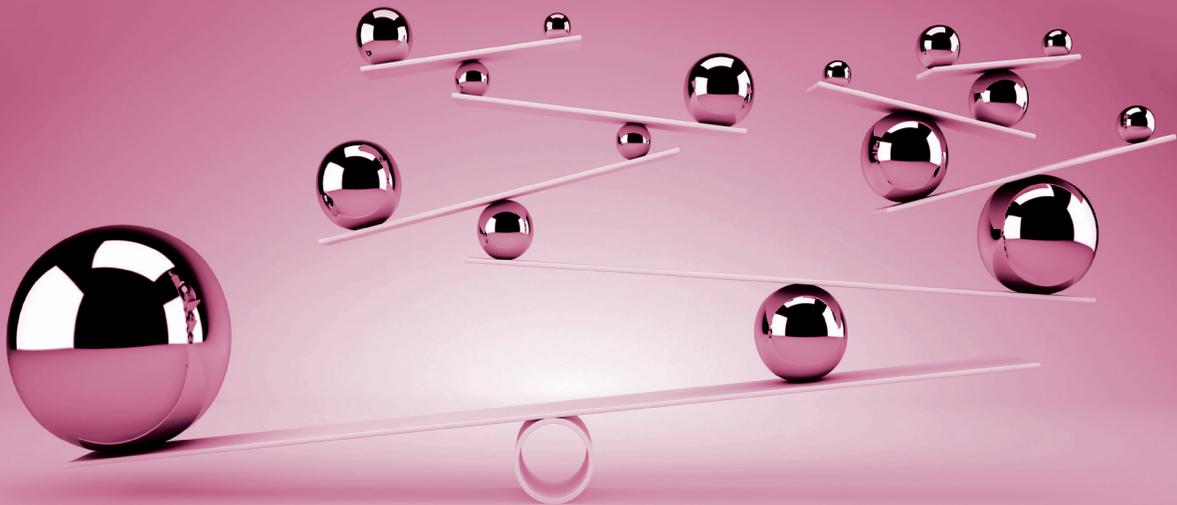


The Governance of Regulators

Governance of Regulators' Practices

ACCOUNTABILITY, TRANSPARENCY
AND CO-ORDINATION

CASE STUDIES FOR MEXICO



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Case Studies for Mexico



Foreword

Assessing practices of economic regulators contributes to building more effective institutions and to reducing risks associated to weak institutional design such as regulatory capture and undue influence. On this regard, transparency and accountability are some of the most powerful tools to avoid such risks. Additionally, co-ordination efforts with other public institutions also contribute to achieving the goals for which the regulator was designed.

This document is a series of the report *Governance of Regulators' Practices: Accountability, Transparency and Co-Ordination*, which was developed to provide experiences from regulators (from the United Kingdom, Portugal and Australia) with relevant achievements not only on accountability, or transparency practices but also over its main objective. In this volume, the emphasis relies on Mexican regulators' practices; in particular, it focuses on the Federal Institute of Telecommunications (IFT) of Mexico and the General Direction of Rail and Multimodal Transportation (DGTFM) of the Ministry of Communications and Transports (SCT).

The report analyses transparency and accountability practices of two regulators of Mexico, which differ substantially on the institutional arrangements. The IFT is a recent autonomous organisation, granted by Constitutional reform and the DGTFM was a body of the SCT. At the time of the report development, the DGTFM was a department with joint functions of promotion and regulation. Nowadays, functions were split and the DGTFM keeps the promotion of the industry and a new regulator was created to address regulatory issues; it is the Regulatory Agency of Rail Transport (ARTF). An important element in the approach of this document is the identification of duties on accountability over different stakeholders.

This report contributes to the OECD programme on the governance of regulators and regulatory policy led by the Network of Economic Regulators (NER) and the Regulatory Policy Committee (RPC), both co-ordinated by the Regulatory Policy Division of the OECD Public Governance Directorate. The Directorate's mission is to help government at all levels in the designing and implementation of strategic, evidence-based and

innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens. The goal is to support countries in building better government systems and implementing policies at both national and regional level that lead to sustainable economic and social development.

