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

Annual Report on Competition Policy Developments in Mexico

-- 2018 --

5-7 June 2019

This report is submitted by Mexico to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Mexico - COFECE

1. Executive Summary

1. Regarding law enforcement regulation, in 2018, the Federal Economic Competition Commission (COFECE or Commission) made amendments to the Regulatory Provisions of the Federal Economic Competition Law. A bill to modify the Federal Economic Competition Law (FECL) was presented at the Mexican Senate to create an Advisory Council for the Commission.

2. This year, enforcement continued to focus on high-visibility cases, judicial battling average held up at 82.2%. COFECE received 46 complaints on anticompetitive practices and other restrictions to competition, of which three led to new investigations (cartels and abuse of dominance); it initiated seven *ex officio* investigations on anticompetitive practices, and one investigation on barriers to competition and essential facilities (also known as market inquiry). The Commission imposed fines totaling an approximate of 41.2 million USD¹ (781.9 million Mexican Pesos). This year, 66 *amparos* were admitted by Specialized courts in competition, of which only eight were granted.

3. COFECE continued its enforcement work in strategic sectors identified in its 2018 - 2021 Strategic Plan. A selection of the most significant cases is presented in the report, including the market inquiry in the card payment system, a probe into the market of credit information, the market for LP Gas and an investigation on no-poach agreements in the market for the recruitment of soccer players, among others.

4. This year COFECE made a reduction of the average response time in non-complex merger cases, processing them in 18.1 days out of the 60 maximum days established by the FECL; 173 mergers were authorized, one subject to conditions, and three deals were blocked. Authorized mergers in 2018 were valued in total at an approximate of 334.14 billion USD² (6 billion, 335 thousand 331 million Mexican Pesos). Seven mergers led to an in-depth review, among which is the Bayer/Monsanto transaction, which was approved with conditions.

5. Regarding advocacy efforts, in 2018 the Mexican Fintech Law was enacted with COFECE's procompetitive recommendations. Also, this year the Commission issued opinions on the national banking fees, the Mexican Official Standard for powdered milk, the state of Tabasco's public procurement and infrastructure laws, among others.

6. COFECE issued new reports and market studies on competition policy issues, such as: "A Competition Agenda Towards Integrity in Public Procurement", "Transition Towards Competitive Energy Markets: LP Gas", and "Rethinking Competition in the Digital Economy".

¹ The exchange rate used throughout COFECE's report is an average of 2018's daily exchange rates: one USD = 18.96 MXN, unless otherwise stated. For MXN: 1 billion = 1,000,000,000,000. For US USD: 1 billion = 1,000,000,000.

² *Ibidem*.

2. Changes to competition laws and policies, proposed or adopted

2.1. Summary of new legal provisions of competition law and related legislation

7. In February 2018, COFECE's Board of Commissioners modified the Regulatory Provisions of the FECL, through Agreement No. CFCE-026-2018.³ Amendments strengthened and clarified procedures and terms of the Investigation Authority, the merger review, the dawn-raids, the trial-like procedure, the analysis of licenses, concessions and permits, and the enforcement of cautionary measures and fines.

2.2. Other relevant measures, including new guidelines

8. In February 2018, COFECE's Board of Commissioners approved the Austerity guidelines for the management of the Federal Economic Competition Commission (COFECE).⁴

9. In October 2018, COFECE published two guidelines in the Federal Official Gazette. These are: the Agreement that contains the Guidelines for the Federal Economic Competition Commission's Institutional Archive System⁵ and the Guidelines for the dissemination of resolutions issued by COFECE's Board of Commissioners.⁶ Both documents were approved by the Board of Commissioners.

2.3. Government proposals for new legislation

10. In November 2018, the *Encuentro Social*⁷ parliamentary group presented a bill in which diverse articles from the FECL are modified and added. The Senate Committee sent said bill to the United Economic and Legislative Study Commissions. It has been approved by the Commissions, but it is still pending to be voted by the full Senate. It will then have to continue its legislative process at the Chamber of Deputies.

11. The bill proposes the creation of an Advisory Council for COFECE founded on the need for citizens' participation and involvement. It also establishes that the Advisory Council members will be appointed, after holding a public consultation, by COFECE's Board of Commissioners, with a majority vote. Gender equality will be guaranteed in the composition of the Council. The Commission will determine internal methods for the proposal of appointments to the Council. The call for their election will be public and directed at academic and investigation institutions, associations and professional associations, and society. COFECE will determine and approve the Council's Rules of Operation.

³ See publication in the Federal Official Gazette in Spanish at: <http://bit.ly/2JsSRrj>

⁴ See Guidelines issued by COFECE, published in Spanish in the Federal Official Gazette at: <http://bit.ly/2QgqNrx>

⁵ See Guidelines issued by COFECE, published in Spanish in the Federal Official Gazette at: <http://bit.ly/2Emcop4>

⁶ See Guidelines issued by COFECE, published in Spanish in the Federal Official Gazette at: <http://bit.ly/2ElJsgK>

⁷ *Encuentro Social* is a political party.

12. The bill also proposes that the Advisory Council shall have powers to issue annual reports on its own performance and work, which will be sent to the Senate; issue non-binding opinions directed to the Commission on relevant matters of economic competition, as well as technical opinions for the continuous improvement of the exercise of COFECE's substantive functions.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive conducts, including agreements and abuses of dominant positions

13. During 2018, COFECE received 46 complaints on anticompetitive conducts and other restrictions to competition, of which three led to new investigations (cartels and abuse of dominance).

3.1.1. Summary of activities of:

COFECE

Table 1. Anticompetitive practices and other restrictions to competition

2018				
Complaints				
	Cartels	Abuse of Dominance	Unlawful mergers	TOTAL
Received	9	37	0	46
Analysis Concluded	8	34	0	42
Leading to investigations	0	3	0	3
Dismissed	8	31	0	39
Integrated into another file	0	0	0	0
Investigations				
Initiated	4	3	0	7
Concluded investigations	6	4	1	11
No evidence of anticompetitive practice	1	1	0	2
Notification of probable responsibility	4	3	0	7
Early closure with commitments	0	1	1	2
Trial-like procedures				
Statement of probable responsibility issued	5	2	0	7
Trial-like procedures concluded	2	3	0	5
Sanctions imposed	2	0	0	2
Closed without liability	0	0	0	0
Closure with commitments	0	3	0	3

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and Internal Statistics.

Table 2. • Barriers to competition and essential facilities (market inquiry)

2018

Market Inquiry					
	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	Total
Admitted	0	0	0	1	1
Concluded	0	0	1	1	2
Statement of Probable Responsibility issued	0	0	1	1	2
Closed: no evidence found	0	0	0	0	0
Phase II					
Statement of Probable Responsibility issued	0	0	1	1	2
Phase II proceedings concluded	0	0	0	0	0
Pending for the next period	0	0	1	1	2
Statements of substantial market power and opinions on the existence of effective competition					
Admitted	0	0	1	0	1
Concluded	1	0	0	0	0
Statement of Probable Responsibility issued	0	0	0	0	0
Closed: no evidence found	0	0	0	0	0
Phase II					
Statement of Probable Responsibility issued	0	0	0	0	0
Phase II proceedings concluded	1	0	0	0	1
Pending for the next period	0	0	0	0	0

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and Internal Statistics

Table 3. Fines imposed (in USD)

2018

Cartels	Abuse of Dominance	Unlawful mergers	Breach of commitments	TOTAL
12,467,778	3,327,532	0	\$22,062,728	37,858,038

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and Internal Statistics

Table 4. Fines imposed (in USD)

2018

	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	TOTAL
Total value	6,093,982	723,899	27,422,660	7,001,582	41,242,123
Enforcement measures	141,944	723,899	2,032,401	485,842	3,384,085
Sanctions for breaching the Law	5,952,038	0	25,390,260	6,515,740	37,858,038

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and Internal Statistics

Specialized Courts on Competition:

14. In 2018, the Judiciary confirmed 82.2% of COFECE's decisions. This outcome is the result of the Commission presenting vigorous and robust cases that effectively communicate its decisions and ensuring soundness of its arguments and better compliance with procedural rules.

Table 5.

	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER
Pending from the previous period	93	103	108	103
Admitted/Received	20	16	9	21
Not admitted	0	1	1	1
Resolved by the Judiciary	10	10	13	12
Amparos dismissed	3	2	7	3
Amparos denied	5	6	3	8
Amparos granted	2	2	3	1

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and internal statistics.

