



# Strategic Plan 2022 - 2025



Comisión  
Federal de  
Competencia  
Económica

The Strategic Plan 2022-2025 is part of the Institutional Strategic Planning Model that COFECE has instrumented since 2021. Through this model, COFECE adopts the best international practices in matters of institutional development to comply with its constitutional mandate in an efficacious, efficient and effective way.

In compliance with what is provided on article 21 and section VII of article 22 of the Organic Statute of COFECE, the Planning, Liaison and International Affairs Unit conducts the planning, proposes institutional goals and coordinates the mechanisms for their fulfillment, as well as their evaluation. Likewise, in accordance with section II of article 41 of said Statute, the General Directorate of Planning and Evaluation oversees coordinating the institutional strategic planning work.

# Contenido

<b>ABBREVIATIONS AND ACRONYMS</b>	<b>4</b>
<b>PRESENTATION</b>	<b>5</b>
<b>Chapter I. Diagnosis of COFECE</b>	<b>8</b>
<i>Environment analysis</i>	<b>8</b>
<i>Situational analysis</i>	<b>15</b>
<i>Strategic analysis (SWOT)</i>	<b>20</b>
<b>Chapter II. Who are we?</b>	<b>22</b>
<i>Mission</i>	<b>22</b>
<i>Vision</i>	<b>22</b>
<i>Institutional values</i>	<b>22</b>
<i>Structure of the Commission</i>	<b>23</b>
<b>Chapter III. Institutional objectives and strategic lines 2022-2025</b>	<b>24</b>
<i>I. Prevent and correct market structures that hinder, damage or impede competition and free market access</i>	<b>24</b>
<i>II. Fight and deter anticompetitive practices that affect markets</i>	<b>25</b>
<i>III. Promote the application of competition principles between public and private actors through actively spreading the benefits of economic competition</i>	<b>25</b>
<i>IV. Consolidate a robust and vanguard institutional model that effectively responds to the institutional needs and challenges</i>	<b>26</b>
<b>Chapter IV. Prioritization of sectors</b>	<b>27</b>
<i>Food and beverages sector</i>	<b>28</b>
<i>Transport and logistics sector</i>	<b>29</b>
<i>Financial sector</i>	<b>29</b>
<i>Construction and real-estate services sector</i>	<b>30</b>
<i>Energy sector</i>	<b>30</b>
<i>Health sector</i>	<b>31</b>
<i>Public procurement</i>	<b>31</b>
<i>Digital markets</i>	<b>32</b>
<b>Chapter V. Follow-up and monitoring of the 2022-2025 Strategic Plan</b>	<b>33</b>
<i>Annual Work Programs</i>	<b>33</b>
<i>Institutional Performance Assessment System</i>	<b>34</b>
<i>SEDI results reports</i>	<b>34</b>
<i>External audits</i>	<b>34</b>
<b>ANNEXES</b>	<b>36</b>
<i>2018-2021 Numeralia</i>	<b>36</b>
<i>2018-2021 Strategic Plan Performance Indicators</i>	<b>36</b>
<i>Results of the 2018-2021 Annual Work Programs</i>	<b>39</b>
<b>DEFINITIONS</b>	<b>40</b>
<b>BOARD OF COMMISSIONERS</b>	<b>43</b>
<b>DIRECTORY</b>	<b>44</b>

## **ABBREVIATIONS AND ACRONYMS**

**ASF**, Superior Audit Office of the Federation

**COFECCE or Commission**, Federal Economic Competition Commission

**Constitution or CPEUM**, Political Constitution of the United Mexican States

**GCR**, Global Competition Review

**GDP**, Gross Domestic Product

**IDPC**, Competition Policy Performance Index

**IMF**, International Monetary Fund

**LFCE or Law**, Federal Economic Competition Law

**PAT**, Annual Work Program

**PJF**, Mexican Federal Judiciary Power

**SEDI**, Institutional Performance Assessment System

**SINEC**, Electronic Notification of Concentrations System

**Statute**, Organic Statute of the Federal Economic Competition Commission

**SWOT**, Strengths, Weaknesses, Opportunities and Threats

**USMCA**, United States, Mexico and Canada Agreement

## PRESENTATION

The year 2021 marked the eighth anniversary of the reform to article 28 of the Political Constitution of the United Mexican States (Constitution or CPEUM per its acronym in Spanish), which created the Federal Economic Competition Commission (COFECE or Commission) as an autonomous body in charge of guaranteeing competition and free market access, as well as preventing, investigating and fighting monopolies, monopolistic practices, concentrations and other restrictions to the efficient functioning of the markets.<sup>1,2</sup> Since then, we have been witnesses of the relevance that competition policy has to generate better conditions in the markets. Since then, we have been witnesses of the relevance that competition policy has to generate better conditions in the markets.

The first years of COFECE helped to define the basis of its institutional design and its scope of action. In this process, the procedures to comply with the new powers granted were defined and the regulation that allows providing greater certainty to economic agents regarding the enforcement of the Federal Economic Competition Law (LFCE or Law) was issued.

One of the main lessons learned throughout these years was the construction of the Institutional Strategic Planning Model of the Commission, since, following the best international practices, strategic planning processes help organizations to establish directives as well as formulate and implement tactics to achieve their objectives and create added value. This tool allows COFECE to obtain better results and have more impact through the focalization and prioritization of its actions, thus optimizing the use of resources to ensure that its operation is effective; the foregoing considering, at all times, where it is intended to go as an institution.

From this model, COFECE carries out its planning considering two stages in different time horizons. For one part, it elaborates a Strategic Plan in which it defines its long-term roadmap to guide its efforts towards the fulfillment of its constitutional mandate.<sup>3</sup> Thus, every four years the effectiveness of the strategy to achieve this end is reviewed, and if adjustments are needed, its components are modified, among which are the mission, the vision, the values, and

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1. The reform of article 28 of the Constitution took place on June 11, 2013.

2. Under the sixteenth paragraph of article 28 of the Constitution, it corresponds to COFECE to guarantee competition and free market access in the markets, except for those of the broadcasting and telecommunications sectors, which correspond exclusively to the Federal Telecommunications Institute.

3. The regulatory framework in matters of competition does not establish the obligation to have a strategic plan; however, based on the best international practices, the Commission elaborated this guiding document for a four-years period and that allows to effectively fulfill its constitutional mandate.

the objectives. On the other part, the Commission conducts a short-term exercise in which it establishes actions that contribute to the achievement of the objectives and goals established in its Strategic Plan. These actions comprise the Annual Work Programs (PAT per its acronym in Spanish), which are submitted to the Federal Executive and Legislative powers at the beginning of each year. In this way, the two strategic planning visions are matched by aligning the daily activities that we carry out at the Commission with the long-term institutional objectives.

In this context, since its creation as an autonomous body, COFECE has conducted two long-term strategic planning exercises which were reflected in its two strategic plans for the 2014-2017 and 2018-2021 periods.<sup>4,5</sup> As a result of these exercises, the lessons learned throughout these eight years were carefully compiled and analyzed, with the purpose of replicating the aspects that have worked and reinforce those that allow a better enforcement of competition policy.

The first section of this 2022-2025 Strategic Plan contains a **Diagnosis of COFECE** comprised by a comprehensive analysis that considers a review about the evolution of the economy in the last years and of variables that could affect the dynamics of the markets; likewise, a review of the institutional development is included, and it concludes with a self-criticism exercise to identify the main strengths, opportunities, weaknesses, and threats faced by the Commission.

The section **Who are we?** presents the mission, vision and institutional values that will guide the daily work of all of us who are part of COFECE. The mission describes our *raison d'être* as an institution, while the vision describes where we want to go. This section also contains five values relevant to COFECE: defense of the public interest, impartiality, independence, transparency and technical capacity.

Subsequently, the **institutional objectives** that will guide the actions of the Commission to fulfill its mandate of guaranteeing competition and free market access in the markets during the next four years are defined. In addition, the **strategic lines** are presented, which specifically outline how COFECE will comply with each of its objectives.

The fourth section presents a **Prioritization of sectors** which aims for a greater impact of the interventions of COFECE in terms of efficiency on the functioning of the markets and people's welfare. The sectors in which the Commission will pay special attention for the 2022-2025 period are health, food and beve-

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4. The 2014-2017 Strategic Plan is available, in Spanish, at [https://www.cofece.mx/attachments/article/37/pe\\_2014-2017\\_act\\_2015.pdf](https://www.cofece.mx/attachments/article/37/pe_2014-2017_act_2015.pdf)

5. The 2018-2021 Strategic Plan is available, in Spanish, at [https://www.cofece.mx/wp-content/uploads/2018/02/pe\\_2018-2021.pdf](https://www.cofece.mx/wp-content/uploads/2018/02/pe_2018-2021.pdf)

rages, financial, transport and logistics, energy, construction and real estate services, public procurement and digital markets. While there is a prioritization strategy, this does not limit the attention of COFECE to matters where there are restrictions to free market access and economic competition.

