

**ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE**

**Merger Working Group**

**Mexico's Federal Economic Competition Commission**

**(Comisión Federal de Competencia Económica – COFECE)**

**February 2021**

**IMPORTANT NOTE:** This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

**1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]**

**Statutory Laws**

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| <b>A. Notification provisions</b> | <b>Federal Economic Competition Law or “LFCE” or “Ley Federal de Competencia Económica”</b> (Available in <a href="#">Spanish</a> and <a href="#">English</a> <sup>2</sup> ) <ul style="list-style-type: none"><li>• Merger or concentration definition- Article 61</li><li>• Thresholds- Article 86</li><li>• Stand-still obligation - Article 87</li><li>• Economic Agents that must notify the merger - Article 88</li><li>• Information required in the filing - Article 89</li><li>• Regular procedure for merger review - Article 90 and 91</li><li>• Simplified procedure for merger review - Article 92</li></ul> |
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<sup>1</sup> Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

<sup>2</sup> The English version does not include the amendment made in 2017 to the LFCE.

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|   | <ul style="list-style-type: none"> <li>• Transactions that are exempt from the Mexican merger review- Article 93</li> </ul> <p><b>Regulatory provisions of the LFCE or “DRLFCE”- (Available in <a href="#">Spanish</a>)</b></p> <ul style="list-style-type: none"> <li>• Thresholds - Article 15, 16 and 133</li> <li>• Stand-still obligation - Article 16</li> <li>• Economic Agents that must notify the merger - Article 17, 19 and 20</li> <li>• Information required in the regular procedure for merger review- Article 17, 18, 18 BIS, 18 BIS-1 and 25</li> <li>• Simplified merger control procedure - Article 28</li> </ul> <p>Since 2020 all merger notifications are filed electronically through COFECE’s Electronic Procedure System or “<a href="#">SITEC</a>” and COFECE’s Electronic Merger Notification System or “<a href="#">SINEC</a>”. The systems enable notification of concentrations, document submission and remote access to files.</p> <p>The Regulatory provisions and guidelines for electronic merger notification are available in the following links:</p> <ul style="list-style-type: none"> <li>• <b>COFECE’s Regulatory Provisions on the use of electronic means</b> (Available in <a href="#">Spanish</a>)</li> <li>• <b>COFECE’s Provisions for electronic merger notifications</b> (Available in <a href="#">Spanish</a> )</li> </ul> |
| <p><b>B. Substantive merger review Provisions</b></p> | <p><b>The LFCE and DRLFCE provide relevant factors to consider for merger review:</b></p> <ul style="list-style-type: none"> <li>• Definition of relevant markets – Article 63, subsection I and 58 of LFCE, as well as Article 5 of DRLFCE</li> <li>• Elements to consider to determine Market power, barriers to entry, market concentration – Article 63 subsection II and Article 59 of LFCE, as well as Article 8 and 13 of the DRLFCE</li> <li>• Merger’s effects on relevant and related markets- Article 63 subsection III and Article 6 of DRLFCE</li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>• Cross-participation by the merging parties in other economic agents or vice versa- Article 63 subsection IV</li> <li>• Efficiencies - Article 63 subsection V and Article 14 of DRLFCE</li> <li>• Remedies- Article 90, last paragraph and Article 91 of the LFCE</li> </ul>   |
| <b>C. Implementing regulations</b>   | <p>Merger regulations:<br/> LFCE Articles 86 to 93;<br/> DRLFCE Articles 14 to 29</p>   |
| <b>D. Notification forms or information requirements</b>   | <p>Article 89 of the <a href="#">LFCE</a> lists the information required to submit a merger notification for the traditional procedure.</p> <p>The Articles 17, 18, 18 BIS, 18 BIS 1 and 25 of the <a href="#">DRLFCE</a> provide further detail about the requirements listed in article 89 of the LFCE</p> <p>The article 90, subsection I of the <a href="#">LFCE</a> agrees the Commission, within the ten days after the written notification has been filed, shall inform the notifying parties if their notification fails to meet the requirements established by the article 89 of the LFCE and will grant an additional ten-day period for the parties to submit the missing information.</p> <p>The article 90, subsection III of the <a href="#">LFCE</a> allows the Commission, within 15 days after receiving the complete required information, to require the notifying parties to submit additional information that is relevant to the assessment of the notified merger. The additional information shall be provided by the notifying parties within 15 days after receiving the notice. This period may be extended under duly justified cases</p> |
| <b>Interpretative Guidelines and Notices</b>   |   |
| <b>E. Guidance on Merger Notification Process [e.g., information on the calculation of thresholds, etc.]</b>       | <ul style="list-style-type: none"> <li>• <b>COFECE's Merger Guidelines</b> (Available in <a href="#">Spanish</a>)</li> </ul>  |
| <b>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</b> | <ul style="list-style-type: none"> <li>• Technical criteria to measure the market concentration (Available in <a href="#">Spanish</a>)</li> <li>• <a href="#">Merger Guidelines</a>:</li> </ul>   |

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|   | <ul style="list-style-type: none"> <li>○ Market shares – subsection 5.2</li> <li>○ Barriers to entry – subsection 5.2</li> <li>○ Efficiencies – subsection 6.2</li> <li>○ Remedies – subsection 6.2</li> <li>○ Assessment of Non- compete clauses –</li> </ul>  |
| <b>G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]</b> | No  |
| <b>H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency’s decision-making process</b>  | <p>As mentioned earlier, since 2020 all merger notifications are filed electronically through COFECE’s Electronic Merger Notification System or “<a href="#">SINEC</a>” according to <a href="#">COFECE’S Strategic plan 2018-2021</a>. The user handbook and technical manual to file an electronic merger notification are available in the following links:</p> <ul style="list-style-type: none"> <li>• Electronic Merger Notification System Handbook (Available in <a href="#">Spanish</a>)</li> <li>• Technical guidelines for COFECE’s Electronic Procedures System (Available in <a href="#">Spanish</a>)</li> </ul> <p>In addition, COFECE issued a policy statement in 2020 where it commits to immediate response in merger cases that arise from the need of greater use of synergies for larger production during COVID19 crisis (<a href="#">Commission’s position regarding implementation of Mexican antitrust law during sanitary emergency</a> )</p> |
| <b>2. Agency (or Agencies) responsible for merger enforcement.</b>  |   |
| <b>A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.</b>   | “ <b>Comisión Federal de Competencia Económica</b> ” (COFECE or Commission or Federal Economic Competition Comision) reviews mergers in all Mexican markets, except for those in the telecommunications and broadcasting sector.  |

