

Economic Competition

# A Platform for Growth

2018-2024



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**Economic Competition**  
**A Platform**  
**for Growth**  
**2018-2024**



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*Economic Competition, A Platform for Growth 2018-2024*

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## Introduction

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The Federal Economic Competition Commission (COFECE or Commission) is an autonomous body created by the Mexican State which stems from the 2013 constitutional reform. COFECE's purpose is to guarantee free market access and economic competition. Its powers are defined under article 28 of the Constitution and the Federal Economic Competition Law, and pursue several objectives. These include promoting a competition culture, as well as design and issuance (by public authorities and sectoral regulators) of laws and public policy which do not limit market competition. In accordance with such powers and with absolute respect to the 2018 electoral process, COFECE presents political parties and future candidates with this document, *Economic Competition, a Platform for Growth 2018–2024*, as a support tool for those who will undertake the task of designing and implementing public policy during the 2018–2024 administration, with the objective of enhancing economic activity in Mexico.

1. Except those pertaining to the telecommunications and broadcasting sectors.




Mexicans demand their government and the governing class act to strengthen the national economy and eradicate those privileges benefiting the few to the detriment of the rest of society. They call for accelerated and inclusive economic growth that allows them to meet the welfare needs of their families. Without a doubt, these citizen demands are legitimate and will be central to the public discussion in next year's presidential elections, the renewal of the Mexican Congress, other local public offices and the design of the National Development Plan. Addressing our society's demands requires placing competition at the center of economic policy.

Competition drives a country's prosperity by incentivizing the best performance of diverse economic sectors. Competition allows Mexico to advance towards an economy with less market entry barriers so that companies, especially small and medium ones, may access production inputs, capital, technology and infrastructure to launch new enterprises, grow, innovate, generate employment and satisfy consumer demand.

Competition also generates important social benefits by increasing families' purchasing power, particularly that of lower-income families. Additionally, wider segments of society are included in the modern economy, whereby families can improve their standing and reap the fruits of their productive activity.

For decades, the protection of privileges based on deficient (sometimes even rigged) policies and regulation, as well as government actions that distort economic activity, have generated concentrated markets with low competitive pressure. Consequently, groups of consumers have been left captive and defenseless against




companies with high market power, and without incentives to innovate and (above all) to offer high quality goods and services at low prices.

Since its creation, COFECE has made use of its legal instruments to increase market competition. However, obstacles that do not depend on the Commission persist; their eradication depends on authorities whose policies define market rules. In this sense, transitioning to competitive markets requires joint responsibility among administrative authorities, legislators and regulators. For this reason, the electoral process for the renewal of the federal executive and legislative, nine governorships, 27 state congresses and 1,636 municipalities is an important opportunity for the articulation of efforts, derived from parties' and candidates' platforms, that guarantee an economic policy backed by free market access.

## **Competition and Economic Growth**

In its most basic concept, economic competition is defined as the set of actions undertaken by companies to gain consumer's preference; actions which imply rivalry and that are only possible due to the existence of conditions that allow free market entry, participation and exchange in the markets. The benefits of competition are clear: low prices, better goods and services and greater purchasing alternatives for consumers and in general, greater market efficiency translating into social welfare. The costs of the lack of competition are: high prices, low quality, limited variety, lack of innovation, privileges for the few and small and inefficient markets.

For businesspeople and entrepreneurs, competition increases business opportunities, provides access to greater quality inputs at better prices, guarantees a level playing field in terms of market access and market conditions, elevates productivity and stimulates innovation. On the consumers' side, competition guarantees a wider variety and higher quality in goods and services at the best possible prices. Competition strengthens the conditions needed to transition from a society of privileges to one of opportunities and rights; a legitimate demand made by Mexican citizens.



Two obstacles to competition stand out. On the one hand, the factors that limit companies from entering the market or expanding. These factors include: elevated initial investment requirements, brand recognition among consumers, lack of access to logistical networks, as well as governmental regulations and laws that limit the market entry, provide exclusive advantages, restrict supply or reduce competition. Of these factors, the most harmful restrictions to competition are regulatory barriers implemented by authorities. These barriers may appear at the federal, state or municipal levels and are frequently imposed through influence or worst, in conspiracy with private economic agents.

