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28 May 2018

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**Annual Report on Competition Policy Developments in Mexico**

**-- 2017 --**

**6-8 June 2018**

This report is submitted by Mexico to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

**JT03432556**

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## *Report by Federal Economic Competition Commission (COFECE)*

### **1. Executive Summary**

1. The 2017 FY marked a year of unprecedented activity regarding anti-cartel and abuse of dominance enforcement for the Mexican Federal Economic Competition Commission (COFECE).
2. COFECE achieved a record-breaking year regarding cartel fines, which increased 614% with respect to 2016. The average cartel fine increased 6383%.
3. During 2017 there was a significant increase in the number of greatly visible cartel investigations, such as the intermediation of Mexican government bonds, pharmaceutical distribution and commercialization, retail gasoline and airport taxi services among others.
4. The investigation into cartelization in the pharmaceutical distribution and commercialization chain could well be the most ambitious anti-cartel investigation the Commission has ever undertaken, since it includes scrutinizing the entire pharmaceutical value chain.
5. Additionally, along 2017 significant investigations came to an end with relevant sanctions applied and important consequences to competition policy. In May 2017, COFECE imposed its highest fine ever for a cartel in the pension fund administration services market. Fines totalled 1.1 billion Mexican pesos (over US\$58 million).
6. Another important sanction relates to a cartel case in the market of corn tortillas, a local staple food, in the state of Jalisco. The state's Secretary of Rural Development was sanctioned for promoting the agreement, a first for a public official.
7. COFECE also reached an important milestone —its first four years as Mexico's Competition Authority.
8. This submission focuses on COFECE's work during the financial year 2017-2018, much of which remains ongoing or has subsequently been completed.

### **2. Changes to competition law and policies**

#### **2.1. New guidelines and technical criteria**

9. The efficient use of Information and Communication Technologies allows improving the performance and quality of COFECE's actions, simplifying administrative procedures, reducing costs and time, to the benefit of economic agents that participate or bring proceedings before the competition authority.
10. To that end, in 2017, COFECE issued Regulatory Provisions on the Use of Electronic Means in competition proceedings, as well as Guidelines for Merger Notifications by Electronic Means.
11. Available at: [goo.gl/LA8gZk](http://goo.gl/LA8gZk) and [goo.gl/MvRYXz](http://goo.gl/MvRYXz)

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

#### 3.1. Enforcement statistics: anticompetitive practices

12. During 2017, COFECE received 45 complaints on anticompetitive practices and other restrictions to competition, of which 7 led to new investigations (cartels and abuse of dominance).

**Table 1. Anticompetitive Practices and other restrictions to competition**

2017					
Complaints					
	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
Received	14	13	10	8	45
Analysis concluded	11	11	14	10	46
Leading to investigations	2	0	5	0	7
Dismissed	9	10	9	10	38
Integrated into another file	0	1	0	0	1
Investigations					
Initiated	2	0	6	4	12
Concluded investigations	5	1	1	2	9
No evidence of anticompetitive practice	0	1	0	0	1
Notification of probable responsibility	5	0	1	2	8
Early closure with commitments	0	0	0	0	0
Trial-like procedures					
Statement of probable responsibility issued	5	0	1	2	8
Trial-like procedures concluded	0	2	1	4	7
Sanctions imposed	0	2	1	3	6
Closed without liability	0	0	0	1	1

Source: COFECE. Quarterly reports 2017. Available at: [goo.gl/PTHJMD](http://goo.gl/PTHJMD)

**Table 2. Barriers to competition and essential facilities**

2017						
Investigations						
	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	2016	
Admitted		0	0	0	2	2
Concluded		0	1	0	0	1
Statement of Probable Responsibility issued		0	0	0	0	0
Closed: no evidence found		0	1	0	0	1
Phase II						
Statement of Probable Responsibility issued		0	0	0	0	0
Phase II proceedings concluded		1	1	0	0	2
Pending for the next period		1	0	0	0	N/A
Statements of substantial market power and opinions on the existence of effective competition						
Admitted		0	0	0	0	0
Concluded		1	0	0	0	1
Pending for the next period		0	0	0	0	N/A

Source: COFECE. Quarterly reports 2017. Available at: [goo.gl/DKyctp](http://goo.gl/DKyctp)

**Table 3. Fines imposed**

2017					
	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
Total value	\$ 37, 524	\$ 3,356,583,041	\$ 23,763,446	\$ 394,183,566	\$ 3,774,530,053
Enforcement measures	\$ 37, 524	\$ 1,153,485	\$ 136,788	\$ 116,379,808	\$ 117,670,081
Sanctions for breaching the Law	\$ 0	\$ 3,355,429,556	\$ 23,626,658	\$ 277,803,758	\$ 3,656,859,972

Note: Mexican pesos: MXN 18.70 = USD 1

Source: COFECE. Quarterly reports 2017. Available at: [goo.gl/DKyctp](http://goo.gl/DKyctp)

### 3.2. Antitrust cases in the courts

13. In 2017, the Judiciary confirmed 86.11% of COFECE's decisions. This outcome is the result of the Commission continuous work on three fronts: first, presenting vigorous and robust cases; second, working on the soundness of its arguments and better compliance with procedural rules; and third, participating in capacity building with the Judiciary power.

**Table 4. Amparo judgments**

	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
Pending from the previous period	55	70	215	227	N/A
Received	21	160	24	66	271
Dismissed	0	1	2	0	3
Resolved by the Judiciary	6	14	11	5	36
Amparos dismissed	1	4	1	2	8
Amparos denied	5	8	8	2	23
Amparos granted	0	2	2	1	5

*Note:* Adjusted numbers. The “amparos” against the liberalization of gasoline prices are not considered.

*Source:* COFECE. Statistics on cases processed by COFECE.

14. A paramount Supreme Court decision in 2017, under the new conditions established in the 2013 Energy Reform, required Petróleos Mexicanos (Pemex), the State-owned oil company, to allow the participation of private parties in the transportation of fuels—from storage and distribution terminals to service stations—formerly a strategic area exclusively reserved to the State. This marked a decisive step towards the transition of competitive gasoline and diesel retail markets in Mexico.

15. As part of the ruling, the Supreme Court overruled a resolution issued in 2013 by the CFC—the former Mexican competition authority—in which Pemex was fined \$653.2 million pesos for tying the sale of gasoline and diesel to the use of Pemex’s fuel transportation services. The CFC’s resolution also ordered the elimination of the conduct. However, according to the Supreme Court, when the conduct was carried out, transportation of fuels was exclusively reserved to the State, as established in the Mexican Constitution, and therefore annulled the sanctions imposed on Pemex as it did not breach the law.

16. The Supreme Court also recalled the objective of the 2013 sector reform, which is the opening of the state monopoly, and ordered that from now on, under the new regulatory framework, Pemex cannot deny the entry of a carrier to its facilities or tie the sale of its fuels to the contracting of any service.

### 3.3. Significant enforcement actions

17. In 2017, COFECE intervened in different strategic sectors and areas: financial, transport, health, agri-food and public procurement through the detection of monopolistic practices, the investigation of the existence of violations of the FECL, the sanction of economic agents when liability has been established, to mention some.

18. During 2017, COFECE reached major milestones which include the highest ever competition fine imposed in Mexico, the first criminal complaint lodged before the Office of the Attorney General against an economic cartel, a sanction to a Public Notary for closing a deal without COFECE’s authorization, and the launch of an investigation in the market for intermediation of government securities.

### 3.3.1. FINANCIAL SECTOR

#### *COFECE imposed the highest ever competition fine on pension fund administrators (Afores)*

19. In May 2017, four pension fund administrators (*Profuturo GNP Afore*, *Afore Sura*, *Afore XXI Banorte*, *Principal Afore*) and 11 individuals were fined a total 1.1 billion Mexican pesos, for agreeing to limit the number of accounts transferred between *Afores*.

20. The fine is the highest ever imposed by a Mexican competition authority. Moreover, this is the first competition case in the financial sector.

21. In Mexico, every worker who has been registered with or has made contributions to either IMSS or ISSSTE, the national social security institutions, has an individual account, administered by an *Afore*, which holds said contributions. The workers have the right to choose which *afore* will manage their retirement savings. However, COFECE found that between November 2012 and June 2014, general directors and chief operation officers agreed to limit the number of accounts transferred from one fund to another.

