

Unclassified

DAF/COMP/WP3/WD(2017)13

Organisation for Economic Co-operation and Development

26 May 2017

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Methodologies for Conducting Market Studies - Note by Mexico (COFECE)

20 June 2017

This document reproduces a written contribution from Mexico (COFECE) submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 20 June 2017.

More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm.

Please contact Ms. Despina Pachnou if you have any questions regarding this document [phone number: +33 1 45 24 95 25 -- E-mail address: despina.pachnou@oecd.org].

JT03414751

Mexico (Cofece)

1. Introduction

1. The Federal Economic Competition Law (FELC or competition law) grants the Federal Economic Competition Commission (COFECE or Commission) the power to conduct and/or order market studies, research projects and formulate general reports, when risks to competition are detected, a competition problem is identified or when requested by another authority.¹
2. A market study is defined as an assessment of how markets under study are operating, and of the causes of their malfunction – in terms of efficiency, competition and consumer welfare – whenever a market problem is detected, and proposals for their improvement are developed. To this end, different aspects of analysis are considered by COFECE such as the structure and current features of the sector under investigation; public intervention in the sector (policies or regulation); and the firm's behavior.²
3. COFECE prioritizes specific markets for study in accordance with its 2014-2017 Strategic Plan, which establishes the following five criteria for determining priority sectors: economic growth, widespread consumption, broad economic impact, lower-income households and regulated markets.
4. The Commission also identifies potential subjects for study from: businesses and business associations concerns; complaints from individual consumers and consumer associations; specific suggestions from government or other regulatory authorities; or from COFECE's own research.
5. COFECE has a large degree of autonomy when conducting markets studies. However, it follows a process which usually consist of the following stages: i) pre-launch; ii) launch of the market study; iii) information collection; iv) analysis and preliminary findings; v) development of recommendations; vi) publishing of market study findings and report; vii) follow-up; and viii) ex-post evaluation.
6. This document focuses on those stages in which the planning, collection and analysis of information takes place.

2. Pre-launch of a market study

7. Planning and strategizing takes place in the pre-launch stage. In this stage, the market study working group is formed, drawn from experts of COFECE's dedicated team for market studies, and led by COFECE's Chief Economist.
8. A paramount step in conducting a market study is establishing the scope of the market study. To that end, COFECE identifies possible products or services to be

¹ Article 12, section XXIII of the FELC. Available (in English) at: www.cofece.mx/cofece/images/Documentos_Micrositios/Federal_Economic_Competition_Law.pdf

² COFECE included the definition of “market study” in the report: “Investigation and Recommendations on Conditions of Competition in the Financial Sector and its Markets,” conducted in 2014.

analyzed. As previously mentioned, businesses' concerns, consumer complaints, government recommendations or COFECE's own research are expected to be valuable sources.

9. For example, when carrying out the market study on the financial sector in 2014, COFECE identified the activities that would have the greatest impact on the overall functioning of the Mexican Financial System. First, COFECE analyzed the different products and services offered by the various economic agents that make up the financial system. Then, the Commission identified structural elements of sectoral regulation, and the concurrent power of the authorities on the services analyzed. This allowed COFECE to identify cross-cutting functions within the system itself, and to understand the disaggregated functioning of different products and services, with the intention of establishing an initial classification of the activities of the study.

10. From this initial classification, and based on the Commission's previous experience in analyzing the financial system, meetings with experts in their field and with sectoral regulatory bodies and other government institutions, as well as international organizations, several common factors that could influence the level of competition in the financial sector were identified. Thus, COFECE made the following classifications to focus the study: i) relevant cross-cutting issues, such as prudential regulation, establishment requirements, payment systems, concurrent powers to sanction, among others; ii) credit; iii) savings; iv) stock market financing; and v) insurance.

11. For each of the financial products and services of this typology, COFECE considered in its analysis the characteristics of the demand, the structure of supply, the applicable regulation, and the expected impact of the legal amendments derived from the 2014 financial reform. Based on this analysis, structural elements, regulatory aspects, market failures, as well as limitations and behaviors that could inhibit competition for each of the analyzed financial products and services were identified.

12. COFECE engaged with several federal government entities, through the signing of collaboration agreements, to obtain relevant statistical and documentary information; and through working sessions, to gain a more detailed understanding of the functioning of the different segments of the sector analyzed in the market study. COFECE also held several meetings with key stakeholders to hear of their concerns and challenges of competing in the sector.

3. Information collection

13. Main activities in this stage include: i) the collection of information (which can be obtained from official sources, government entities, sector regulators, surveys, private institutions, etc.); and ii) the identification and analysis of issues observed in the sector. At this stage, it is also common external consultants who are experts on the subject to provide new elements into the analysis.

14. The LFCE empowers COFECE to require from both the public and private sectors any information it deems necessary for the exercise of its powers (including the preparation of market studies). Under the law, this information may be considered confidential at the request of the economic agents or sources supplying the information. The FECL also provides for enforcement measures required to ensure compliance with

COFECE's requests for information.³ In the case of the market study of the drug market of 2016-17, economic agents and private collectors of information on prices and sale volumes of drugs were required to supply monthly information during the 2009-2015 period.

15. In the market study on the agri-food sector, information was drawn from desk research, statistical analysis and through the use of data generated by several government entities such as the National Institute of Statistics and Geography, the Federal Prosecutor's Office, the Agrifood and Fisheries Information Service, and the National Information and Market Integration System, among others. Other sources included interviews with experts and qualified agents from the private and public sector. Relevant international experience was also considered.

4. Information analysis

16. When conducting market studies, COFECE uses various analytical tools ranging from the classical approach adopted in industrial organization (structure-behavior-performance), to incorporating elements of the new industrial organization, such as the analysis of strategic interactions using mathematical tools such as decision theory and/or game theory. The selection of the methodological approach to be implemented, depends on the issues, available information and theories that characterize each case; however, COFECE's practice considers both as analytical complements, in addition to more traditional empirical methodologies.

17. For example, in the market study of the financial sector, COFECE analyzed the prevailing market structure of the financial sector against the behavior of the economic agents, as economic agents make strategic decisions that impact them and other participants in the sector, and can influence the structure of the sector.

18. In the study of the drug market, soon to be published, econometric techniques were employed to analyze whether laboratories price discriminate between consumers loyal to brand drugs and those who buy in the generics market.

³

Articles 126 and 130 of the FECL