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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN MEXICO

-- 2012 --

This report is submitted by Mexico to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 June 2013.

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Executive Summary

1. This report presents a brief and complete update of competition policy in Mexico. It explains the necessary actions taken to complement the 2011 Mexican Competition Law Reform. It also describes CFC's most important advocacy and enforcement activities in 2012.

2. In November 2012, the Ministry of Economy published in the Official Gazette of the Federation the new Interior Regulations of the Federal Competition Commission (Commission or CFC for its acronym in Spanish). The Interior Regulations seeks to strengthen CFC's Plenum, to regulate the Speaker Commissioner powers and to empower the Executive Secretary with research and investigative tools, formerly CFC President exclusive powers. Furthermore, it strengthens the operative areas.

3. Fines were imposed to local cartels in poultry and tortilla markets. The CFC concluded last year its biggest conduct case in its history, via a settlement with Telcel that secured a 62% drop in mobile termination rates. A decision not to approve a merger on the infant mil formula market between Nestle and Pfizer Nutrition protected Mexican consumers.

4. As part of the advocacy efforts a study was elaborated to assess the impact of a norm to regulate land use and convenience stores in Mexico City.

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

5. To follow the Mexican Federal Law of Economic Competition (Competition Law or FLEC) amendments in 2011, the Ministry of Economy issued the CFC Interior Regulations in 2012. It provides the Commission with better tools to protect the competition process and to improve competitiveness of the Mexican economy for the benefits of consumers.

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

6. In 2011, the Mexican Congress passed a bill with important amendments to the Competition Law. These amendments obliged for the creation of a new Interior Regulation for the CFC aligned with the Mexican Competition Law and the new investigative tools and powers granted to the CFC.

7. In conformity with the Constitution of the United Mexican States and the Organic Law of the Federal Public Administration, the President of the Republic is empowered to issue Interior Regulation for federal government institutions. In this regard, the Commission was actively involved with the Ministry of Economy in the discussion and development of the regulations.

8. In November 2012, the Ministry of Economy published in the Official Gazette of the Federation the new Interior Regulations for CFC. The Interior Regulations respond to the need of structural changes to implement the reforms made to the FLEC in 2011. It specially seeks to strengthen the CFC's Plenum, regulates the Speaker Commissioner (figure created by the 2011 amendments to the FLEC) power and gives the Plenum the faculty to appoint the Executive Secretary.

1.2 Government proposals for new legislation

9. Furthermore, the CFC participated in the prospecting and early drafting of a major set of constitutional amendments, expected to come to fruition in 2013, which if enacted would put the CFC's institutional setup on par with Mexico's Central Bank –Mexico's most solid and arguably its most effective economic institution-. The 2013 amendments will endow the CFC with powers to ensure access to essential facilities throughout the economy (inspired by the role the Australian Competition and Consumer

Commission plays in this realm) and enshrine streamlined judicial review by specialized courts, with procedures consistent with the recent past's markedly improved judicial performance by the agency. This set of amendments, if enacted, would also drastically and permanently improve the regulatory landscape in telecommunications and broadcasting, a major focus of the CFC's enforcement and advocacy efforts over almost a decade.

2. Enforcement of competition laws and policies

10. Regarding law enforcement, the 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.

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

2.1 Actions against anticompetitive practices, including agreements and abuses of dominant position

12. 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 Competition Law distinguishes from two practices: absolute monopolistic practices (cartels) and relative monopolistic practices (unilateral conducts and abuse of dominance).

