

# COFECE Digital Strategy



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*COFECE Digital Strategy*

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# Presentation

The Federal Economic Competition Commission (COFECE or Commission) works constantly to fulfill its constitutional mandate of promoting, safeguarding and guaranteeing competition and free market access, as well as the efficient operation of markets.

COFECE and competition agencies from other countries are aware that the attainment of their objectives faces new challenges posed by the digitization of the economy; and that targeted actions are required to address, from the competition perspective, the tests imposed by the digital economy and the functioning of markets that operate in it.

In this document, the concept of digital economy refers to the exchange of numerous products and services between consumers and suppliers in several markets, taking advantage of and exploiting telecommunications infrastructure and products of the information technology industries (software and hardware) as inputs that generate new means that make said exchange possible.

The process of digitization and permanent connectivity has transformed important aspects of our lives. It has certainly generated substantial benefits, including new employment opportunities; improvements to health services – such as quicker disease detection and the use of telemedicine; more free-of-charge services for consumers; on-line educational services; a more efficient and responsible management of our natural resources; more accessible financial services; the possibility to purchase more products with better services through e-commerce, as well as customization of said products; a simpler and faster connection with relatives and friends; wider markets that tend to have multiple sides, as well as faster, more efficient logistical chains.

Nevertheless, digitization has also raised social concerns (e.g., viral fake news and the manipulation of public opinion through these; physical and / or psychological ailments related to the excessive use of electronic devices; risks of information theft and cybersecurity), as well as concerns related to the functioning of markets (e.g., paramount levels of concentration in digital markets; anticompetitive conducts by global big tech players; increasing accumulation of data – including personal data – by companies that operate in the internet and their possible mishandling and consequent harm to consumer privacy; an increasing digital divide separating people with access and skills related to information technologies from those who lack such access and that do not possess such skills, among others).

Facing a fast-paced changing technological reality, efficient action from COFECE, the government, other regulatory authorities and the private sector, is essential to maximize the benefits of digitization for Mexican consumers. For the sake of this objective, the Commission will implement a Digital Strategy through a series of actions that will enable it to strengthen its capacities and to explore the challenges posed by the digital transformation, which the Commission makes available to the public in through document.

# Digital markets and their implications in the Mexican context

Whilst goods and services exchanged in digital markets are the same (or close substitutes) to those exchanged in traditional markets, what differs is the way in which consumers and suppliers interact in each. This statement is, at least in part, related with the fact that a large number of digital companies operate as platforms. While in traditional markets, the relationship between consumers and the seller is direct in most of the cases, digital platforms work as intermediaries in markets with two or more sides, bringing together two or more market participants (buyers, sellers, publicists, etc.), who would otherwise not interact nor would they connect with each other easily.<sup>12</sup>

Additionally, the role played by big consumer databases in the success of businesses is one of the most important characteristics of digital platforms. Information has always been an important variable to compete in markets. Nevertheless, in the context of digital markets, the amount of available data has grown exponentially, particularly in three dimensions: volume, variety and velocity.<sup>3</sup>

A company's competitive advantage increasingly depends on its capacity to fully exploit the data it has. Consequently, companies in possession of a large volume of data and with the capacity to process them in their benefit could turn this into a barrier for new companies (lacking the necessary information) to access the market and effectively compete.<sup>4</sup>

Besides concerns on the use of data, the dynamics of digital markets raise other concerns and bring about new challenges for competition policy, such as the supply of virtually free services, the acquisition of potential "digital" competitors by established companies and the potential impact of the use of artificial intelligence in the markets, which could lead, for instance, to agreements between competitors to fix prices without the need of human intervention (the appendix to this document lists the concerns specifically arisen by digital markets on competition policy matters).

1 There are also traditional markets that function as multisided platforms (e.g., a shopping mall that offers services for both buyers and shop-owners and works as a marketplace for them to meet physically), however, digital platforms use technological supplies to reach, with the same products and services, more users on their different sides.

