



INTER-AMERICAN DEVELOPMENT BANK
SUSTAINABLE DEVELOPMENT DEPARTMENT
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**ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT**
COMPETITION DIVISION

LATIN AMERICAN COMPETITION FORUM

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-- SESSION I --

IMPROVING RELATIONSHIPS BETWEEN COMPETITION POLICY AND SECTORAL REGULATION

MEXICO'S CONTRIBUTION

1. Introduction

The Federal Competition Commission of Mexico (CFC or the Commission) is empowered to enforce competition legislation by sanctioning monopolistic practices and anticompetitive mergers across all economic activities. It also has powers to promote competition in several economic sectors whose market structure creates the need for specific regulation, namely financial services, telecommunications, transport and energy sectors. Those sectors have specific regulators. Given the general application of the competition law, there is a jurisdictional overlap between the CFC and the sector regulatory agencies. However, there is a clear division of tasks between these agencies:

- i) the CFC is in charge of enforcing the Federal Law of Economic Competition (LFCE).
- ii) The independent regulatory entity or a federal ministry is in charge of enforce sector-specific laws and regulations.

Interactions between the Commission and regulators has evolved from informal communication and cooperation to formal cooperation mechanisms. Recent congressional approval of reforms to the LFCE to grant the CFC the power to issue binding recommendations on sectoral regulation will probably lead to an increased institutionalization of cooperation in policy design.

2. General overview of the interaction between the Federal Competition Commission and sectoral regulators

Both the CFC and sectoral regulators have responsibilities regarding market functioning in regulated sectors: the Commission enforces the competition legislation, while sectoral regulators enforce sector-specific laws and regulations.

Article 28 of the Mexican Constitution provides that the functions exercised exclusively by the State in specified strategic areas are not considered monopolies. The sectors considered as strategic areas are postal services, telegraph and radiotelegraphy, petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals, nuclear energy, electric power¹, and the functions of the central bank in producing coins and paper currency.

In all other sectors of economic activity, the Competition Law is fully applicable. In enforcing this law, the Commission seeks to protect the competition process and free entry to markets by acting against monopolistic practices and anticompetitive mergers.

Regulatory agencies have been established for sectors previously classified as strategic areas, which are currently opened to private participation and competition, including telecommunications (the Federal Telecommunications Commission, or COFETEL, which shares powers and responsibilities with the Ministry of Communications and Transport, or SCT), electricity and natural gas (the Energy Regulatory Commission, or CRE), insurance and sureties (the National Insurance and Sureties Commission, or CNSF), and pension funds (the National Pension Fund System Commission, or CONSAR). The transportation sector, including railroads, aviation, road transport, and ports, is directly regulated by the SCT. The financial sector is regulated by the Ministry of Finance, the National Banking and Securities Commission, and the Mexican central bank. These government entities are in charge of enforcing sectoral laws as well as economic and technical regulations, but they have no authority to apply the LFCE; only the CFC has this authority.

Many of the sector-specific laws and regulations provide an explicit role for the Commission. Specifically:

- The determination of the competitive situation of a market. For certain activities the Commission may determine whether effective competition exists or whether one of the agents has substantial market power. Based on the CFC's determination, the relevant regulator may impose or withdraw acts of economic regulation.
- The authorization of economic agents to participate in the privatization of state-owned enterprises or in public auctions for concessions, licenses and permits. Here the Commission normally applies standards similar to those of merger reviews. The Commission may or may not authorize the applicant's request or establish conditions to prevent the acquisition of market power by the applicant, should it win the auction.

The Commission also participates, together with sectoral regulators, in the design of the auctions themselves and in formulating rules that apply to all bidders equally. In addition, the CFC also participates in several inter-ministerial commissions through which it communicates and coordinates with other governmental authorities. In particular through its participation in the Inter-ministerial Privatisation Commission, the CFC has promoted that decisions regarding privatizations and concessions take into account economic competition issues.