2.1.1 Summary of activities of competition authorities and courts

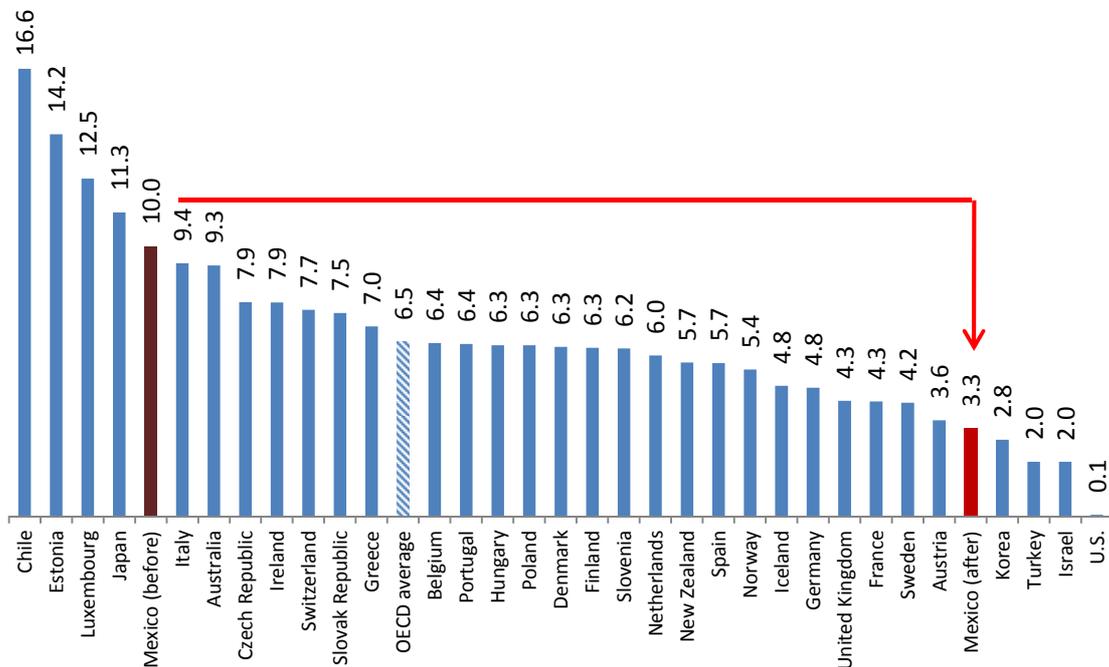
13. The number of cases attended by the Commission in 2012 amount to 426, of which, 372 were received during 2012, while 54 were pending from 2011. The cases that came to conclusion amounted to 341.

2.1.2 Description of significant cases, including those with international implications

- **Telcel agreement to reduce its mobile interconnection tariffs**

The successful conclusion of the biggest conduct case in CFC history, via a settlement with Telcel secured a 62% drop in mobile termination rates, moving Mexico from the fifth highest to the fourth lowest spot among the Organization for Economic Cooperation and Development (OECD) countries (both adjusted for purchasing power). According to the OECD, this measure can yield circa \$USD 6 billion in annual benefits for Mexican consumers for the foreseeable future, significantly more than the \$USD 1 billion fine dropped as part of the settlement. The CFC's ability to fine infringement of settlements with an amount commensurate with the original fine, brought about by the 2011 amendments to the competition law, was instrumental in making this result viable.

**Mobile interconnection fees, 2011
Dollar cents PPP per minute**



Note: Data for Canada is excluded

Source: OECD

The CFC decided on the reconsideration appeal presented by Telcel against the resolution of the case for abuse of dominance in the mobile telephony market.¹ In this resolution a fine for 11 billion 990 pesos (approx. \$USD 1 billion) had been imposed for damaging competition on fixed and mobile telephony markets, through artificially high interconnection rates charged to telephone calls from other networks (off-net), different from those it auto-imposed on calls from their own network (on-net).

The CFC's Plenum decided unanimously to accept five commitments proposed by Telcel during the reconsideration appeal. The five commitments agreed on by Telcel consist of the following:

1. Instead of the 95 cents per minute interconnection fee that prevailed until 2011, Telcel will charge a 36.18 cents per minute interconnection fee from 2012 onwards. This fee, contrary to what occurred until 2011, will be charged per second, with no round up, and represents the elimination of a 22.4 % additional overprice.
2. Telcel will keep these conditions through a public offering to any fixed or mobile telecommunications firms with interest in them.
3. Telcel will desist from all litigation procedures imposed against resolutions issued on interconnection fees for 2011 by Federal Telecommunications Commission (Cofetel for its acronym in Spanish) (the fees are in line with Telcel's first commitment).

¹ File DE-037-2006

4. Telcel will offer plans and/or promotions that will include minutes used to make telephone calls within its own network or to the network of other mobile or fixed telephony company.
5. Telcel will provide to the CFC all the necessary information to verify compliance with the aforementioned commitments. Including data on the use of its marketing plans.

In conformity with Article 35 section XI of the Competition Law, any failure to comply with any of these commitments will accrue a fine of up to 8 % of Telcel's annual income.

The five commitments agreed on by Telcel solve, effectively and in a sustained manner, the main problems that have beset the telecommunications market in Mexico for many years: high mobile interconnection fees that until now have inhibited the competition capacity of small networks and have forced consumers to pay artificial high prices for telecommunication services.