In the ***Follow-up and monitoring of the 2022-2025 Strategic Plan*** section, the tools available to the Commission to know the progress of the fulfillment of the actions that integrate the PAT, as well as its performance in relation to its strategic objectives and goals are described. Finally, a section that summarizes the results of the previous Strategic Plan is included.

This *2022-2025 Strategic Plan* was submitted for public consultation, derived from this exercise we received comments, suggestions, and recommendations, which helped to enrich the present document. We thank all those who participated in the public consultation of the 2022-2025 Strategic Plan since their contributions strengthen the dialogue between the public and private sectors in matters of economic competition.

The cycle that begins with the *2022-2025 Strategic Plan* entails new challenges that we will have to face. The digital economy, that in the last years has revolutionized our day-to-day, has modified the dynamics of multiple markets, thus competition policy is fundamental to monitor that companies act in accordance with the Law, while they also generate benefits for society and innovations.

Finally, all of us who are part of this institution reaffirm our commitment to promote and protect competition in the markets to improve consumer welfare, because we aspire to be a technical and independent authority, recognized for its work for the benefit of society and a reference in public policy decisions in the country.

*Sincerely,*

**Brenda Gisela Hernández Ramírez**

Acting Chair Commissioner

due to a vacancy in terms of article 19 of the LFCE.

# Chapter I. Diagnosis of COFECE

The diagnosis that is presented in the following pages starts from, on the one hand, the context in which the actions of the Commission are placed and, on the other hand, from a comprehensive review of the achievements, lessons, pending topics in the institutional agenda and prioritization in its actions. Considering these two elements, an analysis that identifies the strengths and opportunities of COFECE, as well as the weaknesses and threats it faces is elaborated.

## ***Environment analysis***

An effective competition policy impacts the dynamics of the markets and, parallelly, several contextual factors exercise a direct influence over the actions of competition authorities. For this reason, the environment analysis is relevant for the planning process to identify promptly the challenges in the enforcement of the public policy in charge of COFECE.

The global environment is characterized by volatility, uncertainty, complexity, and ambiguity elements. At the moment of the elaboration of this Strategic Plan, a military invasion of Russia over Ukraine's territory is taking place, which eventually, could have an impact in several sectors of the Mexican economy. The Commission will closely follow up the effects that could derive from this conflict in the Mexican markets to address those that impact competition and free market access.

Next, some contextual aspects of the Mexican economy that could impact in the work of the Commission during the following four years are presented.

### *Low growth rates*

In 2019, a slowdown in the dynamism of the global economy caused mainly by two interrelated factors was observed. The first is the increase in the trade and geopolitical uncertainty caused by the Persian Gulf crisis, trade tensions between the United States and China, and the lack of consensus over Brexit, among other events. A second factor is the weakening of the industrial sector, explained by the decline of the automobile industry, the decrease in investment in a context of increasing uncertainty; and the slowdown in the Chinese economy. Therefore, global economic growth decreased from 3.6% in 2018 to 2.8% in 2019.<sup>6</sup>

In 2020, due to the health emergency caused by the SARS-CoV2 virus and the need to implement lockdown measures to contain its spread, a global economic recession began. On the supply side, the suspension of non-essential activities, the implementation of mobility restrictions and the closing of borders increased

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6. IMF (2021) *World Economic Outlook*, October 2021. Available at <https://www.imf.org/-/media/Files/Publications/WEO/2021/October/English/text.aspx>

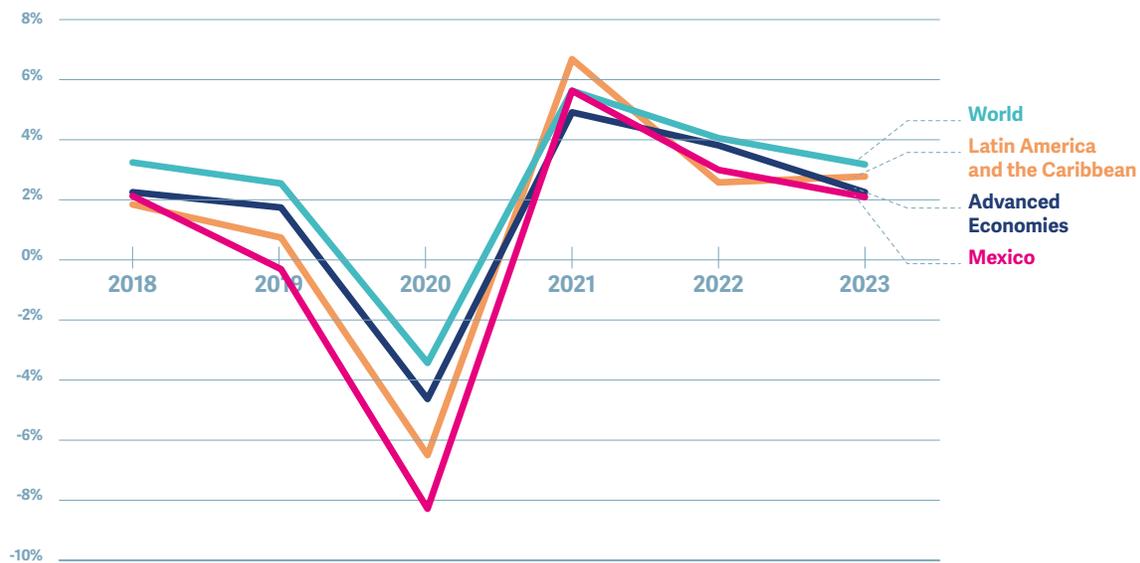
the scarcity of inputs and provoked the interruption of global production and distribution chains. On the demand side, these measures gave rise to a contraction in international trade, the collapse of touristic and transport activities, as well as the weakening of external demand. In addition to this, the shutdown of some economic activities increased unemployment, reduced household income and, consequently, provoked a fall in consumption. Due to the foregoing, it is estimated that by mid-2020 the world Gross Domestic Product (GDP) contracted by 10% compared to its level by the end of 2019.<sup>7</sup>

From 2021 to this date, recovery of the economic effects of the pandemic has been heterogeneous. In developed countries vaccination has covered a broad segment of the population, facilitating the reactivation of economic activity and the increase of trust of families and companies, which contributes to the increase of consumption and investment. Also, the recovery of advanced economies has been encouraged by the implementation of expansive fiscal and monetary policies, which have resulted in the willingness of savings to finance increased consumption in those households affected during the pandemic.<sup>8</sup>

In contrast, in Latin America and the Caribbean economies, the availability of vaccines has been scarce, which adds to the emergence of new contagion waves and the appearance of more contagious variations of the virus that have obliged to the re-establishment of lockdown measures and the subsequent cease or decrease of economic activities. All of the above reflects the reduction of the GDP growth rates from 2018 to 2021 and the forecasts for the next two years. Specifically, for 2022, a 4.1% growth rate is forecasted for the global economy, 3.8% for advanced economies, 2.6% for Latin America and the Caribbean, and 3.0% for Mexico (See Graph 1).

7. OECD (2020). *OECD Economic Outlook*, December. Available at [https://www.oecd-ilibrary.org/sites/39a88ab1-en/1/3/1/index.html?itemId=/content/publication/39a88ab1-en&ga=2.21641720.219581283.1638326290-351862721.1633387680&gl=1\\*1feem8z\\*ga\\*MzUxODYyN-zlxLjE2MzMzODc2ODA.\\*\\_ga\\_F7KSNTXTRX\\*MTYzODQ0Njc3Mi43L-jEuMTYzODQ0NjkxMy4w&csp=c8d2c0401e354b876a307e4d7900ec10&itemIGO=oecd&item-ContentType=book#section-d1e180](https://www.oecd-ilibrary.org/sites/39a88ab1-en/1/3/1/index.html?itemId=/content/publication/39a88ab1-en&ga=2.21641720.219581283.1638326290-351862721.1633387680&gl=1*1feem8z*ga*MzUxODYyN-zlxLjE2MzMzODc2ODA.*_ga_F7KSNTXTRX*MTYzODQ0Njc3Mi43L-jEuMTYzODQ0NjkxMy4w&csp=c8d2c0401e354b876a307e4d7900ec10&itemIGO=oecd&item-ContentType=book#section-d1e180)

8. World Bank (2022) *Global Economic Prospects*, January 2022. Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/35647/9781464816659.pdf>

