

## COFECE imposes, once again, fines for failure to notify a merger.

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The Federal Economic Competition Commission ("COFECE" or the "Commission") imposes, once again, fines for failure to notify a merger.

### What happened?

COFECE imposed four fines for a total amount of \$9,748,587 Mexican pesos (approximately US\$487,429.35\*) to Cemex, ABC Capital, ABC Holding and an individual for failing to notify two mergers that exceed the thresholds set forth in Article 86 of the Federal Economic Competition Law ("Law").

This is the third time this year that COFECE has imposed sanctions on economic agents for their failure to notify concentrations that exceed the merger control thresholds, imposing fines for a total amount of approximately \$21,000,000 Mexican pesos (US\$1,050,000\*).

### Where are we headed?

In recent years, COFECE has shown its clear interest monitoring and fining transactions that exceed the imposed thresholds. This, was even expressly mentioned recently in COFECE's strategic plan for the year 2022 to 2025, one of its institutional objectives is to combat and discourage anticompetitive practices that affect markets by, among other matters, "monitoring markets to detect (...) unnotified transactions."

As evidence of the above, so far this year, COFECE has opened, to the best of the public's knowledge, at least four files to investigate the failure to notify a transaction. To put this into perspective, during the years 2018 to 2021 8 files were opened.

Additionally, during the last three years, COFECE has imposed fines totaling approximately \$31,700,000 Mexican pesos (US\$1,600,000\*).

In most cases, COFECE identified the obligation to have had to notify the transaction at a later time, when one or more of the parties attempted to notify a new transaction or due to an ex-officio investigation carried out by COFECE. This is probably a result of a misinterpretation of the thresholds.

### **Takeway**

It is of vital importance for the parties of a transaction, to carefully analyze the aforementioned thresholds before carrying out the transaction in order to avoid possible sanction by the Commission<sup>1</sup>.

In case of any doubts or comments please do not hesitate to contact us.

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\* Using an exchange rate of \$20.00 M.N per U.S. dollar.

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