

COFECE-049-2017

COFECE Submits to the Senate Pro-Competitive Considerations on the Draft Law to Regulate Financial Technology (Fintech) Institutions

- *Financial Technology (fintech) Institutions are business models that can potentially promote competition and innovation in the financial sector to consumer's advantage.*
- *COFECE considers that the Draft Law for the regulation of fintech must be modified to fully take advantage of their potential.*
- *COFECE's Board of Commissioners proposes the future law specifies and clearly establishes principles of equality and nondiscrimination as well as neutrality in the face of innovation, among other aspects.*

Mexico City, October 30, 2017.- The Federal Economic Competition Commission's (COFECE or Commission) Board of Commissioners submitted considerations to the Senate on the Draft Law to Regulate Financial Technology (Fintech) Institutions (Draft Law) with the objective of enhancing competition and innovation in the market for financial services, thereby increasing quality, promoting greater variety of products and reducing the costs for users.

The Draft Law seeks to regulate services provided by financial technology institutions (FTIs) also known as *fintechs*, which, through the use of digital platforms and innovative businesses, have created new models to provide financial services, such as crowdfunding or payment through cryptocurrency.

FTIs are innovative and generally disruptive companies that are pioneers in unregulated contexts and are therefore free to operate without limitations or obstacles; regulation provides legal certainty to said companies. Considering this, the proposed legal framework, albeit protects consumers and the stability of the financial system, should not hinder the development of *fintechs*.

The Commission identified elements in the Draft Law that could restrict the potential intensity of competition in the market for financial services, which include the discretionary power given to authorities in the granting of authorizations, among others. Additionally, it does not ensure non-discriminatory access of certain inputs, such as information pertaining to customer's transactional data or access to traditional banking financial services- necessary for *fintech's* operation.

In this sense, the new Law should clearly establish that users are the owners of their transactional information, which may be transmitted via networks, when authorized by said users, as well as guaranteeing confidentiality and security. The Draft Law lacks regulation of compensation for the

1

transmission of data, to avoid traditional banks from charging fees that are higher than the operational costs, as well as the terms and conditions for the exchange of information among institutions.

The Draft Law should stipulate that credit institutions be compelled to provide banking services under non-discriminatory conditions, to IFTs, since they are considered essential facilities for the provision and development of products. If credit institutions refuse the provision of said services under non-discriminatory conditions, appropriate sanctions should be established. It is equally important that the IFT's have access to the Interbank Electronic Payment System (SPEI for its acronym in Spanish) and the National Electronic Clearing House (CCEN for its initials in Spanish).

Considering that the financial sector undergoes constant innovation, companies should have an adequate legal framework, to develop, implement and use technologies, infrastructure and business models to compete in the market. The Draft Law is restrictive in the use of these elements.

Considering this, COFECE recommends explicitly stating FTI's freedom to adopt any infrastructure and technology needed for the provision of their services under secure conditions for their clients. Since new business models and activities cannot be predicted, and given the speed of innovation, it is recommended to include in the Law, through general provisions, that other activities (currently unknown) will be allowed.

The considerations submitted to the Senate by COFECE also include recommendations to avoid regulatory burdens or unjustified requirements and the execution of monopolistic practices.

Previously, COFECE has noted that Mexico has a well-capitalized financial system with low default rates, however, users have low mobility and financial intermediaries lack incentives to attract customers through quality and innovation at lower prices; furthermore, there is a high concentration of suppliers of certain products and services, and banks' profits are higher than those in countries with a similar income level; because financial services penetration and inclusion of population is limited.¹

Hence, IFTs are business models that could promote competition and innovation process for the benefit of consumers of financial services.

[See full opinion in Spanish](#)

– 000 –

A BETTER MEXICO IS EVERYONE'S BUSINESS

¹ View *Trabajo de investigación y recomendaciones sobre el sector financiero y sus mercados*. COFECE 2014

The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through this, it contributes to consumer welfare and the efficient functioning of markets. Through its work, COFECE seeks better conditions for consumers, greater output, better services and a “level playing field” for businesses

