# The Public Competition Enforcement Review

Sixth Edition

Editor
Aidan Synnott

Law Business Research

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# The Public Competition Enforcement Review

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Editor
Aidan Synnott

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# THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

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# EDITOR'S PREFACE

The reports from around the globe collected in this volume will be of keen interest to practitioners of competition law everywhere. Increasingly we see that effects of public competition enforcement in individual jurisdictions are felt well beyond those jurisdictions as firms become globalised and cross-border trade increases. To be sure, many jurisdictions retain important local particularities in competition law and enforcement priorities. However, as we can see from the reports collected in this volume, increasing international cooperation among competition enforcers, the widespread reach of firms' conduct and the economic circumstances of certain industries have led to a notable convergence in the cases attracting the attention of enforcers.

With respect to cartel enforcement, the reports from the European Union, Switzerland and the United States all describe efforts in those jurisdictions concerning alleged fixing of the London Inter-Bank Offered Rate (LIBOR). Last year, in a related case, the European Commission levied its largest-ever aggregate fine. The past year also saw continued efforts by regulators to police *auto parts* price-fixing cartels. For example, the United States, the European Commission and Japan each have levied significant fines on auto parts companies around the globe, and Australia continued its proceedings against several firms in this industry. The alleged *liquid crystal display* cartel continues to attract attention from (and fines imposed by) authorities around the world.

Various alleged bid-rigging schemes have attracted the attention of authorities in many jurisdictions, including Brazil, Colombia, Germany, India, Romania, Switzerland and the United States. These investigations range from the provision of subway trains to railway tracks to rubber soles for boots to firearms to road construction. Competition authorities in the United States have continued their focus on bid rigging in municipal bond and real estate foreclosure auctions. The Italian authorities investigated a joint venture between Italian and French firms formed to bid on the provision of services to art museums and archeological sites, but found no infringement.

We also see a convergence in enforcement priorities in other areas. As detailed in the chapters that follow, several jurisdictions have acted against pay-for-delay agreements in the pharmaceutical industry. Last year, the United States Federal Trade Commission

won an important Supreme Court challenge to these agreements, and the European Commission and France levied several fines on parties to such agreements. Italy has also commenced an investigation into one such agreement. The reports from Australia, India and the United Kingdom describe further enforcement efforts in the pharmaceutical industry. Argentina and Italy, like the United States and Spain, continue to investigate various professional associations for possible anti-competitive agreements.

High technology industries – and in particular concerns surrounding the behaviour of firms holding standard-essential patents – continue to get significant attention from enforcers around the world. Chinese authorities have launched an investigation into a wireless research and development company over complaints that it has charged excessive fees for the licensing of certain of its patents for technology standards for mobile phones; the European Commission is undertaking an investigation of major industry players in connection with their ownership of standard-essential patents; and United States authorities continue to actively discuss policy in this area.

Additionally, both the United States and the European Commission have had success in their actions against e-Book publishers. Several jurisdictions – including Brazil, Germany, Switzerland and Finland – have brought actions concerning resale price maintenance schemes for various products. We also note that Brazil, Japan and Spain have moved against copyright management organisations for their actions with respect to royalties. Several of the chapters that follow note the efforts of various regulators concerning interchange fees associated with credit card transactions.

Enforcement activity related to mergers remains robust, and issues surrounding consolidation in the airline industry have occupied regulators across the globe. Both the European Commission and the United States Department of Justice confronted proposed airline mergers last year, leading to different results: the European Commission continued to oppose the proposed merger of Irish airlines Aer Lingus and Ryanair, while the merger of American Airlines and US Airways was ultimately cleared by the United States authorities. Brazilian authorities approved the merger of Azul and Trip Linhas Aéreas subject to conditions. Meanwhile, as detailed in the report from India, after an analysis that will be of interest to practitioners in and observers of airline competition issues, the Indian authorities approved various agreements between Etihad Airways and Jet Airways.

