

Unclassified

DAF/COMP/AR(2016)19

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

31-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)19
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN MEXICO

-- 2015 --

15 - 17 June 2016

This report is submitted by Mexico to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 15-17 June 2016.

JT03396922

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

REPORT BY COFECE.....3

Executive summary3

1. Changes to competition law and policies5

 1.1 New guidelines and technical criteria.....5

2. Enforcement of competition law and policies: actions against anticompetitive practices6

 2.1 Enforcement Statistics6

 2.2 Antitrust cases in the courts7

 2.3 Significant enforcement actions.7

3. Enforcement of antitrust laws and policies: mergers and concentrations9

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

 3.2 Significant merger matters.....9

4. COFECE’s resources11

 4.1 Budget.....11

 4.2 Human Resources Allocation11

5. The role of competition authorities in the formulation and implementation of other policies.11

 5.1 Energy Sector12

 5.2 Other relevant opinions issued by COFECE12

 5.3 Other Advocacy Activities13

6. Summaries of or references to new reports and studies on competition policy issues13

 6.1 Report on the Competition Conditions in the Agri-Foods Sector13

7. International antitrust cooperation.....16

 7.1 International Antitrust Cooperation Developments.....16

REPORT BY IFT18

Executive summary18

1. Changes to competition law and policies19

 1.1 Summary of new legal provisions of competition law and related legislation19

2. Enforcement of competition laws and policies19

 2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions 19

 2.2 Mergers and acquisitions23

3. The role of competition authorities in the formulation and implementation of other policies24

4. Resources of competition authorities.....27

**FEDERAL ECONOMIC COMPETITION COMMISSION (COFECE)
ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN MEXICO
-- 2015 --**

**REPORT BY COFECE
EXECUTIVE SUMMARY**

1. In 2015, the Mexican Federal Economic Competition Commission (COFECE) accomplished two years of working towards fulfilling its constitutional mandate of promoting and safeguarding competition and free market access in Mexico.
2. The actions undertaken during this year contribute to the achievement of the strategic objectives established at the Commission's 2014-2017 Strategic Plan which guides its daily operation.
3. Throughout 2015, COFECE continued to consolidate its regulatory framework by publishing diverse legal and technical instruments to facilitate the execution of its legal mandate. In this sense, COFECE issued seven guidelines and three technical criteria. These tools create better conditions for predictability and legal certainty regarding law enforcement.
4. During 2015, 415 matters were processed by COFECE including the assessment of complaints, merger reviews and the issuance of opinions regarding tenders, the granting of governmental licenses, concessions, and permits.
5. COFECE's Investigative Authority initiated several investigations (10 in total) for anticompetitive conduct (cartels and abuse of dominance) in highly important markets such as sugar, eggs and pension funds. Of the aforementioned, COFECE concluded one investigation by imposing fines for an amount of USD \$1.7 million.¹
6. In 2015, COFECE deployed with more intensity its investigation tools. A clear demonstration of this is the increase in the execution of dawn raids (3.5 times the number of dawn raids carried out in 2014) to gather evidence of anticompetitive conduct.
7. Another mechanism increasingly used by the Commission's Investigative Authority to detect cartels was the execution of leniency agreements. During 2015 the number of leniency applications increased by 300% as compared to 2014.
8. Between January 1st and December 31st 2015, the Federal Judiciary's rulings favored COFECE in 76.4% of the cases. One example, is the favorable ruling issued by the Supreme Court of Justice (April 8), which upheld a sanction imposed by the Commission on four leading pharmaceutical companies for bid rigging practices. Additionally, for the first time the Supreme Court endorsed the use of indirect evidence (economic analysis) to proof anti-competitive behavior.
9. It is worth to highlight that for the first time, two investigations on essential facilities and barriers to competition were launched, pursuant to the new powers granted by the Mexican Constitution.
10. As part of COFECE's advocacy activities, on December 15th 2015, the "Report on Competition Conditions in the Agri-Food Sector" was published. This document contains a thorough assessment of the

¹ The official average exchange rate during the year 2015 was 15.87 MXN/USD, as published by the Mexican Central Bank (Banxico).

agri-food market, considering structural, regulatory and behavioral aspects, as well as 27 specific policy recommendations to foster competition conditions in order to generate greater supply and lower prices on agri-food products.

11. The Commission issued a total of 17 opinions with respect to proposed regulations (77.8% of the cases the recommendations were adopted). Furthermore, the authority provided technical advice on competition aspects within the energy sector due to the implementation of the 2013 reform.

12. According to COFECE's estimations, during 2015 the impact of its resolutions (related to enforcement and not including advocacy actions) upon consumer welfare represented around MXN\$ 1,196 million, hence giving back 2.5 pesos for each peso which was assigned to its budget. As for opinions pertaining laws or regulations, more than 3 out of 4 recommendations were taken into account, fully or in part.

13. Finally, in this term, four specific sectors received special attention, both through enforcement and advocacy actions: food, energy, transport and financial services.

14. This report summarizes the competition enforcement and policy activities of COFECE for the period of January 1 through December 31, 2015. For additional information on COFECE's activities during 2015, see the COFECE's Annual Highlights 2015, available in Spanish at https://www.cofece.mx/cofece/images/Documentos_Micrositios/Doc-Los15del15-Final-3_200116.pdf.

1. Changes to competition law and policies

15. Although no changes or reforms to the Federal Economic Competition Law (FECL) were enacted during 2015, the Commission continued to consolidate its regulatory framework by submitting to public consultation and publishing diverse legal instruments to facilitate the execution of its constitutional mandate and to direct its everyday activities towards the achievement of its institutional objectives.

1.1 *New guidelines and technical criteria*

16. A total of 7 guidelines and 3 technical criteria were published during 2015:

17. ***Merger Notification Guidelines***: It provides information and explanation on the concepts, legal framework and procedures related to merger notifications.

18. ***Guidelines for the initiation of monopolistic practices investigations***: It explains the mechanisms to initiate an investigation for alleged monopolistic practices, the details a complaint should include to be admitted by the Investigative Authority and other important aspects.

19. ***Absolute monopolistic practices investigations procedure Guidelines***: It sets the parameters followed by the Investigative Authority when investigating.

20. ***Leniency Program and Sanction Reduction Guidelines***: It explains the way the Commission receives, analyzes and resolves leniency applications.

21. ***Guidelines on Information Exchanges between Competitors***: It describes the types of information exchanges that may breach the FECL.

22. ***Guidelines for the filling of an investigation procedure for relative monopolistic practices or unlawful concentrations***: It sets the parameters followed by the Investigative Authority when investigating abuse of dominance conduct.

23. ***Guidelines on the procedure for the Exemption and Fine Reduction Benefit***: It details the procedure to access such benefits prior to the conclusion of an investigation of an abuse of dominance practice or an unlawful concentration.

24. ***Technical Criteria for the calculation and application of a quantitative index to measure market concentration***: It explains the method used by COFECE to measure, through an index, the concentration degree on a relevant market. Furthermore it explains the considerations for the application of said index when possible effects on competition and free market access are being analyzed on the relevant market.

25. ***Technical Criteria for the request and emission of injunctive reliefs as well the setting of sureties/bails***: It contains definitions, criteria and requirements related to the procedure for requesting or imposing injunctive reliefs.

