

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

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

**-- 2019 --**

This report is submitted by Mexico to the Competition Committee FOR INFORMATION.

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## Mexico

### Contribution by the Mexican Federal Economic Competition Commission (COFECE)

#### 1. Executive Summary

1. In 2019, COFECE issued regulatory provisions for handling client-attorney communications and launched a public consultation for the new draft regulatory provisions of its Leniency and Immunity Program.
2. The Commission continued to focus on high-profile cases involving abuse of dominance, collusion and unlawful mergers in priority sectors of the Mexican economy, namely health, agri-food, transport, financial, energy and public procurement.
3. In addition to analyzing 46 complaints which derived in 4 new investigations, COFECE concluded a major probe into the pharmaceutical's value chain (production, distribution and commercialization), which resulted in Statement of Objections for possible collusive agreements. Furthermore, two additional ex officio investigations were initiated, adding up to a total of six new investigations initiated this year.
4. Throughout 2019, a total of nine investigations were concluded, of which four resulted in the issuance of a Statement of Objections. As for sanctions, this year the Commission imposed fines amounting 14 million, 805 thousand, 785 hundred USD. Also, the judiciary confirmed 67.21% of COFECE's decisions, which means that 41 out 61 cases of the cases revised in 2019 were upheld.
5. The Commission filed its second ever criminal complaint before the Office of the Attorney General of Mexico against individuals who allegedly colluded to rig bids in public tenders in the health sector.
6. COFECE authorized 132 merger transactions and blocked two. One of these operations was a landmark transaction involving *Cornershop's* acquisition by *Walmart*, which raised diverse concerns, among others, some related to potential anticompetitive misuse of costumers' data by merged parties.
7. Relevant advocacy activities carried out this year included the issuance of recommendations to (1) improve the procurement regulations of the Institute of the National Housing Fund for Workers; (2) incorporate procompetitive measures in the Ports Law; and (3) maintain the horizontal and vertical divestiture, as well as effective competition between the subsidiary productive companies pertaining to the Mexican state-owned electricity utility (Comisión Federal de Electricidad, or CFE). Moreover, the Commission issued market studies related to the diesel and gasoline value chain and inter-city passenger auto transport.
8. The Commission continued to engage in relevant international activities. In 2019, the OECD concluded the Peer Review into Mexico's competition policy. Also, the

Commission hosted two international workshops: one along with the OECD regarding cartel detection and one for the ICN's Unilateral Conduct Working Group. Furthermore, COFECE continued contributing to the development of specialized human resources both through the participation of its staff in international exchange programs and its Fellowship Program for Latin American agencies.

## 2. Changes to competition laws and policies

### 2.1. New legal provisions of competition law and related legislation

9. In June 2019, the Commission concluded a public consultation of modifications to the *Regulatory Provisions of the Federal Economic Competition Law*. In July, the Board of Commissioners approved these modifications, which were published in the Federal Official Gazette (DOF, for its acronym in Spanish) in August 1st. The modifications aim at providing greater certainty to economic agents in cases where either the Investigative Authority or the Technical Secretariat dealt with non-notified unlawful mergers that were legally bound to be notified. These changes also apply to transactions, currently under review by the Commission, in which possible risks to competition have been identified and the notifying parties are allowed to make modifications or additions to the initial commitment proposal before the Board of Commissioners takes a final decision.<sup>1</sup>

10. In July 2019, modifications to the *Commission's Organizational Statute* were published in the DOF. Most of these modifications are related to the handling of attorney-client privileged information. These establish the role of a Qualifying Committees within the Commission's organizational structure, tasking them with determining which information is to be considered part of attorney-client communications.<sup>2</sup>

11. In September 2019, the *Regulatory Provisions for the qualification of information derived from legal counsel provided to economic agents* were approved by the Board of Commissioners and published in the DOF.<sup>3</sup> These provisions seek to provide measures for how information resulting from legal counsel between a lawyer and a client will be handled and, if applicable, protected by the Commission in order to safeguard the rights of economic agents and guarantee impartial probes and due process. This is a milestone in Mexico as there is no other regulation in force for this matter.

12. From October to November 2019, the Commission submitted to public consultation the *Draft Regulatory Provisions of the Leniency and Sanction Reduction Program foreseen in article 103 of the Federal Economic Competition Law*. Its purpose is to provide greater

<sup>1</sup> DOF. *Acuerdo No. CFCE-181-2019 mediante el cual el Pleno de la Comisión Federal de Competencia Económica reforma y adiciona diversas disposiciones de las Disposiciones regulatorias de la Ley Federal de Competencia Económica* (in Spanish). Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5566958&fecha=01/08/2019](http://www.dof.gob.mx/nota_detalle.php?codigo=5566958&fecha=01/08/2019).

<sup>2</sup> DOF. *Acuerdo No. CFCE-157-2019 mediante el cual el Pleno de la Comisión Federal de Competencia Económica reforma, adiciona y deroga diversas disposiciones del Estatuto Orgánico de la Comisión Federal de Competencia Económica* (in Spanish). Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5565470&fecha=11/07/2019](http://www.dof.gob.mx/nota_detalle.php?codigo=5565470&fecha=11/07/2019)

<sup>3</sup> DOF 30-09-2019. *Regulatory Provisions for the qualification of information derived from legal counsel provided to economic agents* (in Spanish). Available at: <https://www.cofece.mx/wp-content/uploads/2019/09/DOF-30septiembre2019-01.pdf>.

legal certainty to interested leniency applicants, clarifying issues such as conditions for revoking leniency or the handling of information provided by applicants, amongst others. In December, the Commission published the report on the comments received. The final version of these regulatory provisions was issued in 2020.<sup>4</sup> The Commission is currently working on new Leniency Guidelines that adequately explain the changes that are included in the new provisions.

## 2.2. New guidelines and technical criteria

13. In May 2019, COFECE submitted for public consultation the modifications to the Guidelines for Concentration Notification (i.e. merger review) via Electronic Means and the Regulatory Provisions on the Use of Electronic Means.<sup>5</sup> In July 2019, these modifications<sup>6</sup> were approved by the Board of Commissioners and published in the DOF.<sup>7</sup> Their aim is to ease and expedite the notification of a concentration by allowing the use of electronic means over the entire procedure. Electronic notification of Concentrations is compulsory since January 2020.

## 3. Enforcement of competition laws and policies

### 3.1. Action against anticompetitive practices

14. During 2019, COFECE received 46 complaints on possible anticompetitive practices and other restrictions to competition, of which four led to new investigations. Furthermore, other two ex officio investigations were initiated. Therefore, in total six new probes were initiated by the Commission this year.

15. In total, nine investigations were concluded in 2019, of which five were closed due to lack of elements (in the markets for gasolines service stations, watt-hour meters procured by the Federal Electricity Commission, raw and pasteurized milk, as well as laboratory and certification tests for the rubber industry)<sup>8</sup> and in four of them Statement of Objections were issued (in the markets of debt securities, pharmaceuticals and polyethylene products and tests and blood banks procured by the health sector). These latter cases are now in the trial-like procedure phase.

<sup>4</sup> COFECE. *Informe sobre la consulta pública del Anteproyecto de las Disposiciones Regulatorias del Programa de Inmunidad y Reducción de Sanciones previsto en el artículo 103 de la Ley Federal de Competencia Económica* (in Spanish). Available at: <https://www.cofece.mx/wp-content/uploads/2019/12/INFORME-consulta-publica-del-Anteproyecto-DRs-inmunidad.pdf>.

<sup>5</sup> “COFECE submits for public consultation the modification to the Guidelines for Concentration Notification via Electronic Means and the Regulatory Provisions on the Use of Electronic Means” (Press release). Available at: <https://www.cofece.mx/wp-content/uploads/2019/05/COFECE-029-2019-English.pdf>.

<sup>6</sup> DOF 18-07-2019. *Guidelines for Concentration Notification via Electronic Means* (in Spanish). Available at: <https://www.cofece.mx/wp-content/uploads/2019/07/Lineamientos-concentraciones-reforma-18-jul-2019.pdf>.

<sup>7</sup> DOF 18-07-2019. *Regulatory Provisions on the Use of Electronic Means* (in Spanish). Available at: <https://www.cofece.mx/wp-content/uploads/2019/09/DOF-30septiembre2019-01.pdf>.

<sup>8</sup> Closed investigations due to a lack of elements were: DE-018-2017 (gasolines service stations), DE-023-2017 (watt-hour meters).

16. In 2019, seven cases in the trial-like procedure phase concluded. Of these, six resulted in sanctions (in the markets of air passenger transportation, tortillas, toothbrushes procured by the health sector, credit information, and taxis services in a local airport)<sup>9</sup> and one was closed without liability (in the market for the production, distribution and commercialization of eggs).<sup>10</sup>

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

	Complaints				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Received	15	16	6	9	46
Analysis concluded	16	16	11	7	50
Leading to investigations	1	1	2	0	4
Dismissed	13	15	9	7	44
Integrated to a case file	2	0	0	0	2
	Investigations				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Initiated	1	1	3	1	6
Concluded	1	3	3	2	9
No evidence of anticompetitive practice	0	2	1	2	5
Notification of statement of objections*	1	1	2	0	4
Early closure with commitments	0	0	0	0	0
	Trial-like procedures				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Statement of objections issued	1	1	2	0	4
Trial-like procedures concluded	2	2	2	1	7
Sanctions imposed	2	1	2	1	6
Closed without liability	0	1	0	0	1
Closure with commitments	0	0	0	0	0

*Note:* The number of received investigation may not equal the number of concluded investigations since these could include inquiries that were initiated in another year or is pending from other periods

\* Pursuant to article 78 of the LFCE, after the Investigative Authority finishes its investigation it shall present an investigative opinion to the Board of Commissioners proposing either the initiation of the trial-like procedure or the closure of the file due to a lack of elements. If the Board decides to initiate the trial-like procedure, the involved economic agents are notified of the Statement of Objections and this phase formally begins

*Source:* Internal Statistics and COFECE. *Quarterly reports 2019*, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>.

17. Pursuant to the LFCE,<sup>11</sup> COFECE has the power to investigate barriers to competition and, if needed, order measures to mitigate possible anticompetitive effects. During 2019, the Commission initiated an investigation of possible barriers to competition in the market for aircraft fuels<sup>12</sup> and closed another one into the market of services for

<sup>9</sup> Trial-like procedures resulting in sanctions were: IO-002-2015 (air passenger transportation), DE-031-2017 (Tortillas in Palenque, Chiapas), DE-043-2017 (Tortillas in Angel Albino Corzo, Chiapas), IO-005-2016 (Toothbrushes procured by the health sector), IO-001-2015 (Credit Information) and DE-008-2016 (Taxis at Cancun's Airport)

<sup>10</sup> Public version of the resolution is available, in Spanish, at: <https://www.cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V299/0/4797875.pdf>

<sup>11</sup> Articles 57 and 94 of the Federal Economic Competition Law.

