

MEXICO**(1998)****Executive summary**

1. The Federal Competition Commission (CFC) studied 571* files during 1998, a figure 2.3 percent higher than the one registered in the previous year. Of these, 104 dealt with anticompetitive practices and barriers to inter-state trade, 224 were about mergers and acquisitions and 166 about notifications of privatisation processes and concessions or permits for providing public services. In addition two files were about market power and competition conditions and 75 files dealt with competition issues consulted by economic agents to the CFC. Files concluded in 1998 added up to 462. This figure represents a reduction of 2.7 percent against the previous year.

2. The Regulation for the Implementation of the Federal Law of Economic Competition (RFLEC) came into effect in March 1998. The new legislation characterises further some relative monopolistic practices; develops in a greater detail the procedures provided for in the Federal Law of Economic Competition (FLEC); simplifies proceedings for certain types of mergers and establishes a tighter discipline on the diffusion of the CFC decisions and rulings.

3. During 1998 the CFC issued several opinions on the competition aspects of laws, regulations and administrative procedures. Among them it is important to point out the CFC comments on: (i) the Regulation for implementing the Civil Aviation Law, (ii) a project to register long distance telephone tariffs, (iii) the procedures and criteria used in the auctions for the Southeast Railroad, radio spectrum frequencies and natural gas distribution permits.

4. Among the studies on competition carried out, it is worth mentioning those published in the first issue of the CFC Gazette: *Application of the dominance index to the analysis of competition in the airline services market*, by Commissioner Pascual García and *Globalization and competition*, by Commissioner Javier Aguilar

I. Proposed or adopted changes to competition policies**1. Summary of new legal provisions of competition law and related regulation**

5. The Regulations for the Implementation of the Federal Law of Economic Competition entered in force into in March 1998. The new rules provide guidance on the concepts and measures of the FLEC, streamline FLEC procedures and develop procedures for dealing with sector-specific law measures, the application of which concerns to the CFC. Some outstanding features of the new legal provisions deal with the facts that might imply the existence of absolute monopolistic practices and with conducts that are within in the catch all provision about relative monopolistic practices (Art. 10, vii of the FLEC).

6. The Regulations also incorporate measures aimed at enhancing transparency on the initiation and outcomes of proceedings, and at improving the diffusion of the CFC criteria and case decisions. To

* Files in process at the closing of 1997 plus files opened in 1998.

MEXICO

achieve this, the RFLEC empowers the CFC to publish the related documents and the abstracts thereof in the Official Journal of the Federal Government.

2. *Other relevant measures, including new guidelines*

7. Pursuant to a provision of the RFLEC, the CFC published in the Official Journal of the Federal Government the method for calculating the Dominance Index, used regularly at the CFC to measure the degree of market concentration.

8. The CFC's new internal regulations issued in August 1998, changed substantially the organizational structure of the Commission. The new regulations: (i) strengthened the enforcement capabilities of the CFC by creating two General Directorates, one for privatization and government auction processes and another for regional coordination and (ii) reinforced the international and public diffusion activities by establishing the General Directorates for international affairs and for information on competition policy and law enforcement.

II. Enforcement of competition laws and policies

1. *Actions against anticompetitive practices, including agreements and abuses of dominant positions*

a) *Summary of activities of competition authorities (statistics).*

9. In 1998 62 files were opened and 46 were concluded. These figures account for changes of 3.3 percent and -11.5 percent against the previous year. See the attached table for details.

b) *Description of significant cases, including cases with international implications.*

Horizontal Price Fixing in the LP Gas Retail Market

10. A local organization of a national political party, filed a complain against *Gas del Valle, S.A. de C.V.*; *Gas Imperial, S.A. de C.V.*; and *Gas Cimmsa, S.A. de C.V.*, for entering into a agreement to fix the retail price of LP gas. The presumed responsible parties operate as distributors in the Toluca metropolitan area.

11. The CFC's investigation found that the above mentioned companies simultaneously (January, 1996) raised the price of LP gas from 1.42 to 1.80 pesos/kg. The previous price of 1.42 pesos/kg was the maximum regulated price to the final consumer authorised by the Federal Government during the final phase of the controlled price regime applied to that product. The 30 percent price increase agreed by the companies and the new price fixed at 1.80 pesos/kg took place under the new deregulated price policy. The collusion was supported and facilitated by means of a co-ordination mechanism formerly used by the responsible parties to negotiate LP gas controlled prices with the regulatory authority.