26. ***Technical Criteria for requesting criminal proceedings dismissals under the Federal Criminal Code***: It established the elements considered by the COFECE's Board of Commissioners to exercise its power for requesting a dismissal regarding alleged criminal behaviors against national consumption and wealth, under article 254 *bis* of the Federal Criminal Code when COFECE acts as complainant.

2. Enforcement of competition law and policies: actions against anticompetitive practices

2.1 Enforcement Statistics

27. During 2015, COFECE assessed 25 complaints, and processed 26 investigations in accordance with the following tables.

| Complaints 2015 | | | | | |
|--|---|---|---|---|----|
| Complaints received in 2015 | 6 | 3 | 6 | 9 | 24 |
| Complaints pending from 2014 | - | - | - | - | 1 |
| Complaints leading to investigations in 2015 | 2 | 1 | 0 | 1 | 4 |
| Cartels | 0 | 1 | 0 | 0 | 1 |
| Abuse of dominance | 2 | 0 | 0 | 1 | 3 |
| Complaints which were dismissed in 2015 | 3 | 3 | 4 | 6 | 16 |
| Complaints pending analysis for 2016 | - | - | - | - | 5 |

Source: COFECE. Second Follow-up Report to the Strategic Plan 2014 – 2017. (https://www.cofece.mx/cofece/images/Informes/II_Informe_PE_2014-2017.pdf)

| Investigations 2015 | | | | | |
|---|-------------|-------------|-------------|-------------|-------|
| Concept | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | Total |
| Investigations pending from 2014 | - | - | - | - | 14 |
| Investigations initiated in 2015 | 7 | 2 | 0 | 3 | 12 |
| Cartels | 3 | 1 | 0 | 1 | - |
| Abuse of dominance | 3 | 0 | 0 | 2 | - |
| Competition barriers and essential facilities | 1 | 1 | 0 | 0 | - |
| Concluded investigations (closed or sanctioned) | 0 | 3 | 0 | 1 | 4 |
| Investigations pending analysis for 2016 | - | - | - | - | 24 |

Source: COFECE. Second Follow-up Report to the Strategic Plan 2014 – 2017. (https://www.cofece.mx/cofece/images/Informes/II_Informe_PE_2014-2017.pdf)

28. With the aim of demonstrating to companies that anti-competitive conduct will be punished in Mexico, the Commission pursued highly ambitious cases in 2015. For the first time, two investigations on essential facilities and barriers to competition were launched (pursuant to the new powers established in the Mexican Political Constitution):

29. *Allocation of take-off and landing slots at Mexico City's international airport:* In February 2015, COFECE's Investigative Authority initiated an ex officio investigation in the market for the provision of air transportation services that use Mexico City's International Airport's for their landing and/or take-off procedures. The investigation has the objective of determining the possible existence of competition barriers or essential facilities that could cause anticompetitive effects.

30. Preliminary findings of this investigation were presented by the Investigative Authority on early 2016.²

² <https://www.cofece.mx/cofece/index.php/prensa/historico-de-noticias/dictamen-preliminar-sobre-investigacion-a-insumos-esenciales-en-el-mercado-de-la-provision-de-los-servicios-de-transporte-aereo->

31. **Public freight transportation services in the state of Sinaloa:** On the second quarter of 2015, COFECE's Investigative Authority opened, as per request of the Ministry of Economy, a second investigation for possible barriers to competition since it identified elements to presume the lack of effective competition conditions in the market of public freight transportation services in the northern state of Sinaloa.

2.2 *Antitrust cases in the courts*³

32. During 2015, COFECE engaged in the defense of 95 actions before the courts, of which 65 were pending from previous years and 30 were initiated throughout 2015. 34 proceedings were concluded during the year, 19 of which denied *Amparo* protection to the plaintiffs, 7 were dismissed, 3 were considered inadmissible and 8 were resolved in favor of the complainants. As a consequence, the Federal Judiciary's rulings favored COFECE in 76.4% of the cases.

33. The following table details the courts activities for 2015 concerning COFECE's decisions:

| Cases | |
|-----------------------------------|-------------------------|
| Indirect Amparo Proceedings | January - December 2015 |
| Pending from the previous period | 65 |
| Filed this period | 30 |
| Resolved by the Federal Judiciary | 34 |
| Inadmissible | 3 |
| Dismissed | 7 |
| Denied | 19 |
| Granted | 8 |
| Pending for the following period | 58 |
| First instance | 27 |
| Before District Courts | 27 |
| Second instance | 31 |
| Before Collegiate Circuit Courts | 17 |
| Before the Supreme Court | 8 |

Source: COFECE. (https://www.cofece.mx/cofece/attachments/article/38/COFECE_4o_Informe_Trimestral_2015.pdf).

2.3 *Significant enforcement actions.*

34. **Passenger transportation services in the State of Chiapas.**⁴ On July 25th 2015, COFECE fined seven passenger transportation companies in the state of Chiapas with 27 million pesos (USD \$1.70 million⁵) for anti-competitive practices. The Commission found that between 2010 and 2014, the

que-utilizan-el-aeropuerto-internacional-de-la-ciudad-de-mexico-para-sus-procedimientos-de-aterrizaje-y-despegue.

³ Pursuant to the new framework, COFECE's resolutions may only be challenged through Indirect Amparo Proceedings filed before the Federal Judiciary, specifically the Specialized Courts for Economic Competition, Broadcasting and Telecommunications (Article 28, paragraph 20, section VII of the Political Constitution of the United Mexican States).

⁴ Resolution available at: <http://www.cofece.mx:8080/cfcresoluciones/docs/Asuntos%20Juridicos/V102/0/2080706.pdf> . Consult press release at https://www.cofece.mx/cofece/ingles/images/Comunicados/Comunicados_ingles/COFECE-020-2015.pdf

⁵ The official average exchange rate during the year 2015 was 15.87 MXN/USD, as published by the Mexican Central Bank (Banxico).

companies had engaged in absolute monopolistic practices through contracts, agreements and arrangements with the objective of fixing prices and restricting the supply of their services, affecting 13 municipalities in Chiapas in which 943,000 people live in moderate and extreme poverty conditions.

35. The investigation focused on the analysis of eight agreements that took place between different combinations of companies, during different time periods. Seven of these agreements were found to be collusive given that through them, the companies fixed prices and restricted the supply for passenger transportation services on two specific routes (*Tuxtla-Comitlán* and *Tuxtla-Tapachula*). The Commission estimated that damages to users of the *Tuxtla-Comitlán* route caused by the cartel amounted to at least USD \$2.78 million, while users from the *Tuxtla-Tapachula* route faced a price increase of between 5 and 8%.

36. The effects caused by these practices were particularly severe because of the increase in prices they generated, affecting the area's economic development. This is relevant because, according to *Mexico's Poverty Report, the country, states and municipalities of 2010*, prepared by the National Council for the Evaluation of Social Development Policy, 50.9% of the State of Chiapas population was living in extreme poverty that year, including the 13 affected municipalities.

37. Bearing this in mind, COFECE ordered the economic agents to immediately cease the practice and imposed a series of economic sanctions to each of the participating companies, taking into account each of the illegal agreements in which they participated.