<sup>12</sup> Public version of the agreement which initiates the investigation for file IEBC-002-2019, available in Spanish, at: [https://www.cofece.mx/wp-content/uploads/2019/10/IEBC\\_002\\_2019\\_ExtractoDeAcuerdoDeInicio.pdf](https://www.cofece.mx/wp-content/uploads/2019/10/IEBC_002_2019_ExtractoDeAcuerdoDeInicio.pdf)

accreditation, conformity assessment and standardization since no evidence related to barriers to competition was found.<sup>13</sup>

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

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Market Inquiry					
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Admitted	0	0	0	1	1
Concluded	0	0	0	1	1
Statement of objections issued	0	0	0	0	0
Closed: no evidence found	0	0	0	1	1
Phase II					
Statement of objections issued	0	0	0	0	0
Phase II procedures concluded	0	0	0	0	0
Pending for the next period	0	0	0	0	0

Source: Internal Statistics and COFECE. Quarterly reports 2019, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

18. In 2019, COFECE imposed fines totaling 14 million, 805 thousand, 785 hundred USD. Pursuant to the LFCE,<sup>14</sup> fines for breaching the law are those resulting from the execution of an anticompetitive practice, an unlawful merger or from not complying with a Commission's resolution.

19. With respect to fines as enforcement measures, these refer to those imposed when an economic agent fails to: i) submit information and documents requested by the Commission within the applicable legal timeframe; ii) submit complete information required by COFECE; or iii) attend a mandatory appearance.

**Table 3. Fines imposed (in USD)**

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Total value	9,324,470.69	1,120,124.52	4,197,422.96	163,767.01	14,805,785.17
Enforcement measures	2,663,695.75	178,716.50	289,015.76	145,863.35	3,277,291.38
Sanctions for breaching the law	6,660,774.94	941,408.02	3,908,407.19	17,903.65	11,528,493.81

Source: Internal Statistics and COFECE. Quarterly reports 2019, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

### 3.2. Antitrust cases in the courts

20. In 2019, the Judiciary confirmed 67.21% of COFECE's decisions regarding the existence of anticompetitive conducts, i.e., 41 out of 61 analyzed cases were upheld. These result from the sum of 12 *amparos*<sup>15</sup> that were dismissed, 23 which were denied and six

<sup>13</sup> Public version of the resolution for file IEBC-003-2017 available, in Spanish, at: <https://www.cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V320/1/4941345.pdf>

<sup>14</sup> Articles 126 and 127 of the Federal Economic Competition Law.

<sup>15</sup> For a better understanding of the *amparo* concept: "In Mexico these appeals proceedings are similar to the habeas corpus figure in other countries. They are established by the Constitution, to grant all persons protection against acts of government. These can be brought by any party based



that were granted, but in which the Judiciary upheld the Commission's decisions regarding the charges proven for anticompetitive practices but ordered a modification of the amount of the fine for reasons related to the methodology for its calculation.

**Table 4. Defense of the Commission's decisions before specialized courts**

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Pending from the previous period	104	107	103	116	116
Admitted/Received	19	16	25	21	81
Resolved by the Judiciary	16	20	12	13	61
<i>Amparos</i> dismissed	5	3	1	3	12
<i>Amparos</i> denied	6	5	4	8	23
<i>Amparos</i> granted	5	12	7	2	26

Source: Internal Statistics and COFECE. *Quarterly reports 2019*, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

21. Relevant criteria were created from the Judiciary's rulings. For example, they clarified the elements for establishing price discrimination and confirmed sanctions imposed in 2017 to five taxi associations and four natural persons in the market for federal land passenger transportation of to and from the Mexico City International Airport.

22. Other *amparo* trials have helped in providing greater clarity and certainty to Mexican competition enforcement, for example:

- in collusion cases it was confirmed that the Commission can impose a sanction when economic agents belonging to a same economic interest group participate as competitors in the same public tender;
- that it is not essential for the Commission to prove the legal mandate of an economic agent's representative in order to impose a sanction on the company he or she represents;
- that data and telephone records may be protected by the client-attorney privilege, and
- that the Commission's powers to eliminate barriers to competition shall be balanced in order to maintain the principle of separation of powers between authorities (e.g. between COFECE and sectoral regulators).

### 3.3. Significant cases

23. In 2019, COFECE continued exercising oversight in the sectors identified as strategic in its *2018-2021 Strategic Plan*: financial, agri-food, energy, transport, health and public procurement.

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*on wide-ranging grounds, including that a law is unconstitutional or that any government action is not supported by substantial evidence or founded on reasoning that is illogical or contrary to general principle of the law". See OECD (2016), The resolution of competition cases by specialized and generalist courts: Stocktaking of international experiences.*

### 3.3.1. Financial Sector

#### *COFECE fines three financial institutions for gun jumping*

24. In January 2019, the Commission fined Banco Banco Ve Por Mas, S.A., Institución de Banca Múltiple, Grupo Financiero Ve Por Mas (Ve por Más) and Bankaool, S.A., Institución de Banca Múltiple (Bankaool) for failure to comply with the pre-merger notification of the transfer of ownership of expired credit claims carried out in 2017. The parties notified the Commission ex-post in 2018; therefore, the Board of Commissioners sanctioned each financial institution with fines of 39 thousand, 276 USD. Notwithstanding, the transaction was authorized.<sup>16</sup>

#### *Sanction for refusal to deal in the market of credit information*

25. In February 2019, COFECE sanctioned *Dun & Bradstreet* with a fine of 1.42 million USD for refusal to deal in the national market for the collection and processing of credit information belonging to legal entities and natural persons.<sup>17</sup> The Board of Commissioners determined that *Dun & Bradstreet* abused its market power by refusing to exchange its primary data base with its competitor.

26. In Mexico only three Credit Information Companies (CICs) or Credit Bureaus operate: *Trans Union de México*, *Dun & Bradstreet* and *Círculo de Crédito*; with the first two belonging to the same economic interest group. CICs are asymmetrical in terms of the volume of information each one holds, especially for the case of information of legal entities, in which *Dun & Bradstreet* holds 15 times more credit applicants than its only competitor, *Círculo de Crédito*. Moreover, the *Law to Regulate Credit Information Systems* compels CICs to share information they collect among each other in order for lenders to have the full credit history of their current and potential customers. The Commission's investigation also looked into possible price discrimination practices, but this could not be demonstrated.

#### *Possible absolute monopolistic practices in the market for the brokerage of debt securities*

27. In October 2019, COFECE notified several economic agents of a Statement of Objections for possible absolute monopolistic practices in the market for the brokerage of debt securities issued by the Mexican government.<sup>18</sup> The Investigative Authority had knowledge of facts that could possibly constitute a collusive agreement with the purpose or effect of manipulating the price of debt securities or imposing obligations to not commercialize or acquire a part of these. The trial-like procedure commenced with the notifications of the aforementioned Statements of Objections. In relation to this case, some of the alleged offenders were accused of damages in the United States. A class action was filed in March 2018 by several pension funds that claimed that the possible offenders operated as a cartel from January 2006 to April 2017. This claim was dismissed by a New

<sup>16</sup> Press Release COFECE-003-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/01/COFECE-003-2019-English.pdf>.

<sup>17</sup> Press Release COFECE-011-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/02/COFECE-011-2019-English.pdf>.

<sup>18</sup> Press Release COFECE-040-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/10/COFECE-040-2019-English.pdf>.

York Federal Court. Nevertheless, and given COFECE's Statement of Objections, the case reopened, and some banks have decided to settle to resolve the class action.<sup>19</sup>

### 3.3.2. Agri-Food Sector

#### *Absolute monopolistic practices in several corn tortilla markets in Chiapas*

28. In 2019, COFECE issued two decisions regarding local markets for corn tortilla<sup>20</sup> in the state of Chiapas.

29. In the first one, on January, the Commission notified several economic agents of a Statement of Objections for absolute monopolistic practices in the market for the production, distribution and commercialization of corn tortillas in the municipality of Ángel Albino Corzo in the state of Chiapas.<sup>21</sup> This, since the Investigative Authority had elements to presume possible agreements between competing economic agents with the purpose of manipulating the price per kilogram of tortilla and for establishing the obligation to sell the product only at tortilla shops (*tortillerías*). As a result of the trial-like procedure for this case, in October the Commission sanctioned 10 individuals who actively participated in the collusive agreement and one who contributed to its commission. Fines for this case amounted 15 thousand 822 USD.<sup>22</sup>

30. The second case, solved in July, involved the sanction to 5 natural persons and 3 tortilla-producer associations for engaging in a collusive agreement for price fixing and allocating the market for the production, distribution and commercialization of corn tortillas in the municipality of Palenque, also in Chiapas. According to the resolution, between 2014 and 2017, the sanctioned economic agents fixed the prices per kilogram of tortilla and established minimum distances between stores to prevent the entrance of new competitors and allocate the market. For these practices, which caused an estimated damage of 817 thousand 271 USD, COFECE issued fines totaling 109 thousand 346 USD.<sup>23</sup>

#### *Investigation into the national market for corn flour*

31. In April 2019, the Commission's Investigative Authority announced an investigation for possible monopolistic practices in the national market for production, distribution and commercialization of corn flour, the main input in the production of corn tortilla.<sup>24</sup> The investigation is ongoing.

<sup>19</sup> In re Mexican Government Bonds Antitrust Litig., No. 18-cv-2830 (S.D.N.Y). See JPMorgan, Barclays To Pay Mexican Bond Investors \$20.7M, in Law 360, A Lexis Nexis Company, available at: <https://www.law360.com/articles/1279000>.

<sup>20</sup> Corn tortillas are deeply connected to the spending of households, mainly those in lower-income levels, as they are a staple product in the Mexican diet. Hence, ensuring competitive conditions in tortilla markets is of the utmost importance for Mexican consumers.

<sup>21</sup> Press Release COFECE-004-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/01/COFECE-004-2019-English.pdf>

<sup>22</sup> Public version of the resolution to file DE-043-2017 available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V321/0/4950348.pdf>

<sup>23</sup> Public version of resolution of file DE-031-2017 is available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V308/0/4880101.pdf>.

<sup>24</sup> Press Release COFECE-021-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/04/COFECE-021-2019-English.pdf>.