The five commitments also represent the first time that Telcel acquiesces to an authority's decision on interconnection fees, instead of resorting to litigation to differ the law's enforcement and stop competition.

This is precisely the spirit of the amendments to the Competition Law issued in 2011. The possibility to impose higher fines has a deterring function, not a compensatory character; therefore, the objective is to generate incentives so that firms avoid or suppress any practice contrary to the competition process, minimizing the authority's need to intervene.²

Up to date, the CFC had only used settlements or early termination exceptionally; this is a common instrument in countries with consolidated competition policies. This is because the low fines previous to the 2011 amendments did not generate incentives for firms to use this path. In the future, it is foreseeable that this mechanism will be used with more frequency (although the Competition Law establishes that a company can only recur to it once every five years).

Independently from the case file early termination or settlements, complainant companies are entitled to claim damages before the Judiciary according to Article 38 of the Competition Law.

- Monopolistic Practice in the Tortilla market in Tuxtla Gutierrez³

In June 29, 2010, the CFC received a complaint from a tortilla producer in Tuxtla Gutierrez, Chiapas for an alleged cartel. During the investigation process the CFC analyzed elements related to the signing of an agreement among industrials from the sector and municipal authorities with the aim to divide certain zones in the city among tortilla suppliers.

Through this agreement the municipality of Tuxtla was divided in four zones and exclusivity rights for the sale of home delivered tortillas were established. The agents involved directly in this agreement formed part of the flour and tortilla industrial sector. Several other agents assisted the persons involved in the agreement, and as such were also sanctioned. Among the former, the

² The preamble to the 2011 amendments to the Competition Law states: "For the (9) economic agents to opt for early termination it is proposed that the Commission can solve the case without imputing responsibility-since the competition process has been restored (9). In the European Union, United States, United Kingdom, France, Brasil, Canada and Australia these facilities are awarded to economic agents. With this, the solution to competition problems is accelerated, resource used minimized, litigation is avoided, and unnecessary fines are not imposed."

³ Files DE-014-2010, RA-053-2010 among others

Mayor of Tuxtla and its Director for Economic Promotion participated along with organizations of tortilla producers in the state of Chiapas.

As part of the agreement tortilla suppliers should ask the Direction of Economic Promotion for a card that entitled them to circulate with their vehicles in a corresponding area of the city. Through this, the tortilla suppliers were able to divide the market and control who was able to enter and sell tortillas in specific zones. Government officials provided the necessary space and resources for this agreement in the offices of the Direction of Economic Promotion.

Consumers were affected since their freedom to choose to buy from certain Tortilla suppliers was restricted. In March 22, 2012, CFC's Plenum decided to sanction those involved in the agreement with fines that amounted to USD\$ 76,000.

- Monopolistic practices in the National Tortilla Market⁴

By making use of its powers, the CFC started an investigation in December 2010, based on a notice from the National Tortilla and Corn Grinders Union (UNIMTAC for its acronym in Spanish) to its members with the following header: "Necessary price increase for the price of Nixtamal tortilla kilos." The notice informed the members of the union of a decision to sell tortillas at a price minimum of 12 pesos (aprox. \$USD 1) per kilo.

Additionally, UNIMTAC's president sent the aforementioned notice to several media and announced publicly that: "production costs had obliged producers to increase the price of its product, which could reach a minimum of 12 pesos per kilo since in some states it is already sold at 14 or 15 pesos."

The persons investigated were UNIMTAC's president, vice-president, secretary general and treasurer, as well as UNIMTAC itself.

During the investigation it was found that UNIMTAC decisions are taken by vote majority. Taking the former into account, it was concluded that the price increase agreement, as well as, the decision to communicate this agreement to the media, was part of an agreed action by UNIMTAC members.

Once the investigation procedure was concluded and after assessing the evidence presented by the alleged offenders, the CFC Plenum decided to order those involved to cease the practice and fine UNIMTAC and four of its board members with \$USD 13 thousand 300 (aprox.).

- Investigation in the Production, Distribution and Commercialization of Poultry in the state of Quintana Roo⁵

In November 17, 2009 the CFC started an officio investigation for the presumed existence of a cartel in the production, distribution and commercialization of products in the national poultry industry.

Afterwards, in May 2011, the CFC separated part of the investigation to focus in particular in the cities of Chetumal and Cancun in the state of Quintana Roo.