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Acronyms and abbreviations

COFECE	Federal Competition Commission of Mexico
COFETEL	Federal Commission of Telecommunications
DGTFM	General Direction of Rail and Multimodal Transportation
GDP	Gross Domestic Product
IFT	Federal Institute of Telecommunications of Mexico
LFRCF	Law of Audit and Accountability of the Federation
LFTAI	Transparency and Access to Public Information (2016)
LFTR	Federal Telecommunications and Broadcasting Act (2014)
LGTAI	General Act for Transparency and Access to Public Information (2015)
LRSF	Regulatory Law of Rail Services
NOM	National Official Standard
Profeco	Federal Prosecutor for the Consumer
SCT	Ministry of Communications and Transport
SHCP	Ministry of Finance

Chapter 1

Federal Institute of Telecommunications of Mexico

This chapter presents a case study that focuses on the accountability and transparency practices of the Federal Institute of Telecommunications (IFT) of Mexico, a recently created autonomous organisation. The section starts with an overview of the institutional background and a summary of the regulatory framework. The core of the section focuses on the obligations and practices on accountability and transparency issues towards the general public, the legislature or ministries and the regulated industry.

Background and legal framework

Until 2013 the Mexican telecommunication industry was characterised by lack of competition with near 80% of fixed lines and 70% of mobile services concentrated on a single enterprise. The report OECD (2012) found that Mexican prices of telecommunication and broadcasting services were above the average of its member countries and estimated that the loss of benefit were close to 1.8% of GDP per annum (OECD, 2012).

Table 1. Mexican prices in the OECD price baskets relative to OECD average country

(USD PPP, February 2011)

Residential calls basket		Mobile calls basket	
Number of Calls	Mexico price compared to OECD average	Number of Calls	Mexico price compared to OECD average
20	124%	30	132%
60	194%	100	165%
140	137%	300	109%

Source: OECD (2012), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264060111-en>.

In addition, the Federal Commission of Telecommunications COFETEL that acted as sector regulator faced significant institutional challenges. It was a dependent body of the Ministry of Communications and Transport lacking budgetary and decision autonomy, and responsibilities associated to regulation, oversight, and policy formulation were tangled. There were no mandatory procedures to develop transparency practices and the Mexican legal system allowed courts to suspend COFETEL regulatory decisions (OECD, 2012).

As a consequence, the 2013 constitutional reforms seeking the increase of economic competition and employment included important changes in the telecommunication and broadcasting sector. Concretely the Mexican Political Constitution now:

- Declares access to information technology and broadcasting services as a constitutional right guaranteed by the State. It establishes that the Mexican government will create conditions for the implementation of effective competition among the service providers in these economic sectors (Article 6).

- Declares that public authorities will prevent and punish any market concentration or business agreement that seeks to avoid competition, create entry barriers, or manipulate prices (Article 28).
- Specifies that resolutions from the market regulator could only be contested under the judicial injunction figure (“*amparo indirecto*”) but its applications will not be suspended. Creates specialised judicial bodies with technical knowledge to solve differences on telecommunications, broadcasting, and economic competition issues (Article 28 and 94).
- Specifies that foreign investment in the telecommunications sector could be of 100% and in broadcasting services of 49% (Transitory provision 11th June 2013).

These constitutional changes also gave origin to the Federal Telecommunications and Broadcasting Act of 2014 (LFTR), and the creation Transparency and Access to Public Information Acts explained below. It also gave origin to a new market regulator that issued its first Organic Statute in 2013.

IFT functions and powers

The Article 28 of the Mexican Constitution created the Federal Institute of Telecommunications IFT as the new regulatory authority for the telecommunication and broadcasting sector. This institution is defined as an *autonomous* body, with *legal personality* and *own budget* aimed to achieve an efficient development of these sectors while seeking the best prices for final users. Specifically IFT is responsible for:

- Regulating and overseeing the usage of spectrum for telecommunication and broadcasting services, which include access to associated infrastructure and inputs.
- Acting as *authority regarding economic competition* in its field with power to establish asymmetric regulation and define concentration limits.
- Granting, revoking, or authorising variations in the ownership of concessionaries and in its operational control.
- Allocating the telecommunication and broadcasting spectrum among different participants through the development of public tenders.

The functions and powers provided to IFT make of it a strengthened regulator. It is an independent institution with authority to declare companies acting as preponderant agents and establish specific requirements for their operations. The concentration limits defined by IFT include not only the frequencies usage, but also the market participation of concessionaries with cross ownership. Moreover, the regulator can request the disincorporation of assets to ensure compliance.

IFT functions are specified further in the Article 15 of the Telecommunications and Broadcasting Act (LFTR) that comprehends among others: Issue technical plans, guidelines and cost models (I), issue provisions regarding networks interoperability, and shared use of infrastructure (IX, XI), resolve disagreements in these topics (XII, XII), declare the extinction of obligations associated to content retransmission (XXIII), authorise, keep record and publish the tariffs charged by concessionaries to users (XXIV), request information and documents need to exercise its powers (XXVIII), establish the obligations of geographic and social coverage (XLIII) and monitor and sanction compliance with maximum times for commercial messages transmission (LVII).

