

COFECE publishes provisions for complaints under the new Law on Advertising Contracts

On June 3, 2021, the Federal Executive branch published the *DECREE enacting the Law for Transparency, Prevention and Combat of Improper Practices in Advertising Contracts* (the “Marketing Law”) in the Federal Official Gazette. The Marketing Law shall enter into force on September 1, 2021, and be applicable to all acts, contracts, agreements, or procedures entered into between two or more of the economic agents referred to thereunder (namely, media agencies, advertisers, and media), provided that the relevant advertiser resides in Mexico and the advertisement is disseminated within the Mexican territory.

The Marketing Law aims, in general terms, to: **(a)** *promote greater transparency in the advertising market*, in particular as pertains to the contracting of advertising spaces; and **(b)** *prevent and combat commercial practices that may constitute an undue advantage* to the detriment of advertisers and, ultimately, consumers, mainly through avoiding conflicts of interest on the part of media agencies, since one of their chief roles in the advertising market is to act as intermediaries between advertisers and media companies.

The Marketing Law establishes that Mexico’s antitrust regulator, the Federal Economic Competition Commission (“COFECE”), shall oversee and process any complaints related to alleged breaches to such Marketing Law. It is worth noting that the COFECE itself filed a constitutional controversy challenging the Marketing Law before Mexico’s Supreme Court of Justice (the “Supreme Court”), arguing that such law includes mandates which would affect its autonomy by forcing it to carry out functions which may not be compatible with its founding provisions. The foregoing, since the Marketing Law makes COFECE responsible for investigating and sanctioning certain acts which may be unrelated to antitrust issues, thereby with potential counterproductive effects on the functioning of the advertising market.

Notwithstanding the foregoing, Mexico’s Supreme Court ruled that the Marketing Law’s issuing decree would not be suspended, effectively ensuring that such law’s provisions must be followed insofar as the relevant constitutional controversy has not been resolved on the merits.

In accordance with such ruling and with the imminent coming into force of the Marketing Law, on August 31, 2021, the COFECE published certain emergency provisions for purposes of the filing and processing of complaints received in connection with alleged breaches to such law (the “Emergency Provisions”). In summary, such Emergency Provisions establish the following:

1. Investigations pertaining to alleged breaches to the Marketing Law shall be initiated only at a plaintiff’s request and shall be resolved by the Investigative Authority.
2. Only such complaints brought by plaintiffs with a legal interest in the relevant matter, pursuant to the terms of Article 2 of the Marketing Law, will be considered.
3. Pursuant to the terms of the Federal Economic Competition Law (the “Competition Law”), such investigations may comprise up to 5 120 working-day periods.

4. Once an investigation has come to an end, in such cases where elements of probable liability are identified, the defense stage referred to under the Competition Law shall begin in the form of a trial-form proceeding whereby the relevant evidence and arguments of the economic agents involved shall be heard.
5. Finally, the COFECE's plenary session shall determine whether or not the acts covered in the complaint constitute a breach to the Marketing Law, and shall, as applicable, impose such sanctions provided by article 10 of the Marketing Law, which include fines ranging between 2 and 4% of the income received by the economic agents involved in the relevant breach.

We offer you the expertise and experience of our team to advise you in any matters regarding the Marketing Law, including steps to comply with such law, opportunities for judicial challenges, as well as counsel for regulatory investigations.

For additional information, please contact our experts:

Luis Burgueño, Partner:

+52 (55) 5258-1003 | lbargueno@vwys.com.mx

Fernando Carreño, Partner:

+52 (55) 5258-1042 | fcarreño@vwys.com.mx

Pablo Jiménez, Partner:

+52 (55) 5258-1016 | pjimenez@vwys.com.mx

Regina Godínez, Associate:

+52 (55) 5258-1003 | rgodinez@vwys.com.mx

Rubén Villegas, Associate:

+52 (55) 5258-1003 | rvillegas@vwys.com.mx

S I N C E R E L Y

VON WOBESER Y SIERRA, S.C.

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VON WOBESER Y SIERRA, S.C.

Paseo de los Tamarindos 60

05120 Mexico City

+52 (55) 5258 1000

vonwobeser.com