### *Sanction for gun jumping in the market for dairy products*

32. In March 2019, the Commission imposed fines on an unlawful merger between *Nestlé México, Société des Produits Nestlé, Nestec* and *Innovación de Alimentos* amounting to 412 thousand 204 USD. The transaction, which took place between July and August 2013, exceeded the thresholds established on the Federal Economic Competition Law and impacted competition and free market access in the market for the production and commercialization of dairy products, specifically yogurt and cheese.<sup>25</sup>

### **3.3.3. Energy Sector**

#### *Possible abuse of market power in the market for LP gas*

33. In March 2019, the Investigative Authority announced the initiation of an investigation, derived from a complaint, in the national market for the import, commercialization, transport, storage, distribution and public retail of liquefied petroleum gas (LP gas). The investigation was added to a previous file and now both complaints will be covered under the same inquiry.<sup>26</sup> COFECE has previously indicated the economic and social importance of LP Gas, as 76% of Mexican households use it as a main fuel.<sup>27</sup>

#### *Investigations into possible anticompetitive conducts in oil markets*

34. In October 2019, the Investigative Authority announced three separate investigations in fuel markets: 1) one derived from a complaint for possible absolute monopolistic practices in the market for public retailing of gasolines and diesel at service stations, 2) an *ex officio* inquiry into a possible unlawful merger in the market for the commercialization and distribution of gasolines and diesel and its public retailing at service stations, and 3) for the probable existence of barriers to competition and essential inputs in the national market for aviation fuels, which include the production, import, storage, transportation, distribution, retail and related services. These are ongoing investigations.<sup>28</sup>

### **3.3.4. Transport Sector**

#### *Collusion in the market for air passenger transportation*

35. In 2015, COFECE initiated an investigation into possible absolute monopolistic practices between *Aerovías de México (Aeroméxico)* and the now extinct *Mexicana de Aviación (Mexicana)* and other airlines in the market for domestic passenger air transportation services.<sup>29</sup> As a result, in April 2019, COFECE determined that, between 2008 and 2010, three individuals had acted on behalf of said airlines to enact agreements with the purpose of exchanging information for coordinating final prices which resulted in

<sup>25</sup> Press Release COFECE-01-2019, available at: [https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-015-2019\\_English.pdf](https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-015-2019_English.pdf)

<sup>26</sup> Press Release COFECE-014-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-014-2019-English.pdf>.

<sup>27</sup> COFECE, Transition to Competed Energy Markets: LP Gas. Available, in Spanish, at: [https://www.cofece.mx/wp-content/uploads/2018/06/Libro-GasLP\\_web.pdf](https://www.cofece.mx/wp-content/uploads/2018/06/Libro-GasLP_web.pdf)

<sup>28</sup> Press Release COFECE-044-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/11/COFECE-044-2019-English.pdf>.

<sup>29</sup> Domestic flights with a Mexican city as final destination or origin.

the establishment of base or minimum prices for at least 112 domestic routes.<sup>30</sup> The conduct is estimated to have directly affected more than 3.6 million passengers and caused damages amounting for 145.68 million USD. Accordingly, the Board of Commissioners resolved to: a) confirm *Aeroméxico's* and *Mexicana's* responsibility regarding the execution of the collusive agreements; b) fine *Aeroméxico* with a total of 4.48 million USD, which was calculated in accordance with the 1992 Competition Act, as it was the legislation in force at the time when the conducts were executed; c) fine *Mexicana* with the minimum applicable fine, as the company had formally filed for bankruptcy; and d) fine three natural persons with 105 thousand 098 USD.

#### *Anticompetitive conducts related to taxi services at airports*

36. In 2016, COFECE initiated an investigation for refusal to deal in the market for federal land transportation of passengers (taxi services) from Cancun International Airport (AIC).<sup>31</sup> During the investigation, the Commission found that the AIC systematically issued negative opinions before the Ministry of Communications and Transport (SCT), against three economic agents, during their application for permits to provide said services and refused to sign a contract for granting access to the airfield's infrastructure to one of them, who had already obtained a permit from the SCT to operate as a taxi service provider for the airport of Cancun. These practices derived in an estimated harm to the market of more than 5 million USD and caused overprices of eight percent for more than 8 million taxi trips. Consequently, in July 2019, the Board of Commissioners fined the AIC with 3.77 million USD. Additionally, the AIC was ordered to correct and suppress the anticompetitive conduct through the following actions:

- sustain with technical elements its opinions for permit applications (either for allowing operations or for increasing the existing car fleets);
- the opinions must bring transparency to the criteria used for the issuance of permits; and
- in a maximum period of 30 business days, the AIC shall provide access to economic agents that had been granted a permit from the SCT to operate.

37. Compliance with these measures will be verified by COFECE at any given moment over a period of five years.

#### *Possible unilateral conducts in passenger transportation at Mexico City's Airport*

38. In February 2019, derived from a complaint, the Commission initiated investigation for possible relative monopolistic practices, also known as unilateral conducts, in the market for federal ground passenger transportation with origin or destination at Mexico City's International Airport. For this inquiry, the Investigative Authority had enough evidence to presume the existence of these type of conducts in the market for regular ground passenger transportation service, subject to frequency and determined schedules, for the departure and arrival to or from the airport's facilities.<sup>32</sup> This is an ongoing investigation.

<sup>30</sup> Public version of resolution of file IO-002-2015 is available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V299/0/4790610.pdf>.

<sup>31</sup> File DE-008-2016 and accumulated, available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V314/1/4904737.pdf>.

<sup>32</sup> Press Release COFECE-010-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/02/COFECE-010-2019-English.pdf>.

### 3.3.5. Health Sector

*COFECE notifies a Statement of Objections derived from its broadest investigation yet in the health sector*

39. As a result of an assessment of the participants' conduct throughout the whole value chain for pharmaceuticals, in June 2019, the Commission notified several economic agents of a Statement of Objections for absolute monopolistic practices.<sup>33</sup>

### 3.3.6. Public Procurement – Health Sector

*Probable collusion in laboratory tests and blood bank services*

40. In March 2019, the Investigative Authority of COFECE issued a Statement of Objections for absolute monopolistic practices in the market for comprehensive laboratory tests and blood bank services, as well as related goods and services, procured by the national health system.<sup>34</sup> Competitive conditions for laboratory and blood bank services are crucial to the welfare of the population, because of the role they play in regular health checkups, the timely identification of medical conditions and transfusions.

*Sanctions for bid rigging in public procurement processed in the market for toothbrushes*

41. In June 2019, the Board of Commissioners found that the companies *Productos Galeno, S. de R.L.*, (*Galeno*); *Dentilab, S.A. de C.V.* (*Dentilab*), and *Holiday de México, S.A. de C.V.* (*Holiday*) and five natural persons acting in their representation, agreed to establish, coordinate and fix bids in public tender proceedings, as well as abstaining from participating in tenders, with the purpose of allocating the market for toothbrushes for adults and infants procured by public institutions in the health sector.<sup>35</sup> Subsequently, the Commission imposed fines on the parties involved amounting to 941 thousand 406 USD.<sup>36</sup>

*Criminal complaint against several individuals who allegedly colluded in public procurement procedures in the health sector*

42. For the second time since its creation, COFECE lodged a criminal complaint before the Prosecutor General's Office (FGR for its acronym in Spanish) against individuals who probably engaged in bid rigging practices in public tenders in the health sector at least between 2011 and 2015, affecting the procurement of goods and services by diverse public entities.<sup>37</sup>

<sup>33</sup> Press Release COFECE-033-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/06/COFECE-033-2019-English.pdf>

<sup>34</sup> Press Release COFECE-017-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-017-2019-English.pdf>.

<sup>35</sup> Cartel conducts were committed from 2007 to 2013, in 68 public health sector tenders and in direct contracts, mainly with the Mexican Social Security Institute (IMSS), the Institute for Social Security and Services for State Workers (ISSSTE) and the Health Ministry.

<sup>36</sup> The public version of the resolution to file IO-005-2016 is available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V305/0/4838239.pdf>.

<sup>37</sup> Press Release COFECE-042-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/10/COFECE-042-2019-English.pdf>.



43. While the Commission continues the trial-like procedure to resolve on the economic agent's administrative responsibility and possible sanctions, the FGR continues the investigation to determine if criminal actions can be exercised against those responsible for committing a crime or participating in its commission.

### 3.3.7. Public Procurement – Other Sectors

#### *Results of the investigation in the market for watt-hour meters purchased by the Federal Electricity Commission (CFE)*

44. In November 2019, the Board of Commissioners decided to close the investigation for lack of evidence of cartel conducts. The case derived from a complaint against possible collusion in the market for the production, distribution and/or retail of watt-hour meters acquired CFE. The complaint indicated that between the years of 2013 and 2016, the companies *Comercializadora IUSA Medidores (IUSA)* and *Controles y Medidores Especializados (Conymed)*, among others, allegedly colluded in said procurement processes. *Conymed* and *IUSA* are part of an economic interest group. The investigation showed that in all cases, the investigated parties did not present themselves as competitors, as they submitted bids for different types of electricity meters, without coinciding in a single budget line item. Therefore, no evidence of a possible collusion could be found.

45. However, the Commission underscored the effects of tender design, calling for greater competition and implementation of the international tender figure that enables participation of foreign suppliers.<sup>38</sup> Even though COFECE's inquiry was closed, its recommendations fostered changes in tendering procedures for the procurement of watt-hour meters, resulting in prices dropping 18% and allowing the entry of two new competitors into the market.

## 4. Mergers and acquisitions

### 4.1. Enforcement statistics: mergers

46. During 2019, 132 mergers were authorized and two were blocked.

**Table 5. Mergers**

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Received in 2019	35	23	48	47	153
Analysis concluded	44	26	31	43	144
Authorized	40	22	29	42	132
Subject to conditions	0	0	0	0	0
Rejected	0	1	0	1	2
Other	4	3	3	0	10
Pending for next period	24	18	35	39	39

Source: Internal Statistics and COFECE. *Quarterly reports 2019*, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

<sup>38</sup> Public version of resolution to file DE-023-2017 available in Spanish at: <http://cofece.mx/CFCResoluciones/docs/INVESTIGACIONES/V3779/1/4966607.pdf>.

47. The value of mergers analyzed by COFECE during 2019 amounted approximately 40 thousand, 410 hundred USD. Most mergers authorized were in sectors related to manufacture industries and real estate services.

