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- Find out about the 3 barriers that COFECE considers have contributed to the exclusion of companies in the field of card payment processing.
- Learn about the recommendations that COFECE made to BANXICO and CNBV, as well as the order it issued to PROSA and GLOBAL.

COFECE identified barriers to competition in the card payment processing market

Pursuant to the "**Summary of the resolution issued in case IEBC-005-2018 by the Board of the Federal Competition Commission ("COFECE")**" published in the Official Gazette of the Federation on September 20, 2023, the Board of COFECE determined, through a special investigation procedure on barriers to competition, that the card payment processing market is highly concentrated. This market operates through "clearing houses", which are companies that process payments made by bank debit or credit cards; currently there are only two clearing houses in operation - Promoción y Operación, S.A. de C.V. ("PROSA") and Servicios Electrónicos Globales, S.A. de C.V. ("GLOBAL") – and COFECE has determined that the manner in which they operate results in restrictions on competition in this market.

In making its assessment of the card payment processing market, COFECE conducted a thorough study of the relevant market and the competitive landscape in accordance with Articles 58 and 59 of the Federal Antitrust Law (Ley Federal de Competencia Económica) ("LFCE"), and identified three main barriers that hinder free competition in this market:

- the **terms and conditions for operation** of the interconnection between clearing houses and the **determination of fees** charged for card payment services ("Exchange Fees") **are agreed upon between PROSA and GLOBAL;**
- the **current payment processing regulation hinders new entries in the market**, as it allows the incumbent clearing houses –PROSA and GLOBAL– to set standards, conditions and procedures applicable to the connection between clearing houses; and
- the **co-ownership** by banking institutions of the clearing houses facilitates **anticompetitive coordination in related markets.**

Considering that exchange fees in Mexico average 1.36% (compared to 0.2% in Europe), COFECE has concluded that the barriers listed above have contributed to preventing micro, small, and medium-sized businesses from gaining access to the financial system, leading to financial exclusion caused by high exchange fees.

In order to restore adequate competition conditions in the card payment processing market, COFECE issued several recommendations directed to Mexico's Central Bank (Banco de México) ("Banxico") and the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores) ("CNBV"), and issued certain orders directed to PROSA and GLOBAL, the most relevant of which can be summarized as follows:

- Regarding the first barrier listed above, COFECE issued a recommendation to both Banxico and CNBV to introduce amendments to relevant regulation so as to (i) guarantee the interoperability of clearing houses and (ii) determine a maximum limit on Exchange Fees, and a balancing formula for the calculation of such fees, to seek to reduce operating costs and promote financial inclusion.
- Concerning the second barrier listed above, COFECE issued a recommendation to Banxico to introduce amendments to relevant regulation so as to prevent clearing houses from enacting card payment processing procedures and establish instead fair and balanced general terms and conditions governing card payment processing procedures.

Current regulations applicable to clearing houses are comprised in the "Law for the Transparency and Regulation of Financial Services", in Banxico's Circular 4/2014, which contains the "Rules for the Organization, Functioning and Operation of Card Payment Clearing Houses" and in the "General Provisions Applicable to Payment Networks" issued jointly by CNBV and Banxico. If CNBV and Banxico follow COFECE's recommendations, it would be expected that such regulations would be modified or new regulations would be enacted.

- Regarding the third barrier listed above, COFECE issued a recommendation to Banxico to establish rules and procedures to guarantee the adequate processing of information collected by the clearing houses, and consider establishing qualifications and requirements to be met by individuals sitting on the board of directors of the clearing houses so as to ensure the adequate performance of their functions. In addition, PROSA and GLOBAL were ordered to implement LFCE compliance programs and to appoint related compliance officers, who may be persons already holding other positions within such clearing houses so as to avoid increasing costs with the introduction of these new positions.

To verify compliance with these measures, COFECE has the power to request information and reports from market participants for a period of up to 5 years.

COFECE is an autonomous constitutional body whose mandate is to oversee, promote and guarantee competition and free market access in Mexico and to prevent, investigate and combat restrictions to the efficient functioning of markets to the benefit of consumers. Cases such as this demonstrate the impact and relevance of COFECE's actions in the exercise of its investigative powers.

At Ritch Mueller, we have extensive experience in banking, financial and competition and antitrust matters, with a team of professionals available to advise clients and prospective clients whose activities may be impacted by COFECE's recommendations and orders related to the card payment processing market.