Competition law continues to evolve across the globe. Indeed, the report from the United Kingdom will be of particular interest. It describes the significant changes in the competition enforcement regime there, as authority for enforcement shifts from two separate authorities, the Office of Fair Trading and the Competition Commission, to a single Competition and Markets Authority. Mexico has a proposed new Antitrust Act, which is under discussion in the Mexican Congress. In China, Mofcom has published draft Provisions on Imposing Restrictive Conditions on Concentration of Undertakings which, we read, are expected to be adopted this year. We also note that in the coming year Australia will undertake a significant review of its competition laws. The report from Brazil details the first full year of that jurisdiction's new competition regime. The report from Germany describes important amendments to the German Act Against Restraints to Competition, particularly regarding the law's application to merger review; and the report from France details new guidelines there for merger control. Numerous

jurisdictions continue to implement and refine leniency programmes designed to encourage the reporting of cartel activity.

The reports that follow detail the efforts of public competition enforcers around the globe. Also of keen interest is the keynote piece challenging the European Commission's philosophy of encouraging private enforcement of competition laws. That chapter will surely provoke much thought on the efficacy and desirability of such enforcement.

**Aidan Synnott**

Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP
April 2014

# Chapter 19

# MEXICO

*Fernando Carreño and José Palomar*[1]

## I OVERVIEW

In Mexico, antitrust practice has been, since its creation, one of the most sophisticated and complex topics in Mexican law. This has resulted in a lot of changes in both institutions and legislation, most of them related to increasing powers and sanctions enforced by antitrust authorities against those that breach antitrust law in Mexico, making it an extremely agile practice. This has resulted in it being an important concern for many companies, both local and international, which have implemented antitrust compliance policies and programmes to avoid an investigation and, possibly, a sanction. Consumers have also become more aware of the effectiveness and necessity of having strong antitrust institutions, and the media closely watches any relevant antitrust cases and quickly communicates them to the general public.

The most recent and innovative changes to antitrust practice have come, and continue to come, through the recent constitutional reform in 2013, with modifications in the antitrust authorities and the drafting and discussion of new antitrust laws (Constitutional Reform).

In addition, the President has issued a bill regarding a proposed new Mexican Antitrust Act (MAA), which is currently under discussion in Congress, and is intended to reflect the amendments in the Constitutional Reform (Bill). Some of the most relevant issues of the Bill include the empowerment of antitrust authorities, the introduction of the regulation of essential inputs, the addition of new relative monopolistic practices, as well as increases in administrative and criminal fines and penalties.

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1 Fernando Carreño is a partner and José Palomar is a senior associate at Von Wobeser y Sierra, SC.

### i Prioritisation and resource allocation of enforcement authorities

Currently, the government is prioritising the investigation of cartels and monopolistic practices in markets that have been identified as prone to have such conditions in the Mexican market, such as telecommunications and broadcasting. This has led to the creation of the Federal Telecommunications Institute (FTI), which is in charge of all antitrust activities and mergers related to the telecommunications and broadcasting sectors. All other markets are investigated and reviewed by the Mexican Antitrust Commission (MAC).

### ii Enforcement agenda

The MAC has issued a Strategic Plan for 2014–2017, which covers the proposed agenda regarding antitrust compliance and enforcement during such period. The MAC has also issued a public consultation so that the public and entities can provide the MAC with information regarding which markets are recommended to be prioritised, based on factors such as economic growth, general consumption, transversal impact, negative effects to low-income households and markets that include additional legislation that could derive from the presence of entry barriers.

In addition, the Strategic Plan includes certain specific markets in its agenda that, due to the high prices of consumer goods, stemming from an alleged lack of competition, affect the welfare of the consumer. These conditions have been identified by the MAC in seven markets: tortillas, processed meat, chicken and eggs, milk, sodas, juice and water, beer and medication. The Strategic Plan agenda states that this effect damages rural, low-income households more in comparison with households with higher incomes, while concluding that the enforcement of a strong antitrust policy would favour the population, and specifically the poorest, mostly rural families in Mexico.

While this agenda and the markets included in it are not definitive, it is important to consider that the MAC is identifying those markets that represent antitrust risks to determine the necessary actions that may be enforced and avoid any monopolistic practices in such markets, with a special view to those that affect low-income households.