**Table 6. Mergers 2019: value of transactions (in million USD)**

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Total value	10,397.50	2,479.43	16,893.90	10,639.65	40,410.49
Number of cases	40	23	28	43	134
National scope (total value)	1,744.66	531.12	1,238.60	4,560.14	8,074.54
National scope (number of cases)	12	5	13	26	56
International scope (total value)	8,652.83	1,948.31	15,655.30	6,079.50	32,335.95
International scope (number of cases)	28	18	15	17	78

Source: Internal Statistics and COFECE. *Quarterly reports 2019*, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

## 4.2. Significant cases: mergers

### 4.2.1. Walt Disney/Fox<sup>39</sup>

48. In August 2018, both the Federal Economic Competition Commission (COFECE) and the Federal Institute for Telecommunications (IFT)<sup>40</sup> were notified of a global transaction by which *The Walt Disney Company (Disney)* acquired 100% of *Twenty-First Century Fox's (Fox)* share capital, as well as its movie and television studios, cable-tv entertainment channels and regional sports channels, and all international television businesses. Pursuant to its powers, COFECE analyzed the impact of the merger in the markets for:

- Movie distribution for theatrical exhibition.
- Audiovisual content and music licensing for home entertainment in physical or digital format either for its purchase or direct download.
- Licensing of music through non-digital media.
- Live entertainment.
- Intellectual property rights licensing for books, magazines and the development of both interactive media and videogames.

49. After conversations with COFECE's mergers division, in January 2019, the parties notified a modification to the transaction to eliminate any possible risk to competition in the market for movie distribution for theatrical exhibition. Accordingly, *Disney* would end its alliance with *Sony Pictures* in said market, eliminating all possible competition risks.

<sup>39</sup> Final resolution under file number CNT-126-2018 (in Spanish), available at: <http://cofece.mx/CFCResoluciones/docs/Concentraciones/V5963/2/4693359.pdf>

<sup>40</sup> It is worth noting that the transaction was notified to both authorities since the IFT has the constitutional mandate of analyzing competition in the telecommunications and broadcast markets. In this particular case, the IFT analyzed those related to licensing for both pay and open TV services, the acquisition of transmission rights for sports events, among others.



As a result, COFECE authorized both the transaction, in the markets under its purview, between *Disney* and *Fox* and the one between *Disney* and *Sony Pictures*.

#### 4.2.2. *Walmart/Cornershop*<sup>41</sup>

50. In May 2019, COFECE blocked *Walmart's* acquisition of *Cornershop*.

51. *Walmart* is a retail company that operates supermarkets, membership price clubs, pharmacies and on-line stores, and it is the largest chain of retail stores in the country, measured both in the number of stores and total sales (its total sales are four times larger than those of its closest competitor). *Cornershop* offers logistical services for the exhibition, purchase and immediate delivery of products offered by retailers through their website and a mobile app, it is the largest economic agent with these services in the Mexican cities that it operates. Hence the merger would operate as a vertical integration.

52. Among those aspects analyzed by COFECE, the following potential risks were identified if the concentration were carried out as originally planned:

- *Cornershop* could refuse to offer its services to *Walmart* competitors.
- *Walmart* could refuse to retail its products on platforms operated by *Cornershop's* competitors.
- The new economic agent resulting from the transaction could induce *Walmart's*
- competitors to abandon the *Cornershop* platform – through the strategic use of information produced and provided by competitors to retail their products.

53. Even though the parties submitted remedies, these were deemed as insufficient to avoid possible negative effects on competition. Thus, the Board of Commissioners resolved not to authorize the transaction, as it would harm competition in the market for logistical services for the exhibition, purchase and immediate delivery of products sold by supermarkets through websites and mobile apps to final consumers.

54. *Cornershop* subsequently found another potential buyer (*Uber*) and notified this transaction to COFECE in October 2019. However, the Federal Institute of Telecommunications (IFT), the authority charged with sectoral regulation for the broadcasting and telecommunications sector, as well as for enforcing the Mexican competition law in those sectors only, also considered itself as the competent authority to handle the transaction, thus giving rise to a conflict of scope of powers foreseen in the legal competition framework in Mexico. In accordance with the competition law, the Federal Judiciary Branch settles this type of conflicts after hearing arguments from both agencies. In May 2020, a Specialized Circuit Court unanimously decided to grant COFECE competence to assess and resolve the *Uber/Cornershop* merger. Currently COFECE is assessing the transaction.

## 5. Competition Advocacy

55. COFECE advocates for the benefits of competition among several audiences through the promotion of procompetitive regulatory frameworks and public policies and by positioning competition in the public agenda. In 2019, the Commission issued several

<sup>41</sup> Final resolution under file number CNT-161-2018 (in Spanish), available at: <http://cofece.mx/CFCResoluciones/docs/Concentraciones/V6013/14/4901568.pdf>

opinions, studies and documents addressed to lawmakers, regulatory agencies, as well as other public authorities and institutions.

## **5.1. The role of COFECE in the formulation and implementation of other policies**

56. COFECE has the power to issue non-binding opinions regarding laws, regulations, draft provisions and other legal frameworks that could have negative effects on competition and free market access. In 2019, the most significant opinions issued were:

### ***5.1.1. Opinion on the Guidelines for the legal separation of the Federal Electricity Commission***

57. In March 2019, the Ministry of Energy published in the DOF the Agreement modifying conditions for the strict legal separation of the Federal Electricity Commission (CFE) published on January 11<sup>th</sup>, 2016. After its review, COFECE found that the provisions resulting from the agreement could compromise the horizontal and vertical separation of CFE which may be counter-productive for the efficiency of the electricity industry as a whole and also in detriment of service users. Thus, COFECE issued an opinion with the following recommendations:

- If there is a restructuration in the assets of CFE's subsidiary companies, CFE should maintain some degree of horizontal separation in the link for electricity generation, as well as some functional separation between the companies that participate in said segment. This with the purpose of avoiding the exchange of privileged information and employees; and for complying with the Electric Industry Law and the Law of the Federal Electricity Commission.
- CFE should maintain vertical separation between distribution and commercialization.
- The Energy Ministry and the Energy Regulatory Commission should use their powers to monitor and ensure CFE's strict separation.

58. By issuing this opinion, the Commission restated its commitment to collaborate with authorities and regulators in the transitional period from closed energy markets to open and contested ones in order to stimulate economic competition in the electricity industry for the benefit of Mexicans.

### ***5.1.2. Opinion on public procurement regulations from the National Housing Fund for Workers***

59. In April 2019, the Commission issued an opinion regarding the public procurement regulations of the National Housing Fund for Workers (INFONAVIT for its acronym in Spanish), a public institution with the objective of addressing housing needs and the development of housing and financing solutions for Mexican workers.

60. The opinion, which was issued at INFONAVIT's request, recommended improvements to the purchasing rules, such as (i) making open bids the main tendering procedures, (ii) the use of competitive methods for smaller purchases, and (iii) the removal of automatic contract renewals. INFONAVIT reacted positively and enacted the necessary changes to adopt the recommendations issued by COFECE in order to commit to efficient public spending.

61. After the issuance of the opinion, the INFONAVIT committed to addressing COFECE's recommendations and estimated savings in the order of 170 million USD from such actions. In November of 2019, INFONAVIT issued a press release announcing the changes adopted through a new procurement framework.<sup>42</sup>

### 5.1.3. *Opinion to Ports Law*<sup>43</sup>

62. In November 2019, COFECE issued an opinion to the Ministry of Communications and Transport and to the respective commissions in the Senate and Chamber of Deputies with recommendations to modify the Ports Law and other regulatory measures to promote competition in port maneuver services.

63. Mexican ports are logistic hubs where maritime transport converges with railways and highways to connect production or import centers of several inputs and goods, with points of consumption across the country. Hence, COFECE recommended legal modifications aimed at guaranteeing better prices, quality and opportunity conditions for the users of maneuver services at diverse ports in Mexico. Among others, the Commission recommended promoting competition in tenders for the assignment of contracts, modifying operational rules for granting exclusivities and empowering the Ministry to use tariff regulations when maneuvering services providers are monopolies at ports. Two legislative proposals using COFECE's recommendations have thus far been presented before the Chamber of Deputies.

## 5.2. New reports and studies on competition policy issues

64. By publishing reports and studies on diverse sectors and markets from a competition perspective, COFECE contributes to the discussion, awareness and adoption of competition principles by different audiences. In 2019, COFECE published the following documents:

### 5.2.1. *Transition towards competed energy markets: gasolines and diesel (2019 Update)*

65. An updated version of the 2016 document *Transition towards competed energy markets: gasolines and diesel* was published in early 2019.<sup>44</sup> This new report constitutes an assessment of the implementation of the energy reform of 2013 in the markets of gasoline and diesel. It includes public policy recommendations to foster efficient supply of

<sup>42</sup> Press release #61 available, in Spanish, at: [https://portalmx.infonavit.org.mx/wps/portal/infonavit.web/el-instituto/el-infonavit/sala-de-prensa/!ut/p/z1/hY7LDolwEEW\\_hQVbOoiQ4g4NFoEQjTFiNwZMLRigpFT4ffGxMfExuzv3nMkgilJEm6wveaZK0WTVmA\\_UOToEIFhMzQTHkQ0bWEcEQjC3LqD9P4CONXwZ7-7TBzLBAGQOZkJwgMFb-ivfja0J2Zkv4MeNEFFeifz5rtfkFuaISnZmkknjKsd1oVTbzXTQYRgGgwvBK2acRK3DJ6UQnULpO4naOoWLXfWxp2k3j7qQYg!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?numeroBoletin=061&mes=noviembre&anio=2019](https://portalmx.infonavit.org.mx/wps/portal/infonavit.web/el-instituto/el-infonavit/sala-de-prensa/!ut/p/z1/hY7LDolwEEW_hQVbOoiQ4g4NFoEQjTFiNwZMLRigpFT4ffGxMfExuzv3nMkgilJEm6wveaZK0WTVmA_UOToEIFhMzQTHkQ0bWEcEQjC3LqD9P4CONXwZ7-7TBzLBAGQOZkJwgMFb-ivfja0J2Zkv4MeNEFFeifz5rtfkFuaISnZmkknjKsd1oVTbzXTQYRgGgwvBK2acRK3DJ6UQnULpO4naOoWLXfWxp2k3j7qQYg!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?numeroBoletin=061&mes=noviembre&anio=2019)

<sup>43</sup> Press release COFECE-047-2019 available at: <https://www.cofece.mx/wp-content/uploads/2019/11/COFECE-047-2019-English.pdf>

<sup>44</sup> COFECE (2019), *Transición hacia Mercados Competidos de Energía: Gasolinas y Diésel*. Available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2019/01/CPC-GasolinasyDiesel-30012019.pdf>.

these fossil fuels. These policy changes would create better conditions for greater competition and lower prices in these markets. Given the importance of gasoline and diesel in the welfare of Mexican households and companies, it is fundamental to promote and ease the entrance of more participants in both wholesale and retail, and to encourage investment across the entire the production chain. Among the key aspects conveyed by the report are the need to reduce barriers to promote capital inflow for the creation of storage and transport infrastructure, the removal of red tape for obtaining import permits and authorization for new service stations and the elimination of any regulation that favors the state-owned enterprise, Petroleos Mexicanos (PEMEX), which still holds – at least in wholesale – 85% of market share.