12. Price agreements among competitors constitute an absolute monopolistic practice forbidden in article 9(I) of the FLEC. In analyzing this case, the CFC considered that: (i) the parallel increase of the retail price of LP gas reflected an increase in the price charged to distributors by *Pemex-Refinación*, the

only supplier of this product in the domestic market; (ii) the 30 percent uniform increase in the agreed retail price was not accounted for by the 8 percent increase charged by *Pemex* to the distributors, nor by the individual cost structure of the responsible companies and, (iii) the collusion was facilitated through the implementation of an information campaign publicizing the concerted price. On these grounds, the CFC decided to impose fines of 120,000 pesos on each economic agent involved in the horizontal price fixing agreement.

13. The defendant parties challenged the CFC decision by appealing for review before this authority. The gas distribution companies claimed procedural irregularities arising from a mistaken interpretation of the law. However, the lack of sound legal arguments, lead the CFC to confirm its decision.

Cartel in the Lysine Market

14. In 1996 the CFC had knowledge that the United States Department of Justice determined that *Archer Daniels Midland Co.* (USA), *Ajinomoto Co., Inc.* (Japan), *Kyowa Hakko Kogyo Co., Ltd.* (Japan) and *Sewon America Inc.* (Korea) conspired to fix prices and allocate the supply of the lysine marketed in the United States and elsewhere. The CFC took into account that *Archer Daniels* and *Kyowa Hakko* had directly and indirectly participated in the Mexican lysine market during the period in which this collusion took place.

15. Three companies participate in the Mexican lysine market: *ADM Bioproductos*, *Fermentaciones Mexicanas* (subsidiaries of *Archer Daniels* and *Kyowa Hakko*) and *Helm de México*. From 1994 to 1996 the former two covered 90 percent of the Mexican demand. *Helm's* market participation is marginal and erratic.

16. In July, 1996 the CFC initiated an ex officio investigation about the possible effects of the international price fixing arrangements in *Mexico*. During the investigation it was found that *ADM Bioproductos* and *Fermentaciones Mexicanas* had fixed the price and the amounts of lysine supplied in the domestic market, as a consequence of the agreement carried out by *Archer Daniels* and *Kyowa Hakko*. The agreement between the Mexican subsidiaries gave raise to substantial parallel price increases in the domestic market.

17. Based on the above, the CFC imposed fines of 1,132,500 and 566,250 pesos on *ADM Bioproductos* and *Fermentaciones Mexicanas*, respectively, for engaging in absolute monopolistic practices forbidden in Article 9(I) of the FLEC.

Exclusive Dealing in Market Research Services

18. *Integra Mercadotecnia, S.A. de C.V.*, consulted the CFC on possible restrictions to competition imposed by *Farmacias Guadalajara, S.A. de C.V.* in the provision of commercial information (consisting of their sales data as a self-service drugstore), necessary for market research activities. In order to prevent, or, if appropriate, to eliminate such restrictions, the CFC recommended to *Farmacias* to provide the above mentioned data to *Integra* (the market research firm), under non-discriminatory conditions. The CFC warned *Farmacias* that the failure to comply with the recommendation would prompt an ex officio investigation on relative monopolistic practices in the market research services. The investigation was initiated in 1997, due to the apparent persistence of such restrictions.

19. Within that proceeding the CFC summoned *AC Nielsen Co.*, (a competitor of *Integra*), and *Farmacias*, as a provider of commercial information inputs for market research services. The investigation found that the exclusivity agreements between *Nielsen* and several department store chains (providers of

MEXICO

commercial information), prevented the entry of new market research service firms and unduly displaced *Nielsen* competitors. This situation reflects Nielsen's substantial power in the relevant market, arising from its: (i) large market share in the supply of market research services; (ii) product diversification; (iii) capacity to reduce supply unilaterally; and (iv) control over the strategic inputs; i.e.: the commercial information generated by the self-service chains.

20. The CFC found that *Farmacias* has substantial power in the geographical area of Guadalajara. This situation is even more prominent in the consumer segment covered by *Farmacias*. Under these conditions, it was determined that *Farmacias*' refusal to deal with *Integra* was a relative monopolistic practice prohibited in Article 10(IV) of the FLEC.

