

Alert | Antitrust Litigation & Competition Regulation



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Mexico Proposes Overhaul of Competition Authority in Constitutional Amendment

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Go-To Guide

- Mexico plans to create a single new economic competition authority, absorbing the functions of COFECE and IFT, as part of a constitutional amendment to simplify government agencies.
- The new authority will have legal personhood, its own assets, and technical/operational independence.
- Congress must pass new secondary laws on competition, free market access, telecommunications, and broadcasting before the constitutional changes take effect.
- Challenges to the new authority's decisions would be made through indirect *amparo* proceedings and would not be subject to suspension. Specialized judges elected by popular vote would hear the cases.
- The International Chamber of Commerce Mexico recommends the new authority maintain independence, transparency, organizational flexibility, and the ability to recruit top talent.

This GT Alert discusses potential economic competition implications of the *Decree that reforms, adds and abrogates several provisions of the Political Constitution of the United Mexican States regarding*

organic simplification (Decree). We also summarize some recommendations for establishing and operating the new economic competition authority in Mexico prepared by the International Chamber of Commerce México (ICC México).

The Decree proposes eliminating seven constitutionally autonomous bodies¹, with the general objective of reducing current budgetary expenditure. The saved economic resources would be allocated to a newly created Pension Fund for Welfare.

This GT Alert focuses on the changes related to eliminating the Federal Economic Competition Commission (COFECE or Commission) and the Federal Telecommunications Institute (IFT) as Mexico's economic competition regulatory authorities.²

Background

1. Feb. 5, 2024: Then-President Andrés Manuel López Obrador submitted the Decree initiative to the Board of the Chamber of Deputies of the Mexican Congress.
2. Dec. 10, 2024: The Chamber of Deputies issued the declaration of constitutionality of the Decree, after having been approved by the Chamber of Deputies, the Chamber of Senators, and 21 of 32 local legislatures.
3. Dec. 21, 2024: The Decree was published in the Official Gazette of the Federation.

Potential Implications

The Decree amends, among others, Article 28 of the Political Constitution of the United Mexican States (Mexican Constitution), which prohibits monopolies and monopolistic practices in Mexico, and which establishes COFECE and IFT's powers in economic competition matters.

As initially proposed, the Decree provided the transferring COFECE functions to the Ministry of Economy and IFT competition and free market access matters to the Ministry of Infrastructure, Communications, and Transportation. These state ministries would oversee enforcing the Federal Antitrust Law (LFCE) and substantiating markets-related proceedings.

However, on Nov. 20, 2024, Ricardo Monreal Ávila, deputy of the MORENA Parliamentary Group, filed reservations to amend Article 28 of the Mexican Constitution and its transitory provisions (Reservations).

Approved by both chambers of the Mexican Congress, the Reservations propose creating a single authority for competition and free market access matters to prevent, investigate, and combat monopolies, monopolistic practices, mergers, and other restrictions to efficient market operations, including in telecommunications and broadcasting.

The amendments to Article 28 regarding competition, established in the Decree and including the approved Reservations, are:

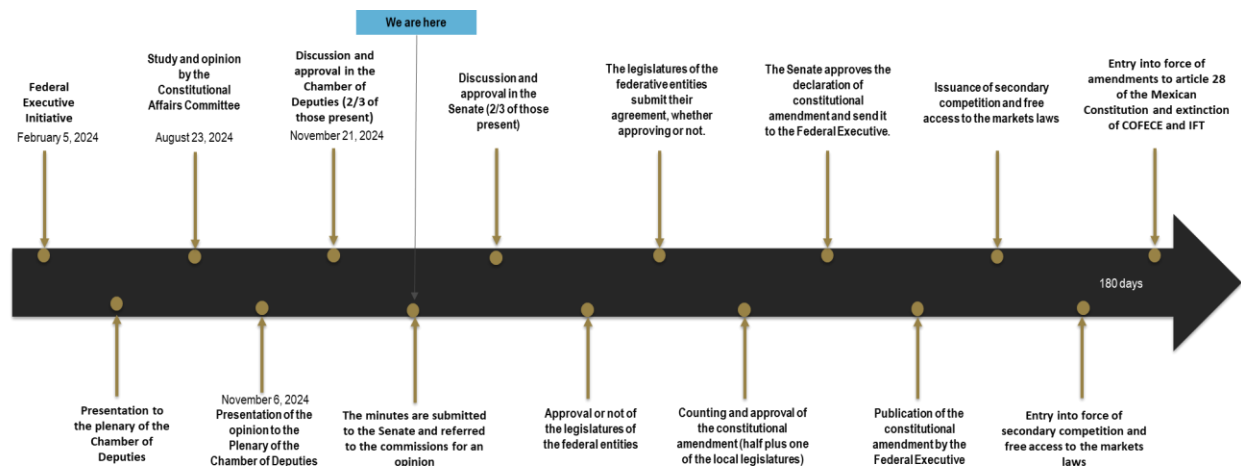
¹ The National Commission for Continuous Improvement (MEJORAEDU); the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI); the National Council for the Evaluation of Social Development Policy (CONEVAL); the National Hydrocarbons Commission (CNH); the Energy Regulatory Commission (CRE); the IFT, and the COFECE.

