

COFECE fines economic agents for modifying non-compete provisions

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The Federal Economic Competition Commission ("COFECE") fined a company and two individuals for modifying the terms of a non-compete provision included in a notified transaction, thereby deviating from the transaction terms approved by COFECE.

As its name suggests, a non-compete clause generally binds the seller from engaging in competition with the target business. Such provisions are customary in M&A transactions to safeguard the value of the acquired business, preventing individuals with in-depth knowledge of the business and close ties with customers from exploiting that knowledge to compete with the divested business.

While necessary, non-compete clauses inherently restrict competition. When evaluating a merger, COFECE examines whether the scope of the non-compete is justified in protecting the buyer's investment. Thus, the scope of a non-compete is a key aspect assessed by COFECE in merger control procedures.

This recent case aligns with COFECE's recent enforcement actions in the merger control realm, aimed at ensuring that parties execute transactions in accordance with the terms assessed and approved by COFECE.

Contact us:

Francisco Fuentes | Partner
ffuentes@macf.com.mx
Antitrust

Carlos Orcí | Partner
corci@macf.com.mx
Antitrust

+52 (55) 5201 7400
For more information, visit:
www.macf.com.mx