21. Based on Art. 41 of the RFLEC, *Nielsen* requested the suspension of the investigation and committed itself: (i) to eliminate the exclusivity clauses in its dealings with information suppliers and (ii) to make public this measure. Previously the CFC had recommended to various department store chains to suppress their exclusive arrangements with *Nielsen* and to provide their sales information, on a non-discriminatory basis, to all market research firms.

22. Based on the facts found, the CFC:

- ordered *Farmacias* to stop refusing to deal with *Integr*;
- imposed fines on both, *Farmacias* and *Nielsen* for engaging in actions (refusal to deal, and exclusivity agreements, respectively) that unduly displaced competitors or prevented their access to the relevant market.

Predatory pricing in inter-city bus services

23. *Autobuses del Centro Grupo AMEC, S.A. de C.V.* filed a complain against *Autobuses Unidos* for alleged monopolistic practices, consisting of predatory pricing and cross-subsidies. The plaintiff claimed that *Autobuses Unidos* offered promotional discounts up to 50 percent in its Puebla-Tehuacán bus services, and increased its fares in the Puebla-Mexico City route.

24. The CFC took into account the absence of legal, technical and economic barriers in the markets of inter-city bus services, as well as the intensified competition, resulting from the deregulation of the sector. The CFC also found that *AMEC* had no market power in the Puebla–Tehuacán route, given the large number of competitors, the low concentration of the market and the existence of alternative routes between those cities.

25. Based on the foregoing facts, the CFC concluded that the possible existence of both, fares below total average cost and cross-subsidies, did not represent in this particular case a risk for competition.

Local government barriers to interstate trade.

26. Chapter II of the FLEC (regarding monopolies and monopolistic practices), implements the constitutional prohibition against interstate trade barriers imposed by local governments. According to the FLEC, the CFC declaration of the existence of such barriers, devoids them of any legal effect. Two significant cases are described below.

Barriers to trade imposed by the government of Sinaloa

27. In July 1997, the CFC was informed of access barriers imposed by the government of Sinaloa against eggs produced in the state of Sonora. The CFC found that the trade of eggs from Sonora to Sinaloa was subject to zoo-sanitary permits issued by the latter government. The purpose and characteristics of the permits and the procedure to obtain them, were not explained to the CFC by the responsible authorities.

28. The CFC found that no zoo-sanitary restrictions apply to products coming from states free of poultry diseases, as is the case in Sinaloa and Sonora. Furthermore, such restrictions could only be imposed by the federal government. Thus, any state prohibition based on presumed zoo-sanitary problems constitutes an over-regulation that violates the federal constitutional law and, in addition, unduly affects trade among states.

29. Based on the above elements, the CFC recommended to the Sinaloa government to eliminate the permit requirement in a 30 days term. Within that period, the state government filed an appeal for review of the CFC decision. However, weakness in legal arguments led the CFC to confirm its decision and to declare the existence of state restrictions affecting interstate trade of eggs.

Barriers to trade imposed by the government of Sonora

30. Milk producers of the state of Baja California consulted the CFC about the legality of certain trade restrictions imposed by the Sonora government on milk produced in other states of Mexico. The regulations applied by the Sonora government required the official verification of nutritional and sanitary standards. Based on these facts the CFC initiated an ex officio investigation into the possible existence of interstate barriers imposed by the state government, against the trade of milk produced in other states. Through this procedure it was found that:

- the standards applied to cow milk were federal standards. Its verification was not discriminatory, and whenever found, irregularities were reported to the proper federal authorities;
- the barriers established on the basis of Sonora's law 22 prevented the trade of milk produced in other states. However, these barriers had ceased to have legal effects as a result of a previous declaration issued by the CFC in order to eliminate an interstate trade barrier to livestock and products.

31. The CFC decided to close the case on the grounds that: (i) the verification of sanitary standards by the state authorities did not discriminate against milk produced in other states; and (ii) that the barriers imposed by Sonora's Law 22 had been removed.

2. *Mergers and acquisitions*

a) *Statistics on number, size and type of mergers notified.*

32. In 1998, 200 files were opened and 200 were completed. Compared with the previous year, these figures represent variations of -5.2 percent and -8.2 percent. See the attached table for details.

