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Constitutional Reform with respect to Antitrust, Telecommunications, Transparency and Information Access and Personal Data Protection

On Friday December 20, 2024, the so called "organic simplification reform" was published in the Official Gazette, which, among other things, transforms the structure of the Federal Economic Competition Commission ("COFECE"), the Federal Institute of Telecommunications (the "IFT"), and The National Institute of Transparency, Access to Information and Protection of Personal Data ("INAI"). This constitutional reform, along with various secondary law reforms that have been recently approved and those expected to be approved over the next year, will result in significant structural changes in these areas.

In general, the set of reforms establish the following:

- ***New antitrust agency:*** A new antitrust agency that will consolidate all competition powers for all sectors (including telecommunications and broadcasting) that previously belonged to COFECE and IFT, will be created. Although the reform does not establish operational rules, it is expected that the authority will retain at least technical and operative autonomy, in addition to the separation between the Investigative Authority and the responsible for resolving.
- ***New authority in telecommunications and digital transformation***: A new Digital Transformation and Telecommunications Agency is created as a dependency of the federal public administration, which will centralize the functions of digital policy, electronic government, and policies and regulation in telecommunications and broadcasting, taking over various powers that belonged to the IFT.
- ***New authority for the protection of personal data:*** A new authority will be created under the Federal Executive in the matter of personal data protection held by private parties, taking over the functions that previously belonged to the National Institute of Transparency, Access to Information, and Personal Data Protection ("INAI").
- ***New authority in transparency and access to public information***: The functions in transparency and access to public governmental information will fall on a Secretariat of the Federal Executive.
- ***Implementation***: According to the amendment's transitional provisions, COFECE and the IFT will cease to exist within 180-calendar days (i.e. six months) "*after the new [antitrust and telecom] secondary legislation becomes effective*". Differently, INAI will cease to exist once the secondary legislation enters into force. As there is no deadline to enact such new legislation, there is some ambiguity as to when the new agencies will be created and when the current commissioners of both the IFT and COFECE will be removed, although, in the case of INAI commissioners, they shall terminate their functions upon the entry into force of the secondary law. In addition, please note that changes to the competition and telecom law may go beyond the mere reorganization of the new agency (*e.g.,* there could be changes in some antitrust procedures).
- ***Consolidation of functions:*** While the new agency will merge functions from COFECE and the IFT, many of the current telecom regulatory powers will not be transferred to it. The Government also created a new agency called *Digital and Telecommunications Transformation Agency* which will absorb some functions (*e.g.,* creating and managing the broadcasting and telecommunications policies, grant or revoke public concessions). As the antitrust amendment aims to achieve some efficiency savings, the overall budget of COFECE and the IFT will also be reduced, and redundant positions will probably be consolidated.
- ***Ongoing Procedures***: Decisions adopted by COFECE, IFT and INAI prior to the entry into force of the new legal framework will remain fully valid. While ongoing proceedings will continue in their normal course, certain investigations, merger control cases and other proceedings may be delayed and reviewed by a new Board if they are still open by May-June 2025.
- ***Budget***: On December 11, 2024, a budget of $199,000,000 and $500,000,000 pesos was approved for COFECE and IFT, respectively[1]. This budget is equivalent to practically one-third of their budget for

2024 and will mean that both agencies will be basically "paralyze" by the second quarter of 2025, which will likely have an effect on all ongoing procedures.

Upon the new legislation is enacted, there will be more visibility as to changes that may affect the competition practice.

Should you have any questions about the above please contact us.

Best regards,

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[1]In 2024 COFECE and IFT had a budget of $687,866,026 and $1,680,000,000 pesos.

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