22. In a market in which investments and the commissions that *Afores* charge are regulated, transfers are a key source of competition. In agreeing to limit these, the incentives to offer a better service are reduced, and the possibility that workers have to reward or punish their *Afore* according to their degree of satisfaction is eliminated.

23. Final resolution under file IO-003-2015 (in Spanish), available at: [goo.gl/tJRRth](https://goo.gl/tJRRth)

#### *Investigation in the market for financial intermediation of Mexican Government securities*

24. Ensuring competition conditions in the market for public debt is critical to public finances and credit rate levels in the domestic market. Every year, the Mexican State places hundreds of billions of Mexican pesos in government securities. COFECE's Investigative Authority published the notice of initiation of the investigation for possible absolute monopolistic practices (hard-core cartel) in the market for intermediation of debt securities issued by the Mexican government. This is an ongoing investigation.

Initiation of the investigation (in Spanish), available at: [goo.gl/xuXvXz](https://goo.gl/xuXvXz)

#### *Probable abuse of dominance in the market of credit information systems*

25. In 2017, the investigation of the market of credit information systems ended with the issuance of several Statements of Probable Responsibility to diverse economic agents and the starting of the Commission's biggest ever probe into public debt sales amid signs of potential wrongdoing.

26. The case is currently on a trial-like procedure stage, where the alleged offenders can defend themselves by presenting evidence.

27. Once the file is considered complete, the file will be assigned to the Commissioner Rapporteur, who will oversee the preparation of the resolution project for the Board of Commissioners' to vote on.



### *Sanction for gun-jumping*

28. COFECE fined *Mexico Multifamily Fund VIII (MMF)*, *Invex*, *Cibanco*, *HSBC* and *Monex* and a Public Notary in Mexico City for closing and formalizing, respectively, a concentration that did not have the approval of the competition authority.

29. In April 2016, COFECE authorized *CIM Group Acquisitions* and *Compass Group Holdings* to acquire six trust assets operated by the fiduciary division of *HSBC Mexico*. The transaction was approved in its original terms. Months later, when the economic agents tried to confirm that the authorized transaction had been carried out, the Commission noticed that the buyer was *Mexico Multifamily Fund VIII*, property of *CIM Group*; a company not authorized by the Commission to carry out the concentration. For its part, Mexico City's Public Notary number 151 formalized the transaction through six notarized instruments, omitting that *MMF* was not part of the agents authorized by COFECE.

30. Companies were fined 365 thousand Mexican pesos each, while the Public Notary was fined 8.54 million Mexican pesos.

### *3.3.2. Transport*

#### *COFECE filed a Constitutional Dispute against the Decree to Reform the Regulations of the Airports Law and the General Principles to Allocate Take-off and Landing Slots at Saturated Airports*

31. The rules for access to landing and take-off airport slots and for the use and control of platform services at Mexico City International Airport (AICM) cause inefficiencies and competition problems in the aviation market such as: i) high market concentration, especially during peak hours, resulting in higher ticket prices; ii) restrictions which limit the entry of other airlines or the opening of new flights due to the saturation of airport facilities and to the slots' allocation mechanism, which reduces the possibilities of accessing them by non-incumbents; and iii) negative effects on the quality of service, which causes harm to passengers, such as flight cancellations and delays. This led COFECE to submit a set of measures to the Airport aiming at the reversal of these shortcomings.<sup>1</sup>

32. Subsequently, the Federal Executive and the Ministry of Communications and Transport (SCT) reformed the Regulations of the Airports Law and issued the General Principles to Allocate Take-off and Landing Slots at Saturated Airports; regulations that do not comply with the measures provided by the Commission, and that to the knowledge of COFECE do not remedy the aforementioned competition problems.

33. In this constitutional dispute, COFECE calls Mexico's Supreme Court of Justice to analyse the scope of its powers to regulate an essential facility, as established in article 28 of the Constitution, and determine whether the Federal Executive has rendered nugatory this constitutional power.

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<sup>1</sup> According to article 94 of the Mexican Federal Economic Competition Law (FECL), COFECE has the power to identify essential inputs and to order measures to regulate its access as COFECE consider it is necessary to eliminate anticompetitive effects.

*Sanction to taxis at Mexico City's International Airport for agreeing to concertedly increase their rates*

34. In August 2017, COFECE fined five taxi associations (*Confort*, *Porto Taxi*, *Sitio 300*, *Yellow Cab* and *Nueva Imagen*)<sup>2</sup> and four individuals that acted on behalf of these associations, a total of 23.6 million Mexican pesos, for agreeing the contracting of a rate-setting study with the object and effect of fixing, raising and manipulating taxi services' rates to be charged.

35. On April 11, 2011, the taxi associations signed an agreement in which they decided to jointly hire a consulting firm to carry out a rate-setting study with the purpose of determining the future price of taxi services. Taxi companies shared strategic information—which under normal circumstances would not be shared—with the consulting firm, such as their operational costs, rates, revenue, and number of units, sales statistics, among others. The firm provided each of the taxi associations with a scheme and recommendations to determine “competitive rates” to be charged until the year 2021. In coordination, on August 2011, the fees were increased.

36. The sanctioned conduct affected passengers at this airport, and even participants in related markets in the airport—such as airlines—whose competitiveness depends of the different costs incurred by a traveller. It is estimated that the conduct affected at least 12 million people and that the damage to the market, calculated considering the overprice paid by the taxi users between August 2011 and December 2015, was of 771.7 million Mexican pesos.

37. Final resolution under file DE-009-2014 (in Spanish), available at: [goo.gl/xTAzj8](http://goo.gl/xTAzj8)

*Sanction to international cartel in the market of maritime transportation of motor vehicles*

38. In May 2017, COFECE fined seven global shipping companies<sup>3</sup> for allocating the market of maritime transportation of vehicles and heavy machinery, an anticompetitive conduct with effects in Mexico. The fines imposed amount to 581.6 million Mexican pesos.

39. The collusive agreements were implemented globally on international routes. What COFECE considered during its investigation was that these collusive agreements included Mexican ports, as point of origin or destination, to South America, Asia and Europe, and that the conduct had the effect of increasing costs of the services provided to companies in the automotive industry in the Mexican market.

40. Final resolution under file IO-005-2013 (in Spanish), available at: [goo.gl/Pxs8VX](http://goo.gl/Pxs8VX)

<sup>2</sup> *Confort y Servicios en Transportación Terrestre (Confort)*, *Porto Taxi Terrestre Ejecutivo (Porto Taxi)*, *Taxistas Agremiados Para el Servicio de Transportación Terrestre Sitio 300 (Sitio 300)*, *Yellow Cab del Nuevo AICM*, previously named *Sitio 300 Yellow Cab- (Yellow Cab)* and *Transportación Terrestre Nueva Imagen (Nueva Imagen)*

<sup>3</sup> i) *Compañía Sud Americana de Vapores (CSAV)*; ii) *Kawasaki Kisen Kaisha (K-Line)*; iii) *K Line America*; iv) *Mitsui OSK Lines (MOL)*; v) *Mitsui OSK Bulk Shipping (MOBUSA)*; vi) *Nippon Yusen Kabushiki Kaisha (NYK)* and, vii) *Wallenius Wilhelmsen Logistics (WWL)*.

### 3.3.3. Health sector

#### *Five latex gloves suppliers fined for bid rigging in public procurement in the health sector*

41. Five companies (*Dentilab, Ambiderm, Degasa, Productos Galeno* and *Holiday de México*) were fined with 257.6 million Mexican pesos for having coordinated their bids in terms of prices and/or discounts, and abstaining from bidding in public procurement processes in the health sector.

42. These anticompetitive conducts took place, at least, from March 2009 to April 2015 and affected several procurement processes, mainly those carried out under the consolidated purchasing model convened by the main State public health institutions in Mexico.

43. The practice resulted in over-priced contracts for the purchase of latex gloves, which, multiplied by the minimum number of units required in the procurement processes, adds to an estimated damage to the public purse of 174.8 million Mexican pesos.

#### *COFECE lodged a criminal complaint against several individuals who allegedly colluded in public procurement in the health sector*

44. Individuals who conspire to raise prices in public procurement reduce the possibility of resources either being saved or freed up to cover other public needs. COFECE's Investigative Authority lodged a complaint before the Office of the Attorney-General (PGR) against individuals that probably committed the offense of bid rigging in public procurement processes in the health-care sector.