MEXICO

b) *Summary of significant cases*

Guinness, Plc/Grand Metropolitan Plc

33. Guinness PLC and Grand Metropolitan took place in the United Kingdom and had an impact on various countries. In Mexico, the CFC took into account:

- the business links between Guinness and its Mexican subsidiaries (United Distillers de México S.A. de C.V. and Importadora, Distribuidora Inter, S.A. de C.V.) and also Metropolitan ownership of the 45 percent of the capital stock of José Cuervo, S.A. de C.V.;
- the market concentration of several spirit, liquor and wine brands produced abroad by the merged companies and other foreign undertakings, and distributed in the Mexican market by *United Distillers de México* (Guinness' brands) and *José Cuervo* (Metropolitan's brands).

34. The merger affected mainly the alcoholic beverage market. Within this framework relevant markets were identified for whisky, gin, vodka, tequila, brandy, cognac, rum, liqueurs and wine. From the analysis of these markets, the CFC concluded that:

- as a result of the merger, *United Distillers de México, Importadora, Distribuidora Inter and José Cuervo* would reach a joint market share of 64.9 percent in the whisky relevant market and would also concentrate the distribution of the better known brands;
- *José Cuervo*, the tequila exports of which are internationally distributed by *Metropolitan*, would be able to use the world distribution channels of *Guinness*. This possibility could cancel the opportunity of using *Guinness* distribution channels to other tequila producers. However, the CFC considered that the presence of other large international distributors offsets such a restriction;
- *United Distillers, Importadora and José Cuervo* had a minor share in the relevant markets of gin, brandy, rum, liqueurs and wines;
- the market structure of tequila and vodka would experience marginal changes as a result of the merger.

35. The high market share of the *Guinness/Metropolitan* merger in the whisky market (64.9 percent), the reputation of their whisky brands and their large brand portfolio, would endow the new economic agent with substantial power in that relevant market. On these grounds, the CFC found that the merger would facilitate relative monopolistic practices, such as exclusive distribution, price discrimination and cross-subsidies. Following this, the CFC decided to condition the *Guinness/Metropolitan* merger to the divestiture or licensing (three years, renewable) of *Metropolitan's* J&B whisky brand.

36. *Guinness* and *Metropolitan* challenged the CFC's decision by filing an appeal for review. They argued that: (i) the authority did not conduct an adequate investigation, (ii) evidence provided by the defendant was ignored and (iii) the perception of the links between *Metropolitan* and *Jose Cuervo* was inaccurate. In view of the lack of soundness of the arguments presented by the appellants, the CFC confirmed its decision.

Gillette Manufacturera, S.A. de C.V./Grupo Warner Lambert de México, S.A. de C.V.

37. In 1995, the *Gillette Co.* embarked in negotiations with *Warner Lambert Co.* to buy its PRO brand of oral hygiene products and other assets related thereof. The transaction was closed in September 1995, and had effects in various countries. In Mexico the international merger implied the acquisition by *Gillette Manufacturera*, (Mexico) of *Warner Lambert's* (Mexico) assets related to the PRO product line.

38. In August, 1995, *Gillette* consulted the CFC about the legal obligation to notify the above mentioned merger, but did not present all the information required to properly analyze the consultation. Despite this fact and ignoring the procedures established in the FLEC, *Gillette* requested, in December 1995, that its consultation be accepted as a formal merger notification. This request was not accepted, since it did not meet the procedures specified in article 21 of the FLEC.

39. The CFC answered the consultation indicating that: (i) the information provided by *Gillette* was not sufficient to determine whether the transaction was subject to the notification procedures provided in Article 20 of the FLEC; and (ii) the CFC is empowered to initiate ex officio investigations on illegal mergers and acquisitions. Following this, the CFC initiated (May 1996) an ex officio investigation on the effects in Mexico of the *Gillette Co. /Warner Lambert Co.* transaction.

40. Against the information provided by *Gillette*, the CFC found that the transaction included, in addition to the sale of tangible assets, the purchase of intangible assets. Under this condition, the concentration exceeded the thresholds specified in article 20(1) of the FLEC and therefore should have been notified before it was closed (September 1995). In compliance with the CFC's ex officio investigation, *Gillette* filed an extemporaneous notification before the CFC, in February 1998.