38. ***Axo and Alsea for failure to notify merger.*** On November 2, 2015, COFECE's Board of Commissioners fined Alsea USD\$1.5 million⁶ and Grupo Axo USD\$174,000 for failing to notify their merger. Alsea, which operates PF Chang's, Starbucks, Burger King and other restaurants, in 2013 purchased a 25 percent stake in Axo. Pursuant to Section III of Article 20 of the FECL in force at the time the transaction was executed, it was mandatory to notify the concentration.⁷ According to COFECE's Board of Commissioners both companies violated their obligations under the FECL, and as such, decided to impose the corresponding fine.⁸

39. ***Alsea fine for partially failing to comply with previously accepted concentration conditions.*** On November 23rd 2015, COFECE's Board of Commissioners decided to impose a USD \$1.2 million sanction upon Alsea for partially failing to comply with one of the conditions imposed by the Commission in February 2014, regarding the acquisition of the chain restaurants Vips, el Portón, Ragazzi and La Finca. In September 2013, Alsea and Walmart requested COFECE's authorization to conduct the concentration, which consisted of the acquisition, by Alsea, of the aforementioned restaurants.

40. In its original analysis, COFECE had warned that if the authorization went forward on the initially proposed terms, there could have been incentives for the group to improperly displace its competitors, restrict their entry and establish exclusive advantages.

41. In order to avoid these risks to competition and to authorize the concentration, the Board of Commissioners imposed certain conditions. One of them was to present, during the first thirty days of each

⁶ The official average exchange rate during the year 2015 was 15.87 MXN/USD, as published by the Mexican Central Bank (Banxico).

⁷ When the act or acts involve an accumulation of assets or capital stock surpassing the equivalent to 8.4 times the current daily general minimum wage in the Federal District and when the participants to the concentration are two or more economic agents whose assets or gross sales, either jointly or separately, are worth more than 48 million times the current daily general minimum wage in the Federal District

⁸ According to the FECL applicable at the time the transaction was executed, notification failure was sanctioned with up to 5% of the companies' income.

year and during a ten-year period, a list of the entire lease contracts held with developers or shopping centers as well as a specific statement that exclusivity clauses and forceful contracting terms with two or more Alsea businesses were not being imposed.

42. In September 2015, COFECE found that Alsea failed to comply with the condition to include the non-exclusivity and forceful contracting clauses in some of the contracts with shopping centers. Condition necessary to avoid the risks to competition.

43. Failure to comply with a condition imposed by COFECE is considered a serious violation therefore, besides the imposition of the fine, the Board of Commissioners issued a warning to Alsea stating that in case of recidivism the Commission could impose double the fine or even order a divestiture.

3. Enforcement of antitrust laws and policies: mergers and concentrations

44. During 2015, merger authorizations remained one of the Commission's priorities, this because merger analysis allows COFECE to identify potential risks to competition and free market access that might be caused by the execution of such transactions. Hence, in Mexico, merger authorization by the Commission is compulsory for covered transactions to have legal effects.⁹

45. Applicable thresholds provide for three multidimensional criteria under which a notification is compulsory: financial value of the transaction, control over an economic agent of a certain size or financial importance, and financial value and participation of agents with a certain financial size or importance.¹⁰

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

46. During 2015, 141 proposed mergers were notified, a 10% increase from those notified in 2014. The Commission blocked 1 of these transactions, conditioned 3 and approved the rest. **Error! Not a valid link.**

47. During 2015 COFECE engaged in 10 in depth merger reviews. The industries involved, among others, were: supermarkets, paper and packing, restaurant chains, poultry, automotive industry and over the counter medications.

3.2 Significant merger matters.

48. **Crown Holdings-Heineken Group.** In September 2015, *Crown Holdings Inc.* and *Crown Packaging Lux III S.a.r.l.* (Crown Lux) expressed their interest in acquiring *Grupo Heineken's* packaging operations (responsible for creating cans, bottle caps, glass bottles and other beverage packaging components) in Mexico for about US \$1.2 billion in stock and/or cash.

49. *Crown Holdings*, is one of the world's largest packaging companies. In Mexico, this company is engaged in the production and distribution of metal packaging for food, beverages, paints, aerosol sprays, insecticides, catalyzers and aerosols. On the other hand, *Heineken* is one of the world's largest brewing companies. In Mexico this company owns a division for the production of cans, bottle caps and glass bottles, as well as a facility in charge of producing and marketing aluminum cans.

50. Initially, the Commission identified that the operation could have reduced the number of competitors from four to three in a market with high entry barriers (aluminum cans market) such as the

⁹ Article 16 of the FECL's Regulatory Provisions.

¹⁰ FECL, Article 86.

time and investment required to install a new facility, as well as *Famosa's* (Heinken's Monterrey's facility) idle capacity. However, COFECE determined that *Famosa's* location and the high transportation costs made it unlikely for the existing idle capacity to hinder competition or establish entry barriers. In addition, COFECE found evidence suggesting that the demand for this product would surpass the supply at a national level over the next four years, which could be an incentive for new competitors. Lastly, it identified that consumers had high negotiation power and, even if the concentration was approved, they would still have enough options to satisfy their necessities.

51. Taking this information into account, COFECE's Board of Commissioners decided to authorize the transaction.¹¹

52. ***Ienova-Pemex.***¹² COFECE blocked a concentration between *Ienova* and *Pemex* involving the sale of the latter's participation in the San Fernando and Burgos-Monterrey pipelines as it would imply the non-compliance of previously imposed conditions upon said company. In 2001 and 2005, the former Federal Competition Commission (CFC) analyzed two concentrations by means of which *Pemex* acquired its participation in the aforementioned pipelines. The CFC conditioned the operation to *Pemex's* divestiture of its participation after a certain period of time through a tender process, in order to prevent possible damages to the competition process.

53. In this context, the direct sale to *Ienova* of its participation represented a breach to the conditions imposed by the former CFC; therefore, COFECE notified the parties, pursuant to the Federal Economic Competition Law, that the transaction could raise anti-competitive concerns.

54. Even though, the Economic Agents brought forth a remedies' proposal to obtain COFECE's authorization, the Board of Commissioners determined that the concentration, if executed, would violate the provisions under Article 28 of the Mexican Constitution, hence the proposed transaction was blocked.

55. ***Organización Soriana - Controladora Comercial Mexicana***¹³: In October 2015, one of the most complex mergers in Mexican history was assessed. The transaction involved two of the largest supermarket chains in the country, whereby *Organización Soriana* agreed to acquire 160 stores from *Controladora Comercial Mexicana* (CCM), representing almost 80 per cent of its business.

56. On its analysis, COFECE's Board of Commissioners studied the effects that the operation could have had on 160 identified relevant local markets and considered that the transaction would represent a risk to the competition process in 27 of them, as well as it could result in an increase in the prices faced by consumers.