2 Michael A Cusumano, Annabelle Gawer & David B Yoffie, *The Business of Platforms: Strategy in the Age of Digital Competition, Innovation, and Power* 15 (2019).

3 Besides volume, variety and velocity, sources like the OECD argue that the value of data also relates to its veracity, its quality and the user's ability to extract the value. OCDE, Meeting of the OECD Council at Ministerial Level. Key Issues Paper (2019), [http://www.oecd.org/mcm/documents/KIP%20-%20CMIN\(2019\)2%20-%20EN%20.pdf](http://www.oecd.org/mcm/documents/KIP%20-%20CMIN(2019)2%20-%20EN%20.pdf)

4 COFECE, Rethinking competition in the digital economy, Competition Advocacy Studies (2018) [https://www.cofece.mx/wp-content/uploads/2018/03/EC-EconomiaDigital\\_web\\_ENG\\_letter.pdf](https://www.cofece.mx/wp-content/uploads/2018/03/EC-EconomiaDigital_web_ENG_letter.pdf)

The Mexican economy has the particular characteristic that, as a consequence of the high degree of concentration persistent in some traditional markets in our country (i.e., energy, telecommunications, finance and health), the elements of digital technologies that often raise concerns in more developed economies, probably would not have the same effect – at least not yet – in the Mexican context.

So far, the entry of some tech giants into Mexican markets has caused competitive pressure for traditional firms. For instance, the growing activity of companies such as Google and Facebook in the advertising markets can lead important and established companies in this market to face greater competition and work harder to meet the demands of their consumers.

Something quite similar could happen in sectors such as retail sales, financial services, transportation and entertainment, where markets exhibit high degrees of concentration, and that could benefit from the process of competition resulting from the entry of companies such as *Amazon*, *Uber*, *Cabify*, *Didi*, several *fintechs*, *Apple*, and *Netflix*.

Hence, it is relevant to ensure that regulatory intervention, in case it becomes necessary, does not unwarrantedly inhibit the development of new digital supply (i.e., avoiding over-regulation), but rather allow it to compete with traditional suppliers for the preference of consumers.

Additionally, even though market participation of tech giants in the Mexican context could generate advantages for consumers in the short term, COFECE pays special attention to the development of these markets, as it cannot be ruled out that these reach a tipping point that implies facing challenges similar to those that could be currently dealt with in other latitudes.

## COFECE 's work in digital markets

The growing dynamism of the digital economy demands the Commission's action in these markets, which is summarized hereunder:

- **Opinions to promote competition:**

*Transport Network Companies:* in 2015, in the context of the debate on how governments should regulate the services provided by the so-called Transport Network Companies (TNCs, such as *Uber*, *Cabify* or *Didi*), COFECE issued an opinion to local governments, which recommended acknowledgement of TNCs as a new model of transportation. Furthermore, it suggested that, in the event of regulating this type of services, the regulatory effort should be limited to public policy objectives related to safety and protection of users, favoring economic competition and free market access, and ensuring that users reap the benefits brought by these new business models.

*Fintech:* in 2017, the Commission sent an opinion to the Senate recommending some changes to the draft Law to Regulate Financial Technology Institutions (Fintech Law), in order to promote competition and innovation. Among other issues, COFECE recommended explicitly establishing that users should hold ownership over their personal information and regulate compensations for data transmission; guaranteeing the provision of financial services by credit institutions to Fintech companies under non-discriminatory conditions; and eliminate any type of technological or infrastructure restriction that may limit entry of new participants to this market. In March 2018, the Fintech Law was enacted, addressing some of the recommendations made by COFECE.

- **Investigations:** in September 2017, the Investigative Authority initiated an investigation for probable abuse of dominance in the market for electronic commerce platforms in Mexico and other related services. One of the lessons learned is that probes into these markets imply analyzing large volumes of information in order to identify possible anticompetitive conduct patterns.