41. From the merger review, it was determined that the transaction had no adverse effects on competition in the domestic market, yet the CFC ordered *Gillette* to reduce the time period covered by a non-competition-clause included in the transaction agreement. Thus, the CFC decided: (i) not to block the notified merger; (ii) to fine *Gillette* for submitting false information and failing to notify the proposed merger in due time; and (iii) to reduce the non-competition clause period from 7 to 5 years.

42. *Gillette* challenged the CFC's decisions by appealing for review. Within this proceeding, *Gillette* complained that it was being treated as a firm inclined to avoid its legal obligations. The CFC confirmed its decisions but accepted *Gillette's* defense against misleading the competition authority.

Sara Lee Co. and Sara Lee Mexicana, S.A. de C.V. /Industrias Canon, S.A. de C.V. and Inmobiliaria Canon, S.A. de C.V.

43. *Sara Lee Co.* and *Sara Lee Mexicana* notified their joint participation in the auction called by *Syncro* to sell its stock shares in *Industrias Canon*, *Canofil* and *Inmobiliaria Camsa*. The possible acquisition of this package by *Sara Lee* would have an important impact in the hosiery market.

44. The market share of *Canon* and *Sara Lee Mexicana* in the relevant hosiery market was of 42.8 percent and 13.4 percent, respectively. The remaining 43.8 percent was split among more than 30 companies. *Canon* and *Sara Lee* also owned the most popular hosiery brands. The market power arising from this market structure would be strengthened by the lack of effective foreign competitors, the higher cost of competing European products, and *Sara Lee's* development plans in Latin America. Based on these elements the CFC opposed to the participation of *Sara Lee* in the auction.

45. *Sara Lee* appealed for a review of the CFC decision, arguing that the authority did not consider its proposals to introduce measures that could eliminate the anticompetitive aspects of the transaction. In

MEXICO

view of this proposal, the CFC final decision approved the completion of the operation, subject to the divestiture of certain brands and productive capacity.

III. The Role of Competition Authorities in the Formulation and Implementation of Other Policies; e.g.: Regulatory Reform, Trade and Industrial Policies

Privatisations and licenses and permits granted by the Federal Government in

Specific-regulated sectors

a) Statistics

46. During 1998 163 files were opened and 154 files were concluded. Compared to the previous year, these figures represent variations of 16.4 percent and 0.0 percent. See the attached table for details.

Privatisation of Railroad Services (Ferrocarril del Sureste, S.A. de C.V.)

47. The divestment of the 3 railroad public companies created in 1996 to open up railroad services to private participation, concluded with the sale of the *Ferrocarril del Sureste S.A de C.V.* The package auctioned for allocating this railroad included the following assets:

- a concession title for 50 years, renewable;
- the assets for the railroad operation;
- a 25 percent share of the capital stock of the *Terminal Ferroviaria del Valle de México*. This railroad company operates the traffic in the Metropolitan area of Mexico City. Its strategic location makes it an essential facility for the 3 railroad regional companies, since it provides access to the main economic concentration in the country;
- the option to buy the Merida/Coatzacoalcos railroad.

48. The relevant market is the freight service in the geographical area formed by Mexico City and the states of Hidalgo, Mexico, Puebla, Oaxaca, Tlaxcala and Veracruz. The *Ferrocarril del Sureste* competes with the *Ferrocarril del Noreste* in the Mexico City/Veracruz route and for certain products and routes faces the competition of trucking and coastal shipping services.

49. The following companies and groups that participated in the auction filed notifications before the CFC:

- Grupo Acerero del Norte, S.A. de C.V./Industria Peñoles, S.A. de C.V./Illinois Central Co. The main activities of the first two companies are not related to the services offered by Ferrocarril del Sureste. Illinois Central, operates railroad services in the region of Illinois and the United States coast of the Gulf of Mexico;

- *Triturados Basálticos y Derivados, S.A. de C.V.* This undertaking is engaged in the operation of highways in central Mexico, the construction industry and the operation of a seaport terminal in the north- east coast of the Gulf of Mexico.