3.1.2. Description of significant cases, including those with international implications.

15. In 2018, COFECE intervened in those sectors identified as strategic in its 2018 - 2021 Strategic Plan (public procurement, financial, agri-food, energy, transport, health sector) as well as others. The following are a selection of the most relevant cases.

Public Procurement

Condom and latex catheter suppliers for bid rigging in public procurement in the health sector⁸

16. In March 2018, COFECE's Board of Commissioners determined that five companies, as well as seven individuals, carried out absolute monopolistic practices (collusive agreements or cartels) in the market for the production, distribution and commercialization of latex condoms and catheters, purchased in Mexico by the public health sector institutions.

17. The behaviors, in addition to affecting the process of competition, infringe upon the public purse, as they resulted in the payment of premiums on these products to the tune of approximately 501 thousand USD (9.5 million Mexican Pesos) in 2011, approximately 596 thousand USD (11.3 million Mexican Pesos) in 2012, and approximately one million USD (19.2 million Mexican Pesos) in 2013. Consequently, COFECE's Board of Commissioners imposed fines amounting to approximately 5.9 million USD, (112 million 850 thousand 638 Mexican Pesos).

Market for media monitoring services supplied to public agencies⁹

18. In January 2018, the Board of Commissioners confirmed that three media monitoring companies and one individual that operated under a commercial name, as well as the individuals representing the companies, fixed the prices in economic proposals and quotes in market research carried out by diverse public agencies. Additionally, these same economic agents arranged or coordinated bids and/or agreed on the suppression of

⁸ The Final Resolution in Spanish, under file: DE-024-2013 is available at: <http://bit.ly/2EeiDLF>

See press release in English: <http://bit.ly/2LVWnfU>

⁹ The Final Resolution in Spanish, under file: IO-006-2015 available at: <http://bit.ly/2EAoKKy>; The press release is available in English at: <http://bit.ly/2VRUtRR>

technical or economic proposals in the procurement procedures known as ‘invitation to no fewer than three suppliers’.

19. The conducts occurred between 2012 and 2016 and had the purpose of benefiting one of the firms through the award of monitoring services contracts. The Board of Commissioners substantiated that the company and the individuals whom represent the company coordinated technical and/or economic proposals, as well as the quotes their competitors signed and submitted to the convening officials. The agents that helped the company benefitted by the agreements, either through a subcontract or assignment of a related service. The aforementioned implied anticompetitive agreements in at least 24 procurement procedures carried out by diverse government agencies. It is estimated that the overprice awarded to the most favored firms reached an average of 14.5%, which resulted in damages of approximately 165 thousand USD (3 million, 144 thousand and 865 Mexican Pesos) in public resources which could have been allocated to other public needs.

20. Because of the latter, COFECE’s Board of Commissioners sanctioned the collusion participants three companies and five individuals- by imposing fines totaling an approximate of 382 thousand USD¹⁰ (7 million, 255 thousand, 121 Mexican Pesos). The Board also ordered that the public version of the resolution be forwarded to the Ministry of Public Administration and the heads of the public agencies that were affected by the conducts, for all legal purposes that may take place.

Financial Sector

Card payment system market¹¹

21. COFECE’s Investigative Authority opened a market inquiry in the card payment system market, in October 2018, as it found elements to presume lack of effective competition conditions or barriers to competition. The probe comprises rates, quotas and protocols carried out by clearinghouses to process card payments for the purchase of goods and services. According to Banco de México, in 2017, card payments to businesses amounted to an approximate of 89 million USD (1.7 billion Mexican Pesos).¹²

Market for the generation, processing and commercialization of credit information¹³

22. In January 2018, COFECE notified diverse economic agents of a statement of probable responsibility for possible relative monopolistic practices (the Mexican term referring to abuse of dominance, terms will be used interchangeably) in the market of credit information.

¹⁰ *Ibidem*

¹¹ See press release in English: <http://bit.ly/2Ek6Taq>

¹² It includes the transactions carried out at point of sales terminals. Data from Banco de México, available in Spanish at: <http://bit.ly/30yWCkn>

¹³ See press release in English: <http://bit.ly/2WTvXfL>

Energy Sector

Market for LP gas¹⁴

23. In February 2018, COFECE began an investigation of possible absolute monopolistic practices that resulted from a complaint, in the market for the distribution and commercialization of liquified petroleum gas (LP gas) in the country. LP gas is the most commonly used fuel to cook and heat water, and is bought by over 90 million Mexicans. Households allocate, on average, 4.4% of their total budget to the purchase of gas and electricity for their homes. This fuel is also fundamental for commerce, industry and service sectors such as for food preparation, the hotel industry and transportation, among others. As a result of the energy reform, the prices of this fuel were deregulated in January 2017 to be determined by the free interaction between supply and demand.

Fine imposed on the state-owned enterprise Pemex Tri for breaching of commitments¹⁵

24. In August 2018, COFECE fined the state-owned enterprise Pemex Tri for breaching of commitments to protect competition in the market for the commercialization and distribution of special marine diesel and other petroleum products, reached between COFECE and Pemex Tri in 2016. The fine amounted to an approximate of 22 million USD (418 million 309 thousand Mexican Pesos). The commitments included the annual presentation of an external auditor's report on the conditions under which Pemex TRI grants benefits in terms of first-hand sales and commercialization of all oil products (gasoline, diesel, jet fuel, intermediate fuel oil and fuel oil). The purpose of the report is to verify that all competitors in the market receive equal treatment by the company. The commitments stipulate the delivery of said report during the first quarter of each year, over a period of five calendar years, as of the first quarter of 2017. The first report was delivered extemporaneously, almost one year over the stipulated delivery date. The delayed presentation of the audit hinders COFECE's access to a fundamental requirement for its verification of Pemex TRI's compliance with the commitments set forth in the commitments.

Transport Sector

Market for securities' custody, transportation and processing services for colluding to fix prices and market segmentation¹⁶

25. The daily transactions of diverse businesses, as well as banks, require services for the transportation and custody of securities, which consists in the reception and delivery of said securities via ground transportation units. The Commission fined seven companies involved in the transportation and custody of securities, as well as ten individuals, for colluding to fix prices and market segmentation. The fines totaled an approximate of 6.5 million USD (123.5 million Mexican Pesos).

¹⁴ See press release in English: <http://bit.ly/2YDh2a4>

¹⁵ See press release in English: <http://bit.ly/2VMiAS1>

¹⁶ See press release in English at: <http://bit.ly/2YQOCt0>

Healthcare Sector¹⁷

26. In 2016, the journalistic report known as the Panama Papers recounted a possible unlawful merger in the market for pharmaceuticals, which involved two distributors. In consequence, the Commission initiated an investigation. In October 2018, two economic agents, one that participated directly and another one with an indirect participation in the unlawful merger, presented and accepted commitments to restore competition in the wholesale commercialization of pharmaceutical, personal care and beauty products nationwide, which resulted in the early closure of the investigation.

Labor Market¹⁸

27. For the first time, in 2018 COFECE opened an investigation on no-poach agreements in the market for the recruitment of soccer players. The possible commission of absolute monopolistic practices also known as collusive agreements or horizontal restraints in the recruitment and hiring process of human resources, would imply a set of anticompetitive conducts that hinder employee mobility in the job market, which would require enforcement of the FECL.

Entertainment Market¹⁹

28. COFECE authorized, with amendments, the commitments presented to restore competition by the members of a prominent economic group in the market for the production of live events, the operation of entertainment centers and automated ticket sales in Mexico. The former resulted from an investigation initiated by the Investigative Authority in December 2015, for tied sales for ticketing and administration of event production and/or venue.²⁰

Industrial Inputs²¹

29. An investigation into probable relative monopolistic practices (conditioned sales and exclusivity clauses) was brought to an end when the companies investigated committed to restore competition in the markets for the distribution of bulk industrial oxygen, nitrogen and argon.

