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COFECE launches investigation of the market of digital goods and services

On July 3, 2023, the Investigative Authority of the Mexican Federal Economic Competition Commission ("COFECE") announced the initiation of an investigation based on a complaint regarding possible relative monopolistic practices in the market for the development, marketing and sale of digital goods and/or services, as well as related services, including, among others, e-books, software, video games, photographs, music and movies, as well as the corresponding negotiation and payment processing mechanisms.

The conduct to be investigated consists, principally, of (i) sales or transactions conditioned to purchase, acquire, sell or provide another good or service, normally different or distinguishable or under a reciprocity basis, and (ii) actions of economic agents whose purpose or effect, directly or indirectly, is to increase costs or impair the production process or reduce the demand faced by other economic agents.

The Investigative Authority of COFECE has a maximum period of 120 days, which may be extended up to four times, to investigate the aforementioned conduct. Throughout its investigation, the Investigative Authority of COFECE has legal authority to request from any person, individual or legal entity, all such information and documents it deems necessary to perform its investigations, to summon persons related to the facts to testify and to conduct verification visits.

Once the investigation is concluded, the Investigative Authority will submit to the Plenary of the COFECE an opinion proposing either (i) the initiation of a trial procedure due to the existence of objective elements that indicate a probable responsibility of the investigated economic agents, or (ii) the closure of the case in the absence of elements to initiate a trial procedure.

Due to (i) the wide range of digital goods and services that may comprise the investigated market, (ii) the universe of economic agents that may be involved in the investigation (either as direct investigated parties or third parties), (iii) the magnitude of the fines and penalties that COFECE has authority to apply against economic agents that incur in relative monopolistic practices (which are up to the equivalent of 8% of turnover of each economic agent), and (iv) the potential civil liability that the sanctioned economic agents may incur to indemnify for damages caused by having incurred in relative monopolistic practices, it is critical that economic agents engage counsel to receive specialized legal advice on competition matters from the outset of the investigation.

Ritch Mueller has specialized competition and litigation teams to advise our clients during all stages of the investigation and trial proceedings before COFECE, as well as in the defense against claims for indemnification for damages brought before the specialized antitrust, broadcasting and telecommunications courts of the Federal Judiciary.

If you require additional information, please contact Octavio Olivo Villa (oolivo@ritch.com.mx) or James E. Ritch (jritch@ritch.com.mx), leaders of Ritch Mueller's competition and antitrust team.