## II CARTELS

### i Overview

The MAA contains the necessary provisions regarding cartels. Since its publication, the MAA has been subject to important reforms in 2006 and 2011, which, *inter alia*, increased the sanctions for monopolistic practices.

Among the prohibited activities in terms of the MAA are monopolistic practices and prohibited mergers. In turn, the MAA divides monopolistic practices into two groups: absolute and relative.

#### *Absolute monopolistic practices*

Absolute monopolistic practices are defined as contracts between competitors with the desired object or effect of:

*a* establishing, enhancing or manipulating the sale or purchase price of goods or services or exchanging information to such effect;

*b* requiring parties not to produce, sell or purchase a quantity of goods or services;
*c* dividing, distributing or assigning segments of a market; or
*d* establishing or coordinating bids on public tenders, bids or auctions.

Since these are *per se* practices, the MAC must only prove their existence to investigate and sanction them, meaning that it is not necessary for such practices to produce effects in order to be sanctioned.

However, proving the execution of absolute monopolistic practices is difficult. The MAC and the plaintiffs are required to obtain the necessary evidence in order for it to be deemed relevant and start an investigation.

***Relative monopolistic practices***

According to the MAA, relative monopolistic practices, which are rule of reason practices, are acts, contracts, procedures or combinations with the object or effect of improperly displacing competitors, blocking their access to the market or establishing exclusive advantages in favour of one or more economic agents. Unlike absolute monopolistic practices, these practices are usually performed through a vertical relationship (i.e., between a producer and a distributor). However, relative monopolistic practices are subject to verification that those who execute them have substantial market power and correspond to the applicable relevant market.

The relevant market is not defined in the MAA. However, Mexican courts have defined it as the geographic area in which similar products or services are offered and demanded, considering the territory in which they are obtained. Therefore, to define the relevant market, it is necessary to take into consideration the possibility to substitute the good or services being analysed with other products available to the consumers in such area.

In determining the relevant market, the MAC shall consider:

*a* the possibility of substitution of the relevant product or service;
*b* the differences in costs related to the product or service (distribution, transportation, insurance, restrictions, etc.) compared with other territories;
*c* the costs and the ability to search for equal or substitute products in other markets; and
*d* the applicable restrictions to access such products or services, or access to alternative suppliers or customers.

The MAA states that the following are relative monopolistic practices:

*a* exclusive distribution or marketing rights;
*b* imposition of conditions for the marketing of goods or services;
*c* tied sales;
*d* refusal to sell or market goods or services to third parties;
*e* boycotts;
*f* granting of discounts or incentives to not acquire or sell goods or services from a third party;
*g* cost incentives or discounts;
*h* price discrimination;

*i* setting different conditions for different clients or distributors in similar circumstances; and
*j* actions to increase costs, impede the production process or reduce the demand of competitors.

Since the reform of the MAA in 2006, the MAC has had a leniency programme in place for companies or individuals involved in absolute monopolistic practices to voluntarily report their activities. Under the MAA, companies or individuals that have participated in absolute monopolistic practices may reduce or avoid sanctions (which can include criminal sanctions) provided they denounce the illegal acts in question and take the necessary steps to terminate their participation. The leniency programme grants full immunity and confidentiality to the company or individual that was the whistle-blower, in order to continue promoting the option for such company or individual to apply for the immunity programme in current or future investigations.

### ii Significant cases

The MAC and the FTI are working very aggressively against entities that hold a significant presence in their respective markets. While only one investigation has been initiated by the FTI, the MAC has issued several resolutions regarding cartels in diverse markets such as poultry, cement, transportation and refrigerator components.

The most publicised resolution was that in the poultry market, since it involved, as one of the members of the alleged cartel, one of the most important companies in Mexico, as well as other local and international companies. This investigation is currently being reviewed by the Mexican courts.

However, the MAC has also issued controversial rulings regarding the unauthorised merger between Televisa and Iusacell in the mobile phone market, and the revocation of the largest fine in the history of the MAC in exchange for various commitments for the prevention of monopolistic practices (US$11 billion), which may have affected the credibility of the MAC among the Mexican public.