⁴ File IO-003-2010

⁵ File IO-005-2009-lb and IO-005-2009la

In March 21, 2012 an investigation against Bachoco Company, one of the main suppliers of poultry in Mexico, and several small poultry producers started in Chetumal. The alleged conducts investigated were agreeing on the wholesale price of poultry, as well as allocating clients.

During the investigation, it was found that the price increase and market allocation schemes were agreed upon in a series of meetings taking place in a producers association called "Oxtankah." Also, during the meetings several sanctions for those who sold poultry below the agreed priced and to non-allocated clients were established.

According to the former, CFC's Plenum decided in October 30, 2012 to sanction those involved with fines that amount to up to \$USD 263, 000 (approx.). These fines were set according to the maximum permitted under Competition Law at the moment the practices were carried out.

In April 12, 2012 an investigation started against the Bachoco Company and several small poultry producers in Cancun. The alleged conduct investigated was price fixing in Cancun.

The investigation started with information provided by the Consumer Protection Office (PROFECO for its acronym in Spanish) to the CFC in March, 2010. During the investigation it was found that several employees of Bachoco and Crio, two companies involved in the production and distribution of poultry in the region participated with other producers in a price fixing agreement. After the investigation concluded, several fines that amounted to \$USD 384,000 (maximum under the law at the time the agreement took place) were established to those involved in the agreement.

- Volaris Mexico City Airport Investigation⁶

In June 18, 2010, the air travel concessionary Volaris filed a complaint before the CFC against Mexico City Airport for denying them the allocation of takeoff and landing slots. For this reason, in July 22, 2010 the CFC decided to start an investigation.

In the beginning, the relevant market was defined as the allocation of takeoff and landing slots and its geographic dimension was circumscribed to Mexico's City International Airport. Takeoff and landing slots allocation is considered essential since it is the only way to access an airport and use the necessary services to operate a flight. There are no substitutes for this service since there is no other point where airlines can operate. Also, it should be taken into consideration that Mexico City airport serves as a hub for flights to other parts of the country.

The investigation concluded that Volaris was denied the allocation of takeoff and landing slots by Mexico's City Airport. However, according to the Mexican Airport Law and Interior Regulations the allocation of takeoff and landing slots is not defined as a service. Taking the former into account a relevant market could not be defined since a relevant market should only include products or services.

Therefore, in December 2012 CFC's Plenum decided to close the investigation for finding no sufficient evidence to prove the alleged conduct.

⁶ File DE-011-2010

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 handled by the CFC.

Merger reviews 2012 – Type of procedure and resolution

Issues	Total	Notifications	Notices
Pending from 2011	10	8	2
Filed	108	96	12
Closed	110	96	14
Authorized	86	86	0
Conditioned	6	6	0
Objected	2	2	0
Admissible*	14	0	14
Inadmissible	0	0	0
Other**	2	2	0
Desisted			
Not accepted to be processed			
Closed			
Pending for 2012	8	8	8

*Decisions adopted according to the merger notifications under Article 26 of the Regulations of the Federal Law of Economic Competition. With the 2011 amendments to the Competition Law operations regulated by this Article are no longer required to be submitted for review by the CFC.

** Includes those rejected, not accepted to be processed, closed or in which agents desisted.

2.2.2 *Summary of significant cases*

- Nestle – Pfizer global infant formula nutrition business⁷

In June 6, 2012, Nestle SA (Nestle) notified the CFC of its intention to acquire Pfizer Nutrition, a global infant nutrition business. The transaction involved buying Pfizer's Mexico infant milk formulas shares, assets and rights. The merger was a part of a global transaction by which Nestle had acquired Pfizer Nutrition division globally.

The merger implied that Nestle obtain Pfizer's Mexican infant milk formula subsidiaries and rights over brand products, as well as, Pfizer's Mexican infant milk facilities.

To define the relevant market, the CFC recognized the existence of different milk formulas on the market. Milk formulas are elaborated in accordance with children's age (e.g. routine formulas for specific infant ages or stages) and special medical purposes (e.g. specialized formulas).

Stage 1 and 2 routine infant formulas have similar consumption patterns. Once parents decide to stop giving formula stage 1 to its babies they start using a stage 2 formula of the same brand. It is often the case that parents do not switch formulas are remain loyal to a brand, independently of the stage the children's age require. Therefore, the Commission determined analyzing milk formulas stage 1 and 2 as a single relevant market.

