

Unclassified

DAF/COMP/AR(2012)20

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

31-May-2012

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2012)20  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN MEXICO**

-- 2011 --

*This report is submitted by Mexico to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 13-14 June 2012.*

JT03322674

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

English - Or. English

## TABLE OF CONTENTS

Executive Summary .....	3
1. Changes to competition laws and policies, proposed or adopted.....	3
1.1 Summary of new legal provisions of competition law and related legislation .....	3
2. Enforcement of competition law and policy .....	5
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions .....	5
2.2 Mergers and acquisitions .....	7
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.....	9
3.1 Binding opinion on the draft declaration for the regulated use of the Agave brand.....	9
4. Resources of competition authorities .....	10
4.1 Resources overall (current numbers and change over previous year).....	10
5. Summaries of references to new reports and studies on competition policy issues .....	10
5.1 Collaboration of CFC with the Mexican Institute of Social Security (IMSS for its acronym in Spanish), the Government of the State of Mexico (GEM) and OECD to adopt and implement the “Guidelines for fighting bid rigging in public procurement” of OECD (Guidelines).....	10
5.2 Adoption and Implementation of the Guidelines by IMSS.....	11
5.3 Adoption and Implementation of the Guidelines by GEM .....	12
5.4 Competition Assessment Toolkit Project.....	13

## Executive Summary

1. This report presents a brief and complete update of the competition policy in Mexico. It explains how the 2011 amendments to the Mexican Competition Law strengthened the enforcement powers of the Mexican Federal Competition Commission (Commission or CFC for its acronym in Spanish) and eased compliance with Competition Law. It also describes the CFC's most important advocacy and enforcement activities in 2011.

2. During 2011, the Commission issued its first binding opinion on a draft project to grant and exclusive use of the "Agave" brand to tequila, mezcal and bacanora. The Commission's opinion states that granting an exclusive use of the "Agave" brand would hinder competition in the alcoholic beverages market and would reduce consumer options.

3. In 2011, the CFC worked closely with the OECD in fighting bid rigging in Mexico's public procurement. The Mexican Institute of Social Security (IMSS for its acronym in Spanish) adopted and implemented the OECD's guidelines on the matter. It was the first time that a government institution worked with the OECD to improve their public procurement regulation and practices. The efforts carried out by OECD and the CFC proved fruitful, and as a consequence, several federal and local institutions will adopt OECD Guidelines.

4. Also during 2011, as part of the implementation of the OECD's Competition Assessment Toolkit, the elaboration of a study on the Mexican regulatory framework of foreign direct investment is underway.

### 1. Changes to competition laws and policies, proposed or adopted

5. In 2011, the Mexican Congress passed a bill with important amendments to the Mexican Federal Law of Economic Competition (Competition Law). These amendments aligned the Mexican Competition Law with the best international practices and provided the Commission with better tools to protect the competition process and to improve the competitiveness of the Mexican economy for the benefit of consumers.

#### 1.1 Summary of new legal provisions of competition law and related legislation

6. In April 2006, the Mexican Congress approved several changes to the Competition Law. While the 2006 reform granted the CFC larger powers, clarified several procedures and increased fines, competition legislation was still limited and a few steps behind international best practices.

7. In this regard, in May 2011, after an intense and fruitful debate in both Chambers of Congress, the Mexican representatives approved unanimously amendments that substantially improved the Competition Law.<sup>1</sup>

8. The changes to the law mainly pertain to the following:

##### 1.1.1 Strengthen competition policy

- Increased fines. One of the main objectives of competition law is to deter firms from participating in collusive agreements or other conducts that hinder competition. Until 2011, the fines

<sup>1</sup> See amended law in: <http://www.cfc.gob.mx/images/stories/Leves/compendio-normativo/compendio-abril-2012.pdf>

established by the Competition Law were not enough to successfully halt companies from engaging in an anti-competitive behavior.