**Graph 1. Gross Domestic Product growth rates 2018-2023**

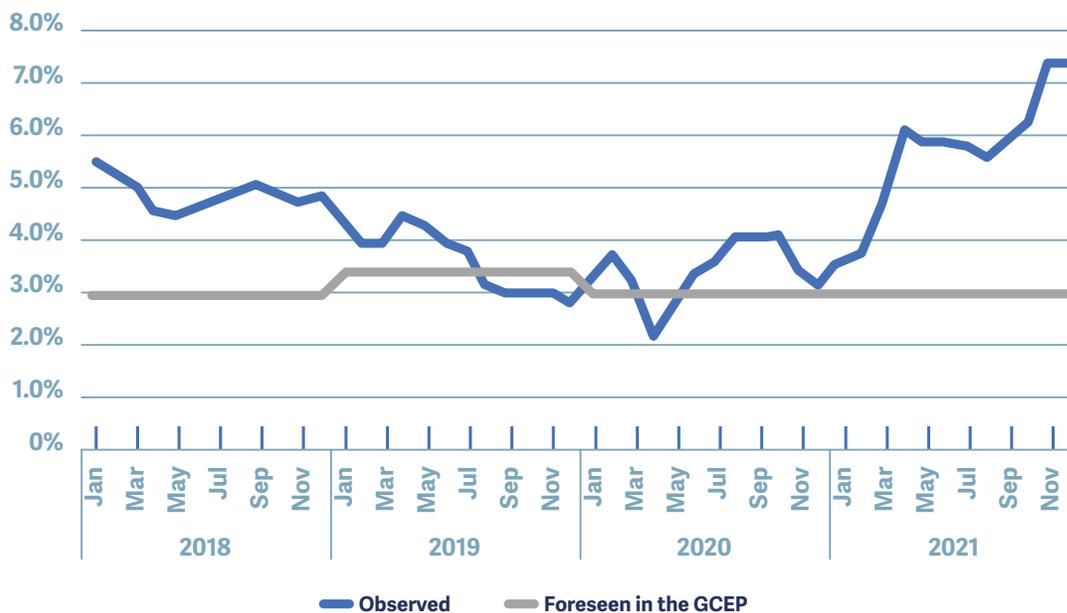
Source: Elaborated with information from World Bank (2022). Global Economic Prospects, January 2022.

In a context of low growth rates, the implementation of an effective competition policy becomes more relevant, as it favors the presence of economic agents, new or previously established, whose capacity to enter and remain in the markets is based on their ability to act, innovate and adapt to the needs, taste and possibilities of the consumers, which promotes an efficient allocation of the production factors. The latter, in turn, favors the economic development of the country over what is reachable through the simple increase of production factors.

### *Inflation*

During 2021, inflation in Mexico was above the 3% goal established by the Bank of Mexico, due to shocks derived from the SARS-CoV2 virus pandemic. In December, general annual inflation was 7.36%, which represents its highest level in the last 21 years.

This level of increases in prices is explained, mainly, by international factors. For one side, in advanced economies, a recovery process began driven by an expansion of government spending, which increased the global demand of goods. On the other part, the interruption of productive activities and the heterogeneous recovery of several sectors created input scarcity, bottlenecks and, consequently, greater costs of production, transport and distribution. Together, these factors generated inflationary pressures that were accentuated by the end of the year. (See Graph 2).

**Graph 2. Inflation 2018-2021**

Source: Elaborated with information from the National Consumer Prices Index of INEGI and the General Criteria of Economic Policy 2018-2021.

The Bank of Mexico, which is the monetary authority in the country, expects inflation to decline during 2022 and converge to the 3% annual target by the second quarter of 2023; however, it does not rule out that pressures could last longer and that new shocks could divert inflation away from the established goal. The foregoing is caused by the prevalence of bottlenecks in the production and the uncertain environment regarding the evolution of the pandemic and the emergence of new variations of the virus.<sup>9</sup>

While competition policy is not aimed at controlling inflation, the prevention of monopolistic practices and anticompetitive market structures prevents the establishment of overprices, which benefits consumers through access to a greater quantity and variety of goods at better prices. Thus, the purchasing power of families is increased, population is enabled to satisfy its consumption needs more easily and greater social welfare is promoted.

### *International trade*

In the international environment, there are recent factors that influence the performance of the Mexican economy: the United States, Mexico and Canada Agreement (USMCA) and the growing importance of China in world trade. On the one hand, USMCA entered into force on July 1, 2020 and substitutes the North Ame-

9. Bank of Mexico. *Programa Monetario 2022* [2022 Monetary Program]. Available, in Spanish, at <https://www.banxico.org.mx/publicaciones-y-prensa/programas-de-politica-monetaria/%7BA504AB28-7C7C-374A-DD52-7977CBC0489B%7D.pdf>

rica Free Trade Agreement (NAFTA), it adds chapters on digital trade, energy, environment, labor market, SMEs, competitiveness, good regulatory practices, anti-corruption and macroeconomic policy.

On the other hand, there is the growing importance of China in world trade before the countries that form the USMCA. In 2020, China represented 13.1% of world trade of goods, while USMCA countries accounted for 15.4%. By the end of 2021, China's share increased to 14% and the one from USMCA countries reduced to 15.1%. China is the third destination of Mexican exports, after the United States and Canada, and the second origin of imports, just after the United States (See Table 1). In 2021, Mexico made imports from China for 101.2 billion dollars and exports for 9.2 billion dollars, thus the trade deficit with this country was of 91.7 billion dollars.

**Table 1. Main origins and destinations of Mexican imports and exports**

Country	2017	2018	2019	2020	2021
<b>Exports (billions of dollars)</b>					
United States	326.8	358.3	370.8	338.7	398.8
Canada	11.3	14.1	14.3	11.1	13.0
China	6.7	7.4	7.1	7.9	9.2
Germany	7.0	7.1	7.1	6.6	7.5
Others	57.5	63.8	61.3	52.7	65.6
<b>Imports (billions of dollars)</b>					
United States	194.6	215.8	205.7	167.8	221.0
China	74.2	83.5	83.0	73.5	101.0
Japan	18.2	18.2	18.0	13.9	17.1
Germany	16.4	17.8	17.7	13.9	17.2
Others	117.1	129.0	130.8	114.0	149.4

Source: Elaborated with data from the Economic Information Bank of INEGI.

In light of the changes in the dynamics of international markets, it is important to promote a competition policy that allows companies to have better access conditions to inputs, capital, technology and infrastructure. Parallely, more competition generates greater dynamism in the markets, which favors the competitiveness of Mexican companies and that improves their positioning in global markets.

## *Evidence of the relation between market concentration and poverty*

In recent years, several investigations have delivered data that allow to observe the relationship between market concentration and poverty. Even before the health emergency, there was evidence of the weakening of the competition conditions in many sectors of the world economy, as well as a decrease in the formation of new businesses and an increase in the concentration of the markets.<sup>10</sup>

The Council of Economic Advisers of the former President of the United States, Barack Obama, noted that a problem associated to the international trends of market concentration is that fewer companies compete to acquire inputs or hire specialized workforce. Consequently, companies have the possibility of exercising market power to decrease the cost of inputs such as wages.<sup>11</sup>

Recently the International Monetary Fund noted that in the last decades there was a global trend to the increase of market power, which is associated with a lower business dynamism. Particularly, an analysis that included 28 economies concluded that there are indications of: i) a fall in the entry of new companies, which diminishes competitive pressure for established companies; ii) unequal growth between companies, which suggests that there are fewer companies with accelerated growth and lower innovation; and iii) in the contribution of young companies to the aggregate output.<sup>12</sup>

In the document *Market Power and Social Welfare*, published by COFECE, it is established that, on average, Mexican households lose 15.7% of their income due to overprices caused by the presence of market power in the analyzed markets. This price increase damages more to lower-income households, evidence of this is that decile I households lose 4.42 times the income percentage lost by decile X households (those with the highest income). The foregoing accentuates inequality in the country. In the absence of price distortions generated by the presence of market power, income inequality in the country would be reduced by around 7.3%<sup>13</sup>

## *The pandemic and telework*

During the following years, the world and the Mexican economy will continue to resent the effects of the health emergency caused by SARS-CoV2. For this reason,

10. Council of Economic Advisers (2016). *Benefits of competition indicators of market power*. Available at [https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414\\_cea\\_competition\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf)

11. Ibid.

12. IMF (2021) *Rising Corporate Market Power: Emerging Policy Issues*. Available at: <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2021/03/10/Rising-Corporate-Market-Power-Emerging-Policy-Issues-48619>

13. COFECE (2018) *Market power and social welfare*. Available at <https://www.cofece.mx/market-power-and-social-welfare/>

the recent and future evolution of contagion, vaccination, and contention measures are important elements in the context that the Commission will face.

