Federal Competition Commission

Competition Law and Policy

Review of Mexico

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Peer review exercise

• The OECD’s Peer Review exercise is a powerful instrument to assess Competition Law and Policy:
  • It provides an independent evaluation by experts knowledgeable about the best experiences and most recent developments in the field worldwide; and
  • It constitutes a unique opportunity for competition authorities to receive feedback and establish a dialogue with international peers fully dedicated to competition law and policy.

• Mexico has benefited greatly from two reviews in 1998 and 2004.
The 2004 Report

• The 2004 report arrives in a key moment for Mexico’s competition policy:
  • The CFC celebrated its tenth anniversary;
  • The President of Mexico has announced that competition policy will be a central component of his strategy to enhance the country’s competitiveness.
  • Change of leadership in the CFC.
• The report reflects a careful, detailed and solid analysis of competition law and policy in Mexico, and goes to the heart of the CFC’s priorities.
• The report recognizes key achievements and identifies important challenges that must be addressed.
The report confirms strengths identified in the 1998 report:

- The analytical quality of the Law and its regulations;
- The establishment of an institutional setup to enforce the law that has gained in standing and credibility over time; and
- The CFC’s authority and its active role in participating in the formulation of competition enhancing public policies.

The report notes that “the perception of an institutional reluctance by the CFC to engage powerful opponents has largely dissipated.”
Strengths (II)

- It identifies additional strengths:
  - The CFC has become a credible and respected organization, both domestically and internationally;
  - The CFC follows the best principles of management and the highest standards of public service; and
  - The CFC has effectively focused its limited resources to the most relevant matters in promoting competition policy in Mexico.

- The report concludes: “The CFC’s accomplishments are remarkable given the difficult environment in which it operates”
Some strengths have evolved in areas that were the focus of the 1998 recommendations

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<tr>
<th>1998 recommendations</th>
<th>2004 findings</th>
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<td>• “Maintain emphasis on regulatory issues and regulated and privatising sectors …”</td>
<td>• The CFC has “maintained a focus on regulated and privatised sectors,”</td>
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<td>• “Broaden the base of support…”</td>
<td>• sought to broaden its base of support by publicising its actions to a wider audience and conducting outreach activities</td>
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<td>• “Enter international co-operation agreements to improve enforcement efficiently in transnational matters.”</td>
<td>• established important international antitrust co-op agreements …”</td>
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<td>• “Make the CFC part of the Economic Deregulation Council …”</td>
<td>• “… the Chairman of the CFC is a permanent member of the present Regulatory Improvement Council.”</td>
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However, there are key pending issues

1998 recommendations

- “Broaden the base of support...”
- “Provide for effective power to ensure that regulations to remedy market power actually achieve that aim ...”
- “Broaden the available enforcement resources by expanding the right of private action.”

2004 findings

- “… the degree of general support for competition policy is still an open question and remains a potential vulnerability. ”
- “… the CFC has a mixed record of participation in proceedings to establish price regulation for inadequately competitive market sectors. “
- “… further maturation of Mexico’s antitrust environment, especially in the courts, is necessary before private actions can become a significant feature of competition policy enforcement.”
The 2004 report identifies additional weaknesses:

- “… certain statutes and judicial processes that constrain the CFC’s ability to remedy anti-competitive conduct and market conditions …”

- “… decline in the Commission’s budget and staffing levels.”; and

- “…some deficiencies in the Commission’s own case litigation procedures, and in its interface with other government entities, that reduce the CFC’s efficacy as a law enforcement agency and competition advocate.”
The findings of the 2004 OECD report go to the heart of key CFC’s institutional challenges.
Key institutional challenges

1. Absence of an integral competition policy
2. Lack of competition culture
3. Excessive litigation
4. Ineffectiveness of fines
5. Legal limitations
6. Limited resources
Integral competition policy

- Competition policy has not become a State policy.
- Competition and efficiency principles must be included in all relevant economic and regulatory government decisions.
- Economic regulations and industry specific policies must be designed not as an alternative to competition, but as a complement in promoting market efficiency.
- The FCC would promote competition more effectively if all relevant economic and regulatory decisions by the government were consistent with competition principles.
Culture of Competition

• Competition is far from becoming the normal way of organizing national life.

• Competition increases efficiency and economic welfare, but it also implies the loss of privileges, which creates opposition.

• The FCC has undertaken efforts to promote competition, but better results would definitely be reached if the FCC had more allies in these efforts.

A culture that embraces competition is a must.
Excessive litigation

Between 1993 and 2003, 706 *amparo* cases were filed:

- 34% are pending for resolution and have been open, on average, for 1.9 years.
- Cases completed took, on average, 401 days to be resolved.
- There have been 1.2 *amparos* for each appeal for review.
- 49% are intra procedural.

Excessive litigation delays the application of the Law, leaves public interest unprotected, while affecting third parties.

* The *amparo* is a proceeding established in the Constitution to protect individuals against unconstitutional acts by the government.
Ineffectiveness of fines

1993-2003: 493 fines imposed for 338 million pesos

Pending: 61%
Collected: 12.7%
Revoked: 26.3%

Fines are practically not collectable
Legal limitations

The CFC is not empowered to:

- Stop or sanction the abuse of market power through excessive pricing or other commercial conditions;
- Impose structural remedies on monopolies, even though they are *per se* illegal;
- Order suspension of anticompetitive practices that are pending for final resolutions;
- Undertake on-site investigations;
- Carry out leniency programs

A more effective competition policy requires the enhancement of CFC’s powers.
Limited resources: annual budget

2003 million pesos

- 2000: 161 million pesos
- 2001: 156 million pesos
- 2002: 160 million pesos
- 2003: 157 million pesos
- 2004: 147 million pesos
Limited resources: personnel

Number of employees

- 2000: 208
- 2001: 198
- 2002: 192
- 2003: 174
Proposed reforms
The office of the President of Mexico is developing a package of legislative reforms that pursue the following objectives:

- To consolidate CFC’s autonomy;
- To promote a comprehensive and consistent competition policy across all sectors;
- To reinforce the authority of the CFC to prevent anticompetitive practices; and
- To implement more effective administrative and judicial procedures.

These reforms would address most of the recommendations presented in the 2004 report.
Proposed reforms (II)

- In addition, the CFC is working on other aspects identified in the recommendations.
  - Merger notification procedures that fully meet ICN recommended practices;
  - An open dialogue with the Mexican Bar Association;
  - More active cooperation with COFEMER and PROFECO;
  - Greater international cooperation; and
  - Continuous advocacy activities: improving the website, additional publications, training seminars, conferences, etc.
Proposed reforms (III)

- Some of the recommendations in the report are not feasible at present.
  - Establishing the CFC as an agency with full independence in the management of its budget;
  - Creating a specialized *amparo* court with economic expertise.
Conclusions

- Competition policy in Mexico faces important challenges and opportunities.
- The main challenge is to consolidate competition policy by renewing the leadership and by reforming the law.
- The great opportunity is to make competition policy one of the key policy tools that will allow Mexico to enhance its economic development.