On the other hand, the new functions and powers demand mechanisms to reinforce independence, prevent undue influences, and gain confidence on the decision making process.

Box 1. IFT Plenary Characteristics and Appointment Process

IFT maximum decision body is the Plenary made of 7 commissioners including its President who is also head on management issues. To guarantee technical suitability and undue pressures from stakeholders the Mexican constitution has established that commissioners (Article 28):

- Demonstrate at least 3 years of previous outstanding work in professional activities substantially related to the sector and needed knowledge to take office.
- In the year previous to appointment was not Secretary of State, Federal Attorney General, Senator, Federal or Local Representative, Governor or Chief Minister.
- In the 3 years previous to appointment did not hold any job position on corporations subject to IFT regulation.
- While in office refrain from performing any other job or commission with the exception of teaching.

Box 2. IFT Plenary Characteristics and Appointment Process (cont.)

- Be in office for 9 years without possibility of re-election, and would be only removed by two thirds of the Senate due to a serious failure on the exercise of functions.

When a commissioner vacancy opens, a multistage appointment process is implemented including: An open public call, a knowledge evaluation created by members of the Bank of Mexico, the Institute for Evaluation and Education, and the Institute of Statistics and Geography, a presentation to the Executive of the final five candidates with higher scores, the selection of one candidate by the executive, and a final ratification by the Senate.

Source: (n.a.) (2017), *Constitución Política de los Estados Unidos Mexicanos*, www.diputados.gob.mx/LeyesBiblio/pdf/1_150917.pdf (accessed 27 November 2017).

Institutional objectives

In addition to its legal mandates, IFT has defined four institutional objectives and one transversal policy of self-strengthening to make of it an efficient regulator that uses the best management practices and modern technical tools to fulfil its functions. The objectives are:

1. Promote a better offering of public services at affordable prices by fostering competition in the regulated sectors.
2. Promote universal access to the telecommunication and broadcasting services and technologies to maximise social welfare.
3. Guarantee that telecommunication and broadcasting services offered are consistent with international quality standards.
4. Promote respect for the rights of users.

These statements serve to IFT as reference points to all its strategies. For example developing activities to encourage the entrance of new investors is seen as a concrete way to pursue Objective 1, while giving information to users about the telecommunication industry and the channels to complain aims to achieve Objective 4. These goals also co-ordinate IFT with the broader institutional framework of the National Development Plan 2013-18 (IFT, 2016).

Accountability and transparency obligations

Having a legal framework that allows the existence of autonomous regulators requires the implementation of appropriate accountability and transparency policies in their governance. These bodies exist to execute specialised tasks aimed to foster economic and social development, and all stakeholders should be able to assess their performance which in turn increases confidence and compliance (OECD, 2014).

In the Mexican case, all government institutions including independent regulators must comply with both the General Act for Transparency and Access to Public Information of 2015 (LGTAI) and the Federal Act for Transparency and Access to Public Information of 2016 (LFTAI). The regulations seek to foster the accountability culture and establish procedures to guarantee the right to obtain data held in public offices while also specifies how to define and handle the one that is classified as reserved or confidential. Mandates are coherent with the necessity of providing enough public information about the regulators performance.

For IFT this means a general set of mandates (Article 70 of LGATI) requiring updated and open information regarding its operational behaviour as well as its interaction with citizens and the regulated industry. Transparency requirements comprehend: Publishing information about the organic structure and contact directory from the boss level, job vacancies and open calls, financial performance, inventory of concessions, and citizen participation mechanisms among others. IFT complies with the required mandates on its webpage where it has a specific section associated to transparency as shown in Table 2.

Additionally, the legal framework demands the elaboration of an annual report about public information access “*Informe Annual de Transparencia*” containing at least the number of solicitudes created, the result of those solicitudes, the time taken to answer, the evolution of claims with the internal comptroller, and any difficulties fulfilling the law. As a result IFT elaborates and publishes online the report incorporating additional elements such as the legal framework, the reception channel of user requests, the profile of petitioners, a classification of user submissions by topic, the calendar of sessions of the Transparency Committee, web links to deepen the shown information, an inventory of press releases, the programmes of training for civil servants, and additional transparency measures taken by the Plenary.