Through these amendments economic sanctions were raised to an amount of up to ten per cent of the annual national revenues of a firm, in the case of cartels, and eight percent for abuse of dominance cases. The fines are in line with those contemplated in the Competition Law of the United States, United Kingdom, Australia and Spain, just to mention a few jurisdictions.

- Criminal Sanctions. Considering the great economic damage caused by cartel activity, the United States, Australia, South Africa and Brazil, among other countries, have included criminal sanctions for company's executives involved in anti-competitive agreements. According to the aforementioned, the 2011 reforms also amended the Mexican Federal Criminal Code to establish sanctions ranging from three to ten years of prison for firms' officers who take part in cartels.
- Surprise On-Site Searches. Before the amendments to the Competition Law, the CFC had to request a judicial order to inform investigated companies on its intention to carry out on site searches. Additionally, the CFC could only search for information previously requested to the firms. This allowed investigated companies to hide or destroy information valuable to CFC's investigations. The amendments to the Competition Law authorize dawn raids without previous notice, hence facilitating evidence gathering.
- Interim measures. Prior to the 2011 amendments, a firm could still commit an alleged illegal conduct while the Commission carried out an investigation. Moreover, the firm could continue with the anti-competitive conduct until the CFC issued a resolution. This allowed the firms to continue with monopolistic practices or to carry on with a merger to the detriment of consumer welfare. The reform allows the CFC to establish interim measures that oblige firms to cease an alleged anti-competitive conduct and avoid an irreversible damage to competition, while an investigation is executed.

#### *1.1.2 Ease compliance with Competition Law*

- Oral hearings. The changes to Competition Law provided firms involved in a case with the possibility to present their defense arguments to the CFC's Commissioners and officers through oral hearings.
- Settlements. The CFC can now end investigations in advance requesting an investigated firm's compliance to several commitments established by the Commission, with the purpose of restoring competition conditions in affected markets. Settlements permit for a better allocation of resources and avoid facing expensive litigation.
- Simplification of merger notifications. The former obligation to give notice of mergers that pose no danger to competition, like in the case of corporate restructuring, was eliminated. Also, the simplified procedure to notify operations which notoriously do not lessen competition was clarified.

In addition to the amendments described above, on August 30, 2011, another reform that allowed for class actions was approved. The former Law only allowed for an individual claim for damages, thus resulting in a costly trial that a plaintiff most often could not afford. Class actions provide those affected with a better chance to receive damage compensation.

## 2. Enforcement of competition law and policy

9. Regarding law enforcement, the Mexican Competition Law groups its procedures into six categories: i) mergers; ii) monopolistic practices; iii) opinions; iv) consultations; v) requests for reconsideration and appeals; vi) and declarations of effective competition conditions.

10. In the subsequent subsections the Commission's works in the areas of mergers, monopolistic practices, and opinions will be summarized.

### 2.1 *Action against anticompetitive practices, including agreements and abuses of dominant positions*

#### 2.1.1 *Monopolistic practices*

11. Monopolistic practices are those that, because of their object or effect, damage or prevent the process of competition and free market access in the production, processing, distribution and marketing of goods and services. The Mexican Competition Law distinguishes from two practices: absolute monopolistic practices (cartels) and relative monopolistic practices (unilateral conducts).

#### 2.1.2 *Summary of activities of competition authorities*

12. The number of cases attended by the Commission in 2011 amounted to 476, of which, 381 were received during 2011, while 95 were pending from 2010. The cases that came to conclusion amounted to 396. The majority of the cases were related to merger notifications followed by biddings, concessions, and permits.

13. Cases pertained to the following economic sectors: manufacturing industries represent 50 percent of the cases attended by the CFC, professional services represent 13 percent of the cases, telecommunications accrue for 8 percent and transportation amounts to 7 percent of the cases. The rest of the cases belong to different economic sectors.

