

Due to lack of the appointment of Commissioners, COFECE suspends the legal term to issue resolution on barriers to competition in the card payments system

- *The Federal Economic Competition Law establishes that the attributions to resolve this type of procedures may only be exercised by the Board of Commissioners with the affirmative vote of at least five Commissioners. Today the Board of Commissioners operates with only four of the seven members established by the Constitution.*
- *The Commission urges the Federal Executive and the Senate of the Republic to appoint the missing Commissioners.*

Mexico City, February 1, 2022.- The Board of Commissioners of the Federal Economic Competition Commission (COFECE or Commission) suspended the legal timeframe to determine whether competition conditions exist in the card payments system when the processing involves a clearinghouse¹. The foregoing is due to the fact that the Federal Economic Competition Law (LFCE, per its initials in Spanish) establishes that **the affirmative vote of at least five Commissioners is required to resolve procedures to determine the existence of barriers to competition and essential facilities**². In contrast, currently its governing body **only has four of the seven members that per constitutional mandate must integrate it.**

This suspension is in addition to two others decreed by the Board of Commissioners last November when it was unable, due to the lack of appointment of Commissioners, to continue the processing of the legal procedure for the issuance of the *Lineamientos para el uso de medios electrónicos durante la investigación, la secuela del procedimiento, la verificación y los incidentes tramitados ante la COFECE* [Guidelines for the use of electronic means during the investigation, the sequel to the procedure, the verification and the incidents processed before COFECE] and the *Lineamientos para la emisión de opiniones o resoluciones en el otorgamiento de licencias, concesiones, permisos y análogos, por medios*

¹ File number IEBC-005-2018.

² Article 18 of the LFCE established that: **The attributions** indicated in Article 12 Section II (about ordering measures to eliminate barriers to competition and free market access), when they derive from the procedure provided in Article 94 of this Law, as well as those provided in its Sections XVII (to issue Regulatory Provisions for the fulfillment of its attributions, as well as its organic statute) and XXII (concerning publishing the Regulatory Provisions needed for the fulfillment of its attributions, [...] issue directives, guides, guidelines and technical criteria, prior public consultation []) , **could only be exerted by the Board when they are resolved with the affirmative vote of at least five Commissioners.** [...].



electrónicos ante la COFECE [Guidelines for the issuance of opinions or resolutions in the granting of licenses, concessions, permits and analogous, through electronic means before COFECE].

In accordance with Article 28 of the Political Constitution of the United Mexican States, it is the responsibility of the head of the Executive Power to propose to the Senate of the Republic the persons who will fill the vacancies in the Board of Commissioners of COFECE, who must be selected from the three lists that the Evaluation Committee, formed by Bank of Mexico and the National Institute of Statistics and Geography, sent in November 2020, as well as in March and November 2021. The candidates to fill the positions are experts in economic competition that passed a technical knowledge exam and underwent a rigorous evaluation process.

In view of the head of the Executive's omission, COFECE filed, in December 2021, a constitutional controversy in order to enforce the Constitution, since concluding with the selection of Commissioners is an essential condition to exercise all its powers.

Therefore, the Commission urges the head of the Federal Executive and the Senate of the Republic to appoint those who will assume the vacancies of Commissioners, so that COFECE is in a position to resolve this and other relevant cases for the benefit of the efficiency of the markets and, above all, for the welfare of consumers.

Press releases [Preliminary Investigative Opinion that establishes that there are not effective competition conditions in the card payments system in the national territory](#)

[Infographic about barriers to competition](#) (in Spanish)

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The Mexican Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to the people's welfare and the efficient functioning of the markets. Through its work, it seeks better conditions for consumers, that more services are offered with higher quality and that there is "level playing field" for companies.

