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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN MEXICO

-- 2013 --

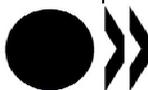
18-19 June 2014

This document includes two reports from the delegation of Mexico: Report I by COFECE (the Federal Economic Competition Commission) and Report II by IFETEL (the Telecommunications Regulator). This document is submitted to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 June 2014.

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REPORT I BY COFECE

Executive Summary

1. In 2013, Mexico celebrated 20 years of having an active competition policy. This policy began in 1992 when the Federal Law of Economic Competition¹ (FLEC) was issued, and which entered into force in 1993. The Law implemented the provisions of article 28 of the Constitution in matters of supervision, defense, and promotion of free market participation and competition. In addition, it provided for the creation of an institution with the exclusive authority to fulfil this mandate.

2. 2013 saw the most important reforms in economic matters in the recent history of the country. With the Constitutional Reform in Telecommunications and Competition, the Federal Economic Competition Commission (COFECE or Commission) was created replacing the Federal Competition Commission (CFC). The COFECE, formally established on September 10, 2013, is an autonomous body with more and better instruments to effectively defend the principles of economic competition and free market participation established in the reformed Political Constitution of the United Mexican States (CPEUM or Constitution).

3. In these two decades, the Mexican competition authority has worked with due diligence in order to strengthen and expand its institution. Additionally, the authority has actively promoted the benefits of competition in the Mexican economy to the society. The Law issued in 1992 underwent two major reforms (2006 and 2011). In addition, a new Law was issued in 2014. The previous instruments enhance the investigation tools and capabilities as well as the sanction faculties of the competition authority.

4. This report provides an integral account of the actions conducted by the COFECE from September 10 to December 31 of 2013. Moreover, in order to provide transparency to the actions entitled to the prior CFC, the current information also covers the period that comprehends January 1st, 2013 to September 10, 2013.

5. From September 10 to December 31, 2013, the COFECE processed 191 cases, 100 which were transferred from the prior CFC and 91 which were admitted in the defined period. Of the total of matters, 124 were finalized and 67 remained for analysis and resolution in 2014.

6. In terms of application of competition legislation, 44 merger cases were authorized, 3 were under investigation, one case was withdrawn and 23 were transferred to 2014.

7. The most relevant merger cases in this period were the Sherwin Williams-Comex merger and the reconsideration appeal submitted by Cinemex-Cinemark. In terms of monopolistic practices, 13 cases were received, out of which nine were finalized in 2013. Sanctions were imposed in two matters, five were discarded and two were closed. The most relevant cases in this regard were those related to monopolistic practices in the production, distribution and commercialization of poultry.

¹ Referred as the Law throughout this text.

8. As part of its advocacy efforts, the Commission issued an opinion on the Livestock Law of Southern Baja California and of the Bylaw of the Milk Commission of Southern Baja California. This attribution is provided by the Law, as the COFECE can issue non-binding opinions with regards to laws, bylaws and other instruments that are related to free market participation and economic competition².

9. Taking in consideration its constitutional autonomy, the COFECE issued 24 norms for its organizational development, as well as for the management of its financial and material resources. The latter provided for the creation of the legal framework necessary for the fulfilment of the mandate of the Commission.

10. The Plenum of the COFECE issued provisions that guarantee the institutional compliance with transparency and information access. Hence, in the reported period 67 information requests were handled promptly.

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

11. In June 2013, a reform decree to articles 6, 7, 27, 28, 73, 78, 94 and 105 of the Political Constitution of the United Mexican States was published. After ratification of 6 of the Commissioners by the Mexican Congress on September 10, the new Federal Economic Competition Commission (COFECE) was formally established as an autonomous constitutional body on September 10 of the same year.

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

12. After the Constitutional reform the COFECE, is an autonomous competition authority for most of the economic sectors, with exception of telecommunications and broadcasting. It must be noted that competition and regulation mandates in the latter matters are exclusive of the Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones, IFETEL) which was also created by the aforementioned reform.

13. The new COFECE is formed by 7 Commissioners. Now Commissioners are appointed by a fair and transparent mechanism which is handled by an autonomous Evaluation Committee that conducts an impartial examination process and afterwards submit the top candidates to ratification by the Senate. This process avoids the deliberate determination of the Commissioners.

14. In addition, the new constitutional and legal framework enables the Commission to order measures to eliminate barriers to competition and free market participation, to regulate the access to essential inputs, and to order the divestiture of assets, rights or shares of the economic agents in the necessary proportions to eliminate anticompetitive effects. Moreover, the COFECE is also entitled to initiate *ex-officio* investigations when there are elements that contribute to the suspicion that there are no effective competition conditions in a given market, with the objective to determine the existence of barriers to competition and free market participation or anticompetitive handling of essential inputs³.