¹ Electricity power sector has been partially opened to private participation. Under certain circumstances, private parties may generate electricity for their own use or for exclusively sale to state-owned electricity monopoly.

Beyond the Commission's attributions in the enforcement of competition legislation and its role stemming from sectoral laws and regulations, it also has powers to issue non-binding opinions addressing the effects on competition of changes to federal programs and policies, as well as to laws, regulations, agreements, and other governmental acts. Regulatory development projects in which the CFC has been involved cover practically all regulated sectors.

In general, relationships between the CFC and the regulators have been relatively successful. One relatively complicated situation has been the telecommunications sector. This is mainly due to two factors. First, the state monopoly in telephony was privatized before the advent of competition legislation, so competition considerations were not included in the privatization scheme. This led to the creation of an economic agent with substantial market power and great capacity to lobby sectoral regulators. Second, the institutional arrangement designed for Cofetel does not guarantee full independence, which has led to political pressure from regulated enterprise, both directly and through SCT, resulting in regulatory delays and differences with the CFC.

A countervailing strategy chosen by the Commission has been issuing several opinions in the telecommunications sector to promote competition and free market access. In 2005 alone the Commission issued three opinions related to the telecommunications sector. The first addressed a resolution of the COFETEL to promote competition in long-distance phone service. The resolution's object was to establish the "calling party pays" scheme for long distance calls to a local mobile service user. The second opinion covered a SCT project aimed at reducing entry barriers for broadband services and other wireless uses. The third opinion was issued to ensure that the potential pro-competitive effects of telecom network convergence are materialized to the fullest extent possible.

3. Improvements in the relationship between the CFC and sector regulators

The Commission considers that it is essential to strengthen cooperation with sector regulators as well as to enhance their knowledge of competition issues in order to improve the competitive landscape in regulated sectors, and thus promote private investment and efficiency. In order to accomplish this goal, the CFC has developed several initiatives related to capacity building on competition principles for regulator officials, negotiated collaboration agreements with regulators, and promoted amendments to the competition legislation.

The CFC has organised several seminars and workshops covering competition and price issues in regulated sectors. Officials of the sector regulatory authorities participated in these events. The most recent workshop, which included participation by experts from the US Federal Trade Commission and the Antitrust Division of the US Department of Justice, covered practical cases on railroads, electricity power, natural gas, and competition and prices. The objective was to do an in-depth study of the relationship between competition legislation and sector regulation, emphasizing the economic benefits of incorporating competition principles in sector regulation, pricing policy, and access-specific regulation.

The LFCE empowers the Commission to establish coordination mechanisms or agreements with authorities and entities of the federal public administration to prevent and investigate anticompetitive mergers and monopolistic practices, and in general to guarantee the enforcement of the competition legislation. Pursuant to this, the CFC has signed collaboration agreements with the Consumer Protection Office (PROFECO), the CRE, and the Federal Regulatory Reform Commission (COFEMER), which plays a critical role reviewing all new regulations or amendments to existing regulation proposed by federal government agencies.

The objective of such agreements is establishing a framework for collaboration between the authorities charged with enforcing competition policy and the correspondent sector regulatory policy, as well as promoting information exchange to facilitate activities of common interest.

Finally, the Commission promoted the recently approved amendments to the FLEC. An issue particularly relevant for the relationships between the CFC and the sectoral regulators is the power granted to the Commission to issue binding opinions. The CFC is confident that this faculty will improve the coordination of activities and policies with all sector regulators.

4. Final remarks

Activities of competition agencies should not be limited to those directly related to enforcement of the competition legislation. They should include competition advocacy activities to promote competition, aimed at government and broader society. In Mexico, competition advocacy has been essential to include fundamental competition principles in public policies and regulations, as well as to embed these principles in the way of doing business.

Close coordination between competition authorities and regulators is important to improve the competition level and enhance efficiency in specific regulated sectors. The approaches used in Mexico include informal channels, formal cooperation agreements, and –shortly- the power to issue binding opinions on regulatory matters.