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Specialized Competition Court rules that COFECE is the competent authority to review the Uber/Cornershop transaction

The First Collegiate Circuit Court Specialized in Competition, Broadcasting and Telecommunications Matters (the “Specialized Court”) ruled on May 21 that the Federal Commission of Economic Competition (“COFECE”) is the competent authority to review the proposed acquisition by Uber of the digital platform Cornershop (the “Transaction”).

In October of last year Uber notified COFECE of its intention to acquire a majority stake in Cornershop. The Federal Institute of Telecommunications (“IFT”) became aware that COFECE was reviewing the Transaction and in November issued a ruling claiming jurisdiction as the sole competent authority to review the Transaction alleging that it involved the use of telecommunications services and requested COFECE to refrain from hearing the case.

In response to IFT’s request, COFECE issued a ruling declaring itself competent to review the Transaction.

Since each of COFECE and IFT considered to be the competent authority to review the Transaction, the matter had to be submitted to the Federal Judiciary so that the Specialized Court could resolve the conflicting jurisdiction.

In its resolution, the Specialized Court confirmed that COFECE is the competent authority with sole jurisdiction to review the Transaction, since it does not impact the telecommunications sector but rather the logistics and food and grocery markets.

Some of the points made by the Specialized Court in its resolution are summarized as follows:

- (i) The notifying parties are not telecommunication concessionaires but rather rely on them for the provision of their services through digital platforms.
- (ii) The services provided are not telecommunication services, but rather logistic services involving intermediation between consumers, drivers and distributors.
- (iii) The notifying parties use the internet as an input to offer their respective services, with the internet not being the actual service offered nor the source of their revenues.

This determination of the Federal Judiciary is particularly relevant as the Specialized Court confirmed the jurisdiction of COFECE to review a transaction involving digital platforms and sets an important precedent in the definition of conflicting jurisdiction between COFECE and IFT.

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