15. The Constitutional reform has also provided a new framework for the judicial process in competition matters. Consequently, the resolutions of the Commission can only be contested by an appeal trial (*juicio de amparo indirecto*) and the decisions are not objects of suspension, except in cases in which the Commission imposes fines or the divestiture of assets. Moreover, the resolutions that originate from a specific Commission trial-type procedure can only be refuted for any breach to its due process. It must also

² Article 24, of the current FLEC reformed in 2011, subsection X.

³ CPEUM, Article 28.

be observed that the amendments to the Constitution provide that the appeal trials will be conducted at specialized tribunals in matters related to competition, telecommunications and broadcasting.

16. Additionally, the Constitutional reform provides for the separation of the investigation and decision processes, in order to investigate the cases independently from the resolution instance. The aforementioned structure is aimed to provide an adequate and impartial conduction of the procedures handled by the Commission.

17. The Constitutional reform was further implemented by the new Federal Law of Economic Competition (FLEC), which was approved by Congress in April 2014. The new Law was enacted when published in the Official Gazette of the Federation (DOF) by the President of Mexico on May 23, 2014. This law will formally enter in to force in July 7, 2014, after a period of 45 days for its implementation.

2. Enforcement of competition laws and policies

18. In terms of enforcing the competition law in Mexico⁴, the Commission divides its actions and procedures in six different categories: i) mergers; ii) monopolistic practices; iii) opinions; iv) consultations; v) reconsideration appeals; and vi) declarations of competition conditions. In the following subsections some of the different actions conducted by the Commission will be briefly addressed.

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

19. Monopolistic practices are those that, because of their object or effect, damage or affect the competition process or free market participation in the production, processing, distribution and trading of goods as well as services. In the Mexican competition legislation there are two types of monopolistic practices: absolute monopolistic practices, such as cartels, and relative monopolistic practices, which are unilateral abuse of dominance⁵.

2.1.1 Summary of activities of the competition authorities;

20. From September 10 to December 31, 2013, which includes the period since the COFECE was formally established, 191 cases were received, of which 91 were admitted in the aforementioned period and 100 were referred from the prior CFC. In this regard, 124 cases were issued with a resolution and 67 matters are still pending.

21. During September and October 2013 the pending decisions in the telecommunications and broadcasting sectors were transferred to the IFETEL.

2.1.2 Description of significant cases, including those with international implications.

2.1.2.1 Production, distribution and commercialization of Poultry

22. In December 2009, the CFC commenced an investigation for absolute monopolistic practices in the market of production, distribution and commercialization of the national poultry industry⁶. Afterwards, in May 2011 the CFC decided to segment the case with the objective to analyze the effects of this practice

⁴ According to the FLEC as amended in 2011.

⁵ Articles 9 and 10, FLEC reformed in 2011.

⁶ File IO-005-2009.

specifically in the state of Quintana Roo. In March 20, 2013, two more leads were created, one for the investigation of the practice in the state of Veracruz and another for Mexico City (Federal District)⁷.

2.1.2.2 Investigation in the state of Veracruz⁸

23. The Statement of Objections (SO) was issued before the case was segmented in 2013. In addition, the respondent economic agents submitted evidence to the Commission during the same period⁹.

24. The investigated practices consisted in a series of actions that were conducted to set the price of poultry products in the state of Veracruz, which correspond to an absolute monopolistic practice. The responsibility of the previously mentioned actions was attributed to the following economic agents: *Neria*, *ACA*, *Marver*, *IBachoco*, *Bachoco*, *San Antonio* and *Asociación de Avicultores de Veracruz*. Bearing in mind the aforementioned, on July 11, 2013, the Plenum of the CFC decided unanimously to sanction the offenders with a fine of 6.2 million pesos, approximately 478,500 USD¹⁰.

25. The resolution of the reconsideration resources was handled by the COFECE, implemented after the reform. After analyzing the claims of the offenders, the Plenum of the Commission decided to declare them void, and proceeded to confirm the resolution of the CFC.

2.1.2.3 Investigation in Mexico City (Federal District)¹¹

26. On the other hand the Statement of Objections of the case corresponding to the Federal District¹² was issued on September 14, 2012. The investigated practice consisted in agreeing the price of sale of poultry products in Mexico City. This breach was conducted publishing adverts in media, during 2008 and 2009, in which the poultry prices were fixed for sale in public markets and other establishments.