57. After an in-depth investigation, the Board of Commissioners conditioned the concentration to *Soriana* complying with either i) abstaining from acquiring some of the stores owned by *CCM* located

¹¹ Resolution available at: <http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V610/102/1970881.pdf>

¹² Resolution available at: <http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V2061/15/2306155.pdf>. Consult press release at: http://www.cofece.mx/cofece/ingles/images/Comunicados/Comunicados_ingles/COFECE-041-2015.pdf

¹³ Resolution available at: <http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V1730/0/2289112.pdf>. Consult press release at: https://www.cofece.mx/cofece/ingles/images/Comunicados/Comunicados_ingles/COFECE-031-2015.pdf

within those 27 relevant markets or ii) acquiring them, but committing to sell them to a third independent party within an established period of time.

58. COFECE gave the economic agents a 10 business days' time frame to submit a document accepting all the conditions. As a result, *Soriana* agreed to exclude 14 stores and to acquire the remaining 12, in order to divest them according to the previously agreed terms. Hence, complying the conditions imposed by the Board of Commissioners.

59. ***Alstom-General Electric:***¹⁴ On July 24th, 2015, *Alstom Energy* and *General Electric* (GE) notified the Commission their intention to undertake a concentration consisting of *GE's* acquisition of *Alstom's* businesses in the thermal energy, renewable energy and electric networks markets at a global scale. In Mexico, both parties concur on the marketing of several products such as gas and steam turbines, generators, instrumentation, control and automatization systems, wind turbines, converters and capacitors. Also the companies concur in the provision of services for generators as well as gas, steam and wind turbines.

60. Of the analyzed markets, high market participations were detected in the gas turbines services. However, it was determined that *Alstom* and *GE* did not exercise a significant competitive pressure since their supply was oriented towards their own installed base. Furthermore, the analysis also determined that with *Alstom's* divestures, resulting from concerns addressed by competition authorities in the United States and the European Commission, the likelihood of a competition risk was reduced. Therefore, COFECE's Board of Commissioners unanimously authorized the operation.

4. COFECE's resources

4.1 Budget

61. COFECE's was assigned a budget of MXN \$478,332,005.00 (approximately USD \$30.14 million¹⁵) for 2015.

4.2 Human Resources Allocation

62. In 2015, the Commission employed 384 people. Of this total, 68 worked on mergers, 112 on anti-cartel activities, 53 on dominance related issues, 43 on advocacy activities, 17 on issues related to litigation and 121 on administrative tasks.

63. Of the 263 non-administrative staff, 111 are lawyers, 85 economists and 67 came from other professions.

5. The role of competition authorities in the formulation and implementation of other policies.

64. In 2015, COFECE issued a total of 109 opinions: 17 with respect to proposed regulations and the remaining 92 regarding tenders and the granting of governmental licenses, concessions, and permits.

¹⁴ Resolution available at: <http://www.cofece.mx:8080/cfcre resoluciones/docs/Concentraciones/V1219/1/2156471.pdf>

¹⁵ The official average exchange rate during the year 2015 was 15.87 MXN/USD, as published by the Mexican Central Bank (Banxico).

65. Out of the 17 opinions on proposed regulations, 9 were issued as part of the public consultation process conducted by the Federal Commission for Regulatory Improvement (COFEMER). The remaining 8 opinions were issued by request or *motu proprio*.

66. Out of the 92 opinions regarding tenders, licenses, concessions, and permits, 22 concerned calls for tenders, 67 referred to tender participants, and 3 to concessions and permits.

5.1 Energy Sector

67. 2015 marked a very important year for the energy sector since its regulators (Energy Regulatory Commission and the Ministry of Energy) enacted several administrative regulations aimed to the implementation of the 2013 reform. Considering that initial conditions will determine competition in energy markets in both medium and long term, during this year COFECE took an active role in providing technical advice on competition aspects, informally and also through formal opinions by the Board of Commissioners.

68. A total of 8 opinions were issued so proposed regulations did not unduly affect the competition process. Some of these opinions referred to aspects such as: i) cross-participations, ii) open access and regulation of distribution, transport and storage services of natural gas and hydrocarbons, iii) commercialization of natural gas and Pemex's asymmetric regulation, iv) bioenergetics, v) electricity market regulation and vi) interconnection of electricity panels.

5.2 Other relevant opinions issued by COFECE

69. **Opinion on the Federal Law of Public Works.** On February 9th 2015, COFECE issued an opinion on a proposed amendment to the Federal Law of Public Works, which had been approved unanimously by the Chamber of Deputies in December 2014.

70. For COFECE, the project had several elements that could affect the competition process. Therefore, it recommended, among others: avoiding undue advantages to local bidders; fostering transparency and publicity; and letting COFECE to issue a non-binding opinion only regarding relevant projects. Discussions are still ongoing at the Senate, where COFECE has taken an active role.

71. **Opinion regarding Transportation Network Companies (TNC's).** On June 4th 2015, COFECE issued an opinion regarding the impact Transportation Network Companies, such as *Uber* and *Cabify*, have upon the competition process.

72. On its Opinion, COFECE recommended that local governments should encourage these services through their formal recognition and, if there was any need to regulate them, only security concerns should be addressed.

73. Very shortly after COFECE's opinion, on July 15th, Mexico City's Department of Transportation issued a specific regulation on TNC's, which heavily relied on COFECE's opinion and allowed TNC's to fully operate in the city. Since then, other Mexican states have followed suit.

74. **Opinion on laws approved by local Congresses.** On February 9th 2015, COFECE issued an opinion on a new procurement law approved by Jalisco's Congress that granted artificial advantaged to local suppliers and limited the entry of potential bidders from other States.

75. On September 10th 2015, COFECE issued an opinion regarding a reform to the Urban Law approved by Coahuila's Congress that established a minimum distance requirement between gas stations,

therefore granting exclusive advantages to those station already established and limiting supply and options for consumers.

76. In both cases, based on COFECE's opinions, the Governors used their constitutional power to veto such laws.

5.3 Other Advocacy Activities

77. During 2015, COFECE implemented of a number of actions to promote a competition culture among different stakeholders: public entities, universities, academia, private sector and civil society.

78. From January to May 2015, COFECE visited 39 universities in seven cities and had contact with more than 3,500 undergraduate students, in order to promote the first edition of the COFECE Competition Research Award. A total of 123 essays were submitted by students of 26 different universities in 18 states.

79. The winners received the prize directly from the President of Mexico, during the opening ceremony of Competition Day on October 7th. B) COFECE developed and published (in August) three documents for the private sector: one explaining competition policy to Small and Medium Enterprises; another with suggestions on how to implement a compliance program; and an explanation of the tools available to the regulator and to the regulated actors within the FECL. They were promoted through roadshow which reached five business chambers and associations in the last quarter of 2015 and will continue during 2016.

80. An advertising campaign was implemented, taking advantage of time slots available to public authorities in Nationwide Radio Broadcasts. It explained the benefits of competition to the general public and Mexico's leniency program to businesses.

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

6.1 Report on the Competition Conditions in the Agri-Foods Sector

81. On December 2015, the Commission published the *Report on Competition Conditions in the Agri-Foods Sector*, which analyzed the sector's structural, regulatory and functional characteristics from a competition perspective. The Report had the purpose of both gathering information about the sector's characteristics so the Commission could perform its functions more effectively pursuant to its Strategic Plan and to identify public policy actions which would promote market efficiencies in the sector, thus contributing to lower costs and prices for consumers.¹⁶ The report is not intended to seek anticompetitive practices nor to prejudge on possible infringements to the FECL with regards of future or current investigations.