45. The Investigative Authority has evidence of the coordination between bidders in public tenders called by the health sector between 2009 and 2015.

46. It is the first time that the Commission exercised this power as per the Federal Criminal Code and the Federal Economic Competition Law (FECL).

### 3.3.4. AGRI-FOOD

#### *Sanction for fixing the price of tortillas — a Mexicans staple food*

47. COFECE sanctioned the Secretary for Rural Development in the state of Jalisco and dough and *tortilla* producers for agreeing to fix the retail price of *tortillas*, within a range of 9 and 14 Mexican pesos per kilogram, with which other providers had the incentive to raise their own prices. According to the information published by the National Institute of Statistics and Geography (INEGI), in February 2016, when this illegal agreement took place, the tortillas' National Consumer Price Index in the State of Jalisco (Guadalajara) reached 2.26%, the highest regarding the level observed nationwide, which averaged 0.40%. Harm to consumers was estimated at 52 million Mexican pesos.

48. Final resolution under file DE-009-2016 (in Spanish), available at: [goo.gl/JQGrGQ](http://goo.gl/JQGrGQ)

*Illegal concentration investigation in the milk market*

49. In early 2017, COFECE's Investigative Authority initiated two investigations for possible unlawful concentrations. One in the market to produce raw milk and the other for the production, distribution and marketing of pasteurized milk and dairy products.

50. According to the FECL, concentrations must be notified to COFECE when they meet the thresholds established on article 87 for the Commission to determine if the transaction will have an impact on competition in the market.

51. If these unlawful concentrations are proven to exist, COFECE may order the correction or suppression of the illegal practice, order partial or total divestiture of the illegal concentration, order the termination of control or suppression of acts and impose a fine of up to 8% of the economic agent's annual turnover.

52. Notice of the initiation of the investigations (in Spanish), is available at: <https://goo.gl/cM43po>

**3.3.5. PUBLIC PROCUREMENT***Fines for bid rigging in public procurement processes in the market for media monitoring services*

53. In December 2017, COFECE imposed fines totalling 7.2 million Mexican pesos on four companies (*Especialistas en Medios*, *Delfos*, *SVS Internacional de México*, *Emilio Otero*) and four individuals representing the companies, for manipulating the prices provided in market researches and/or economic proposals in public procurement processes convened by several public authorities in Mexico.

54. The conducts that occurred between 2012 and 2016, had the purpose of benefiting *Especialistas en Medios* through the award of monitoring services contracts.

55. COFECE found that the company coordinated technical and/or economic proposals, as well as the quotes their competitors signed and submitted to the convening officials. The alleged competitors that helped *Especialistas en Medios* win the contacts then were benefitted either through a subcontract or assignment of a related service.

56. Final resolution under file IO-006-2015 (in Spanish), available at: [goo.gl/DEkbDf](https://goo.gl/DEkbDf)

*Investigation in the market for watt-hour meters purchased by the Federal Electricity Commission (CFE)*

57. The Commission's Investigative Authority is investigating the suspected execution of agreements that resulted in price manipulation, the restriction or limit of supply and demand, the division or segmentation of markets, manipulation of public tenders or the exchange of information in the market for the production, distribution and/or commercialization of watt-hour meters acquired by the Mexican Federal Electricity Commission (CFE).

58. In the last ten years, the CFE has allocated more than 15 billion Mexican pesos to the acquisition of watt-hour meters through diverse public tender processes.

59. Notice of the initiation of the investigation (in Spanish), available at: [goo.gl/yhYYDJ](https://goo.gl/yhYYDJ)

## 4. Enforcement of competition law and policies: mergers and concentrations

### 4.1. Enforcement statistics: mergers

60. During 2017, 131 mergers were authorized, and one deal was blocked: the joint venture (JV) between *Rea Magnet Wire Company* and *Xignux's* businesses dedicated to the manufacture and distribution of magnet wire.

**Table 5. Mergers**

2017

	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
Received in 2017	41	37	37	40	155
Analysis concluded	52	38	36	34	160
Authorized	43	25	35	28	131
Subject to conditions	4	4	0	0	8
Rejected	0	0	0	1	1
Other	5	9	1	5	20
Pending for next period	25	24	25	31	N/A

Source: COFECE. Statistics on cases processed by COFECE. Available at: [goo.gl/r982n7](http://goo.gl/r982n7)

**Table 6. Mergers 2017**

Value of transactions (million Mexican pesos)

	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
Total value	\$ 402,623.04	\$ 253,755.99	\$ 63,300.89	\$ 161,152.49	\$ 880,832.41
Mergers	48	27	35	29	139
National scope	\$60,314.00	\$19,546.39	\$35,617.03	\$45,593.42	\$161,070.84
Number of mergers	23	7	23	18	71
International scope	\$342,309.04	\$234,209.60	\$27,683.86	\$115,559.07	\$719,761.57
Number of mergers	25	20	12	11	68

Note: MXN 18.70 = USD 1

Source: COFECE. Statistics on cases processed by COFECE. Available at: [goo.gl/VhwwvZ](http://goo.gl/VhwwvZ)

### 4.2. Significant cases: mergers

#### 4.2.1. Boehringer / Sanofi (animal health)

61. In March 2017, the Commission challenged the concentration between Sanofi and Boehringer Ingelheim International in the animal health sector, as the proposed transaction would harm competition in five markets for animal vaccines in Mexico.

62. COFECE found that the concentration as initially notified, would have substantially lessened competition. If Sanofi had exited the market, Boehringer would have lost competitive pressure to discipline its prices and would have strengthened its position over the rest of its competitors. Both circumstances would have given the merged company the possibility to impose conditions such as price fixing or restricting supply, with its competitors being unable to counteract anticompetitive behaviour of the combined company, in five vaccine markets, four related to animal diseases in the poultry sector and one in the porcine sector.

63. To ensure competition conditions in the five markets, COFECE demanded the divestment (to a third-party purchaser) of four Boehringer's vaccines and one Sanofi's vaccine, prior to closing the transaction. The purchaser had to maintain the competitive pressure in these markets. In addition, the purchase agreement had to include clauses ensuring the supply of these vaccines to new purchasers during a certain period while the purchaser develops its own manufacturing sources.

64. Final resolution under file CNT-068-2016 (in Spanish), available at: [goo.gl/7JVgVo](http://goo.gl/7JVgVo)

#### **4.2.2. ChemChina / Syngenta**

65. In April 2017, COFECE conditioned ChemChina's acquisition of Syngenta. COFECE's identified problematic market overlaps in the production and distribution of agrochemical products. According to the Commission's investigation, the takeover would have significantly hindered effective competition in the following markets: i) selective herbicides for weed control (broad spectrum; broadleaf weeds, and grass weeds) for the cultivation of sugar cane; and (ii) contact fungicides for several crops.

66. Had the transaction been approved with no remedies, ChemChina's market position would have been strengthened in several markets for herbicides and fungicides, which would have given it a dominant position. The transaction as originally proposed would have implied a significant reduction of alternatives available for farmers to protect their crops from harmful pests, as well as price increases in some herbicides and fungicides, resulting in rising costs for their activity. Remedies included the divestment of five Syngenta's specific products to a third independent party.

67. Final resolution under file CNT-083-2016 (in Spanish), available at: [goo.gl/47QG6g](http://goo.gl/47QG6g)

#### **4.2.3. Dow Chemical Company / DuPont de Nemours**

68. In June 2017, COFECE approved the concentration between the Dow Chemical Company and DuPont de Nemours, conditioned to the divestiture of the Dow's acid copolymers and ionomers business, and DuPont's foliar insecticides business. COFECE considered that the transaction without conditions would have resulted in a company with a high market share on this market, considerably opening the gap regarding its closest competitor. This would have meant a reduction of competitive pressure that could have resulted in the increase of prices in these products.

Final resolution under file CNT-049-2016 (in Spanish), available at: [goo.gl/DWfdAN](http://goo.gl/DWfdAN)

#### **4.2.4. G500 (partnership between retail gasoline operators)**

69. In 2017, the Commission reviewed for the first time a transaction in which several retail gasoline operators sought to concentrate into a partnership to jointly purchase fuels and other related products, after the imminent liberalization of the retail fuel markets in Mexico.