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|   | <p>The “<b>Instituto Federal de Telecomunicaciones</b>” (IFT or Federal Institute of Telecommunications) reviews mergers in the telecommunications and broadcasting sectors.</p>   |
| <p><b>B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]</b></p>                      | <p><b>Comisión Federal de Competencia Económica (COFECE):</b></p> <p>Website: <a href="https://www.cofece.mx/">https://www.cofece.mx/</a> (in Spanish and English)</p> <p>Phone: (+52) 552789-6500</p> <p>Address:<br/> Avenida Revolución 725, Colonia Santa María Nonoalco<br/> Alcaldía Benito Juárez,<br/> Mexico City, Mexico.<br/> Zip code 03700</p>  |
| <p><b>C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]</b></p> | <p>Yes.</p> <p><b>Comisión Federal de Competencia Económica (COFECE):</b></p> <p><b>Merger Division:</b><br/> E-mail: <a href="mailto:concentraciones@cofece.mx">concentraciones@cofece.mx</a><br/> Phone: (+52) 55 2789-6659</p> <p><b>Director General for Mergers:</b><br/> E-mail: <a href="mailto:jambriz@cofece.mx">jambriz@cofece.mx</a><br/> Telephone: +52 (55) 27 89 65 00 ext. 6659</p> |

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| <b>3. Covered transactions</b>  |  |
| <b>A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]</b> | <p>Article 61 of the LFCE defines concentrations (“concentraciones”) as a merger, acquisition of control, or any other act where companies, associations, stock, partnership interest, trusts or assets, in general, are consolidated, and which is carried out among competitors, suppliers, customers or any other economic agent</p> <p>A detailed description of the meaning and scope of a merger, acquisition of control, and asset acquisitions is provided on pages 7 to 10 of <a href="#">COFECE’s Merger Guidelines</a></p>  |
| <b>B. What is the geographic scope of transactions covered?</b>   | <p>The geographic scope is Mexico, including all the transactions that have legal or material effects in Mexico, either directly or indirectly, regardless of where the main transaction took place.</p> <p>Article 87 of the LFCE clarifies that concentrations resulting from legal acts executed outside México must be notified before having a legal or material effect in Mexican territory.</p> <p>For purpose of calculating thresholds of Article 86 of LFCE, the location of the turnover is considered, as well as the location of sales, assets and company capital of the parties involved in the transaction and their subsidiaries.</p> <p>Further details on determining sales and assets in or into Mexico to calculate thresholds can be found on pages 13 to 22 of <a href="#">COFECE’s Merger Guidelines</a></p> |
| <b>C. If change of control is a determining factor, how is control defined and interpreted in practice?</b>   |  |

There is no definition of control in the LFCE. However, for purpose of analysing control in merger cases, the Commission considers, among other elements, [Mexico's Supreme Court decision](#) regarding the definition of control. This decision clarifies that an economic agent can exercise decisive influence over another economic agent, as a result of legal acts (legal control or *de iure* control) or by situations that are true in fact, though not formally recognized (control in fact or *de facto* control).

It is considered that de jure control can be exercise if:

- An economic agent has the majority of shareholdings or rights, so that they can make unilateral decisions in shareholders assemblies.
- An economic agent can lead or manage another economic agent due to contracts or legal agreements.
- An economic agent has the capacity or right to appoint most of the members of the Board of Directors, or the high-level managers of a company.
- If there is a family relationship among economic agents that have control over other economic agents.

De facto control is a broader concept that refers to influence rather than legal control. In this concept, other factors need to be considered to determine control, as the record of attendance in shareholders assemblies, and other shareholders' position (dispersion, economic or familiar ties with main shareholders)

Also, COFECE may consider the definition of control that is present in the [Mexican Securities Market Law](#). Article 2, subsection III of the [Mexican Securities Market Law](#) defines control of an entity as:

The capacity of one individual or legal entity or group of individuals or legal entities, to perform any of the following actions:

a) To impose, directly or indirectly, any decisions on the general shareholders' or partners' meetings as well as other equivalent bodies, or to appoint or remove the majority of the directors, managers or their equivalent, in a legal entity.

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|  | <p>b) To keep their title to ownership of rights which allow, directly or indirectly, exercising voting rights in connection with more than fifty percent of the capital stock of a legal entity.</p> <p>c) To direct, indirectly or directly, the management, strategy or the main policies of a legal entity, either through the ownership of securities, under an agreement or otherwise.</p> <p>Also, the Commission may analyse the exercising of corporate actions of an entity, such as joint control, right of veto or unanimous decision-making.</p> <p>Article 93, subsection II and III clarifies that:<br/>The authorization for concentrations established in article 86 of this Law shall not be required in the following cases:</p> <p>II. When the holder of stock, partnership interest or units of participation increases its relative participation in a company’s capital stock <u>which it has controlled since its incorporation or commencement of operations, or, when the Board of Commissioners had previously authorized the acquisition of such control and the former then increased its relative participation in the capital stock of the referred company</u></p> <p>IV. When the transaction concerns legal acts of foreign companies, over stock, partnership interest or participation units, or under trust agreements entered into abroad and related to companies not residing in Mexico for tax purposes, insofar <u>as the companies involved do not acquire control over Mexican companies</u>, nor accumulate stock, partnership interest, participation units or participation in trusts or assets in general within the Mexican territory in addition to those which they directly or indirectly owned before the transaction</p> <p>For a more detailed definition and interpretation of “control”, refer to pages 7 to 9 of <a href="#">COFECE’s Merger Guidelines (in Spanish)</a></p> |
| <p><b>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of</b></p> | <p>Yes, partial (less than 100%) stock acquisitions and minority shareholdings are covered by the Mexican Competition Law. There are three types of thresholds:</p>   |



**assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?**

- When the total consideration for the acquisition exceeds 18 million times the Updated Metric Unit (hereinafter UMA by its acronym in Spanish. The UMA is explained in detail in question 4.A)
- When the acquiring economic agent will hold at least 35% of shares or assets of the acquired entity, and the total domestic sales or assets of this acquired entity exceeds 18 million UMAs.
- When the acquiring economic agent will accumulate assets or share capital in Mexico, equivalent to 8 million 400 thousand UMAs; and the undertakings concerned have and individual or joint total domestic sales or assets equivalent to 48 million UMAs.

The first and third thresholds are independent of the level or stock percentage, and more related to the value or size of the transaction and the size of the parties involved. Indeed, the second threshold also captures acquisitions equal to or above 35% of stocks or assets of an entity are covered.

The assets do not have to form a free-standing business. Any asset acquisition may be reportable in Mexico if it exceeds the thresholds. Furthermore, if the amount of purchased assets meets the threshold foreseen in Article 86 of the LFCE, the Commission have jurisdiction, regardless of the acquirer’s existing business.