30. In April 2014, the Investigative Authority initiated a probe resulting from probable abuse of dominance conducts in the market for gases delivered via tanks and stored in cryogenic containers on site at the customer's location, which are used in a variety of industries including steel, glass, plastic, ceramic, mining, hydrocarbon, poultry,

¹⁷ See press release in English: <http://bit.ly/2JTQT2A> ; See final resolution in Spanish: <http://bit.ly/2VGWn2X>

• ¹⁸ See notice of initiation of investigation in Spanish: <http://bit.ly/2HrSbjA> See press release in English: <http://bit.ly/2YElxzT>

¹⁹ See final resolution in Spanish: <http://bit.ly/2HsAJeR> See press release in English: <http://bit.ly/2Y EJ3hj>

²⁰ Public information available in CIE's 2017 Annual Report, in Spanish, at: <http://bit.ly/2QozUXa>

²¹ See final resolution in Spanish: <http://bit.ly/2HqgnD0>; See press release in English: <http://bit.ly/2JRFHn9>

agriculture, textile, cement, metallurgic, pharmaceutical, chemical, construction and water treatment.

31. During the proceedings, the companies under investigation exercised their right to present commitments to restore competition for the early closure of the file, as stipulated in the FECL. COFECE deemed the proposed commitments as suitable and economically viable. Among the commitments acquired by these companies are:

- Elimination of exclusivity clauses concerning the supply of gases sold.
- Limit exclusivity clauses to the use of the cryogenic tank and infrastructure which firms invested in. This would allow competitors to install tanks on the same property, thus exclusivity is not extended to the totality of the customer's factory or their buyer's facilities.
- Limit the automatic renewal of supply contracts to one year with the possibility of customer interruption of the contractual relation. In case of early termination, penalization shall be for amounts that will allow competitors to contend each contract.
- All commitments will be eligible and applicable in the universe of contracts (current and new) among these companies and their customers

3.2. Mergers and acquisitions

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

32. During 2018, COFECE's average response time in non-complex merger cases was 18.1 days.

33. This year, 171 mergers were authorized, and three deals were blocked: 1) Organización Soriana, S.A.B. de C.V./Wal-Mart de México, S.A.B. de C.V.; 2) CCM SOR, S.A. DE C.V. / INMOBILIARIA GLEZNOVA, S.A. DE C.V. / ORGANIZACION SORIANA, S.A.B. DE C.V. / QDR REALESTATE, S.A. DE C.V.; and 3) the Rheem-Grupo Industrial Saltillo transaction.

Table 6. Mergers

2018

	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	TOTAL
Received in 2018	59	47	40	37	183
Analysis concluded	38	77	37	31	183
Authorized	34	74	36	29	173
Subject to conditions	0	1	0	0	1
Rejected	1	1	1	0	3
Other	3	2	0	2	7
Pending for next period	55	21	26	31	N/A

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and Internal Statistics

Table 7. Mergers: Value of transactions (in millions of USD)

2018					
	1 ST QUARTER	2 ND QUARTER	3 RD QUARTER	4 TH QUARTER	TOTAL
Total value	120,373.19	186,262.84	11,555.98	15,949.93	334,141.94
Mergers	34	74	36	29	173
National scope	13,803.67	7,492.10	1,346.13	1,472.93	24,114.83
Number of mergers	20	43	12	9	84
International scope	106,569.51	178,770.75	10,209.85	14,477.00	310,027.11
Number of mergers	14	31	24	20	89

Source: COFECE. Quarterly reports 2018. Available at: <http://bit.ly/2Wfkmug> and internal statistics

3.3. Summary of significant cases.

34. The following seven notified mergers led to an in-depth review in 2018:

3.3.1. Bayer Aktiengesellschaft (Bayer) / The Monsanto Company (Monsanto) File: CNT-024-2017

35. During 2018, COFECE analyzed one of the largest global transactions in the agriculture industry. From an in-depth review, COFECE concluded that with the transaction as initially notified Bayer would become the sole supplier of genetically modified cotton seeds in Mexico and would gain significant market shares in the market for multiple crops, significantly reducing competition on price and innovation in Mexico. Thus, the merger was conditioned to the divestment of the businesses for genetically modified cotton seeds, vegetable seeds and non-selective herbicides businesses. Business days for resolution: 12²²

3.3.2. Grupo Financiero Banorte, S.A.B. de C.V. / Grupo Financiero Interacciones, S.A.B. DE C.V. File: CNT-152-2017

36. COFECE approved the merger between two financial groups that overlapped in the provision of 29 financial products and services. COFECE cleared the transaction, as it concluded that the merger would not adversely affect competition in Mexico, in particular in financial services to local governments where the overlap was most evident. Business days for resolution: 8

3.3.3. Rheem Manufacturing Company / Rheem U.S. Holding Inc. / Grupo Industrial Saltillo S.A.B. de C.V. / INGIS, S.A. de C.V. File: CNT-072-2017

37. COFECE made an in-depth analysis of the merger between the main suppliers of water heaters in Mexico, Rheem, and its competitor Grupo Industrial Saltillo; and found a market with high barriers to entry and with no other competitors to counterbalance the power of the merging entity. Commitments proposed by the parties were insufficient as

²² The duration of in-depth review is measured in accordance with the law, from the moment the Economic Agents present conditions.

they did not avoid negative effects to the structural conditions and on competition. Thus, COFECE blocked the transaction. Business days for resolution: 36

3.3.4. Organización Soriana, S.A.B. de C.V. / WAL-MART de México, S.A.B. de C.V. File: CNT-092-2017

38. COFECE initiated an in-depth review as it had concerns that the acquisition of several convenience stores property of Soriana, a Mexican supermarket chain, by Walmart (as part of a set of divestment measures imposed to close another deal) could restrict competition in the market for retail stores. The transaction was blocked. Business days for resolution: 82

3.3.5. Masisa, S.A. / Inversiones Arauco Internacional Limitada / ARAUCOMEX, S.A. DE C.V. File: CNT-016-2018

39. In 2018, COFECE open an in-depth review on the proposed merger between Masisa, a wood products company, and Arauco, a Chilean forestry company. The parties overlapped in the distribution of particle boards and medium-density-fiber boards in Mexico. To address competition concerns pointed out by the Commission, parties modified their original plan as to exclude from the deal certain production facilities located in Mexico. Business days for resolution: 48

3.3.6. Gemalto N.V. / Thales, S.A. File: CNT-112-2018

40. Following an in-depth review of the proposed merger between Gemalto and Thales, COFECE found that the parties overlapped in the distribution of hardware security modules or HSM. The transaction was approved subject to the compliance of the conditions offered to the European Commission. Business days for resolution: 48

3.3.7. Westinghouse Air Brake Tech Corporation / Wabtec US Rail, INC./ General Electric Company File: CNT-124-2018

41. COFECE approved the merger expected to create a transportation and logistics company. The transaction was cleared, as COFECE concluded that the merger would not adversely affect competition in Mexico. Business days for resolution: 17

4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

42. It is worth mentioning that major concerns in the opinion issued by COFECE in 2017 pointing to possible obstacles to competition in the draft of the Mexican Fintech Law were addressed in the law which came into force in 2018:

4.1. Opinion to the Mexican Senate on the Mexican Fintech Law²³

43. On September 19, 2017, COFECE was notified by the National Commission for Regulatory Improvement (as part of an agreement between that institution and COFECE)

• ²³ See full opinion in Spanish at: <http://bit.ly/2WSj2H>

of a Draft decree to amend several laws pertaining to the Financial Sector and to issue the first Mexican Law to regulate Financial Technology Institutions (Fintech Draft Decree).²⁴

44. On October 19, 2017, COFECE issued an opinion on the Fintech Draft Decree. The Draft Decree's purpose was to regulate the financial services provided by Fintechs, as well as their organization, operation and functioning, and the financial services subject to any special regulations that are offered or carried out by "*innovative means*." User information is essential for new entrants, such as Fintechs, to compete on equal terms with traditional banking and credit institutions. Before the enactment of Fintech Law there was no obligation for traditional financial institutions to provide such information to other market participants. COFECE's recommendations were, to a great extent, related to this subject.

45. On March 9, 2018, Mexico's Fintech Law was published in the Official Gazette. Among COFECE's recommendations adopted by the Mexican Fintech Law were: (i) explicitly recognizing financial information is the clients' property, not the financial institutions'; (ii) facilitating Fintech's access to clients' information under control of traditional financial entities, who had so far been the only participants in the market, by determining regulators would establish non-discriminatory fees for information transmission and conditions under which transmission interruptions were permitted. Fintechs will now have greater possibilities to assess the risk level of each potential client and generate products that respond to their needs accordingly, presenting themselves as an option different from traditional banking. COFECE is now following the development of secondary regulation.

