

Competencia económica - Nueva investigación en el mercado de insecticidas domésticos en territorio nacional

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | March 25, 2022

El 23 de marzo de 2022 la Comisión Federal de Competencia Económica publicó el inicio de una investigación por una práctica monopólica relativa, conocida como boicot, en el mercado de producción, distribución y comercialización de insecticidas domésticos en territorio nacional, la cual puede derivar en multas severas.

Si requiere información o asesoría legal respecto a esta investigación, contacte a nuestro equipo de competencia económica.

New investigation in the market of household insecticides within the Mexican territory

On March 23, 2022, the Federal Antitrust Commission published a notice announcing a vertical restraint (boycott) investigation in the market of production, distribution and commercialization of household insecticides, which may result in severe fines.

If you require information or legal advice regarding this investigation, please contact our antitrust team.

For more information, please contact Partner [Alejandro Mendiola](#)

Mexico Private Equity Comparative Guide - Legal 500 2022

Category: Practices Areas, Private Equity, Publications
written by Nader, Hayaux & Goebel | March 25, 2022

Don't miss the Mexico's Private Equity 2022 Q&A, published by Legal 500 with an overview of the laws and regulations applicable in the market.

With the contribution of partner [Hans Goebel](#), [Héctor Arangua](#), [Adalberto Valadez](#) and associate [Miguel Ángel González](#).

[Click here to link to the Q&A.](#)

New investigation in the industrial gases market within the Mexican territory

Category: Antitrust, Legal Alerts
written by Nader, Hayaux & Goebel | March 25, 2022

On January 5, 2022, the Mexican Antitrust Commission published a notice announcing a cartel investigation in the integration, installation, maintenance and commercialization of equipment, accessories and spare parts for the use of industrial gases market, which might derive in severe fines.

If you require information or advice regarding this investigation, please contact our antitrust team.

Nueva investigación en el mercado de gases industriales en territorio nacional

El 5 de enero de 2022, la Comisión Federal de Competencia Económica de México, publicó el inicio de una investigación por prácticas monopólicas absolutas en el mercado de la integración, instalación, mantenimiento y comercialización de equipos, accesorios y refacciones para el aprovechamiento de gases industriales en territorio nacional, la cual puede derivar en severas multas.

Si requiere información o asesoría respecto a esta investigación, contacte a nuestro equipo de competencia económica.

For more information, please contact:

[Partner Alejandro Mendiola](#)

The 11th edition of The International Capital Markets Review

Category: Capital Markets, Publications

written by Nader, Hayaux & Goebel | March 25, 2022

[Partners Julián Garza](#), [Gunter Schwandt](#) and associate [Fernando Quezada](#) contributed to The International Capital Markets Review, part of the reputed The Law Reviews series published by Law Business Research.

This multi-jurisdictional guide addresses the comparative law aspect of international capital markets workload and offers legal practitioners with a reference source.

The guide is now in its 11th edition, and covers 23 jurisdictions in which leading law firms offer the latest insights and regulatory updates.

The Mexico chapter can be downloaded free of charge [here](#).

Federal Public Administration Public interest and national security on projects and works of the Mexican Government

Category: Infrastructure, PPPs and Government Procurement, Legal Alerts
written by Nader, Hayaux & Goebel | March 25, 2022

On November 22, 2021, the Official Federation Gazette published the “AGREEMENT instructing the agencies and entities of the Federal Public Administration to execute the indicated actions, in connection with the projects and works of the Government of Mexico considered of public interest and national security, as well as critical and strategic for national development” issued by the President of the United Mexican States, Andrés Manuel López Obrador (the “**Agreement**”), which became effective on the day of its publication.