27. On October 3, 2013, the Plenum of the COFECE unanimously decided to sanction *IBachoco*, *Pilgrim's*, *Tyson*, *San Antonio* and *PQro*, as well as six individuals for their direct participation in the proved monopolistic practices. Moreover, the *UNA* was sanctioned for participating as adjuvant in the aforementioned practices. Consequently, sanctions were imposed to the 12 agents totalling 131.8 million pesos, approximately 10.1 million USD¹³.

⁷ File IO-005-2009-I.

⁸ Files IO-005-2009-II, RA-022-2013, RA-028-2013, RA-030-2013.

⁹ The following were there involved economic agents: *Avícola Marver (Marver)*, *Agroindustrias de Córdoba (Agroindustrias)*, *Grupo Pecuário San Antonio (San Antonio)*, *Avicultores Cordobeses Asociados (ACA)*, *Asociación de Avicultores de Veracruz (ASAVE)*, *Industrias Bachoco (IBachoco)*, *Bachoco (Bachoco)* y *Productos Agrícolas y Agropecuarios Neria (Neria)*, as well as several individuals.

¹⁰ Approximate calculation based in the Exchange rate of the Bank of Mexico (1 MXN = 0.077174 USD) on May 12, 2014.

¹¹ File IO-005-2009-III.

¹² This SO was notified to the following economic agents: *Avícola Pilgrim's Pride de México (Pilgrim's)*, *San Antonio*, *Pollo de Querétaro (PQRO)*, *Tyson Operaciones (Tyson)*, *Unión Nacional de Avicultores (UNA)*, *IBachoco*, *Bachoco*, *Tyson Alimentos* and several individuals.

¹³ Approximate calculation based in the Exchange rate of the Bank of Mexico (1 MXN = 0.077174 USD) on May 12, 2014.

2.2 *Mergers and acquisitions*

28. In order to prevent market concentration that could lead to abuse of dominance in such market, such as unilaterally setting prices, restricting supply, impeding the access to essential inputs, unduly displacing their competitors, or facilitating the conduction of monopolistic practices, the COFFECE supervises and controls merger processes.

29. The FLEC defined a merger as the fusion, joint venture, acquisition of control, or any other action between firms, associations, stocks, partnership interest, trusteeships or assets in general, that are conducted by competitors, suppliers, clients or any other economic agent¹⁴.

30. The obligation that the economic agents have to notify a merger is established in article 20 of the still current FLEC reformed in 2011. This provision establishes that the economic agents that participate in a merger that surpasses the thresholds defined in any of the three sections of the aforementioned article must notify the COFECE before completing the merger.

31. Consequently, when a threat to competition is detected, the Commission conditions the authorization of the operation to the implementation of remedies. When there is not a feasible mechanism to counter the threat the operation is blocked.

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

32. The Commission has three types of procedures to analyze and investigate mergers:

- Merger notifications: when an operation exceeds the limits contained in article 20 of the FLEC reformed in 2011.
- Forbidden merger complaints: If a company considers that a merger could affect the competition process and further asserts that it would be affected, it may submit a complaint to the Commission.
- *Ex-officio* investigations: The COFECE is entitled to autonomously investigate mergers that may harm or substantially lessen competition.

33. The following table contains the number of mergers that were reviewed by the Commission from September 10 to December 31, 2013.

¹⁴ Article 16 of the FLEC reformed in 2011.

Mergers (Between September 10 and December 31, 2013) Type of procedure and resolution			
Cases	Total	Notifications	Notices¹⁵
Pending from the CFC	14	14	0
Filed (notified)	57	53	4
Closed	48	45	3
Authorized	44	44	0
Conditioned	0	0	0
Blocked	0	0	0
Under investigation*	3	0	3
Inadmissible	0	0	0
Other**	1	1	0
Pending for 2014	23	22	1

2.2.2 Summary of significant cases.

2.2.2.1 The Sherwin Williams Company-Comex¹⁶

34. On December 19, 2012, The Sherwin Williams Company (SW) and Avisep, as holding entity of the *Comex* Consortium (Comex) notified an intended merger to the CFC.

35. SW is an American society focused in the production, distribution and sale of paint and related products for professional, industrial and commercial clients mainly in North and South America with additional operations in the Caribbean, Europe and Asia. *Comex* is a Mexican society that controls the stocks of companies that produce, distribute and trade in the paint related market.

36. The notified operation consisted in the acquisition, by SW, of 100% of the stocks of *Comex* and its subsidiaries. On July 11, 2013, the Plenum of the Commission denied the merger request after considering that it would cause a consolidation or increase in the market power that was held by *Comex*.

37. In disagreement with the resolution, SW and Avisep presented a reconsideration resource on August 8, 2013, along with different remedies that, under their perspective, eliminated any risk that the operation could represent to the competition process and free market participation in the relevant markets.