46. In addition, during 2018, COFECE issued several opinions containing recommendations for legal changes directed to competent authorities. Among the most relevant are the following:

4.2. Opinion to the Senate on *draft* regulation of banking fees at the national level²⁵

47. On November 8, 2018, Morena political party presented to the Mexican Senate an "Initiative with a draft decree to amend various provisions of the Law for Transparency and Regulation of Financial Services and the Law of Credit Institutions in the matter of bank charges" (Initiative).

48. On November 21, 2018, COFECE issued an opinion on the Initiative. The Initiative aimed at prohibiting the collection of a set of banking fees in Mexico. COFECE recommended the Senate: i) request that the Bank of Mexico conduct a study on each of the banking fees on its own merits, and ii) if deemed necessary, issue specific regulatory measures to address the market failures identified on a one-on-one basis. This Initiative is still under discussion in the Mexican Senate.

²⁴ National Commission for Regulatory Improvement and the Mexican Competition Commission Agreement available at: <http://bit.ly/2HFomLh>

²⁵ See full opinion in Spanish: <http://bit.ly/2Jtxs10>

4.3. Opinion to the (Federal) Ministry of Economy to modify an Official Mexican Standard for powdered milk²⁶

49. On November 11, 2017, COFECE was advised by the National Commission for Regulatory Improvement (under the aforementioned agreement) of a Draft Project to issue a Mexican Official Standard to regulate the Commercial Information, Testing Methods and specification of Powdered Milk (Draft).²⁷

50. On July 5, 2018, COFECE issued an opinion which recommended the Ministry of Economy modify the proposed Draft, which intended: i) to establish more restrictive standards than those considered in international benchmarks; ii) to determine a unique set of physicochemical parameters regardless of the productive process the powdered milk would be utilized in; and iii) to include testing methods that are not in line with best practices and could constitute an unduly obstacle to commerce. Due to the dairy deficit in the country, Mexico is the second largest importer of powdered milk world-wide, and the approval of the standard could cause domestic shortages and/or price increases of the product.

51. COFECE's recommendations were taken into account in the draft of final standard as many of the parameters were homologated with international benchmarks and testing methods were changed to be in line with international best practices.

4.4. Opinion to the Governor of Tabasco regarding the decree project of the state's Public Procurement and Public Infrastructure Laws²⁸

52. On September 26, 2018, a reform to the state's public procurement laws passed by the state Congress of Tabasco, significantly increased, without objective substantiation, the authority's margin of discretion in the direct awarding of contracts, by extending exemptions to public bids and increasing options for their direct award, risking the efficient use of the public budget. COFECE submitted the governor of the state a set of recommendations to promote competed public procurement processes and proposed that the state's Congress review the Commission's considerations with the purpose of guaranteeing that the decree complied with the principles of competition and effective use of public funds that are stated in articles 28 and 134 of the Mexican Constitution.

53. However, the decree was passed as it was originally presented regardless of COFECE's recommendations. In turn, COFECE brought the law to the Federal Executive, who is empowered to submit it to the Supreme Court of Justice (SCJN) for the review of its constitutionality. This resource called 'action of unconstitutionality' has not yet been resolved.

²⁶ See full opinion in Spanish: <http://bit.ly/2JZ39yX>

²⁷ The Draft Norm is available in Spanish at: <http://bit.ly/2JOSNS1>

²⁸ See full opinion in Spanish: <http://bit.ly/30snbra>

4.5. Opinion on the exclusivity maintained by ASA to provide jet fuels²⁹

54. On March 8, 2018, COFECE recommended the Ministry of Communications and Transportation (SCT as per its initials in Spanish) eliminate the legal exclusivity granted to ASA, a state-owned company that oversees the management, operations and development of Mexico's airports, to sell, store, distribute and provide jet fuel services (in the Mexican airports). ASA's regime of exclusivity, in addition to affecting retail prices to the detriment of airlines and passengers, was incompatible with the regulatory framework set forth by the Energy Reform, which has the objective, among others, to open all petroleum markets to competition. COFECE's recommendations also included awarding, through an open and competitive process, the contracts for the construction of storage facilities, supply and any other air fuel service in Mexico City's New International Airport.

55. On June 21, 2018, through a publication in the Mexican Official Gazette, the General Directorate of Civil Aeronautics of the Ministry of Communications and Transportation acknowledged the end of ASA's exclusivity to provide jet fuel sales, storage, distribution and supply services.³⁰

5. Resources of competition authorities

5.1. Resources overall (current numbers and change over previous year):

5.1.1. Annual budget (in your currency and USD):

56. The annual budget in 2018 was of equivalent to 32,145,084.65 USD³¹ (618,149,978 Mexican pesos).

5.1.2. Number of employees (person-years):

57. In 2018, 305 collaborators worked on competition enforcement, of which 207 are non-administrative staff. Specifically:

- economists: 87 (28.5%)
- lawyers: 146 (47.8%)
- other professionals: 72 (23.6%) (engineers, political scientists, and foreign affairs specialists, among others)

5.2. Human resources (person-years) applied to:³²

- Enforcement against anticompetitive practices

²⁹ The Energy Regulatory Commission (CRE) then granted permits to import jet fuel to 82 companies.

See full opinion in Spanish: <http://bit.ly/2HCXpYB>

³⁰ Official Gazette Publication available at: <http://bit.ly/2EiAscs>

³¹ Calculation based on an exchange rate of \$19.23 pesos per USD.

³² Some non-administrative staff work in more than one area of competition enforcement; therefore, numbers add up to more than the number of total staff.

- Anti-cartel: 130 public officials
- Dominance/antimonopoly: 126 public officials
- Merger review and enforcement;
 - Mergers: 78 public officials
- Advocacy efforts.
 - 33 on advocacy, 5 on international affairs.

5.3. Period covered by the above information:

58. 2018

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

59. In July 2018, COFECE published the document: “A Competition Agenda Towards Integrity in Public Procurement”, with 13 recommendations (six directed to the executive branch and seven to the legislative branch, both of the federal level) aimed at reducing room for the discretionary application of the procurement laws while fostering competition through a better design of the procedures and the reduction of opportunities for collusion and simulated competition. One recommendation (regarding centralization of procurement of certain goods and services) coincides with a project announced by the Ministry of Finance and Public Credit, the entity who will oversee public procurement processes in México since the entry of the government in December 2018.

60. The Commission published the document “Transition Towards Competitive Energy Markets: LP Gas”, providing a thorough review of different links in the productive chain and recommendations to improve competition in this market, such as promoting the entry of more players in diverse regions of the country, fully exploiting the installed pipeline infrastructure and storage, and the strict enforcement of existing legislation in all links of the chain. This fuel is used by 76% of households in Mexico, therefore increases in LP gas retail prices have significant regressive effects on the lowest-income households, which allocate more than three and a half times their budget on the purchase of LP gas than families with greater financial resources. The study made recommendations to relevant regulatory authorities, such as the Energy Regulatory Commission, in areas such as imports, commercialization, transportation and storage, and distribution.

61. COFECE also published the document “Rethinking Competition in the Digital Economy”, positioning itself as a reference in Mexico and Latin America regarding the challenges faced by competition authorities and sectoral regulators in a context of disruptive (digital) markets. It covers challenges related to the exercise of enforcement powers faced specifically by competition authorities, as well as regulatory design issues that sectoral authorities are confronted with, which present advocacy opportunities for competition agencies.

Mexico - Federal Telecommunications Institute (IFT)

1. Executive Summary

62. The integration of competition and regulatory proceedings has continued under the regime that followed the Mexican Telecommunications Constitutional Reform and the Competition Constitutional Reform in 2013. The IFT, as national competition authority in the telecommunications and broadcasting sectors adopted new provisions in its Statutory Charter to harmonize its operations with the national legal framework. It also issued two Guidelines to provide orientation to the public regarding antitrust proceeding and issued expert opinions to the Mexican government to support international treaties negotiations.

63. During 2018, the IFT processed ten investigations and concluded one trial-like procedure against anticompetitive practices. It also finalized three proceedings related to mergers and acquisitions. It reviewed and issued recommendations for two public bid rules and for its applicants: one to allocate a public-private partnership contract to deploy a National Backbone Network, and another to allocate 120 MHz of radio electric spectrum for mobile services in the 2500-2690 MHz band. Also, as part of a remarkable institutional effort to tackle historical backwardness in the attention of concession-related requests, the IFT carried out the competition assessment of 916 transactions regarding the grant, renewal, and transfer of concessions to provide telecommunications or broadcasting services.