## ■ Mergers:

*Banamex, Inbursa – Pagos Móviles:* in early 2017, the Commission authorized the acquisition of different percentages of social capital of *Pagos Móviles* by two multiple-banking services institutions: *Banamex* and *Inbursa*. *Pagos Móviles* is a company that provides services for hosting and account management, services for compensation of transfers made through mobile devices and services for withdrawals and payments made through the *Transfer* platform. The analysis of COFECE determined that the transaction would not have negative effects on competition and free access in the mobile payments market.

*Walmart – Cornershop:* in mid-2019, COFECE blocked this deal, as it identified potential risks to competition that could be derived from the transaction. According to the Commission's analysis, *Cornershop* could refuse to provide services to *Walmart's* competitors; moreover, *Walmart* could refuse to sell its products through platforms competing against *Cornershop*; and the economic agent resulting from the transaction could induce the exit of *Walmart's* competitors from *Cornershop's* platform through the strategic use of the information competitors provide to and produce within the platform from the sale of their products.

*Privalia – Grupo Axo:* in late 2019, the Commission authorized the merger between *Grupo Axo*, a company that commercializes clothing, footwear and accessories through its own stores, department stores and on-line stores, and *Privalia*, a company in the business of commercialization and electronic brokering of off-season clothes sales through a website and an application for smart mobile devices. The transaction was authorized as it did not represent risks to competition and free market access for on-line commercialization of brand clothing, footwear, accessories and household products.

*PayClip – General Atlantic, Banorte:* in early 2020, COFECE authorized the indirect acquisition of *PayClip*, a *Fintech* firm that provides non-banking mobile payment solutions to small and medium enterprises, by *General Atlantic PCI*, *MissionOG*, *MissionOG Paralell*, *LA Holdings*, *RPS* (all of them mainly with activities of investment funds) and *Banorte* (a company authorized to conduct multiple banking and credit operations). The Commission's analysis determined the deal would have a low probability of negatively affecting competition in the market for card payments and supply of electronic payment terminals for businesses.

*Konfio Limited, Red Amigo – LA Holdings:* in March, 2020 the Commission authorized *LA Holdings* (technology-investment fund) to acquire a part of the social capital of *Konfio Limited* and, indirectly, its only Mexican subsidiary, *Red Amigo*, a fintech company that offers simple credits, credit cards and provides financial services to small and medium enterprises through the digital applications *Konfio* and *Kompas*. The transaction was authorized as it did not affect the process of free market access and economic competition in the markets for credits for natural persons with entrepreneurial activities and legal entities (small and medium enterprises).

*Kavak Holdings – LA Holdings, General Atlantic KV, Greenoaks:* also in March 2020, COFECE authorized *LA Holdings, General Atlantic KV y Greenoaks* (all three investment funds in technology and internet sectors) to acquire a part of *Kavak Holdings*, with its sole subsidiary being *Kavak México*. *Kavak* is a start-up dedicated to the purchase and sale of second-hand cars directly or through a digital application. The transaction was authorized, as it would have few probabilities of affecting the process of free market access and competition in the market for the purchase and sale of automotive vehicles.

COFECE has deployed the necessary technical capacity to solve the proceedings related to digital markets it has dealt with so far. Nevertheless, markets grow and the ways to exchange goods and services evolve. As a response to such dynamism, COFECE always pays attention to increasing its analysis and investigation capacities to fulfill its mandate. Thus, as the number and complexity of matters related to the digital economy increases, the Commission shall strengthen its abilities to successfully deal with challenges to come. Hence the pertinence of this Digital Strategy.

# COFECE Digital Strategy

In light of the dynamism and growing relevance of digital markets in the Mexican economy, it becomes necessary to execute actions that contribute to approach the digitization phenomenon. COFECE's mid-term strategic planning allows for specific strategies to address particular challenges as they appear.

Consequently, with the purpose of strengthening its capabilities and facing the challenges posed by digital markets, COFECE will initiate five actions related with some of its institutional objectives set forth in the 2018-2021 Strategic Plan, as is shown in Figure 1.