On the other hand, certain conducts carried out by economic agents are anticompetitive, among these: collusion among competitors, which is particularly serious in public procurement; and abuse of market power to displace competitors, hinder market entry or restrict access to inputs necessary to produce and to participate in the market.

The elimination of these obstacles in the Mexican economy is essential to attain greater levels of welfare and accelerated growth. The evidence provided by recognized international organizations and academic institutions, show that nations with vigorous competition have markets with greater dynamism and a greater distribution of the benefits from economic activity. This is reflected in the growth of the Gross Domestic Product (GDP), productivity, volume of trade and innovation. The conclusions of some analyses show the positive effect that competition has on diverse economic indicators.



INDICATOR	EVIDENCE
GDP	An adequate competition policy increases GDP between 2 and 3% (Gutman and Voigt, 2014)
Productivity	The elimination of anticompetitive regulations may increase productivity in the long term up to 10% (Arnold, <i>et al.</i> , 2011). The reforms that favor competition generate productivity increases in the totality of factors between 12 and 15% (Ospina and Schiffbauer, 2010).
Labor Productivity	Collusion is responsible for a reduction between 20 and 30% in labor productivity (Symeonidis, 2008).
Trade	The increase in competition through trade liberalization generates an increase in the intensity of innovation and productivity growth (Griffith, <i>et al.</i> , 2006).
Innovation	The highest levels of competition are associated to greater growth in innovation and development (Grünewald, 2009).

Furthermore, greater competition in markets favors workers and their families:

INDICATOR	SCOPE
Prices	Deregulation allowing the entry of new competitors in specific markets, generates price reductions to the tune of 10% in the long term (Davies, <i>et al.</i> , 2004). Markets in which cartels are dismantled and sanctioned have resulted in price reductions on average of 23%, in the long term (Connor 2014).
Employment	The reduction of regulations that limit competition increase the employment rate approximately 1% (Fiori, <i>et al.</i> , 2012).
Inequality	Loss of welfare in the face of market power is four times greater in the poorest 10% of the population versus that of the richest 10% (Aradillas, 2016). During the last 30 years, wages and payments to capital have diminished due to less competition generated by the increase in market power, which in turn, generates higher profit margins and reduces investment levels (Barchai, 2016). The increase in companies' profit margins has clear negative effects: salaries and return on investment decrease, lower share of labor as a factor of production and the general slowdown of production (Loecker y Eeckhout, 2017).



Competition has positive effects in other areas of national importance: (i) the integrity of public officials in public procurement, (ii) favorable conditions for entrepreneurs, (iii) the scope of trade openness and (iv) rule of law. These relationships are further described under the following headings.

## Competition and integrity

Diverse public opinion polls consistently show that Mexicans demand that corruption be faced head-on.<sup>2</sup> In the fight against corruption, competition can be a strategic ally. In its *2014 Foreign Bribery Report* the Organization for Economic Cooperation and Development reports that more than half of the corruption cases are linked to securing public contracts, thereby avoiding competition when it comes to governmental contracts.<sup>3</sup> An explanation for this bias towards the lack of competition for contracts is found in the large amounts of money that are at stake and that the benefits - both for private and public servants - can be accessed easily and immediately through rigged tender procedures.


In contrast, when a tender is designed so that there is real competition for government contracts, overpricing is restricted, as is favoritism and undue influence peddling, thereby preventing the formation of collusive agreements (economic cartels) aimed at obtaining illegal profits through relations of complicity between supposed competitors, to the detriment of the public budget and the welfare of society.