In addition, the MAC has also initiated investigations in, *inter alia*, the sugar, corn and automobile components markets.

In 2011, 20 applications were made to the MAC under the immunity or leniency programme. The most important cases included those regarding the marine transportation services market in the state of Quintana Roo and the trucking market in the state of Baja California Sur. In each of these cases, an applicant in the market filed an application under the leniency programme and provided information that successfully proved to the MAC the existence of absolute monopolistic practices, which led to a significant reduction in the fines imposed on the applicant.

One significant resolution issued recently by the MAC regarded the execution of a worldwide breach of antitrust law that had effects in Mexico. One of the participating companies applied to the leniency programme, resulting in fines exceeding US$20 million.

### iii Trends, developments and strategies

The MAC publicises its investigations and resolutions through mass media with the clear intention of making all entities, as well as consumers, aware that the newly formed antitrust authorities intend to actively investigate and sanction any activities prohibited by law.

The MAC has also begun making full use of its rights to investigate on a larger scale. Since the Constitutional Reform, during the past six months, the MAC has executed more visits to investigated entities than it had done in previous years. This strategy strengthens the fact that the antitrust authorities will work to ensure free trade in all markets.

The leniency programme has had great success in investigations and the determination of sanctions. This, in addition to the strengthening of the antitrust authorities' powers and sanctions, provides those companies involved in absolute monopolistic practices with more reasons to consider applying for leniency. The confidentiality of the applicant throughout the proceeding and after the issuance of the resolution has been an important element that entities that applied to such programme have taken into consideration, as it ensures that they will not be negatively affected in relation to their competitors or suppliers as a consequence of such help to the authorities.

### iv Outlook

Due to the Constitutional Reform, several new topics are being drafted in the Bill, which is expected to be published in the next few months. Two new relative monopolistic practices are being introduced in the Bill before Congress: margin squeeze (i.e., the reduction of margin profits between an essential input and the final product offered to the final consumer), and restricting or denying access to an essential input.

Essential inputs are defined by the Bill as those that inputs are owned or supplied by a reduced number of entities, and which cannot feasibly be reproduced by another agent; and that are indispensable for the provision of goods or services in one or more markets, with no close substitutes. The MAC will determine which inputs are considered essential in accordance with the law.

## III ANTITRUST: RESTRICTIVE AGREEMENTS AND DOMINANCE

Unlike most jurisdictions that have a developed and mature body of antitrust legislation that considers the percentage of market share to determine the dominance of an entity, Mexico has no clear determination in place of how to establish dominance in a specific market.

In accordance with Mexican antitrust law and criteria, an entity has substantial power in the market when it can increase prices, reduce or control the supply or otherwise restrict free trade, and its competitors do not have the ability to counter such actions. For the MAC to prove the existence of substantial power in the market, it shall consider:

*a* the participation of the company in the market and the inability of competitors to counteract this participation;

*b* the existence of entry barriers;

*c* the existence and market power of its competitors;

*d* the possibilities for new competitors to enter the market; and
*e* the behaviour of all competitors in the market.

In addition, it is important that Mexican antitrust law has divided the different types of restrictive agreements into absolute monopolistic practices and relative monopolistic practices, as explained above. The consequences of executing such agreements differ, and the fines imposed on those involved are more elevated when they involve absolute monopolistic practices.

One important change that has taken place since the Constitutional Reform is that companies or individuals affected by the activities of antitrust authorities investigating any monopolistic activity cannot challenge such activities of antitrust authorities through a constitutional appeal before the authorities' final resolution; in the past, such appeal had been used to slow down or stop investigations and weaken the authority's resolution. In addition, such constitutional appeals against a final resolution can only be filed through recently created Mexican courts that specialise in antitrust and telecommunications matters. This has been criticised by many as a breach of the constitutional rights of the affected parties, since it is possible that the antitrust authorities can violate such rights during an investigation without the possibility of the parties lodging an appeal or proceeding to protect them prior to the final resolution.

While the antitrust law applies to most markets, the Constitution provides certain important exceptions. Mexico does not consider strategic activities (e.g., railroads) and activities that are exclusively reserved to the state (e.g., postal services, telegraph and radiotelegraphy, petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals and nuclear power generation, electricity) to be monopolies.

