

COFECE sets rules for the handling of attorney-client communications

- *Regulatory provisions for qualification of information derived from legal counsel provided to economic agents was published in the Federal Official Gazette.*
- *These regulations will guide COFECE's actions when, in the exercise of its functions, it obtains communications between a lawyer and an economic agent involved in a process brought before the Commission.*

Mexico City, September 30, 2019.- The Mexican Federal Economic Competition Commission (COFECE or Commission) published in the *Federal Official Gazette* the *Regulatory Provisions for the qualification of information derived from legal counsel provided to economic agents* (Regulatory provisions), which establish measures for how information resulting from legal counsel between a lawyer and a client is handled. This type of communications must be protected and lack evidentiary value.

During procedures, the Commission has diverse investigative tools essential in the fulfillment of its constitutional mandate to protect and make competition prevail in markets, which allow it to obtain valuable elements to detect and/or demonstrate anticompetitive conducts and, hence, protect consumer's welfare. It can be the case that, while wielding these tools, COFECE comes into possession of information potentially protected by such *legal privilege* - that is, the protection of privacy, defense and confidentiality of communications between a lawyer and her client/company.

Regulatory provisions – which were subject to public consultation – establish measures to be adopted by COFECE to protect attorney-client communications, in order to safeguard the rights of economic agents, to carry out impartial probes and to respect due process.

Among other aspects, these provisions establish:

- i) The elements economic agents should provide when requesting that certain information be qualified as protected by *legal privilege*;
- ii) The obligation to establish measures to be followed by public officials of the Investigative Authority during investigations and of the Technical Secretariat during proceedings resulting from said investigations, for safeguarding, protecting and qualification of such information;



- iii) The requirements for the establishment of committees tasked with qualifying information to be considered as part of attorney-client communications;
- iv) The description of the proceeding by which committees may handle and, in certain instances, exclude such information from a file. Should this case arise, physical evidence will be returned to petitioners; and electronic evidence, will be deleted from the file; and
- v) The measures to prevent attorney-client communications from being known by public officials in charge of the corresponding proceeding, as well as the exclusion of public officials from such proceedings when they come into contact with such communications during their work.

The publication of the *Regulatory provisions* seeks to bring legal certainty to economic agents and the Commission. During the elaboration of the *Regulatory provisions*, consideration was given to legal precedents and international practices, especially to the handling of this type of information by the European Commission and the Department of Justice of the United States of America, who were consulted during the development of said guidelines.

See new [Regulatory provisions in Spanish](#)

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The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's well-being and the efficient functioning of markets. With its work, COFECE seeks better conditions for consumers, more services of higher quality and a "level playing field" for companies.