² The IFT is the competent authority in matters of economic competition in the broadcasting and telecommunications sectors; therefore, in these sectors it exercises exclusively the faculties that the Mexican Constitution and secondary laws establish for the COFECE.

- The creation of a single economic competition authority, which would absorb COFECE and the IFT’s functions.
- The new economic competition authority would have legal identity, its own assets, and technical and operational independence in its decisions, organization, and operation. The amendments guarantee separation between the authorities responsible for investigating and resolving proceedings.
- The Mexican Congress must issue secondary laws on competition and free market access, telecommunications, and broadcasting to exercise Article 28 powers.
- The Article 28 amendments would take effect 180 days after such secondary legislation entered into force.
- The COFECE and the IFT would dissolve once the Article 28 amendments took effect.
- Existing COFECE and the IFT acts would remain in effect.
- The COFECE and IFT commissioners would terminate their functions once the amendments entered into force.
- Challenges to the new authority’s decisions would only be made through indirect *amparo* proceedings and would not be subject to suspension. For cases where fines were imposed, disincorporation of assets, rights, social parts or shares, would be executed until the *amparo* trial was resolved.
- Specialized judges and courts, elected by popular vote in terms of the constitutional reform of the judiciary, would continue to hear *amparo* proceedings.

Status of the Legislative Process

The following chart summarizes the most relevant stages of the legislative process relating to the amendments to Article 28 of the Mexican Constitution:



Once the Decree is published by the Federal Executive, secondary laws would establish the structure and powers of the new authority. The Organic Law of the Federal Public Administration would also require amendments to grant the new authority the necessary powers to act as a regulatory body in competition and free market access matters.

ICC México Recommendations for Implementing and Operating New Economic Competition Authority

On Nov. 11, 2024, the ICC México issued a press release proposing recommendations for establishing an effective, independent, and legitimate economic competition authority³:

- 1) The authority should operate independently from both the government and business interests. A structure, operation, and budget guaranteeing technical autonomy would allow for impartial decisions based on market tests and for analysis to be carried out in a professional manner by personnel with expertise and experience in the field.
- 2) A collaborative body of individuals who hold appointments of at least seven years, on a staggered basis, would help ensure the technical independence of the institution. In addition, a collaborative body may be less susceptible to external influence compared to a single-appointee structure.
- 3) It is essential to clearly define the authority's objectives, which should be focused on protecting the welfare of lower-income people who are most affected by the lack of market competition. This clarity would guide decisions and case prioritization, ensuring that the authority's actions align with its stated goals.
- 4) To avoid bias in case analysis and ensure a fair process, the ICC Mexico recommends separating the investigation and adjudication functions internally, promoting objectivity and fairness in case resolution.
- 5) The authority should operate with high levels of transparency in its processes and decision-making. This transparency would not only increase perceived legitimacy but would also act as a defense against undue external influence. Controls and protocols for contact with public servants should be retained and strengthened.
- 6) The ability to prioritize cases efficiently is crucial to maximize the impact of the authority's actions, focusing on those that most affect the welfare of lower-income people. In turn, collaborating with sector regulators is essential to align competition and regulatory policies, avoiding conflicts and effort duplication.
- 7) ICC México also highlights the need for organizational flexibility that allows the authority to adapt to changes in the economic and legal environments, responding effectively to new challenges and opportunities, particularly in the face of the challenges the digital economy poses. To achieve this, it is essential to have an adequate and stable budget, ensuring the authority's financial independence.
- 8) Recruiting and retaining highly qualified economics and law personnel is essential to handle complex cases and contribute to the authority's continuous development. The government should consider establishing evaluation and continuous improvement mechanisms, allowing the authority to adapt to changes in the environment and justify its existence and effectiveness to Mexicans.

These recommendations may help Mexico's new competition authority promote a fair and competitive market environment for Mexican consumers.

³ ICC México, "ICC Mexico proposes 8 recommendations to establish an effective, independent and legitimate economic competition authority," Nov. 11, 2024.

Authors

This GT Alert was prepared by:

- Miguel Flores Bernés | +52 55.5029.0096 | mfbernes@gtlaw.com
- Natalia Mejía Sigüenza [~] | Law Clerk/JD | México City

[~] Not admitted to the practice of law.

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