

COFECE issues new Guidelines for Exchange of Information between Economic Agents

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Considering that pursuant to the Federal Economic Competition Law (the "Law"), the Federal Economic Competition Commission ("COFECE") must review its guidelines every five years, on November 24, 2020, COFECE issued a new Guidelines regarding Exchange of Information between Economic Agents (the "Guidelines"), which replaces the once issued in 2015 (the "Previous Guidelines").

The Guidelines' content is essentially the same to that of the Previous Guidelines, only simplifying some of its sections. Furthermore, the following matters were added to provide more clarity to economic agents:

- The Guidelines incorporated the existence of barriers to entry as an additional market characteristic¹ considered by COFECE while analyzing whether an exchange of information between economic agents could result in risks to competition. The Guidelines points out that barriers facilitate collusion by inhibiting the entry of new competitors that impose a competitive pressure. Thereafter, the Guidelines consider that information exchanges in markets with high entry barriers may be more likely to generate the aforementioned risks.
- It expressly states that co-investments or joint-ventures formed with the purpose of creating a "buying club" can favor communication and exchange of information between competitors which could affect other related markets, even when they aim to improve purchase conditions. Thus, COFECE emphasizes the need of considering the exchange of information when creating buying clubs.

¹ Other market characteristics already considered within the Previous Guidelines include market transparency, concentration, symmetry and product characteristics.

The above-mentioned amendments strengthen the Previous Guidelines and seek to provide economic agents with a higher degree of predictability regarding the elements that COFECE will consider when determining whether an exchange of information between economic agents could result in a breach to the Law. Notwithstanding the foregoing, please note that the Guidelines are not binding and were issued for the sole purpose of orienting economic agents; therefore, exchange of information requires to be carefully evaluated on a case-by-case basis.

Should these measures have an adverse effect on you, please do not hesitate to contact our team with expertise in antitrust matters, who can be of assistance:

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