64. Amendments to the accounting separation methodology applicable to preponderant economic agents, declared agents with substantial market power and wholesale shared networks were issued by IFT's Board. Draft amendments to the Regulatory Provisions of the competition law and a draft guide to submit the investigation of market conditions requests in the telecommunications and broadcasting sectors underwent public consultation. Two studies on telecommunications services packaging and discounts and on the audio-visual content market and vertical relations in the telecommunications industry were issued. Two surveys addressed to advertisers and media agencies were carried out as well as other advocacy efforts.

2. Changes to Competition Laws and Policies, Proposed or Adopted

2.1. Summary of new legal provisions of competition law and related legislation

2.1.1. Amendments to IFT's Statutory Charter

65. During 2018, the Board amended IFT's Statutory Charter twice. On July 4, 2018, the IFT published the amendments in the Mexican Official Gazette (DOF) following the obligations outlined in the General Law for the Protection of Personal Data Possessed by Obligated Subjects.³³ To this end, the IFT included in its Statutory Charter various obligations such as:

³³ Published on January 26, 2017 in the Federal Official Gazette, and it is available in Spanish at: https://www.dof.gob.mx/nota_detalle.php?codigo=5469949&fecha=26/01/2017

- the generation of a privacy notice;
 - the obligation to inform the owner of the personal data, through the privacy notice, the treatment that will be given to it;
 - the establishment of policies and programs for personal data protection, mandatory and enforceable within the responsible organization;
 - various functions for the Transparency Units and the Transparency Committees of the obliged subjects, together with the attributions that correspond to them according to the Mexican General Law of Transparency and Access to Public Information³⁴ and the Federal Law on Transparency and Access to Public Information³⁵, which are currently observed in IFT's Statutory Charter.
66. On December 7, 2018, the IFT published further amendments to its Statutory Charter in the DOF,³⁶ which are currently in force, and included some changes to the functions of the Economic Competition Unit (UCE) and the Investigative Authority (AI) of the IFT.
67. Regarding the UCE, the amendments:
- eliminated its obligation to issue competition opinions on telecommunications and broadcasting concessions extensions. Before the amendment, the Statutory Charter ordered such opinions according to legal principles for managing radio electric spectrum, following the Constitution and judicial precedents, but this obligation was not established in the Federal Telecommunications and Broadcasting Law (LFTR). For that reason, some of IFT's decisions were challenged through *amparo* trials questioning that the procedure included a requirement not established in the law. Amendments were adopted to speed the extension of concessions and to adjust the functions of the IFT in line with the LFTR. In spite of such needed amendments, any specialized unit have general powers to request on a case-by-case basis, a competition opinion from UCE to complete their assessment.
68. Regarding the AI, the amendments:
- conferred it powers to receive complaints for violations of the Federal Economic Competition Law (LFCE) and to issue resolutions ordering the opening of investigations, formulating preventions, considering them not presented or dismissing them due to notorious inadmissibility, when appropriate;
 - conferred it powers to receive, to initiate processes and to provide research requests in the markets of the telecommunications and broadcasting sectors, according with provisions of articles 94 and 96 of the LFCE, its Regulatory Provisions and the LFTR;

³⁴ Published on May 4, 2015 in the Federal Official Gazette, and it is available in Spanish at: http://www.dof.gob.mx/nota_detalle.php?codigo=5391143&fecha=04/05/2015

³⁵ Published on January 27, 2017 in the Federal Official Gazette, and it is available in Spanish at: http://www.dof.gob.mx/avisos/2493/SG_090516/SG_090516.html

³⁶ Published on December 7, 2018 in the Federal Official Gazette, and it is available in Spanish at the IFT website at: http://www.ift.org.mx/sites/default/files/contenidogeneral/conocenos/COMPILACIONESTATUT_OORGANICOMODIFICACIONESDICIEMBRE2018.pdf

- redistributed powers to ensure greater agility in the dispatch of matters, as well as consistency with the existing distribution of powers established in the Statutory Charter regarding the attention of public information requests, particularly those related to the AI;
- conferred it powers to receive and process, or reject applications for exemption or reduction of fines submitted by economic agents, pending an investigation of relative monopolistic practices or unlawful concentrations; and redistributed powers to ensure greater speed in the dispatch of matters regarding imposed fines, as enforcement measures, as well as regarding the attention of public information requests.

2.2. Other relevant measures, including new guidelines

2.2.1. Guide to file complaints for monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors, before the Investigative Authority of the IFT.³⁷

69. The LFCE mandates the IFT to provide guides for monopolistic practices and unlawful concentrations investigations, which must be reviewed at least every five years. On December 10, 2018, the IFT published this Guide in the DOF, including information about:

- The anticompetitive behaviors that the AI can investigate;
- What can be understood as an objective cause;
- The ways to start an investigation;
- The requirements that must be met in the writ of complaint;
- The agreements that the AI may render once it receives and analyzes the writ of complaint;
- The reports of any of the anticompetitive behaviors;
- The information classification presented with the writ of complaint.
- The possibility of anonymously reporting anticompetitive conducts or mergers.

70. The purpose of this Guide is to provide orientation to the public, specifically on the information and the supporting documents to satisfy the requirements established in article 68 of the LFCE.

³⁷ The Guide is available in Spanish at: http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/dofpift141118779_1.pdf

The project underwent a public consultation from October 2, 2018 to November 12, 2018. The archive is available in Spanish at: <http://www.ift.org.mx/industria/consultas-publicas/consulta-publica-sobre-el-anteproyecto-de-guia-del-procedimiento-de-dispensa-o-reduccion-del-importe>

2.2.2. Guidelines to file monopolistic practices and unlawful concentrations complaints in telecommunications and broadcasting sectors through electronic means³⁸

71. On December 10, 2018, the IFT published the Guidelines in the DOF, in order to establish the terms applicable to file complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors before the AI through electronic means, as an option to traditional submissions in order to cut the red tape and encourage filing.

72. The use of electronic means to file the complaint is optional and it is established with the purpose of making available to the public an alternative mechanism that reduces the administrative burden and facilitate filing probable existence of anti-competitive behavior complaints prohibited in the LFCE, by making use of information and communication technologies.

73. The complainant may choose to submit the writ of complaint through electronic means or through the filing office of the Federal Telecommunications IFT.

74. The Electronic Reporting System to File Complaints with the AI (SEPDAI, by its acronym in Spanish) is the electronic mean available in the microsite of the AI at the IFT webpage³⁹ through which a complaint can be filed for the probable commission of anticompetitive conduct prohibited by the LFCE and to notify the AI regarding actions set forth in the Guidelines. The system uses the electronic signature granted by the Mexican Tributary Administration System (SAT) for authentication.

2.3. Government proposals for new legislation

2.3.1. Mexico-United States-Canada Trade Agreement (TMEC)

75. In August 2017, the first negotiation round for the modernization of the North American Free Trade Agreement (NAFTA) began. On September 30, 2018, after over a year of negotiations, the governments of Mexico, the United States and Canada reached an agreement to modernize the treaty. Finally, on November 30, 2018, in Buenos Aires, Argentina, in the framework of the G20 Summit, the TMEC was signed by the Heads of State. Chapter 21 is dedicated to the Competition Policy.⁴⁰

2.3.2. Free Trade Agreement between the European Union and Mexico (TLCUEM)

76. In April 2018, the European Union and Mexico concluded negotiations for a new Comprehensive Agreement that includes political, economic and cooperation aspects,

³⁸ It is available in Spanish at the IFT's webpage at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/dofpift141118778.pdf>

The project underwent a public consultation from May 21, 2018 to June 29, 2018 (<http://www.ift.org.mx/industria/consultas-publicas/consulta-publica-sobre-el-anteproyecto-de-lineamientos-para-la-presentacion-de-denuncias-de>)

³⁹ The SEPDAI can be accessed at: <http://www.ift.org.mx/industria/autoridad-investigadora>

⁴⁰ <https://www.gob.mx/cms/uploads/attachment/file/401192/21PoliticaCompetencia.pdf> and in English at this [link](#).

which will strengthen political dialogue, increase trade and investment flows, and increase technical and scientific cooperation in benefit of both societies. Chapter 23 is dedicated to Competition Policy.⁴¹

2.3.3. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

77. The Mexican Senate ratified the Agreement in April 2018; it includes new generation disciplines that reflect the reality of our economy allowing small and medium enterprises and State Commercial Companies to take advantage of the opportunities that the Treaty offers. Chapter 16 is dedicated to the Competition Policy.⁴²

3. Enforcement of Competition Laws and Policies

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

3.1.1. Summary of Activities

78. During 2018, the IFT processed ten investigations. Six of them were initiated in 2018; three were initiated in 2016, and one in 2017. Two of them considered the possible existence of barriers to competition, two regarded the possible existence of economic agents with substantial power, four of them regarded unilateral conducts and two involved an unlawful merger. Additionally, the IFT concluded one trial-like procedure regarding anticompetitive practices.