By means of such Agreement **(i)** the execution of projects and works by the Mexican Government associated with infrastructure in various sectors, including communications, telecommunications, customs, borders, hydraulic, hydric, environmental, tourism, health, railways, railroads in all its modalities, energy, ports, airports and those that, due to their purpose, characteristics, nature, complexity and magnitude, are considered critical and/or strategic for national development, shall be deemed of public interest and national security; and **(ii)** the agencies and entities of the Federal Public Administration are instructed to grant provisional authorizations regarding the filing and/or obtaining of opinions, permits or licenses necessary to initiate the referred projects or works, which must be issued within a maximum term of 5 (five) business days as of the filed request; provided that, once such term has elapsed without an express provisional authorization having been issued, such opinion, permit or license shall be deemed granted. The provisional authorization will be valid for 12 (twelve) months, during which period the definitive authorization must be obtained.

In view of the foregoing, the following consequences arise: Regarding any project of the Government of Mexico within the sectors subject matter of the Agreement, any permit, license or opinion required from a federal authority will be granted provisionally within a 5 (five) business day period from its request, either by explicit or deemed authorization. The foregoing guarantees the issuance of the permit, license or opinion, on a temporary basis, in order to be able to commence with any project or works.

Given that the projects and works of the Government of Mexico will be deemed of public interest and national security, the agencies and entities may consider awarding **(i)** public-private partnerships, **(ii)** acquisitions, lease and services, and **(iii)** public works and related services agreements, without being subject to a public tender or bidding procedure, through an invitation to at least 3 (three) persons or direct award, on the basis of the exception contained in each applicable law.

Regarding acquisitions, leases and services and public works and associated services, the participation of social witnesses may be exempted in cases of confidential information that endangers national security.

The authorizations granted by the agencies and entities will be provisional and, no later than 12 (twelve) months after its issuance, said authorities will definitively resolve such authorizations. Notwithstanding the foregoing, the execution of the projects and works may begin within such term, during which time the corresponding authorities will simultaneously carry out the evaluation of the respective project and/or work. The Agreement does not regulate the effects on the project or works if the definitive opinion is negative or if the permit or license is not definitively granted.

Regarding transparency and information access, all information in possession of any authority regarding such projects and works may be temporarily reserved for reasons of public interest and national security.

Should you require further information regarding the above, please contact your usual contacts at Nader, Hayaux and Goebel.

Interés público y seguridad nacional en proyectos y obras del Gobierno de México

El 22 de noviembre de 2021, se publicó en el Diario Oficial de la Federación el “ACUERDO por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de México considerados de interés público y seguridad nacional, así como prioritarios y estratégicos para el desarrollo nacional” emitido por el Presidente de los Estados Unidos Mexicanos, Andrés Manuel López Obrador (el “**Acuerdo**”), el cual entró en vigor el día de su publicación.

Mediante dicho Acuerdo **(i)** se establece que serán de interés público y seguridad nacional la realización de proyectos y obras a cargo del Gobierno de México, asociados a infraestructura en diversos sectores, incluyendo comunicaciones, telecomunicaciones, aduanero, fronterizo, hidráulico, hídrico, medio ambiente, turístico, salud, vías férreas, ferrocarriles en todas sus modalidades, energético, puertos, aeropuertos y aquellos que, por su objeto, características, naturaleza, complejidad y magnitud, se consideren prioritarios y/o estratégicos para el desarrollo nacional; y **(ii)** se instruye a las dependencias y entidades de la Administración Pública Federal a otorgar autorizaciones provisionales respecto de la presentación y/u obtención de dictámenes, permisos o licencias necesarias para iniciar los proyectos u obras referidas, la cual deberá emitirse en un plazo máximo de 5 (cinco) días hábiles contados a partir de la presentación de la solicitud correspondiente, en el entendido que, transcurrido dicho plazo sin que se haya emitido una autorización provisional expresa, se entenderá emitida en sentido positivo. Dicha autorización provisional tendrá una vigencia de 12 (doce) meses, periodo en el que se deberá obtener la autorización definitiva que corresponda.