Table 2. Summary of LGTI transparency mandates and IFT fulfilment

Information requirement	IFT webpage and observations
Associated Regulatory Framework.	Available. Some links are outdated.
Organic structure, description of each area with tasks, goals, and activity indicators.	Available. Activity indicators by area are not clearly defined.
Contact information from the boss level including phone and email.	Available
Salary structure, vacancies by area and labour calls open.	Available
List of formalities and procedures.	Available
Financial information on the assigned budget and quarterly information and audit.	Available. Audit information could be explained further.
Sectorial reports, statistics, and citizen participation mechanisms.	Available. Public consultation calendar and other mechanisms.
Inventory of concessions and related information.	Available.
Contact information of Transparency Unit and Transparency Committee.	Available.
Other information considered relevant.	Available. Report of service and tariff comparison.

Source: (n.a.) (2015), *Ley General de Transparencia y Acceso a la Información Pública*, www.diputados.gob.mx/LeyesBiblio/pdf/LGTAIP.pdf (accessed 27 November 2017).

Obligations and practices to the general public

In addition to the described measures that improve management and operational practices transparency, OECD recommends the creation of systems to complain both against concessionaries providing services to final users, and against the regulator itself (OECD, 2014).

To protect user’s rights IFT has developed with the Office of the Federal Prosecutor for the Consumer (Profeco) an online tool called “*Soy usuario*” that allows any client to create a case against a telecommunication or broadcasting services provider. Complaints are transferred directly to the concerned company that should answer with an explanation and redressing offering under IFT and Profeco supervision. If not agreement is reached and there are justifiable reasons for it, dissatisfactions could evolve to a formal intervention by the public authorities. IFT also publishes periodic reports with statistics of “*Soy usuario*”, classifying claims by sector, company, issue, and state of the process (solved, rejected or escalated).

In contrast, IFT does not have an explicit mechanism for complaints regarding its own actions. All IFT public officers are subject to the standard constitutional controls (Title 4) and the responsibilities and sanction regime established on the Federal Administrative Public Officers Liabilities Act of 2012. The institution publishes openly the contact information of the members of the Transparency Committee as well as the Internal Comptroller Unit that has the power to resolve proceedings regarding the complaints submitted against public officers. This Unit also investigates any act or omission that implies irregularities in the management of resources (LFTR Article 35). Further, the internal comptroller could escalate cases with the Senate for a motion of removal of a commissioner violating its duties.

Obligations and practices to the legislature or ministries

Regulators exist to pursue objectives associated with fostering social and economic development, and they operate on a legal framework designed by legislatures. This means that although independent in its operation and decisions, regulators should held accountable with executive and legislative branch of their countries. OECD recommended policies includes having clear expectations, publishing a corporate plan outlining how to achieve such objectives, delivering official management reports with measurable indicators, and appearing before executive or legislative authorities (OECD, 2014).

Clear expectations

As abovementioned, IFT has concrete and well defined mandates and its functions are clearly separated from those of the Ministry of Communications and Transport. Defining explicit institutional objectives and publishing them on its web page is an appropriate way to pursue this recommendation.

Corporate plan

The Mexican Constitution in its Article 28 requires from IFT to present an Annual Work Plan to the Executive and Legislative powers “*Programa Anual de Trabajo*”. The report is a key guidance for the operation of IFT and has been improving with the inclusion of more precise deliverables and specific due dates, it lacks however any mention to financial resources that are showed in separate reports and formats. The annual work plan contains:

- Long term vision and explanation of institutional objectives.
- Regulatory agenda and its connection with each objective.

- Inventory of projects, responsible areas and expected percentage of advance.
- Studies, diagnostics, and documents to develop throughout the year.
- Planned events, forums, and summary of daily activities performed by IFT.

Management reports

Article 28 of Mexican constitution also states the obligation of generating a quarterly report of activities to the Executive and Legislative powers. Fulfilling this directive IFT makes public a document assessing the annual work plan progress each 3 months “*Informe Trimestral de Actividades*”. The report contains a summary of topics discussed by the Plenary, the public consultations done, and the goals achieved. It also relates each institutional activity with the previously defined objectives, and provides information about the projects advance against what initially planned. Is a useful tool to evaluate IFT performance regarding the missional objectives but it does not have financial or operational data.

In relation to IFT administration, the Article 20 of LFTR states that President Commissioner should run and manage human, financial, and material resources and the Organic Statue specifies that he must inform annually to the Plenary about such tasks. As a result, an annual report of the management of resources is made public online “*Informe del Estado que Guarda la Administración de los Recursos del Instituto Federal de Telecomunicaciones*”. It includes:

- Assigned and executed budget, financial statements, and an explanation of key variables.
- Acquisition of goods and services through public tenders or other mechanisms.
- Actions taken to promote talent management and recruitments.
- Operational policies, events, technology and information management.
- Internal comptroller evaluations.