However, the transaction does not have to be notified to the Commission if the acquired entity is listed on a Stock Exchange and after the transaction, when the acquirer will not hold more than 10% of the acquired entity’s shares or assets, and will not have the power to:

- a. Appoint or remove members of the board, directors or managers of the acquired entity;
- b. Impose decisions on the stockholders’ meetings;
- c. Hold rights that allow to exercise voting regarding 10% or more of the acquired entity’s capital stock, or

d. Direct or influence the management of the acquired entity

#### 4. Thresholds for notification

**A. What are the general thresholds for notification?**  
**[If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]**

Under Article 86, of the LFCE, the following concentrations must be authorized by the Commission before their execution:

- I. When the originating act or sequence of acts, notwithstanding the place of performance, are worth within Mexican territory, directly or indirectly, an amount in excess to the equivalent of 18 million times the current UMA. **This threshold may be considered as a “size of transaction” test.**
- II. When the originating act or sequence of acts, implies the accumulation of 35% percent or more of the assets or stock of an Economic Agent, whose annual sales originating in Mexican territory or assets in the country, are worth an amount in excess of the equivalent of 18 million times the UMA. **This threshold may be considered as a “size of person” test.**
- III. When the originating act or sequence of acts, imply an accumulation within Mexican territory of assets or capital stock in excess of the equivalent to 8.4 million times the UMA, and two or more of the Economic Agents participating in the concentration have annual sales originating in Mexican territory or assets in Mexican territory which are worth, jointly or separately, an amount in excess of forty eight million times the UMA. **This threshold may be considered as a mix between the “size of transaction” and “size of parties” tests.**

The acts carried out in infringement of this article shall be null and void, without prejudice of the Economic Agents’ administrative, civil or criminal liability and that of the persons who ordered or contributed to the execution thereof, as well as the notary public or attesting official who may have intervened.

The legal acts concerning a concentration may not be registered in the corporate ledgers, formalized under a public deed nor registered in the Public Commercial Registry until the Commission has issued its authorization or the legal timeframe

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|  | <p>under article 90, subsection V, has elapsed, without the Board of Commissioners having issued a decision.</p> <p>The Economic Agents involved that do not fall under the hypotheses outlined in subsections I, II and III of this article may voluntarily notify concentrations to the Commission.</p> <p>The <b>UMA</b> is a monetary economic reference in pesos to determine the amount of payment from obligations and alleged assumptions provided for in the federal law, for the states and Mexico City, as well as in legal provisions emanating from all of the above.</p> <p>The thresholds are adjusted every year according to the value of the UMA. The annual value of the UMA is published by the National Institute of Statistics and Geography (INEGI) before January 10<sup>th</sup> every year on the following webpage: <a href="https://www.inegi.org.mx/temas/uma/">https://www.inegi.org.mx/temas/uma/</a></p> |
| <p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>   | <p>1) The first and second thresholds defined in Article 86 of the LFCE includes the acquired firms, its subsidiaries and affiliates whose sales or assets are located in Mexico.</p> <p>2) The third threshold considers acquired firms, its subsidiaries and affiliates whose assets or capital stock are in Mexico. It also considers all the entities that participate directly and indirectly in the concentration (buyer, seller, acquired entity, and their respective subsidiaries and affiliates) whose assets or sales are located in Mexico.</p>  |
| <p><b>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</b></p> | <p>Value of the transaction- The first threshold is based on the value of the transaction. For transactions undertaken in México, the value of the transaction can be the price agreed by the parties as reported in the letter of intent, contract or similar document signed by the parties.</p> <p>For international transactions, the specific value for Mexico is not always available. In these cases, the second and third thresholds are used.</p>   |

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|   | <p>Assets located in Mexico - There are different ways to determine the value of assets.</p> <ul style="list-style-type: none"> <li>a) The value of total assets reported in financial general balance statements.</li> <li>b) The market value of the acquired assets. This is the price paid for the assets in the transaction or</li> <li>c) The carrying value reported by the seller, when shares of a company are acquired.</li> </ul> <p>Sales – When considering sales to calculate thresholds, the net sales or income reported in financial statements can be used.<br/>For international transactions with foreign parties with no assets in Mexico, but sales in México, all sales invoiced in Mexico or to Mexico shall be considered.</p> <p>Capital stock- This element is used to calculate the third threshold of Article 86 of the LFCE. It refers to the capital stock or shares capital reported in financial statements.</p> <p>Regarding the use of financial statements, the values generally accepted are the ones reported in the most recent annual audited financial statements.</p> |
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| <p><b>D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b></p>  | <p>Yes, in the case of sales or assets.<br/>Market share is not considered to determine the notification thresholds.</p> <p><b>Further detail can be found in <a href="#">COFECE'S Merger guidelines</a></b></p>  |
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| <p><b>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b></p> | <p>Article 28 of the <a href="#">Mexican constitution</a> provides that certain activities carried out by the Mexican government do not constitute monopolies, thereby, they are excluded from competition law (e.g. oil exploration in Mexico). However, any activity that is outside the scope of that protection is subject to competition law (e.g. oil commercialization).</p> <p>Thresholds in Mexico apply without consideration of any period of time.</p>  |

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| <p><b>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</b></p>  | <p>No</p>   |
| <p><b>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</b></p> | <p>The LFCE do not specify special rules or exceptions regarding transactions with foreign parties.</p> <p>However, Article 86 of LFCE considers “sales originated in the Mexican territory” to calculate merger thresholds. In a transaction where the acquiring and acquired parties are foreign and have no subsidiaries or assets in Mexico, but have sales in México, the Commission considers all sales invoiced in Mexico or to Mexico to calculate the second and third threshold established in the article 86 of the LFCE.</p> <p><b>Further information can be found in <a href="#">COFECES Merger guidelines</a></b></p>  |
| <p><b>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</b></p>  | <p>Yes, pursuant Article 65 of the LFCE, the Commission has the authority to review ex-post “unlawful” mergers up to one year after execution, when they fell below the threshold and were not reported to the Commission. According to Article 62, a Concentration is considered unlawful if it has the purpose or effect to obstruct, diminish, harm or impede competition.</p> <p>If a below-threshold merger can be considered unlawful in terms of articles 62 and 64 of the LFCE, the Commission can initiate an investigation as established in Articles 65, 66, 67 and 68, up to one year after its execution of the transaction.</p> <p>The Commission’s investigations shall be initiated by a complaint, ex-officio or per the request of the Federal Executive Branch.</p> <p>Regarding the methodology for exchange rates:</p> |

