

COMPETITION IN DIGITAL MARKETS

Mexico



Competition in Digital Markets

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Quick reference guide enabling side-by-side comparison of local insights into applicable legislation, enforcement authorities and regulatory guidelines; horizontal agreements; vertical agreements; unilateral anticompetitive conduct; merger control; and recent trends.

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LEGAL AND REGULATORY FRAMEWORK

Legislation

What legislation governs competition in digital markets in your jurisdiction? Does the standard competition law framework apply or are there any special rules or exemptions?

In Mexico there is no specific legislation that regulates competition in digital markets. These markets are currently governed by the provisions of the Federal Economic Competition Act (FCA).

The authorities in charge of the enforcement of the FCA are the Mexican Federal Economic Competition Commission (COFECE) and the Mexican Federal Telecommunications Institute (IFT), which were mandated as both regulators and antitrust enforcers.

Additionally, some digital markets, particularly those related to telecommunications and broadcasting industries, could be regulated under the Federal Telecommunications and Broadcasting Law.

Law stated - 16 December 2022

Enforcement authorities

Which authorities enforce the competition law framework in your jurisdiction's digital markets?

The authorities in charge of the enforcement of the FCA are COFECE and IFT.

The development of new technology and the increasing growth of over-the-top (OTT) platforms has led COFECE and IFT to come face to face as both seek to be recognised as the competent authority to conduct merger review processes and investigate potential anticompetitive conduct in these emerging markets.

In the context of this conflict, the agencies have claimed jurisdiction on different merger process and investigations. Most of these conflicts have been brought before federal courts specialised in competition and telecommunications for their review.

Both Mexican antitrust enforcers have been in conflict over who has jurisdiction over OTT services. As part of these efforts, COFECE created a new digital markets unit, which is charge of reviewing these markets and provide additional support to the merger unit and the investigative body of COFECE. At the time of writing, the IFT has not launched any similar units.

Law stated - 16 December 2022

Regulatory guidelines

Have the authorities in your jurisdiction issued any guidelines on the application of competition law to digital markets?

Mexican authorities have not issued any guidelines on the application of competition law to digital markets.

COFECE has issued documents explaining the measures to be implemented to address their assessment and investigations in digital markets. Likewise, the IFT has issued a document in relation to OTT digital platforms, through which it addresses the characteristics of OTT digital platforms from a competition point of view.

Law stated - 16 December 2022

Advisory reports

Have any advisory reports been prepared in your jurisdiction on competition law issues in digital markets?

Yes. Considering the accelerated pace at which digital markets are expanding, COFECE and IFT have realised the impact that these types of markets have on society, and even though these are still not regulated, competition authorities have issued some opinions and reports that seek to explain the difference between digital markets and traditional markets.

The documents issued by COFECE and IFT in relation to digital markets are the following:

- COFECE, 'Estrategia Digital COFECE' (2020);
- COFECE, 'Repensar la competencia en la Economía Digital' (2018); and
- IFT, 'Plataformas Digitales OTT' (2021).

Law stated - 16 December 2022

Advance compliance guidance

Can companies active in digital markets ask the competition authority for advance guidance on competition law compliance before entering into an agreement or determining a pricing strategy?

Any economic agent may request a formal opinion from COFECE on matters of economic competition, provided that there are no previous guidelines issued by the authority and a description of the particularities of the opinion requested is provided (excluding hypotheticals). The authority may issue an opinion without the need to conduct an additional investigation of the facts. Such requests shall contain the following:

- the identity of the economic agents concerned;
- the specific matters on which an opinion is requested;
- a reasoned explanation for the request for an opinion; and
- any information that allows COFECE to perform the requested analysis.

If the request contains confidential information, the requesting party must also identify it separately with annexes to justify its confidential character.

It is also important to mention the terms for this type of request.