En virtud de lo anterior, se desprenden las siguientes consecuencias: Tratándose de cualquier proyecto del Gobierno de México dentro de los sectores materia del Acuerdo, cualquier permiso, licencia o dictamen que se requiera de autoridad federal será otorgado en forma provisional dentro de un plazo de 5 (cinco) días hábiles siguientes a su solicitud, ya sea mediante autorización expresa o *afirmativa ficta*. Lo anterior, garantiza la emisión del permiso, licencia o dictamen, de manera temporal, para poder iniciar con el proyecto u obra.

Dado que los proyectos y obras del Gobierno de México serán considerados de interés público y seguridad nacional, las dependencias y entidades podrán considerar adjudicar contratos de **(i)** asociación público privada, **(ii)** adquisiciones, arrendamientos y servicios, y **(iii)** obras públicas o servicios relacionados con las mismas, sin sujetarse a un procedimiento de concurso o licitación pública, a través de invitación a cuando menos 3 (tres) personas o de adjudicación directa, aplicando la excepción correspondiente de cada ley aplicable.

En materia de contratación de adquisiciones, arrendamientos y servicios y obras públicas y servicios asociados a las mismas, se podrá exceptuar la participación de testigos sociales en casos de información reservada que ponga en peligro la seguridad nacional.

Las autorizaciones otorgadas por las dependencias y entidades serán provisionales y, a más tardar 12 (doce) meses después de su emisión, dichas autoridades resolverán sobre las autorizaciones definitivas. No obstante lo anterior, la ejecución de los proyectos y obras podrá iniciarse dentro de dicho plazo, en el cual paralelamente las autoridades correspondientes realizarán la evaluación del proyecto y/u obra respectiva. El Acuerdo es omiso sobre los efectos en caso de que el resultado definitivo de un dictamen sea negativo o que el permiso o licencia no se otorgue de manera definitiva.

En materia de transparencia y acceso a la información, toda la información en posesión de cualquier autoridad respecto de dichos proyectos y obras, podrá ser reservada temporalmente por razones de interés público y seguridad nacional.

En caso de requerir más información en relación con lo anterior, comuníquese con sus contactos habituales en Nader, Hayaux y Goebel.

The SCJN sets forth criteria applicable to the late payment of premium

Category: Firm news, Insurance and Reinsurance
written by Nader, Hayaux & Goebel | March 25, 2022

On February 17, 2021, the First Chamber of the Mexican Supreme Court of Justice (“**SCJN**”) issued a judicial precedent pursuant to which it determined that notwithstanding the insurance premium is paid, in case this is done after the 30-day grace period, the insurance contract terminates, even if the insurer received the

premium.

The rationale of the First Chamber of the SCJN is based on the assumption that the insurance contract is bilateral, onerous and aleatory, and is perfected at the moment in which the contracting party becomes aware of the acceptance of the offer made by the insurer, and additionally, according to the Insurance Contract Law (the "**Law**"), from the due date for payment of the premium, the contracting party has a grace period of 30 calendar days to pay the premium.

If the Insurer has not received the payment of the premium prior to 12 o'clock of the last day of the 30-day term, the effects of the insurance contract cease automatically and the insurer is released from its obligations.

Even if the contracting party pays the premium after said term and the insurer accepts the late payment, the effects of the insurance contract may not be rehabilitated.

According to the criteria of the SCJN, once the insurance contract is terminated, there must be a new offer from the insured and same shall be agreed with the insurer to formalize a new insurance contract.

The late payment of the premium or of any of its installments does not constitute an offer and the receipt of the payment by the insurer does not constitute a tacit consent.

Any late payment of the premium shall be deemed a deposit that may be applied to the premium if the new insurance contract is executed; if it is not executed, it shall be reimbursed to the insured as an undue payment.

Furthermore, on February 24, 2021, the First Chamber of the SCJN issued another judicial precedent resulting from contradicting rulings between two Collegiate Courts of the same circuit but from different specialties, which establishes that pursuant to article 41 of the Law the insurance contract is invalidated when payment of the insurance premium is made outside the grace period of 30 calendar days, even when the insurer does not immediately refuse such payment.