IFT does not have a quarterly version of the annual report but it publishes on several formats periodic budget and financial information.

Appearing before Congress

Finally, besides the generation of reports Article 28 of Mexican constitution mandate IFT representatives to appear before the Congress to provide further explanations of activities if they are asked to do so. Article 93 is complementary and states that heads of autonomous institutions could be summoned to Congress to inform and be interrogated about issues in their field.

Obligations and practices to the regulated industry

Regulated industries expects also a proper use of the authority provided to regulators that includes avoiding exceeding the attributed powers, taking resolutions without consultation, or omitting relevant evidence. OECD recommended policies in this regard comprehend promoting access to appeal processes, defend the right to appeal big impact decisions through judiciary, and publishing justifications for all major decisions (OECD, 2014).

The IFT makes public the mechanisms by which regulated industries would contact and schedule officers and members of the plenary meetings, but does not have explicit internal channels for redress. Important exceptions are the procedures realised in the form of trial, as in the telecommunication and broadcasting sector IFT is the market regulator, and also the competition authority. This means that the Plenary makes the final decision regarding accusations related to anticompetitive or monopolistic practices but the procedure comprehends the arm's length separated analysis from the Investigation Authority (IFT, 2014). Before any final decision of the Plenary is taken, the involved company has opportunity to refute any accusation and show its arguments.

In reference with the external mechanism of appealing with the judiciary, the constitutional reform created specialised judges to give celerity and technical expertise to these processes (Article 28 and 94). However, as one weakness of the system before 2013 was that courts were allowed to delay or suspend the market regulator decisions application (OECD, 2012), the current system is open to appealing through the judicial injunction figure ("*amparo indirecto*") but do not suspend the applications until the trial is solved. This feature does not hold for fines or divestiture of assets preserving a balance for regulated industries.

Finally, regarding the justification of all major decisions, the LFTR establishes concrete requirements for making public the plenary meetings discussions and agreements, as well as realising public consultation containing an explanation for the proposed regulatory changes.

Table 3. Transparency measures for the plenary decisions

Transparency measure	IFT fulfilment
Plenary agreements, and resolutions should be public with the exception of sections containing confidential information (Art 47)	IFT publishes online the Plenary session's calendar. A searching engine tool for historical records is also available.
Plenary sessions will be recorded and made public online. The vote of each commissioner should always be public. (Art 48)	Public information includes attendance, discussed agenda with a short description, and votes of each commissioner by topic.
Minutes of the sessions should be available online after 10 labour days (Art 50)	Written document with the evolution of the sessions is available to download.
Before regulatory changes IFT should perform public consultation to collect non-mandatory observations and make public an impact analysis of it. The regulatory agenda should be available online (Art 51)	IFT publishes the calendar of monthly projects for public consultation. The impact analysis is not always explicit in the informative document. IFT also publishes the comments received in each public consultation.
Commissioners should keep record of the interviews held with representatives of regulated industries that should be made public online (Art. 30)	IFT makes public the database of meetings specifying date, topic, company, and attendees list.

Source: (n.a.) (2017), Ley Federal de Telecomunicaciones y Radiodifusión, www.diputados.gob.mx/LeyesBiblio/pdf/LFTR_311017.pdf (accessed 27 November 2017).

Conclusions

1. The Mexican reforms of 2013 and its posterior developments provided IFT with useful tools to improve the performance of the telecommunication and market regulation.
2. IFT has powers to define and declare concentration practices, establish significant fines, and ask for assets separation. At the same time IFT has been allocated with explicit accountability and transparency tasks, which are consistent with OECD recommendations for engaging with the general public, the legislature and regulated industries.
3. Practices associated with complain and redress against IFT could be made clearer.

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Chapter 2

General Direction of Rail and Multimodal Transportation

This chapter presents a case study that focuses on the accountability and transparency practices of the General Direction of Rail and Multimodal Transportation (DGTFM) of the Ministry of Communications and Transport (SCT) of Mexico. The section starts with an overview of the institutional background and a summary of the regulatory framework. The core of the section focuses on the obligations and practices on accountability and transparency issues towards the general public, the legislature or ministries and the regulated industry.

Regulatory framework, objectives and functions

Accountability and transparency practices of the Mexican railway authorities have a central role due to the high regulated nature of its market. For most of the XXth Century, Mexican railway services were exclusively operated by the State, as the Article 28 of the Constitution defined railway services as a strategic national area. In 1995 that article was reformed, giving way to the privatisation of construction, operation and exploitation of railways (Cámara de Diputados del H. Congreso de la Unión, 2016). The SCT granted concessions to private operators throughout the country for a total of over 16 thousand kilometres of line, operated by 9 companies. These concessions were given for a total of 30, 45 or 50 years.