### i Trends, developments and strategies

One of the modifications that the Constitutional Reform (and the proposed Bill), regarding antitrust investigations for absolute monopolistic practices, is the possibility for antitrust authorities to order the divestiture of assets, shares or rights of entities that are repeat offenders in violation of the antitrust law. Such resolution will be enforced by the antitrust authorities as a measure to eliminate anti-competitive effects.

In addition, the Bill introduces penalties for any officials who have represented their companies or entities in the execution of monopolistic practices, consisting of up to five years of disqualification and the removal of such persons as officers or representatives of the company or entity. This specific sanction seems to exceed the limits of the MAC and the FTI by engaging directly in the administrative sanctioning of the economic agents.

The above-mentioned sanctions are a clear indication that the antitrust authorities will punish anyone involved in restrictive agreements and dominance in breach of the antitrust law more severely.

### ii Outlook

Since 2011, an area in which the government has increased its attention and resources is the prevention, investigation and enforcement of antitrust law, and 2014 will not be an exception to this. As part of the Constitutional Reform, the MAC and the FTI are now

independent government agencies, which provides them with more power to enforce and sanction people and entities that are involved in monopolistic practices.

It will be necessary to establish to what extent Congress will modify the Bill and how the new antitrust legislation will enter into effect in order to determine and analyse the manner in which the FTI and the MAC will investigate and sanction restrictive agreements and the illegal use of a dominant position in any market.

## IV SECTORAL COMPETITION: MARKET INVESTIGATIONS AND REGULATED INDUSTRIES

As a result of the Constitutional Reform, the FTI was created. The FTI was appointed to review all antitrust activities specifically related to the telecommunications and broadcasting sectors, which have been identified as markets with companies that hold significant power and prevent the entry of new competitors to the market.

### i Significant cases

In March 2014, the FTI issued an extremely important resolution in which it determined that America Movil (the biggest telephone company in Mexico) is a dominant agent in the telecommunications sector. In addition, the FTI issued a resolution regarding Grupo Televisa (the biggest broadcasting company in Mexico), determining it as a dominant agent in the broadcasting sector.

As such, the FTI imposed on these entities a significant number of prohibitions and measures to reduce such dominance and to allow the entry of new competitors into the markets. This is a very significant step towards ensuring fair conditions in such sectors, and it greatly affected América Móvil and Grupo Televisa (Grupo Televisa's share value on the Mexican Stock Exchange fell 3.7 per cent following the FTI's resolution).

### ii Trends, developments and strategies

Following the FTI's resolutions affecting the dominant agents in the telecommunications and broadcasting sectors, and the proposed procedures related to essential inputs stated in the Bill, it is clear that the antitrust authorities have identified certain specific markets that are prone to facilitating the execution of monopolistic practices, which is why the government is making considerable efforts to ensure that such markets have additional regulations and prohibitions, as well as higher sanctions in place for those who breach the antitrust law.

### iii Outlook

The telecommunications and broadcasting sectors are expected to be the most scrutinised markets in Mexico in the next few years. The creation of a new authority designed specifically to ensure free trade and competition in those markets is a clear sign that the government wants to help not only the smaller competitors in the market, but also ultimately the consumer, since the entrance of new competitors who will invest in broadcasting and telecommunications will help improve the quality of the goods and services provided by the existing companies, and lower the prices for such goods and services.

## V STATE AID

As part of the Constitutional Reform and the Bill proposed by the President, new antitrust legislation will include specific procedures related to the determination of existing barriers to free trade and competition in the markets related to essential inputs. Such procedures can be initiated by the MAC itself or by request of the President (either himself or through the Ministry of Economy). With the addition of this specific regulation, and where applicable, a resolution by the MAC may order the entities involved in markets related to essential inputs to remove the existing barriers to new competitors, as well as the divestiture of assets or rights.

### i Outlook

Given the recent changes in antitrust law and the resolutions of the antitrust authorities, and the addition of regulations in markets related to essential inputs included in the Bill, the antitrust authorities will most likely try to further intervene in such markets.