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|   | <p>When the data is presented in US dollars, the conversion rate used corresponds to the “Exchange rate for liquidating liabilities denominated in foreign currency and payable in Mexico” published by the Central Bank [Banco de México]. The exchange rate can be found in the following link:<br/> <a href="https://www.banxico.org.mx/tipcamb/main.do?page=tip&amp;idioma=sp">https://www.banxico.org.mx/tipcamb/main.do?page=tip&amp;idioma=sp</a></p> <p>To calculate the thresholds the Commission use the lowest exchange rate reported within the five working days prior to the day of the filled concentration is submitted to the Commission, as clarified in Article 15 of the <a href="#">DRLFCE</a></p> <p>If the data is reported in another foreign currency, first the foreign currency is converted to USD, using the exchange rate available in public sources (e.g. <a href="#">Pacific Exchange Rate Service</a>). After that, the methodology explained above is used to convert from USD to Mexican pesos.</p> <p>For those transactions that fell below the threshold and were not reported to COFECE, and are subject to an ex post investigation, COFECE must convert the size of transaction to Mexican pesos. For transactions payed in US Dollars, the exchange rate to be used is the lowest exchange rate reported within the five working days prior to the execution of the transaction. As specified in Article 133 of the DRLFCE.</p> <p>Transactions payed in a different currency, shall be converted first to USD dollars and then, to Mexican pesos using the exchange rate (foreign currency/DLS) available in public sources as explained before.</p> |
| <p><b>I. Are current notification criteria catching relevant transactions related to digital markets?</b></p> | <p>Yes, some transactions in digital markets have been caught with the threshold established in article 86 of the LFCE.</p>  |

**Calculation Guidance and related issues**

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| <p><b>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</b></p> <p><b>i) the value of the transaction;</b></p> | <p><b>As mentioned in question 4.C</b></p> <p>i) Value of the transaction- The first threshold is based on the value of the transaction. For transactions undertaken in México, the value of the transaction can be the price</p> |
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| <ul style="list-style-type: none"> <li>ii) the relevant sales or turnover;</li> <li>iii) the relevant assets;</li> <li>iv) market shares;</li> <li>v) other (please describe).</li> </ul>  | <p>agreed by the parties as reported in the letter of intent, contract or similar document signed by the parties.</p> <p>For an international transaction, the specific value for Mexico is not always available. In these cases, the second and third thresholds are used.</p> <p>ii) Relevant sales or turnover – When considering sales to calculate thresholds, the net sales or income reported in financial statements can be used.</p> <p>For international transactions with foreign parties with no assets in Mexico, but sales in Mexico, all sales invoiced in Mexico and to Mexico shall be considered.</p> <p>iii) Relevant assets- There are different ways to determine the value of assets.</p> <ul style="list-style-type: none"> <li>a) The value of total assets reported in financial general balance statements.</li> <li>b) The market value of the acquired assets. This is the price paid for the assets in the transaction or</li> <li>c) The carrying value reported by the seller, when shares of a company are acquired.</li> </ul> <p>iv) market shares- market shares are not used to calculate merger thresholds in Mexico</p> <p>v) capital stock- This element is used to calculate the third threshold of Article 86 of the LFCE. It refers to the capital stock or shares capital reported in financial statements.</p> <p>Regarding the use of financial statements, the values generally accepted are the ones reported in the most recent annual audited financial statements.</p> |
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| <p><b>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</b></p> | <ul style="list-style-type: none"> <li>1) The first threshold only considers the value of the transaction for Mexico. It does not include information of any entity.</li> <li>2) The second threshold considers the target company and its subsidiaries, or the directly involved seller when the target is composed by assets.</li> </ul>   |

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|  | <p>3) The third threshold considers the target company or assets, as well as the size of the firms involved (such as the buyers and sellers). In this case, the size of the firms involved may consider investment funds and its partners and affiliates.</p>  |
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| <p><b>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</b></p> | <p>Transactions involving investment funds are analyzed case by case.</p> <p>The general partner of the fund and its direct and indirect shareholders must present information of all the investments they have in Mexico.</p> <p>Furthermore, limited partners holding 20% or more of the fund are also required to be disclosed. The parties must identify the investments of those limited partners in Mexico.</p>  |
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| <p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>  | <p>As mentioned before in question 4.H</p> <p>When the data is presented in US dollars, the conversion rate used corresponds to the “Exchange rate for liquidating liabilities denominated in foreign currency and payable in Mexico” published by the Central Bank [Banco de México]. The exchange rate can be found in the following link:<br/> <a href="https://www.banxico.org.mx/tipcamb/main.do?page=tip&amp;idioma=sp">https://www.banxico.org.mx/tipcamb/main.do?page=tip&amp;idioma=sp</a></p> <p>To calculate the thresholds the Commission use the lowest exchange rate reported within the five working days prior to the day of the filled concentration is submitted to the Commission, as clarified in Article 15 of the <a href="#">DRLFCE</a></p> <p>When the data is reported in a foreign currency – different to USD-:<br/> As a first step, the foreign currency is converted to USD, using the exchange rate available in public sources (e.g. <a href="#">Pacific Exchange Rate Service</a>). After that, the methodology explained above is used to convert from USD to Mexican pesos.</p> |
| <p><b>5. Pre-notification</b></p>  |  |



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| <b>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</b> | The LFCE do not consider a pre-notification procedure. However, if desired, the parties may request an informal meeting with the merger Division, to discuss an intended concentration informally and in confidence before notification. |
| <b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b>                                  | The LFCE do not consider a pre-notification procedure.   |

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| <b>6. Notification requirements and timing of notification</b>   |   |
| <b>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</b>                          | The LFCE has an ex-ante mandatory merger control review. Therefore, for all transactions that meet the merger thresholds established in article 86 of the LFCE, notification is mandatory prior to its implementation.  |
| <b>B. If parties can make a voluntary merger filing when may they do so?</b>   | Article 86 of LFCE allows parties to voluntarily file a merger. The concentration shall be notified to the Commission prior its implementation.   |
| <b>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</b> | <p>Pursuant to article 86 and 87 of the LFCE, concentrations shall be notified to the Commission prior its implementation.</p> <p>The transaction can be notified to the Commission as soon as the parties have clarity of the proposed transaction and prove it with a draft of a letter of intention or agreement. However, COFECE's authorization has a validity period of six months, which can be extended for an additional period of six months.</p> <p>COFECE may also accept the filing with a signed agreement, but in that case, there should be a standstill obligation or a suspensory clause, subject to COFECE's approval.</p> |
| <b>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive</b>  | Under Article 86 and 87 of the LFCE, concentrations shall be notified and approved by the Commission prior its implementation.  |

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| <p>agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>                            | <p>There are no special rules for public takeover bids.</p>  |
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| <p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p> | <p>Concentrations shall be notified and approved by the Commission prior its implementation.<br/>The LFCE do not consider any extension regarding a notification deadline.</p> |