**Figure 1. COFECE Digital Strategy actions and their alignment with the objectives of the 2018-2021 Strategic Plan.**



## **1. Produce a document with public policy proposals for digital markets to benefit more Mexican consumers**

The Commission acknowledges economic competition is not a well-known topic for many Mexicans. Every day, the Commission works to divulge the benefits of the efficient operation of markets on the income and welfare of Mexican families. Presently, with the technological revolution in which we live, it is essential to promote amid consumers, businesspersons and public officials, how digitization permeates the Mexican economy and the implications of this process.

Furthermore, given the challenges faced by the world due to the development of the digital economy and those that could arise specifically in Mexico, it is of the utmost importance to ask ourselves questions such as the following:

1. What characteristics of digital markets have given rise to concerns of diverse competition authorities in other countries? What areas of public policy are responsible for addressing these concerns?
2. How have different governments intervened to mitigate these concerns? Have such interventions been enough to successfully resolve problems resulting from digital markets while at the same time taking advantage of the positive opportunities these present? What lessons derive from actions undertaken by competition authorities?
3. What reflections on the worrisome characteristics of digital markets have come about in other countries, in international organizations and foreign competition authorities?
4. Amongst these reflections and learnings, what considerations have been raised with respect to possible modifications or extensions to the powers of competition authorities, or regarding changes in the institutional design of countries to effectively regulate these markets?
5. Are digital markets in Mexico as developed as in other countries? Do they pose challenges specific to our reality?
6. What public policy interventions would have to be considered to harness the potential benefits of digital markets, but also to mitigate their risks?
7. Does Mexico have an institutional structure that allows authorities to react to problems similar to those detected and addressed in other countries? To face its own challenges? What institutional changes must be made?

With the purpose of starting to provide answers to these questions and to open the discussion on the matter, COFECE has convened a multidisciplinary group of experts on digital issues and will coordinate the production of a document that will assess the potential implications of digital markets in our country. The document will address the following issues:

- a.** The functioning of digital markets, their advantages and risks;
- b.** The work carried out by other countries to understand and approach the operation of digital markets;
- c.** The specific effects of digital markets on the Mexican economy;
- d.** The challenges regarding competition, consumer protection and protection of personal data that must be solved by Mexico to effectively address the functioning of digital markets, as well as to possible measures to face them, for example:
  - Whether it is necessary to identify under specific categories those digital platforms with certain capacities to influence or distort markets;
  - Whether it is necessary to take into consideration specific regulations to limit conducts from digital platforms that fall under said categories or that may otherwise distort the markets;
  - Assess the need to modify or extend the existing functions and powers of competition, consumer and privacy authorities to: allow the implementation of remedies to potential problems posed by digital platforms; impose sanctions to market-distorting conducts currently not foreseen in norms and particular to this kind of platforms; and, generally, to promote a more efficient operation of markets.
- e.** The current institutional design in Mexico and the eventual appropriateness of modifications for successfully facing the challenges deriving from the operation of digital markets.

## 2. Organize fora with international experts

The effective enforcement of the Federal Economic Competition Law (LFCE), as well as the prevention and correction of market structures adverse to competition in an increasingly digital economy, require a thorough understanding of the digitization phenomenon and of its impact on different sectors of the Mexican economy. To this end, COFECE will organize fora with international experts with the following main objectives:

- Permanently update and strengthen the knowledge of the Commission's personnel on the operation of digital platforms, particularly of big technological companies;
- Learning from foreign cases, experiences and policies related with digital markets;
- Move forward in the implementation of measures to strengthen COFECE's capacities for facing competition challenges that prevail in the current economic context; and
- Ensure that the work of the Mexican competition authority brings the benefits of the digital economy closer to Mexican consumers.

## 3. Strengthen capacity building and technological infrastructure

In an economy where data has become one of the most important assets for generating value, and a relevant competitive advantage for enterprises, competition authorities must pay particular attention to the means by which companies gather data and the ways they use it.