- Within 10 business days of receipt of the request, COFECE's Presiding Commissioner shall summon and submit the request to the board or plenary of COFECE. The board will have five days to decide whether an opinion will be issued or not and shall notify the interested economic agent of its decision within the next five business days.
- Once the resolution is issued, it will have five business days to turn the file to the entity in charge, which may request additional information and documentation within the following 10 business days, and the economic agent will have to provide such information within the following 15 business days.
- The file will be forwarded to a commissioner, who will have 15 business days to present a draft of the opinion, with the possibility of extending the term for justified cause for an equal period.
- Once the above term has expired, the plenary will have 10 business days to issue a formal opinion.

These procedures may be useful as they can give an overview of what the economic agent is asking. However, and in practice, the content of such opinions is seldom specific; requires a broader search to reach a concrete answer; and are generally seldom used by practitioners, since such opinions may give rise to other types of investigations or are requested to be filed as formal merger control notices or other formal submissions.

Law stated - 16 December 2022

Regulatory climate and enforcement practice

How would you describe government policy and the competition authorities' general regulatory and enforcement approach towards digital companies in your jurisdiction?

COFECCE and IFT try to promote competition in digital markets. There are multiple precedents that support a pro-digital approach. Among them, there are several merger-control cases such as the following acquisitions:

- Banamex, Inbursa–Pagos Móviles (in the mobile payments market);
- Uber–Cornershop (display, purchase and immediate delivery of products offered by self-service stores and price clubs through websites and apps to end-users);
- Privalia–Grupo Axo (online trading of clothing, footwear and household products);
- PayClip–General Atlantic, Banorte (card payment acceptance services);
- Konfio Limited, Red Amigo–LA Holdings (credit market for individuals and companies);
- Kavak Holdings–LA Holdings, General Atlantic KV, Greenoaks (purchase and sale of used cars); Despegar.com Corp–Best Day (online travel shopping platforms); and
- recently, HBO–Warner Bros Discovery.

Notwithstanding, it is necessary to emphasise that the authorities have actively sought to disseminate the benefits of the operation of digital markets. Therefore, the authorities have been expanding their knowledge on these markets by increasing their ability to analyse and investigate the digital economy, acknowledging that eventually these markets could dominate the exchange of products and services in Mexico.

Law stated - 16 December 2022

HORIZONTAL AGREEMENTS

Special rules and exemptions

Do any special rules or exemptions apply to the assessment of anticompetitive agreements between competitors in digital markets in your jurisdiction?

There are no special rules that apply to the assessment of anticompetitive agreements between competitors in digital markets in Mexico. There is still no specific regulation for these markets, hence the same provisions applying for all the other markets are applicable for digital markets.

Law stated - 16 December 2022

Access to online platforms

How has the competition authority in your jurisdiction addressed horizontal restrictions on access to online platforms?

Currently, we are not aware of any decisions of horizontal restrictions on access to online platforms in Mexico. However, COFECE is currently carrying out an investigation in the national retail e-commerce market, with the purpose of determining the possible existence of barriers to competition, free market access and essential facilities that may generate anticompetitive effects. The resolution issued by COFECE indicating the opening of the investigation is available on their website .

Law stated - 16 December 2022

Algorithms

Has the competition authority in your jurisdiction considered the application of competition law to the use of algorithms, in particular to algorithmic pricing?

Yes; in a document issued in 2021 called 'COFECE Digital Strategy', COFECE stated that there are 'new forms of collusion or price fixing' by using algorithms powered by large amounts of money, which could take place even without human intervention.

Likewise, in another document published on 2018 by COFECE, called 'Rethinking competition in the Digital Economy', COFECE addressed these issues in greater detail, addressing:

- the use of big data as an instrument that can generate a barrier to entry to certain digital markets;
- the use of the same price algorithms by many users to determine the market price, which would have a negative impact on the markets, and which would be similar to horizontal collusion since the result would be the presence of higher prices than those that would prevail in competition;
- tacit collusion derived from the use of algorithms that, by means of adjusting prices according to market data, result in parallel fixing of prices; and
- collusion derived from the operation of artificial intelligence in a market transparency scenario, which derives in an anticompetitive result without the need for the existence of an explicit or tacit agreement, but rather as a best response.

