



# **Federal Competition Commission**

## **Merger control in Mexico**

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## **Object of competition policy**

- Promote the correct functioning of markets as a source of competitiveness and social welfare.
- Ensure economic agents free, non-discriminatory access to markets, thus encouraging entrepreneurial activity.



## Competition policy has a solid constitutional basis.

### Article 28

- Prohibits monopolies and monopolistic practices.
- Establishes that concessions of public goods and services shall avoid concentrations that go against the public's interests.



## Competition policy in Mexico began in 1993.

- Since 1857 the Constitution prohibits monopolies and monopolistic practices.
- However, competition policy really began in June 1993, when the Federal Law of Economic Competition (FLEC) came into force.
- This law created the Federal Competition Commission (FCC) as an autonomous entity, solely responsible for its application.
- In addition, a number of sectoral legislations confer faculties to the FCC to strengthen competition in regulated sectors.



# FCC's mandate: to protect the competition process and free market access in all markets...

## Federal Law of Economic Competition

### Object

Protect the competition process and free market access through the prevention and elimination of monopolies, monopolistic practices and other restrictions to the efficient functioning of markets.

Article 2

### Scope

- Of general observance
- Throughout the national territory
- Applicable to all areas of economic activity and to all economic agents, both public and private.\*

Articles 1 and 3

\* Exceptions: Article 28 of the Constitution establishes that the following will not be deemed monopolies: the State's functions in strategic areas, unions, patents and trademarks, and exporting cooperatives (under certain conditions).



... by using a number of tools.

## FCC's legal tools

1. Preventing, opposing and sanctioning absolute and relative monopolistic practices.
- 2. Merger control.**
3. Assessing agents that are interested in participating in auction processes and in obtaining permits or concessions.
4. Making declarations on competition conditions or substantial market power in regulated sectors.
5. Advocating competition principles.



## Pre-merger notification

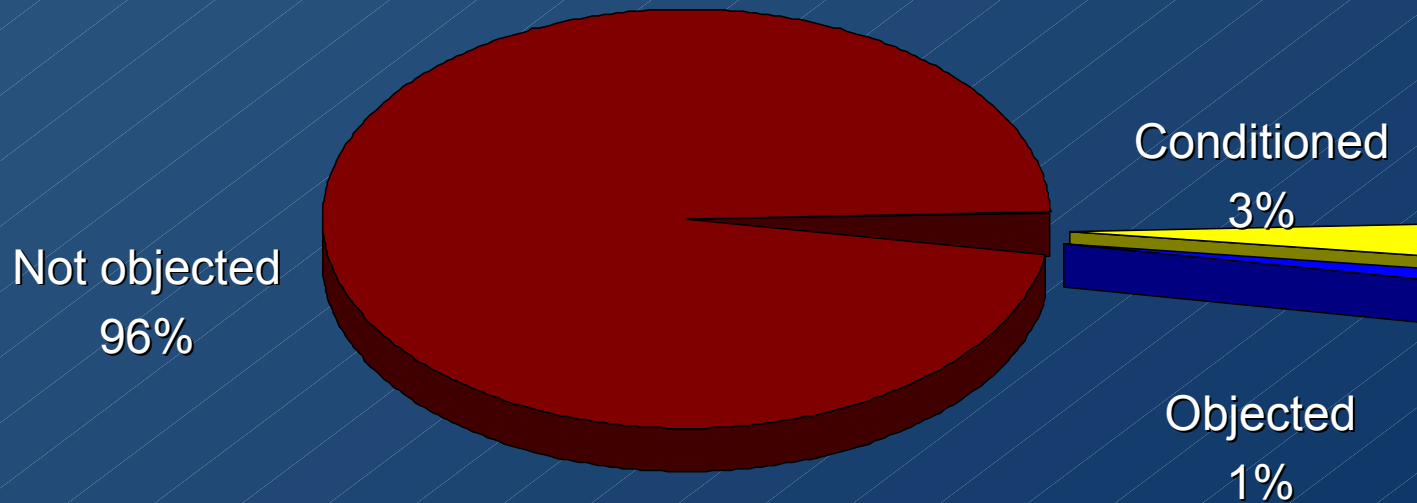
- Notification required prior to closing transactions.
- No discrimination between national and foreign economic agents.
- Notification thresholds indexed to the minimum wage are defined in terms of the size of the transaction and of the merging parties.
- Review periods are clearly defined.
- Decisions may be appealed before the Commission and courts



# Mergers reviewed

1993-2004

Total cases: 2,218\*



**Mergers are conditioned or objected only when they have clear negative effects on competition.**

\* Includes notified mergers, notices and investigations of allegedly prohibited mergers.



## The FCC minimizes costs for notifying parties.

Although the maximum legal period to clear mergers for which no additional information is required is 45 days, in practice, the FCC resolves them in 28 days on average.

Review of mergers for which additional information is required is accomplished within 50 days on average, though the maximum legal period is 80 days.

The FCC has efficient procedures to resolve merger cases: they are certified under the ISO 9001:2000 quality management standard.



## Examples of objected mergers.

### Railway sector: Ferromex/Ferrosur

- the transaction was intended to combine two of the three major regional railroads.
- the FCC's intervention prevented the elimination of inter railroad competition.

### Televisa/Radio Acir

- the proposed acquisition would negatively affect competition in the broadcast advertising market by creating a dominant firm in radio and television



## Examples of conditioned mergers.

### Bank mergers: Citicorp/Banamex

-the transaction involving Mexico's second largest bank was subject to the divestiture of business in the markets for ancillary banking services, where competition would be impaired.

### Guinness/Grand Metropolitan

-the merger of alcoholic beverage manufacturers would create a firm with a 65% share in the whiskey market, thus divestiture of "J&B" brand was required.



# Merger control

Is an effective tool to foster economic competition:

- It prevents the excessive accumulation of market power without imposing high regulatory costs.
- It allows the FCC to challenge or sanction mergers that have clear negative effects on competition without deterring private entrepreneurship.



# Globalization has internationalized competition policy.

## Globalization

Market integration.

Higher number of concentrations and alliances with international scope.

More cartels and other monopolistic practices with international dimension.

**Increasing importance of international convergence and cooperation in competition policy.**



## Convergence in merger control (I)

Mexico adheres to the “OECD Recommendation of the Council Concerning Merger Review” and is implementing ICN principles and recommended practices.

It has revised and simplified its merger review procedures.

It has developed Draft Merger Guidelines (available on the Internet for discussion) addressing, among other:

- Local nexus considerations
- Procedures for non-consensual transactions and sales in bankruptcy
- Transparency concerns
- Precise definition of confidential information



## Convergence in merger control (II)

Proposed reforms to the Federal Law of Economic Competition include changes to enhance the efficiency of procedures, such as:

- Expedite review procedure for mergers not raising material competitive concerns
- Simplified information requirements
- Precise definition of confidential information
- Higher notification thresholds



## Final remarks

- Merger control has been an effective tool to prevent agents from acquiring substantial market power.
- The FCC is currently reviewing its merger control regime to improve its procedures and adapt to converging standards.
- Mexico actively promotes international convergence and cooperation because they improve the effectiveness of competition policy.