Taking into account the challenge posed by gathering and analyzing large amount of data in order to detect and/or prevent anticompetitive conducts, COFECE will develop a plan for managing the exploitation and processing of large volumes of data (big data), as well as to comprehend the scope of artificial intelligence, which will imply further building up the capacities of COFECE's staff and strengthening the Commission's technological infrastructure.

#### 4. Digital Markets Unit within COFECE

In 2019, international organizations, governmental bodies and academic institutions carried out and published different studies on the implications of the digital economy for the competition policy.<sup>5</sup> Among the recommendations of these studies, one of the most noteworthy is the creation of specialized units for the analysis of the development of the digital economy and its repercussions on the processes of competition.

Following this recommendation, some competition authorities have begun to establish digital units within their institutional structures. For example, the United States Federal Trade Commission established the *Technology Enforcement Division* which, among other tasks, continually monitors competition processes in digital markets and probes anticompetitive conducts in these markets.

Also, the Competition and Markets Authority of the United Kingdom created the *DaTA Unit*, a cross-sectional area that uses tools such as data analysis and machine learning to identify possible breaches to competition law in that country.

In early 2020, France's Competition Authority also announced the creation of a digital economy unit tasked with developing new tools for digital investigations, supporting different units of the Authority in handling cases with important digital aspects, and analyzing complex merger cases in digital markets.<sup>6</sup>

Aware of the best international practices, COFECE will assess and determine the best way to establish a Digital Markets Unit within its institutional structure with the purpose of advancing in the comprehension of the digitization of the Mexican economy to execute the powers bestowed upon it by the LFCE with greater effectiveness.

#### 5. Strengthen international cooperation

Due to the borderless nature of the digital economy and the dynamic operation of digital markets, cooperation between competition authorities across the world is essential. Bilateral collaboration and also within the framework of regional and international organizations enables sharing lessons learned, experiences and developments on the matter, as well as joint identification of actions to be implemented for contributing to the efficient functioning of digital markets around the world.

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<sup>5</sup> For example, the report on competition policy for the digital era of the European Union, the Furman report of the United Kingdom's Competition and Markets Authority, the report on digital platforms by the Stigler Center of the University of Chicago, the Australian Competition and Consumer Commission's report of the investigation on digital platforms, among others.

<sup>6</sup> It is important to note that the three examples mentioned are not the only the foreign efforts in this matter, as other competitions authorities in countries such as Australia and Canada have also created their own units specialized in digital markets.

COFECE embraces all efforts aimed at these ends and will therefore seek to actively and purposely strengthen its network of cooperation with competition agencies from other countries.

As stated above, a reduced group of competition agencies is under the process of creating units for digital markets. Due to their recent creation and to the fact that each one is currently identifying its own ways of tackling digital markets, there are still no efforts to nurture synergies among them.

Thus, as an example of international collaboration, COFECE will organize a Digital Units workshop that will bring together public officials working within them with the aim of sharing experiences and build shared knowledge. This effort will be institutionalized in the mid-term, if possible.

## **COFECE's commitment with Mexico**

Digitization of the world economy is irreversible. Mexico can yield great advantages from the digital economy. To this end, it is essential to understand the implications of technological change, to identify valuable strategies from other countries aimed at reaping the benefits of digital markets for consumers, and to begin the implementation of concrete actions that allow companies (including small and medium-sized enterprises) and Mexican consumers to gain from the ongoing large-scale technological transformation. COFECE will make every effort to ensure the efficient performance of digital markets through competition and free market access.