3.1.2. Description of Significant Cases, Including those with International Implications

Investigations started in 2018

1. An investigation initiated in order to determine the possible existence of barriers to competition and free competition that can generate anticompetitive effects in the market of fixed telecommunications services with a geographical dimension circumscribed to the State of Mexico.⁴³
2. An investigation initiated in order to determine the possible existence of barriers to competition and free competition that can generate anticompetitive effects in the market of fixed telecommunications services with a geographical dimension circumscribed to the State of Guanajuato.⁴⁴

⁴¹ Available in English at: https://www.gob.mx/cms/uploads/attachment/file/416564/23_Cap_tulo_Competencia.pdf

⁴² Available in English at: https://www.gob.mx/cms/uploads/attachment/file/113238/16_Competit ion_Policy.pdf

⁴³ Initiation decision available in Spanish, file AI/DC-001-2018 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5513219&fecha=14/02/2018

⁴⁴ Initiation decision available in Spanish, file AI/DC-002-2018 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5513220&fecha=14/02/2018

3. An investigation initiated *ex officio* in order to determine the probable existence of economic agents with substantial power in the market of telecommunications networks that provide voice, data or video services, at national, state, regional and/or local level.⁴⁵
4. An investigation initiated *ex officio* in order to determine the probable existence of economic agents with substantial power in the radio and television market.⁴⁶
5. An investigation initiated by a complaint for probable commission of a relative monopolistic practice in the markets of production, distribution and commercialization of contents that are transmitted through a platform with an Internet connection; distribution and commercialization of electronic devices for the reproduction of contents through Internet, and television and audio restricted services, in the domestic territory.⁴⁷

Investigations in process during 2018

1. In 2016, the IFT initiated an *ex officio* investigation with respect to the existence of facts or conducts that could constitute one or several probable unlawful concentrations as referred in article 62 of the LFCE, in the market of the use, exploitation and commercial exploitation of radio electric spectrum frequencies to provide public radio broadcasting services in the domestic territory.⁴⁸
2. In 2016, the IFT initiated an *ex officio* investigation regarding an alleged unilateral conducts of tied sales, exclusionary practices, predatory pricing and rising rival costs in the advertisement on public television broadcasting and cable or satellite television in all the country.⁴⁹
3. The IFT undertook an investigation of the alleged unilateral conducts 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.⁵⁰
4. In 2017, the IFT undertook an investigation of alleged unilateral conducts of predatory pricing, cross-subsidization, and raising rival costs in the fixed and mobile services, fixed and mobile Internet access services, and production,

⁴⁵ Initiation decision available in Spanish, file AI/DC-003-2018 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5520516&fecha=24/04/2018

⁴⁶ Initiation decision available in Spanish, file AI/DC-004-2018 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5534456&fecha=10/08/2018

⁴⁷ Initiation decision available in Spanish, file AI/DE-003-2018 at: http://dof.gob.mx/nota_detalle.php?codigo=5538189&fecha=18/09/2018

⁴⁸ Initiation decision available in Spanish, file AI/IO-001-2016 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5448847&fecha=22/08/2016

⁴⁹ Initiation decision available in Spanish, file AI/IO-002-2016 at: http://dof.gob.mx/nota_detalle.php?codigo=5462363&fecha=24/11/2016

⁵⁰ Initiation decision available in Spanish, file AI/DE-003-2016 at: http://dof.gob.mx/nota_detalle.php?codigo=5457066&fecha=18/10/2016

distribution and commercialization of audiovisual contents transmitted through Internet in the country.⁵¹

Investigations closed in 2018

79. An investigation was initiated in 2014 regarding the alleged unilateral conducts of 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. Once the trial-like procedure was substantiated, on April 12, 2018, the IFT Board resolved that América Móvil, S.A.B. de C.V. and Radiomóvil Dipsa, S.A. de C.V. (Telcel) were responsible for performing a relative monopolistic practice in accordance with article 10, section VIII of the LFCE applicable to the procedure, during the period from March 31, 2012 to August 12, 2014. The practice consisted of granting Blue Label México, S.A.P.I. de C.V. (BLM) positive and negative incentives not to commercialize through its “Qiubo” network, airtime from its mobile competitors, with the intent of illegally displacing them.

80. In this case, the IFT defined incentives as a general concept that, in matters of economic competition, refer to any element that motivates a commercial agent to make a determined decision –to do or abstain from doing. Thus, the incentives can be:

- Positive, if they offer to increase the benefits of an economic agent to act in a certain way (i.e., if a commercial agent that meets all of the requirements, receives an additional payment), and
- Negative (or coercive), when they establish that, in case of not acting in a certain way, the economic agent would face a loss. For example, the clauses of a contract may motivate a financial agent to avoid certain behaviors, stating that in case of doing so, it would face penalties.

81. The IFT considered as relevant the market for wholesale of virtual airtime buckets, where Telcel and other mobile providers act as sellers and BLM and other retailers act as buyers. In this relevant market, Telcel holds substantial market power.

82. Following what was stated earlier the practice consisted of Telcel granting BLM preferential commission rates for the sale of its airtime in case it sold it exclusively and menacing BLM to stop selling it airtime in case it did not stop selling its competitors. The intent rather than the effect of the practice was taken into account by the IFT to conclude it was illegal.

83. A fine was imposed on América Móvil, S.A.B. de C.V. and Radiomóvil Dipsa, S.A. de C.V. that amounted to \$96,825,831.51 MXN (USD \$5.03 million).⁵²

⁵¹ Initiation decision available in Spanish, file AI/DE-002-2017 at: http://www.dof.gob.mx/nota_detalle.php?codigo=5496815&fecha=11/09/2017

⁵² IFT Board’s decision available in Spanish, file E-IFT/UCE/DGIPM/PMR/0006/2013 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/vppift120418293not.pdf>. USD amounts shown at a year’s average interbank exchange rate of \$19.2306 MXN.

Table 8. Procedure regarding anticompetitive practices

Economic Agents	Practice	Main affected market	Decision
Radiomóvil Dipsa, S.A. de C.V. (Telcel).	Granting BLM incentives not to commercialize through its “Qiubo” network airtime from its mobile competitors.	Relevant market: wholesale of airtime for pre-paid mobile services.	Telcel was fined with USD \$5.03 million.

Source: IFT

84. The IFT undertook an investigation of the alleged unilateral conduct of refusal to deal, raising rival costs, and denying access to an essential facility in interconnection services, access to broadband Internet services, directed to business Internet, access and use of shared passive and/or active infrastructure, and dark fiber, all of them nationwide. However, from the elements collected during the investigation –following the complaint of Mega Cable against Telmex and Telnor regarding the probable illegal practices established in articles 54 and 56, section XI and XII of the LFCE–, it was clear that it is not possible to determine the facts denounced and investigated to fit in the anti-competitive conduct referred to in articles 54 and 56, section V, XI and XII of the LFCE, since Telmex/Telnor dark fiber rental service requests were submitted by Mega Cable in terms of the Thirty-Fourth Measure of the Fixed Measures of the Preponderant Resolution. In this respect, on February 7, 2018, the IFT Board decided to close the file since there were not enough elements to initiate the trial-like procedure⁵³.

Unlawful Concentrations

85. During 2018, the IFT initiated an investigation according to the provisions of the agreement issued by the AI on May 18, 2018. The investigation was initiated by a complaint for probable unlawful concentrations that could have the object or the effect to hinder, diminish, damage or prevent free competition or economic competition in the markets for the provision of restricted television and audio services, fixed and mobile telephone, and access to fixed and mobile broadband Internet, in the domestic territory⁵⁴.

