manager, director, executive, agent, **advisor,** representative or representative in a legal entity **in the market in question** for up to a period of five years and fines of up to **$39,599,000.00**[40], to those who participate directly or indirectly in monopolistic practices or illegal concentrations, on behalf of or on behalf of another person;
	XI. Fines of up to **$20,365,200.00**, to those who have aided, encouraged, or induced the commission of monopolistic practices, illegal concentrations, or other restrictions on the efficient functioning of the markets in terms of this Law;	XI. Fines of **$113.14 and up to $33,942,000.00**[41], to those who have contributed, facilitated, or induced the commission of monopolistic practices, illegal concentrations, or other restrictions on the efficient functioning of the markets in terms of this Law;
	XII. Fine up to the equivalent **of eight percent of the income of the Economic Agent,** for having failed 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 responsibility	XII. Fine of $113.14 and **up to the equivalent of twelve percent of the income of the Economic Agent**, for having failed to comply with the resolution issued in terms of Article 101 of this Law;

[40] Three hundred and fifty thousand times the UMA

[41] Three hundred thousand times the UMA.

	incurred, for which the Commission must report such circumstance to the Public Prosecutor's Office;	
	No correlative	**XII Bis. Fine of $113.14 and up to the equivalent of ten percent of the income of the Economic Agent, for failing to comply with the provisions of sections I, II and VIII, third paragraph of this article. The foregoing is regardless of the criminal responsibility incurred, for which the Commission must report this circumstance to the Public Prosecutor's Office**
	XIII. Fines of up to **$20,365,200.00 for notary publics who intervene in acts related to a gathering** when it has not been authorized by the Commission;	XIII. Fines of **$113.14 and up to $22,628,000.00**[42], to notaries public who intervene in acts related to a concentration **that exceeds the monetary thresholds in Article 86, without having previously obtained the corresponding authorization.**
	XIV. A fine of up to the equivalent of **ten percent of the income of the Economic Agent** who controls an essential input, for failing to comply with the regulations established with respect thereto and for failing to obey the order to eliminate a barrier to competition, and	XIV. Fine of **$113.14 and up to the equivalent of twelve percent of the income of the Economic Agent** who controls an essential input, for failing to comply with the regulations established with respect thereto and to anyone who does not obey the order to eliminate a barrier to competition or **disincorporate assets in terms of Article 94, section VII, of this Law**, and

[42] Two hundred thousand times the UMA.

	XV. Fine up to the equivalent <u>of ten percent of the income of the Economic Agent</u>, for failing to comply with the precautionary order referred to in this Law.	XV. Fine of **<u>$113.14 and up to the equivalent of ten percent of the income of the Economic Agent</u>** for failing to comply with the precautionary order referred to in this Law.
	No correlative	**XVI. Temporary disqualification from participating, directly or through an intermediary, in public procurement procedures <u>for a period that shall not be less than six months nor more than five years,</u> 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 regulations.**

		XVII. Fine of <u>$113.14 and up to the equivalent of ten percent of the income of the Economic Agent, for having failed to comply with any of the specific measures imposed by virtue of its determination as preponderant or with the measures established in Article 142 of this Law.</u>
	Article 128. In the case of those Economic Agents who, for any reason, do not declare or have not been determined cumulative income for Income Tax purposes, the following fines will be applied:	**Article 128.** In the case of those Economic Agents who, for any reason, do not declare or have not been determined cumulative income for Income Tax purposes **<u>or the Commission does not have the information for reasons attributable to the Economic Agent</u>**, the following fines will be applied:
	I. Fine of up to **<u>$169,710,000.00</u>,** for the infractions referred to in sections IV, IX, XIV and XV of Article 127 of the Law;	I. Fine of **<u>$113.14 up to $339,420,000.00</u>**[43], for the infractions referred to in sections IV, IX, XIV and XV of Article 127 of the Law;

[43] Three million times the UMA.

	II. A fine of up to **<u>$101,826,000.00</u>** for the infractions referred to in sections V, VII and XII of Article 127 of the Law, and	II. A fine of **<u>$113.14 and up to $226,280,000.00</u>**[44], for the infractions referred to in sections V, VII and XII of Article 127 of the Law;
	III. Fine of up to **<u>$45,256,000.00</u>**, for the infraction referred to in section VIII of Article 127 of the Law.	III. Fine of $113.14 and **<u>up to $158,396,000.00</u>**[45], for the infraction referred to in section VIII of Article 127 of the Law.

[44] Two million times the UMA.
[45] One million four hundred thousand times the UMA.