82. The Agri-Foods sector is comprised of a large number of markets which range from agricultural activities, to farming and food processing as well as their distribution and merchandising channels. Hence, the sector is highly complex due to the large number of productive chains and hundreds of different markets it comprises.

83. Based on its findings, COFECE issued 27 recommendations to foster competition in the Agri-Foods sector. These include the following:

¹⁶ It is important to remember that this sector holds a strategic importance for the Mexican economy insofar as low income households allocate as much as 79% of their combined income for purchasing these essential goods.

| Report on the Competition Conditions in the Agri-Foods Sector | |
|--|--|
| Collecting, improvement and dissemination of information | Recommendations |
| | <ul style="list-style-type: none"> • Establish an annual agri-foods survey system which incorporates a specific marketing module which emphasizes volumes, prices as well as terms and conditions for first-hand sales of the main agri-food products, highlighting the characteristics of both producers that sell and the different types of buyers that acquire said products • Specialized technical Committees on Agri-Foods Information and Price Statistics should create an information system on market prices that covers, at least, information on parcel prices, regional and wholesale market's entrance and exit prices. |
| Production | Recommendations |
| | <p style="text-align: center;">Direct State Intervention</p> <p>The Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) or other authorities should not condition the granting of subsidies to machinery and equipment certification.</p> <p>To review subsidies performance on electric fees for agricultural pumping.</p> <p>Regulation</p> <ul style="list-style-type: none"> • Implement public policies to support the elaboration of <i>ejidal</i> cartography as well as to ease procedures to approve parceling. • Reform article 22 section II of the Industrial Propriety Law so parallel imports may be performed with legal certainty without violating the rights of the patent's holder. • Establish a more transparent procedure for the allocation of concessions for the use, exploitation and utilization of water. • Public consultation should be performed prior to the concession allocation to identify the potential demand for the resource. • Establish an information bureau for agri-livestock insurance in order to gather and share existing information on accident rate, insured goods, weather variables, geo-references locations, etc. • The Treasury and Public Credit Ministry (SHCP) should perform the authorization procedure for new insurance funds, without the intervention of funds established through local bodies. |
| | Recommendations |

| | |
|-------------------------|---|
| <p>Marketing</p> | <p>Direct State Intervention</p> <ul style="list-style-type: none"> • SAGARPA and the Economics Ministry (SE) should promote the establishment of local or regional collection markets. • SHCP, SAGARPA and SE should allow the development of “virtual” markets. • Development banks should establish a safeguards scheme aimed at providing cold network services (storing and transportation) to third-parties to minimize the owner’s risk. • To review subsidies operation known as “marketing incentives”. • Redirect the resources from the Marketing Incentives Program to the Agency of Services for Marketing and Agricultural Markets Development (ASERCA) to improve the access to price hedging services. <p>Regulation</p> <ul style="list-style-type: none"> • Create a storage system based on: rules and standards, transparency mechanisms, electronic bidding platforms and market trainers. • In wholesale markets, clear and simple rules must be established for carrying out business or retail propriety changes. • Wholesale markets should have general mechanisms and physical areas for bidding processes. • In saturated wholesale markets, the reallocation of retail spots and storages should be done through competitive mechanisms such as bids. • Increase transparency by publishing requirements for animal or vegetal origin goods imports. • Foreign facilities that have all the sanitary authorizations and certifications from countries with similar standards to produce, process or pack animal origin food should be able to automatically access national territory without further authorization. • Local legal provisions and government’s behavior should not impose additional requirements, certifications or processes to the federal ones. • Create a federally-recognized certification for livestock goods processed in butcheries to avoid barriers to inter-state commerce. • Eliminate animal mobility and accreditation requirements included in the Livestock Organizations Law. |
| | <p>Recommendations</p> |

| | |
|---|--|
| Cross-Sectional (Including production and marketing) | a) Direct State intervention <ul style="list-style-type: none"> • Create a unique register for the beneficiaries of the subsidies program for producers and traders of agro-livestock goods. b) Regulation <ul style="list-style-type: none"> • Perform the necessary legal reforms to avoid the participation of producer's associations and organizations in the public policy decision-making processes for this sector, allowing their participation only for consultation purposes. • Eliminate legal provisions that allow associations and organizations to perform: agri-foods activities, agree or concert prices or quantities, allocate markets or exchange information for any of these objectives. |
|---|--|

Source: https://www.cofece.mx/cofece/images/Estudios/COFECE_resumen_v04_alta.pdf

84. COFECE's recommendations were delivered to the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA for its acronym in Spanish). Additionally, it was submitted to other relevant public entities in charge of designing the regulation in these markets for their consideration.

85. As food prices are expected to keep on rising in the near future, the Commission will continue to promote collaborative work with governmental entities that play a regulatory role in the agri-foods sector in order to promote greater rivalry between producers and firms with the objective of spawning competition conditions which result in lower costs and prices for the benefit of Mexican consumers. Also, and pursuant to its Strategic Plan, the COFECE will continue to make use of its powers to promote competition in strategic areas of the Mexican economy such as this sector.

7. International antitrust cooperation

7.1 *International Antitrust Cooperation Developments*

86. During 2015, COFECE promoted the experience and best practices exchange between several international partners. Hence, the Commission continued to consolidate its international cooperation and outreach through several activities such as:

87. ***Participation in International Organizations:*** The Commission continued building strong ties with major international bodies such as the International Competition Network (ICN)¹⁷, the Organization for Economic Cooperation and Development (OECD), the Asia-Pacific Economic Cooperation (APEC) and the United Nations Conference on Trade and Development (UNCTAD).

88. ***Cooperation in merger cases:*** COFECE kept close cooperation ties with competition agencies around the world. An example of this was the technical assistance gave by the United States Federal Trade Commission (FTC) during the *Soriana-Comercial Mexicana* merger case.

89. ***United States-Canada-Mexico Trilateral Meeting:*** Mexico, through COFECE, hosted the 2015 Trilateral Meeting between the heads on antitrust agencies of the North America region. The discussions

¹⁷ In 2015, the Commission was elected Co-Chair of the ICN's Advocacy Working Group (AWG) along with competition authorities from Italy and Finland.

focused on the agencies' ongoing work to ensure effective antitrust enforcement cooperation in the increasingly interconnected markets of North America. Furthermore, the participants also discussed the strengths and opportunities for enforcement cooperation and how to further involve other Latin American agencies, mainly through technical assistance and capacity building initiatives.

90. ***Capacity Building Internship Program for Competition Authorities in Latin America and the Caribbean:*** To promote the institutional strengthening of competition agencies in the region as well as to improve cross border cooperation, in March 2015, the Commission launched the first Capacity Building Internship Program for Competition Authorities in Latin America and the Caribbean.

91. During 2015, COFECE hosted and funded 5 fellows from Argentina, Ecuador and Nicaragua, whom participated in investigations, enforcement actions, and other projects with COFECE attorneys, investigators, and economists. The fellows returned to their home agencies prepared to share what they learned at COFECE.