According to official data from the Ministry of Health, by March 28 2022, there were 5.6 million confirmed cases and 322 thousand deaths, which represents a mortality rate of 5.7%.<sup>14</sup> Regarding vaccination, 66.0% of the population received at least one shot of the vaccine against SARS-CoV2 and 61.5% received a complete scheme. Additionally, new vaccination schemes have been applied to 4.5% of the population.<sup>15</sup>

Regarding the future evolution of the disease, in accordance with a survey conducted by Nature magazine to immunologists, infectious disease researchers, and virologists from 23 countries, the most likely scenario is that SARS-CoV2 will not disappear and, instead, it becomes an endemic virus.<sup>16</sup> Similarly, several measures implemented to contain contagion and guarantee the operative continuity could be maintained in the long term.

One of these measures is remote work, which proved to be an important tool to guarantee continuity in the operation of some sectors. Recognizing this situation, on March 12, 2021, the Commission issued the *Specific Guidelines for the remote work of the personnel of the Federal Economic Competition Commission*.

During the next four years, the performance of the Commission will be inserted in a context in which information technologies and telework will be critical elements for the functioning of public and private institutions. Thus, COFECE will have to redouble its efforts to guarantee the continuity of its operations, considering technology as an element that will allow it to improve its actions in favor of consumers.

### *Adverse political-administrative context*

One of the most important challenges in the current political and administrative context faced by COFECE is the lack of appointments of Commissioners by the Federal Executive Power and the Senate of the Republic. Due to this, the Board of Commissioners is formed only by four out of the seven Commissioners established by the Constitution. On November 18, 2020, April 19, and November 26, 2021, the Evaluation Committee published and sent to the Federal Executive Power the lists of persons that passed the evaluation to fill the vacancies in the Board

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14. Ministry of Health. *Informe técnico diario al 28 de marzo de 2022* [Daily Technical report March 28, 2022]. Available in Spanish at [http://www.gob.mx/cms/uploads/attachment/file/712574/Comunicado\\_Tecnico\\_Diario\\_COVID-19\\_2022.03.28.pdf](http://www.gob.mx/cms/uploads/attachment/file/712574/Comunicado_Tecnico_Diario_COVID-19_2022.03.28.pdf)

15. Percentages calculated with the projection of population of the National Population Council for the beginning of 2022, available in Spanish at <https://datos.gob.mx/busca/dataset/proyecciones-de-la-poblacion-de-mexico-y-de-las-entidades-federativas-2016-2050>

16. Phillips, Nicky (2021). *The coronavirus is here to stay – here's what that means*. Available at <https://www.nature.com/articles/d41586-021-00396-2>

of Commissioners of COFECE. However, at the moment, the head of the Federal Executive Power has not sent to the Senate its proposals to fill these vacancies for ratification. On the other hand, in June 2021, the Commissioners aspiring to occupy the Chairmanship of the Commission appeared before the Commission of Economy of the Senate of the Republic, without having been appointed so far.

In addition to this context, is the implementation of public policies contrary to competition and free market access by the Federal Executive Power. Some examples are the sectoral regulation that benefits state companies such as Pemex and the Federal Electricity Commission, and the *Agreement by which the entities and bodies of the Federal Public Administration are instructed to conduct the actions that are indicated, in relation with the projects and works of the Government of Mexico considered of public interest and national security, as well as priority and strategic for the national development.*<sup>17</sup>

## **Situational analysis**

The analysis of the performance of the Commission requires a review of the results obtained from 2018 to 2021. Such results are detailed below under five specific headings: (i) Enforcement of economic competition regulation; (ii) Prevention and correction of market structures, as well as anticompetitive legal frameworks; (iii) defense of the legality of the Commission's actions; (iv) Economic competition on the public agenda; and (v) Towards a vanguard organizational model.

### *Enforcement of economic competition regulation*

With regards to the investigation and sanction procedures of monopolistic practices, in the 2018-2021 period 35 procedures took place, of which 16 concluded in sanction, 13 were closed due to the lack of elements and six were closed with commitments presented before the Board of Commissioners by the economic agents to suspend, suppress, correct or not conduct the alleged practice. Referring to the Immunity and Sanction Reduction Program, from 2018 to 2021, 26 applications to adhere were registered.

These numbers note important progress in relation to the 2014-2017 period, in which 26 investigations were carried out, of which 14 concluded in sanction, 10 were closed due to the lack of elements and 2 were closed with commitments by the investigated economic agents.

Additionally, the Commission will redouble its efforts to communicate with greater effectiveness the results of its investigation and sanction work.

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17. The agreement is available in Spanish at [https://dof.gob.mx/nota\\_detalle.php?codigo=5635985&fe-cha=22/11/2021](https://dof.gob.mx/nota_detalle.php?codigo=5635985&fe-cha=22/11/2021)

### *Prevention and correction of market structures, as well as anticompetitive legal frameworks*

During the past four-year period, COFECE analyzed 623 concentration notifications to prevent the creation of market structures that represent risks to competition and free market access. Of these, 568 concentrations were authorized, three were conditioned to the compliance of conditions that eliminated potential risks to competition and six were objected. Additionally, 46 concentration notifications were considered as not presented, not admitted for processing, or withdrawn.<sup>18</sup>

Particular mention should be made of the implementation in 2018 of the Electronic Notification of Concentrations System (SINEC per its acronym in Spanish), which allows economic agents to conduct the concentration procedure electronically, from the notification to the accreditation of the closure of the corresponding operation. The SINEC allows to submit documents, receive notifications and have access to the file remotely on a 24-hour basis. From January 2020, the use of the SINEC is mandatory.

Also, to prevent market structures with risks to competition, the Commission issued opinions regarding tenders, concessions and permits. From 2018 to 2021, 39 opinions were issued to tender bases, of which 35 established recommendations to incorporate measures to protect and promote free market access. Similarly, COFECE issued 51 opinions to participants in tenders, of which 34 were favorable, two not favorable, 13 were closed and two were subjected to conditions, since it was foreseen that, the granting, cession of a concession or permit to the requesting economic agents in the proposed terms, could restrict competition in those markets.<sup>19</sup>

### *Defense of the legality of the actions of the Commission*

The resolutions issued by the Board of Commissioners can be appealed by economic agents and reviewed by the Mexican Federal Judiciary (PJF per its acronym in Spanish). The means to do it is through an indirect *amparo* trial, before the Specialized Courts and Tribunals in Economic Competition.<sup>20</sup> From 2018 to 2021, the PJF resolved 759 *amparo* trials, of which 600 were dismissed, 76 were denied and in 73 the *amparo* was granted and ten had other results. This means that in 89% of the cases, the PJF confirmed the legality of the actions of COFECE. The propor-

18. A concentration is considered as not presented when the economic agents do not provide the information required for the analysis of the operation; not admitted when the Commission is not the competent authority for conducting the analysis; and withdrawn when the economic agents decide not to continue with the notification process.

19. The data on tenders, concessions and permits includes files whose resolutions have not been published, thus, are not accounted for in other reports.

20. In accordance with what it is established in the twentieth paragraph, section VII of article 28 of the Constitution and section IX of article 107 of the *Amparo* Law.

tion of cases in which the legality of the decisions of the Commission is confirmed is an indicator that they have a solid reasoning. However, it is precise to recognize that, even though the PJF proves the unlawful conduct, in some cases this Power does not confirm the resolution of COFECE with regards to the sanction. In such way that there is an opportunity in this field and the Commission is working on this matter.

### *Competition in the public agenda*

COFECE contributes to promoting economic competition in the public agenda by issuing opinions on regulatory projects in relation with their impact on anti-trust, the collaboration with national and international actors and the positioning of the Commission in Mexico and the world.

The Commission is empowered to issue opinions regarding laws, regulations, agreements, draft provisions, and other administrative acts when it considers that these could have adverse effects on competition and free market access. Between 2018 and 2021, COFECE issued 18 opinions to regulatory frameworks related with sectors such as energy, financial services and government activities. Likewise, in the context of the agreement with the National Commission of Regulatory Improvement (CONAMER per its acronym in Spanish) 118 regulatory analyses were conducted. The number of opinions issued in the previous four-year period contrasts with the 47 issued between 2014 and 2017. This is because the universe of regulations of which the Commission was able to issue an opinion was reduced.

With regards to the collaboration with national and international actors, the Commission has subscribed 47 collaboration agreements with government agencies, academic institutions, companies, counterparts in other countries and international organizations.<sup>21</sup> Through these, COFECE, on the one hand, promotes economic competition and, on the other, collects best practices that may be useful to optimize the procedures of the Commission.

