

## Mexico probes digital ad market

Emily Craig | 01 September 2020



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Mexico's competition watchdog has launched an abuse of dominance investigation into the digital advertising services market to determine whether market participants are complying with competition rules.

Mexico's Federal Economic Competition Commission (COFECE) announced the probe on 24 August and said it will focus on whether companies in the market have bundled their services or increased costs, altered production processes or reduced demand of other market participants.

The authority said it has not yet identified any competition violations in the market or any suspected companies.

COFECE said the digital advertising market is one of the country's most important markets for advertising, with Mexico receiving the second highest investment in the digital advertising market out of all Latin America countries in 2019.

The commission can fine a company up to 8% of its annual turnover if it finds an infringement.

COFECE opened its investigation on 10 August and has until 25 January to complete the probe. It has the option to extend the investigation by 120 working days up to four times.

The probe comes one month after the commission created a digital unit to examine the development of digital markets and assist it with investigations and merger reviews in the sector.

Fernando Carreño, a partner at Von Wobeser y Sierra SC in Mexico City, told Latin Lawyer's sister publication *Global Competition Review* that digital markets "will be even more relevant" in a post-coronavirus pandemic economy and big players should be able to explain the new dynamics of these markets to COFECE.

The probe "will be a very important challenge" for COFECE, because it will need to develop a thorough understanding of the market to avoid imposing unfair heavy burdens on a sector that is of "the utmost relevance in the recovery of the economy," he said.

Carlos Mena-Labarthe, a former official at COFECE and now a partner of Creel, García-Cuellar, Aiza y Enriquez SC in Mexico City, told *Global Competition Review* that he thinks the probe will target Google and Facebook, and these companies should engage with the commission as soon as possible.

Mena-Labarthe said he expects the commission to ask all market participants to complete questionnaires, "so companies should get ready".

It will be a challenge for COFECE to define the relevant market because other jurisdictions have also struggled with this, he said. The commission recently closed an e-commerce payment investigation, partly due to difficulties with market definition, he noted.

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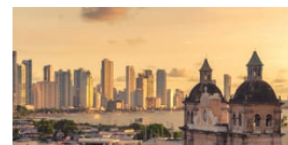
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Mexico's telecommunications regulator – Federal Institute of Telecommunications – could challenge COFECE's jurisdiction, as it previously considered itself to be competent to review Uber's acquisition of Cornershop, he said.

Mena-Labarthe said the commission and the institute asked the First Collegiate Court Specialised in Economic Competition, Broadcasting and Telecommunications to determine which authority had jurisdiction in that case. The court ultimately ruled that COFECE had jurisdiction but it could decide differently in this case, he said.

Omar Guerrero Rodríguez, a partner at Hogan Lovells LLP in Mexico City, told *Global Competition Review* that there had been very few vertical restraint investigations in Mexico. COFECE likely opened the probe in reaction to competition authorities in other jurisdictions investigating the same market, he said.

The UK's Competition and Markets Authority published its final report on online platforms and digital advertising in July, which found that Facebook and Google use their market power to pressure consumers into giving up their data and potentially stifle innovation.

In April, Japan's Fair Trade Commission released its digital advertising survey results, which showed that national businesses found contacts with major digital platforms – including Google and Facebook – to be restrictive and difficult to change.

The Australian Competition and Consumer Commission opened a 18-month inquiry in February into the markets for the supply of advertising technology and digital advertising agency services.

COFECE, Facebook and Google did not respond to *Global Competition Review's* request for comment.

*The article was first published on 25 August by Latin Lawyer's sister publication Global Competition Review.*

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