Law stated - 16 December 2022

Data collection and sharing

Has the competition authority in your jurisdiction considered the application of competition law to 'hub and spoke' information exchanges or data collection in the context of digital markets?

Through some international precedents in cases involving companies such as Facebook and Whatsapp in Germany, Mexican competition authorities acknowledge that the collection of data by digital markets can generate three major problems:

- the information could constitute a barrier to entry;
- it could be used for abuse of dominance practices; and
- it could facilitate collusion. However, the exchange and collection of data on digital markets has not been specifically regulated.

In terms of competition, COFECE has stated that the collection and use of data for the purpose of price discrimination or for the imposition of vertical restrictions generates certain asymmetries in the market. First, companies have much more information than the users themselves, who often lose awareness of which companies have what information

and how it is marketed. Second, as a company obtains more information about a customer, it may reduce its purchasing options; for example, by showing them higher prices based on the information previously collected about them. Since the consumer cannot easily know the general price in the market as it can only see the prices that appear in his search, there is less price transparency. A clear example of this is the case of Best Day–Despegar , where the authority expressed its concern regarding the issue of price searches through these platforms and where an ‘abuse of online advertising dominance’ could happen.

Law stated - 16 December 2022

Other issues

Have any other key issues emerged in your jurisdiction in relation to the application of competition law to horizontal agreements in digital markets?

Other than the opinions and reports issued by COFECE and the IFT, no other issues have emerged regarding the application of competition law to horizontal agreements in digital markets.

Law stated - 16 December 2022

VERTICAL AGREEMENTS

Special rules and exemptions

Do any special rules or exemptions apply to the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets in your jurisdiction?

There are no special rules that apply to the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets. There is still no specific regulation for digital markets.

Law stated - 16 December 2022

Online sales bans

How has the competition authority in your jurisdiction addressed absolute bans on online sales in digital markets?

None of the competition authorities in Mexico have resolved any matter regarding absolute bans on online sales in digital markets in the use of their jurisdictional powers. However, the Mexican Federal Economic Competition Commission (COFECE) has stated that it is aware of modern ways for exerting abuse of dominance within these markets and acknowledges as an example that there might be some restrictions or prohibitions of online sales or bans on certain platforms, particularly on luxury products.

Law stated - 16 December 2022

Resale price maintenance

How has the competition authority in your jurisdiction addressed online resale price maintenance?

We are not currently aware of any case related to online resale price maintenance being solved by competition authorities in Mexico.

However, both COFECE and the Mexican Federal Telecommunications Institute (IFT) have expressed a concern in the collection of data since the use of algorithms may enhance abuse of dominance cases. For example, a manufacturer with market power that uses an algorithm to detect and sanction any reseller who is selling below or above the price set by the manufacturer.

The authorities acknowledge that resale price maintenance as a conduct that may be anticompetitive; however, the agencies have not provided any guidelines to limit any potential harmful effect to the competition process derived from such a commercial strategy.

Law stated - 16 December 2022

Geoblocking and territorial restrictions

How has the competition authority in your jurisdiction addressed geoblocking and other territorial restrictions?

We are not aware of this problem being addressed yet by any of the competition authorities in Mexico. Entities with geoblocking measures are still typically found in several entertainment and tech industries in Mexico.

Due to this lack of precedents, parties that wish to implement geoblocking measures in Mexico should consider that, for them to be fined by competition authorities, such measures would either have to be made to fit into an anticompetitive practice (either horizontal or vertical) or as a barrier to competition. For the purposes of vertical anticompetitive conducts or barriers to competition, substantial market power in defined relevant markets would be required.

Contrary to some other jurisdictions, competition chapters of international treaties subscribed to by Mexico do not specifically state or provide any kind of express prohibition on geoblocking measures.