#### 2.1.3 *Description of significant cases, including those with international implications.*

- Abuse of Dominance in the mobile telephony market<sup>2</sup>

In 2006 and 2007 several public telecommunications network operators filed a complaint against Telcel, a subsidiary of America Movil, the largest mobile telephony operator in the country. The claims consisted in an alleged anti-competitive conduct in the "termination" of mobile and fixed calls within Telcel's mobile network. Telcel allegedly charged artificial high interconnection rates to telephone calls from other networks (off-net), different from those it auto-imposed on calls from their own network (on-net). The investigation concluded that there were no substitutes for this service since only Telcel may "terminate" calls made by users in its own network. Also, the investigation found that making use of its substantial market power, Telcel unduly displaced its competitors to the detriment of consumer welfare.

In this regard, the CFC set a historical fine for 11.9 billion pesos (aprox. 1 billion dollars), which represented ten percent of Telcel's assets. The economic sanction imposed to Telcel was the

---

<sup>2</sup> File DE-037-2006.

highest ever imposed by the Commission. The fine was calculated taking into account Telcel's recidivism, the damage infringed to consumers, and Telcel's economic capacity.

Later in 2011, Telcel filed a reconsideration appeal and a motion for recusation against the President of the CFC. On June 2011, the CFC's plenum, decided by majority that there were grounds to accept the reconsideration appeal and to impede the CFC's President from participating in this case. The case is suspended until the Judiciary issues a ruling on the reconsideration appeal filed by Telcel.<sup>3</sup>

- Freight Truck Services Cartel in the State of Baja California<sup>4</sup>

In January 2011, the CFC launched an ex officio investigation on the market of freight truck services in the state of Baja California. The Commission received information, which prompted the start of the investigation, from an applicant to the CFC's Leniency Program.

An alleged agreement among competitors to fix prices, restrict the supply and allocate the market of freight truck services in the region was investigated. The Commission obtained certified copies of nine agreements signed by several firms' employees.

Through these agreements the firms agreed on:

- Fixing the price for cement freight transportation services.
- Limiting the number of freight trucks available for product transportation.
- Allocating the clients among suppliers of freight truck services.

In 2011, the Commission sanctioned four freight truck firms and four persons involved in the agreement. Among those sanctioned for this collusive agreement was the Director for Transportation of the state of Baja California. Fines amounted up to 13.78 million pesos (aprox. 1 million US dollars).

- Mexico's anesthesiology services cartels<sup>5</sup>

In October 2008, the Commission investigated an alleged price fixing agreement in the market of Mexican anesthesiology services. Information found in the Mexican Federal Anesthesiology Association's webpage provided the grounds for the launching of this investigation.

A fee chart, which determined the prices paid by insurance companies to anesthesiologists was published on the Association's webpage. The investigation found that the College of Anesthesiologists of Juarez City in the northern state of Chihuahua had elaborated the fee chart. Moreover, several insurance companies presented information that confirmed that anesthesiologists from at least seven different cities used the fee chart to negotiate the price charged for their services.

---

<sup>3</sup> In 2012 the case was returned to the Commission. The CFC decided not to collect the fine imposed and accepted five commitments presented by Telcel, which will generate benefits of over 6 billion dollars a year for consumers, five times the amount of the fine originally imposed.

<sup>4</sup> Files IO-001-2010 and RA-025-2011

<sup>5</sup> File IO-002-2008

During the investigation, the Commission found that the Mexican Anesthesiologists Federation presented false information to the Commission. Once the investigation was concluded and after the assessment of the evidence presented by the anesthesiologists involved in the case, the CFC decided to fine 32 economic agents for their participation in this illegal agreement. The fines amounted to up to 1 million 934 thousand pesos (aprox. 200 thousand US dollars). In the calculation of the fine, a sanction for presenting false information was considered.

## 2.2 *Mergers and acquisitions*

14. Merger control is a key preventive tool to protect competition and free access to markets. The CFC has exclusive powers to assess mergers, acquisitions, or any other act by which corporations associate in Mexico.

15. According to the Competition Law, a merger is the joint venture, acquisition of control, or any other activity through which societies, associations, actions, social parties, trusts or assets in general are concentrated among competitors, suppliers, clients or any other economic agent.

