

The Federal Economic Competition Commission (“COFECE”) identifies possible barriers to competition in retail e-commerce

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What happened?

On February 13, 2024, the Investigative Authority (“Investigative Authority”) of COFECE preliminarily determined that there are no conditions of effective competition in the retail e-commerce market (marketplaces) in Mexico.

This preliminary conclusion is based on the premise that: (i) these markets are highly concentrated since there are few participants; (ii) there are network effects, i.e., the value of a product or service increases as it is used by more individuals; and (iii) there are several barriers to entry, including high investment amounts for their development, the need for technological tools, investments in advertising, marketing and public relations, among others.

The Investigative Authority determined that there are three possible barriers to competition:

1. **Artificiality of marketplaces’ loyalty programs:** some companies include services such as streaming or other services in their loyalty programs, which affect the behavior of buyers and generate an artificial strategy to attract them.
2. **Lack of transparency in the management of the marketplaces’ offers:** the algorithms used by marketplaces to manage offers can highlight a particular offer without a clear understanding of the criteria that are used for these purposes, which affects the transparency and efficient operation of these marketplaces.
3. **Preferences for own logistics solutions:** some platforms limit the freedom of choice of the logistics company from the sellers, encouraging the use of logistics services offered by the same platform and generating a distortion in the market.

As a result of the above, the Investigative Authority proposes the following measures:

1. **Disassociate memberships from streaming and other services:** marketplace loyalty programs should not include services unrelated to the use of the marketplace, and their promotion within the marketplace should be prohibited.

2. **Transparency in offer management:** create a section on the companies' portals where sellers are informed of the criteria used by the offer management algorithms to choose the featured offer to provide transparency and certainty.
3. **Modify the bid management criteria:** that bid management algorithms should not consider as a variable the contracting of logistics solutions with a specific economic agent, in order to eliminate distorting incentives.
4. **Transparency of logistics standards:** make transparent the appropriate standards for providing logistics services, thus allowing the integration of logistics companies interested in the platform.

It is important to emphasize that the foregoing is preliminary and is still subject to review by COFECE's Plenum as part of a proceeding followed with COFECE.

If case of questions or comments, please do not hesitate to contact our team of experts.

Contact us:

Francisco Fuentes

Partner | ffuentes@macf.com.mx
Antitrust

Carlos Orcí

Partner | corci@macf.com.mx
Antitrust