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| <p><b>7. Simplified Procedures</b></p>  |   |
| <p><b>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</b></p> | <p>Pursuant to Article 92 of the LFCE, the Commission may allow a simplified procedure if the parties fully prove that the proposed transaction will not raise competition concerns according to the specifications listed in Article 92.</p> <p>The notification of a concentration under the simplified procedure shall be made in writing and shall contain the information and documentation referred to in subsections I to XII of article 89 of the LFCE (that is to say, the conventional procedure).</p> <p>Within the five days following reception of the concentration notification, the Commission shall decide on its admissibility for a simplified procedure or order its inadmissibility and the file may be processed under the conventional procedure specified in article 90 of the LFCE.</p> <p>Once the notification has been admitted in the simplified procedure, the Commission has 15 days to resolve. However, if the Commission considers that the concentration does not fall under the criteria set in Article 92, or the information provided by the Economic</p> |

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|  | Agent is incomplete, the Commission shall issue a decision for processing the case under article 90 of the LFCE. |
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| <b>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</b> |   |
|   | <p>To consider a transaction under the simplified procedure, the parties must prove that the proposed transaction will not raise competition concerns according to the specifications listed in Article 92. Also, the notification must include the complete information required in article 89 of the LFCE.</p> <p>The criteria specified in article 92 is the following: 1) The acquiring party shall not have participation in markets related to the relevant market in which the concentration takes place; 2) The acquiring party shall not be an existing or potential competitor of the acquired party.</p> <p>Furthermore, any of the following circumstances shall occur:</p> <p>I. The transaction implies the participation of the acquiring party in the relevant market for the first time.</p> <p>II. Prior to the transaction, the acquiring party does not hold control over the acquired Economic Agent, and as a consequence of the transaction, the former increases its relative participation in relation to the latter, without attaining more power to influence the company's operation, administration, strategy and main policies, including appointing board members, directors or managers.</p> <p>III. The acquirer already has the control of a company and increases its relative participation in the company's capital structure.</p> |

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| <b>8. Information and documents to be submitted with a notification</b>  |   |
| <b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b> | Pursuant to Article 89 of the LFCE, the documents that the parties must submit with the notification are the following: |

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|  | <ol style="list-style-type: none"> <li>I. The name of the entities notifying the concentration and those participating directly or indirectly.</li> <li>II. The name of the legal representative and powers of attorney, address and authorized persons. The law also requires the parties to appoint a common representative.</li> <li>III. A description of the concentration, and a draft of the corresponding legal act (for example, the agreement or a letter of intent), as well as a draft of the non-compete clauses.</li> <li>IV. The documents and information that explain the purpose and motive of the concentration.</li> <li>V. The articles of incorporation and any amendments thereof and, if the case may be, the bylaws of the agents involved.</li> <li>VI. Financial statements of the immediately preceding fiscal year, of all entities involved.</li> <li>VII. A description of the corporate structure of all entities participating directly and indirectly in the transaction, identifying each partner or stockholder's as well as the individuals or legal entities that have and will have control thereof before and after the concentration. Generally, COFECE requires the identification of stockholders with more than 5% of the stock, or limited partners with more than 20% of the fund's assets.</li> <li>VIII. A disclosure if the economic agents involved in the transaction participate in other agents that produce or sell similar or substantially related goods to those supplied by the other entities participating in the concentration -in Mexico-.</li> <li>IX. Information about market shares of the parties and their competitors.</li> <li>X. The location of the parties' manufacturing facilities and distribution centers .</li> <li>XI. A description of the goods or services supplied or produced by the parties in Mexico, and information about their use in the relevant market. In addition, A list of similar goods or services provided by the main economic agents that participate in the market.</li> </ol> |
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| <p><b>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</b></p> | <p>Yes, the parties must describe what is the target of the transaction, whether they are tangible or intangibles assets, users, voting rights or any other type of entitlements.</p>  |
| <p><b>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</b></p>  | <p>Pursuant Article 14 of the DRLFCE, the parties may provide documents proving the efficiency of the transaction at any time during the merger procedure, and up to three days after the Commission communicate the parties about possible concerns, if the case may be.</p>  |
| <p><b>D. What information is required in case the target company is experiencing financial insolvency?</b></p>  | <p>Cases regarding companies with financial insolvency or failing firms are not explicitly considered in the LFCE.</p> <p>However, it is suggested that the parties submit the information that proves the financial deterioration of the entity, its impossibility to face financial obligations, the absence of viable alternatives –i.e. corporate restructuring or funding-.</p> <p>Some example of these documents may be the most recent financial statements, financial analysis, assembly minutes, the documentation presented to potential investors or buyers.</p> |
| <p><b>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</b></p>  | <p>No, the LFCE do not have a specific procedure for this case. However, under this scenario, it is not compulsory for the seller and target to be part of the notification file.</p> <p>In such cases, COFECE may use its powers to request information to third parties to obtain information of the target.</p>   |
| <p><b>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</b></p>  | <p>Yes, foreign powers of attorney must be legalized (notarization and apostille).</p> <p>Any powers of attorney issued in México must be a notarial certificate.</p>  |

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| <b>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</b> | <p>There are no specific rules regarding exemptions from information requirements for transactions with foreign parties.</p> <p>Usually, when a party is unable to submit some of the required information, they must fully justify it.</p>  |
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| <b>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</b>  | <p>Yes, the Commission can require information from third parties.</p> <p>Third parties can voluntarily submit information and contact COFECE. They are also entitled to present complaints about a possible merger that is under review. In that case, the complaint may be discarded but the information is taken into consideration in the merger file.</p>   |
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| <b>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</b>   | <p>Yes, According to Article 89, subsection XII, the parties can provide other elements they consider pertinent or important for the analysis, at any time.</p> <p>However, information to prove efficiencies must be submitted up to three days after the Commission inform the parties about any competition concerns.</p> <p>Similarly, proposed remedies shall be submitted up to one day after the concentration is scheduled for a Board of Commissioners session.</p> |
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| <b>J. Are there different forms for different types of transactions or sectors?</b>   | No   |
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| <p><b>K. With respect to investment funds:</b></p> <p><b>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</b></p> <p><b>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</b></p> <p><b>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</b></p> | <p>i. Yes</p> <p>ii. Yes</p> <p>iii. Transactions involving investment funds are usually reviewed case by case. There may be some exemptions regarding presenting certain information, when it is not needed for the analysis (for example, when there is an absence of overlaps).</p> |
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| <p><b>9. Translation</b></p>  |   |
| <p><b>A. In what language(s) can the notification forms be submitted?</b></p> | <p>The notification must be submitted in Spanish</p> <p>Other documents may be submitted other language. However, parties must attach a translation by a certified expert of the sections they deem relevant, notwithstanding that the Commission may request additional translations or the translation in full by a certified expert when deemed pertinent.</p> <p>The Commission shall not consider the text of documents in a language other than Spanish. The Commission may collect, in any ongoing proceedings, documents in a</p> |

