Monday, May 16, 2022

Under the Federal Economic Competition Law (LFCE), parties to certain concentrations with effects in Mexico, such as joint-ventures, mergers, or acquisitions of shares or assets (directly or indirectly) in Mexico, are required to notify and to obtain clearance from the Federal Economic Competition Commission (“COFECE”) before the transaction is closed and becomes effective in Mexico. Recently, COFECE has fined companies in the auto parts industry more than 9 million Mexican pesos for failing to notify two concentrations on time.
A joint venture, merger, or acquisition transaction should be notified and cleared by COFECE only if it triggers any of the thresholds set forth in Article 86 of the LFCE, in one or more steps, in Mexico.

Pursuant to the last update in the Mexican Official Unit of Measure (known as “UMA”) value published in the Federal Official Gazette on January 10, 2022, the referred thresholds to notify were modified, and currently apply as follows[1]:

- **Section I.** When the value of the transaction (i.e., the price to be paid for the shares or assets), directly or indirectly, and regardless of its place of execution, is greater than $1,731,960,000 Pesos, Mx. Cy. (the equivalent of approximately USD$86.5 Million) in the portion attributable to the Mexican shares or assets, if any.

- **Section II.** When the transaction involves the direct or indirect acquisition or accumulation of thirty-five percent (35%) or more of the capital stock or assets of an economic agent (e.g., a company) having, before the transaction, assets or annual sales in Mexico or attributable to Mexican operations, greater than $1,731,960,000 Pesos, Mx. Cy. (the equivalent of USD$86.5 Million approximately).

- **Section III.** When the transaction involves the direct or indirect acquisition or accumulation in Mexico by the acquirer of assets or capital stock of other entities in an amount exceeding $808,248,000.00 Pesos Mx. Cy. (the equivalent of approximately USD$40 Million) and the economic agents participating in the transaction (e.g., joint-venture parties, buyer, seller, or others), jointly or separately, had assets or annual sales in Mexico in the previous year exceeding $4,618,560,000 Pesos Mx. Cy (the equivalent of USD$231 Million approximately).

Due to the last UMA increase, the fines that COFECE may impose for the omission to notify a concentration have also increased 7.36%.

Our antitrust and transactions teams at Foley have extensive experience and capacity to assist clients in filing these type of merger control notifications and obtaining clearances with COFECE in Mexico.

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**FOOTNOTES**

[1] The thresholds are based on multiples of the daily Mexican Official Unit of Measure (known as “UMA”) set forth for 2022 (i.e., $96.22 Mx. Cy.) and is subject to change on a yearly basis. For the estimated conversion into U.S. Dollars, we have used an average exchange rate of $20 Mx. Cy. per U.S. Dollar, and rounded the figures. It should be noted that the official figures to consider are in Mexican pesos. The Mexico/U.S. Dollar exchange rate is constantly fluctuating and, therefore, U.S. Dollar amounts are only for an estimated reference. If the transaction is closed in 2022, the financial figures to consider while analyzing the thresholds of Section II and Section III are those set forth in statutory financial statements as of December 31, 2021.
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