In the 2018-2021 period, COFECE strengthened its international positioning. For example, the specialized publication Global Competition Review (GCR) consistently assigned COFECE a rating of 3.5 stars during that lapse, categorizing it as a “consistent good authority”, which represents an improvement in relation with the previous four-year period, in which the Commission obtained a rating of three out of five stars possible.<sup>22</sup>

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21. During the reporting period, COFECE had 29 valid agreements at the national level (23 with the public sector, two with the private sector, four with the academic sector), 17 agreements with foreign competition agencies and an agreement with the Inter-American Development Bank.

22. Ratings from GCR are: 2.5 stars por competition agencies considered with a sufficient level, 3 and 3.5 stars for agencies considered as good, 4 and 4.5 stars for very good agencies and 5 stars for elite-quality agencies.

In the reference period, the Commission obtained important recognitions such as the U-Gob award to the public innovation for the implementation of the Electronic Procedures System of COFECE (SITEC per its acronym in Spanish)<sup>23</sup>; the Competition Advocacy Contest Winner in 2019<sup>24</sup> and 2021<sup>25</sup> from the World Bank and the International Competition Network for the opinion issued by COFECE to the draft Fintech Law and the advocacy work of the Commission to promote competition in the electric sector, respectively; the award for practices in the Use of the Results of the Monitoring and Evaluation in the cycle of Public Policies, awarded in 2021 by the National Council for the Evaluation of Social Policy (CONEVAL, for its acronym in Spanish), due to the generation of evidence from COFECE's ex ante and ex post assessments initiatives in matters of competition<sup>26</sup>; the Proactive Transparency Practices award, granted in 2021 by the National Institute of Transparency, Access to Information and Personal Data Protection (INAI per its acronym in Spanish) for the multimedia dissemination section on economic competition that is available in the website of the Commission.<sup>27</sup>

While the registered progress in the positioning of COFECE is important, the Commission recognizes that there is still some way to go to establish itself as a competition agency of the highest level whose actions are an international benchmark.

### *Towards a vanguard organizational model*

The consolidation of COFECE as a vanguard institution is based, primarily, on the development of human capital, the efficient and effective management of resources, and the continuous improvement of its organizational model.

Human capital is the backbone of COFECE's performance. Thus, the Commission constantly optimizes its recruiting, candidate selection, training, professional development and performance assessment processes, based on the principles of equality, equity and non-discrimination.

From 2018 to 2021, COFECE conducted 322 calls in the Candidate Selection System, of which 250 had a winner, 71 were declared void and one was declined. Likewise, during this period, through the annual training plans (PAC per

23. COFECE (2019). Monthly Report, March 2019. Available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2019/04/Reporte-Mensual-marzo2019-ver03.pdf>

24. World Bank. *2018-2019 Competition Advocacy Contest*. Available at <https://www.worldbank.org/en/events/2018/12/06/2018-2019-competition-advocacy-contest#4>

25. World Bank. *Competition Advocacy Contest 2021*. Available at <https://www.worldbank.org/en/events/2021/04/07/competition-advocacy-contest-2021>

26. CONEVAL. Publication of the results of the award "Good practices in the use of the monitoring and evaluation results in the cycle of public policies 2021". Available at [https://www.coneval.org.mx/Evaluacion/BPME/GF/Documents/Resultados\\_BP\\_2021.pdf](https://www.coneval.org.mx/Evaluacion/BPME/GF/Documents/Resultados_BP_2021.pdf)

27. COFECE (2021). Monthly Report, October 2021. Available at <https://www.cofece.mx/ reporte-mensual-octubre-2021/>

its acronym in Spanish), 259 trainings were delivered aimed at reinforcing technical, cross-technical, managerial and directive skills, as well as the public service vision.

Additionally, the Commission has a performance assessment model, in which it annually evaluates the work of the public officials of COFECE, allowing those that obtain a high or extraordinary performance to be eligible for a promotion. Based in this model, from 2018 to 2021, the Commission granted 211 promotions to public officials of different levels.

The efforts described above have allowed the Commission to obtain recognition such as the EDGE Certification Move, awarded by the Economics Dividends for Gender Equality Foundation for creating a workspace with equal opportunities for men and women; the certification of the NMX-R025-SCFI-2015 Mexican Standard on Labor Equality and Non-Discrimination; and the Great Place to Work certification as one of the best institutions to work in Mexico.

To provide more transparency to the use of the public resources allocated to COFECE for the fulfillment of its constitutional mandate, during the 2018-2021 period, the Commission hired the services of an independent auditor, who issued a clean opinion regarding the financial statements of the Commission and determined that these were elaborated under the applicable legislation.<sup>28</sup>

COFECE carries out several actions that contribute to the continuous improvement of its organizational model. For example, planning documents are elaborated which allow the follow-up of the fulfillment of institutional objectives, such as the PAT and the quarterly reports of activities.

To encourage proactive accountability exercises, in 2018 COFECE published the 2018-2021 Accountability Agenda, whose commitments were complied with. Additionally, between 2018 and 2021 the Superior Audit Office of the Federation (ASF for its acronym in Spanish) conducted five audits to COFECE, the recommendations of which have been fully addressed.<sup>29</sup> Also, to promote ethics and integrity culture, in February 2019 the Ethics Committee was established. Additionally, in line with best international practices, in July 2020 COFECE created the General Directorate of Digital Markets, in charge of, among others, studying and following up the functioning, development, competitive dynamics and other relevant aspects regarding competition and free market access in digital markets.

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28. General Law of Government Accounting; Federal Law of the Budget and Financial Responsibility, Government Accounting Manual of COFECE; Government Accounting Manual and technical regulatory documents issued by the National Council of Accounting Harmonization.

29. In February 2022, the ASF issued the report related with the 109-GB regarding COFECE's Performance in matters of economic competition. COFECE is in the process of addressing the recommendations included in said report.

## **Strategic analysis (SWOT)**

Based on best international practices in matters of strategic planning, COFECE resumes the strategic analysis or SWOT (Strengths, Weaknesses, Opportunities, and Threats), for being a tool that allows it to know the real situation in which it finds itself and, from there, designs a strategy for the future.

SWOT analysis allows the identification of positive and negative elements, as well as internal and external ones that impact the operation of institutions. From the external point of view, threats and opportunities are those factors that could affect or encourage its performance; while, from an internal perspective, strengths and weaknesses are those key characteristics that have an impact on the results. The identification of these elements allows the Commission to mitigate external risks and address the identified areas of opportunity, without neglecting its strengths.

### *Strengths*

- Public officials with vast experience and high specialization on antitrust.
- Independence in its resolutions and actions.
- Consolidation of the technical autonomy.
- Cost-effective actions since the economic benefits generated for the society exceeds the budget allocated annually.
- Consolidation of COFECE as an international benchmark in antitrust due to its technical soundness.

### *Weaknesses*

- Board formed only by four Commissioners limits the exercise of certain powers.
- Dissemination strategies of competition policy that have not had the expected impact and reach in society.
- A legal framework that limits the impact of the recommendations derived from the opinions and market studies issued by COFECE.
- The external perception of prolonged duration of the substantive procedures.
- Reduced work team for the processing of the substantive and adjective procedures of the Commission.

### *Opportunities*

- The growing trend of digitalization of processes and proceedings in national and international authorities.
- Existence of spaces for greater dissemination of the benefits and pillars of economic competition.

- Modern markets with characteristics other than the traditional ones require the application of new techniques for their analysis.
- Greater interaction and collaboration with local and federal authorities to promote the principles of competition and free market access.
- An international trend that recognizes the political relevance and incidence of competition in the economic recovery of the markets.

### *Threats*

- Prevalence of sectorial laws and regulations with anticompetitive components that do not incorporate the recommendations of COFECE.
- Greater concentration of economic and political interest groups in sectors and markets with potential competition problems.
- Lack of appointment of Commissioners that could render the Commission inoperative to comply with its constitutional mandate.
- Modifications to the fines imposed by the Commission derived from the amparo trials filed by economic agents against the resolutions of COFECE.
- Competition problems generated in Mexican markets by non-compliance with international trade treaties and agreements.

### *Conclusion*

As a result of the strategic analysis, four main challenges that the Commission will face during the following years were identified:

- I. Prevalence of market structures that limit competition.
- II. Anticompetitive practices by economic agents.
- III. Lack of knowledge of the benefits of economic competition in society.
- IV. Organizational model at an early stage.

From these challenges, COFECE will conduct actions that allow working on the improvement areas and potential risks related to these aspects that could affect its performance and the fulfillment of its constitutional mandate. Likewise, this would allow to strengthen the enforcement of competition policy which translates in greater benefits for society.