## Competition and Entrepreneurial Drive

In Mexico, there is a growing number of people and small companies willing to start a business and generate jobs. However, entrepreneurship becomes

2. See *Índice Global de Impunidad* [Global Impunity Index] 2017 ([http://www.udlap.mx/cesij/files/IGI-2017\\_esp.pdf](http://www.udlap.mx/cesij/files/IGI-2017_esp.pdf)), 2016 *Corruption Perception Index* from Transparency International (<http://www.tm.org.mx/ipc2016/>), *México: Anatomía de la Corrupción 2016* [Mexico, the Anatomy of Corruption] from Mexicanos Contra la Corrupción y la Impunidad (<https://contralacorrupcion.mx/categoria/?cat=630>) and *Encuesta Nacional de Calidad Regulatoria e Impacto Gubernamental en Empresas* [National Survey on Regulatory Quality and Governmental Impact on Companies] (ENCRIGE) 2016 (<http://www.beta.inegi.org.mx/proyectos/encuestas/encuestas/especiales/encrige/2016/>).

3. OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris. Available at: [http://www.oecd-ilibrary.org/governance/oecd-foreign-bribery-report\\_9789264226616-en;jsessionid=dg20gfnak4jln.x-oecd-live-03](http://www.oecd-ilibrary.org/governance/oecd-foreign-bribery-report_9789264226616-en;jsessionid=dg20gfnak4jln.x-oecd-live-03)



impossible without market entry certainty or conditions of competitive equity. On the contrary, when there are conditions that guarantee free market access and competition, consumer preference decides which projects enter and remain in the market.

## Competition and Trade Openness

In the context of the renegotiation of the North American Free Trade Agreement, as well as the potential effects that United States trade policy may have, it is fundamental to maintain the level of competition attained in the last two decades through Mexico's trade openness, which has resulted in social welfare.<sup>4,5</sup> Trade diversifies supply of consumer goods and production inputs sources, disciplines prices of products irrespective of their manufacturing origin, promotes competitiveness, restricts extraordinary profits of domestic companies with market power, and expands and cheapens the basic consumption basket, benefiting Mexican families.


## Competition and the Rule of Law


Competition is a powerful instrument that favors the rule of law through three channels. First, when effective competition conditions exist, the power of companies against the government and their influence on the design and application of public policy for their own benefit and to guarantee their privileges is diluted. In addition, competition transfers the power from companies to citizens as they determine, through preferences, which suppliers remain in the market because of the quality and price of their products. Lastly, competition creates equal opportunities while promoting social mobility based on personal capacities and not on sociodemographic conditions.<sup>6</sup>

4. To learn more on how international trade generates welfare gains see: Grossman y Rogoff (eds.) (1995) *Handbook of International Economics* Volume III, North-Holland; Harrigan y Choi (eds.) (2003), *Handbook of International Trade*, Blackwell; Feenstra (2003), *Advanced International Trade: Theory and Evidence*, Princeton University Press; OECD (2012), *Policy Priorities for International Trade and Jobs*, (ed.), D. Lippoldt, electronic document available at: <https://www.oecd.org/site/tadicite/50258009.pdf>; Spence, M. and M. M. El-Erian (2008) *Growth Strategies and Dynamics Insights from Country Experiences*, Working Paper No. 6, Commission on Growth and Development.

5. To learn about how excessive profit margins in certain sectors decreased immediately once the North American Free Trade Agreement (NAFTA) came into force, see: López Noria, G. (2015), "El efecto de la liberalización comercial sobre los márgenes de precios a costos marginales del sector manufacturero", in *El Trimestre Económico*, vol. LXXXII (3), no. 327, July-September, 2015, pp. 583-616.

6. See Shapiro (2017).





In short, because of the positive effects it generates, competition must be a central criterion to favor the well-being of the majority. This requires a great political commitment from Mexican public institutions, its elected authorities and from the parties to make competition the central axis of economic policy, and thus guarantee the existence of competitive markets in favor of society.