Routine infant formula stage 3 has a different composition from the stage 1 and 2 formula. Stage 3 formulas are not subject to the World Health Organization regulations and are considered a food supplement. Therefore, the Commission decided that Stage 3 formulas were part of a different relevant market. Specialized formulas with medical purposes were considered to be a different relevant market too. The three relevant markets were considered national.

CFC found that, although there are other brands in the market with much lower prices, parents prefer to buy brands recommended by physicians. In this sense, physicians play a key role determining parent's choice. In addition, parents prefer to lower their expenses in other products rather than changing brands of a milk formula they trust.

With the assessment of the CFC, it was determined that the merger could allow Nestlé to increase its sales volume participation to up to 70.6% for the infant formula stage 1 and 2 market, 88.2 % for the stage 3 market and 37 % for specialized formulas.

Barriers to entry were considerably high in all relevant markets. For example: the incumbent took advantage of economies of scale, promotion schemes focused on targeting physicians, who suggested which brand to give to newborns, and high consumer's loyalty.

Moreover, the CFC calculated that Nestle could increase, between 2.9 and 11.5% the price of milk formulas, depending on the brand. Also Nestle would become the owner of three of the four production facilities for infant milk formula in the country.

Therefore, in November 8, 2012 the CFC's Plenum decided not to authorize the merger between Nestle and Pfizer.⁸

⁷

File CNT-035-2012

- Anheuser Busch Inbev – Grupo Modelo⁹

In August 7, 2012 a merger by which Anheuser-Busch Inbev (ABI) notified its intention to acquire 100% of Grupo Modelo actions was presented to the CFC.

Grupo Modelo is a Mexican company which main business is the production, distribution, commercialization, exportation and importation of beer. ABI is a Belgian company with operations in more than 23 countries worldwide and with a portfolio of more than 200 companies. ABI does not distribute, commercialize or elaborate its products. These activities are carried out by Grupo Modelo, in which ABI already owned an important share at the moment CFC was notified of the operation.

In its analysis the CFC considered mainly two factors. First, it observed that ABI already owned a part of Grupo Modelo. Second, it took into account that Grupo Modelo is in charge of the distribution of ABI products in Mexico. In addition ABI's market share in the beer market was small. Taking the former into account, the Commission's Plenum considered that the operation would not have effects contrary to competition and free market access. In this regard, in November 8, 2012, the CFC decided to authorize the merger.

- Televisa and Iusacell¹⁰

In April 7, 2011 Televisa S.A.B. (Televisa) and Corporativo Vasco de Quiroga (CVQ) both part of Televisa Group, along with GSF Telecom Holdings (GSF) notified their intention to merge to the CFC. The purpose of this operation was that Televisa acquire 50% of GSF actions, which were in the property of Salinas Group, which would hold the remaining 50%.

Televisa group is a conglomerate of companies with investments in mass media (production and transmission of free to air and pay content for television and radio, publications and distribution of magazines), telecommunications (local and long distance telephony services and internet services) and the property of football clubs, among other economic activities.

Meanwhile, Salinas Group participates in the mass media (production and transmission of contents for television), bank, insurance and retirement fund management services, telecommunications (mobile telephony and internet), retail store chains and football clubs, among other economic activities.

In the analysis of this operation several competition issues were identified in the markets in which these two groups coincide. The Commission sustained that the association between Televisa and Salinas Group could imply incentives to collaborate, not only in the mobile telephony markets, but also incentives to collude in other overlapping markets. Also, this alliance could generate incentives for both groups to share information or veto each other corporate decisions in other markets.

⁸ After the CFC's decision the companies involved filed a reconsideration appeal. The merger was approved in April, 2013 after the parties agreed to divest Pfizer infant formula business. <http://www.cfc.gob.mx/images/stories/Noticias/Comunicados2013/CFC-05-2013.pdf>

⁹ File CNT-052-2012

¹⁰ Files CNT-031-2011, RA-043-2012 and RA-044-2012

In particular, the CFC identified several potential risks in the free to air television markets, in which both agents had strong incentives to coordinate. In the free to air television market both groups hold 95% of the free to air television concessions and 100% of the channels with nationwide coverage. Moreover, the free to air television market has high entry barriers, such as the need to invest in infrastructure and equipment throughout the country and high costs of content production.

It is worth noting that free to air television receives 57 % of the total sales in advertising in Mexico. If both groups coordinate and increase advertising prices in free to air television, advertising companies could face higher prices, which might be transferred to consumers.

