

## UPDATED THRESHOLDS FOR PRE-MERGER APPROVAL IN MEXICO



The Federal Economic Competition Law ("LFCE") provides monetary thresholds for the determination of the obligation to obtain pre-merger approval in transactions which constitute "concentrations" (mergers and acquisitions).

Previously, such monetary thresholds were expressed in Daily General Minimum Wages for the Federal District ("SMGVDF"). However, with the purpose of discontinuing the use of SMGVDF as a measurement unit for purposes besides its nature, the Measurement and Updating Unit ("UMA") was established, the value of which is determined by the Mexican Statistics and Information Agency (INEGI). On January 10th, 2017 the UMA was published in the Federal Official Gazette, with a daily value of MXN\$75.49.

Thus, the thresholds for transactions taking place or with effects in Mexico, are as follows:

- a) When the paid price of the transaction in Mexico exceeds of MXN\$1'359 million (US \$62,8 million considering US \$1 = MXN\$21.6);
- b) Upon the accumulation of 35% or more of the assets or shares of an economic agent with annual sales or assets in Mexico equivalent or in excess of MXN\$1'359 million (US \$62,8 million);
- c) Upon the accumulation in Mexico of assets or capital stock of MXN\$603 million (US \$28 million) and in the transaction two or more economic agents participate, whose sales or assets in Mexico are, jointly or separately, of MXN\$3'623 million (US \$167,7 million).

Bearing in mind the continued fluctuation of the exchange rate between the peso and the dollar, it is of the highest importance to update the exchange rate calculations at the moment in which the obligation to notify a concentration is being assessed.

On the other hand, we would like to emphasize that concentrations are subject to a rigorous pre-merger review by the Federal Economic Competition Commission ("Cofece"), and that failure to comply with this obligation or undertaking an illicit concentration are severely punished by the LFCE. Therefore, it is essential to perform a thorough analysis on a case by case basis. Moreover, parties should abstain from performing actions which would materialize a concentration until approval is granted by Cofece.

Lastly, if a concentration is performed amongst participants in the same market (competitors), it is of the essence to adopt protocols to ensure that information exchange would not result in an absolute monopolistic practice, which are subject to very severe administrative sanctions and even criminal penalties, regardless of the payment of damages and loss profits to affected third parties.

### Contact

Should you have any questions or queries regarding the above or related to antitrust and competition, please feel free to contact us.

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