## Proposals for more Competition in Mexico


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The 2013 Mexican constitutional reform on competition brought forth an autonomous competition body and specialized courts, along with other relevant regulators. These have begun to implement a new phase of public policy, to open markets historically closed to competition. Also, a growing number of decision-makers from the public and private spheres are aware of the need to ensure competed markets, either because of well-designed regulations, the intervention of COFECE through the fining of monopolistic practices, or the incursion of new competitors in the markets –some of them disruptive. However, we must also be aware that we are at an early stage of this task, which deserves sustained support.

The processes of regulation development and design and implementation of public policies are necessarily influenced by groups with interests in the market in question. When there is no competition, the interests that ultimately materialize in legislative or executive actions are those linked to groups with large economic power or political clienteles (which are sometimes the same), whose goal is to impose or maintain obstacles to competition to preserve their privileges, generating undue advantages in their favor and to the detriment of the public interest, in a vicious circle that tends to perpetuate itself. Therefore, effective competition in markets requires the commitment of political leaders so that regulatory frameworks, law initiatives, rules and government actions favor equity, and allow and promote the entry of new competitors.

In this regard, the following five actions are respectfully proposed to be evaluated as inputs for the economic platforms of presidential candidates:


1. **Issue of a decree by the Federal Executive aimed at identifying and eliminating competition restrictions established by federal administrative regulations in the most relevant sectors of economic activity.** This action requires the participation of all agencies, entities and economic regulators of



the Federal Public Administration to identify the norms that hinder competition in markets, pointing out the necessary corrective actions to guarantee transformation towards the existence and implementation of pro-competitive legal frameworks in the sectors that fall within its scope of action. The list of obstacles and corrective actions should be public and have a timely follow-up to ensure compliance. For the proposals to be relevant, COFECE, in its role as guardian of competition, could participate in identifying restrictions and corrective actions. Political parties should commit to making the necessary changes in federal laws through their legislative benches.

2. **Issue of a decree by the Federal Executive requiring that all amendments to federal laws be subject to a preliminary competition analysis.** This mechanism would prevent the creation of regulatory barriers to competition derived from new legal instruments. As a complementary measure, the proposal may include granting powers to COFECE to issue binding opinions when the Commission identifies that a legal provision will generate significant damages to the process of competition and free market access and consumers' welfare.<sup>7</sup>
3. **Issue of a decree by the Federal Executive to allow COFECE and other related institutions to execute a public review of high impact public procurement procedures to ensure competition.** One of the most frequent problems of badly-designed or rigged tenders is the unjustified presence of subcontracting schemes and simulated competition (several companies participate, although in reality they are owned by the same group). The decree could instruct federal agencies to publicly request a review, by the aforementioned instances, of their bidding guidelines and calls (or invitations) in the case of public works or purchases of great impact. Likewise, it could order bidders to be compelled to specify the purpose and advantages of subcontracting, the disclosure of this information in advance, as well as request that the definition of the economic

7. Article 24, section VI of the Federal Economic Competition Law, reformed in 2011 indicated that the Commission had the following powers: issue, when considered pertinent or upon the request by any interested party, a binding opinion, to agencies and Public Federal Administration entities, regarding adjustments to programs and policies, when these may have effects that are contrary to the process of competition and free market entry.



group is included in the bidding documents and limiting offers to one bid per group.<sup>8</sup> Also, the decree could instruct that Federal Public Administration entities and agencies not use the exception provided in the laws which do not require competitive processes when it comes to tenders between public entities. Complementary legislation could be proposed to the Legislative to modify the legal framework of and public works and purchases, so that companies and individuals who have been penalized for collusion are banned from participating in public procurement.

4. **Implement a budgetary incentives program for the Mexican states that manage to build or strengthen pro-competitive regulatory frameworks.** The program would consist in granting budgetary incentives to the Mexican states that adopt measures similar to the first numeral of this list, that is, those that elaborate and apply action plans to amend competition restrictions imposed by their laws and local regulations. This, among other benefits, would encourage investment in infrastructure – creation of networks, for example - to reduce barriers to competition in precursor markets such as gasoline, railways, natural gas, electricity and telecommunications.
5. **Grant COFECE and the Federal Institute of Telecommunications the power to lodge an appeal on the grounds of unconstitutionality of federal and local laws when they are contrary to the constitutional guarantee of free market access and competition, in their respective fields.** This could lead to the overruling, by the national Supreme Court of Justice, of particularly serious anticompetitive restrictions, issued by any level of government, that unduly limit the entry of companies or grant benefits in favor of one or several agents without reasons of valid public interest. Currently, neither institution has the power to curb unjustified legal provisions issued by administrative authorities and local congresses that are contrary to competition.