38. Bearing in mind the aforementioned, and after analyzing that the remedies were not sufficient to eliminate the market power accumulation, the COFECE confirmed the resolution on October 22, 2013.

¹⁵ Decisions adopted according to the merger notification provisions established in article 26 of the Bylaw of the FLEC (BFLEC). After the 2011 reforms to the FLEC operations regulated by this article are no longer required to be reviewed by the Commission.

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

¹⁶ Files RA-027-2013 and CNT-095-2012.

2.2.2.2 Grupo Cinemex – Cinemark Holdings¹⁷

39. On July 17, 2013, the CFC objected the merger between *Cinemex* and *Cinemark*. Both companies are devoted to the development and operation of movie theaters in Mexico, where they offer film exhibition services and complementary services such as snacks and advertisement spaces. *Cinemex* operates 195 complexes in 69 cities in the country, whereas *Cinemark* has 31 complexes in 19 cities.

40. The resolution considered that the merger would lead to the elimination of one of the three actors that concentrate the 95% of the film exhibition market in Mexico, which involves as well high entry barriers. Consequently, it was established that the two remaining companies would have greater incentives to coordinate their activities. Bearing in mind the above, the CFC objected the operation.

41. *Cinemex* and *Cinemark* presented on August 20, 2013, a reconsideration resource in which they referred that the previous resolution did not elaborated adequately on the affectations on the competition process and free market participation as a result of the reduction in competing economic agents.

42. The COFECE analyzed the resource on October 29, 2013, and decided to revoke the original CFC resolution in order to proceed with the authorization of the merger. This decision was made by a qualified majority of votes of the Commissioners.

43. Noting the arguments presented by the companies in their reconsideration resource, the Plenum recognized that it does not suffice to deny a merger based on a reduction in the number of competitors, but it is also required to analyze other elements that could provide or limit a coordinated conduct if the merger is approved.

44. Consequently, the Plenum analyzed the following elements: i) The current role of *Cinemark* in the market; ii) The incentives for firms to collude and the market performance; iii) the product differentiation; and iv) the asymmetry in the market participations.

45. The Plenum of the Commission determined that the competitive pressure represented by *Cinemark* is weak, due to the fact that in the last five years the latter has not built new theaters and its market participation has reduced. Hence, the conditions that facilitate collusion would not result from this merger.

46. Moreover, it was observed that, in spite of the merger, there was national asymmetry between *Cinemex/Cinemark* and *Cinopolis*, which is the operator with the greatest market share nationwide. This element would reduce incentives for these companies to coordinate their conduct in affectation of the consumers. In addition, the film exhibition market is clearly expanding, and its offer is not homogeneous, which conditions any collusion.

47. Therefore, the Plenum of the COFECE concluded that the operation would not harm the competition process and free market participation. On the contrary, it determined that the substitution of *Cinemark* by a competitor that has been more active in investing and promoting corporate growth could even benefit competition in the market.

¹⁷ Files RA-029-2013 and CNT-010-2013.

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

48. According to article 28 of the Constitution and the FLEC reformed in 2011, the COFECE has the faculty to issue opinions regarding: i) the existing regulatory framework, ii) bills that were presented at the Congress or the State legislatures, iii) secondary legislation projects and iv) adjustments to public programs or policies.

49. In the period comprehended in this report, the Plenum of the COFECE issued an opinion related to two norms of the Government of the State of Southern Baja California.

3.1 *Opinion of the Plenum on the Livestock Law of the State of Southern Baja California and the Bylaw of the Milk Commission of Southern Baja California*¹⁸

50. On November 21, 2013, the Plenum of the COFECE decided to issue an opinion in matters related to competition and free market participation with respect to the Livestock Law of the State of Southern Baja California (LLSSBC) and the Bylaw of the Milk Commission of Southern Baja California (BMCSBC). The Plenum of the Commission considered that the LLSSBC and the BMCSBC contained several provisions that affected the free market participation and competition process. In addition, the aforementioned norms hindered the public interest and consumer welfare as these create unduly justified barriers to entry, discriminate economic agents and provide exclusive advantages to the producers located in Southern Baja California.