### 2.2.1 *Statistics on number, size and type of mergers notified and or controlled under competition laws*

16. The CFC has three types of procedures to analyze mergers and to investigate those that may harm or lessen competition:

- Merger notifications: when an operation exceeds the monetary thresholds established in the article 20 of the Competition Law.
- Forbidden merger complaints: If a firm believes a merger operation might affect the competition process and considers themselves as damaged parties, it may file a complaint before the CFC.
- Ex officio investigations: the CFC, on its own initiative, investigates mergers that may harm or substantially lessen competition.

17. The following table shows the number of mergers attended by the CFC.

**Merger reviews 2011 – Type of procedure and resolution**

<b>Issues</b>	<b>Total</b>	<b>Notifications</b>	<b>Notices</b>	<b>Complaints</b>	<b>Ex officio investigations</b>
<b>Pending from 2010</b>	<b>15</b>	<b>11</b>	<b>4</b>	<b>0</b>	<b>0</b>
Filed	146	111	31	3	1
Closed	149	114	32	3	0
Authorized	137	105	0	0	0
Conditioned	1	1	0	0	0
Objected	0	0	0	0	0
Admissible*	0	0	32	0	0
Inadmissible*	0	0	0	0	0
Rejected	3	0	0	3	0
Desisted	7	7	0	0	0
Not accepted to be processed	0	0	0	0	0
Closed	1	1	0	0	0
<b>Pending for 2012</b>	<b>12</b>	<b>8</b>	<b>3</b>	<b>0</b>	<b>1</b>

\* Decisions made regarding merger notification under article 26 of the Competition Law Bylaw.

18. Of the 114 mergers that were closed during 2011, 21 presented no obvious risk to competition.

## 2.2.2 *Summary of significant cases*

- Mexichem / PEMEX Petrochemicals<sup>6</sup>

In May 2011, Mexichem Derivados, S.A. de C.V., a subsidiary of Mexichem S.A.B. de C.V., and PEMEX Petrochemicals, a subsidiary of the Mexican National Oil Company (PEMEX for its acronym in Spanish), notified a joint venture. On the one hand, Mexichem Derivados will contribute to the venture with its chlorine, caustic soda and salt facilities located in Coatzacoalcos and Jaltipán, Veracruz. On the other hand, PEMEX will contribute to the venture with its ethylene and vinyl chloride monomer (VCM) facilities from the Pajaritos Oil Derivatives Development, located in Coatzacoalcos, Veracruz.

The Commission determined the operation would have effects on the salt, caustic soda, ethylene/ethane, VCM, and PVC markets, which are part of the “vinyl production process.” In this regard, the Commission carried out an analysis on the competition conditions in each of the aforementioned markets.

- Vinyl Chloride Monomer (VCM)

PEMEX VCM facility in Veracruz is the only supplier of this material in Mexico. However, the parts stated that the plant operated with significant spare capacity. The Commission concluded in its market assessment that the investment might improve the plant’s capacity and technological efficiency, and as a consequence, promote a better use of inputs and lower production costs.

- Chlorine and caustic soda

Chlorine and caustic soda are byproducts; in this regard, caustic soda production is deeply entwined with chlorine production cycles. In Mexico, VCM low production levels imply a low demand for chlorine and, as such, a low production of caustic soda. Mexican users of caustic soda are forced to import considerable caustic soda volumes at high prices. The merger will generate an important increase in VCM production which, as a consequence, will increase both the demand and production of chlorine. A higher chlorine production will also contribute to lessen the imbalance between the supply and demand of this product in Mexico.

- Polyvinyl (PVC) resins

In Mexico, two types of PVC resins are produced: suspension and emulsion resins. The Commission calculated that the market for emulsion resins covered both the United States and Mexico. As a result Mexichem faced competition from important international producers of this type of resin.