## Chapter II. Who are we?

COFECE is an autonomous body, with legal personality and patrimony of its own whose object is to guarantee free competition and market access, as well as to prevent, investigate and fight monopolies, monopolistic practices, concentrations, and other restrictions to the efficient functioning of the markets. Additionally, COFECE is empowered to regulate access to essential inputs and order measures to eliminate barriers to competition and free market access, the divestment of assets, rights, social parts or stock of economic agents.

COFECE's mission, vision, structure, and values are as follows:

### ***Mission***

To promote and protect competition for the benefit of consumers through the efficiency of the markets.

### ***Vision***

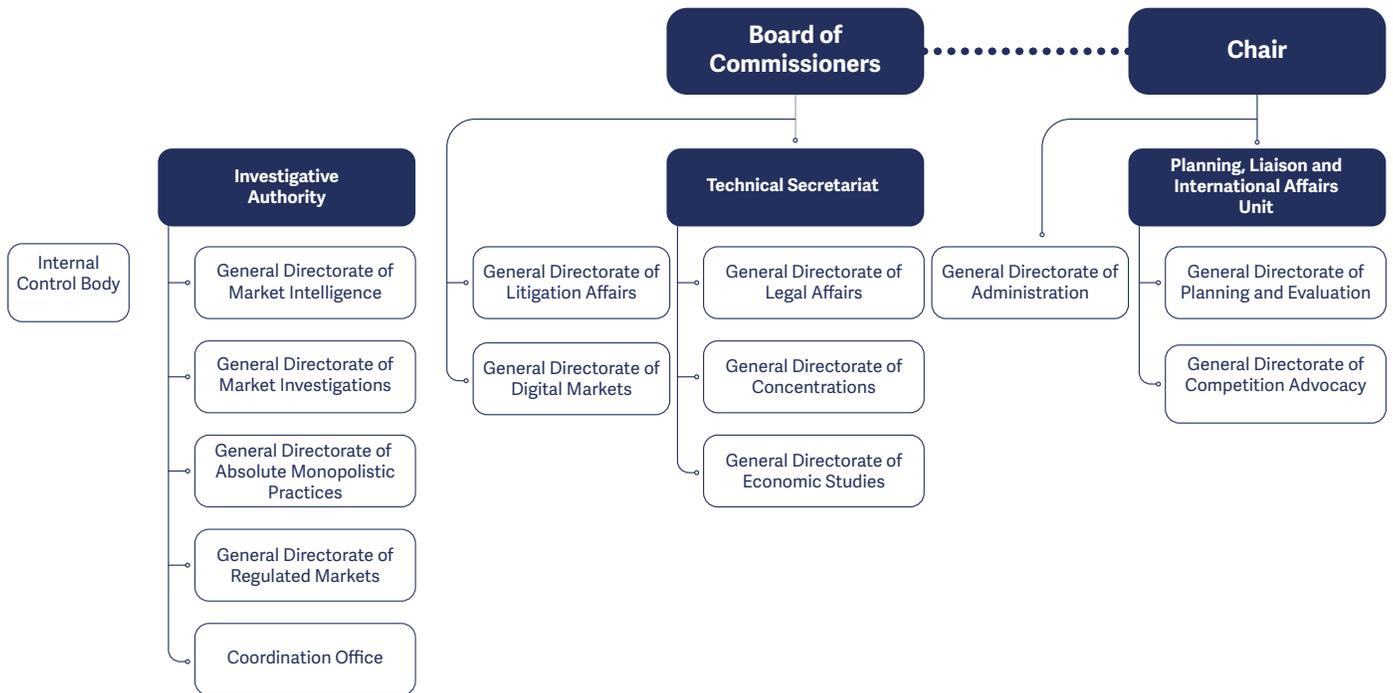
To be a technical and independent authority, recognized for protecting and promoting competition for the benefit of society and a benchmark in the public policy decisions in the country.

### ***Institutional values***

- **Defense of public interest:** ensure the welfare of families through the promotion and protection of competition in the markets.
- **Impartiality:** act with objectivity and neutrality, basing our decisions on evidence and analysis of facts, in accordance with the regulation.
- **Independence:** the actions of the Commission are only conditioned by the interest of generating and protecting competition in the markets.
- **Transparency:** COFECE provides the society with clear and open information about its actions and protects the one classified as confidential or reserved.
- **Technical capacity:** the public officials of COFECE have vast experience and high specialization in antitrust matters.

## Structure of the Commission

The last reform to the Statute of the Commission was published in the Federal Official Gazette on May 24, 2021.<sup>30</sup> The Statute established the organic structure and operation basis of COFECE.<sup>31,32</sup>



30. The Statute was published for the first time in the Federal Official Gazette (DOF, as per its acronym in Spanish) on July 8, 2014.

31. With respect to the Investigative Authority, article 26 of the LFCE establishes its technical and managerial autonomy to decide over its functioning and resolutions. The foregoing with the purpose of complying with article 28, twentieth paragraph, section V, of the CPEUM which establishes that there must be separation between the authority that investigates and the one that resolves.

32. Based on the second paragraph of article 42 of the LFCE, the head of the Internal Control Body will have a hierarchical level equal to a General Director or its equivalent in the organic structure of the Commission.

## Chapter III. Institutional objectives and strategic lines 2022-2025

COFECE has defined four institutional objectives that will guide its work during the 2022-2025 period. Through these objectives, the Commission will fulfill its constitutional mandate of guaranteeing competition and free market access, as well as to prevent, investigate and fight monopolies, monopolistic practices, unlawful concentrations and other restrictions to the efficient functioning of the markets.

The 2022-2025 institutional objectives will constitute the framework that will guide COFECE's daily activities during the next four years. COFECE has defined four strategic lines that trace specifically the way in which each institutional objective will be fulfilled.

### ***I. Prevent and correct market structures that hinder, damage or impede competition and free market access***

- **I.1** Proactively investigate and determine the existence of essential inputs and barriers to competition.
- **I.2** Proactively investigate and issue resolutions in the markets lacking effective competition conditions.
- **I.3** Analyze and resolve the concentrations notified before COFECE to prevent risks to competition.
- **I.4** Analyze process of tenders, concessions and permits to avoid concentrations that could affect the functioning of markets.
- **I.5** Elaborate studies to identify possible risks to competition in the markets.
- **I.6** Defend before the Mexican Federal Judiciary the actions of COFECE issued in the framework of procedures aimed at preventing and correcting market structures.
- **I.7** Exercise constitutional actions in cases related with the prevention and correction of market structures.

## ***II. Fight and deter anticompetitive practices that affect markets***

- **II.1** Facilitate and promote the filing of informed complaints of anticompetitive practices.
- **II.2** Strengthen the Immunity and Sanction Reduction Program.
- **II.3** Monitor markets to detect anticompetitive practices, unlawful concentrations, and non-notified concentrations.
- **II.4** Investigate facts related with possible infringements to the LFCE.
- **II.5** Guarantee due process for investigated economic agents and sanction when responsibility is proved.
- **II.6** Verify the compliance of the Board of Commissioners' resolutions.
- **II.7** Defend before the Mexican Federal Judiciary the actions of COFECE that derive from the investigation of anticompetitive practices.
- **II.8** Exercise constitutional actions in cases related to the investigation of anticompetitive practices.
- **II.9** Exercise the attribution to file criminal complaints in matters of economic competition before the Public Prosecutor.

## ***III. Promote the application of competition principles between public and private actors through actively spreading the benefits of economic competition***

- **III.1** Promote the knowledge of collective actions in matters of economic competition in the society.
- **III.2** Issue and monitor opinions regarding legal frameworks that could have adverse effects to competition in the markets.
- **III.3** Elaborate and publish documents and dissemination materials that promote the principles and culture of economic competition.
- **III.4** Evaluate the impact of COFECE's resolutions on markets and consumers' welfare.
- **III.5** Bring COFECE's work closer to society through an effective communication strategy.
- **III.6** Encourage the collaboration with regulatory bodies, public institutions, the private sector, academia and international actors in matters of economic competition.
- **III.7** Position COFECE as a benchmark in matters of economic competition in the international arena.

#### ***IV. Consolidate a robust and vanguard institutional model that effectively responds to the institutional needs and challenges***

- **IV.1** Consolidate the Talent Management System to attract, retain and develop human capital.
- **IV.2** Exercise the allocated financial resources in an efficient, responsible, and transparent way.
- **IV.3** Favor competed acquisitions of goods and services that guarantee the efficient use of resources.
- **IV.4** Encourage digitalization to optimize the substantive and adjective processes of COFECE in the face of a changing environment.
- **IV.5** Safeguard the right to access to information in accordance with the applicable regulation.
- **IV.6** Consolidate COFECE as a benchmark institution in transparency and accountability.
- **IV.7** Encourage the development of public officials based on the principles of ethics, integrity, inclusion, respect, and gender equity; for the strengthening of organizational culture.
- **IV.8** Proactively exercise actions that guarantee continuity of COFECE's operations.
- **IV.9** Implement actions in matters of planning, evaluation, and internal control to strengthen the strategic approach of COFECE.