51. The LLSSBC and the BMCSBC have the following implications:

- *Limit trade from economic agents located in other States.* The LLSSBC asserts that, in order to provide introduction permits and transit guidelines of cattle products, the authority can consider the “State economy”, “Market situation” and its “Repercussion on the local producers”. The Plenum of the COFECE noted that these criteria favour the local producers and limit competition coming from other regions.
- *Allow the participation of economic agents in the decisions of the authority.* The LLSSBC allows that the established producers provide their views with regards to the inspectors that are enabled to authorize or block the cattle exchange. In addition, the BMCSBC foresees that the local milk producers can participate in the Milk Commission of Southern Baja California, which authorizes the introduction of dairy products. With this attribution, the local producers could affect the decisions of both the inspectors and of the Milk Commission, providing unjustified advantages.
- *The LLSSBC establishes quality standards.* The LLSSBC contends that the cattle, its products and by-products must fulfil the quality standard established by the State Executive Branch (Governor). The COFECE noted that introducing quality standards in cattle related products limits the options of the consumers. It can be also perceived as an unjustified barrier to entry, due to the fact that those products that fulfil the health requirements, but that have an inferior quality level, cannot be commercialized in the State.
- *Price fixing.* The BMCSBC states that the Milk Commission of the Southern Baja California can issue opinions and propose to the competent authorities the prices and margins for milk

¹⁸

The full opinion is available at:

<http://www.cfc.gob.mx:8080/cfcresoluciones/docs/Mercados%20Regulados/V4/11/1785968.pdf>.

and dairy products. In this regard, the COFECE considered that these measures could facilitate incurring in absolute monopolistic practices, affecting market efficiency and consumer welfare.

52. Bearing in mind the aforesaid, the COFECE considered that the provisions contained in the LLSSBC and the BMCSBC affected free market participation and the competition process. Hence, the Commission expressed its intention to collaborate with the Government of Southern Baja California in promoting a regulatory framework that contributes to consumer welfare and generates greater efficiency in the markets.

53. In addition to the aforementioned, the Government of Southern Baja California signed an agreement with the Federal Commission for Regulatory Improvement (COFEMER) with the objective to foster an agenda of regulatory improvement. In this regard, the Commission and the COFEMER have had an active role in promoting competitive regulation in the different areas of the Mexican government¹⁹.

4. Resources of competition authorities

4.1 Resources overall:

4.1.1 Annual budget (in your currency and USD):

54. For 2014 the annual budget is of \$297 million Mexican Pesos (approximately US \$22.9 million)²⁰.

4.1.2 Number of employees (person-years):

55. At the end December 2013, COFECE had 184 employees directly involved with competition matters, of which 48 are economists, 64 lawyers and the rest from other disciplines.

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

56. In November 2013, the COFECE and the Organization for Economic Cooperation and Development (OECD) issued a comprehensive report on the legal framework and public procurement practices conducted by the Institute of Security and Social Services of the Workers of the state (ISSSTE). This report provides several recommendations for improving the public tendering systems²¹.

57. In addition, a report on the Elimination of Restrictions to Foreign Direct Investment (FDI) was published by the COFECE and the OECD in 2013. This report demonstrates that, for example, the civil air transport sector has substantial restrictions when compared to other countries. The paper proposes prospective benefits for opening this and other sectors to foreign investment²².

¹⁹ Agreement available at: http://www.cofemer.gob.mx/imagenesUpload/2013741645Baja%20California%20Sur_%20Pol%C3%ADtica%20Regulatoria.pdf

²⁰ Approximate calculation based in the Exchange rate of the Bank of Mexico (1 MXN = 0.077174 USD) on May 12, 2014.

²¹ Report “Fighting Bid Rigging in Public Procurement in Mexico” available at: <http://www.oecd.org/mexico/mexicoissste2013.htm>.

²² The referred Report “*Eliminación de Restricciones a la Participación Extranjera en México*” is available in Spanish at <http://www.oecd.org/daf/competition/IEDreporteOCDECFE.pdf>.

58. On May 2013, the President of Mexico presented legislation to the Lower Chamber of Congress (*Cámara de Diputados*) to reform the banking sector of the country. The principal governance objective of the reform is to strengthen the legal framework of the National Commission for the Protection and Defense of Financial Services Users (CONDUSEF). The bill was part of a strategy to 1) increase the availability of banking credit as a driver of entrepreneurial activity and improved household welfare (a key commitment in the Pact for Mexico); 2) improve consumer protection of financial services users; and 3) increase competition among lenders, making credit more accessible and affordable.

59. The reform impacts the main financial institutions of the country²³ and has a broad legislative scope, as it would eliminate, add or modify provisions in Laws on Protection and Defense of Users of Financial Services; Transparency and Command of Financial Services; Credit Institutions; and regulate the Institute for the National Fund for Labor Force Expenditures. The bill was approved in 2014 and it stipulates that the Commission will have to conduct and present an evaluation of the current state of competition within the financial services markets described above in that time. The evaluation should include recommendations to improve competition in these markets and/or enhance enforcement of the FLEC.

