Highlights from the Peer Review on Competition Law and Policy in Mexico

Mexico’s competition regime has been modified three times in the last 14 years. Some of these reforms have been driven by previous OECD reviews. The reforms and, in particular, the adoption of the 2014 competition law are the result of Mexico’s ambitious efforts to set a level-playing field for all economic agents and to improve the effectiveness of competition enforcement. The review finds that Mexico’s competition regime is in line with internationally recognised practices. Mexico plays a relevant role in the international competition context and has solid enforcement agencies with strong investigation powers.

Institutional Design and Resources

Mexico has two competition authorities: the Federal Commission of Economic Competition (Comisión Federal de Competencia Económica, COFECE), the competition authority in charge of competition law enforcement in all sectors except telecommunication and broadcasting and the Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones, IFT), the telecommunication and broadcasting sectoral regulator, which is in charge of enforcing competition law in those sectors. Both competition authorities are constitutional autonomous bodies (órgano autónomo), the highest level of institutional independence in Mexico. The review identifies the need to preserve competition authorities’ independence and calls for more transparency on how cases are allocated between COFECE and IFT.

Mexico has adopted an institutional model based on a strict separation between adjudication and investigation functions inside the competition agencies. This model guarantees impartiality and due process, in particular in relation to on-going cases. However, the investigation and adjudication bodies should strengthen their dialogue and co-operation to provide clear and consistent guidance on standard of proof, substantive analysis of cases and procedural issues.

Competition agencies’ employees are highly qualified and are viewed by the antitrust community in Mexico as professional and committed. The rapid development of the digital economy should prompt the recruitment of staff with IT forensic, digital and technological profiles. Competition agencies should also adopt measures to strengthen their economic expertise to foster complex economic effects-based analysis required to sanction anticompetitive practices and conducting merger analysis by, for example, creating the position of an independent Chief Economist in charge of giving independent economic advice in the decision-making process.
**Anti-competitive conduct**

Mexico competition law provides for a wide range of administrative sanctions and remedies to punish anticompetitive conduct and re-establish the competitive process in the market. However, Mexico should consider including bid rigging among the violations that could trigger public procurement debarment. The review also recommends the adoption of guidelines on the calculation of fines.

The Mexican competition law limits the prohibition of horizontal agreements to the five categories expressly listed under Article 53. The legal text and the formalistic and literal interpretation of this provision by the competition authorities and the judiciary has prevented the prosecution and sanctioning of other types of horizontal agreements. As competition knowledge and experience grow, Mexico should adopt a less formalistic and more effects-based analysis of non hard-core horizontal agreements in line with international practices.

Competition authorities should rely less on commitment decisions in order to generate a body of case law on vertical and unilateral practices. Fully-fledged analysis of effect-based infringements would indeed support better understanding and lead to the building of a sound case law. Competition authorities should also develop guidelines on the substantive economic analysis.

**Figure 2. Decisions on vertical agreements and abuse of dominance establishing an infringement in Mexico, OECD and Latin America and the Caribbean in 2018**

**Merger control**

COFECE and IFT have been extremely active in reviewing mergers. Merger control applies to all sectors of the economy with the exception of mergers involving non-preponderant agents in the telecommunications and broadcasting sectors. The OECD has already identified this exception as unnecessary and unsuited to protect competition in the telecommunications and broadcasting markets and recommended its elimination. With regard to the competitive assessment of mergers, international practices would suggest a more economic-based analysis and further development of the statistical and econometric tools.

**Judicial review**

The 2013 Constitutional Reform created the specialised courts in competition, telecommunications and broadcasting, eliminated the suspensive effects of appeals (amparos) and limited the amparos to final decisions (decisions concerning intermediary acts can no longer be appealed). Mexico should however adopt measures to allow specialised judges to acquire the necessary specialised knowledge by, for example, allowing longer terms of appointment and investing on regular capacity-building programmes.
Key Recommendations

1. Competition authorities’ independence and autonomy, enshrined in the Mexican Constitution, should be preserved.

2. Competition authorities should continue to cooperate and clarify through the adoption of guidelines on how cases are allocated between IFT and COFECE, especially in view of the growth of the digital economy.

3. If market-investigation decisions addressed to public authorities remain non-binding, public authorities should inform the competition authorities of the objective grounds for not following their decisions within a set timeframe.

4. Competition authorities should further invest in acquiring IT forensic equipment to complement more traditional investigation tools to carry out dawn raids.

5. Mexico should consider including bid rigging among the violations that could trigger public procurement debarment, in addition to other more conventional criminal, civil and administrative sanctions.

6. As competition knowledge and experience develops, competition authorities should move away from a formalistic approach towards a more effects-based analysis of non-hard-core restrictive agreements in line with international practices.

7. Ensure effective criminal enforcement of hard-core cartels by promoting the cooperation between the competition authorities and the Office of the Attorney General and clarify the interactions between the leniency programme and criminal enforcement.

8. Competition authorities should strengthen enforcement against abuse of dominant position and vertical agreements by: (a) relying less on commitment decisions in order to generate a body of case law in this area; (b) developing guidelines on the substantive economic analysis of this kind of practices; (c) strengthening the economic expertise of their staff to foster complex economic effects-based analysis.

9. Eliminate the merger control exemption granted to transactions by non-preponderant players in the telecommunications and broadcasting sector.

10. IFT and COFECE should consider further developing the economic analysis of mergers and rely more on new tools, such as statistical and econometric analysis.
Related materials

Competition and Market Studies in Latin America (2015)
Follow-up to the Nine Peer Reviews of Competition Law and Policy of Latin American Countries (2012)
Peer Reviews of Competition Law and Policy in Latin America: A Follow Up (2007)
More OECD Competition Reviews on Mexico

Peer Reviews of Competition Law and Policy

OECD peer reviews have proved to be a valuable tool for countries to reform and strengthen their competition frameworks.

The mechanisms of peer reviews vary, but they are founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers.

The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions.

Furthermore, these reviews incorporate recommendations for changes in government policy.

Access all reviews at www.oecd.org/daf/competition