Since both groups represent 40 % of the television audience, a probable coordination between these groups could cause that the broadcasting rights of contents, such as football first division matches (which both groups own totally), could be used to displace pay television competitors who are not integrated with either group.

Taking into consideration the arguments explained above, in January 24, 2012, CFC's Plenum decided not to authorize the merger. However, both parties filed a reconsideration motion in which the following commitments were presented:

1. Televisa and TV Azteca (Grupo Salinas free to air television company) are required to sell advertising space according to market conditions to any telecommunication company.
2. Televisa and TV Azteca are forbidden from conditioning sales of advertising spaces to hiring Iusacell mobile telephony services.
3. GSF board of directors cannot include employees from other Salinas and Televisa Groups involved in open or restricted television or in their managerial operations.
4. Both broadcasters have the obligation to sell their free to air television contents in a non-discriminatory manner
5. The pay television company Total Play should not be included in the partnership between the two groups so that Televisa, owner of another restricted television company (Cablemas) do not own shares from a competitor in this market.

In July 6, 2012 the CFC decided to authorize the operation subject to the landmark conditions imposed on Televisa-Iusacell mobile-phone joint venture. It should be highlighted that an obligation to auction a long-awaited (and equally long-resisted by Televisa) third national television concession within the next three years should be carried out. Failure to carry out this auction would imply the dissolution of the merger. These conditions, which overcome a major de facto obstacle to a key measure to boost competition in broadcasting, were also made possible by enhanced CFC powers to fine non-compliance included in the 2011 reforms.

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

18. In Mexico various laws and regulations empower the CFC to issue declarations on effective competition, the existence of substantial market power or related themes. With the CFC declaration the regulator (telecommunications, airports, gas, etc.) can set specific obligations regarding tariffs, service quality and market information.

19. The procedure to issue these declarations is foreseen under Article 33 bis of the FLEC and 53, 54 and 55 of its Interior Regulations.

20. Also, Article 24 of the Competition Law empowers the Commission to issue opinions on laws, regulations, decrees and policies and their effects in competition. 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.

3.1 Declaration of Substantial power in the market of termination calls¹¹

21. In November 23, 2007 the CFC started an investigation to determine whether certain operators in the termination calls market had substantial power. Termination call services are offered by mobile network operators to different concessionaries of local and long distance calls.

22. In October 27, 2011, CFC's Plenum determined that Telcel, Iusacell and Telefonica had substantial market power in the termination calls market since they possess the capacity to fix or restrict price or supply of the service unilaterally and since their competitors cannot offset their actions.

23. All three companies involved filed a reconsideration motion against the CFC substantial power declaration. Telcel argued that the CFC had interfered with the Telecommunications Regulator faculties, and had set measures which pertained to a sector outside its domain. The CFC considered that no measures had been imposed since only a substantial power declaration was issued; hence, confirming that Telcel had substantial market power.

24. Iusacell and Telefonica, on their side filed a reconsideration motion arguing they could not restrict supply to operators. The CFC agreed to change its substantial power declaration excluding them for lack of evidence.

25. CFC declaration of substantial power was sent to the sector regulator, which was now in a position to establish specific obligations regarding tariffs, service quality and information for the benefit of consumers.

3.2 Declaration of substantial power in the market of local voice service¹²

26. In June 25, 2009 CFC's Plenum determined that Telmex and Telnor, part of the Telcel/Telnor/Telcel group, had substantial market power in the local voice service market through its local networks. The former was determined as part of a request from Grupo de Telecomunicaciones Mexicanas (GTM).

¹¹ Files RA-007-2011 and DE-037-2006 (Origin File)

¹² Files RA-037-2009 y DC-005-2007 (Origin File).

27. The companies involved in the substantial power declaration participate in the voice peering markets through public telecommunication networks for fixed local calls.

28. In this sense, the CFC determined that Telmex and Telnor have the capacity to unilaterally restrict the supply of local transit services and fix tariffs in the relevant market. Telmex and Telnor filed a reconsideration motion arguing that the CFC had implemented specific measures not pertaining to its faculties.

29. In this respect, the CFC considered that no specific measures were imposed since the investigation and declaration had the sole purpose to determine substantial power in the relevant market. The former was carried out so that the Telecommunications regulator could issue specific regulatory measures. In this regard CFC's Plenum confirmed the substantial market statement.

