Santamarina + Steta

LEGAL UPDATE

March 2020

Statement of the Mexican Federal Economic Competition Commission regarding the enforcement of the Federal Economic Competition Law as a response to COVID-19

On March 27, 2020, the Mexican Federal Economic Competition Commission (the "<u>Commission</u>") released a statement stating its position regarding the enforcement of the Mexican Federal Economic Competition Law (the "<u>Law</u>"), in view of the current COVID-19 sanitary crisis, joining the efforts of the antitrust agencies in other jurisdictions such as the Department of Justice and the Federal Trade Commission of the United States of America and the antitrust agencies of the European Union.

As part of its statement, the Commission acknowledges COVID-19 as a serious disease of urgent attention, takes into consideration the establishment of the phase 2 contingency plan by the Mexican Federal Ministry of Health and highlights that it is aware of the negative effects the aforesaid may create for the companies, consumers and, in general, the functioning of markets.

In the light of the above and in order to avoid the interruption of the supply chains or the artificial restriction of the offer and the increase in the price of goods and services, the Commission stated the following:

- The Commission shall not challenge those cooperation agreements between economic agents which, in the current context of the sanitary contingency, are necessary to maintain or increase output, satisfy the demand, protect the supply chains, avoid shortages or the hoarding of goods, and are not intended to displace competitors who also participate in the same market and are aligned with the law;
- 2. Any price increase shall obey individual and independent decisions adopted by each company and shall not be induced, encouraged or recommended by the Associations, Confederations or Chambers to its members;
- 3. Given that under the current circumstances any agreement between competitors to manipulate prices, restrict the supply of goods and/or services, allocate markets, as well as coordinate bids or refrain from bidding, is particularly serious, the Commission shall prosecute and sanction in accordance with the regulations applicable to this type of conducts.

- 4. The Commission shall monitor the behavior of those sensitive markets where unparalleled price increases is noted and shall assess whether the cause of such increases derive from unjustified barriers or arrangements among competitors, thus justifying the adoption of a formal investigation procedure; and
- 5. The Commission commits to promptly reviewing those concentration notices that arise from the need to make synergies and increase the production capabilities to satisfy, in a timely and sufficient fashion, the need of mass consumption products as well as of those other products needed to address the current crisis.

In our opinion, the statement does not entail an exception to the Law's provisions with regards to *per-se* and *rule-of-reason* monopoly practices, but rather reaffirms the provisions of the Law and the Commission's criteria, in the sense that there are occasions in which the collaboration between economic agents can promote a greater competition, resulting in more products at a better price for the consumer.

It is important that economic agents that are considering the type of cooperation agreements referred to in the Commission's statement seek proper advice in order to do so within the applicable legal framework and avoid engaging in antitrust practices, and therefore be subject to sanctions.

In case you require additional information, please contact the partner responsible of your account or any of the following attorneys:

Mexico City Office: Mr. Vicente Grau A., <u>vgrau@s-s.mx</u> (Partner)

Mr. Ernesto Duhne B., eduhne@s-s.mx (Partner)

Phone: +52 (55) 5279-5400

Monterrey Office: Mr. Francisco Torres G., ftorres@s-s.mx (Partner)

Phone: +52 (81) 8133-6000

Queretaro Office: Mr. José Ramón Ayala A., <u>jayala@s-s.mx</u> (Partner)

Phone: +52 (442) 290-0290