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|   | language other than Spanish and attach them to the file, along with the translation of the aspects deemed relevant by the Commission   |
| <p><b>B. Describe any requirements to submit translations of documents:</b></p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p> | <p>All documents submitted to COFECE must have a proper Spanish translation of their relevant parts. However, in practice, regarding large document productions (for example, as a response to an information request), only the most relevant documents have to be translated.</p> <p>For a translation, the only requirement is that it is performed by a person with knowledge of the language.</p> |

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| <b>10. Review Periods</b>   |   |
| <p><b>A. Describe any applicable review periods following notification.</b></p> | <p>The Commission is required to issue a decision (resolution) within 60 working days upon a fully integrated filing. A filing is fully integrated once the parties submit all requested information.</p> <p>The Commission can request information as follows:</p> <ul style="list-style-type: none"> <li>• within 10 working days after the notification submission, COFECE may request missing information.</li> <li>• within 15 calendar days either after the initial filing or after the parties have provided the complete missing information, the commission may issue a document and information request.</li> </ul> <p>In complex cases, the Commission may extend the deadline up to 40 working days.</p> |



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|   | If the Commission does not issue a decision or “Resolution” after the end of the review period, it is understood that the transactions have been legally approved.  |
| <b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b>   | No.   |
| <b>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</b> | <p>Article 90, subsection VI clarifies that only under exceptionally complex cases, the Commission may extend the legal timeframes for the review period for 40 working days. In order to extend the review period, the Commission shall notify the parties to communicate them the time extension.</p> <p>The request for additional information does suspend the review period, in a way that review period starts only after the parties have complied with such information request. Further information requests do not suspend review periods.</p> <p>Furthermore, if the proposed conditions are not submitted together with the written notification, the timeframe for issuing a decision will be suspended and re-started from the initial stage when the conditions are submitted.</p> |
| <b>D. Is there a statutory or other maximum duration for extensions?</b>  | Article 90, subsection VI clarifies that under exceptionally complex cases, the Commission may extend the legal timeframes for the review period for 40 working days.   |
| <b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties’ consent?</b>                           | No, the Commission cannot suspend review periods. Under Article 90, subsection V, if the review period ends and the Commission had not issued a decision, it may be understood that the notified concentration has been legally approved.   |
| <b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>   | The period for the simplified procedure described in Article 92 is as follows:  |

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|   | <p>Within the five days following reception of the notification, the Commission shall issue its decision on its admissibility, or, order its inadmissibility and for the case to be processed under the conventional procedure specified in article 90 of the LFCE.</p> <p>Once the notification has been admitted, the Commission has 15 days to review the merger and to issue a decision.</p> |
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| <b>G. If remedies are offered, do they impact the timing of the review?</b> | <p>Article 90, last paragraph clarifies that remedies can be submitted at the beginning of the procedure, along with the written notification.</p> <p>In case the proposed remedies are not submitted together with the written notification, the review period will be re-started once the remedies are presented.</p>  |

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| <b>11. Waiting periods / suspension obligations</b>   |  |
| <b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b>   | The parties must notify the transaction before its implementation. They cannot close the transaction until either the Commission issue a decision, or the review period ends.              |
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| <b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>  | No   |
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| <b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</b> | The suspension obligation only applies to Mexico. An international transaction may close in other countries at any time, as long as it does not cause legal or material effects in Mexico. |
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| <b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b>   | Yes, if the review period ends and the Commission has not issued a decision, it may be understood that the notified concentration has been legally approved. In such case, the parties may request a letter from the Commission confirming there is no objection.   |
| <b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b>  | In complex cases, the Commission can extend the review period for up to 40 working days. Parties may extend the review period by presenting a remedies proposal.  |
| <b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b>  | Not applicable. The parties are allowed to close their transaction when COFECE's decision is issued.  |
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| <b>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b> | <p>As mentioned in 10.A</p> <p>The parties must notify the transaction before its implementation. They cannot close the transaction until either the Commission issue a decision, or the review period ends.</p> <p>If the parties close a reportable deal without COFECE's authorization, they may be fined.</p> |

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| <b>12. Responsibility for notification / representation</b>   |  |
| <b>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</b> | <p>The parties directly involved in the transactions are responsible to notify the transaction to the Commission. It is usually the acquiring company(ies) and seller(s).</p> <p>They must present a joint filing.</p> <p>Under special circumstances – i.e. some public tenders-, only one of the parties may make the filing. In such a case, the notifying party must justify why the counterpart was unable to notify. However, these special circumstances are analyzed case by case.</p> <p>Also, only the buyer may file a transaction in the simplified procedure.</p> |

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| <p><b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b></p>   | <p>As mentioned in the previous question, under special circumstances – i.e. some public tenders-, it is possible that only one of the parties make the filing. In such a case, the notifying party must justify why the counterpart was unable to notify. However, these special circumstances are analyzed case by case.</p>  |
| <p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>  | <p>There is no special rule. However, the representing person must submit the documentation that accredits its legal capacity to represent the party (i.e. powers of attorney).</p>   |
| <p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</b></p> | <p>As mentioned in question 8.F, the representing person must submit the documentation that accredits its legal capacity to represent the party, according to applicable laws.</p> <p>Regarding foreign firms, a power of attorney must be notarized (when applicable by the local jurisdiction), legalized and apostilled.</p> |

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| <p><b>13. Filing fees</b></p>  |  |
| <p><b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31<sup>st</sup>, 2020]</b></p> | <p>Yes, it is a flat fee that is updated every year.</p> <p>The amount is determined and updated every year according to the Article 77 of the <a href="#">“Ley Federal de derechos”</a> or Federal Duties Act and the <a href="#">appendix 19 of the Fiscal Miscellaneous Resolution</a> which are updated every year.</p> <p>The amount as of December 31<sup>st</sup>, 2020 was \$190,020.00 Mexican pesos, roughly equivalent to 9,530.93 USD</p> <p>The current amount applicable for 2021 is 196,347.33 Mexican pesos, roughly equivalent to 9,848.29USD</p> |

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|   | The updated amount is also available at the Commission's website:<br><a href="https://www.cofece.mx/tramites-y-pagos/">https://www.cofece.mx/tramites-y-pagos/</a>  |
| <b>B. Who is responsible for payment?</b>   | This decision is made by the parties  |
| <b>C. When is payment required?</b>   | The payment receipt must be attached to the notification. Otherwise, the Commission does not accept the filing.   |
| <b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b> | <p>The proof of payment must be submitted along with the Notification.</p> <p>Payment can be done per bank transfer or at the bank counter.</p> <p>The updated amount and payment format are available at the Commission's website:<br/><a href="https://www.cofece.mx/tramites-y-pagos/">https://www.cofece.mx/tramites-y-pagos/</a></p> |