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS OF MEXICO

-- 2015 --

REPORT BY IFT

EXECUTIVE SUMMARY

92. In 2015, the Federal Institute of Telecommunications, approved the acquisition of the fourth larger mobile telecommunications services provider (Nextel) by the third one (AT&T-Iusacell). This was the last of a series of transactions by which AT&T sold its shares in América Móvil and acquired Iusacell and then Nextel, to become a direct competitor of América Móvil. The Institute considered that consolidation in mobile telecommunications would not damage competition given the restructuring of the market and the strength of the remaining competitors, especially the leading provider (América Móvil-Telcel) which holds nearly 70% of the market in terms of subscribers, though some conditions were imposed to address collusion risks.

93. The Institute also issued a determination over a sui generis merger case that took place in 2008 when Telmex, the main provider of fixed telecommunications and Dish México, a DTH pay TV provider signed a series of contracts that granted the first control over the second. The IFT considered that the execution of the contracts should have been notified as a merger.

94. Finally, the integration of competition and regulatory proceedings has continued under the regime that followed the telecommunications reform in 2013. The integration of competition assessments into proceedings like granting, renewing and transferring licenses for spectrum, as well as the auctions of spectrum has decreased the regulatory burden for economic agents and resulted in new ways of promoting competition in the telecommunications and broadcasting markets.

1. Changes to competition law and policies

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

95. On January the 12th 2015, the Institute issued the Regulatory Provisions of the Federal Economic Competition Law (FECL) for the Telecommunications and Broadcasting Sectors, following a public consultation on a project of the provisions that started on November 2014.

96. The provisions' aim is to regulate the specific application of FECL to the telecommunications and broadcasting sectors. They include detailed rules for the notification and analysis of mergers and acquisitions, implementation of trial-form proceedings, and merger qualification, among other processes.

2. Enforcement of competition laws and policies

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

97. Pursuant to the provisions of the FECL, action against anticompetitive practices is divided in two stages. In the first stage an investigation is opened and carried out by the Investigative Authority (AI, for its acronym in Spanish) of the Institute, be it ex officio or following a complaint by an economic agent. If there is a preliminary finding of an anticompetitive practice, a statement of objections is issued and the case enters a second stage, that takes the form of a trial, where the alleged offender presents arguments and proofs to counter such finding. The Economic Competition Unit (UCE, for its acronym in Spanish) is the area in charge of implementing this second stage, at the end of which a final determination is reached by the Institute.

2.1.1 Summary of activities

- **Investigative Authority**

98. During 2015 the AI processed thirteen cases; four of which were initiated in 2015 and nine in 2014 or prior. One case concerned a cartel, two cases regarded prohibited mergers, 6 consisted of unilateral behaviour (abuse of dominance) and four were market investigations (significant market power inquiries).

99. In two of such cases a statement of objections was issued in order to proceed against the suspected offenders, and three preliminary reports found the existence of significant market power in order to proceed to further stages of inquiry. Three cases were closed due to lack of evidence, while the rest is still under investigation.

- **Economic Competition Unit**

100. The UCE concluded three trial-form procedures regarding anticompetitive practices, one for abuse of dominance and two for (non-notified) potentially anticompetitive mergers. One of the anticompetitive mergers cases ended up in a determination of responsibilities and fines, while the other two cases were closed.

| Economic Agents | Practice | Main affected market | Decision |
|-----------------------------------|--|--|--|
| Dish México and Telmex | Non-t notified merger. | Local pay TV markets throughout the country. | Determination of responsibilities and fines. |
| Grupo Televisa and Grupo Iusacell | Non- notified and anticompetitive merger. | Several local pay TV markets. | Closed. |
| Grupo Televisa | Refusal to provide open air TV programming to the SVOD platform of Maxcom TV, S.A. de C.V. | Relevant market: licensing of open air TV programming in Mexico. Related (affected) market: Distribution of video content through the internet. | Closed. |

2.1.2 Description of significant cases, including those with international implications

- **Investigative Authority**

1. Cases referred by CFC¹⁸

Cartels

101. Investigation of an alleged cartel in the markets of production, distribution and commercialization of pay television to end costumers in all the country. This investigation was closed due to the lack of evidence to prove the practice.

Abuse of Dominance Investigations

102. Investigation of the alleged unilateral conducts consistent of the refusal to deal; and raising rivals' costs in the commercialization market of television programs and of interconnection services in all the country. A statement of objections was issued to certain investigated economic agents.

Prohibited Mergers

103. Investigation of an alleged prohibited merger in the markets of mobile telecommunication services, fixed line telecommunication services, access to broadband internet, dedicated lines, interconnection, pay television, broadcasting, advertising in media, production, transmission and distribution of video and audio contents at the national and international level through licenses and services.

2. Cases Initiated in IFT

Prohibited Merger

104. Investigation of an alleged prohibited merger in the nation-wide pay television market. This investigation was closed due to the fact that the Board of the IFT ruled on the merger pursuant to the Ninth Transitory Article of the Federal Telecommunications and Broadcasting Law (FTBL), which defines a special process of ex post merger analysis applicable to entities not related to the preponderant agent in a sector where a preponderant agent exists.

Abuse of Dominance Investigations

¹⁸ Cases initiated in the now extinct Federal Competition Commission (CFC, for its acronym in Spanish) which were referred to the IFT as the new competition authority for the correspondent economic activities.

105. In strict compliance with a ruling of the Federal Judiciary Power, an investigation was initiated, regarding alleged unilateral conducts consisting of a refusal to deal; purchases or discounts subject to conditions; and raising rivals' costs, in the markets of distribution and merchandising of credit score for mobile telephone services in all the country.

106. Investigation of one alleged unilateral conduct consisting of raising rivals' costs in the pay television service market of pay television service in certain locations of the state of Sinaloa.

107. Investigation of the alleged unilateral conducts consisting of predatory pricing; cross-subsidization; price discrimination; and raising rivals' costs in the markets of telecommunications services provision, marketing, and of Internet service provision in the country; as well as in the markets of the acquisition, distribution and merchandising of contents transmitted in the country by Internet and pay television.

108. Investigation of an alleged unilateral conduct consisting in a refusal to deal; boycott; price discrimination; and raising rivals' costs in the advertising market on open nationwide television.

109. In strict compliance with a ruling of the Federal Judiciary Power, a statement of objections was issued to certain economic agents for the unilateral conducts consisting in raising rivals' costs and margin squeezing in the interconnection market services in all the country.

Market Investigations (Significant Market Power Inquiries)

110. On September 5, 2014, the AI initiated a market investigation in order to ascertain the existence of undertakings with significant market power within the pay TV services markets, pursuant to Transitory Article 39th of the TBFL.¹⁹ On March 13th, 2015, the AI issued a preliminary report with the following findings: (1) the relevant market comprised the supply of pay TV services provided through any means of transmission, within a local geographic dimension restricted by municipal boundaries, except for Mexico City and its metropolitan area;²⁰ (2) Grupo Televisa, S.A.B. (and subsidiaries) held significant market power in 2,124 out of 2,436 geographic relevant markets under analysis.

111. On December 17th, 2014, the AI initiated a market investigation pursuant to Transitory Article 9th of the TBFL,²¹ arising from the acquisition of Cablecom²² by Grupo Televisa, S.A.B. The IA issued a preliminary report on April 22nd, 2015, and concluded that, as a result of said acquisition, Grupo Televisa, S.A.B. had increased or acquired significant market power in 99 geographic relevant markets. Such relevant markets comprised the supply of pay TV services provided through any means of transmission, within a local dimension restricted by municipal boundaries.