3.2. Mergers and Acquisitions

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

86. The IFT finalized three proceedings related to mergers and acquisitions. One of them was filed through an *ex ante* (traditional) notification and two were filed pursuant to Transitory Article 9 of the LFTR, which exempts certain mergers of being notified *ex ante* to the authority⁵⁵. The total value of the analyzed transactions was \$2.7 billion MXN (USD\$138 million)⁵⁶.

⁵³ IFT Board’s decision available in Spanish, file AI/DE-002-2016 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift07021885.pdf>

⁵⁴ Initiation decision in Spanish, file AI/DE-001-2018: http://www.dof.gob.mx/nota_detalle.php?codigo=5524245&fecha=28/05/2018

⁵⁵ See paragraphs 72-74 of the 2014 *Annual Report on Competition Developments* for an explanation of this provision of LFTR. The review of Transitory Article 9 merger notice has the purpose of verifying that the merger meets the specific criteria set at the sectorial rather than at the

Table 9. Proceedings related to mergers and acquisitions

Operation	Main affected market	Decision	Dimension
Ex ante procedure			
Acquisition of dark fiber infrastructure property of <i>Pegaso</i> by <i>Even</i> and <i>Neutral</i>	Fixed telecommunications services	Authorized	Local
Transitory Article 9 ex post procedures			
Acquisition of optic fiber infrastructure property of <i>Kio Networks</i> by <i>American Tower</i>	Fixed telecommunications services	Reviewed	Local
Transfer of two radio concessions from <i>Audio Publicidad</i> , to <i>Radio Triunfos</i>	Radio services	Reviewed	Local

Source: IFT

3.2.2. Summary of significant cases

1. Acquisition of dark fiber infrastructure property of *Pegaso PCS, S.A. de C.V.* (*Pegaso*) by *Even Telecom, S.A. de C.V.* (*Even*) and *Neutral Networks, S. de R.L. de C.V.* (*Neutral*). On September 27, 2018, the parties requested IFT's authorization for the acquisition of 1,409 km of dark fiber infrastructure in several cities of the country, property of *Pegaso*, by *Even* and *Neutral*. The transaction was authorized under the LFCE without conditions, given that the buyers' accumulated participation was 0.39% of the fiber infrastructure at a national level and they did not participate in the involved localities.
2. Acquisition of optic fiber infrastructure property of *Sixsigma Networks México, S.A. de C.V.* (*Kio Networks*), by *ATC Mexhold, L.L.C.* (*American Tower*). On April 10, 2018, the IFT reviewed the ex post notice pursuant Transitory Article 9 of the LFTR of the acquisition by *American Tower* of two societies property of *Kio Networks* that jointly own a 4,400 kilometers optic fiber network, concluding that it complied with legal requisites to be benefited by the exemption set forth by such procedure. The transaction did not entail any concentration of business, but merely the substitution of an economic agent by another.
3. Transfer of two radio concessions from *Audio Publicidad, S.A. de C.V.* (*Audio Publicidad*) to *Radio Triunfos, S.A. de C.V.* (*Radio Triunfos*). On July 6, 2018, the IFT reviewed the ex post notice pursuant Transitory Article 9 of the LFTR of the merger of two radio broadcasting concessions, *XEDD-AM* and *XHDD-FM*, in a locality of *Nuevo Leon* state, previously held by *Audio Publicidad* who sell the holding rights to *Radio Triunfos*. Through this concentration, *Radio Triunfos* accumulated between 44 and 50% of the radio stations in the locality. Besides, the parties proved that this transaction would allow the stations to remain viable in the long term and entailed technological improvements for digital services in benefit of audiences. Because there were both negative and potentially positive benefits, the IFT determined there was not enough information to conclude that the transaction had the effect of diminishing, damaging or impeding competition and free entry into the corresponding markets. The legal consequence was that this concentration did not require IFT's authorization.

markets dimension to be exempt from the *ex ante* authorization. Such specific standard does not follows the traditional LFCE criteria or proceedings for carrying out competition cases.

⁵⁶ USD amounts shown at a year's average interbank exchange rate of \$19.2306 MNX.

4. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

87. Following the 2013 Constitutional Reform and the issuances of the 2014 LFCE and LFTR, the IFT has endeavored to integrate competition assessments to various regulatory proceedings, as an approach to promote effective competition in the telecommunications and broadcasting markets. These changes aimed at fostering pro-competitive measures, so that a more efficient communication market could expand access, improve service quality and render communication services more affordable for the people of Mexico.

88. By incorporating competition criteria into the regulatory process, the IFT has boosted its efficiency to simplify procedures, facilitated oversight, created clarity and reduced the compliance burden on economics agents, utterly reducing and removing unnecessary restrictions to competition in the markets that shape telecommunications and broadcasting sectors.

89. The IFT has focused on substantiating its regulatory decisions on proceedings established by the LFTR and on comprehensive assessments that integrate competition assessments, carried out by the administrative units specialized on competition, and other technical and legal considerations.

90. Regarding public bids, the IFT, as administrator of the Mexican national spectrum policy, aims at increasing the availability of this resource to the markets through competitive mechanisms (i.e. public bids). 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. To this end, the IFT considers two kinds of competition assessments involved in such proceedings that review:

- The conditions and specifications of the public bid documents before their publication, to ensure that their requests do not unjustifiably restrict participation or competition for the contract, and to issue recommendations aiming to protect and promote competition in the markets where the bid winner would participate; and
- Specific applicants, to ensure that their participation does not entail competition risks (i.e., accumulation of scarce assets, such as certain frequency bands) for the markets if they win.

4.1. Public bid for the award of a public-private partnership contract for the deployment of the National Backbone Network

91. On June 21, 2018, pursuant to article 99 of the LFCE, the IFT issued a competition opinion regarding the draft documents of an international public bid for a public-private partnership to deploy the National Backbone Network project, called out by *Telecomunicaciones de México* (Telecomm), a public organism that provides telecommunications and financial services.

92. The IFT issued two measures to be compulsorily adopted by Telecomm and fifteen recommendations of optional adoption over several terms and conditions of the draft documents, to protect and promote competition during the bidding process and in the affected markets. These measures or recommendations aimed at increasing certainty

for the participants regarding the rules of the bid, the contract model and the obligations of the attached concession. Every participant had to obtain the IFT's favorable (or favorable subject to conditions) competition opinion to participate in the bidding process.

4.2. Public bid for the allocation of 120 MHz of spectrum for mobile services in the 2500-2690 MHz band

93. On June 11, 2018, the IFT reviewed the two applicants to the public bid IFT-7⁵⁷ (provision of wireless access service): *Pegaso PCS, S.A. de C.V. (Telefónica)* and *AT&T Comunicaciones Digitales, S. de R.L. de C.V. (AT&T)*. The IFT defined the economic interest group of each applicant, quantified the amount of radio electric spectrum they held and stated up to how many blocks they could bid for, out of the six blocks available, according to the public bid rules. IFT's Board granted Certificates of Participation to two interested parties, after issuing the technical-legal opinions and economic competition opinions to each of them.

94. AT&T had 20.36% of the mobile spectrum at a national level, while Telefónica held 10.67%. Consequently, none of them qualified as new competitors, and thus they did not obtain a discount in the prices set forth in the bid to enhance participation of newcomers. AT&T obtained clearance to bid for three 20 MHz nation-wide blocks in the first phase, and a total of four blocks at the end of the bid's second phase. Telefónica was not held under a bidding cap and could bid for up to six blocks.

95. As a result, 120 MHz were assigned. AT&T won 80 MHz of spectrum, whereas Telefónica won 40 MHz, both for mobile services, which increased in 26.5% the allocated spectrum for mobile broadband services in Mexico. This means that users will have mobile broadband services with higher speed and better quality, greater coverage throughout the country, and the possibility of the deployment of 5G technology.