50. The CFC decided not to block any of the participants.

Maritime Port Terminal Auctions

51. The *Adiminstración Integral Portuaria de Manzanillo, S.A. de C.V.* called for the auctions of contracts for (i) the rights to construct, use and operate a container port terminal and (ii) the rights to use, and operate a multipurpose port terminal. Both facilities were located in the port of Manzanillo.

52. In accordance with a CFC opinion, the two auctions included the following restrictions aimed at protecting competition:

- participants in the auctions must not operate or own another port terminal in Manzanillo, nor must they be related to any economic agent having interest in the same line of business therein;
- the above restrictions were meant to be applied within the geographical relevant market, as defined by the CFC during the review process.

53. The CFC decided not to block any of the participants in the auctions, but imposed conditions on two of them

- the group formed by *Internacional de Contenedores Asociados de Veracruz/International Container Terminal Services/Jorge A Cano*, was conditioned to chose between any of the two contracts, in the event of wining both auctions;
- *Internacional de Contenedores Asociados de Veracruz* and *International Container Terminal Services*, were conditioned to participate as a single entity, given their business association in several business related to port services.

Radio electric spectrum actions

54. The Federal Telecommunications Commission called for the auction of concessions of radio electric spectrum bands (200 and 222 Mhz) for the provision of mobile land radio-communication services. The concessions period are for 20 years, renewable. One of the concessions has national coverage and the 18 others have regional coverage.

55. The relevant markets determined by the CFC are the provision of trunking, paging, tele-metering, tele-control and alarm monitoring services within geographical areas defined in each concession title. There is a large number of competitors in the trunking and paging services, both at national and regional levels. The alarm monitoring, tele-control and tele-metering services markets are not yet developed.

56. The CFC found that awarding concessions to participants already operating in the market would not endow them with substantial market power. On these grounds the CFC decided not to block any of the bidders.

MEXICO

Exclusive distribution of natural gas in the Mexico City Metropolitan Area.

57. The Energy Regulatory Commission (CRE) called for auctions for two exclusive distribution permits of natural gas in the geographical areas of: (i) the Federal District and (ii) Cuautitlán Valley in the State of Mexico. Taking into account that these two areas are located in the Mexico City metropolitan region, the auction rules prevented the allocation of both permits to the same economic agent. This measure, devised to avoid excessive concentration of market power, was reinforced by a decision to reduce the exclusivity period from 12 years to 5 a year period. Once the exclusivity period concludes, distribution permits may be obtained by any interested party that meets the technical and safety requirements specified in the sector's regulations.

58. The relevant markets related to the auctions are the natural gas distribution services provided in the Mexico D.F. area and the Cuautitlan Valley. The CFC considered that, at present, natural gas faces significant competition from alternative fuels (LP gas, fuel oil and diesel). However, the possibility of an efficient substitution between alternative fuels would diminish as the natural gas distribution network expands.

59. The same companies participated in both auctions, as follows:

- Gas Natural Mexico Consortium;
- Mexigas Consortium;
- Anáhuac Consortium.

60. The CFC decided to approve all participants with the sole exception of the *Gas Natural de Mexico Consortium*. In this case, the CFC considered that one of the consortium members held an exclusive distribution permit in a geographical zone (Toluca Valley) adjacent to the Mexico City metropolitan area. However, this decision was reversed by the CFC itself, as a result of an appeal for review that proved that the Toluca Valley and the two other areas were three separate geographical markets.

Advocacy

a) Regulatory framework

Regulation to the Civil Aviation Law

61. The issuance of the Civil Aviation Law in 1995 consolidated previous progress in the deregulation of air routes and fares and established the necessary legal bases for building a regulatory framework that encourages competition. The CFC has closely followed this development on two fronts: (i) oversight of competitive conditions in air transportation markets; and (ii) participating in the drafting of the Regulations to the Civil Aviation Law.

62. The CFC opinions regarding the above-mentioned Regulations, sought:

- to preserve the CFC's powers to decide whether or not conditions of effective competition exist in the airline sector. This powers, provided for in Article 43 of the Civil Aviation Law, are important to: (i) ensure a healthy balance between the regulatory and the competition authorities; (ii) avoid over-regulation in air fares; (iii) promote the elimination of institutional entry barriers and, (iv) prevent or eliminate abuses by companies with market power;

- to ensure the application of relevant market and market power concepts, included in Articles 12 and 13 of the FLEC, in the decisions about the existence of effective competition conditions;
- to limit the application of regulations on fares and service quality to those airlines endowed with substantial power in the relevant market. The CFC also recommended the application of this principle when establishing specific obligations on routes, frequencies of flights, etc.;
- to set simple and transparent procedures regarding the authorization of routes;
- to avoid the introduction of measures that could unnecessarily limit competition between regular and charter air transport.

