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Panama Papers leak sparks Mexican investigation

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Panama City (Credit: iStock)

Mexico's competition authority is re-examining a major pharmaceutical merger, after the Panama Papers revealed the purchase had allegedly been funded by the wife of the owner of its biggest rival.

Dutch private equity fund Moench Cooperatif paid US$83 million to acquire drug distribution company Casa Marzam last year. Mexico's Federal Economic Competition Commission approved the deal last year after the fund claimed to be entering the drug distribution market for the first time.

Leaked documents from Panamanian law firm Mossack Fonseca apeared to reveal Marina Matarazzo de Escandon funded the entire deal; she is married to Pablo Escandon, the president and chief executive officer of Nadro, the largest pharmaceutical distributor in Mexico.

The link came to light after an anonymous whistleblower leaked thousands of documents from Panamanian law firm Mossack Fonseca to media organisations earlier this year. The leak exposed the offshore banking arrangements of thousands of individuals and companies.

A spokesperson for the commission said it is currently analysing the Casa Marzam acquisition's compliance with Mexican law.

Under Mexican law, merger filings must include a description of the parties' capital structure and name partners or stakeholders – either direct or indirect – and name any individuals that have a controlling stake in the parties involved in the transaction.

Mexican law does not require full disclosure of the sources of a transaction's funding. The documents from Mossack Fonseca appear to reveal that Marina Matarazzo de Escandon provided the loan to Moench Cooperatif, but has no shares in the fund.

Luis Garcia Santos Coy at Creel García-Cuéllar Aiza y Enriquez in Mexico City said whether the company actually broke the law is unclear. "If the funding was structured as a loan, and there is no legal requirement [under Mexican law] to disclose who provides the funding," Coy said. "There is no vaccine against bad faith."

This is the first time since the new commission came into force two years ago that such a case has arisen. How the Mexican enforcer proceeds will test its jurisdiction to re-examine cases it has previously approved – but it is unclear on what legal basis it will proceed.

Under the new law, the commission has the power to cancel transactions if they were approved on the basis of false or misleading information. The commission can also file complaints with public prosecutors, as misleading public authorities is a criminal offence.

Even if the filing was made in bad faith, it is not clear that Marina Matarazzo de Escandon's name was legally required to be on the filing documents.

Luis Omar Guerrero Rodríguez at Hogan Lovells in Mexico City said the legal uncertainty surrounding the case means he does not think the commission will attempt to simply reverse its decision. "It is more likely to start a special proceedings, conduct its own investigation and give the parties the right to be heard. And then take a decision," he said.

The revelation of the alleged link between Nadro and Casa Marzam opens another possibility for the commission to pursue: it could charge the companies with the violation of Mexican laws that ban anti-competitive information exchanges and cartels.

Fernando Carreño Nuñez de Alvarez at Von Wobeser y Sierra in Mexico City thinks this is the most likely course of action. “It is ridiculous to believe that someone would lend US$80 million to a third party without doing due diligence,” Carreño said.

None of the companies named in this story could be reached for comment.

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