70. In March 2017, the concentration was partially authorized on the following terms: i) the integration of 54 retail gasoline operators into the partnership G500 was approved, and it was expressly stated that the partners should operate independently in the retailing of these products; ii) the proposal of G500 on "the incorporation of potential partners" was rejected as there was not enough information to analyse the effects on the

competition process of their participation in the partnership as they were potential - not know *a priori* - ; and iii) the joining of new partners in the agreement is allowed, by notifying and providing information to COFECE.

71. Final resolution under file CNT-058-2016 (in Spanish), available at: [goo.gl/KLhH34](http://goo.gl/KLhH34)

#### **4.2.5. Rea Magnet Wire Company / Xignux**

72. In December 2017, COFECE blocked the joint venture (JV) between Rea Magnet Wire Company and Xignux's businesses dedicated to the manufacture and distribution of magnet wire.

73. COFECE found that the JV would combine NAFTA assets of both companies, merging the main and the third largest competitors in the region and potentially giving rise to a company with a significant market share in terms of sales that might have facilitated price increases, with no other competitors to counteract such effects.

74. By blocking the deal, COFECE prevented the elimination of an important source of competitive pressure within the market, so customers (such as the buoyant Mexican automotive industry) would still benefit from increased competition in the magnet wire market.

75. Final resolution under file CNT-069-2017 (in Spanish), available at: [goo.gl/ehLY4z](http://goo.gl/ehLY4z)

## **5. Competition advocacy**

### **5.1. COFECE's role in the formulation and implementation of other public policies**

76. Throughout 2017, COFECE issued several opinions and drafted documents with specific recommendations for different sectors, addressed to lawmakers, ministry officials, regulatory agencies and other authorities aimed at promoting competition principles in the design of laws and regulations.

#### **5.1.1. Fintech Law**

77. In October 2017, COFECE issued an opinion to the Senate on the Draft Law to Regulate Financial Technology (Fintech) Institutions, with the purpose of enhancing competition and innovation in the Mexican financial sector, thereby increasing quality, promoting greater variety of products and reducing costs for users. The recommendations included:

- Explicitly establish that users own their information and regulate the considerations for the transfer of data
- Legally require credit institutions to provide financial services to FTIs, under non-discriminatory conditions
- Explicitly establish that FTIs may use any technological infrastructure
- Add general provisions to the law establishing that new business models or activities that authorities determine will be allowed

- Reduce the length of authorization periods and procedures, grant legal certainty for the operation of new business models through regulatory sandboxes

78. On March 1st, 2018 the Fintech Law was passed. Among the noteworthy improvements to the Law derived from COFECE's opinion are: users explicitly own their information and authorities must determine the considerations for the transmission of the data. In addition, Fintech's access to information is guaranteed by establishing the terms and conditions under which the interruption in the transmission of data is deemed appropriate.

79. The opinion OPN-007-2017 (in Spanish) is available at: [goo.gl/fRs3xJ](https://goo.gl/fRs3xJ)

### ***5.1.2. "Economic Competition, a Platform for Growth 2018 – 2024": COFECE's advocacy tool to position competition on the agenda within the Mexican elections***

80. In December 2017, in the context of the 2018 federal elections, COFECE drafted the document entitled "Economic Competition, a Platform for Growth 2018 – 2024", to be used as a tool by political parties and future Mexican presidential candidates, as well as senators and federal congress members, to assist them in the design of public policy proposals that favour competition in markets.

81. The document presents strengths and challenges to competition in Mexico, as well as the positive effects of competition on national economic growth, integrity in public tenders, the fostering of entrepreneurship, trade openness and upholding the rule of law. The recommendations aim to encourage cross-cutting proposals in the financial, energy, transportation, trade, public tender and health sectors, which are critical to national economic development.

82. Available in English at: <https://goo.gl/Ed1A96>

### ***5.1.3. Market study on competition and free market access in the off-patent drug markets***

83. In August 2017, COFECE made publicly available a market study on competition conditions in the market of off-patent drugs or generics in Mexico.

84. Once a pharmaceutical's patent has expired, the entry of the generic drug into the market lowers prices. However, the above-mentioned study found that Mexican consumers do not enjoy this benefit, as there are competition problems derived from regulatory and public failures that delay the arrival of generics to the market. COFECE estimates that these delays cost up to 2.5 billion Mexican pesos to Mexican households. The Commission recommended the Ministry of Health and the Federal Commission for the Protection Against Sanitary Risks (COFEPRIS) to modify industry regulations to redress this situation.

85. With this exercise, the authority took an important step towards putting the pharmaceutical sector in the spotlight, contributing to a larger choice of medicines at competitive prices for Mexican families.

86. Available in English at: [goo.gl/LjuqGC](https://goo.gl/LjuqGC)



#### ***5.1.4. Trade policy with a competition perspective***

87. In May 2017, COFECE drafted the document “Trade Policy with a Competition Perspective” in which the Commission identified certain aspects of the Mexican trade policy that could be restricting competition, affecting domestic companies’ competitive position and decreasing Mexican’s welfare. The document makes recommendations to the Federal Executive so trade policy allows the efficient functioning of markets, in the scope of antidumping proceedings, quotas and their allocation mechanism and sectoral promotion programs.

88. Available in English at: [goo.gl/GvohFA](http://goo.gl/GvohFA)

### **5.2. Other advocacy activities**

#### ***5.2.1. Award for identifying the most absurd regulatory obstacle to competition and entrepreneurship***

89. In 2017, COFECE presented the winners of the “Award for identifying the most absurd regulatory obstacle to competition and entrepreneurship”. The award was designed to give citizens, entrepreneurs and businesspeople a greater voice about policy making, by pointing out those regulatory obstacles which, in their experience and opinion, most affect the entrepreneurial drive and competitive dynamics. For COFECE this is a win-win situation as it helps the authority to identify more competition issues with fewer resources.

90. The jury selected the submission on state laws that regulate notary services as the most absurd regulatory obstacle to competition and entrepreneurship. Virtually all-state laws on the matter contain provisions that limit the number of notaries and competition between them, which result in higher prices and lower quality in notary services. The implications on national development have led COFECE to call on the federal entities’ congresses to push the reform of notary service laws. Additionally, Congress has been urged to review and amend the relevant regulations to strengthen the role of Public Brokers to increase competition of notary services in commercial issues.

91. The results of the Award in English are available at: <https://goo.gl/KSjiT8>

## **6. International Cooperation**

### **6.1. Regional Cooperation**

#### ***6.1.1. COFECE Fellows Program for Latin American and Caribbean Competition Agencies***

92. In March 2017, COFECE launched its third edition Fellows Program for Latin American and the Caribbean competition agencies. This year, the Commission hosted fellows from 5 different authorities (Argentina, Brazil, Panama, Peru and the Dominican Republic).

#### ***6.1.2. Strategic Latin American Alliance***

93. In March 2017, a strategic alliance between enforcers of Argentina, Chile, Brazil and Mexico was announced in Washington, D.C. in the margins of the American Bar

Association Section of Antitrust Spring Meeting 2017. This alliance was later formalized in December 2017, when a meeting between the heads of Argentina, Brazil, Chile, Mexico and Peru agencies took place in Paris and the five authorities agreed to cooperate on specific matters.<sup>4</sup>

### ***6.1.3. North America***

94. In the context of the North American Free Trade Agreement's (NAFTA) renegotiation talks, COFECE participated as an advisor of the Mexican Federal Government on the discussions of the competition policy chapter. This was one of the first chapters to close as agreements from the parties were reached promptly.

95. Additionally, in November 2017, COFECE participated in the yearly trilateral meeting of competition enforcers in North America with the US Department of Justice Antitrust Division, the US Federal Trade Commission and the Competition Bureau Canada.<sup>5</sup>

## **6.2. Bilateral Cooperation**

96. During 2017, COFECE cooperated with other competition agencies on a bilateral basis in 7 merger analysis investigations.

97. Additionally, in May 2017, COFECE subscribed a Memorandum of Understanding with the Peruvian competition Authority (INDECOPI) to increase our cooperation ties.

