



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.**

Strengths (I)



- **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



1998 recommendations

- “Maintain emphasis on regulatory issues and regulated and privatising sectors ...”
- “Broaden the base of support...”
- “Enter international co-operation agreements to improve enforcement efficiently in transnational matters.”
- “Make the CFC part of the Economic Deregulation Council ...”



2004 findings

- The CFC has “maintained a focus on regulated and privatised sectors,
- sought to broaden its base of support by publicising its actions to a wider audience and conducting outreach activities
- established important international antitrust co-op agreements ...”
- “... the Chairman of the CFC is a permanent member of the present Regulatory Improvement Council.”

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 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.



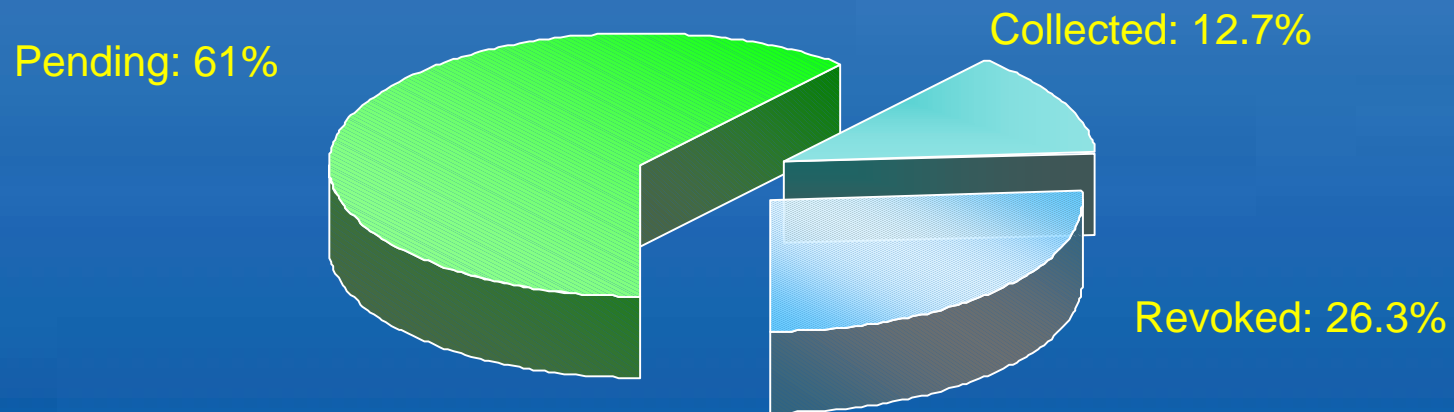
Excessive litigation delays the application of the Law, leaves public interest unprotected, while affecting third parties.

* 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



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

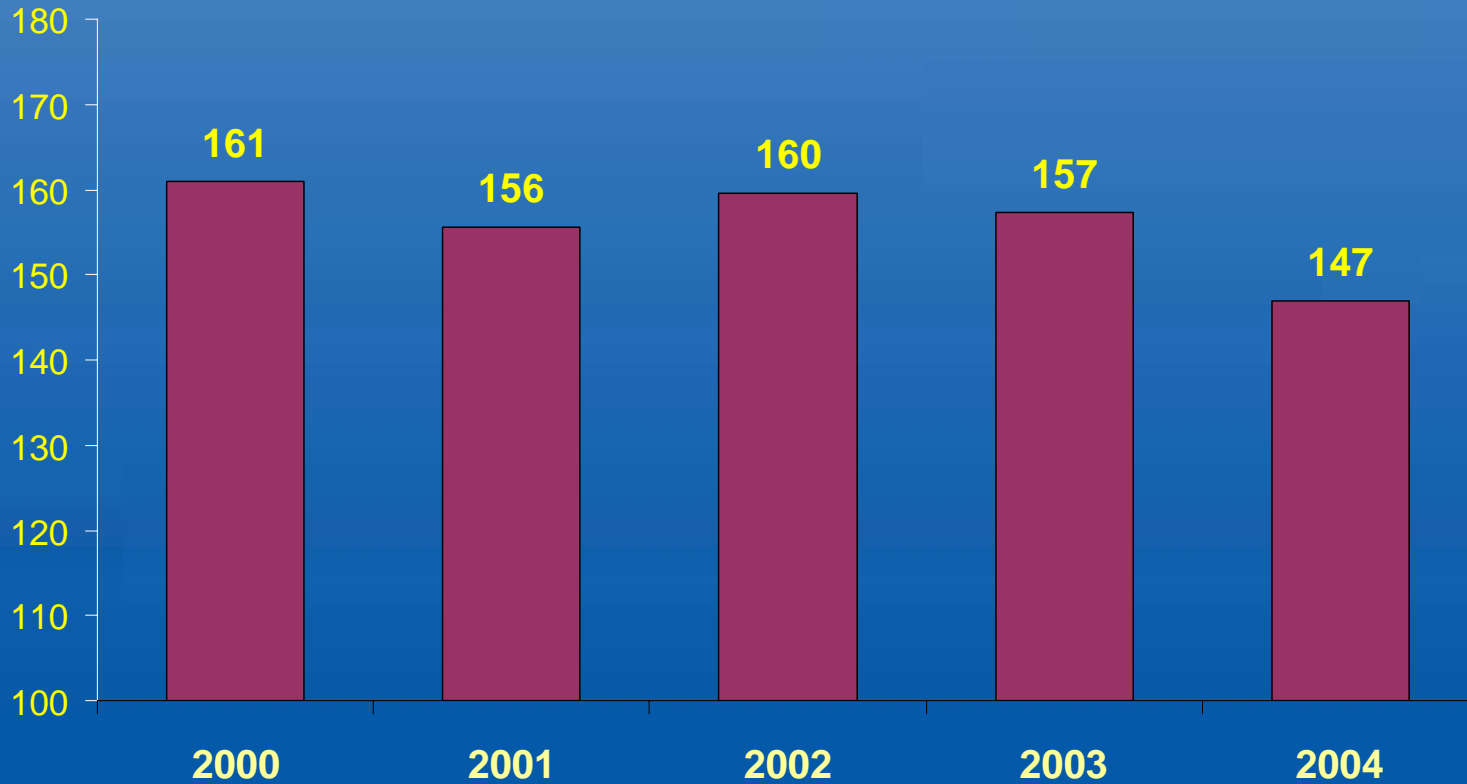


A more effective competition policy requires the enhancement of CFC's powers.

Limited resources: annual budget



2003 million pesos



Limited resources: personnel



Number of employees





Proposed reforms

Proposed reforms (I)



- **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.**