Law stated - 16 December 2022

Platform bans

How has the competition authority in your jurisdiction addressed supplier-imposed restrictions on distributors' use of online platforms or marketplaces and restrictions on online platform operators themselves?

Both COFECE and the IFT are facing a challenge in identifying when this type of conduct may generate anticompetitive effects in digital markets. These could become increasingly common, sophisticated and difficult to analyse, in addition to such platforms being created and becoming more active in jurisdictions outside of Mexico. Although the authorities recognise this problem, they have not yet made any official pronouncements on the matter or solved a case which expressly addresses this issue, although COFECE is currently investigating marketplaces due to potential barriers to competition.

COFECE has stated that restrictions or prohibitions of online sales or on certain platforms are restrictions imposed by manufacturers to prohibit the sales of their products on internet sites or certain platforms and that such cases generally occur in the case of luxury products. As an example, COFECE pointed out that in 2012 Adidas only allowed its authorised distributors to sell the German brand's products on the distributors' own websites but prohibited them from doing so on their other platforms (eg, eBay, Amazon and Rakuten.de). Adidas also required them to ensure that customers did not reach the authorised online stores via platforms bearing the logos of sites such as those mentioned

above.

The lack of precedents or specific regulation at present will force the authorities try to make a case by fitting the relevant conduct into one of the specific prohibitions outlined in the Federal Economic Competition Act.

Law stated - 16 December 2022

Targeted online advertising

How has the competition authority in your jurisdiction addressed restrictions on using or bidding for a manufacturer's brand name for the purposes of targeted online advertising?

Although this problem has been addressed by other competition authorities around the world, Mexico has not addressed it yet.

Law stated - 16 December 2022

Most-favoured-nation clauses

How has the competition authority in your jurisdiction addressed most-favoured-nation clauses?

These issues have only been addressed in a report issued by COFECE, where they acknowledged that they refer to vertical agreements between suppliers and sellers, whereby one of the parties undertakes to guarantee the other the best price for a product or service.

In this report, COFECE cites as an example of these clauses the investigation conducted by the UK and German authorities into agreements between Amazon and sellers of different products through its platform. COFECE argues that in this case, the sellers agreed that they would not sell cheaper on other platforms that were not Amazon, including in their own online stores. The authorities determined that this agreement was price fixing between competitors, so Amazon removed the clause.

The report also mentions another example: an investigation conducted by the German competition authority against Booking.com for imposing clauses that force the hotels to always offer the lowest price, the largest room capacity and the most favourable cancellation policy in the online and offline market (broad best-price clauses). These clauses were prohibited.

COFECE is currently conducting an investigation into barriers to competition in digital marketplaces but has not yet issued any resolution.

Law stated - 16 December 2022

Multisided digital markets

How has the competition authority in your jurisdiction addressed vertical restraints imposed in multisided digital markets? How have potential efficiency arguments been addressed?

There have been no cases of vertical restraints being imposed on multisided digital markets in Mexico yet. The only case investigated by COFECE related to digital markets in this context was an investigation of the e-commerce platform services market, but it was closed due a lack of sufficient evidence.

However, COFECE is currently carrying out an investigation into the national retail e-commerce market with the purpose of determining the possible existence of barriers to competition, free market access and essential facilities that may generate anticompetitive effects. Although the investigation is confidential, we believe that is very likely that one of the

things COFECE is looking into is possible vertical restraints in multisided digital markets. The resolution that follows this investigation will be key to understanding the way in which COFECE analyses digital markets, since it will be the first to potentially address the issues that have been recognised for their importance by other competition authorities around the world.

Law stated - 16 December 2022

Other issues

Have any other key issues emerged in your jurisdiction in relation to the application of competition law to vertical agreements in digital markets?

COFECE has stressed its concern with the collection of big data and its use in algorithms. The authority assumes that companies are using these tools to offer prices close to the reserve price of each customer.