¹⁹ Transitory Article 39th of the TBFL establishes the mandate to initiate a market investigation in the pay TV markets, with a national, state and/or local dimension.

²⁰ The report concluded that Mexico City's boroughs and some municipalities of the State of Mexico comprised altogether a single geographic market.

²¹ Transitory Article 9th of the TBFL provides that the IA shall initiate a market investigation after a merger or acquisition has taken place, under the especial procedure established therein, in order to ascertain the existence of significant market power in the markets of telecommunication networks providing voice, data or video services or in the markets for broadcasting services in radio or tv.

²² Cablecom was a pay TV and telecommunications services provider.

112. On February 26th, 2015, the AI initiated a second market investigation under Transitory Article 9 of the TBFL, derived from the acquisition of PCTV²³ by Megacable Holdings, S.A.B. de C.V. The preliminary report was issued on June 12th. The AI found that there was not enough evidence to conclude that Megacable Holdings, S.A.B. de C.V. had acquired or increased significant market power in the relevant markets, as a result of the said acquisition. The AI analyzed the following markets:

113. Production and aggregation of pay TV contents, within a national scope, further divided in four separate markets: entertainment, music, movies and sports;

114. Advertising time in pay TV services, within a national scope; and Commercialization of pay TV channels, within a national scope, further divided in eight separate markets: entertainment, music, movies, culture, children, news, broadcast TV and sports.

115. In connection with the acquisition of Telecable²⁴ by Grupo Televisa, S.A.B., and pursuant to Transitory Article 9th of the TBFL, the AI initiated a market investigation on April 29th, 2015, in order to ascertain the existence of undertakings with significant market power. The AI issued a preliminary report on September 3rd and found that Grupo Televisa, S.A.B. had increased or acquired significant market power in 63 relevant markets as a result of the said acquisition. Such relevant markets comprised the supply of pay TV services provided through any means of transmission, within a local geographic dimension restricted by municipal boundaries.

3. Economic Competition Unit

Non-notified mergers

116. On January the 7th 2015, the Institute ruled that a series of contracts between by Dish Mexico (a joint venture between Grupo MVS, S.A. de C.V, and Echostar Corporation for the provision of DTH pay TV services) and Telmex (the fixed telecommunications incumbent provider) in 2008 constituted a merger in terms of the FECL and, because of the amounts involved, should have been notified before their execution. The merger itself was not considered to be anticompetitive, though. The Institute fined the parties for a combined amount of \$68.1 millions MXP (equivalent to \$4.6 millions USD at the exchange rate of the date of resolution) for not notifying the merger and for providing false information to the authority.

²³ PCTV was a producer and supplier of owned and licensed pay TV channels and contents.

²⁴ Telecable was a pay TV and telecommunications services provider.

2.2 Mergers and acquisitions

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

117. The Institute finalized five proceedings related to mergers and acquisitions. Three of them were filed through *ex ante* notifications and two pursuant to 9th Transitory Article of the FTBL²⁵. The total value of the analysed transactions was \$43.6 billion MXP (\$2.7 billion USD at 2015 average exchange rate).

| | Main Affected Market | Decision | Geographical Dimension |
|--|--|----------------------------------|------------------------|
| Ex ante procedure | | | |
| Acquisition of TGA Tower Ventures by Mexico Tower Partners | Sites for mobile telecommunications | Authorized | National |
| Acquisition of Nextel by AT&T | Mobile telecommunications | Authorized subject to conditions | National |
| Acquisition of Alcatel Lucent by Nokia Corporation | Access and core network mobile telecommunications equipment | Authorized | International |
| 9th Transitory Article ex post procedure | | | |
| Acquisition of PCTV by Megacable | Production and resale of video programming for pay TV networks | Reviewed | National |
| Acquisition of Grupo Hevi by Grupo Televisa | Pay TV and fixed telecommunications services | Reviewed | National |

2.2.2 Summary of significant cases

- **Acquisition of Nextel International LLC (Nextel México) by AT&T Incorporated (AT&T)**

118. On April the 29th 2015 the Institute authorized, subject to conditions, the acquisition of Nextel México by AT&T. Nextel México was the fourth provider of mobile telecommunications services in the country through nationwide networks with Motorola Iden and WCDMA-HSPA+ technologies, and a market share of 2.9% in terms of subscribers. AT&T had redefined its position in the Mexican mobile market through selling the share it held in América Móvil (owner of Telcel) since 2002 and then acquiring Iusacell (4Q 2014) the third largest mobile telecommunications provider with a nationwide network and a market share of 5.8% in terms of subscribers.

119. The Institute considered that the merger wouldn't confer substantial market power to the resulting entity mainly because of the small market share it would have, and the strong competition it would face from the remaining providers, specially the biggest one, Telcel, that had a market share of 69.5% in terms of subscribers.

120. Also, the accumulation of a regional average of 42% of the spectrum available for the provision of mobile services was not considered to limit access to this input for current or potential competitors mainly because an important quantity of spectrum in the 700 MHz, AWS and 2.5 GHz bands would be made available for the provision of mobile services through different mechanisms in the short and medium terms.

²⁵ See paragraphs 72-74 of the 2014 *Annual Report on Competition Developments* for an explanation of this provision of FTBL. The review of a 9th Transitory Article merger notice has the purpose of verifying that the merger meets the criteria set by the FTBL to be exempt from the *ex ante* authorization, and that it does not follow the *ex ante* FECL criteria or proceedings.

121. The Institute found some risks of coordinated effects arising from the operation because of the previous relationship between AT&T and América Móvil. These risks were addressed through a series of conditions.

Acquisition of Inmobiliaria Hevi, S.A. de C.V. and subsidiaries (Grupo Hevi), by Grupo Televisa, S.A.B. de C.V. (Grupo Televisa)

122. The Institute reviewed the ex post notice of the acquisition of Grupo Hevi by Grupo Televisa. Grupo Hevi was a fixed telecommunications services provider through cable networks in 63 locations throughout the country (2.7% share of pay TV subscribers at national level). Grupo Televisa is the largest provider of pay TV services in Mexico through Sky, a DTH services provider (38.8% share of subscribers at a national level), and several cable networks (23.1% share of subscribers at a national level). Grupo Televisa is also a significant player in fixed voice and broadband services through its cable undertakings, an important wholesale producer and provider of pay TV programming, and the biggest open air TV services provider in the country.

123. On April the 20th 2015, the Institute concluded that the acquisition wouldn't decrease, harm, or hinder competition in the telecommunications sector given that the potential negative effects that would result from a greater concentration in the provision of pay TV services at the local level would be exceeded by its potential positive effects, due mainly to the expansion and update of Grupo Hevi's cable networks for the provision of voice and broadband services.

- **Acquisition of Alcatel Lucent by Nokia Corporation (Nokia)**

124. On September the 21st 2015, the Institute authorized the acquisition of Alcatel Lucent by Nokia, an international merger with effects in Mexico. The parties to the transaction had horizontal overlap in the manufacture of access and core network mobile telecommunications equipment and related services. The Institute concluded that the transaction would not decrease, harm, or hinder competition in the affected markets mainly because of the small increment in market shares the transaction implied.