Regarding PVC suspension resin, in 2009, the Mexican Ministry of Economy eliminated several countervailing duties to the importation of this product. These countervailing duties were an obstacle to the authorization of a previous merger request filed by Mexichem. Mexichem had previously requested the elimination of these countervailing measures to the Ministry of Economy to comply with this particular Commission’s request in a previous merger notification. With the elimination of the countervailing duties, imports of this raw material grew and its price in the national market decreased.

---

<sup>6</sup> File CNT-043-2011

In this context, the CFC considered that as a result of the joint venture the operative efficiency and productions costs of VCM will improve and decrease respectively.

- Ethylene / Ethane

The ethylene production plant of Pajaritos supplies the VCM production facility in Veracruz. Currently, the ethylene plant operates with important spare capacity. The CFC estimated that VCM production will increase the ethylene demand and, therefore, contribute to raise the use of the plant's production capacity.

Taking into account the previously described market assessment, the Commission decided to approve the merger between PEMEX Petrochemicals and Mexichem.

### **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

19. Article 24 of the Competition Law empowers the Commission to issue opinions on laws, regulations, decrees and policies and their effects in competition. Also, the CFC may issue opinions on current or draft laws. The opinion issuing power applies to any regulation, regardless of subject; however, opinions will refer only to competition aspects without considering other issues. CFC opinions may be binding or non-binding.

20. Binding opinions may be issued by the CFC's Plenum (section VI and VIII of article 24 of the Competition Law) with respect to amendments to programs and policies, provisions, rules, circulars and other general administrative acts, issued by the Federal Government, when the CFC considers that issuance or amendments to these administrative regulations may hinder competition. Binding opinions may only be challenged by the Executive.

21. Non-binding opinions can be issued on laws, regulations, agreements, circulars and administrative acts of general character, and their drafts. The CFC's President (section VII and XI, article 24 of the Competition Law) or CFC's Plenum (section X, article 24 of the Competition Law) may issue non-binding opinions on any type of regulation, regardless the issuing authority, be it the Federal Congress, State Congress, Executive branch, State executives or Municipal authorities.

#### ***3.1 Binding opinion on the draft declaration for the regulated use of the Agave brand***

22. In October 2011, the Mexican Institute of Industrial Property (IMPI for its acronym in Spanish) filed a draft declaration before the Federal Commission of Regulatory Improvement (Cofemer for its acronym in Spanish) to regulate the "Agave's" brand use and grant through this regulation the exclusive use of the brand (denomination of origin) to producers of alcoholic beverages of tequila, mezcal and bacanora. According to the project, other agave beverages could only use the term "Agavacea".

23. IMPI's main argument for proposing this regulation was to prevent alleged "unfair competition" from other alcoholic beverages which main ingredient is agave. IMPI considered that consumers invariably associate the word "agave" with tequila, mezcal and bacanora, so the use of this word in the label of alcoholic beverages made from agave generated confusion and deceived consumers, which resulted in the alleged "unfair competition."

24. The CFC became aware of the draft declaration by reviewing Cofemer's website on draft projects under review. Cofemer also sought the CFC's written opinion within both institutions' collaboration framework.

25. Agave is a plant genus from the Agavaceae family which includes about 200 species. In this context, the CFC considered that the draft declaration would generate a unique advantage for beverages with designation of origin and generated market entry barriers to drinks made with agave different from that of tequila, mezcal and bacanora. It also considered that the draft declaration would prevent consumers to have clear and accurate information regarding the composition of agave made beverages, making it impossible to take informed purchasing decisions. Therefore, CFC's Plenum issued a non-binding opinion on these terms to the Cofemer on October 28, 2011.

26. Subsequently, on November 29, 2011 IMPI filed before Cofemer a new version of the draft declaration that did not modified the main theme on reserving the exclusive use of the word "agave" tequila, mezcal and bacanora producers.<sup>7</sup>

#### 4. Resources of competition authorities

##### 4.1 Resources overall (current numbers and change over previous year)

27. The Commission does not have complete budgetary autonomy. Its resources are negotiated by the Ministry of Economy with the Mexican Public Finance Ministry and the Mexican Congress.