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| <b>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</b> |   |
| <b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b>             | <p>The procedure may be structured as follows.</p> <p>Upon receipt of a file, the Commission first review if the information provided by the parties is complete, as required in Article 89 of the LFCE. This contains information regarding the parties' activities, corporate and financial information, market shares, features of the transaction, signed agreement, and main participants in the market. Generally, in non-complex cases, this information may be enough to perform the competitive assessment. This stage may be regarded as an initial review of basic information.</p> <p>Once the file is complete and admitted for review, if needed, the Commission may issue an additional information request to the parties, regarding relevant information for the</p> |

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|   | analysis. Once the parties comply with the request, COFECE has a 60+40 working days period to issue its final resolution.   |
| <b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b>   | The Commission considers elements similar to a Substantial Lessening of Competition Test (SLC), since the article 28 of the Mexican constitution provides that the authorities shall effectively prosecute every concentration that has the effect of a price increase. Similarly, article 63 of the LFCE states that a market power increase (as defined in the LFCE) resulting from a merger, may be an indication of an unlawful concentration.  |
| <b>C. What theories of harm does the agency consider in practice?</b>   | <p>The theories of harm considered by the Commission vary from case-to-case depending on the characteristics of the proposed transaction and the market. However, usually the theories of harm fall into the categories of unilateral effects or coordinated effects.</p> <p>The unilateral effect implies that after the merger, the participants can profitably increase prices unilaterally, whereas with coordinated effects, implies that post-merger the structure of the market may facilitate collusion or the practice of coordinated behaviour.</p> |
| <b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b>                             | There are no stages in the substantive analysis.  |
| <b>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</b> | Non-competition issues are not considered by the Commission.  |

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| <b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b>   | Article 90 of the LFCE clarifies that the Commission's resolution may authorize, object or subject the transaction to remedies.   |
| <b>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</b> | Pursuant Article 91 of the LFCE, the remedies that the Commission may establish or accept from the parties, may consist of:<br>I. Carrying out or abstaining from performing a specific action.<br>II. Divesting specific assets, rights, partnership interest or stock in favour of third parties.<br>III. Modifying or eliminating terms or conditions from the acts intended to be executed.<br>IV. Committing to implement actions that are intended to foster the participation of competitors in the market, as well as providing them access or selling of goods or services |

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| <b>15. Confidentiality</b>   |  |
| <b>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</b>   | The only information published by COFECE is the name of the notifying parties once the file is formally received. The information is available at:<br><a href="https://www.cofece.mx/conocenos/pleno/resoluciones-y-opiniones/">https://www.cofece.mx/conocenos/pleno/resoluciones-y-opiniones/</a>                    |
| <b>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</b>   | Yes. At any time.<br><br>However, the parties are not allowed to access third parties' information that the file may contain.  |
| <b>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</b> | Third parties do not have access to merging parties information.<br><br>Government agencies may have access to some information regarding a notification upon formal request. In such cases, the Commission and the agencies must take the necessary measures to safeguard the information classified as confidential. |

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| <p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>  | <p>Yes, under Article 3, subsection IX, X, XI and 125 of the LFCE, parties must specify the information that shall be classified as reserved and confidential. They shall explain the reason why such information requires such classification and submit a summary of the information.</p> <p><i>“Article 125. For the purposes of this Law, Confidential Information shall only be considered as such at the Economic Agent’s request, and upon validation that the information has this characteristic. Likewise, the Economic Agent shall provide a summary of the information satisfactory to the Commission, for its inclusion in the file. If the Economic Agent is unable to provide said summary, it shall express the reasons for said inability, in which case the Commission may draft the corresponding summary. Under no circumstances shall the Commission be compelled to provide Confidential Information, nor may it publish said information. The Commission shall take the necessary measures for said information’s safeguarding. The Commission’s public officers shall abstain from publicly expressing or disclosing information related to the files or procedures before the Commission and that directly damages the parties involved, until the Economic Agent subject to investigation has been notified of the Board of Commissioners’ resolution, always complying with the obligations under this article.”</i></p> |
| <p><b>E. Can the agency deny a party’s claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</b></p> | <p>The Commission may deny a party’s claim that certain information is confidential, when such information is available in public sources.</p> <p>In such cases, the Commission would ask the parties to fully justify why the identified information must be held as confidential.</p>   |



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| <p><b>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent, or limit public disclosure of information designated as confidential that is contained in these documents?</b></p> | <p>Yes, as stated in Article 47 of the DRLFCE, the Commission must prepare a public version of the Commission’s decision or “Resolution”.</p> <p>A public version of the Commission’s decision or “Resolution” regarding a merger case, must be published within 20 days after the decision was notified to the parties.</p> |
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| 16. Transparency   |   |
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| <p><b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b></p>   | <p>Yes since 2018 the Commission publishes a Concentration annual report<br/> <a href="#">Concentrations Annual Report 2019</a><br/> <a href="#">Concentrations Annual Report 2018</a></p> <p>The Commission publication can be found in the following link:<br/> <a href="https://www.cofece.mx/category/2019/">https://www.cofece.mx/category/2019/</a></p> <p>In addition, the commission publishes quarterly reports available at:<br/> <a href="https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/">https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/</a></p> |
| <p><b>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</b></p> | <p>Yes, the press releases are available at:<br/> <a href="https://www.cofece.mx/publicaciones/prensa/">https://www.cofece.mx/publicaciones/prensa/</a></p>   |
| <p><b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</b></p>                         | <p>The Commission’s decisions are available in the following link:<br/> <a href="https://www.cofece.mx/conocenos/pleno/resoluciones-y-opiniones/">https://www.cofece.mx/conocenos/pleno/resoluciones-y-opiniones/</a></p>   |
| <p><b>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</b></p>   | <p>Yes, the publications are available in:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.cofece.mx/publicaciones/documentos-de-planeacion-y-evaluacion/">https://www.cofece.mx/publicaciones/documentos-de-planeacion-y-evaluacion/</a></li> <li>• <a href="https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/">https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/</a></li> </ul>   |

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| 17. Cooperation   |  |
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| <b>A. Is the agency able to exchange information or documents with international counterparts?</b>  | Yes.   |
| <b>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b> | <p>Free Trade Agreements (FTAs), bilateral agreements between the Mexican federal government and other governments on competition law; and bilateral agreements between COFECE and other competition enforcement agencies establish the framework for cooperation between COFECE and other agencies.</p> <p>In these, particularly in FTAs and bilateral agreements, the parties have agreed to cooperate on a reciprocal basis on issues such as: notifications, consultations and exchange of information related to the enforcement of their competition laws and policies. In addition, antitrust cooperation agreements include provisions for technical assistance and reciprocal cooperation on visits and staff exchanges.</p> <p>However, exchange of confidential information must be done only when waivers are in place.</p> <p>Foreign authorities:<br/> Argentina<br/> Brazil<br/> Canada<br/> Chile<br/> Colombia<br/> Caribbean Community<br/> Costa Rica<br/> Ecuador<br/> El Salvador<br/> European Commission</p> |