# APPENDIX

## Some competition policy concerns raised by digital markets

- **“Winner-takes-all”:** digital platforms dynamics imply competition for the market becomes more important than competition in the market.<sup>7</sup> That is, the process of competition does not occur within the market, but rather to become the first to take over the entire market. This dynamic is caused, to a large extent, by network effects characteristically found in digital platforms, by which the first platform to reach critical mass of users diminishes the chances for other platform to generate competitive pressure.
- **“Zero-price”:** due to changes in cost-structure and the existence of network externalities, digital platforms have incentives to offer, at least to one of the sides or actors in the market, free-of-charge services, also known as “zero-price”. Nevertheless, these zero-prices are not precisely free, as they can imply that, inadvertently, users provide personal information to the platform, and the platform uses it with lucrative ends.<sup>8</sup> For competition authorities this poses new challenges. For example, the traditional toolkit used to define relevant markets may not useful when zero-prices exist.<sup>9</sup>
- **New ways of collusion or price-fixing:** the use of algorithms fed by large amounts of data might increase the companies’ capacity to fix prices or collude, even without the need of human intervention.<sup>10</sup>

7 Elena Argentesi et. al., Ex-post Assessment of Merger Control Decisions in Digital Markets, Lear, p.p. 44 (May, 2019), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803576/CMA\\_past\\_digital\\_mergers\\_GOV.UK\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803576/CMA_past_digital_mergers_GOV.UK_version.pdf)

8 For example, Facebook’s business model grants users with free access to user-generated contents while using the resulting information to design and implement certain advertising strategies.

9 Jacques Crémer, *et al.*, Competition Policy for the Digital Era, European Commission (2019), <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

10 Ezrachi and Stucke, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (2016). According to the authors this could happen in four different ways: (i) The execution and monitoring of collusive agreements facilitated by the increasing capacity of computers and the Internet; (ii) the use of the same price algorithm by many users to determine a market price can result in higher prices than those that would prevail under competitive circumstances; (iii) tacit collusion derived from the use of algorithms that adjust prices according to market data result in parallel price setting; and (iv) collusion derived from artificial intelligence resulting in an anticompetitive outcome without the need for the existence of an explicit or tacit agreement, but rather as a better response.

- **Acquisition of potential competitors:** incumbent companies have incentives to acquire rising or potential competitors to prevent future competition. This type of acquisitions may imply an analytical challenge since the company to be acquired is at an early development stage to accurately determine if it will be potential competition. It is important for competition authorities to consider the impact that these acquisitions will have on innovation, as well as new theories of harm that allow better comprehension of the dynamics behind these transactions.<sup>11</sup>
- **Market power through unilateral conducts:** in the digital ecosystem, digital platforms with a dominant position could wield market power through conducts such as price discrimination, price depredation, refusal to deal, tying, most favored nation clauses, among others.<sup>12</sup>
- **Consumer behavior bias:** the market power of companies operating in digital markets can increase as a result of biased consumer behavior, such as the tendency to favor *status quo* (e.g., consumers won't change default software in their personal computers or mobile devices), or due to the costs of migrating information from one platform to another (high multi-homing costs).

Also, there is the difficulty of deciding between several options of products or services or among vast amounts of information, as well as the tendency of consumers to choose the first results shown by search engines instead of scrolling down for more alternatives or using other search engines.<sup>13</sup> Aware of these biases, platforms will try to lead consumers to choose the option generating the most profit.

- **Market power by exploiting consumer data:** companies can wield market power in manners different from raising prices. For example, they can exploit consumer data and information to prevent further competition in the market, blocking other companies from using consumer data and information, or by influencing consumer's choice.<sup>14, 15</sup>

11 Sai Krishna Kamepalli et. al., Kill Zone, University of Chicago, (November 2019), [https://faculty.chicagobooth.edu/raghuram.rajan/research/papers/Kill%20zone\\_nov.pdf](https://faculty.chicagobooth.edu/raghuram.rajan/research/papers/Kill%20zone_nov.pdf)

12 Jonathan B. Baker, The Antitrust Paradigm: Restoring a Competitive Economy 149 (2019).

13 George J. Stigler Center for the Study of the Economy and the State, Committee on Digital Platforms Final Report, (2019), <https://research.chicagobooth.edu/stigler/media/news/committee-on-digital-platforms-final-report>

14 COFECE, *Op. cit.* Note 2

15 Crémer, *et al.*, *Op. cit.* Note 6.

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