However, several organisations and analysts have stated that it is important to protect investments and innovation in essential inputs. Further, the broad definitions given to essential inputs and barriers to competition have been flagged as dangerous, since they may empower antitrust authorities to intervene in markets that represent no antitrust threats. Therefore, it will be necessary to review how the Bill will be modified and published in order to prevent excessive antitrust authorities' activity outside the scope that economic theory and the market suggest.

Finally, it will also be necessary to review the procedure included in the Bill to remove ambiguities and possible damages to the incentives to invest and innovate in markets related to essential inputs.

## VI MERGER REVIEW

Not all mergers must be filed before and cleared by the MAC prior to their execution. The MAA states that, to determine whether a merger notice must be filed before the MAC, the participating companies must verify if the merger will have effects in Mexico, and if the merger surpasses the thresholds set forth in the MAA. If the merger exceeds any of the following thresholds, the companies involved must file a merger clearance request before the MAC:

*a* if the cost of the transaction in Mexico (considering only the companies, subsidiaries, affiliates or assets located in Mexico that will be indirectly acquired by the acquiring company) exceeds approximately US$93 million;

*b* if the purchaser, whether located in Mexico or abroad, will acquire at least 35 per cent of the assets or shares of a company or companies in Mexico whose assets or annual sales (those of the Mexican companies only) exceed approximately US$93 million; or

*c* if the assets or annual sales volumes of the purchaser or seller (regardless of the country in which they are located), separately or jointly, exceed approximately US$248 million, and the transaction involves the purchase in Mexico of assets or capital greater than approximately US$43 million.

When a merger has effects in Mexico and any of the above-mentioned thresholds are surpassed, the participating companies are obligated to file a merger clearance request before the MAC.

### i Significant cases

In recent years, several important mergers (many with a global impact) have been analysed and resolved by the MAC in the beer, automobile, consumer goods, hotel and cinema industries. The most important merger authorised by the MAC was the purchase of Grupo Modelo by Anheuser-Busch InBev, which represents the biggest merger in Latin-American history.

However, some mergers have been conditioned by the MAC in its final resolution on the execution of several commitments to ensure free trade and competition. One of the most significant was the request by Alsea (the biggest restaurant administrator) to purchase Vips (a nationwide restaurant chain) from Wal-Mart. The MAC identified that Alsea, which owns many of the top restaurant brands in Mexico, might agree on exclusivity agreements with shopping malls for all its restaurants and stores, which would in turn limit the presence of their competitors in such venues, thereby affecting free competition.

### ii Trends, developments and strategies

The most significant change in merger review proposed by the Bill (through the Constitutional Reform) is the order by the MAC or the FTI of the divestiture of assets, shares or rights to entities that execute prohibited mergers. An additional proposed modification includes the removal of the issuance of the stop order (which prevented parties from executing a merger before the antitrust authority's prior clearance, and which was issued in most transactions), which implies that the parties will now be sanctioned in the event that a merger is executed during the merger clearance procedure prior to its resolution.

Such changes have not been subject to much criticism from analysts and associations, since the desired outcome is to ensure that mergers that must be filed before the antitrust authorities comply with such prerequisites before their execution, which will in turn guarantee that no monopolies are formed in breach of the antitrust law.

### iii Outlook

From recent resolutions that the MAC has issued, it seems that the antitrust authorities will now not only consider the markets related to a transaction, but also the related markets that may be affected by a merger. In addition, the MAC has begun to consider joint market power when analysing a merger to determine the possibility of smaller or new competitors to participate in the market without any obstacles that may be gained by one or more companies through a merger.

In addition, the proposed increased penalties for executing mergers prohibited by law or for failing to request a merger clearance from the MAC before their execution will likely reduce the possibility of companies engaging in such mergers in an unlawful way, since the divestiture of assets will not only affect the merger itself, but will make the MAC analyse the later merger clearance request in much greater detail.

