Cofece-038-2022

Cofece recommends to the SHCP, Banxico and CNBV measures to promote competition in the Financial Technology Institutions sector.

- *Regulatory instruments were identified that could limit the process of competition and free market access in this sector to the detriment of users and suppliers.*
- *The Commission recommends actions related to cloud storage, the use of commission agents, maintaining the principle of neutrality of notice and consent obligations for domestic vis-à-vis foreign read-only APIs , and the protection of the savings of Fintech users.*

Mexico City, November 17, 2022.- The Federal Economic Competition Commission (Cofece or Commission) issued an opinion on different regulations governing Financial Technology Institutions (Fintech)[1], as it identified regulatory instruments that could limit the process of competition and free market access in this sector to the detriment of users and suppliers. Therefore, it recommended the Ministry of Finance and Public Credit (SHCP), the Bank of Mexico (Banxico), the National Banking and Securities Commission (CNBV) and other supervisory commissions[2] to evaluate the regulation related to cloud storage, the role played by commission agents, and the protection of the savings of Fintech users.

In particular, the Electronic Payment Fund Institutions Provisions (IFPE, per its initials in Spanish) establish that:

- IFPEs must include a secondary provider in their business continuity plans when contracting with a third party as the primary provider of cloud computing services.[3]

[1] The General Provisions applicable to Credit Institutions, the Law to Regulate Financial Technology Institutions (Fintech Law) and the Bank Savings Protection Law (IPAB Law). Provisions applicable to the Electronic Payment Fund Institutions referred to in Articles 48, second paragraph; 54, first paragraph, and 56 first and second paragraphs of the Fintech Law (IFPE Provisions).
[2] In accordance with section V of article4of the Fintech Law, oversight commissions refer to the CNBV, the National Commission of the Retirement Savings System, the National Insurance and Surety Commission and the National Commission for the Protection and Defense of Financial Services Users, with respect to their areas of competence.
[3] In accordance with Article 50 of the IFPE Provisions, those who must comply with the prudential measures are the Electronic Payment Fund Institutions (IFPE) that: a) during a period of twelve calendar months, carry out any of the following activities: 1. Make more than three million five hundred thousand transfer operations;

- IFPEs must have their own infrastructure to carry out their activities, or any other mechanism authorized by Banxico or the CNBV; the foregoing, when these services are susceptible to be interrupted by mandate or act of a foreign authority.[4]
- Commission agents shall be subject to certain limits per client account, while credit institutions are subject to limits per type of investment and account, to carry out withdrawals and receive cash.

In this regard, Cofece recommended: (i) reviewing the proportionality of having another storage mechanism when a cloud is used as the primary provider and (ii) evaluating the regulatory distinction regarding the limits for the use of commission agents of IFPEs *vis-à-vis* credit institutions.

On the other hand, this Commission identified that the Fintech Law establishes that Fintech must deposit the amounts of money —that they have not yet delivered to the beneficiary— in accounts of an authorized financial entity (for example, a bank). The above implies that the protection of the funds of Fintech clients has to comply with the provisions of the Bank Savings Protection Law, which obliges them to deposit the funds in a bank over whose decisions and level of risk they have no control. In this sense, this obligation does not entail the protection of the clients' funds.

Likewise, the Commission recommended that the SHCP, Banxico and the CNBV assess regulatory alternatives to guarantee the protection of the funds of Fintech users, based on best international practices.

Additionally, to promote efficiency and competition in the activities in which Fintechs participate, the use of open banking should be encouraged. Therefore, it is recommended that the CNBV and other supervisory commissions issue regulations on open banking[5], as well as clear guidelines on the use of customer information.

Moreover, Cofece recommends that the CNBV assess the proportionality and distinction of the regulation with respect to the notice and authorization obligations that must be

2. Send or receive transfers for a total amount greater than the equivalent in local currency of six thousand million UDI's or b) At any time have had more than one million accounts that, during a period of twelve consecutive calendar months, have registered, at any time, a positive balance or with respect to which at least one transfer has been sent in said period, or have had a total balance in the accounts greater than the equivalent in local currency of four hundred million UDI's.

[4] As indicated in footnote 3.

[5] Open banking allows public, aggregated and transactional information from financial institutions (and other participants in the financial system), as well as from customers, to be easily exchanged.

complied with by developers of *read-only* standardized application programming interfaces (APIs)[6] from domestic and foreign providers.

Read the complete opinion (in Spanish)

– 000 –

MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission safeguards competition and free market access.
Through its work, it seeks better conditions for consumers, that more services
are supplied with higher quality and that there is a "level-playing-field" for companies

[6] They can only access databases and information systems in read mode.