4.3. Grant, renewal and transfer of concessions

96. During 2018, the IFT issued 916 opinions related to the grant, renewal, and transfer of concessions to provide telecommunications or broadcasting services. They rely on competition analysis and criteria akin to that of mergers, which identifies the involved economic agents (in its dimension of an economic group), defines the relevant and related markets, and estimates some indicators of market power. The following is a summary of the cases:

Table 10. Number of cases related to concessions reviewed in 2018

Type of cases	Telecommunications	Broadcasting
Grant	60	225
Renewal	1	500
Transfer	22	108
Total	83	833
Grand Total		916

Source: IFT

⁵⁷ Auction IFT -7 (wireless access service): <http://www.ift.org.mx/industria/espectro-radioelectrico/telecomunicaciones/2018/licitacion-no-ift-7-servicio-de-acceso-inalambrico>

97. The results from these reviews were:

- Regarding spectrum concessions for social uses, the UCE's competition opinion recommended not to grant them to 13 requesting parties, given that as economic groups they had a significant number of commercial radio stations in a given locality, which could raise their incentives to hoard social concessions and prevent the entry of new competitors, therefore reducing diversity in this media. Also, in cases where the number of frequencies available was smaller than those requested, the UCE recommended not to grant them to 45 parties that already had concessions, and give priority to others, considering the number of frequencies each one held locally and nationally.
- In 229 localities that exhibit high concentration rates of radio broadcasting stations, the UCE recommended to include available frequencies in the Annual Program of Frequency Use, for further allocations in 2019, to reduce barriers to entry in these markets.

4.4. Substantial market power (SMP) investigations

98. No SMP investigations were completed during 2018.

4.5. Amendments to the accounting separation methodology applicable to preponderant economic agents, declared agents with substantial market power and wholesale shared networks

99. On December 19, 2018, the IFT's Board modified the accounting separation methodology applicable to preponderant economic agents, declared agents with substantial market power and wholesale shared networks approved by Agreement P/IFT/191217/914 and modified by agreement P/IFT/171018/624.⁵⁸ This instrument consists of a preliminary structure on how the accounting separation information is going to be delivered, in order to help reduce the risks of divergence between the information delivered by the regulated subjects and the obligations related to the accounting separation.

100. Therefore, the implementation programs allow that, through the information reported by the recipients of the standard, the regulatory objectives defined for accounting separation can be achieved, such as identifying potential anticompetitive practices (i.e., narrowing of margins, depredation of prices and/or cross subsidies, among other behaviors) and detecting potential discriminatory treatment in the provision of wholesale services, among other objectives.

4.6. Draft amendments of the Regulatory Provisions of the LFCE

101. On October 1, 2018, IFT's Board submitted to public consultation the draft amendments,⁵⁹ which main purpose are to regulate the procedure for exemption or

⁵⁸ IFT's Board decision available in Spanish at: http://www.dof.gob.mx/nota_detalle.php?codigo=5546889&fecha=19/12/2018

⁵⁹ The project underwent a public consultation from October 2, 2018 to November 12, 2018. The archive is available in Spanish at: <http://www.ift.org.mx/industria/consultas-publicas/consulta-publica-sobre-el-anteproyecto-de-modificaciones-las-disposiciones-regulatorias-de-la-ley>

reduction of the amount of fines in investigations of relative monopolistic practices or unlawful concentrations, for the telecommunications and broadcasting sectors established in articles 100, 101 and 102 of the LFCE. In this sense, the amendments identify the requirements that the application document must meet; the actions that can be carried out both by the AI and by the applicant during the procedure; the meaning of the resolution that may be issued by IFT's Board; the elements that may be taken into consideration in it; and the conclusion or resumption of the investigation.

4.7. Draft Guide to submit the investigation of market conditions requests established in article 96 of the LFCE in the telecommunications and broadcasting sectors

102. On July 30, 2018, IFT's Board submitted to public consultation this draft Guide,⁶⁰ which main objectives are to provide guidance on:

- the modalities to initiate an investigation;
- the requirements that the application must meet;
- the elements to identify the relevant market;
- the elements to identify the existence of substantial power or the absence of conditions of effective competition;
- the agreements that may be issued by the Investigative Authority of the IFT once the application is submitted; and
- the different categories in which the information submitted by the applicants can be classified.

⁶⁰ The project underwent a public consultation from July 31, 2018 to September 10, 2018. The archive is available in Spanish at: <http://www.ift.org.mx/industria/consultas-publicas/consulta-publica-sobre-el-anteproyecto-de-guia-para-presentacion-de-solicitudes-de-investigacion-de>

5. Resources of competition authorities

5.1. Resources overall

5.1.1. Annual budget (in MXN and USD)

Table 11. IFT annual budget breaking down competition administrative units 2018

Administrative Unit	Amount ⁶¹	Percentage
Total IFT Budget	\$1,998,000,000 MXN \$103,896,914 USD	100%
Investigative Authority (AI)	\$81,773,171 MXN \$4,252,242 USD	4.09%
Economic Competition Unit (UCE)	\$75,413,559 MXN \$ 3,921,539 USD	3.77%
Legal Affairs Unit (UAJ)	\$88,833,131 MXN \$4,619,363 USD	4.45%

Source: IFT

5.1.2. Number of employees (person-years):

Table 12. Number of IFT employees 2018

Year	Employees
2018	1,264

Table 13. Number of IFT employees by administrative unit

Broken down by profession 2018

Administrative Unit	Economist	Lawyer	Other Professional	All Staff Combined
UCE	31	30	8	69
AI	30	30	9	69
UAJ	0	61	7	68
Total	61	121	24	206

Source: IFT

5.2. Human resources (person-years) applied to:

Table 14. Number of IFT employees applied to competition practice 2018

Practice	Employees
Enforcement against anticompetitive practices	206
Merger review and enforcement	137
Advocacy efforts	68

Source: IFT

5.3. Period covered by the above information:

103. January 1, 2018 to December 31, 2018.

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

6.1. Report on Telecommunications Services Packaging and Discounts⁶²

104. Its scope is the information of Mexican households' behavior on individual or joint purchases of fixed telecommunications services, as well as the exposition of theoretical elements for the analysis of bundled goods and services. Its main findings are:

- In Mexico, 28% of households do not consume fixed telecommunications services.
- There is no specific preference between individual services and bundled services in households that do consume these services.
- In general, consumption is divided by individual services, double play and triple play.
- Bundling can have positive and negative effects on competition conditions and consumer welfare, such as economies of scale and scope, improvement of the quality of goods, reduction of the search for options, existence of discounts and reduction costs of advertising, etc. Among the negatives effects, unduly displacing other competitors, comparability problems, high search costs, lack of transparency.
- International cases review identified that relevant market definition it is not identified in the bundle itself, but in the markets of the products that make up the bundle. This suggests that the relevant market definition is determined on a case-by-case basis.
- In addition, the use of a test is usually very useful. However, the analysis of the rationality of the company that bundles is conducted usually without the application of a test.

6.2. Study on the audiovisual content market and vertical relations in the telecommunications industry

105. The information of the study is confidential.

⁶² Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenido-general/autoridad-investigadora/estudiosobreempaquetamientoydescuentodelosserviciosfijosdetelecomunicaciones.pdf>

6.3. Survey addressed to advertisers in the radio broadcasting service⁶³

106. Its main object is to obtain information on patterns of advertising consumption by advertisers and media agencies in Mexico, in the radio broadcasting service. The survey is targeted to people in charge of the execution, negotiation and/or quotation of the advertising campaigns in radio and who have been scheduled on the radio during the last year.

6.4. Survey addressed to media agencies⁶⁴

107. Its main object is to obtain information on the patterns of advertising consumption by advertisers and media agencies in Mexico, in the radio broadcasting service. The survey is targeted to people in charge of managing the planning and purchase of advertising space for clients in the different media means and who have been scheduled on the radio in the last year. Additionally, it explores the wide mix of media with high levels of investment.

6.5. Advocacy efforts

108. On November 7 and 8, 2018, the IFT organized the fourth edition of the "Challenges of Competition in Digital Environment " Forum, which brought together experts from academia and industry, national and foreign, in order to foster dialogue on the challenges facing competition in the sectors regulated by the IFT, emphasizing the issues of relevance in the digital markets⁶⁵

⁶³ The results are available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/autoridad-investigadora/reportefinaldelaencuestadirigidaaanunciantesenelservicioderadiodifusionsonora.pdf>

⁶⁴ The results are available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/autoridad-investigadora/reportefinaldelaencuestadirigidaaagenciasdemedios.pdf>

⁶⁵ Video record is available at the following links for day 1: <https://www.youtube.com/watch?v=W8J-WwqdG9E>, and day 2: <https://www.youtube.com/watch?v=-iZ7vcLa4u4>