## VII CONCLUSIONS

Antitrust law in Mexico is currently going through probably the most important and profound change in the country's short history of antitrust prevention and enforcement. The creation of new authorities with more powers, and the increased sanctions and consequences of breaching antitrust law, have confirmed the importance the government gives to ensuring that adequate competition conditions are implemented in all applicable markets.

In addition, recent resolutions of both the FTI and the MAC against very important companies have attracted the attention of consumers, sending a message that antitrust enforcement will be executed against all companies breaching the provisions that help regulate a healthy market, no matter the size or importance of the parties involved.

However, regulations proposed in the Bill regarding essential inputs and the prevention of competition barriers will need to be analysed closely in order to prevent the antitrust authorities from going further than they should in regulating markets that allegedly involve essential inputs and sanctioning entities that participate in such markets, particularly with regards to the consequences derived from such actions for investment and technology development.

The next few years will help determine how the new antitrust authorities (and the recently created Mexican specialised courts) will work to guarantee a healthy and competitive environment in all markets, with specific attention being given to the telecommunications and broadcasting sectors.

### i Pending cases and legislation

The Bill related to the new MAA will modify certain important aspects of the antitrust law. It is expected to be reviewed, modified and published during the second quarter of 2014.

However, the Regulations to the MAA, which have not been modified since 2007, are now outdated, and will need to be redrafted to ensure a functioning antitrust legal system in Mexico. The new Regulations to the MAA have been subject to analyses since 2012, but no developments have occurred thus far.

### ii Analysis

As part of its Strategic Plan, the MAC has determined the execution of several activities related to the antitrust law and its enforcement, such as:

*a* the creation of an intelligence unit to monitor markets and identify risks to competition;
*b* the standardisation of procedures to improve efficiency, quality and transparency;
*c* the issuance of several guidelines and technical criteria on antitrust and free competition in accordance with the provisions of the MAA; and
*d* the execution of collaboration and coordination agreements and mechanisms between the MAC and other related institutions as well as the sector regulators.

The FTI is also expected to issue certain legislation and guidelines regarding antitrust law in the telecommunication and broadcasting sectors, as well as continuing to help new competitors enter the market through the creation of new ways to participate as a consequence of the Constitutional Reform.

The evolution of antitrust law in Mexico has been quick and complex, and the next few years will largely determine how the antitrust authorities will coexist and the extent of the government's regulation in preventing monopolistic activities.

## Appendix 1

# ABOUT THE AUTHORS

**FERNANDO CARREÑO**

*Von Wobeser y Sierra, SC*

Fernando Carreño has been a partner at Von Wobeser y Sierra since 2009. He graduated *cum laude* from the Escuela Libre de Derecho, where he obtained his law degree; he obtained his master's degree from Northwestern University School of Law. Mr Carreño worked as visiting attorney at Arent Fox LLP in Washington, DC. He was head professor of alternative dispute resolutions at the Universidad Iberoamericana in Mexico City. Currently, Mr Carreño is the head of the antitrust practice at Von Wobeser y Sierra. He provides antitrust advice on both competition and antitrust aspects of corporate deals as well as litigation matters before the Mexican Antitrust Commission and the Mexican courts. Mr Carreño regularly advises clients in many different industries, including the aerospace, telecommunications, energy, health care and technology sectors, as well as financial institutions in national and cross-border transactions. He also engages in mergers and acquisitions and financial transactions. Mr Carreño is fluent in Spanish and English.

**JOSÉ PALOMAR**

*Von Wobeser y Sierra, SC*

José Palomar is a senior associate at Von Wobeser y Sierra. He graduated with honours from the Universidad Nacional Autónoma de México, where he obtained his law degree. He also obtained a speciality in international arbitration from the International Chamber of Commerce and the Escuela Libre de Derecho. He has wide experience in antitrust law, and also engages in mergers and acquisitions and financial transactions. Mr Palomar is fluent in Spanish and English.

**VON WOBESER Y SIERRA, SC**
Guillermo González Camarena 1100 7th Floor
Santa Fe
01210 Mexico City
Mexico
Tel: +52 55 5258 1000
Fax: +52 55 5258 1099
fcarreno@vwys.com.mx
jpalomar@vwys.com.mx
www.vonwobeserysierra.com