Notwithstanding, COFECE acknowledges that a price discrimination policy is not illegal per se. This could be viewed as an anticompetitive conduct to the extent it is carried out by an entity with market power. This brings another set of questions, as the corresponding competition assessment would have to deal with markets in which any customer has a particular price, as opposed to traditional markets, in which it is common to have similar prices. COFECE recently flagged this potential concern but did not offer an answer.

COFECE has also stressed that there are other vertical restraints which may be relevant in digital markets, such as:

- the application of 'most favored nation' prices;
- restriction or prohibition of sales online or on certain platforms; and
- resale price maintenance targeted to a specific retailer.

Law stated - 16 December 2022

UNILATERAL ANTICOMPETITIVE CONDUCT

Establishing market power

What are the relevant criteria for establishing market power in digital markets in your jurisdiction? Is there any concept of 'abuse of economic dependence' where a company's market power does not amount to a dominant position?

Traditionally, in accordance with the Federal Economic Competition Act (FCA) an entity would have market power if:

- their market share and ability to unilaterally fix prices or restrict supply in the relevant market, without competitors being actually or potentially able to counter-balance such power. To determine market share, COFECE may consider sales indicators, number of clients, production capacity, as well as any other factor deemed appropriate; and
- there are barriers to entry;

Additionally, the authority must assess the following:

- competitors and their and market power;
- the access to input sources; and
- the recent behaviour of the relevant entity that participate in said market.

Likewise, analysing market power has traditionally implied, among other variables, a review of the company's profits. In fact, the definition of the exercise of market power – and even more so when it involves anticompetitive behaviour – is related to the generation of 'extraordinary profits' (ie, higher than those that would be generated under competitive pressure). However, many digital companies tend to have negative or very low profits for long periods when they start their operations.

Mexican authorities are aware that the digital market requires a different analysis as these markets traditionally use market shares to determine the dominance of a company in a market. In a digital context, the existence of network effects or platforms can generate accelerated growth of a company and confer a high market share in a short period of time. Although the Mexican Federal Economic Competition Commission (COFECE) and the Mexican Federal Telecommunications Institute (IFT) recognise this problem, they have not yet made pronouncements or solved specific cases on the matter.

Additionally, there is still no concept of 'abuse of economic dependence' or a similar concept.

Law stated - 16 December 2022

Abuse of market power

To what extent are companies with market power in digital markets subject to the rules preventing abuse of that power in your jurisdiction?

Since there is no specific regulation for digital markets in Mexico, companies with market power in these markets would be subject to the FCA.

While there is no specific definition of abuse specifically related to digital markets, the FCA does set forth that the abuse of substantial power in a market shall be illegal where:

- a conduct, agreement, procedure or combination has or may have as its purpose or effect, in the relevant market or a related market thereof, the undue displacement of other participants; and
- the potential competition advantages from this conduct do not outweigh the risks.

COFECE has pointed out that the digital markets should not be assessed under the same criteria used for traditional markets; however, the authority does not shed light on the proper assessment for such markets.

Law stated - 16 December 2022

Data access

How has the competition authority in your jurisdiction addressed concerns surrounding access to data held by companies with market power in digital markets?

COFECE has addressed this in a general way, highlighting the importance of reducing the costs of exchanging data between digital platforms with the aim of allowing users to migrate to other platforms. It also noted that the use of big data might be a barrier to entry for other competitors.

Law stated - 16 December 2022

Data collection

How has the competition authority in your jurisdiction addressed concerns surrounding the collection of data by companies with market power in digital markets?

One of the main concerns of the competition authorities is the collection of data by companies. This can generate three potential problems:

- the information could constitute a barrier to entry;
- it could be used for abuse of dominance practices; and
- it could facilitate collusion.

Nonetheless, the exchange and collection of data through electronic markets has not been regulated, although certain precedents do exist where the sharing of information from competitors using a digital application was the main reason for prohibiting the merger.

In 2019, COFECE denied the Walmart–Cornershop transaction since it identified possible risks to competition. COFECE concluded that Cornershop, a delivery application for groceries mainly, could not only start to refuse to provide services to Walmart's competitors, but most importantly, COFECE was concerned with the use of data of Walmart's competitors by means of the Cornershop platform.