## Chapter IV. Prioritization of sectors

COFECE establishes a prioritization of sectors to guide its efforts during the 2022-2025 period as part of its commitment to efficiently use its human, physical and financial resources. The definition of priority sectors allows to guide the efforts of the institution towards where competition policy can generate greater benefits in terms of consumer welfare and good economic performance of the country. Although these sectors guide the proactive work of the Commission, it maintains its commitment to timely address the complaints and initiate the corresponding procedures when it detects obstacles to competition and free market access in any market.

Since the 2014-2017 Strategic Plan, COFECE used six criteria to identify the sectors that are a priority in economic competition policy: contribution to economic growth, generalized consumption, transversality, impact on lower-income population, regulated sectors and prevalence of anticompetitive conducts. For the 2022-2025 four-year period an additional criterion is added: international trends in competition matters.

**Table 2. Criteria for the prioritization of sectors 2022-2025<sup>33</sup>**

Criterion	Description
<b>Contribution to economic growth</b>	It refers to the extent in which an economic sector contributes to increasing the national GDP, considering its participation in the total output of goods and services, and its growth in recent years.
<b>Generalized consumption</b>	It refers to the extent to which goods and services generated by a sector of economic activity are acquired or consumed by a greater proportion of households and persons.
<b>Transversality</b>	It identifies the magnitude in which the goods and services produced by a sector are used as inputs in the productive process of other branches of economic activity.
<b>Impact on lower-income population</b>	It quantifies the proportion of the spending that lower-income households allocate to the acquisition of goods and services of an economic sector.

33. These criteria are not weighted, they do not have a specific order and the chosen sectors do not necessarily comply with all of them.

**Table 2. Criteria for the prioritization of sectors 2022-2025<sup>33</sup>**

Criterion	Description
<b>Regulated sectors</b>	It identifies those economic sectors whose characteristics favor anticompetitive market structures and, thus, require government regulation.
<b>Prevalence of anticompetitive conducts</b>	It refers to the extent to which COFECE has historically identified the possible commission of anticompetitive practices in the markets that form a given sector.
<b>International trends in competition matters</b>	It makes reference to sectors in which foreign competition agencies have made special emphasis due to factors as its disruption to the economy.

Derived from the application of these criteria, the Commission identified the following eight priority sectors:

### ***Food and beverages sector***

This sector includes all the stages of production, from agriculture to food and beverage retail, as well as the food manufacturing industry.

While in 2020 the share in the GDP from the agri-food sector increased to 4.1%, growth in agricultural, livestock and food manufacturing activities was 5.8%, 10% and 8%, respectively, between 2016 and 2020.<sup>34</sup> Likewise, in 2018 the activities of the food and beverages sector generated more than 15% of the added value by the productive activities of the national economy.<sup>35</sup>

In 2020, 99% of the Mexican households registered expenditures in food and beverages for their consumption inside the household and 32% spent on the same products for their consumption outside the household. These items represented 38% of the total household expenditure at the national level, and 50% for households in the lowest income decile.<sup>36</sup>

Due to its relevance, COFECE has had multiple actions in this sector during the last four years. In particular, the Commission initiated eight investigations and four trial-like procedures for anticompetitive practices in branches of activity related

34. INEGI. National Accounts System.

35. INEGI. Economic Census 2018.

36. INEGI. National Survey on Income and Expenditure of Households 2020.

with food and beverages. Additionally, towards the end of 2020, COFECE published the *Study on Competition in the modern channel of retail of food and beverages*.<sup>37</sup>

## **Transport and logistics sector**

This sector considers the activities that go from the manufacture of transport equipment, the provision of transport services, as well as those of storage and dispatching that allow products to reach final consumers efficiently.

In 2020, these activities accounted for an 8.5% share of the GDP.<sup>38</sup> Likewise, in that year 94.8% of households registered expenditures in this sector, and it accounted for 20% of household spending at the national level. In particular, expenditure on public transportation represented between 4.5% and 5% of spending for the three lowest income deciles.<sup>39</sup> In addition to this, transport and logistics activities allow the transfer of goods and are a fundamental factor to determine scarcity – and thus, prices- of the greater part of goods and services, that is, they are cross-cutting sectors. Likewise, it is a sector that includes several regulated markets.

In the 2018-2021 period, the Commission initiated two investigations and four trial-like procedures in markets related with this sector. Also, in 2020 COFECE issued its first resolution of absence of effective competition conditions in 21 markets of railway transport of chemicals and petrochemicals in Veracruz. Additionally, the Commission published the documents *Study on competition in the federal passenger transport, Proposals for a Subnational Regulatory Agenda in Freight Transport and Study on competition in the public service of railway freight transport*.<sup>40</sup>

## **Financial sector**

This sector contributed, in 2020, with 5% of the GDP and, from 2016 to 2020, it grew 7.2%. In particular, the finance, insurance and pensions subsector had a 50% growth in the same period, which represents an average annual rate of more than 10%.

Financial services are used both by final users and for the development of other productive activities. In 2018, 31% of the population aged 18-70 had at least one formal credit.<sup>41</sup> Likewise, in 2020, 27% of households reported deposits in

37. COFECE. Study on competition in the modern channel of retail of food and beverages. Available in Spanish at: <https://www.cofece.mx/estudio-de-competencia-en-el-canal-mod-erno-del-comercio-al-menudeo-de-alimentos-y-bebidas/>

38. INEGI. National Accounts System.

39. INEGI. National Survey on Income and Expenditure of Households 2020.

40. The study is available in Spanish at <https://www.cofece.mx/propuestas-de-agenda-regulatoria-subnacional-para-autotrans-porte-de-carga/>

41. CNBV and INEGI. National Financial Inclusion Survey 2018.

accounts and savings banks, and 85.6% reported credit card payments.<sup>42</sup> Almost a quarter of the demand of services of this sector is used as an input in other branches of activity.<sup>43</sup>

In the last four years, the Commission initiated, and concluded in sanction, a trial-like procedure, related with the intermediation of Mexican government debt securities. In the same way, COFECE processed an investigation to determine the existence of essential inputs or barriers to competition in the market of card payments systems.

### **Construction and real-estate services sector**

Construction and real-estate services represented, in 2020, 17.7% of the GDP. While construction decreased 21.7% between 2017 and 2020, real-estate services grew 5.5% in the same period.<sup>44</sup>

In 2020, 8% of households recorded the payment of fees for their own housing and 11% recorded payments for services or materials for the repair, maintenance, or repair of the dwelling. Both items represented, in sum, 20% of household expenditures for the purchase of personal property, real estate, valuables and physical assets.<sup>45</sup>

Over the last four years, the Commission initiated two investigations in this sector: one in the maintenance services of the Cuernavaca-Acapulco highway and another in the market of industrial gases equipment used in construction.

### **Energy sector**

Although the oil and gas extraction, and the generation, production and distribution of electric energy represented only 4.8% of the GDP in 2020, 97.7% of households reported expenditures in electric energy and fuels. This item represented 10% of the spending of households at the national level and 12% in the case of lower income deciles.<sup>46</sup> However, the generation, transmission and distribution of energy sector grew only 0.25% between 2017 and 2020.<sup>47</sup>

The importance of this sector derives from its use as an input in almost all of the productive sectors. Three quarters of the national production are not destined to final users, but rather to address the intermediate demand, of which 93% corresponds to other sectors and activity branches.<sup>48</sup>

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42. INEGI. National Survey on Income and Expenditure of Households 2020.

43. INEGI. Input-Output Matrix 2013.

44. INEGI. National Accounts System.

45. INEGI. National Survey on Income and Expenditure of Households 2020.

46. INEGI. National Survey on Income and Expenditure of Households 2020.

47. INEGI. National Accounts System.

48. INEGI. Input-Output Matrix 2013.

Energy and fuels constitute a regulated sector, and in the last four years, COFECE initiated an investigation in the market of the generation, wholesale commercialization and supply of electric energy. Additionally, in the last three years the Commission has issued five opinions related with the sector.<sup>49</sup>

## **Health sector**

Following the health emergency due to the SARS-CoV2 virus, the importance of this sector was reaffirmed, which had a share of 2.3% of the GDP in 2020 and a growth of 3.4% between 2016 and 2020.<sup>50</sup> However, in 2020, 54% of households reported spending on health care related items; specially on medical services (30%) and prescription drugs (31%).<sup>51</sup>

Between 2018 and 2021, the Commission initiated several trial-like procedures in the markets for the production, distribution, and commercialization of medicines; public procurement of lab studies and blood banks, as well as toothbrushes, condoms, and latex probes.