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|  | <p>Honduras<br/>Israel<br/>Japan<br/>Korea<br/>Nicaragua<br/>Panama<br/>Peru<br/>Dominican Republic<br/>Russia<br/>United States<br/>Uruguay</p> <p>The full list of agreements is available on the Commission's website:<br/><a href="https://www.cofece.mx/publicaciones/marco-juridico-y-normativo/#normateca-4">https://www.cofece.mx/publicaciones/marco-juridico-y-normativo/#normateca-4</a></p> |
| <p><b>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</b></p> | <p>Yes, the Commission need the parties' consent to share information with other competition authorities.</p> <p>The Commission does not have a model waiver. Generally, COFECE accepts the ICN model waiver with some modifications that account for local legislation.</p>  |
| <p><b>D. Is the agency able to exchange information or documents with other domestic regulators?</b></p>   | <p>The Commission may exchange information and documents with other regulators, taking the necessary measures to safeguard the information classified as confidential.</p>  |

**18.Sanctions/penalties**

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| <p><b>A. What are the sanctions/penalties for:</b></p> <ul style="list-style-type: none"> <li><b>i) failure to file a notification;</b></li> <li><b>ii) incorrect/misleading information in a notification;</b></li> <li><b>iii) failure to comply with information requests;</b></li> <li><b>iv) failure to observe a waiting period/suspension obligation;</b></li> <li><b>v) breach of interim measures;</b></li> <li><b>vi) failure to observe or delay in implementation of remedies;</b></li> <li><b>vii) implementation of transaction despite the prohibition from the agency?</b></li> </ul> | <ul style="list-style-type: none"> <li>i) As stated in Article 127, subsection VIII, the Commission may impose a fine ranging from the equivalent of five thousand times the UMA to five percent of the parties' income for failing to notify a concentration when it was legally required to do so</li> <li>ii) Article 127, subsection III establishes a maximum fine equivalent to one hundred seventy-five thousand times the current UMA for having rendered false statements or for having submitted false information before the Commission, regardless of any criminal liability to which the offender may be subject;</li> <li>iii) Article 90, subsections II and III provides that, when the parties do not comply with an information request, the file may be discarded. In such a case, the parties have to present a new filing.</li> <li>iv) The notification will not be analyzed under the regular procedure established in article 90 of the LFCE. Instead, an incidental procedure will start as established in article 118, 119 and 133 of the DRLFCE and the following fines will apply: <ul style="list-style-type: none"> <li>• If the transaction closes before the notification, the same penalty as in question i)</li> <li>• a maximum fine equivalent to eight percent of the Economic Agent's income, If the transaction is considered an unlawful merger, regardless of the corresponding civil liability as stated in Article 127, subsection VII.a maximum fine equivalent to one hundred eighty thousand times the current UMA, for the notary public or attesting official who participate in the acts concerning a concentration without prior authorization by the Commission as set in Article 127, subsection XIII establishes;</li> </ul> </li> <li>v) Not applicable in mergers.</li> <li>vi) Article 127, subsection IX contemplates a maximum fine equivalent to ten percent of the parties' income, for failing to comply with the remedies specified in a concentration resolution, independently of a possible order for divestiture.</li> </ul> |
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|  | vii) Article 127, subsection VIII contemplates a maximum fine equivalent to eight percent of the Economic Agent's income, for having incurred in an unlawful concentration in terms of this Law, regardless of the corresponding civil liability;  |
| <b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</b>   | All the parties involved in the merger agreement and also public notary or attesting official who participate in the acts concerning a concentration without prior authorization by the Commission.  |
| <b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b> | Administrative sanctions can be imposed directly by the agency, but they can be reviewed by the judicial authority if the agents file an "Amparo suit" before the Specialized Tribunals in Competition [An indirect amparo is a proceeding established in Articles 103 and 107 of the Mexican Constitution to provide all persons with protection against unconstitutional acts by the government. It is available to any party who can raise a claim that it is being subject to an unconstitutional law or that his due process rights are being infringed. Article 16 of the Mexican Constitution requires that agency orders articulate the "legal basis and justification for the action taken" .]. The reviewing process vary but may last several months. |
| <b>D. Are there any recent or significant fining decisions?</b>  | In February 2021 the Commission fined the companies Interjet and HSBC for failure to file a notification on time.  |

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| <b>19. Independence</b>  |   |
| <b>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</b> | No. COFECE is an independent body of the public administration. |

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| <b>B. What are the grounds for such ministerial intervention?</b>  | Not applicable. |
| <b>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</b> | Not applicable. |

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| <b>20. Administrative and judicial processes/review</b>  |  |
| <b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b>  | The parties have fifteen working days after receiving a notice or decision -i.e. the Commission Resolution-, to present an Amparo suit before the Specialized Courts.<br>The reviewing process varies case-to-case and can last several months.<br><br>Once the Specialized Court issue its decision or judgement, the parties still have the option to appeal this decision before a Specialized Tribunal |
| <b>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</b> | COFECE submits the file to the Specialized Court or Tribunal, with all confidential information properly identified, and Courts and Tribunals are compelled to safeguard that information.   |
| <b>C. Are there any limitations on the time during which an appeal may be filed?</b>   | If the merging parties want to challenge COFECE's resolution or decision they have fifteen working days to present the Amparo Suit to the Specialized Courts.  |

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| <b>21. Additional filings</b>  |  |
| <b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b> | Yes. It depends on the case (for example, regulated sectors such as energy or banking ). |

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| <b>22. Closing Deadlines</b> |
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| <p><b>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</b></p> | <p>Article 90, subsection VIII establishes that the Commission's favourable decision will be valid for six months. The parties can get one extension valid for six additional months.</p> <p>According to Article 23 of the DRLFCE if the parties do not execute the transaction within the time set in Article 90 of the LFCE, they must notify the concentration again to the Commission.</p> <p>According to Article 23 of the DRLFCE, parties must submit to the Commission proofs of the execution of the transaction within 30 workings days after the transaction is implemented.</p> |
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| <p><b>22. Post-Merger review of transactions</b></p>  |   |
| <p><b>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b></p>                              | <p>The Commission can reopen an investigation of a transaction under specific circumstances:</p> <p>Article 65. of the LFCE clarifies that concentrations approved by the Commission may not be investigated, except if the decision was taken under the assertion of false information or when it has been subject to ulterior conditions which were not fulfilled during the legal timeframe provided for such purpose.</p> |
| <p><b>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</b></p> | <p>The Commission has published some ex-post analysis of approved relevant transactions.</p> <p>The documents are available at the following link:</p> <p><a href="https://www.cofece.mx/category/planeacion-evaluacion/evaluaciones-ex-post/">https://www.cofece.mx/category/planeacion-evaluacion/evaluaciones-ex-post/</a></p>   |