²³ For instance: multiple banking services, pensions (*Afores and Siefores*), investment funds, real estate, hedge funds, insurance, securities, general deposit warehouse, leasing, intermediaries, credit unions, foreign exchange, community financial services, savings and loans cooperatives, investment services (equity, debt and capital), and brokerages.

REPORT II

IFETEL (INSTITUTO FEDERAL DE TELECOMUNICACIONES)

1. Legal provisions of competition law

1. With the Constitutional Reform in Telecommunications and Competition, released in June 2013, the IFETEL (*Instituto Federal de Telecomunicaciones*) was given both, Regulation and Competition faculties in the Telecommunications and Broadcasting sectors.

2. As COFECE, IFETEL is now an autonomous competition authority formed by 7 Commissioners. Commissioners are appointed by a fair and transparent mechanism handled by an autonomous evaluation Committee. The mechanism consists in an impartial examination process and the selected candidates required ratification by the Senate.

3. The IFETEL is entitled to implement regulatory policy, resolve disputes between economic agents, and enforce competition law by own-initiative or followed by complaints. It is also entitled to manage the radio spectrum and to enforce consumer protection. The protection final users and audiences is one of the IFETEL's most important duties because the constitutional reform made access to information and communication technologies a constitutional right.

4. The new secondary law to regulate the sectors, the *Ley Federal de Telecomunicaciones* (LFT), is about to be launched; the new competition law, *Ley Federal de Competencia Económica* (LFCE) was already approved in June 2014 and will formally enter into force in July 7, 2014.

2. Enforcement of competition law in the Telecommunications and Broadcasting sectors

5. From September 10th 2013 on, when the IFETEL was formally established, it has been enforcing Competition Law (LFCE: *Ley Federal de Competencia Económica*).

6. As established in the LFCE (2011), IFETEL divides its actions and procedures on the competition field in six categories, four preventive: i) mergers, ii) opinions about market structure or regarding grants and concessions, iii) consultations, and iv) statements of competition conditions in the market; and two corrective: v) investigation of monopolistic practices (cartels and unilateral conduct) and vi) reconsideration appeals¹.

7. Besides the actions established in the LFCE (2011), IFETEL had the obligation to accomplish a number of tasks mandated in the Constitutional Reform within the 180 days of its publication. Some tasks were oriented to a regulatory objective and others to competition objectives. The actions from the competition perspective consisted in: i) starting the process to create two national chains of Free TV digital channels, ii) declaring the existence of preponderant economic agents in the telecommunications and broadcasting sectors

¹ Nonetheless, the Constitutional Reform of June 2013 eliminated reconsideration appeals in antitrust cases.

as well as the corresponding remedies to promote more competition in these markets, including the unbundling of the local telecommunications network of the preponderant agent in the telecommunications sector. As a result of “must carry - must offer” rules entering in force as mandated by the Constitutional Reform, the IFETEL also issued guidelines for their application.

3. Summary of activities in the competition field

8. Since its constitution in September 2013, IFETEL initiated procedures necessary to accomplish the actions mandated in the constitutional Reform related to: i) “must-carry - must offer” obligations, ii) the process for auctioning licenses for two national chains of free TV digital channels, and iii) the identification of preponderant agents in the telecommunications and broadcasting sectors and their asymmetric regulation.

9. In September and October 2013, 67 open files in the telecommunications and broadcasting sectors were transferred from COFECE to IFETEL. They split into: one merger, 3 cartel investigations, 5 investigations on unilateral conduct, one prohibited merger² case, 2 trial proceedings (*procedimientos en forma de juicio*), one reconsideration appeal (*recurso de reconsideración*), 3 compliance undertakings (one for a merger authorized under conditions and 2 for correcting unilateral conduct), one opinion on a tender for commercial radio rights, 11 opinions on transfers of commercial radio licenses, and 39 opinions on issuing permissions for cultural radio stations operation. All opinions involve merger analysis. Additionally, 14 cases were initiated in IFETEL: one merger, 3 unilateral conduct investigations, 2 prohibited mergers, 3 opinions on changes in the stock structure of public telecommunications networks licensees and 5 opinions to authorize the operation of cultural radio stations.

3.1 By Constitutional mandate

3.1.1 Sealed-bid auction of spectrum for two national digital television chains.

10. On December 20th 2013, IFETEL published the list of local band frequencies available to be tendered to form two national chains of free TV digital channels, together with information about their location, the cities and towns that must be served, and regional coverage. Each free TV digital national chain can be composed of up to 123 local stations spread across the country. That is, a package of 246 stations is available to be tendered.