The current regulatory authority of the rail market in Mexico is the Ministry of Communications and Transport (*Secretaría de Comunicaciones y Transportes*, SCT), specifically the General Direction of Rail and Multimodal Transportation (DGTFM), under the supervision of the Deputy Ministry of Transport—even though the decree creating the Railway Transport Regulatory Agency was published in the Official Gazette on January 26, 2015 (DOF, 2015). However, the legislative basis for the creation of a new regulatory authority was published on January 2015. The Regulatory Law of Rail Services (*Ley Reglamentario del Servicio Ferroviario*, LRSF) has been reformed for the creation of the Railway Transport Regulatory Agency. This agency is defined as a de-concentrated body within the SCT, which grants it technical and operational autonomy (including faculty to manage its own budget). Nonetheless, it will still form part of the Executive Branch of the government; as it was not granted full constitutional autonomy, in contrast with other agencies such as the Federal Telecommunications Institute (IFT) or the Federal Competition Commission (COFECE). This is relevant since the transparency obligations provided in this study case will mostly apply to every public instance within the Executive, Legislative, and Judicial Branch, as well as autonomous bodies, as the Law of Transparency and Access to Public Information (*Ley Federal de Transparencia y Acceso a la Información Pública*, LFTAI) applies, but the Law of Audit and Accountability of the Federation (*Ley de Fiscalización y Rendición de Cuentas de la Federación*, LFRCF) does not apply to autonomous bodies (Art 2, Frac IX of Cámara de Diputados del H. Congreso de la Unión, 2016).

As stated in Table 4 **Error! Reference source not found.** the SCT is in charge of issuing norms of technical standardisation (known in Mexico as NOM: Mexican Official Norm). In the SCT website, there are four NOMs published (SCT, 2017), which is an unusual low number relative to international rail regulators. Through these set of NOMs, the SCT regulates

the concessions granted to the private industry. NOMs should be extensive and of easy access to facilitate the compliance of regulation to the regulated entities. The fact that there are only four NOMs published on the SCT website highlights either the lack of NOMs for technical regulation or the lack of transparency on presenting them.

Table 4. Railway functions of the SCT

Article 6: Attributions on rail service	
Ministry of Communications and Transport (Before the reform)	Ministry of Communications and Transport (After the reform)
I. Plan, design and conduct the policies and programs, as well as regulate the development of the railway system. II. Give concessions and permits, verify their compliance and resolve issues of modification and termination. III. Technical regulation of railways IV. Basis of tariffs regulation V. Sanctions VI. Integrate the registry of permits and concessions.	I. Plan, design and conduct the policies and programs, as well as regulate the development of the railway system. II. Grant concessions and permits, as well as verifying their compliance and resolve issues of modification and termination. Regulatory Agency of Rail Transport III. Technical regulation of railways and infrastructure interconnection. IV. Basis of tariffs regulation V. Integrate the registry of permits and concessions. VI. Recommendation and cooperation on Public Security and related matters. VII. Promote the expansion and use of the rail network. VIII. Register the maximum freight tariffs. IX. Rail industry statistics X. Short-rail valuations. XI. Sanctions XII. International forums participation and research conduction XIII. Request of information to licensees.

Source: Cámara de Diputados del H. Congreso de la Unión (1995), Ley Reglamentaria del Servicio Ferroviario, www.diputados.gob.mx/LeyesBiblio/pdf/209_080616.pdf. Cámara de Diputados del H. Congreso de la Unión (2016), Ley Reglamentaria del Servicio Ferroviario, www.diputados.gob.mx/LeyesBiblio/pdf/209_080616.pdf.

Another important authorities figures regarding rail policy are the SCT-Centres. These centres are representations of the Ministry in the Mexican states that are set to contribute to the development of communication and transport systems of each state. On specific rail matters, it has the purpose of improving the security and sustainability of the rail

national system, as well as enhancing the legal and regulatory framework of the railway system and its compliance, to achieve an oversee authority role and give certainty to the concessionaires, the investors and the users (SCT, 2011).