In this case, the rationale of the First Chamber of the SCJN, consistent with the judicial precedent described above, is based on the premise that the first paragraph of article 40 of the Law establishes that if the contracting party does not pay the premium or the corresponding installment, in case it is paid in installments, within the grace period of 30 calendar days, the effects of the insurance contract will cease automatically at 12 o'clock on the last day of such term.

Article 41 of the Law further provides that any agreement that intends to waive the effects of the provisions of the first paragraph of Article 40 of the Law shall be invalid.

Therefore, it is considered that the effects of the insurance agreement irrevocably terminate in case of late payment of the premium or of any of its installments, which is an invariable consequence of the non-payment within the term foreseen for such purpose.

Consequently, it may not be deemed that receiving the late payment rehabilitates the effects of the insurance contract and constitute an agreement to waive the effects of the first paragraph of article 40 of the Law, as the foregoing would not be valid pursuant to article 41 of the Law.

NHG's Preliminary Observations

- It is a common practice for insurers to receive late premium payments and, in general terms, if the loss occurs after the insurer receives the late payment of the premium, the insurer fulfills its obligations under the insurance contract.
- The judicial precedents release the insurers from any liability under insurance contracts in which premiums have not been paid within the grace period set forth in article 40 of the Law, and require that the insurers accept a new offer from the insured, in order for a new insurance contract to become effective.
- If an insured pays, after the grace period the premium corresponding to the insurance contract, the insured will be required to obtain an express acceptance from the insurer in which the insurer confirms the acceptance of the risk; otherwise, the insurance contract will be deemed invalid and will

not produce any legal effect.

- We recommend to carefully analyze the rehabilitation clauses currently used in insurance contracts to confirm whether these clauses constitute, on their own, an express consent from the insurers to accept the risk in case of untimely payment of the premium or, if applicable, adjust them to comply with the judicial precedents.

La SCJN define criterios para el tratamiento del pago extemporáneo de la prima

El 17 de febrero de 2021, la Primera Sala de la Suprema Corte de Justicia de la Nación (la “**SCJN**”) emitió una tesis jurisprudencial conforme a la cual determinó que el pago de la prima de seguro fuera del plazo genérico de 30 días produce la terminación del contrato de seguro, no obstante que la aseguradora haya aceptado el pago extemporáneo.

El razonamiento de la Primera Sala de la SCJN parte de la base que el contrato de seguro es bilateral, oneroso y aleatorio, y se perfecciona en el momento en que el contratante tiene conocimiento de la aceptación de la oferta por parte de la aseguradora, y además, que conforme a la Ley sobre el Contrato de Seguro (la “**Ley**”), a partir del vencimiento de la prima, el contratante tiene un plazo de 30 días naturales para pagarla.

Si la aseguradora no recibe el pago antes de las doce horas del último día del plazo de 30 días, los efectos del contrato de seguro cesan automáticamente y la aseguradora se desvincula del cumplimiento de sus obligaciones.

Aun y cuando el contratante pague la prima después de dicho plazo y la aseguradora acepte el pago extemporáneo, no se rehabilitan los efectos del contrato de seguro.

Conforme al criterio de la SCJN, una vez terminado el contrato de seguro, debe existir una nueva oferta del asegurado y la aceptación de la aseguradora para que exista un nuevo contrato de seguro.

El pago extemporáneo de la prima o de alguna de sus parcialidades no constituye una oferta y la recepción de dicha prima por parte de la aseguradora no constituye

un consentimiento tácito.

El pago extemporáneo de la prima solamente se puede considerar como un depósito a ser aplicado a la prima si el nuevo contrato de seguro se perfecciona, de no perfeccionarse, ésta se deberá reembolsar al asegurado al tratarse de un pago de lo indebido.