11. At the beginning of 2014, the IFETEL published the call and rules for the auction process.

12. The call for the auction describes the band frequencies in terms of their location, coverage and general regional characteristics.

13. The auction rules describe the requirements bidders must fulfill for participating in the process, the terms and conditions of the license, the process for the allocation of the frequencies (one-shot sealed-bid mechanism with an evaluation formula that combines economic and coverage proposals) and provide the calendar of activities.

² Prohibited merger cases are ex-post interventions when a possibly anti-competitive merger has occurred, opposed to normal merger cases, where the intervention is ex-ante.

14. The auction rules reveal that the price will not be the only or the most important factor to allocate the block of frequencies. In fact, there is a constitutional mandate not to consider exclusively economic offers to define winners. Thus, the higher the coverage in terms of population proposed by the bidder, the higher the ranking of the proposal will be. Bidders are not required to bid for the 123 frequency bands, but their proposed block of frequencies must be sufficient to cover at least 30 percent of the population in each of the 32 federal states. A single bidder can bid for the two national chains of free digital TV.

15. Finally, free TV operators that already have licenses that cover 12 MHz or more for broadcasting services cannot participate in the auction.

16. It is worth mentioning that this is the first time that spectrum for free TV channels will be auctioned in Mexico. The purpose of the process is to generate competition in a highly concentrated market where by far large, free TV remains the main means to access audiovisual content, so that audiences are benefited from more competition and more plurality.

3.1.2 The statement of preponderance in the telecoms sector and remedies

17. By constitutional mandate a predominant agent in the telecoms and the broadcasting sectors is the one with a share higher than 50 percent. Shares can be measured either by the number of users, subscribers, audience, network traffic or capacity, and do not have to be market-specific.

18. In November 2013, the IFETEL notified a preliminary finding of the existence of a predominant economic agent in the telecoms sector. By March 2014, IFETEL determined as predominant economic agent the group of firms controlled by Carlos Slim and his family, composed mainly of América Móvil, Telmex, Telnor (fixed incumbents) and Telcel (mobile incumbent). The group's market share is about 68 percent in the fixed telephony market, 70 percent in the mobile telephony market and 67 percent in the fixed broadband market.

19. The remedies imposed to the dominant group are related to regulatory and competition obligations. For example, the preponderant agent has to:

1. Provide interconnection services according to asymmetric tariffs and conditions defined by IFETEL.
2. Publish a wholesale services reference offer for virtual mobile operators approved by IFETEL.
3. Publish a passive infrastructure reference offer approved by IFETEL.
4. Publish a roaming reference offer approved by IFETEL.
5. Lease lines with minimum quality standards
6. Comply with a price cap in a basket of retail fixed services
7. Provide clear and complete information about the products and services users are charged.
8. Unlock mobile telephones.
9. Eliminate roaming charges for on-net calls.

10. Provide unbundled access to its local network.

20. At the same time, it cannot:

1. Offer tie-in sales; interrupt the services if other than telecommunications products are not paid on time.
2. Acquire in exclusivity relevant audiovisual content.
3. Participate or exercise direct or indirect control on the preponderant agent in the broadcasting sector.

3.1.3 *The statement of preponderance in the broadcasting sector and remedies*

21. Also in November 2013, IFETEL notified a preliminary finding of the existence of a predominant economic agent in the broadcasting sector. By March 2014 IFETEL, determined as predominant economic agent in the broadcast sector, the group of firms controlled by Grupo Televisa, directly or by means of affiliation.

22. Among the remedies imposed to Grupo Televisa are to:

1. Publish a reference offer of access to its passive infrastructure, approved by IFETEL
2. Publish their commercial offering of publicity tariffs.

23. At the same time, it cannot:

1. Acquire in exclusivity relevant audiovisual content.
2. Participate in purchasing clubs, without IFETEL's authorization.
3. Discriminate in the provision of its channel to any technological platform
4. Participate or exercise direct or indirect control in the preponderant agent of the telecommunications sector.

3.1.4 *Common remedies: "Audiovisual relevant content" cannot be acquired in exclusivity*

24. The IFETEL determined the list of programs to be considered "audiovisual relevant content", considering past ratings and their replicability. The methodology was oriented to find out which are the contents that the audience values the most and have no available substitutes (cannot be replicated). These "relevant contents" turned out to be some sport events such as the initial and closing events for the Olympic Games, the final and other matches in the soccer world cup, national final soccer cup match and the matches by the soccer national team.

3.1.5 *Must carry – must offer obligations*

25. In November 2013, IFETEL released a public consultation on "the must carry – must offer" guidelines for the application of these obligations by free TV and pay TV operators. IFETEL received 32

answers from industry, academic institutions and civil organizations, relating mostly to technical, regulatory and intellectual property rights aspects. Taking into consideration those submissions, IFETEL modified the guidelines and published a final version in February 2014.