Telephone Rate Registration

63. In August 1998, discussions took place regarding a proposed mechanism for telephone rate registration whose primary objective was to prevent predatory pricing. Study of the proposal revealed that the procedures and obligations it set forth would significantly reduce competition, affecting both consumers and telephone service providers. To avoid these difficulties, the CFC recommended applying rate and fee obligations only on those agents that could hinder the operation of telephone service markets.

b) *Privatisation strategies*

Grupo Comercial PIPSA, SA.

64. The Special Commissioner for the divestiture of *Grupo Comercial PIPSA, S.A.* filed for a CFC opinion on the effects of that undertaking privatization on competition. *Grupo PIPSA* controls *Productora e Importadora de Papel, S.A. de C.V.*; *Fábricas de Papel Tuxtepec, S.A. de C.V.*; *Mexicana de Papel Periódico, S.A. de C.V.* and *Productora Nacional de Papel Destinado, S.A. de C.V.*. The first subsidiary is a marketing company, and the other three produce different types of paper.

65. The three manufacturers account for all of Mexico's newsprint production and meet 77 percent of demand. The remaining 23 percent of demand is met by imports from the NAFTA area. *Grupo PIPSA's* share of the domestic supply of bond and directory paper is not significant.

66. The CFC decided that *Grupo PIPSA's* large share in the newsprint market (an input for the publishing industry) did not give it substantial power over this market because imports are available from NAFTA countries. However, the CFC recommended to the party responsible for the privatization, that in the event that *PIPSA* were awarded to a publishing company, the award should be made conditional on guarantees of non-discriminatory access to newsprint for competitors.

Servicios de Almacenamiento del Norte, S.A. de C.V.

67. The Special Commissioner for the divestiture of *Servicios de Almacenamiento del Norte, S.A. de C.V. (Seranor)* asked the CFC to render an opinion on the participation of *Grupo Mexico, S.A. de C.V. (GM)* in a second bidding process for *Seranor*. *GM's* participation in the first bid process was blocked by the CFC. .

MEXICO

68. The CFC confirmed that awarding *Seranor* to GM would endow it with substantial market power in the storage and marketing of grains in the north-west of the country, given the following factors: (i) *Seranor's* storage capacity and control of essential units (specifically the grain storage terminal in the port of Guaymas) and, (ii) GM's stock share in the railroad (FPN) linking the north-west with the markets of Guadalajara and Mexico City.

69. The CFC recommended not to block GM's participation in the bidding process for *Seranor*. However, to prevent an excessive concentration of market power, it recommended to condition the possible allocation of *Seranor* to GM, to the sale of the grain terminal in the port of Guaymas.

Container Storage Facility at the Port of Veracruz

70. The *Administración Portuaria Integral de Veracruz, S.A. de C.V.* (API) filed for a CFC opinion on the bidding processes for: (i) a land facility for the storage and repair of containers and (ii) an area for the repair of containers. Both areas are within the port enclosure managed by the API. Following usual procedures provided in the Ports Law, bid participants were required to notify the competition authority, in order to prevent possible competition problems. .

71. The CFC analysis of the auction, found that more economic agents would be interested if the land facility about to be auctioned were offered together with an adjacent area. This measure, would promote greater competition and the diversification of service providers. Following this line, the CFC recommended to the API to call for a new auction, including the adjacent area.

IV Resources of the Competition Authority

Resources overall (Current Figures and Change In Relation to the Previous Year)

a) *Annual Budget*

72. The Commission's 1998 effective budget added up to 72.6 million Mexican pesos. This amount is equivalent to 7.96 million U.S. dollars and represents a 15 percent increase compared to the previous year.

Number of Employees (Person-years)

73. The creation of new General Directorates required the addition of 22 new officers and other personnel during 1998. The total senior and middle management added up to 128, made up of 42 economists, 35 lawyers and 51 professionals and technicians with degrees in engineering, mathematics, accountancy and computer systems. The support staff comprises 59 employees. Thus, the total staff added up to 187 employees.