### 5.2.2. Market study on competition in federal passenger transportation

66. In 2019, the Commission published the *Market Study on competition in federal passenger transportation*<sup>45</sup> which identifies the role of regulations in hindering competition in this market. Although it was partially de-regulated starting in 1993, this service currently displays slow technological change and a general lack of innovative business models. The study found that 76.8% of the 5,877 inter-urban routes studied are covered by a sole operator, and federal regulation hinders the participation of more suppliers. COFECE identified a series of these obstacles limiting entry and competition. The Commission's estimates show that if pro-competitive measures were to be enacted, the entrance of one new competitor on a route could reduce the price 40% per kilometer. This study is relevant since federal land passenger transportation is the main means of public inter-urban transportation in Mexico.

## 6. International Activities

### 6.1. Peer Review of Competition Law and Policy: Mexico

67. In 2019, the OECD conducted a Peer Review of Competition Law and Policy in Mexico, based on interviews with relevant stakeholders such as academic experts, specialized judges, business representatives, practitioners, sectoral regulators and other public authorities, as well as officials from both COFECE and the IFT.

68. A first examination from peers took place in September 23, during the 2019 Latin American and Caribbean Competition Forum in San Pedro Sula, Honduras. The examination was conducted by senior officials of competition authorities from Brazil, Chile, Norway and the United States.

69. Finally, during the December meeting of the OECD Competition Committee, the lead examiners from Brazil, Norway and the United States presented their remarks and the Committee's Secretariat presented the findings of the report and draft proposed recommendations for Mexico. The report was approved by the Competition Committee during this meeting.

70. The Peer Review of Competition Law and Policy: Mexico was published in February 2020.

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<sup>45</sup> COFECE (2019). *Estudio de competencia en el autotransporte federal de pasajeros*. Available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2019/04/Estudiocompetenciaautotransportefederalpasajeros.pdf#pdf>.

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

71. In February 2019, the Commission launched the fifth edition of the Fellows Program for Latin American and Caribbean Competition Agencies. This year, COFECE hosted two officials from Ecuador, one who worked in Mergers and one in Market Investigations, and two officials from Peru who worked in Regulated Markets and Mergers.

## 6.3. OECD-COFECE Workshop for Competition Officials on Effective Cartel Detection and Prosecution

72. In June 26 and 27, COFECE hosted the *Workshop for Competition Officials on Effective Cartel Detection and Prosecution*, jointly organized with the OECD.<sup>46</sup> This capacity building activity explored techniques for cartel detection and case handling in diverse jurisdictions, paying special attention to screenings, dawn raids and interview techniques. Officials from the OECD and eight jurisdictions (including Australia, Brazil, Canada, Chile, Costa Rica, Israel, Korea, Peru, Turkey and the United States) participated.

## 6.4. ICN-COFECE Unilateral Conduct Workshop

73. In November 14 and 15, the Commission and the International Competition Network (ICN) co-organized the 8th edition of the *Unilateral Conduct Workshop*, aimed at exploring issues surrounding the assessment of unilateral conducts in the context of digital platforms through plenary and breakout sessions discussing hypothetical scenarios. Specifically, the event focused on market definition and market power in digital platforms; tying sales in digital markets, and remedies and commitments in competition cases related to the digital economy. The workshop was attended by 144 participants representing competition agencies from 32 countries, as well as competition experts from international organizations and the legal, business and academic communities.

## 6.5. Capacity Building of COFECE's Personnel at Foreign Competition Authorities

74. As part of its Annual Strategic Plan for 2019, the Commission organized exchange programs with foreign competition authorities to promote the knowledge and implementation of best practices of enforcement amongst its staff. Several competition agencies responded to COFECE's project, thus allowing two of its officials to travel abroad and work alongside local teams in the United States and in Australia.

75. The Federal Trade Commission of the United States of America (FTC) hosted a COFECE official as a part of the *SAFE WEB Internship Program*, where she had the chance to collaborate in issues related to mergers. The Australian Competition & Consumer Commission (ACCC) accepted a member of COFECE's staff to participate in its Secondment Program, who worked on issues related to cartel conducts.

76. International cooperation contributes to the strengthening of the staff's technical capabilities, and, consequently, the Commission's actions. At the same time, these

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<sup>46</sup> The official website for the Workshop is available at: <http://www.oecd.org/daf/competition/oecd-cofece-workshop-effective-cartel-detection-and-prosecution.htm>

activities have been essential for deepening COFECE's ties with competition enforcers around the world.

## 7. Resources of competition authorities

### 7.1. Annual Budget

77. For 2019, the annual budget was MXN \$581,230,908.00 (equivalent to 30,240,942.14 USD).

### 7.2. Human Resources

78. In 2019, the Commission employed 422 people, of which:<sup>47</sup>
- 266 are non-administrative staff working in competition enforcement, of which:
    - 126 work in the Investigative Authority (cartels, abuse of dominance, market intelligence and forensics)
    - 23 work on Litigation Affairs
    - 37 work in the Board of Commissioners
    - 80 work in the Technical Secretariat (including merger review and market studies)
79. In terms of professions, of the total of non-administrative staff:
- 135 are lawyers
  - 97 are economists
  - 34 come from other professions (engineers, political scientist, foreign affairs, among others)
80. Most of the information provided covers from January 1st to December 31st, 2019.

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<sup>47</sup> It is important to point out that some non-administrative staff works in more than one area of competition enforcement: therefore, numbers add up more than the number of total staff.

## Report by the Federal Telecommunications Institute (IFT)

### 1. Executive Summary

81. In 2019, the IFT modified and updated its “Regulatory Provisions of the Federal Economic Competition Law (LFCE) for the Telecommunications and Broadcasting (T&B) Sectors” twice. It issued the “Guide to the Procedure for the Exemption or Reduction of the Amount of Fines in Investigations of Relative Monopolistic Practices or Unlawful Concentrations for the T&B Sectors”; the “Guide for the Submittal of Applications for the Investigation of Market Conditions under Article 96 of the LFCE in the T&B Sectors”; it launched the Electronic Complaint System before the IFT’s Investigative Authority (SEPDAI) and therefore amended the “Guidelines for Filing Complaints of Monopolistic Practices and Unlawful Concentrations in the T&B Sectors before the Investigative Authority of the IFT through Electronic Means.”

82. The IFT conducted seven investigations in the T&B sectors. Two of them on the possible existence of economic agents with substantial market power; four of them on unilateral conducts; and one of them on an unlawful merger. In 2019, the Board decided to close four files after determining that there were not enough elements to initiate a procedure.

83. Regarding mergers and acquisitions, the IFT reviewed nine cases. Two of them were filed pursuant to Transitory Article 9th of the Federal Telecommunications and Broadcasting Law (LFTR) that exempts certain mergers from being notified *ex ante* to the IFT; and one of them, the acquisition of assets property of Twenty-First Century Fox, Inc. by The Walt Disney Co. was approved subject to conditions. The total value of the analysed transactions was \$82.57 billion USD.

84. As a convergent regulatory and competition authority, the IFT also carried out the competition review of a public bid of spectrum in the 2000-2020 MHz/2180-2200 MHz band; of 289 transactions that involved T&B licenses; and of the biennial update of preponderance (*ex ante*) regulation.

85. The IFT took part in the “OECD Peer Review of Competition Law and Policy in Mexico”; it published a “Study on the Behaviour of the Regulated Market Indicators”; a “Report on the Offer and Demand of Audio-visual Content OTTs in Mexico”; a “Report on Forecasts of the Telecommunications Services”; a “Report on Competition Policy for Regulating Online Platforms in the Asia-Pacific Region” through Asia-Pacific Economic Cooperation (APEC) funding; and engaged in advocacy and international cooperation actions to support its competition mandate.

86. Finally, IFT’s annual budget amounted to \$108,261,500 USD, with a staff of 1233 employees, out of which 450 were dedicated to competition related activities.



## 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 the Regulatory Provisions*

87. The Federal Economic Competition Law (LFCE) empowers the Federal Telecommunications Institute (IFT), as the competition authority for the telecommunications and broadcasting (T&B) sectors, to issue the necessary regulatory provisions for the fulfilment of its functions. The IFT published its “Regulatory Provisions of the LFCE for the T&B Sectors” (Regulatory Provisions) on January 2015. In 2019, the IFT modified and updated its Regulatory Provisions twice.<sup>48</sup>

88. The first modification was issued on February 1, 2019, addressing the need to regulate the procedure referred to in articles 100, 101 and 102 applicable to the exemption and reduction of fines that the law establishes as sanction for relative monopolistic practices or unlawful concentrations. These amendments established the minimum requirements that the writing request must meet in order to qualify for the benefit of the exemption or reduction of the amount of fines provided for in article 100 of the LFCE; the way in which the procedure provided for in Article 100 and 102 of the LFCE will be processed; and the assumptions to dismiss the request as notoriously inadmissible; among other changes.

89. The second modification was issued on November 22, 2019, seeking to provide greater legal certainty to regulated agents and to make IFT's performance more efficient in the exercise of its powers, as the competition authority in the T&B sectors. These amendments modify the moment for the presentation of information that can prove efficiency gains in investigations of unlawful concentrations and relative monopolistic practices; the procedure to request the issuance of precautionary measures; the possibility of notifying actions by electronic means; and the division of unlawful merger cases between the Investigative Authority and the Economic Competition Unit; among other changes.

### 2.2. Other Relevant Measures, Including New Guidelines

#### *2.2.1. Guide to the Procedure for the Exemption or Reduction of the Amount of Fines in Investigations of Relative Monopolistic Practices or Unlawful Concentrations for the T&B sectors<sup>49</sup>*

90. The extract of the Guide was published on February 1, 2019, in the Federal Official Gazette (DOF), with the purpose of conducting the procedure for the exemption or reduction of the amount of fines in investigations of relative monopolistic practices or unlawful concentrations in the T&B sectors, specifically on information and documents suitable to satisfy the requirements established in article 100 of the LFCE and in the Regulatory Provisions.