This case shows that COFECE is concerned with the exchange and retention of data obtained through digital markets, as well as the possible abuse and damages that could derive from the use of information obtained through these platforms.

In this regard, and in terms of competition, COFECE has stated that the collection and use of data for the purpose of price discrimination or the imposition of vertical restrictions may create certain asymmetries in the market. First, companies have much more information than the users themselves, who often lose awareness of which companies have what information and how it is marketed. Second, as a company obtains more information about a customer, it may reduce its purchasing options, offering a price close to the reservation price of each customer.

Law stated - 16 December 2022

Leveraging market power

Has the competition authority in your jurisdiction adopted any decisions involving theories of harm relating to leveraging market power in digital markets, such as through tying, bundling or self-preferencing?

There have been no cases regarding vertical restraints in digital markets in Mexico, as the only investigation that was being carried out by COFECE was closed due to the lack of sufficient evidence. Competition authorities in Mexico have not yet adopted any decisions involving theories of harm related to leveraging market power in digital markets.

Notwithstanding, and based on cases such as Despegar.com Corp –Best Day , it is clear that the authorities continue to try to delve into such matters and take them into account in their decisions. Recently, the IFT received a claim against Google and Apple related to tied sales, in which the claimant argues that both companies mandate that any purchases of digital goods within apps distributed through the Google Play Store and Apple's App Store can only be paid for through Google and Apple's payment processing systems. The claimant also argues that both Apple and Google take advantage of their monopolistic position in their app stores 'to tie up the use of their own payment

processing systems', for which they also charge a commission of between 15 and 30 per cent, something that 'artificially raises the price of digital goods'.

Although it remains to be seen whether such claims are accurate, the tied sales referred to in the complaint are a practice prohibited by law if the alleged offender has substantial market power in one of the markets that are engaged in the tying conduct. In this case, the claim alleges that the technology companies condition the sales of the applications or within the applications offered in their stores to the use of their own payment systems.

Although this complaint against Google and Apple is the first of its kind in Mexico, it is not the first in other countries. Authorities in the European Union, the United Kingdom, France, the Netherlands, Germany, Australia and Korea have all initiated proceedings against these companies for similar types of practices.

Law stated - 16 December 2022

Other theories of harm

What other types of conduct have been found to amount to abuse of market power in digital markets in your jurisdiction?

Other than the previously discussed cases, neither of the two competition authorities in Mexico have detected conducts that constitute an abuse of market power in digital markets.

Law stated - 16 December 2022

MERGER CONTROL

Merger control framework

How is the merger control framework applied to digital markets in your jurisdiction?

There are no special rules or specific thresholds applied to digital markets. The transactions related to digital markets should be evaluated under the traditional monetary thresholds, which are set forth in the FCA.

Law stated - 16 December 2022

Prohibited mergers

Has the competition authority prohibited any mergers in digital markets in your jurisdiction?

Yes; COFECE prohibited the acquisition of Wal Mart International Holdings, Inc (Walmart) of Delivery Technologies, S de RL de CV (Cornershop).

COFECE decided to not authorise the merger, mainly for the following reasons.

- Cornershop may refuse to provide its service to Walmart's competitors.
- Walmart may refuse to market its products through other platforms that are competitors of Cornershop.
- The economic agent resulting from the transaction could induce the exit of Walmart's competitors from the Cornershop platform through the strategic use of the information that they provide and produce on the platform for the sale of their products.

Law stated - 16 December 2022

Market definition

How has the competition authority in your jurisdiction addressed the issue of market definition in the context of digital markets?

The market definition in the context of digital markets has raised a battle between the competition authorities in Mexico, with collateral impact among market participants, particularly those engaged in activities related to over-the-tops (OTTs) and their services. During the past eight years, both authorities have been at odds as both have asserted jurisdiction on these matters. The battle has intensified during the last few years.