##### 4.1.1 Annual budget (in your currency and USD)

28. In 2011 the CFC's budget was of 174.7 million pesos (approximately 14.06 million US dollars).

---

#### Annual Budget of the CFC in 2011

---

		Change over previous year
Approved budget in local currency	\$174.7 million pesos	+19.3 million Mexican pesos
Approved budget in dollars	\$14.06 million US dollars *	

\*Average exchange rate in 2011 was 12.42 Mexican pesos per dollar

##### 4.1.2 Number of employees (person-years)

29. As of 2011, the staff consisted of 160 positions 120 of those position corresponded to the operative staff. From the operative staff 80 had a bachelor's degree, 24 of them had a Master's degree and 8 of them hold a PhD. Regarding the operative staff professional education 36% are economists and 32% lawyers.

#### 5. Summaries of references to new reports and studies on competition policy issues

##### 5.1 Collaboration of CFC with the Mexican Institute of Social Security (IMSS for its acronym in Spanish), the Government of the State of Mexico (GEM) and OECD to adopt and implement the "Guidelines for fighting bid rigging in public procurement" of OECD (Guidelines).

30. In 2011, the IMSS and GEM committed to adopt and implement the "Guidelines for fighting bid rigging in public procurement" with support of the OECD and the CFC. The Guidelines list the most common strategies of bid rigging (e.g. cover bid rigging, bid suppression, bid rotation and market allocation) and industry, product, and service features that facilitate collusion (i.e. small number of

---

<sup>7</sup> On January 17, 2012, CFC's Plenum issued its first binding opinion in its history. The opinion was addressed to IMPI so it would refrain from issuing a draft declaration, considering that the effects would be contrary to competition. In accordance to section VIII of Article 24 of the FLEC only the President of the Mexico might object to this opinion. However, to date, the President of the Mexico has not acted on this binding opinion.

suppliers, little or no entry, market conditions, industry associations, repetitive bidding, identical or simple products or services, few if any substitutes, and little or no technological change).

31. The Guidelines also include two checklists, one on how to design the procurement process to reduce the risk of bid rigging and other on how to detect collusion in public procurement.

## **5.2 Adoption and Implementation of the Guidelines by IMSS**

32. The IMSS is the third largest purchaser of goods and services in Mexico. In January 2011, the IMSS committed to adopt and implement the Guidelines, through:

- Analyzing the extent to which the current public procurement legislation in Mexico and practices at IMSS are consistent with the Guidelines and identify areas for further improvement;
- Increasing awareness about bid rigging practices among IMSS's public procurement officers (both at the central and delegation offices);
- Developing in-house skills to identify and avoid bid rigging practices; and
- Implementing the applicable recommendations derived from the process at its institutional policy level.

33. The OECD committed to support the process of adoption and implementation of the Guidelines by the IMSS through:

- Preparing an analytical report on the current public procurement legislation, regulation and practices governing IMSS's procurement;
- Recommending areas for further improvement in procurement legislation, regulation and practices at IMSS in accordance with the Guidelines;
- Providing capacity building for IMSS's officials on the design of public procurement to reduce risks of bid rigging and on identification of bid rigging practices.

34. The CFC committed to support the process of adoption and implementation of the Guidelines by the IMSS, through:

- Collaborating with its expertise in preventing, deterring, identifying and sanctioning anti-competitive practices;
- Accompanying the IMSS through the process;
- Assigning necessary resources for the process.

35. The aforementioned OECD analytical report on the current procurement legislation, regulation and practices governing IMSS's procurement was published in January 2011. The recommendations address to the IMSS in this report are related on how this Institute could improve its procurement procedures in the following thematic areas:

- Further opportunities for the IMSS to exercise buyer power (further consolidating purchases among its local centers; using multi-year tenders where appropriate; procuring goods and services

jointly with other government agencies; and attracting the interest and sponsoring the entry of new suppliers);