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<sup>48</sup> Available in Spanish at:

[http://www.ift.org.mx/sites/default/files/disposiciones\\_regulatorias\\_de\\_la\\_lfce\\_vigente\\_integrada\\_al\\_22-nov-19.pdf](http://www.ift.org.mx/sites/default/files/disposiciones_regulatorias_de_la_lfce_vigente_integrada_al_22-nov-19.pdf)

<sup>49</sup> Available in Spanish at:

<http://www.ift.org.mx/sites/default/files/guiadelprocedimientodedispensaoreducciondelimportede multas.pdf>



91. The Guide identifies anticompetitive behaviours that may be subject to the benefit of exemption or reduction of the amount of fines; the requirements that must be met in the writing document; the actions that the Investigative Authority and the applicant can perform during the procedure; the meaning of the resolution that can be issued by the IFT's Board and the elements that can be taken into consideration; the conclusion or resumption of the investigation, as appropriate; the verification of compliance with the commitments; and the classification of the submitted information.

### ***2.2.2. Guide for the Submittal of Applications for the Investigation of Market Conditions under Article 96 of the LFCE in the T&B Sectors***<sup>50</sup>

92. The extract of the Guide was published on February 1, 2019, in the DOF, with the purpose of advising the public on the presentation of requests for investigations of market conditions provided for in article 96 of the LFCE, particularly, on the information and appropriate documents to meet the requirements established in article 120, section I, of the Regulatory Provisions, in relation to article 96.

93. The Guide includes information on the modalities for initiating an investigation; the requirements that the writing request 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 the Investigative Authority can issue once the application has been submitted; and the categories in which the submitted information can be classified, along with the application document.

### ***2.2.3. Amendment to the Guidelines for Filing Complaints of Monopolistic Practices and Unlawful Concentrations in the T&B Sectors before the Investigative Authority of the IFT through Electronic Means***<sup>51</sup>

94. The Guidelines were first published on December 10, 2018. Following the amendments of the Regulatory Provisions, a modification of paragraph fourth of article 9 became necessary. This provision considered that on the actions and notifications of the Investigative Authority through the Electronic Complaint System before the IFT's Investigative Authority (SEPDAI), "the agreement that prevents the complainant, rejects the complaint or considers it not filed, shall also be notified personally", in addition to being notified through the SEPDAI. This provision avoided effectively fulfilling the purpose of the Guidelines, that is, making available to the public, optionally, an alternative mechanism that reduces the administrative burden and facilitates denouncing the possible existence of anticompetitive behaviours, by making use of the information and communications technologies. Thus, on November 22, 2019, the Guidelines eliminated said paragraph.

## **2.3. Government Proposals for New Legislation**

95. No government proposals for new economic competition legislation were issued during 2019.

<sup>50</sup> Available in Spanish at:

[http://www.ift.org.mx/sites/default/files/guia\\_solicitudesarticulo96lfce\\_versionaccesible.pdf](http://www.ift.org.mx/sites/default/files/guia_solicitudesarticulo96lfce_versionaccesible.pdf)

<sup>51</sup> Available in Spanish at: <http://www.ift.org.mx/industria/autoridad-investigadora/documentos-materia-economica>

### 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

###### *Competition Authorities*

96. The efficient development of the T&B sectors; to guarantee free competition and market access; and to prevent, investigate and fight monopolies, monopolistic practices, unlawful concentrations and other restrictions on the efficient functioning of the markets of those sectors corresponds exclusively to the IFT. Additionally, the IFT is responsible for the regulation, promotion and supervision of the use, development and exploitation of the radio spectrum, networks and the provision of T&B services, as well as the access to active, passive infrastructure and other essential facilities.

97. In 2019, the IFT processed seven investigations in the T&B sectors. Four of them were initiated in 2019; one was initiated in 2017, and two in 2018. Two of them on the possible existence of economic agents with substantial market power, four of them on unilateral conducts and one on an unlawful merger.

###### *Courts*

98. The Mexican legal framework does not support private actions in competition matters. Courts may only act following a challenge filed by an interested party against the resolution of a competition authority without suspension, or a private action claiming damages after competition liability has been established.

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

###### *Started Investigations*

99. An investigation initiated by a complaint for probable commission of a relative monopolistic practice in the market of the provision of wholesale services of disaggregation of the local network of the preponderant economic agent in the telecommunications sector, in the national territory.<sup>52</sup>

100. An investigation initiated by a complaint for probable commission of a relative monopolistic practice in the retail markets of mobile telecommunications services and of commercialization of mobile terminal equipment, in the national territory.<sup>53</sup>

<sup>52</sup> Initiation decision available in Spanish, file AI/DE-002-2019 at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5559511&fecha=06/05/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5559511&fecha=06/05/2019)

<sup>53</sup> Initiation decision available in Spanish, file AI/DE-003-2019 at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5578364&fecha=11/11/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5578364&fecha=11/11/2019)

101. An investigation initiated *ex officio* in order to determine the probable existence of economic agents with substantial power in the telecommunications network market(s) that provide voice, data or video services at the national, state, regional and/or local level.<sup>54</sup>

102. An investigation initiated *ex officio* in order to determine the probable existence of economic agents with substantial power in the telecommunications network market(s) that provide voice, data or video services at the national, state, regional and/or local level.<sup>55</sup>

### *Investigations in Process*

103. 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, distribution and commercialization of audio-visual contents transmitted through the Internet, in the national territory.<sup>56</sup>

104. In 2018, the IFT undertook an investigation for a probable commission of a relative monopolistic practice in the markets of production, distribution and commercialization of contents transmitted through a platform with an Internet connection; the distribution and commercialization of electronic devices for the reproduction of contents through the Internet, and television and audio restricted services, in the national territory.<sup>57</sup>

105. In 2018, the IFT initiated an investigation by a complaint for probable unlawful concentrations that could have the object or the effect of hindering, diminishing, damaging or preventing free concurrence 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 national territory.<sup>58</sup>

### *Investigations that Concluded with a Preliminary or a Probable Responsibility Statement, as Applicable*

106. In 2016, the IFT initiated and *ex officio* investigation on the existence of facts or conducts that could constitute one or several probable unlawful concentrations as referred to 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. In terms of the provisions of article 78, second paragraph of the LFCE, in the assumption that the Investigative Authority presents a probable responsibility statement to the IFT's Board, to propose the start of a trial-like procedure for existing objective elements that establish the responsibility of the economic agent or

<sup>54</sup> Initiation decision available in Spanish, file AI/DC-002-2019 at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5559749&fecha=08/05/2019](http://dof.gob.mx/nota_detalle.php?codigo=5559749&fecha=08/05/2019)

<sup>55</sup> Initiation decision available in Spanish, file AI/DC-003-2019 at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5572081&fecha=12/09/2019](http://dof.gob.mx/nota_detalle.php?codigo=5572081&fecha=12/09/2019)

<sup>56</sup> 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](http://www.dof.gob.mx/nota_detalle.php?codigo=5496815&fecha=11/09/2017)

<sup>57</sup> Initiation decision available in Spanish, file AI/DE-003-2018 at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5538189&fecha=18/09/2018](http://dof.gob.mx/nota_detalle.php?codigo=5538189&fecha=18/09/2018)

<sup>58</sup> Initiation decision available in Spanish, file AI/DE-001-2018 at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5524245&fecha=28/05/2018](http://www.dof.gob.mx/nota_detalle.php?codigo=5524245&fecha=28/05/2018)

probable agents investigated, the Board will order the body in charge of the instruction, the beginning of the procedure through the summons of those likely responsible.<sup>59</sup>

107. In 2018, the IFT initiated an investigation in order to determine the possible existence of barriers to competition and free concurrence that can generate anticompetitive effects in the market of fixed telecommunications services with a geographical dimension circumscribed to the State of Mexico. As a result, the Investigative Authority concluded the investigation with a preliminary statement, in which it was determined that there are no effective competition conditions in 123 relevant markets of the fixed broadband internet access service (SBAF, by its acronym in Spanish), located in the State of Mexico. Likewise, the existence of regulatory barriers that restrict the entry and expansion of SBAF bidders in the relevant markets were identified. Consequently, the IFT's Board ordered the performance of all the necessary acts to follow the procedure until its conclusion.<sup>60</sup>

108. In 2018, the IFT initiated an investigation in order to determine the possible existence of barriers to competition and free concurrence that can generate anticompetitive effects in the market of fixed telecommunications services with a geographical dimension circumscribed to the State of Guanajuato. As a result, the Investigative Authority concluded the investigation with a preliminary statement, in which it was determined that there are no effective competition conditions in 43 relevant markets of the SBAF, located in the State of Guanajuato. Likewise, the existence of regulatory barriers that restrict the entry and expansion of SBAF bidders in the relevant markets were identified. Consequently, the IFT's Board ordered the performance of all the necessary acts to follow the procedure until its conclusion.<sup>61</sup>

109. In 2019, the IFT initiated an investigation *ex officio* in order to determine the probable existence of economic agents with substantial power in the telecommunications network market(s) that provide voice, data or video services at the national, state, regional and/or local level. As a result, the Investigative Authority issued a preliminary statement, in which it identified elements to determine the existence of substantial power by the economic interest group called GTV (*Grupo Televisa*) in 35 relevant markets of the pay television service. Consequently, the IFT's Board ordered the performance of all the necessary acts to follow the procedure until its conclusion.<sup>62</sup>

### *Closed Investigations*

110. In 2016, an investigation was initiated regarding the alleged unilateral conducts of refusal to deal, setting conditions to purchases or discounts, and raising rival costs, in the

<sup>59</sup> Board Agreement, available in Spanish, file AI/IO-001-2016 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vppift050619314accai.pdf>

<sup>60</sup> Board Agreement, available in Spanish, file AI/DC-001-2018 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vppift251119740acc.pdf>

<sup>61</sup> Board Agreement, available in Spanish, file AI/DC-002-2018 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vppift251119741acc.pdf>

<sup>62</sup> Board Agreement, available in Spanish, file AI/DC-002-2019 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift110919453acc.pdf>

pre-paid mobile airtime recharge service in the country. 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. The results were as follows.

111. Regarding the anticompetitive practices that were denounced and investigated, the Investigative Authority issued a statement to close the investigation, in which it was taken into account, in relation to the price predation, that Telmex incurs in losses for the provision of the public telephone service without this being attributable to the sale of the different modalities of the service below its variable average cost or its total average cost. This, due to the downward trend in the demand for public telephone service which decreases Telmex's revenues for said service, as well as the obligation established in its concession title to keep a certain number of telephone booths in operation, which prevents it from reducing its fixed costs.