3.3 Opinion on the draft "Agreement by which the Federal Telecommunication Commission issued a draft interconnection regulatory framework for Regulation Improvement"

30. In June 26, 2012 the Federal Commission for Regulatory Improvement (COFEMER for its acronym in Spanish) requested CFC's opinion on a draft project presented by the Communications and Transport Ministry (SCT for its acronym in Spanish) in June 22, 2012. The draft project's goal was to establish the terms and conditions for the interconnection of public telecommunications network with the goal to guarantee that concessionaries provide and receive interconnection services in an efficient and nondiscriminatory manner.

31. In this regard, in June 18, 2012 the CFC issued an opinion on the effects that the draft project could entail in competition and free market access if approved.

32. Interconnection or peering guarantees that network users communicate with users from a different network without imposing excessive costs to end users. What determines the election of a supplier of this service is the operating efficiency of each network and not artificial network economies which derive from entry barriers or unjustified interconnection costs. Efficient interconnection benefits consumers through better price, quality and diversity in telecommunication services.

33. The CFC considered that the draft project presented by the sectorial regulator could increase interconnection service efficiency providing more transparency on terms, conditions and attention terms in contracts.

34. In particular the CFC considered favorable that the draft project established obligations with respect to:

- Granting unrestricted access, network neutrality; and,
- The shared use of infrastructure, in other words, the obligation to allow using infrastructure provided to a concessionary by a third party.

35. Furthermore, in the draft project services included in the interconnection service were specified and principles for the implementation of tariffs were adopted. The CFC considered that the draft project adopted best international practices. Transparency in the terms, conditions and use of infrastructure would facilitate nondiscriminatory access to interconnection services, hence fostering competition.

3.4 *Opinion on the draft project for a “Decree to amend the Radio and Television Federal Law, the Federal Telecommunications Law and the Federal Copyright Law.”*

36. In December 3, 2012 the CFC issued an opinion on the draft decree to amend the Radio and Television Federal Law, the Federal Telecommunications Law and the Federal Copyright Law presented by the Deputies Chamber in November 15, 2012. The CFC opinion highlighted the positive effects to competition that the proposed measures could have on the free to air and pay television markets.

37. The preamble of the draft project stated that several gaps in the Mexican laws should be repaired on the following:

- The requirements to transmit free to air television signals as part of the operation of pay television operators (must carry); and,
- The obligations of free to air television concessionaries to offer their signal without cost to be retransmitted by pay television operators (must offer).

38. The CFC agreed completely in that referring to incorporate this type of obligations to the Mexican Law on these issues. In fact, on 2006 an opinion was issued to promote competition principles in the audiovisual content markets, in which the Commission had already explained the necessity to guarantee must offer and must carry obligations.

39. In that referring to must carry, the draft proposes to amend Article 44 bis of the Federal Telecommunication Law. The draft contemplates the obligation for pay television service suppliers to transmit free to air television signals in an integral manner, without modifications (including publicity) and with the same quality.

40. The CFC considered that these measures could eliminate entry barriers in the transmission media since it would allow open signal producers to compete under equal circumstances. However, it observed that certain issues should be considered. In particular, the capacity of a pay television operator could limit the quantity of channels that could be transmitted. Also, there was a risk to duplicate certain contents in different channels thus generating inefficiencies. The Commission recommended that the former and other issues be taken into account.

41. In that related to must offer, the draft proposed to modify the Federal Law of Radio and Television. The draft initiative established the obligation for free to air television concessionaries to allow the simultaneous retransmission of its signal by pay television suppliers.

42. The Commission considered that, for the pay television suppliers, access to free to air television content is essential to compete successfully in the market. In these regard, the CFC suggested to carry out the necessary amendments to harmonize must carry and must offer obligations.

43. Finally, the initiative contemplated modifications to the Federal Radio and Television Law regarding broadcasting service regulation. In this regard, the CFC highlighted that the proposed draft might be confusing, since the redaction of the document leaves space to interpret that the amendments propose the elimination of the permit and concessions regime. This would not benefit the markets since given, the characteristics of the radio electric spectrum, a permit and concessions regime is considered the most efficient allocation mechanism.

44. The CFC considered that the proposed amendments would foster competition in the free to air and pay television markets. In this regard, the CFC supported its implementation and the incorporation of CFC's recommendations.