### ***6.2.1. Multilateral Cooperation***

#### ***International Competition Network***

98. COFECE played an active role in all ICN Working Groups in 2017. Alejandra Palacios, COFECE's Chairwoman has been an ICN Steering Group Vice-Chair since 2016 and continued to serve during 2017 as Vice-Chair for Younger Agencies and Regional Diversity.

99. In May 2017, COFECE started its third and final year as Co-Chair of the Advocacy Working Group and continued to actively participate in the projects and teleseminars of all other ICN working groups: Agency Effectiveness, Cartels, Mergers and Unilateral Conduct.

100. COFECE attended the ICN Annual Conference in Portugal in May 2017, in which COFECE's Chairwoman spoke in the Special Project Plenary Session on "Amplifying the Impact of Enforcement: Proactive outreach strategies for deterrence". COFECE further participated in the sessions "Corruption and Bid Rigging", "Innovative tools to Advocate and Promote Competition" and "ICN Implementation".<sup>6</sup>

101. In February 2017, COFECE attended the 13<sup>th</sup> edition of the ICN Merger Workshop held in Washington D.C. Furthermore, in early October 2017, COFECE participated in the ICN Cartel Workshop, held in Ottawa, Canada, in which the

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<sup>4</sup> [goo.gl/vufgc5](http://goo.gl/vufgc5)

<sup>5</sup> [goo.gl/ilgvGH](http://goo.gl/ilgvGH)

<sup>6</sup> [goo.gl/fwUfRu](http://goo.gl/fwUfRu)

Commission participated in the Plenary Session on “The outer limits: the parameters of a bid-rigging investigation”. In late November 2017, officials from COFECE participated in the Unilateral Conducts Workshop organized in Rome by the Italian Competition Authority.

102. On December 12<sup>th</sup> and 13<sup>th</sup>, 2017, COFECE organized the 14<sup>th</sup> edition of the ICN Merger Workshop in Mexico City, which focused on Modern Investigative Techniques in merger analysis. More than 110 officials from 30 different jurisdictions attended the workshop.<sup>7</sup>

## 7. COFECE resources

### 7.1. Budget

103. For 2017, the annual budget was MXN \$537,243,760.00 (equivalent to USD \$28,729,612).<sup>8</sup>

### 7.2. Number of employees

104. In 2017, the Commission employed 410 people, of which 232 are non-administrative staff that worked on competition enforcement, while 41 worked in competition advocacy.

105. Of the 232 non-administrative staff, 137 are lawyers, 101 economists and 40 come from other professions (engineers, political scientists, and foreign affairs specialists, among others).

106. The information provided covers from the period 1 January to 31 December 2017.

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<sup>7</sup> [goo.gl/7a6gAV](https://goo.gl/7a6gAV)

<sup>8</sup> Calculation based on an exchange rate of \$18.70 pesos per US dollar.

## *Report by the Federal Institute of Telecommunications (IFT)*

### **8. Executive Summary**

107. In 2017 the Federal Institute of Telecommunications (IFT) issued two different guideline documents: one for its Immunity and Reduction of Sanctions Program, and another with the aim of providing transparent, reliable and comprehensive information about how the IFT conducts merger control proceedings established in the Mexican applicable laws.

108. It is worth noting that during this year, a competency conflict arose between the two national competition authorities, the COFECE and the IFT, concerning a merger proceeding which consisted of the acquisition of Time Warner by the telecommunications company AT&T. This conflict was settled by the judiciary, which decided to allocate competence over the case to both authorities, on specific matters related to the markets potentially affected by the operation.

109. During 2017, the IFT processed six cases which concerned unilateral behaviours and one which involved the investigation of an unlawful merger. It also decided on four merger notification cases and on the participation of 5 of a total of 9 agents interested in public spectrum auction IFT-5 (provision of capacity for private radio-communication systems) and of 14 of a total of 24 agents interested in public spectrum auction IFT-6 (digital broadcast television). In both auctions, the Board decided on the participation of the interested agents after the thorough consideration of technical and legal arguments, as well as of opinions on economic competition.

110. Additionally, the IFT also issued a non-binding opinion to the Energy Regulatory Commission regarding some provisions related to the access to passive infrastructure (poles) belonging to the National Energy System.

### **9. Changes to Competition Laws and Policies, Proposed or Adopted**

#### **9.1. Other Relevant Measures, Including New Guidelines**

##### ***9.1.1. Immunity and Reduction of Sanctions Program***

111. The Federal Economic Competition Law (LFCE, by its acronym in Spanish) mandates the IFT to provide guidelines for an Immunity and Reduction of Sanctions Program which must be reviewed at least every five years. In 2017, the IFT issued the Immunity and Sanction Reduction Program Guide for the Telecommunications and Broadcasting Sectors.<sup>9</sup>

112. The purpose of this guide is to publicize the program implemented by the IFT to gather the necessary information in order to pursue and sanction absolute monopolistic practices committed by competing economic agents (cartels) in the telecommunications

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<sup>9</sup> It is available in Spanish at the IFT's webpage at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5468788&fecha=09/01/2017](http://www.dof.gob.mx/nota_detalle.php?codigo=5468788&fecha=09/01/2017)

and broadcasting sectors, as well as the requirements for its application and the benefits for those who decide to join it.

113. The program is aimed at economic agents that have incurred or are incurring in absolute monopolistic practices; economic agents who have participated directly, on behalf or by account and order of legal entities in absolute monopolistic practices; or economic agents or individuals who have collaborated, promoted/fostered, induced, or participated in the execution of absolute monopolistic practices, and who are willing to admit it, to cooperate fully and continuously, to provide to the IFT enough conviction elements in their possession and those which may be available during the investigation and the trial-like procedure, as well as to carry out the necessary actions to end their participation in the conduct. The economic agents that join the program may benefit from the reduction of sanctions or fines that would apply in accordance with the LFCE, its regulatory provisions for the telecommunications and broadcasting sector, and the Federal Criminal Code.

### *9.1.2. Merger Guidelines*

114. On June 28, 2017 the IFT issued the Guidelines on Merger Control Proceedings for the Telecommunications and Broadcasting sectors (Merger Guidelines). This document is public<sup>10</sup> and aims to provide transparent, reliable and comprehensive non-binding information and references about how the IFT conducts concentration control proceedings established in the competition law – the LFCE— and the sectoral law –the Federal Telecommunications and Broadcasting Law (LFTR, by its Spanish acronym).<sup>11</sup>

115. The LFCE, in general, establishes three types of proceedings. Firstly, there is the standard notification subject to full-length assessment; secondly, the simplified notification that may be exempted from a full assessment if the actors fulfil some legal criteria based on the notoriousness that the concentration's effects would not hamper competition; thirdly, already executed mergers –totally or partially– may be subject to a formal investigation proceeding if there is an objective cause to consider that they may hamper competition. On the other hand, the LFTR explicitly identifies the cases that constitute a merger and, therefore, are subject to one of these<sup>12</sup>: (i) a procedure established in the LFCE; (ii) a different administrative procedure established in the LFTR and subject to a competition assessment based on the LFCE's criteria; or (iii) an exception to obtain authorization<sup>13</sup>.

<sup>10</sup> It is available in Spanish at the IFT's webpage at: <http://www.ift.org.mx/sites/default/files/industria/temasrelevantes/9195/documentos/pift280617368.pdf>.

<sup>11</sup> Both laws came into force in 2014. The 2014 LFCE replaced (i.e. caused the abrogation) of the previous competition law. In turn, the 2014 LFTR replaced the previous law of telecommunications and law of broadcasting.

<sup>12</sup> Those procedures include the lease of radio spectrum; the partial or total assignment of licences (concessions) rights; the subscription, acquisition or transfer of the corporate shares of concessionaires; the elaboration of public bidding rules to grant concessions for commercial use of radio spectrum and/or to occupy and exploit orbital resources, and the evaluation of participants in public bidding processes.

<sup>13</sup> The decree that issued the LFTR established transitional provisions — additional to those contained in the law— that are enforceable as long as a preponderant economic agent exists in telecommunications and/or broadcasting sectors. In particular, the article ninth transitory grants economic agents the right to benefit from an exception regime. This benefit consists in exempting

116. The new guidelines offer information about the practical criteria for calculating the monetary thresholds that trigger the obligation to notify a merger before the IFT. They also address the concepts and elements that are necessary to define legal terms, such as merger, economic agent, economic interest group, control and influence. With these guidelines, the IFT provides a convergent, integrated and harmonized perspective (i.e. a single window approach) about procedures, criteria and terms that before the IFT's creation in 2013 were applied through separate proceedings and by different authorities<sup>14</sup>. Additionally, the IFT plans to elaborate complementary guidelines on the economic assessment of mergers.