- Coordination with the Ministry of Federal Public Administration (SFP for its acronym in Spanish), the CFC and adoption of best practices (i.e. use of standardized tender documents and procedures as describe in SFP's procurement manual; and adopt remote and electronic tender procedures for all its purchases and at all the stages of the procurement process);
- Fighting practices which may facilitate collusion (i.e. calls for tender should make clear that joint bids are allowed only when there are pro-competitive justifications; and split of single contract among multiple suppliers only in exceptional circumstances);
- Increased use of competitive mechanisms (i.e. limit the use of exceptions to public tenders; open tenders to non-Mexican providers; and considering requiring a Certificate of Independent Bid Determination to accompany all tenders);
- Overhaul of market studies (i.e. consider change is planning procedures so that enough time is available to carry out market studies; allow for sufficient amount of information is collected from good-quality sources; and information in these studies should not be disclosed to bidders before the tender);
- Monitoring and information-sharing activities (i.e. regularly and proactively monitor the number of bidders; investigate why bidders decide not to bid any longer; and maintain a comprehensive dataset for all its tenders and make it available to the CFC); and
- Training activities (implement training program for its procurement staff focusing on bid rigging and ways to fight it).

36. Most of these recommendations were provided in a preliminary form to the IMSS in June 2011 and were incorporated in IMSS's 2012 procurement cycle since they did not require changes to the procurement laws and regulations.

37. The Adoption of the Guidelines by the IMSS was a key milestone in Mexico's fight against bid rigging in public procurement. It contributed to allow for increased competition in public procurement processes of the IMSS in order to promote efficiency on behalf of its beneficiaries.

### ***5.3 Adoption and Implementation of the Guidelines by GEM***

38. Following the successful experience of the IMSS, the GEM also committed to adopt and implement the Guidelines.

39. In October 2011, the CFC, the GEM and the OECD signed an Inter-Institutional Agreement with the aim of enabling the OECD, with the support of the CFC, to develop an analytical report to evaluate the extent to which procurement legislation, regulation and practices at GEM are consistent with the Guidelines, as well as, to formulate related recommendations.

40. Once the analytical report is completed by mid- 2012, the Commission, the GEM and the OECD will determine the best way to proceed with the implementation of applicable recommendations by the GEM at institutional policy level.

41. In addition, this agreement enabled the OECD to conduct, together with the CFC, capacity building among procurement officials on the cost and risks of bid rigging and to provide them with guidance on:

- How to design tenders to reduce the risk of bid rigging;
- How to identify possible instances of bid rigging at an early stage during the procurement process; and
- What to do when bid rigging is found at this stage.

42. Motivated by the IMSS and the GEM's examples in the fight against bid rigging, other federal government entities like the State's Employees' Social Security and Social Services Institute (ISSSTE for its acronym in Spanish) and the State electricity monopoly (CFE for its acronym in Spanish) have shown interest in signing similar agreements with the CFC and the OECD. Indeed these initiatives are very important, since the CFE and the ISSSTE concentrate 14.9% of the public federal procurement (11.3% and 3.6% respectively).

#### **5.4 Competition Assessment Toolkit Project**

43. In September 2007, a Memorandum of Understanding between Mexico and the OECD for the application of a Competition Assessment Toolkit (toolkit) was signed. The application of toolkit has the purpose of identify regulatory barriers that hinder the efficient functioning of markets.

44. For the toolkit's implementation the Mexican government assigned a specific budget for two technical teams, one on regulatory simplification, led by the Cofemer and the other on competition related matters, led by the CFC.<sup>8</sup>

45. In January 2010, the OECD and the Mexican Ministry of Economy signed an agreement to renew the implementation of the toolkit. As part of the projects to be carried out through this renovation, a study on foreign direct investment is being elaborated. The study will indentify restriction to competition derived from applicable regulatory frameworks. The industries and sectors assessed are:

- Transition to digital TV and Radio
- Mobile telephony services
- Domestic passenger transportation
- Public procurement

46. The final version of the document will be available on 2012.

---

<sup>8</sup> For more information about the application of the toolkit please refer to the Annual Reports on Competition Policy Developments in Mexico from previous years.