4. Resources of competition authorities

4.1 Resources overall (current number and change over previous year)

45. 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)

46. The budget Congress approved for the agency for the 2012 fiscal year is 205.5 million Mexican pesos (approximately US\$15.61 million).

Annual Budget of the CFC in 2012

Approved budget in local currency	205.5 million Mexican Pesos	Change over previous year
Approved budget in dollars	approx. USD\$15.61 million	Approx. + USD\$ 1.5 million

4.1.2. Number of employees (person-years):

47. As of 2012, the staff consisted of 252 positions, 211 of those position corresponded to the operative staff. From the operative staff 80 are lawyers, 66 economist, 65 other careers, and 9 of them hold a PhD.

4.2 Human resources (person-years) applied to:

48. As of 2012 the non-administrative staff is assigned as follows:

Area	Number of staff
Mergers	9
Anti-cartel	20
Dominance-related issues	18
Other (eg, advocacy)	11
Regulated markets	15
Planning, Institutional and International Affairs	16
Legal Affairs:	27
Economic Studies	11
Other (Plenum, Executive Secretary, etc.)	84

4.3 Period covered by the above information:

49. The information above is provided from January to December 2012.

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

50. A fundamental aspect to promote competition is to assess market conditions with the goal to improve competition. In this sense, evidence found by studies or investigations on distortions that public policies or regulatory frameworks generate allows to nurture criteria for the CFC work on competition advocacy.

5.1 *Restrictions on land use and its effects on basic food basket consumers*

51. In 2010, Mexico City Assembly approved an amendment to land use rules with respect to business localization. The amendment to land use rules forbids the establishment of convenience stores on certain parts of the city. In specific “Norm 29” states the following:

52. “Norm 29. Improving the competition conditions of equity and competitiveness for public supply”

The Mercantile establishments for the sale of the basic food basket products, and the complementary sale of shoe and clothing under the self service modality, in convenience stores, supermarket or mini supers, may only be situated in a zone whose land be denominated for mixed use...

53. In compliance with its mandate to promote competition, the CFC issues opinions to influence the adoption of efficient regulations. The former is particularly important when a proposed regulation affects prices and sale conditions of first necessity goods and services, as such, the welfare of lower income households. Norm 29 on the use of land has these characteristics since it affects the competition levels of the suppliers of this type of goods and services.

54. The retail sale of food, clothing and other essential goods in commercial establishments is characterized by high format diversity. The size of stores, its geographic location, infrastructure, complementary services and price policies differ greatly. On the demand size, consumers exhibit a high level of heterogeneity in their preferences.

55. A study on the possible effects of this norm was carried out taking into account the following:

- A comparison of goods and services from the basic basket prices, which was carried out by the Economic Development Ministry of the Federal District Government from 2002 to 2007. This study was offered to the general public to serve as a guide on minimum and maximum prices offered by establishments selling this type of products.
- Information provided by the Bank of Mexico (Mexico’s central bank) on Mexico City store prices. Data included 1 thousand 873 observations on the prices of different products on different type of establishments, for 2011’s first semester.

56. Through an analysis of the information described above it was found that that supermarket tend to have lower prices than other type of stores, particularly in first necessity goods. This is particularly important for the 10% lowest income households since these products represent 26% of their expenses. Dispositions such as Norm 29 interfere with competition and restrict the number of establishments. Taking the former into account the study allowed concluding that the Norm dispositions are contrary to consumer welfare.

5.2 Competition assessment work with the Federal Commission for Regulatory Improvement

57. The Commission has worked with the Federal Commission for Regulatory Improvement (Cofemer for its acronym in Spanish) to include Competition Assessment as a key element of the Regulatory Impact Analysis (RIA) in Mexico.

58. This cooperation was formalized and published in the Official Gazette in November 2012. The Competition Assessment will enable to identify whether or not a proposed/draft policy or regulation is likely to have a significant impact on competition.

59. The importance of Competition Assessment lies in ensuring more coherence and greater integration between federal policies and competition policy objectives.

60. The implementation of the Competition Assessment includes 3 tools:

1. A competition checklist for evaluating all government bodies' preliminary draft law or policies submitted for regulatory assessment.
2. If these have the potential to affect the scope and nature of competition, a Competition Assessment should be included in the Impact Assessment.
3. The third tool is the analysis and opinion provided by the Commission and that Cofemer must include in the regulatory impact assessment.

61. This methodology was designed in accordance with best practices outlined in the OECD's Competition Assessment Toolkit.