112. Regarding the price discrimination behaviour, Telmex offers the same rates to all of its wholesale service customers, but it offers different levels of discount for different customers. The discount policy is based on an economic rationality in which Telmex seeks to keep its wholesale service customers of the public telephone service, given its regulatory obligation to have a certain number of telephone booths in operation.

113. Regarding the behaviour of raising the rivals' costs, impeding the production process or reducing demand, it was considered that the effective rates that Telmex has charged the complainant for the service and for the monthly rent, shows a systematic fall since 2007. In general, Telmex has maintained or lowered its rates. There were no elements to determine that Telmex had carried out actions whose object or effect, direct or indirect, is to increase costs, hinder the production process or reduce the demand faced by other agents.

114. Finally, in relation to the behaviour of narrowing margins, it was concluded that the margin between the price at which Telmex offers the public telephone service and the price offering of wholesale services has not diminished. In this respect, on February 6, 2019, the IFT's Board decided to close the file since there were not enough elements to initiate a procedure.<sup>63</sup>

115. In 2016, the IFT initiated an *ex officio* investigation regarding 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. Derived from the analysis of the elements of conviction collected during the investigation, the Investigative Authority issued the statement that proposed to close the file. In this respect, on June 19, 2018, the IFT's Board decided to close the file since there were not enough elements to initiate a trial-like procedure.<sup>64</sup>

116. During 2018, IFT initiated an *ex officio* investigation in order to determine the probable existence of economic agents with substantial power in the market of

<sup>63</sup> Resolution of the IFT's Board, available in Spanish, file AI/DE-003-2016 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/vppift06021968acc.pdf>

<sup>64</sup> Resolution of the IFT's Board, available in Spanish, file AI/IO-002-2016 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/vppift190619331acc.pdf>

telecommunications networks that provide voice, data or video services, at national, state, regional and/or local level. As a result, the Investigative Authority issued a statement to close the investigation, since there were not enough elements to determine that after the operation, the economic interest group headed by American Tower Corporation and formed by its subsidiaries *MATC Digital, S. de R.L. de C.V.*, *MATC Infraestructura, S. de R.L. de C.V.*, ATC HFM, CFCA TELECOMM and TELCO acquired substantial power in the analysed relevant markets. In this respect, on August 22, 2018, the IFT's Board decided to close the file since there were not enough elements to initiate a procedure.<sup>65</sup>

117. In 2018, the IFT initiated and *ex officio* investigation in order to determine the probable existence of economic agents with substantial power in the radio and TV market. As a result, the Investigative Authority issued a statement to close the investigation, since there were not enough elements to determine that, after the operation, *Grupo Multimedios* formed by *Multimedios, S.A. de C.V.*, *MM Radio, S.A. de C.V.*, *MM Televisión, S.A. de C.V.*, *Radio Triunfos, S.A. de C.V.*, *Radio Informativa, S.A. de C.V.* y *La Voz de Linares, S.A.* acquired substantial power in the analysed relevant market. In this respect, on December 12, 2018, the IFT's Board decided to close the file since there were not enough elements to initiate a procedure.<sup>66</sup>

## 3.2. Mergers and Acquisitions

### 3.2.1. Statistics on Number, Size and Type of Mergers Notified and/or Controlled under Competition Laws

118. The IFT finalized nine proceedings related to mergers and acquisitions (M&A). Two of them were filed pursuant Transitory Article 9th of the LFTR that exempts certain mergers of being notified *ex ante* to the IFT. The total value of the analysed transactions was \$82.57 billion USD and the average value was of 9.09 billion USD.<sup>67</sup>

<sup>65</sup> Resolution of the IFT's Board, available in Spanish, file AI/DC-003-2018 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/vppift220818532ai.pdf>

<sup>66</sup> Resolution of the IFT's Board, available in Spanish, file AI/DC-004-2018 at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/pift121218948.pdf>

<sup>67</sup> USD amounts shown at a year's average interbank exchange rate of \$19.2574 MXN.

**Table 7. M&A Analysed by IFT in 2019**

<i>Ex Ante Procedure</i>			
M/A	Main Affected Market	Decision	Dimension
Acquisition of assets property of Twenty-First Century Fox, Inc. by The Walt Disney Co.	Licensing of sports Pay TV networks, licensing of factual Pay TV networks, and licensing of audio-visual sports content for Online Video Distributors	Authorized subject to conditions	International
Acquisition of ARRIS International, Plc., by CommScope Holding Company, Inc.	Active and passive elements and solutions for wired and wireless communications networks	Authorized	International
Acquisition of Finisar Corporation by II-VI Incorporated	Active elements for optic fiber networks	Authorized	International
Acquisition of <i>Sistema Radiópolis, S.A. de C.V.</i> , by <i>Corporativo Coral, S.A. de C.V.</i>	Various local radio markets	Authorized	National
Acquisition of assets property of <i>Pegaso PCS, S.A. de C.V.</i> , by <i>MATC Digital, S. de R.L. de C.V.</i>	Mobile sites countrywide	Authorized	National
Acquisition of 51% of <i>OCESA Entretenimiento, S.A. de C.V.</i> , by Live Nation Entertainment, Inc.	Production of live events, operation of venues and sell of tickets (IFT analysed related markets in the T&R sectors)	Authorized	International
Acquisition of assets property of <i>Axtel, S.A.B. de C.V.</i> , by Equinix Inc.	Data hosting	Authorized	National
<i>Transitory Article 9<sup>th</sup> Ex Post Procedure</i>			
M/A	Main Affected Market	Decision	Dimension
Acquisition of assets property of <i>Axtel, S.A.B. de C.V.</i> , by <i>Grupo Televisa</i>	Pay TV and fixed telecommunications local markets	Reviewed	National
Acquisition of assets property of <i>Axtel, S.A.B. de C.V.</i> , by <i>Megacable</i>	Pay TV and fixed telecommunications local markets	Reviewed	National

Source: IFT

### 3.2.2. Summary of significant cases

#### *Acquisition of Assets Property of Twenty-First Century Fox, Inc. by The Walt Disney Co.*

119. The operation consisted in the acquisition of film and TV studios, pay TV networks and content retransmission licenses (including international) property of Twenty-First Century Fox, Inc. (21CF) by The Walt Disney Company (TWDC). Twelve markets in the T&B sector were analysed, 10 of them with a horizontal concentration. In two of these, licensing of networks and content for pay TV and online video distributors, the operation represented a high market concentration, 80% and 40%, respectively, in terms of viewership in two categories: sports and factual content. The operation was authorized subject to:

- behavioural conditions aimed at preventing the influence of TWDC in the strategic decisions of a jointly owned company that licenses the retransmission of pay TV networks in the factual category in Mexico; and
- the obligation to sell sports pay TV networks and retransmission rights (including Fox Sports, Fox Sports 2, Fox Sports 3 and Fox Sports Premium).



*Acquisition of Assets Property of Axtel, S.A.B. de C.V. by Grupo Televisa*

120. The operation consisted in the acquisition of several optic fiber access networks and clients in six of the main Mexican cities. The review was an *ex post* proceeding pursuant to Transitory Article 9th of the LFTR<sup>68</sup>. The IFT concluded that the positive effects of the operation in the corresponding local fixed voice and broadband markets (related to a potentially more aggressive offer by *Grupo Televisa*) surpassed the negative effects of the operation in the corresponding local pay TV markets (related to an accumulation of market shares greater than 60%), and therefore it did not decrease or damage competition.

#### 4. The Role of Competition Authorities in the Formulation and Implementation of Other Policies, e.g. Regulatory Reform, Trade and Industrial Policies

121. The IFT exercise regulatory and competition powers jointly, therefore its resolutions are convergent as they include and consider competition and users' protection aspects. The IFT has adopted this vision and implemented regulation, enforcement and advocacy along this convergent mandate.

122. Following the Constitutional Reform in 2013 (with its transitory regime), and subsequent enactment of the LFCE and the LFTR in 2014, which provide the IFT with a variety of mechanisms to safeguard competition in its specialized sectors, the IFT has endeavoured to integrate competition assessments into various regulatory proceedings, to the benefit of industry stakeholders and consumers. Regulatory processes are carried out more efficiently, imposing less regulatory burden on economics agents, and implementing new ways of promoting competition in the T&B sectors. Currently, The IFT has the possibility to assess on a case-by-case basis the best action, tool or mechanism to tackle a specific competition problem.

123. Competition assessments carried out by the Economic Competition Unit (UCE) of the IFT can be grouped in four categories, while the regulatory proceedings themselves are carried out separately by other Units at the IFT:

- public bids
- grant, renewal and transfer of licenses
- substantial market power (SMP) investigations, and
- opinions on draft and existing regulation;

##### 4.1. Public Bids

124. There are two kinds of competition assessments involved in public bids proceedings:

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<sup>68</sup> See paragraphs 72-74 of the 2014 *OECD Annual Report on Competition Developments in Mexico* for an explanation of this provision of LFTR. The review of a Transitory Article 9th merger notice has the purpose of verifying that the merger meets the criteria set by the LFTR to be exempt from the *ex ante* authorization, and it does not follow the traditional LFCE criteria or proceedings for carrying out competition cases.



- the review of the conditions and specifications of the public bid documents prior to their publication, in which the UCE seeks to ensure that no requisite unjustifiably restricts participation, or in which it seeks to propose the inclusion of any measure that would promote competition in the markets affected by the bid; and,
- once the public bid proceeding started; and the review of specific applicants to make sure the concentration of licenses that might arise from their participation does not decrease, harm, or hinder competition in the affected markets.

#### ***4.1.1. Public Bid for the Allocation of 40 MHz of Spectrum for Mobile Satellite Terrestrial Complementary Service in the 2000-2020 MHz/2180-2200 MHz Band (IFT-9)***

125. On the first quarter of 2019, the conditions and specifications of the public bid documents were reviewed, to find that the main competition promoting measures, such as spectrum caps and the compulsory competition review of specific applicants, were in place. Notwithstanding, some additional recommendations were made, mainly regarding the existence of contracts with service providers, the allocative mechanism, the reserve values and the length of the concession.

126. On August 2019, two applications to the bid for the provision of the Complementary Terrestrial Service of the Mobile Satellite Service in the national territory for a term 15 years were reviewed. Both pretended to acquire spectrum below the established caps and no other risks to competition were identified.