8. The obligation to submit certain bidding guidelines and calls for large tenders to a public consultation process could also be explored, because COFECE or the public entities involved do not always have the technical knowledge to identify favoritism at that level of detail.

In addition to these cross-cutting actions, COFECE has worked arduously to identify barriers to competition that could be protecting specific producers, to the detriment of consumers in general, in specific sectors that are considered priority for the national economy such as finance, energy, transport, trade, public procurement and health, and that require specific regulatory actions and public policy to eliminate them. Among these analyses are the *Research and Recommendations on Competition Conditions in the Financial Sector and its Markets*; the *Report on the Competition Conditions in the Agri-food Sector*; the *Study on Free Market and Competition in the Expired-patent Drug Markets in Mexico*; a document on *Trade Policy with a Competition Perspective*, a document with *Recommendations on the Promotion of Competition and Free Market Access in Public Procurement*; an *opinion on the Applicable Regulations to Access Services in Federal Zones and Parking for the Provision of Public Transportation Services (Taxis), from National Airports*; *opinion on the Pro-Competitive Considerations on the Draft Law to Regulate Financial Technology (Fintech) Institutions*; the *Recommendations for the Transition to Competitive Markets for Gasoline and Diesel*, and the *Opinion on the Decree that Amends the Public Works and Related Services Law* all of these are available in Spanish and some in English on the Commission's website. The Annex lists examples of specific initiatives that may be evaluated in the drafting of public policy for the 2018-2024 period.<sup>9,10,11,12,13,14,15,16,17</sup>

9. Find the *Research and Recommendations on Competition Conditions in the Financial Sector and its Markets. Executive Summary* at: [https://www.cofece.mx/cofece/images/Estudios/ExecutiveSummary\\_10022015.pdf#pdf](https://www.cofece.mx/cofece/images/Estudios/ExecutiveSummary_10022015.pdf#pdf). See full report at: [https://www.cofece.mx/cofece/images/Estudios/COFECE\\_trabajo\\_investigacion\\_prot.pdf#pdf](https://www.cofece.mx/cofece/images/Estudios/COFECE_trabajo_investigacion_prot.pdf#pdf)

10. *Reporte sobre las condiciones de competencia en el sector agroalimentario* [Report on the Competition Conditions in the Agri-Food Sector] available at: [https://www.cofece.mx/cofece/images/Estudios/COFECE\\_reporte%20final-ok\\_SIN\\_RESUMEN\\_ALTA\\_RES-7enero.pdf](https://www.cofece.mx/cofece/images/Estudios/COFECE_reporte%20final-ok_SIN_RESUMEN_ALTA_RES-7enero.pdf)

11. *Study on Free Market and Competition in the Expired-patent Drug Markets in Mexico* available at: [https://cofece.mx/wp-content/uploads/2017/11/Studies-drug-markets\\_vF-BAJA.pdf#pdf](https://cofece.mx/wp-content/uploads/2017/11/Studies-drug-markets_vF-BAJA.pdf#pdf)

12. *Miscelánea de obstáculos regulatorios a la competencia* [Miscellany on Regulatory Obstacles to Competition] available at: [https://www.cofece.mx/cofece/images/Promocion/Miscelanea\\_Estatal\\_210916.pdf#pdf](https://www.cofece.mx/cofece/images/Promocion/Miscelanea_Estatal_210916.pdf#pdf)

13. *Trade Policy with a Competition Perspective* available at: <https://www.cofece.mx/wp-content/uploads/2018/01/TradePolicywithaCompetitionPerspective.pdf#pdf>

