

COFECE: new provisions on the use of electronic media

Antitrust – July 15, 2020

COFECE issues Regulatory Provisions regarding the use of electronic means for certain procedures

The Federal Economic Competition Commission ("COFECE") recently issued the Regulatory Provisions for the implementation, use, and handling of electronic means¹ in certain procedures (the "Electronic Means Regulations"). The Electronic Means Regulations came effective on June 25, 2020.

A summary of some of the most relevant aspects of the Electronic Means Regulations is provided as follows.

- General

The following procedures may be conducted by electronic means:

1. Claims for monopolistic practices (horizontal and vertical anticompetitive agreements) and unlawful concentrations.
2. Investigations regarding monopolistic practices and unlawful concentrations, as well as to determine essential facilities, barriers to competition or lack of effective competition.
3. Immunity programs related to monopolistic practices.
4. Proceedings followed as a trial with the COFECE; and
5. Verifications of compliance of COFECE's rulings.

¹ Pursuant to the Electronic Means Regulations, meaning the "mechanism, installation, equipment, tool, or technological system that allows to produce, store, transmit, print or exchange documents, data, and information in an automated way".

Electronic Means Regulations will be binding for the economic agents involved in any of the foregoing procedures and that use the electronic means.

To carry out these procedures COFECE will implement an electronic platform and an electronic filing office ("EFO")² to file promotions.

Requests for information and summons that were notified to the parties prior to the effectiveness of the Electronic Means Regulations may be carried out through electronic means, provided that such parties agree with it.

- Legal Representatives

The legal representatives of an economic agents shall be authorized by COFECE to be able to submit information through the EFO on behalf of such agent. The legal representatives will have to provide to COFECE their power and authority granted according to Mexican law.

- Notifications

COFECE may notify any official communication electronically to the e-mail address of the economic agent or its legal representative available in its records. A digital copy of the official communication will be attached to COFECE's e-mail.

Recipient must confirm of receipt within the next two business days and expressly state his/her willingness to carry out the procedure through electronic means.

COFECE's official communication notified electronically will be effective the day after the recipient confirmation is published in COFECE's daily lists. In case the recipient does not confirm of received, COFECE will notify the official communication through ordinary means.

- Immunity Program

The immunity program procedure may be carried out through electronic means. However, ordinary means will still be used to protect the confidentiality of the applicant and the information submitted under this procedure. The Investigative Authority will determine whether to use or not electronic means on a case by case basis.

² Available as of August 24, 2020. Until then, all interventions that require the EFO will have to be carried out through ordinary means (i.e. in person).

EFO cannot be used to submit any information or documents related to the Immunity Program.

- Summons and testimonies

Subpoenas to appear before COFECE must be notified at least eight business days before the date in which it will take place. Before the hearing the individual must send electronically to COFECE a copy of his/her official identification with a photograph, as well as of his/her counsel.

The subpoenas by electronic means shall be subject, among others, to the following:

1. At the beginning of the proceedings a COFECE officer must confirm that the identifications provided correspond to the individuals participating in the hearing and state that the hearing will be recorded, and such recording will be part of the hearing minute.
2. The appearing parties shall state, under oath, that he/she is who he/she says to be.
3. COFECE officials shall make an examination of the place where the appearing party is located.
4. The appearing party and COFECE officials must always be visible on the screen of the electronic device.
5. During the proceeding, the camera and the microphone shall be active at all times; and
6. The appearing party shall state under oath that he/she is not accompanied by any person, other than his/her counsel.

- Public hearings

Oral hearings with the Commissioners of COFECE may be carried out via electronic means if all interested parties agree to it.

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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