

Two enforcers will review AT&T/Time Warner merger, Mexican court rules

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A specialised court has given both of Mexico's competition enforcers power to review the AT&T/Time Warner deal.

In a [decision](#) last month, the Second Specialised Court agreed with arguments made by the Federal Economic Competition Commission (COFECE) that each authority must review the merger solely in the markets that it has jurisdiction over. The Federal Telecommunications Institute (IFT) had asked to exclusively review the entirety of the merger, to avoid potentially contradictory rulings from both authorities.

Telecommunications services provider AT&T and media company Time Warner had notified both agencies of their tie-up, dividing the affected markets into those that should be analysed by the IFT, and those that should be analysed by COFECE.

When overhauling the country's antitrust enforcement in 2013 and establishing COFECE and IFT, the Mexican legislature took away the competition agency's jurisdiction over the telecommunications sector. IFT has the exclusive authority to regulate and enforce competition matters in Mexico's highly concentrated telecoms and media markets, while COFECE is the nation's antitrust enforcer for all other industries.

Several members of COFECE and IFT have questioned the move, as it has created confusion over which agency has jurisdiction over certain matters.

The AT&T/Time Warner deal will have effects on products and services in the telecommunications and broadcasting sector, the court said in its resolution in February. The merger will also vertically integrate the production and distribution of the companies' audiovisual content.

Since COFECE and IFT were established, there has been only one other case in which both authorities thought they had jurisdiction: the *Nokia/Alcatel-Lucent* deal. The Second Specialised Court said in October 2015 that IFT had authority to review the merger between the information technology company and telecommunications equipment provider.

Those familiar with the case said the jurisdictional issue was resolved relatively quickly; the law gives the court up to 10 days to decide which agency has jurisdiction.

Omar Guerrero at [Hogan Lovells BSTL](#) in Mexico City said that the court last month did not follow the precedent set forth in *Nokia/Alcatel-Lucent* – that the IFT should be the authority in charge of all matters related or that are substantially related to telecom and broadcasting matters.

Francisco Fuentes Ostos at [Mijares, Angoitia, Cortés y Fuentes SC](#) in Mexico City said that "IFT is clearly competent for anything that has to do with broadcasting, but in our view it does not have jurisdiction on advertising and content production services." IFT had argued that such services are closely related to broadcasting services, he said.

Lucía Ojeda Cárdenas at SAI Law & Economics in Mexico City asserted that the court's resolution "shows that the analysis of the competent authority to resolve a specific merger or case should be made on a case-by-case basis, and that we will see more of this type of controversy in the future."

Fernando Carreño at [Von Wobeser y Sierra SC](#) said now that the ruling is final, IFT and COFECE will need to determine and divide which markets each of them should review, based on their authority given to them stated in the Constitution, to avoid contradicting rulings.

In a statement, COFECE said that "the resolution provides more legal certainty for all economic agents involved regarding each body's specific competencies".

IFT did not respond to a request for comment.

Comments

There are currently no comments.

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