### 9.1.3. Competency Conflict between COFECE and IFT

117. On December 21, 2016 AT&T Inc. (AT&T) filed before each competition authority—the IFT and the COFECE—a notification concerning a part of a merger which consisted of the acquisition of Time Warner Inc. (Time Warner)<sup>15</sup>.

118. At an aggregated level, the ATT/Time Warner merger involved telecommunications markets, such as retransmission of audio-visual content through pay TV and over-the-top platforms, as well as other related markets that do not belong to the telecommunications sector, such as merchandise commercialization and content distribution through cinemas and physical formats (e.g. discs).

119. Within the collaborative framework established by both Mexican competition authorities, the IFT presented a written opinion before the COFECE about its decision to claim full competence to assess and decide about the whole ATT/Time Warner proceeding. The IFT explicitly recognized that not all the markets involved in the merger belong to the telecommunications sector but noted that the major part of the parties' turnovers do. The IFT also pleaded for not splitting the facts of the case to be assessed (i.e. the non-separation of the cause) in order to avoid a "double window" in addressing the transaction. The COFECE claimed its jurisdictional powers to address the merger in the part that involved markets that do not belong to telecommunications sector. Thus, a competence conflict arose and, pursuant to article 5 of the LFCE, the file was sent to a specialized court that decided to allocate competence over the case to both authorities in the way initially notified by the undertakings, according to the constitutional mandate about jurisdictional areas for the IFT and the COFECE.

120. It is worth considering that with respect to the above-described decision the *OECD Telecommunication and Broadcasting Review of Mexico 2017* points out that it should be monitored closely, since it has the potential to recreate a "double window"

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the concentration from requiring the (previous) authorization from the Institute established in the standard procedures provided in the LFCE and the LFTR, as long as they comply with the following criteria: (i) the involved parties are concessioners; (ii) the economic agent declared preponderant in the sector – telecommunications or broadcasting— does not participate in the concentration; and (iii) the transaction comply with four specific requirements that, in synthesis, prevent a significant increase in concentration indexes and adverse effects on competition at a sectoral level.

<sup>14</sup> Before the IFT's creation, the regulation powers in telecommunications and broadcasting were granted by two different laws to the Federal Telecommunications Commission (Cofetel), the Ministry of Communications and Transportation (SCT by its acronym in Spanish) and the Ministry of the Interior (SEGOB by its acronym in Spanish).

<sup>15</sup> A summary of the IFT's decision on this merger is presented in section 2.2 of this Report.

between the two authorities. Additionally, it noted that the decision did not consider the implications of convergence between voice, video and data, and recommended that, in the future, and taking into account that convergence will only increase, the IFT should keep the mandate to deal with these competition cases<sup>16</sup>.

## 10. Enforcement of Competition Laws and Policies

### 10.1. Action against Anticompetitive Practices, Including Agreements and Abuses of Dominant Positions

#### 10.1.1. Summary of Activities

121. During 2017, the IFT processed seven investigations. One of them was initiated in 2017, four were initiated in 2016, and two in 2014. Six of them regarded unilateral behaviours and one involved an unlawful merger. In two of these cases a statement of objections was issued in order to proceed against the suspected offenders. The rest of the cases are still under investigation.

#### 10.1.2. Description of Significant Cases, Including those with International Implications

##### *Investigations Started in 2017*

122. In 2017 the IFT undertook an investigation of alleged unilateral conducts consistent of predatory pricing, cross-subsidization, and raising rival costs in the fixed and mobile services, fixed and mobile Internet access services, and production, distribution and commercialization of audio-visual contents transmitted through Internet in the country.<sup>17</sup>

##### *Investigations in Process during 2017*

- i. An investigation was initiated in 2014 regarding the alleged unilateral conducts consistent of a refusal to deal, setting conditions to purchases or discounts, and raising rival costs, in the pre-paid mobile airtime recharge service in the country. A statement of objections was notified to the alleged offenders and the trial-like procedure was initiated in September 4th, 2017.<sup>18</sup>
- ii. In 2016 the IFT initiated an *ex officio* investigation regarding an alleged unilateral conduct consistent of tied sales, exclusionary practices, predatory pricing and

<sup>16</sup> *OECD Telecommunication and Broadcasting Review of Mexico 2017*, pages 212-213. Available at: <https://www.oecd-ilibrary.org/docserver/9789264278011-en.pdf?expires=1523753867&id=id&accname=guest&checksum=A6DBE443CC03B4A720DA0AC1DF4533D2>

<sup>17</sup> Initiation decision in Spanish, file AI/DE-002-2017: [http://dof.gob.mx/nota\\_detalle.php?codigo=5496815&fecha=11/09/2017](http://dof.gob.mx/nota_detalle.php?codigo=5496815&fecha=11/09/2017)

<sup>18</sup> Initiation decision in Spanish, file E-IFT/UCE/DGIPM/PMR/0006/2013: **Error! Hyperlink reference not valid.**

rising rival costs in the advertisement on public television broadcasting and cable or satellite television in all the country.<sup>19</sup>

- iii. The IFT undertook an investigation of the alleged unilateral conducts consistent of predatory pricing, price discrimination, raising rival costs, and margin squeeze in the public telephone services to the final user through public telephone devices in all the country.<sup>20</sup>
- iv. The IFT undertook an investigation of the alleged unilateral conduct consistent of the refusal to deal, raising rival costs, and denying access to an essential facility in interconnection services, access to broadband Internet services, direct to business Internet, access and use of shared passive and/or active infrastructure, and dark fibre, all of them nationwide.<sup>21</sup>

### *Investigations Closed in 2017*

123. During 2014, the IFT undertook the investigation of the alleged unilateral conducts consistent of predatory pricing, cross-subsidization, price discrimination, and raising rival costs in the Internet service provision, as well as in the content transmission via Internet and Pay TV in the country. A statement of objections was notified on March 30th, 2017 to Teléfonos de México, S.A.B. de C.V., and on March 31th, 2017 to both Teléfonos del Noroeste, S.A. de C.V. and América Móvil, S.A.B. de C.V. for granting Claro Video free of charge for twelve months to their subscribers, reducing the demand of its competitors in the double play market. Once the trial-like procedure was substantiated, on September 6, 2017, the IFT Board decided to close the file, considering that there are no elements to prove the practice.<sup>22</sup>

### *Unlawful Mergers*

124. During 2017, the IFT initiated *ex officio* an investigation about an unlawful merger in the market for the use, exploitation and commercialization of frequencies of the radio spectrum, to provide the public service of radio broadcasting nationwide.<sup>23</sup>

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<sup>19</sup> Initiation decision in Spanish, file AI/IO-002-2016: [http://dof.gob.mx/nota\\_detalle.php?codigo=5462363&fecha=24/11/2016](http://dof.gob.mx/nota_detalle.php?codigo=5462363&fecha=24/11/2016)

<sup>20</sup> Initiation decision in Spanish, file AI/DE-003-2016: [http://dof.gob.mx/nota\\_detalle.php?codigo=5457066&fecha=18/10/2016](http://dof.gob.mx/nota_detalle.php?codigo=5457066&fecha=18/10/2016)

<sup>21</sup> Initiation decision in Spanish, file AI/DE-002-2016: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5435484&fecha=29/04/2016](http://www.dof.gob.mx/nota_detalle.php?codigo=5435484&fecha=29/04/2016)

<sup>22</sup> IFT Board decision in Spanish, file UCE/DE-001-2014: [http://apps.ift.org.mx/publicdata/VP\\_P\\_IFT\\_060917\\_545.pdf](http://apps.ift.org.mx/publicdata/VP_P_IFT_060917_545.pdf)

<sup>23</sup> Initiation decision in Spanish, file AI/IO-001-2016: [http://dof.gob.mx/nota\\_detalle.php?codigo=5448847&fecha=22/08/2016](http://dof.gob.mx/nota_detalle.php?codigo=5448847&fecha=22/08/2016)



## 10.2. Mergers and Acquisitions

### 10.2.1. Description of Cases

#### *Telcel/MVS*<sup>24</sup>

125. On April 27, 2017, the IFT authorized Telcel to acquire 60 MHz of radio spectrum in the 2.5 GHz band, through the acquisition of a MVS Multivision's subsidiary (DIGICRD). The acquired undertaking held 43 concessions to use or exploit that spectrum band, whose scope included 1,759 localities and 75.41% of the national population. The 2.5 GHz band is ideal for the provision of mobile telecommunications services (MTS) –that include telephony, internet and messages– whose demand has shown an increasing trend.