125. Both of the Mexican competition authorities, the IFT and Cofece, claimed to have legal powers to review this transaction. The case was brought before a court which ruled that the Institute was the competent authority to review any transaction that had effects on markets where a direct input to the provision of telecommunications or broadcasting services was traded, either because of its powers to regulate the input or its expertise in the functioning of those markets.

3. The role of competition authorities in the formulation and implementation of other policies

126. Following the Constitutional Reform of 2013, and the subsequent enactment of the Federal Economic Competition Law and the Federal Telecommunications and Broadcasting Law in 2014, the IFT has implemented competition assessments in various regulatory proceedings, to the benefit of the industry stakeholders and consumers, as regulatory processes are carried out more efficiently, imposing less regulatory burden on economic agents, and new ways of promoting competition in the telecommunications and broadcasting sector are implemented.

127. Three categories of implementation can be distinguished: (A) public auctions; (B) grant, renewal and transfer of licenses; authorization of spectrum lease or exchange; and multiprogramming authorization, and (C) substantial market power investigations and determination of preponderant economic agents. These assessments are carried out by the UCE while the regulatory proceedings themselves are carried out separately by other units.

- Public Auctions

128. There are two kinds of competition assessments involved in public auctions: (i) the review of the conditions and specifications of the public auction rules and related documents prior to their publication, in which the IFT reviews these to ensure that no unjustified requisite restricts participation or to propose the inclusion of measures to promote competition in the auction as well as in the related markets; and, once the public auction is started (ii) the review of specific applicants to make sure the market or spectrum concentration that might arise from their participation does not decrease, harm, or hinder competition in affected markets.

129. This approach to auction processes has been applied to all spectrum auctions carried out by the IFT, as well as to the public auction process carried out by the Ministry of Communications and Transport for allocating the new public-private wholesale mobile network.

- *Public auction for the allocation of 80 MHz of spectrum for mobile services in the AWS band (1710-1780 MHz/2110-2180 MHz).*

130. The UCE reviewed the conditions and specifications of the public auction documents in order to propose the inclusion of some measures that would promote competition in the affected markets.

131. On October 16th, the UCE proposed the inclusion of a cap that limited the amount of spectrum that any participant could accumulate to 80 MHz in the whole AWS band, as it considered that greater competition for the spectrum would lead to a more efficient allocation. The UCE also proposed that the auctions included a revision of specific applicants in order to determine the economic group to which they belonged and properly apply the said spectrum cap. The bid bidding rules for the auctions were launched on December 16th 2015 including these recommendations.

- Grant, renewal and transfer of licenses for telecommunications and broadcasting services

132. During 2015, the UCE issued 518 competition opinions related to the grant, renewal and transfer of licenses to provide telecommunications or broadcasting services. The opinions comprised an analysis akin to that of mergers, where an economic group is identified, a market defined and some indicators of market power assessed. The following is a summary of the cases:

| Number of cases related to licenses reviewed in 2015 | | |
|---|--------------------|--------------|
| | Telecommunications | Broadcasting |
| Grant | 41 | 40 |
| Renewal | 156 | 167 |
| Transfer | 30 | 84 |
| Total | 227 | 291 |
| | | 518 |

133. In 14 of the renewal of licenses for radio services cases analysed, corresponding to 8 localities, a high level of concentration of licenses by the same economic group was detected. The UCE proposed to the competent area of the Institute the inclusion of these locations in the Annual Program of Frequency Use so that new local radio licenses for this service are issued in 2016, where there exists spectrum availability. The aim of the measure is to reduce barriers to entry in concentrated local radio markets.

- Substantial market power investigations

134. Similarly to actions against anticompetitive practices, pursuant to the provisions of the FECL, the substantial market power (SMP) investigations are divided in two stages. In the first stage the investigation in itself is carried out by the AI. If there is a preliminary finding of SMP, the case enters a second stage where the agent, and other market players, present arguments and proofs to counter or support such finding. The UCE is the area in charge of implementing this second stage, at the end of which a final determination is reached by the Institute.

- *Substantial market power investigation in 2,124 local pay TV markets.*

135. In the investigation stage of this proceeding the AI preliminarily found that Grupo Televisa, S.A.B., (Grupo Televisa) had SMP in 2,124 local pay TV markets throughout the country. Grupo Televisa is the biggest provider of pay TV services in Mexico through Sky, a DTH services provider, and several cable networks²⁶.

136. In the second stage of the proceeding, the Institute found that in a recent period (from the 1Q 2013 to the 1Q 2015) the main competitors of Grupo Televisa registered an important growth of their subscriber base. For example, Dish, the main competitor of Grupo Televisa in the DTH platform, captured 40.3% of the new 1.49 million subscribers in the period, to increase its national share from 27.0% to 29.2%. Megacable, the main competitor of Grupo Televisa in the cable platform, captured 53.4% of the new 0.67 million subscribers, to increase its national share from 14.9% to 15.1%.

137. Information on the growth of competitors was taken by the Institute as evidence that Grupo Televisa doesn't have the capacity to fix prices or restrict the supply of pay TV services independently of its competitors. Also, the Institute considered that "must offer" obligations imposed on Grupo Televisa, as the provider of the open air TV programming with greatest audience in the country, prevented it from denying access to this input to its pay TV competitors.

138. On September the 30th 2015, the Institute determined that there was not enough evidence in the investigation file to conclude that FECL criteria for the determination of substantial market power were fulfilled in this case.

- *Substantial market power investigation in 102 local pay TV markets.*

139. In the investigation stage of this proceeding the AI preliminarily found that Grupo Televisa had acquired SMP in 102 local pay TV markets as a result of the acquisition of Grupo Cable TV, S.A. de C.V. (Cablecom), a fixed telecommunications and pay TV services provider through cable networks²⁷.

140. On November the 2nd 2015, similar arguments to those described in the afore mentioned SMP investigation were considered by the Institute to determine that there was not enough evidence in the file to conclude that FECL criteria to determine that Grupo Televisa gained substantial market power with said transaction were fulfilled. Also, the Institute pointed out several deficiencies the investigation suffered of, such as a lack of an adequate analysis of: (i) the geographic dimension of markets; (ii) the effect of bundles on competition dynamics, and (iii) the characteristics of vertical segments of pay TV service (such as premium or basic) in order to rule them out as separate relevant markets.

²⁶ See the summary of Grupo Televisa activities in the M&A relevant cases section in page 3 of this report.

²⁷ See a description of the transaction in the M&A summary of relevant cases section in page 20 of the *Annual Report on Competition Policy Developments in Mexico 2014*.

4. Resources of competition authorities

141. The Federal Spending Budget for the 2015 fiscal year allocated MXN \$2,000,000,000 (USD \$126.023 million) for the IFT.

142. Human resources applied to enforcement against anticompetitive practices, merger review and enforcement and advocacy efforts are concentrated in the AI, UCE and Legal Affairs Unit (UAJ for its acronym in Spanish) offices.

| IFT's Human Resources | | |
|------------------------------|------------|------------|
| AI | UCE | UAJ |
| 59 | 56 | 68 |
| Total staff | | |
| 1127 | | |