Por otra parte, el 24 de febrero de 2021, la Primera Sala de la SCJN emitió una tesis jurisprudencial por contradicción de tesis entre dos Tribunales Colegiados del mismo circuito pero de distinta especialidad, en la que se establece que el pago de la prima de seguro fuera del plazo genérico de 30 días naturales, aun cuando la aseguradora no rehúya de inmediato esa exhibición, constituye un convenio nulo en términos del artículo 41 de la Ley.

En este caso, el razonamiento de la Primera Sala de la SCJN, consistente con la tesis jurisprudencial anteriormente descrita, parte de la base que el primer párrafo del artículo 40 de la Ley establece que si el contratante no realiza el pago de la prima o de la fracción correspondiente, en caso de pago en parcialidades, dentro del plazo genérico de 30 días naturales, los efectos del contrato de seguro cesan automáticamente a las 12 horas del último día del plazo.

El Artículo 41 de la Ley establece que es nulo cualquier convenio que pretenda privar los efectos de las disposiciones del primer párrafo del artículo 40 de la Ley.

Por lo anterior, la SCJN considera que el pago extemporáneo de la prima o de alguna de sus parcialidades implica que, indefectiblemente, ha ocurrido la cesación de los efectos del contrato de seguro, consecuencia invariable de la omisión del pago dentro del plazo previsto para ello.

Por lo tanto, admitir que la eventual aceptación del pago extemporáneo rehabilita los efectos del contrato de seguro, constituye un convenio que pretende privar de sus efectos al primer párrafo del artículo 40 de la Ley y, en consecuencia, es nulo, de conformidad con lo dispuesto en el artículo 41 de la Ley.

Observaciones Preliminares de NHG

- En la práctica, es común que las aseguradoras reciban la prima de forma extemporánea y por lo general, si el siniestro ocurre después de que la aseguradora recibe el pago de la prima, ésta cumple con sus obligaciones bajo el contrato de seguro.
- Las tesis jurisprudenciales liberan a las aseguradoras de cualquier responsabilidad bajo los contratos de seguro en los que la prima no se haya pagado dentro del plazo de gracia que establece el Artículo 40 de la Ley, y requieren que las aseguradoras acepten una nueva oferta del asegurado, para que el contrato de seguro surta efectos.
- Si un asegurado paga extemporáneamente la prima correspondiente a su contrato de seguro, deberá obtener una aceptación expresa de la aseguradora del riesgo, ya que de no hacerlo, el contrato de seguro es nulo y no produce efecto legal alguno.
- Sugerimos analizar cuidadosamente las cláusulas de rehabilitación que actualmente son utilizadas en los contratos de seguro para confirmar si las mismas constituyen por si mismas un consentimiento expreso de las aseguradoras para aceptar el riesgo en caso de pago extemporáneo de la prima o en su caso ajustarlas para cumplir con las tesis jurisprudenciales.

Para mayor información sobre el pago extemporáneo de la prima, nos ponemos a sus órdenes con sus contactos habituales en Nader, Hayaux & Goebel, o con [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx

For more information on the untimely payment of the premium, please contact your regular contacts at Nader, Hayaux & Goebel, or [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx

Lexology GTDT Fintech 2022 -

Mexico

Category: Fintech, Publications

written by Nader, Hayaux & Goebel | March 25, 2022

NHG contributed to the GTDT Fintech Q&A for Mexico, an overview to understand the legal regulatory landscape in which fintech entities operate, the financial technology regulations and the implications related to offering regulated financial services in Mexico.

“Fintechs in Mexico are mainly focused on payments and remittances services, followed by consumer lending, technologies for financial institutions and enterprise financial management.”

“The Mexican fintech environment has continued to develop at a fast pace, and has been labelled as ‘unstoppable’ by experts in the fintech industry.”

[Click here to download the full guide: Lexology GTDT Fintech_Mexico 2022.](#)

You can also read it on the Lexology GTDT Fintech Platform [here](#).