126. In this case, the IFT assessed the possible effects of allowing the economic agent best positioned in the provision of MTS to acquire the 60 MHz in the 2.5 GHz band. Through this transaction, the buyer would acquire an input, but not final users. The spectrum holder (MVS – DIGICRD) used to provide pay TV services via microwaves to final users. DIGICRD used an outdated technology in the licensed spectrum in the 2.5 GHz band and was serving a marginal demand.

127. Additionally, the licenses include an obligation to provide broadband wireless access in the short term<sup>25</sup>. Compliance with this obligation will be assessed by the IFT in a different procedure. As part of their pre-merger agreement, parties also informed of their intention, subject to merger authorization, to suspend pay TV services through the licensed spectrum, in order to make the necessary technological changes to comply with the obligation to provide broadband wireless access.

128. The IFT determined that as a result of the merger Telcel would accumulate up to 29.77% of the total spectrum available for MTS. This estimation included the spectrum allocated and available within the next two years in the following bands for MTS: 700 MHz, 800 trunking, 800 cellular, PCS (1900 MHz), AWS (1.7-2.1 GHz) and 2.5 GHz. The assessment also took into consideration that the 2018 auction announced by the IFT would allocate the rest of the spectrum available in the 2.5 GHz Band (120 MHz) in which other IMT operators would be able to compete for some of this spectrum.

129. The Institute concluded that this level of spectrum accumulation would not limit the availability of this input for the entry of new competitors or for the expansion of the current ones, nor would it generate barriers to entry or effects contrary to the process of economic competition in the provision of mobile telecommunications services.

<sup>24</sup> Case number UCE/CNC-003-2016. The redacted version of this decision is available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones\\_pleno/acuerdo\\_liga/version\\_publica\\_uce\\_270417\\_221.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones_pleno/acuerdo_liga/version_publica_uce_270417_221.pdf)

<sup>25</sup> By the end of 2017, extendable for one year.

*AT&T/ Time Warner*<sup>26</sup>

130. On August 15th, 2017, following a judiciary sentence<sup>27</sup>, the IFT reviewed and imposed conditions on the authorization of the AT&T/Time Warner merger within telecommunications markets in Mexican territory<sup>28</sup>.

131. Time Warner is a worldwide firm that produces, aggregates and provides audio-visual content to several delivery platforms. In Mexico, it is one of the main providers of pay TV channels, and operates through three divisions: Turner, HBO and Warner. On the other hand, AT&T is a nationwide mobile carrier in Mexico and participates in the major satellite pay TV service provider (Sky Mexico), where its majority partner is Grupo Televisa—the leading provider of audio-visual content in Mexico for pay TV services and the largest pay TV network carrier (including cable networks).

132. The IFT determined that this merger:

- i. Would allow AT&T to improve its position to develop and provide video services across multiple platforms, including AT&T's mobile networks.
- ii. Would not generate risks to competition within the mobile telecommunications markets because, among other elements, AT&T faces strong competitors, including Telcel. The same conclusion was reached concerning other markets, such as the provision of over the top distribution services (OTT) of audio-visual content by subscription, and access to audio-visual content for programmers of channels of pay and open television.
- iii. Could hamper competition in the relevant market defined as the provision of programming channels to pay TV carriers, and the related market defined as pay TV services to final users. The association of AT&T with Grupo Televisa in Sky México would create incentives for AT&T /Time Warner to: (a) unilaterally deny access to licensing of channels to third parties that compete with Grupo Televisa's carriers, (b) raise barriers to entry and foreclose third parties from the related market of pay TV services, by controlling access to relevant programming channels, and (c) coordinate or exchange information with Grupo Televisa, instead of competing independently, in the provision of programming channels for Pay TV.

133. In order to prevent anticompetitive effects that may result from the merger, the Institute decided to authorize it subject to conditions that oblige AT&T/Time Warner to:

- i. Maintain independence, in terms of decision-making and information flow, between Sky Mexico and Time Warner; and between HBO Latin America and the rest of AT&T/Time Warner and, therefore, with Sky Mexico.

<sup>26</sup> Case number UCE/CNC-004-2016. The redacted version of this decision is available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones\\_pleno/acuerdo\\_liga/version\\_publica\\_uce\\_p\\_ift\\_250117\\_52.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones_pleno/acuerdo_liga/version_publica_uce_p_ift_250117_52.pdf)

<sup>27</sup> It corresponds to a specialized Court on the Competency Conflict 1/2017, whose summary is provided in section 1.2 of this report.

<sup>28</sup> The COFECE carried out the evaluation of the concentration and issued the corresponding decision in the other markets that are not part of the IFT's jurisdiction.

- ii. Attend all requests for access to its pay television programming channels by third-party providers of pay television service, offering similar terms and conditions as those granted in comparable requests.

*Century Link/ Level 3*<sup>29</sup>

134. On September 25th, 2017, the Institute authorized that CenturyLink Inc. (CenturyLink) acquire all the shares of Level 3 Communications Inc. (Level 3) and the three subsidiaries of Level 3 in Mexico.

135. CenturyLink did not have any prior direct or indirect participation in the provision of services or products for the telecommunications and radio broadcasting sectors in Mexico. Level 3 is a small participant in several telecommunications markets. It operates an optic fibre network that connects Mexico City, Querétaro, Guadalajara, Monterrey, Laredo, Reynosa, Mazatlán, and Tijuana, and operates a submarine cable that connects the cities of Mazatlán and Tijuana with the western coast of the United States of America, Costa Rica and Panamá.

136. As this merger would result in the substitution of a small participant in the telecommunications sector in Mexico, with other with no prior participation in the market, the Institute concluded that the structure of the markets would not change, and that it did not generate risks to competition.

*MATC Digital/ American Tower*<sup>30</sup>

137. On October 18th, 2017 the IFT authorized that MATC Digital, S. de R.L. de C.V. acquire assets, consisting of 142 telecommunications towers, from Axtel, S.A.B. de C.V. (Axtel). MATC was identified as an entity that belongs to the group of economic interest (GIE) controlled by American Tower Corporation (Grupo ATC). In Mexico, Grupo ATC participates in the telecommunications sector, mainly through the leasing of sites in towers and auxiliary infrastructure to telecommunication carriers.

138. In its analysis, the Institute did not foresee that this merger had or could have the purpose or effect of conferring substantial power to ATC, nor did it establish barriers to entry, preventing third parties from accessing the corresponding services and/or facilitating the exercise of conducts prohibited by the LFCE. To reach this conclusion, the Institute considered that, because of this acquisition: (i) the increase in the number of ATC national towers was marginal; (ii) the infrastructure was formerly used only by Axtel and after the merger it would increase the supply for other carriers; and (ii) that the Grupo ATC faces important nation-wide competitors.

<sup>29</sup> Case number UCE/CNC-001-2017. The redacted version of this decision is available in Spanish at: [http://apps.ift.org.mx/publicdata/VP\\_P\\_IFT\\_250917\\_593.pdf](http://apps.ift.org.mx/publicdata/VP_P_IFT_250917_593.pdf).

<sup>30</sup> Case number UCE/CNC-002-2017. The redacted version of this decision is available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones\\_pleno/acuerdo\\_liga/version\\_publica\\_uce\\_270417\\_221.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones_pleno/acuerdo_liga/version_publica_uce_270417_221.pdf).

## 11. The Role of Competition Authorities in the Formulation and implementation of other Policies

139. Since its creation in 2013 the IFT has actively issued regulations to implement the constitutional and legal reform for the telecommunication and broadcasting sectors aimed to stimulate their efficient development and strengthen competition. As a sectoral regulator, the IFT adopts competition principles and criteria and pursues competition objectives, for which it has established an active internal collaboration among the competition and other specialized areas in order to integrate competition perspectives into major policymaking procedures. The following sections provide relevant examples of IFT's decisions based on competition assessments.