Accountability and transparency obligations

Notwithstanding that all public organisations have to comply with the same obligations on accountability and transparency, according to the LFTAI and the LFRFCF, in practice such policies may differ among agencies, as some may comply with higher quality standards than others. The DGTFM currently has the obligation to publish the transparency information required by the LFTAI. This means that the through the transparency portal, the SCT – as every other Ministry – has to publish information on the following categories (INAI 2017):

- Organisational structure
- Faculties
- Directory
- Monthly compensations
- Liaison unit
- Goals and objectives
- Services
- Formalities (including requirements and formats)
- Budget (allocated and spent)
- Audits
- Subsidies Programs
- Concessions (including permits and authorisations)
- Procurement
- Regulatory Framework
- Citizen Participation
- Relevant Information

Obligations and practices to the general public

The main instrument to promote transparency and accountability within the general public is through the publication of high quality information. In this way, academics, think-tanks or any stakeholder would be able to review and work with sector's information.

A relevant practice to promote transparency and accountability is issuing a clear, comprehensive and useful annual report. However, there exists a lack of an annual report produced by the rail authority with the objective to disseminate financial and operative results, as well as the measurement of goal achievement during the year. In contrast, the DGTFM mainly presents its annual information in two reports: the Annual Activities Report and the Annual Statistical Yearbook. The former is a centrally based report prepared by the Ministry and the latter a report prepared solely by the DFGTM.

The annual statistical yearbook is only composed by descriptive market indicators, summarised in Table 5 **Error! Reference source not found.** This yearbook lacks however of performance indicators to be measured by the rail regulator over its own performance and the accomplishment of objectives defined.

Some examples of possible performance indicators include: on-time performance, train delays, public benefits, employee on-duty casualties, train accidents (US Department of Transportation, 2017), total number of complaints received, percentage of complaints responded (ORR, 2017). Moreover, the statistical yearbook published by the DGTFM is far from an ideal statistical comprehensive database as it is not user friendly (it is only published in PDF format) and it is not updated on regular basis.

The Annual Activities Report mostly gives information regarding infrastructure projects of rail services on both cargo and passenger modalities. The report delves in government commitments for the following year. Specific data is narrowed down to the annual data of quantity of passengers and the passengers target for the year following the publication of the report, as well as a yearly comparison of the number of intermodal cargo terminals in operation and the total cargo movement by railway. However, there is a lack of reporting on budgetary or operative matters.

Regulators should be specific on short, medium and long term goals and objectives, so the public have rational expectations on what the regulator is set to accomplish, as well as to publish. This must be published in an easy-to-work format.

Table 4. DGTFM Statistical Yearbook Indicators

Mexican Railway System (MRS)		Freight Movement	Freight Forwarded by Rail Company	Freight Moved by Rail Company	International Trade Freight Traffic	Passenger Transport
Overview	Fuel efficiency	Freight transported in the MRS	Forwarded freight in the MRS	Companies: KCSM Ferromex	International Trade Evolution	Passenger Transport
MRS Map	Fuel Consumption on the MRS	Total freight transported by type of product	Forwarded freight by railway company	Ferrosur Coahuila-Durango CDCHM	International Trade by Port and Border	Inter-urban passenger transport
Railway longitude	Evolution of the labour force in the MRS	Mobilised freight by group of products		FTVM Admicarga	Imports-Exports by Port and Border	Suburban passenger transport
MRS Driving Force Evolution	Rail cars by type in the MRS	Mobilised freight by railway company				Suburban passenger transport by train station
Traffic Equipment on the MRS						

Source: SCT-DGTFM (2015), Anuario Estadístico Ferroviario, www.sct.gob.mx/fileadmin/direccionesgrales/dgtfm/anuarios_dgtfm/anuarios_pdf/anuario_2015.pdf (accessed 27 November 2017).

Even though the LRSF specifies the faculties and obligations of the rail regulator, there is not a set of published specific strategic objectives. The transparency portal lacks of information on specific goals and objectives that should be developed and published by the DGFTM and included in its annual report. Also, the goals and objectives of the regulator are not published in the portal, even though there is a legal obligation to do so. This subject is rather important as it provides credibility from the citizens to the regulator and a baseline measure to its own goals. These goals should be as specific as possible. Not having a short-term (and long-term for that matter) set of goals would complicate the accountability of the regulator towards the regulated stakeholders and its hierarchical superior. This will become more important as the independence of the regulator is enhanced.

Obligations and practices to the legislature or ministries

Several accountability instruments designed to supervise instances are also outlined with the general public. This includes a yearly activities report and the measurement of goals achievement and objectives. Even though the budget is of public interest, the DFGTM has to be held accountable of its expenses to the SCT and to the Congress; for this reason the budget analysis is centred as accountability to its superior instances. The DGFTM budget is proposed by the SCT to the Ministry of Finance (*Secretaría de Hacienda y Crédito Público*, SHCP), who ultimately sends the integrated budget of the Executive Power to the Congress for approval.