The debate between the agencies has increased and become more complex, to a certain extent because the early decisions from courts were more general in nature and did not shed much light on the actual markets in which each agency is competent, and to a great extent because the technological evolution of the services provided through OTT platforms has moved forward rapidly, bringing additional questions into this discussion.

Particularly with respect to OTT markets, federal courts have issued recent decisions addressing jurisdiction in these markets. The criteria from the courts have changed in such decisions and have swung between the agencies. In the most recent decision, specialised courts concluded that the IFT had jurisdiction if the disputed markets featured services that demanded the internet as a relevant input and if such services fell under the asymmetric regulation imposed on the preponderant economic agents.

Geographic market definitions have not been subject to discussion within the recent decisions. It seems that these markets must at least be reviewed at the national level.

Law stated - 16 December 2022

'Killer' acquisitions

How has the competition authority in your jurisdiction addressed concerns surrounding 'killer' acquisitions in digital markets?

COFECE is aware of the importance of monitoring these types of transactions, which could not only reduce the number of competitors and the intensity of current competition in the market but could also discourage innovation in the long term and therefore affect future competition conditions. Therefore, in the analysis of the market power derived from a merger of this type, the long-term effects on market behaviour and dynamic competition become more relevant in comparison with traditional sectors. Therefore, for the analysis of mergers in digital markets, beyond considering joint market shares if the merger takes place, it may also be necessary to analyse and understand the direct and indirect network effects; economies of scale; access to data; and the potential for innovation.

The competition authorities have not yet regulated killer acquisitions in digital markets that do not exceed thresholds; however, they have issued opinions on the need to develop monitoring procedures to identify them and rethink the criteria established by the regulations for the merger filings.

Law stated - 16 December 2022

Substantive assessment

What factors does the competition authority in your jurisdiction consider in its substantive assessment of mergers in digital markets?

Nowadays, the most important factor is the definition of the underlying markets is related to the transaction to be

reviewed. The competition authorities must prove that there are sufficient grounds to be the competent authority for the corresponding case, particularly because their decision would be subject to the scrutiny of specialised federal courts.

In addition to the foregoing, the authorities carefully consider the vertical relationships that the transaction may create, avoiding the existence of any theory of harm that might create exclusionary effects.

Law stated - 16 December 2022

Remedies

How has the competition authority in your jurisdiction approached the design of remedies in mergers in digital markets?

Competition authorities have not imposed remedies in mergers in digital markets. Almost all the mergers outlined above were authorised by COFECE because it was of the opinion that the transactions represented no risks to competition and free market access, therefore, no remedies were imposed, with the Cornershop–Walmex merger being a relevant exception, for the reasons stated before.

Law stated - 16 December 2022

UPDATE AND TRENDS

Recent developments and future prospects

What are the current key trends, legislative and policy initiatives, recent case law developments and future prospects for the enforcement of competition law in digital markets in your jurisdiction?

To the best of our knowledge, no bills have been submitted to Congress to regulate competition in digital markets. There is currently an investigation underway by the Mexican Federal Economic Competition in the national retail e-commerce market, with the purpose of determining the possible existence of barriers to competition, free market access and essential facilities that may generate anticompetitive effects.

Considering that these markets have been growing rapidly, we expect to see more merger control cases regarding digital markets.

Law stated - 16 December 2022

Jurisdictions

	Australia	Gilbert + Tobin
	Brazil	Advocacia José Del Chiaro
	China	King & Wood Mallesons
	European Union	Herbert Smith Freehills LLP
	Germany	Herbert Smith Freehills LLP
	Japan	Miura & Partners
	Mexico	Galicia Abogados SC
	South Korea	Yoon & Yang LLC
	Sweden	Advokatfirman Cederquist KB
	Switzerland	Prager Dreifuss
	Turkey	ELIG Gurkaynak Attorneys-at-Law
	United Kingdom	Herbert Smith Freehills LLP
	USA	Crowell & Moring LLP