1. *Human Resources*

74. The Commission's new structure comprises:

- The Plenum. Decision making body integrated by five Commissioners, including the CFC President.
- The Executive Secretariat. Responsible for operational coordination.
- Six Operational General Directorates, directly involved in technical studies and procedures for the enforcement of the FLEC.
- Five General Directorates for management coordination and assistance to the President on international affairs and diffusion of the CFC activities and policies.

a) *Enforcement against Anticompetitive Practices*

75. In addition to the Plenum, 38 officials serving in the Operational General Directorates, except the General Directorates for mergers and public auction processes.

b) *Merger Review and Enforcement*

76. In addition to the Plenum 7 officials from the mergers directorate.

c) *Advocacy Efforts*

77. The Plenum is responsible for issuing opinions on competition aspects of laws and actions by government agencies. This activity is supported by:

- 10 members of the General Directorate for Privatization and Auction Processes are responsible for studying competition conditions in regulated sectors, as well as for investigating and deciding on competition and market power conditions referred to by legal provisions other than the FLEC.
- 10 members of the General Directorate for Economic Studies participate in studies on competition aspects of general economic policy and laws.
- 4 officers of the General Directorate for International Affairs analyze competition aspects of international agreements.

2. *Period Covered by the Above Information: January–December 1998*

V. References to New Reports and Studies on Competition Policy Issues

78. On December 1998, appeared the first number of the Economic Competition Gazette, a quarterly journal designed to publicise all the decisions issued by the CFC, the Plenum criteria on the application of the competition law, and the CFC's approach to competition policy. The first issue covered the period from March to August, 1998. This six month period, is exceptional. It was issued due to the necessity of catching up with the CFC obligation of making public all past decisions, starting from March 5, 1998.

MEXICO

79. The first number of the Gazette included articles by Commissioners Pascual García de Alba and Javier García Aguilar. García de Alba's contribution deals with the application of the Dominance Index (regularly used at the CFC to analyse market concentration rates) to the Mexican airline market. García Aguilar explores globalisation aspects that have had an impact on competition at world and national levels.

References:

García Alba, Pascual, "El índice de dominancia y el análisis de competencia de las líneas aéreas mexicanas", *Gaceta de Competencia Económica*, Year 1, No. 1, March – August, 1998, pp. 15-32.

Aguilar, Javier, "Globalización y libre competencia". *Gaceta de Competencia Económica*, Year 1, No. 1, March – August, pp. 33 – 51.

Annex 1
FEDERAL COMPETITION COMMISSION
Files Processed 1997-98

	1997	1998
MERGERS, PRIVATIZATIONS, CONCESSIONS, TRANSFERS OF RIGHTS/PERMITS		
Cases filed and <i>ex officio</i> investigations initiated	351	363
Notifications of mergers	188	189
Notifications of privatisations, concessions, transfers of rights and permits	140	163
<i>Ex officio</i> investigations into mergers	22	10
Complaints	1	1
Concluded	372	354
No objection	344	326
Conditions imposed	4	12
Opposed	4	5
Other ¹	20	11
In Process	27	36
Mergers	24	24
Privatisations, concessions, transfers of rights and permits	3	12
MONOPOLISTIC PRACTICES AND OTHER RESTRICTIONS TO COMPETITION		
Cases filed and <i>ex officio</i> investigations initiated	60	62
<i>Ex officio</i> investigations into monopolistic practices	35	5
Complaints	25	57
Concluded	52	46
Penalty or recommendation	13	16
Decision against the plaintiff	1	13
Complaints dismissed ²	20	9
<i>Ex officio</i> investigations closed ³	15	7
Withdrawals	3	1
In Process	42	58
MARKET POWER AND COMPETITION CONDITIONS		
Filed	2	2
Concluded	2	0
In process	0	1
CONSULTATIONS		
Filed	56	61
Concluded	49	62
In process	14	13
TOTAL		
Cases filed and <i>ex officio</i> investigations initiated	469	488
Concluded	475	462
In Process	83	109

1. Includes withdrawals, expiration of process and *affirmativa ficta*.
2. Patently inadmissibility or expiration of process.
3. No violations of the Federal Economic competition law detected.