NHG appoints new Partner

Category: Firm news, Tax

written by Nader, Hayaux & Goebel | March 25, 2022

Nader, Hayaux & Goebel is pleased to announce that Ana Paula Pardo has joined the Firm as Partner effective July 12, 2021.

Ana Paula will be part of the Tax Practice of the Firm, working mainly on domestic and international tax matters. Her practice includes the representation of individuals and corporations in matters related to commercial transactions, tax planning, estate planning, business ventures, long-term business arrangements, investments, mergers and acquisitions, spin-offs, divestitures, non-taxable reorganisations and transfer pricing consulting, among others.

Ana Paula has extensive experience in international transactions, including the representation of multinational and domestic groups in their operations, assisting them during the course of tax audits, and representing them in tax-related litigation. Her expertise in corporate law and negotiation skills allow Ana Paula to very effectively assist her clients in their operations.

“Our Firm has grown and positioned itself as one of the best Mexican Firms. We are at a strategic moment where we want to ensure the Firm’s leadership in the tax area, as we have in the rest of our practices. The addition of Ana Paula and her team gives us the opportunity to strengthen our capabilities, reinforce our client service and nurture our roster of recognized partners in the Firm.” Hans Goebel, Chairman of Nader, Hayaux & Goebel.

With more than 19 years of experience, she will be joining the tax team headed by our partner Adalberto Valadez in order to broaden the scope of services offered to our clients. The combined services offering raises the bar for the practice that is not only recognized in Mexico, but also abroad.

Adalberto enthuses that *“Ana Paula and her team are a very welcome addition to our team that will allow us to provide a much more comprehensive tax service to our clients, by increasing our capabilities to provide tax consulting and tax controversy services related to the day-to-day operations of our clients, in addition to the transactional services for which our practice is recognized”*.

Ana Paula, the newest addition to NHG’s team of successful women partners, joins our tax practice together with two associates, Luis Roberto Moreno and Miguel Ángel Aspe. With these additions to our tax team, we are consolidating a stronger team of tax professionals while continuing to reinforce our commitment to offer the best quality service to our clients.

Ana Paula obtained her law degree from Universidad Panamericana in 2002, and a postgraduate degree from the University of Salamanca in 2004. She has an LLM from the University of Florida - Fredric G Levin College of Law, where she obtained a certificate of academic excellence in 2007.

Cartels Chambers Global Practice Guide: Mexico Chapter 2021

Category: Antitrust, Compliance, Publications

written by Nader, Hayaux & Goebel | March 25, 2022

Learn more about how Mexican competition authorities investigate cartels and the sanctions they can impose in the latest edition of Chambers & Partners' Global Practice Guide on Cartels (2020), written by our Partner [Alejandro Mendiola](#) and Associate [Daniella Ramirez Aguilar](#).

A comprehensive analysis of the evolving legal and procedural framework for cartel enforcement, sanctions remedies, and private civil litigation involving alleged cartels, as well as additional comments on the impact of the COVID-19 pandemic. A guide to understand *"What to expect from a cartel investigation"*.

You can read the full [Mexico's Cartels Chambers Global Practice Guide](#)

LexGTD T Telecoms & Media 2021 -

Mexico

Category: Data Protection, Publications, Telecoms

written by Nader, Hayaux & Goebel | March 25, 2022

Partner [Julián Garza](#) and associate [Paulina Bracamontes](#) contributed to the development of [Mexico's Telecoms & Media 2021 LexGTDI](#) guide.

Take a look to the Mexico's Telecoms & Media guide, a comparison on regulatory framework, restrictions and licensing requirements; spectrum use considerations; platform regulation; next-generation access (NGA) networks; data protection and cybersecurity issues; big data; local storage requirements; foreign programmes and local content requirements; advertising; must-carry obligations; regulation of new media content; digital switchover; media plurality; regulatory agencies, competition law, and appeals; and recent trends.

[Download the full Telecoms and Media 2021 guide here](#)