### 11.1. Competition Opinions and Resolutions regarding Regulatory Procedures

#### 11.1.1. Measures imposed to Preponderant Economic Agents<sup>31</sup>

140. In March 2014, the IFT declared the existence of preponderant economic agents (AEP, by its Spanish acronym) in the telecommunications and in the broadcasting sectors, and imposed to them asymmetric regulation (measures) in order to prevent them from restricting competition and free market access<sup>32</sup>. It also established a biennial review in order to suppress or modify them, or to impose new ones, based on an assessment of their impact in competition conditions.

141. In 2017, the IFT carried out the first biennial review of the 2014 measures based on a competition assessment, and decided to amend some measures and impose new ones. A brief description of the most relevant changes is provided in the following table.

**Table 7.**

AEP in Telecommunications	AEP in Broadcasting
Functional separation: The IFT ordered Telmex/Telnor to create a legally separated company to exclusively provide wholesale services related to local access. The two companies will have to be governed by independent bodies.	Relevant content: the AEP is not allowed to obtain, directly or indirectly, exclusive rights to retransmit relevant audio-visual content in broadcasted television, unless it also obtains the rights to sub-license them to other broadcasters.
Non-discriminatory treatment: Measures were issued relating to equivalence of inputs, and to technical and economical replicability with respect to the provision of wholesale fixed and mobile services.	Accounting separation: rules for accounting separation were strengthened.
Economic replicability: the AEP's retail rates must be replicable by other carriers that use regulated wholesale services, applying the equally-efficient carrier standard and a methodology of long-run incremental costs.	

142. The functional separation order issued by the IFT constitutes the first case in which a Mexican authority uses its powers to order the separation of an entity, pursuing competition objectives.

<sup>31</sup> Public versions of both resolutions are available at: <http://www.ift.org.mx/conocenos/pleno/sesiones/iv-extraordinaria-del-pleno-27-de-febrero-de-2017>.

<sup>32</sup> A press release in English is available at: <http://www.ift.org.mx/node/2660>.

### *11.1.2. Public Auctions of Radio Spectrum*

143. Electromagnetic spectrum constitutes a necessary input to expand and modernize the provision of quality telecommunication services at affordable prices and offering access to a progressively larger population nation-wide. The IFT, as administrator of the Mexican national spectrum policy, aims to increase the availability of this resource to the markets through competitive mechanisms (i.e. public auctions).

144. The IFT performs a review of interested participants in public spectrum auctions in order to decide if the potential acquisition of additional spectrum concessions could harm competition and free market access. During 2017, the IFT issued opinions to those agents interested in public spectrum auctions IFT-5 (provision of capacity for private radio-communication systems) and IFT-6 (digital broadcast television).

145. In auction IFT-6, it was reckoned that four interested participants could damage competition because of their affiliation with undertakings belonging to Grupo Televisa, which controls the largest commercial network in broadcasted digital television. In those cases, the IFT authorized their participation subject to the termination of their affiliation agreements with Grupo Televisa. The rules of this auction provided economic incentives to favour the entrance of new competitors in the markets. The competition assessments also served to identify which interested parties complied with the requirements to be considered as new competitors.

### *11.1.3. Economic Competition Assessment in Regulatory Procedures.*

146. In 2017, the IFT performed 1,167 assessments on economic competition regarding transactions involving concessions, such as granting, transferring, migration and amendment that are subject to administrative proceedings that require a competition assessment, which is conducted applying criteria contained in the LFCE for merger evaluation.

147. When the IFT detects that operations involved in the regulatory procedures analysed had or could have the object or effect to damage competition in the corresponding markets/services, the IFT has recommended the implementation of certain actions and measures. The following stand out:

- i. Regarding 65 cases of extension of broadcasting concessions, the competition assessment revealed high levels of concentration in the respective service areas. As a result, the Institute determined more than 50 frequencies subject to commercial use and considered them for auction in its Annual Frequency Band Programs (PABF) for the years 2017 and 2018.
- ii. In the *Frequency Migration Guidelines*, which allocate scarce FM radio frequencies among former AM licensees, based on competition considerations, the IFT adopted criteria to favour new entrants and the expansion of smaller operators. To this end, the request of each undertaking was first assessed considering the number of frequencies already granted to its GIE (i.e. all the persons under the same controlling entity or influence). Then, it favoured the selection of applicants whose GIE had the smallest number of FM frequencies both in the relevant area and at the national level. From the 83 applications received, 43 were not authorized for such reasons.
- iii. Even the requests for concessions to use spectrum for social use to provide broadcasting services are subject to a competition assessment. In 2017, the

Institute decided not to authorize 11 of them, having detected that the evaluated applicants already had broadcasting concessions in the corresponding areas, which would generate incentives to accumulate spectrum for social use and prevent the entry of competitors in the commercial radio service.

- iv. When applicants request frequencies in the same area, exceeding the availability of frequencies, the IFT decision follows the same criteria referred in subparagraph (ii) above, in order to encourage the entry of new participants and pro-competitive expansions of smaller participants, and to avoid the hoarding of spectrum and the creation of barriers to entry.

## 11.2. Implementation of other Provisions

### 11.2.1. *Opinion for the Energy Regulatory Commission*

148. The Energy Industry Act authorizes the Energy Regulatory Commission (CRE, for its Spanish acronym) to regulate the electricity industry, which is comprised by the National Energy System (SNE, for its Spanish acronym), subject to specific principles such as efficiency, quality, reliability, continuity and safety, as well as promoting investment and competition in the sector.

149. In October 2017, the CRE requested an opinion to the IFT on the “*Preliminary draft for the issuance of administrative provisions to allow access to telecommunication services providers to infrastructure and rights of way pertaining to the SNE*”, whose purpose was to establish the technical, administrative and economic conditions to allow access to the poles of the SNE. These conditions will be of mandatory observance for the access providers who are responsible for the physical control of the infrastructure.

150. The IFT considered that the draft provided:

- i. An increase in available capacity on the access points in the facilities of the SNE, since it explicitly mentioned the facilities subject to the access obligation;
- ii. A reduction of costs for the deployment and expansion of terrestrial telecommunications networks and, consequently, an increase in the coverage of public telecommunications services;
- iii. Transparency, by issuing the criteria to determine the capacity of the poles subject to the access of service providers, as well as the conditions to be met by access requesters and guidance to solve shortages on services;
- iv. Non-discriminatory conditions in access provision to the poles;
- v. The use of cost-based rates, by issuing the criteria to determine the cost for transport companies and distributors that allow them to recover infrastructure costs and to invest on the expansion of capacity.

151. To strengthen the draft, the IFT recommended:

- i. To keep the records of the activities carried out by access providers which are useful to assess the compliance with the provisions;
- ii. To standardize the criteria for conducting auctions to award the last access point available;
- iii. To allow access providers to request consultations with the IFT on competition issues;

- iv. To adopt a transparent policy on discounts in order to avoid providing advantages to large providers with respect to smaller ones.

### *11.2.2. Technical Support on Trade Negotiations*

152. Along 2017 the IFT offered technical assistance relative to competition issues to the executive branch during the negotiation of a number of trade agreements, namely those with Canada and the United States of America, the European Union, the European Free Trade Association and Argentina.

## **12. Resources of competition authorities**

153. The Federal Spending Budget for the 2017 fiscal year allocated MXN \$2,111,140,000 (approximately USD \$111 million) for the IFT.

154. Human resources focused on enforcement against anticompetitive practices, merger review and advocacy efforts are concentrated in the Investigative Authority (AI), the Economic Competition Unit (UCE) and the Legal Affairs Unit (UAJ) offices.

**Table 8. IFT's Human Resources**

	UCE	AI	UAJ
Substantive staff	53	59	54
Supporting staff	2	3	5
Total	55	62	59

### **12.1. Advocacy efforts**

155. On September 27 and 28, 2017, the IFT organized the third edition of the "Challenges of Competition in Telecommunications and Broadcasting" forum, which featured the participation of international experts from, among other institutions, Stanford University, the US Department of Justice, the National Competition Authority of France, the University of Aalborg in Denmark, and the Argentine Commission for the Defense of Competition.