The approved budget may be found in the *Federal Expenditure Budget* report published by the SCHP. The expenditure report of the DGTFM may be found biannually in the transparency portal. It includes the approved budget and the expenses made up to the end of the first semester. This format should be included in the annual report and analysed further. It should also be more specific on each of the categories to enhance the expenditure transparency. The breakdown of the account is the following:

Table 5. Breakdown of the DGTFM expenditure report

Total expenditure	
a) Direct Expenses	
•	Current Expenses: Personal Services, Materials, General Services, Pensions, Other Expenses
b) Subsidies and Transfers	
•	<i>Subsidies</i> : States (Current Expenses including Personal Services and Others and Capital Expenses and Other Expenses); Others (same breakdown).
•	<i>Transfers</i> : States (Current Expenses including Personal Services and Others and Capital Expenses (Physical and Capital Expenses as well as Other Expenses); Others (same breakdown).

Source: SHCP (2015), Decreto del Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2015, www.diputados.gob.mx/PEF2015/exposicion/decreto_presupuesto.pdf (accessed 27 November 2017).

Compared to international practices, the financial information of the rail regulator seems limited. For instance, the Office of Rail Regulation of the United Kingdom publishes an annual report which includes financial statements and further notes. Some of the specific information includes amount of expenses on: Travel and Subsistence, Hospitality, Consultancies, IT & Telecoms, Landlord service charges & rates, Building related and so forth (ORR, 2016). Furthermore, the financial statements presented in this report are audited from both internal and external parties. As an example of a good practice, the report includes advances in five strategic objectives of

the regulator, a thorough remuneration report, perspective for the following years, accountability to the legislative power and some other relevant topics.

In terms of accountability, the LFRCF remarks the role of the Federal Superior Audit (ASF) body as the responsible to integrate the financial statements of agencies that belong to the Executive power, among others. These individual reports must include the following information: selection criteria for the objectives and scope of the audit procedures, names of the public servants of the ASF in charge of conducting the audit, the compliance of the legal provisions regarding public budget, results of the audit, observations, and recommendations derived, and a chapter with each individual audit (Art. 26 of Cámara de Diputados del H. Congreso de la Unión, 2016).

Obligations and practices to the regulated industry

Accountability to the regulated industry takes shape in some processes in which the industry has direct participation. This includes the issuing and publication of technical norms, obligation of information requests, establishment of new formalities or change in the requirements for existing formalities, establishment of basis for tariffs regulation and so forth.

The process of establishing or modifying these regulations is an imperative scenario in which the DGTFM must have high quality accountability and transparency measures. A relevant example where transparency should be enhanced further is the establishment of tariff regulation in the railway market by the SCT. If the Federal Competition Commission establishes that there are no conditions of effective competition in a specific railway market, the DGFTM has to establish bases for tariff regulation (Art. 47 of Cámara de Diputados del H. Congreso de la Unión, 1995). The LRSF by-law states that the SCT has to establish a methodology that will consider a *competitive* tariff that an efficient carrier would charge (Art. 175 of Presidencia de la República, 2011). There are no guidelines considering public consultation among expert in the public industry or the academia, nor any grounds for publishing the methodology established by the SCT. This issue holds for general public consultation matters as well.

Another relevant transparency practice is the establishment of formal mechanisms to engage with the industry. Currently the DFGTM conducts informal meetings with the industry, which represents an important shortcoming of a transparent process. Given the technical and high regulated nature of the industry, it is important that the DFGTM does engage with the industry, but in an open and transparent way. International practices call for different types of mechanisms, including periodical committees in specific technical issues, or to oblige the regulatory authority to disclosure relevant information about meetings conducted with the industry.

Conclusions

1. The DGTFM complies with the set of obligation that the LFAIP establishes to all public entities. This set of obligations includes several topics and levels of information. Nevertheless, as a network and economic regulator, its accountability and transparency obligations should go beyond.
2. The DGTFM does not publish an integral annual report that evaluates the financial and operational results of the year as well as the goal achievement.
3. The Mexican Rail Authority does not have – at least available for the general public – clear short, medium and long term goals and objectives.
4. The financial expenditure report has serious shortcomings on specificity level when compared to international standards.
5. No audits of the DGTFM by an external agency are carried out and published, as many regulators from OECD country members do.
6. The DGTFM does not conduct any kind of performance evaluation of established goals or regulatory activities so that it may be hold accountable for its operations.
7. The statistics presented by the DGTFM could be enhanced further: in the presentation (a database rather than a pdf format), the periodicity of the indicators and the quality of the content.
8. The DGTFM does not have a systematic mechanism to hold formal and transparent meetings with the industry.

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