14. *COFECE Publishes Recommendations to Promote Competition in Public Procurement Procedures* available at: <https://www.cofece.mx/wp-content/uploads/2018/01/COFECE-032-2016.pdf>

15. *Guía para la evaluación de la regulación desde la óptica de la competencia* [Guide for the Evaluation of Regulation from a Competition Perspective] at: [https://www.cofece.mx/cofece/images/Promocion/Guia\\_Evaluacion\\_Regulacion\\_270516.pdf#pdf](https://www.cofece.mx/cofece/images/Promocion/Guia_Evaluacion_Regulacion_270516.pdf#pdf)

16. *Opinión sobre la normatividad aplicable al servicio de acceso a la zona federal y estacionamiento para la prestación del servicio público de autotransporte federal de pasajeros en su modalidad de taxi, con origen en los aeropuertos nacionales* [Opinion on the Applicable Regulations to Access Services in Federal Zones and Parking for the Provision of Public Service Federal Passenger Transportation in the Form of Taxis, with National Airports as Origin] available at: <http://cofece.mx/CFCResoluciones/docs/Opiniones/V13/0/3653400.pdf>

17. *Opinión sobre la Minuta con Proyecto de Decreto que reforma, adiciona y deroga diversas disposiciones de la Ley de Obras Públicas y Servicios relacionados con las mismas* [Opinion on the Draft Decree to Issue the Law to Regulate Financial Technological Institutions] available at: <http://cofece.mx/CFCResoluciones/docs/Opiniones/V20/6/3953499.pdf>

## Annex

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COFECE's analyses have resulted in certain measures that would have significant impact on competition in specific markets. These may be applied by the new government. A brief list with some of these measures as follows:

### Financial Sector

- Reform the pension system into a model that minimizes administrative costs and increases the supply of investment funds which compete for consumer preference based on returns from investments.
- Introduce greater competition in the network of ATM's by ensuring non-discriminatory access to all financial intermediaries to the ATM infrastructure.
- Guarantee the exchange of customer financial information and risk ratings among financial institutions when authorized, to increase competitive pressure in credit and insurance markets.
- Guarantee open and non-discriminatory access to clearinghouses to foster bank usage and the expansion of point-of-sales terminals.
- Avoid smaller financial institutions or institutions with new business models from being stifled by regulatory burdens.

### Energy Sector

- Convene a working group to identify (and aim to solve) transportation and storage infrastructure bottlenecks that hinder the development of competition in the gasoline and diesel retail markets.
- Identify the levels of vertical integration (import, distribution, storage and commercialization) of the relevant companies in the market for LP gas, as well as the levels of use of their infrastructure, to identify the use of their capacity and determine if cross-shareholding has anticompetitive effects.





### **Transport Sector**

- Use port infrastructure efficiently through the increase of competition in these markets.
- Transition from a model of exclusiveness to an open model for the entry of taxis in all national airports.

### **Agri-food Sector**

- Consolidate a single national agri-food product market by eliminating transit bonds, phytosanitary red tape duplicity and interstate sanitary barriers.
- Create a single registry of beneficiaries of subsidy programs for producers and marketers of agri-food products

### **Health Sector**

- Reform the linkage between patents and the process of sanitary authorization, to remove obstacles to the entry of generic pharmaceuticals.

### **Trade**

- Develop a transparent defense process against unfair trade practices.
- Move from a policy of import quotas to a unilateral tariff reduction in products that are recurrently undersupplied and present increases in prices.
- Increase transparency to the requirements for importing animal or plant origin products, to ensure their availability all year round.

### **Public procurement**

- Create an online market for small purchases of all Public Administration agencies.



## **Final Considerations**

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The 2018 electoral process is before us and represents an opportunity to take the right decisions and address social demands that will allow us to build a prosperous nation where all Mexicans have the same opportunities to improve their well-being, in a context where the success of companies and businesspeople depends on their talent and hard work, made possible only through a culture of competition.

A better Mexico is everybody's responsibility.

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