127. Complementary terrestrial service of mobile satellite service in Mexico operate in the same segment of the radio spectrum and allow the transmission of signs, signals, writings, images, voice, sounds or information of any nature. The IFT's Board issued two resolutions, one in favour of *Omnispace México, S. de R.L. de C.V.*<sup>69</sup> and another in favour of *HNS de México, S.A. de C.V.*<sup>70</sup>

## **4.2. Grant, Renewal and Transfer of Licenses**

128. During 2019, the UCE issued 289 opinions related to the grant, renewal and transfer of licenses to provide telecommunications or broadcasting services. The opinions perform an analysis akin to that of mergers, where an economic group is identified, a market is defined and some indicators of market power are assessed. A summary of the cases follows.

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<sup>69</sup> Resolution of the IFT's Board, available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift021019475acc.pdf>

<sup>70</sup> Resolution of the IFT's Board, available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift021019476acc.pdf>

**Table 8. Number of Cases Related to Licenses Reviewed in 2019**

Opinions	Telecommunications	Broadcasting
Grant	10	23
Renewal	61	92
Transfer <sup>71</sup>	39	64
Totals	110	179
	289	

Source: IFT

129. Opinions regarding granting of licenses (for social use) can recommend the rejection or the prioritization of an application, if demand surpasses offer in certain locality, based on the number of frequencies (for commercial or social use) already held by the economic agents.

130. Opinions regarding transfers of licenses can recommend the rejection of the transaction.

131. Opinions regarding renewal of licenses are generally approved but if a high level of concentration is detected, the UCE proposes to the competent Unit of the IFT, the inclusion of the corresponding localities in the Annual Program of Frequency Use so that new licenses for this service are issued in the next year, where spectrum availability exists. The aim of the measure is to reduce barriers to entry in concentrated local radio markets.

### 4.3. SMP Investigations

132. During 2019, no SMP investigations were concluded.

### 4.4. Opinions on Draft or Existing Regulation

133. As part of the second biennial revision of preponderance regulation<sup>72</sup>, during the third quarter of 2019, the UCE issued two opinions regarding its economic competition impact up to date, one for each of the T&B sectors.

134. The opinions include a general assessment of the provision of the services in each sector, the evaluation of the impact in competition, based on the declared objectives of each measure, and recommendations about their suppression, modification or addition.

<sup>72</sup> The 2013 Constitutional Reform that created the IFT also created the legal figure of “preponderant economic agent” that allowed the IFT to impose pro-competitive *ex ante* regulation to these big agents, which has become the main regulatory tool of the IFT.

## 5. Resources of Competition Authorities

### 5.1. Resources Overall (Current Numbers and Change over Previous Year)

#### 5.1.1. Annual Budget (in MXN and USD)

**Table 9. IFT's Annual Budget Broken down by Competition Administrative Units 2019**

Administrative Unit	Amount <sup>73</sup>	Percentage	Change over 2018
Total IFT Budget	\$2,084,835,000 MXN \$108,261,500 USD	100%	+4.34%
Investigative Authority (AI)	\$67,722,000 MXN \$3,517,674 USD	3.25%	-17.19%
Economic Competition Unit (UCE)	\$58,935,000 MXN \$3,060,382 USD	2.83%	-21.85%
Competition Activities in Other Units	\$652,726,000 MXN \$33,894,815 USD	31.3%	+18.19%

Source: IFT

#### 5.1.2. Number of Employees Person-Years (and Change over 2018):

**Table 10. Number of IFT Employees in 2019**

Year	Employees
2019	1233
Change over 2018	-2.46%

Source: IFT

**Table 11. Number of IFT Employees by Administrative Unit Broken down by Profession in 2019**

Administrative Unit	Economist	Lawyer	Other Professional	All Staff Combined
AI	26	29	8	63
UCE	23	22	7	52
All Staff Combined	49	51	15	115
Change over 2018	-19.67%	-15%	-11.76%	-16.67%

Source: IFT

### 5.2. Human Resources (Person-Years) Applied to:

**Table 12. Number of IFT Employees Applied to Competition Practice in 2019**

Practice	Employees
Enforcement against anticompetitive practices	115
Support	335
Total*	450

\* This includes the staff of the AI, UCE, and 30% of the staff of the IFT dealing with *ex ante* regulation

135. Period Covered by the Above Information: January 1, 2019 to December 31, 2019.

## 6. Summaries of or References to New Reports and Studies on Competition Policy Issues

### 6.1. OECD Peer Review of Competition Law and Policy in Mexico<sup>74</sup>

136. Throughout 2019, Mexico underwent a peer review of its competition policy and law by the OECD, which was published on 13 February 2020.<sup>75</sup> The IFT share an innovative vision regarding its legal nature and dual stand as regulator and competition authority for the T&B sectors derived from the Constitutional mandate of 2013. In this sense, the IFT carries out a convergent constitutional task, which translates into the issuance of sectorial regulation that includes aspects of competition that are beneficial for final consumers.

### 6.2. Studies by IFT

#### *6.2.1. Study on the Behaviour of the Regulated Market Indicators<sup>76</sup>*

137. The metrics included in this report present information on the behaviour of markets regulated by the IFT, through a vision aligned with the institutional objectives. The actions carried out by the IFT in previous years promoted competition and free market access, resulting in affordable prices for the benefit of final users. The indicators built in this document confirm another trend of technological convergence when viewing concessionaires that are enabled to provide more than one service through packaging and where the Internet clearly becomes the common packaging factor for each subset of services.

138. The IFT created a regulatory framework to issue authorizations on the secondary use and exploitation the radio spectrum. This was motivated from international experience and the various authorization requests to perform specific events, to develop and to operate certain commercial and industrial activities, under the premise of meeting the needs of specific radio communications, which are not intended to provide telecommunications services for commercial purposes. The number of requests doubled in April 2019 with respect to 2018, consequently, promoting the efficient use of radio spectrum for the benefit of the economy and diversity in the offer of services that require this resource in a short period and in specific geographical areas.

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<sup>74</sup> Available at: <http://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-mexico-2020.htm>

<sup>75</sup> Available at: <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-mexico-2019.htm>

<sup>76</sup> Spanish version available at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/transparencia/Indicadores2019.pdf>

### ***6.2.2. Report on the Offer and Demand of Audio-visual Content OTTs in Mexico<sup>77</sup>***

139. The report collects information on the evolution of the supply of platforms by type of company; the evolution of the supply of platforms by business model; the evolution of the supply of platforms by type of company and business model; the characteristics that Mexicans value most to choose an OTT service; the evolution of consumption by business model, among other data. With the results obtained in the areas indicated above through the collection of 16-year-old people primary data through online panel surveys, who have Internet connection at home, it was possible to gain insight on the behaviour at homes with a real likeness to consume online content in Mexico.

### ***6.2.3. Report on Forecasts of the Telecommunications Services<sup>78</sup>***

140. In this report, the IFT published an analysis of the economic relations of the variables that affect the dynamics experienced by the access and lines of basic telecommunications services in Mexico, identifying the trends, catalysts and challenges experienced by these services. This report addressed the need to make a systematic analysis of the evolution of the number of lines or access to mobile and fixed services in Mexico in order to understand its dynamics, based on two fundamental elements:

- the historical information provided by the available public data; and
- the interrelation that they have with other explanatory variables that are generally used to predict the availability of those services, such as price indexes for telecommunications services, real GDP per capita, the number of lines or accesses of other associated services, the applicable taxes, the degree of concentration of the market, among others.

### ***6.2.4. Report on Competition Policy for Regulating Online Platforms in the Asia-Pacific Region***

141. Through the IFT, Mexico implemented in 2019 the Asia-Pacific Economic Cooperation (APEC) Project CPLG-02-2018 “Competition Policy for Regulating Online Platforms in the APEC Region” with APEC funding. In this context, Mexico hosted a 3-day APEC Workshop on Competition Policy for Regulating Online Platforms in the Asia-Pacific Region, on 7-9 May 2019, in Mexico City. The IFT published an electronic report,<sup>79</sup> which included the results of a survey conducted among APEC economies to gather information on their competition policy legal frameworks and procedures, and issued recommendations to strengthen competition authorities’ enforcement tools and to advocate for a competition-supportive and technologically neutral approach for the assessment of online platforms in the APEC region.

<sup>77</sup> Spanish version available at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/medios-y-contenidos-audiovisuales/ofertaydemandadeottsdecontenidosaudiovisualesenmexico2019.pdf>

<sup>78</sup> Spanish version available at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/estadisticas/PronosticosTelecomunicaciones2019.pdf>

<sup>79</sup> Available at: [https://www.apec.org/-/media/APEC/Publications/2019/8/Competition-Policy-for-Regulating-Online-Platforms-in-the-APEC-Region/219\\_EC\\_CPLG\\_Competition-Policy-for-Regulating-Online-Platforms-in-the-APEC-Region.pdf](https://www.apec.org/-/media/APEC/Publications/2019/8/Competition-Policy-for-Regulating-Online-Platforms-in-the-APEC-Region/219_EC_CPLG_Competition-Policy-for-Regulating-Online-Platforms-in-the-APEC-Region.pdf)

### 6.3. Advocacy

#### *6.3.1. 5<sup>th</sup> Forum on Challenges of Competition in the Digital Environment*

142. The Forum took place in Mexico City, on November 6 and 7, 2019. It yearly gathers national and international experts from competition authorities, academia and industry to foster the dialogue and analyse the T&B markets, especially the digital markets, in the context of the changing technological landscape.

#### *6.3.2. 3<sup>rd</sup> Edition of the Contest on Economic Competition for Students of Economy and Law*

143. The IFT collaborated with the Federal Economic Competition Commission and the National Association of Business Lawyers in the third edition of the Contest on Economic Competition for students of Economy and Law. The event took place in Mexico City, on 25-29 November 2019.

### 6.4. International

#### *6.4.1. Technical Opinions for International Legal Instruments*

144. The IFT issued technical opinions to the Ministry of Economy, in the chapters of Competition Policy, Monopolies and State-owned Enterprises, Telecommunications and E-Commerce in the context of the negotiation process of the Free Trade Agreement between Mexico and Ecuador.

145. In addition, the IFT issued technical opinions to the Ministry of Economy regarding the judicial review process for the modernization of the Free Trade Agreement between Mexico and the European Union (TLCUEM), in the chapter of Competition Policy, particularly in the telecommunications services, radio and cable TV services, and the telecommunications related services.

#### *6.4.2. International Consultations in the Merger Process of Disney-Fox*

146. Virtual meetings took place in the context of international cooperation between the IFT and the competition authorities of Argentina, Brazil, Chile, Colombia, Ecuador, the USA and the European Commission, in order to exchange experiences regarding the analysis in the merger process of Disney-Fox, in compliance with the waivers issued by the economic agents.