26. The guidelines establish, among other issues, that pay TV operators must re-transmit the integral programming, including publicity, of free TV channels that are transmitted in their coverage zone, without requiring the free TV carrier's formal authorization.

27. In parallel, pay TV operators must re-transmit public and private free TV channels, without requiring any payment, under non-discriminatory rules and with the same quality standards they use for their own programming. It is worth noting, that while pay TV operators with cable infrastructure are required to re-transmit all free TV channels that are transmitted in their coverage zone; operators with satellite infrastructure have the obligation to re-transmit only the channels that have at least 50 percent of national coverage. The IFETEL determined those channels are identified as Televisa's networks 2 and 5, and TV Azteca's networks 7 and 13.

3.2 Cases referred by COFECE

28. In October 2013, COFECE transferred to IFETEL, among others, two important cases that were recently solved. These are:

3.2.1 Market segmentation in the fixed telephony/internet/pay TV services market by Grupo Televisa and Grupo Megacable

29. Early in 2014, a cartel investigation in the "triple play" market (fixed telephony/pay TV/internet) was decided. IFETEL determined that Grupo Televisa and Grupo Megacable incurred in market segmentation in one of the regional markets where they jointly participated. The instruments by which Cablevisión (part of Grupo Televisa) and Megacable were segmenting the market were their call centers, websites and retail sales stores. More specifically, the parties were assigning clients to one single provider, even though these carriers could offer triple play packages in the market. Cablevisión was fined with around 670,000 USD and Grupo Megacable with 2.5 million USD. The groups were ordered to stop the anticompetitive practice as well as to offer a set of mechanisms to verify that the practice will actually be suppressed.

3.2.2 Eutelsat (Hispasat) / Satmex merger

30. Eutelsat Communications acquired Satélites Mexicanos, ("Satmex"). Both operators provide satellite capacity for fixed satellite services (FSS). Satmex operates in the Mexican market and Eutelsat does not, at least not directly. However, Eutelsat owns more than 33 percent of Hispasat, which operates in the Mexican market. IFETEL concluded that it was not foreseeable that the operation could substantially affect competition in the relevant market for the following reasons:

- There is another satellite operator in the market, Intelsat, with a larger market share than Satmex and Hispasat joint market share.
- Considering total installed capacity (in use and excess), Intelsat and a fourth competitor have more capacity than Intelsat and Hispasat jointly.

31. Given the above, it was considered that Satmex and Hispasat have a limited possibility to increase prices unilaterally or to coordinate an increase in prices or decrease in quality of the services.

3.3 Cases initiated in IFETEL

32. Since September 2013, 14 cases were initiated in IFETEL: one merger, 3 investigations on abuse of dominance, 2 prohibited mergers, 3 opinions on changes in the stock structure of public telecommunications networks licensees and 5 opinions on the issuance of authorizations for the operation of cultural radio stations. Among the complex cases that IFETEL is currently investigating are:

3.3.1 Prohibited mergers.

33. IFETEL is entitled to divest mergers that might have anticompetitive effects in the market. Among the determinants that make IFETEL investigate a consummated merger are: i) the merger didn't need prior authorization by IFETEL (or by the former *Comisión Federal de Competencia*) and not a year has passed since it was completed, ii) the merger needed prior authorization by IFETEL (or by the former *Comisión Federal de Competencia*) but it was not notified for authorization, iii) the information provided by the parties to obtain authorization, was misleading.

34. IFETEL opened two prohibited merger investigations. One of them resulted from a third party complaint and it relates to the broad market of telecommunications and broadcasting together (that is, fixed telephony, mobile telephony, broadband access, interconnection, leased lines, pay TV, as well as, free TV, publicity and contents) in the national and international geographic markets.

3.3.2 Abuse of dominance investigations

35. Ensuing a third party complaint, IFETEL opened an abuse of dominance investigation in the market of acquisition, distribution and sales of contents that are transmitted nationally through internet and pay TV platforms. Investigated conduct comprises: exclusive dealing, cross subsidization, price discrimination and increasing rivals' costs with the intention to foreclose a competitor.

36. A second investigation resulting from a complaint, was opened early in 2014 in the product market of pay TV in the geographic market of Sinaloa (one of the federal states). The investigated practice is the increase in rivals' costs with the intention of foreclosing a competitor.

37. A third market investigation, following a complaint, is being carried out in the market of publicity in free TV channels. The investigated practices are refusal to deal, boycott, price discrimination and increasing rivals' costs.