## **Public procurement**

Surveillance of competition in public procurement has been an activity of strategic attention for COFECE since its creation. This was reflected in both the 2014-2017 and the 2018-2021 Strategic Plans.

Public procurement refers to the acquisition of goods, services and public works by governments and state-owned companies. According to the World Bank, public procurement represents, on average, between 13 and 20% of the world GDP and at the global level the spending on public procurement amounts to 9.5 trillion dollars.<sup>52</sup> Also, it is an item that stands out for its transversality, since a large part of public procurement is conducted to provide goods and services to the population in different sectors.

In Mexico, over the last eight years, direct awarding has risen. While in 2013 it represented 36% of the total amount of contracts granted by the federal govern-

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49. The opinions were issued with regards to the "Initiative with a Draft Decree by which several provisions of the Hydrocarbons Law are reformed and added", the "Initiative with a Draft Decree by which several provisions of the Electric Industry Law are reformed and added", the "Agreement to guarantee Efficiency, Quality, Reliability, Continuity and Security of the National Electric System, due to the recognition of the pandemic due to the SARS-CoV2 virus", the "Agreement by which the Energy Regulatory Commission interprets for administrative purposes the cross participation foreseen in the second and third paragraphs of article 83 of the Hydrocarbons Law and issues the guidelines that establish the procedure for its authorization" and the "Agreement by which the Terms for the strict legal separation of the Federal Electricity Commission are modified".

50. Ibidem.

51. INEGI. National Survey on Income and Expenditure of Households 2020.

52. World Bank <https://www.worldbank.org/en/news/feature/2020/03/23/global-public-procurement-database-share-compare-improve>

ment, in 2020 it represented 43%. In contrast, public tenders in 2013 represented 56% of the amount of contracts granted by the federal government and in 2020 they represented 40%.<sup>53</sup>

Just as it has done it since its creation, COFECE will continue to address public procurement through a comprehensive strategy that involves three fronts: 1) investigation and sanction of collusion, 2) promotion of pro-competitive public procurement regulation; and 3) promotion of competed tendering processes.

## **Digital markets**

In Mexico, the mobility restrictions imposed due to the SARS-CoV2 pandemic increased the use of online shopping applications by 90% compared to the first quarter of 2020, well above the 25% growth observed worldwide, and two out of 10 companies with online sales channels have experienced growth of more than 300%.<sup>54</sup>

COFECE and foreign peer agencies are aware that the achievement of their objectives faces a new challenge as a result of the digitalization of the economy, and that actions are required specifically aimed at addressing the challenges posed, from a competition perspective, by the digital economy and the functioning of the markets that operate in it.

While the Commission has accumulated important experience in digital markets through the issuance of opinions, analysis of concentrations and investigations, for the first time it includes these markets within its strategic planning, with the purpose of making emphasis on them in its actions.

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53. IMCO. <https://imco.org.mx/43-de-las-compras-publicas-fueron-por-adjudicacion-directa-en-2020/>

54. Mexican Association of Online Retail (AMVO per its acronym in Spanish) (September 8, 2020). 4.0 Report COVID-19 Impact in online shopping in Mexico. Available in Spanish at <https://www.amvo.org.mx/estu-dios/reporte-4-0-impacto-covid-19-en-venta-online-mexico/>

## Chapter V. Follow-up and monitoring of the 2022-2025 Strategic Plan

Since its creation, COFECE has conducted several efforts that have culminated in the development of a follow-up system, which favors the supervision of the actions associated to the strategic lines and allows to anticipate to situations that could hinder the fulfillment of its institutional objectives. Likewise, this system contributes to accountability regarding the performance of the Commission.

In this sense, COFECE uses several tools to conduct precise monitoring over the fulfillment of its established objectives and goals, such as the PAT, the Quarterly Reports of Activities, the Institutional Performance Assessment System (SEDI per its acronym in Spanish) and its reports of results, as well as the assessments and audits conducted by external authorities. Each of these tools are described next:

### ***Annual Work Programs***

This tool favors the focalization and prioritization of efforts that allows COFECE to comply with its constitutional mandate, through the efficient use of the allocated resources. These programs are formed by strategic actions that have clear and specific goals to be concluded during the corresponding exercise. Likewise, these actions are associated to the institutional objectives through the assignation of a strategic line. In this way, compliance of the PATs contributes to the gradual achievement of the objectives established in this Strategic Plan.

### ***Quarterly Reports of Activities***

COFECE presents reports about the activities it carries out during a quarter in order to inform about its work, as well as of its financial situation and general performance in relation to its objectives and goals. Through these reports the Commission follows up on the progress made in the fulfillment of the strategic actions contained in its PAT which are aligned with the institutional objectives. In this way, COFECE encourages transparency and accountability before the society, while also complying with its legal obligations in this matter.<sup>55,56</sup>

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55. Section VII of the twentieth paragraph of article 28 of the CPEUM and article 49 of the LFCE, establish that COFECE must present the annual work program and a quarterly report of activities to the Federal Executive and Legislative Powers, by January 31 of each year at the latest and within 30 working days after the corresponding quarter ends, respectively.

56. Given that in January 2022 this Strategic Plan was under elaboration, the 2022 PAT implicitly used the mission, vision, objectives, strategic lines, and priority sectors of the last Strategic Plan in force.

## ***Institutional Performance Assessment System***

COFECE has a SEDI, which allows to comply with what it is established in section LI of article 2 and article 111 of the Federal Law on the Budget and Financial Responsibility, as well as article 79 of the General Law on Government Accounting. Based on this legal basis, the SEDI elaborated by the Commission comprises the group of methodological, regulatory, and operational elements that allow to objectively monitor and quantify the comprehensive performance of the institution.

COFECE aligns the issuance of its SEDI with the long-term strategic planning. The SEDI corresponding to the 2022-2025 period will be comprised by strategic, managerial and results indicators, which will measure the progress in the fulfillment of the institutional objectives defined in this Plan. In this sense, the SEDI will allow to evaluate COFECE's performance for this period in an objective and technically robust way; and will allow to have relevant and timely information that helps to continuously improve the quality of the institutional procedures.

Additionally, the SEDI represents an element of control that provides information regarding the conduction and execution of COFECE's actions, in compliance with the legal framework and in line with best international practices. The main benefits of having and assessment system are: a) linking the institutional objectives to goals and indicators, b) obtaining timely and relevant information, and c) identifying institutional areas of opportunity.

### ***SEDI results reports***

The progress of the fulfillment of the institutional objectives will be communicated through the reports of results of the SEDI, which will present COFECE's performance for decision-making. The annual results of the SEDI 2022-2025 will be submitted to the Ministry of Finance and Public Credit and will be published in the Commission's website. The foregoing, with the purpose of these being available for consultation by citizens at all times.

### ***External audits***

Another mechanism to follow-up the achievement of the institutional objectives of the 2022-2025 Strategic Plan will be the reviews and assessments conducted by the ASF, as well as budget and financial audits that are carried out by external firms, with the purpose of making the use of the allocated public resources more transparent. The ASF is the technical body in charge of reviewing the Public Account with the objective of evaluating the results of the financial management and verify compliance with the objectives contained in the programs, as well as the use of federal public resources in the three Powers of the Union, constitutional autonomous bodies and any entity that has used federal public resources.

Additionally, each year COFECE contracts an external firm to audit the financial statements and budget analysis.

The following figure shows the institutional planning and follow-up scheme of COFECE:

**Figure 1. Strategic planning and institutional follow-up of COFECE**



Source: COFECE.

## ANNEXES

### 2018-2021 Numeralia

	2018	2019	2020	2021	2018-2021
<b>Concentrations Analysis (CNT)</b>					
Initiated	183	153	126	167	629
Concluded	184	144	141	154	623
<b>Tenders, concessions and permits (LI,ONCP,OCCP)</b>					
Initiated	81	38	42	30	191
Concluded	89	41	39	36	205
<b>Investigations for monopolistic practices and unlawful concentrations (DE,IO)</b>					
Initiated/Received	50	52	35	34	171
Concluded	47	59	39	35	180
<b>Investigations to determine Essential Inputs or Barriers to Competition (IEBC)</b>					
Initiated	6	2	3	0	11
Concluded	4	4	4	0	12
<b>Procedures to resolve on market conditions – Resolutions (DC)</b>					
Initiated	3	0	3	1	7
Concluded	3	0	3	1	7
<b>Opinions (OPN)</b>					
Issued	6	3	7	2	18
<b>Regulatory analyses (OPN)</b>					
Conducted within the framework of the COFECE-CONAMER agreement	49	20	25	24	118
<b>Amparo trials (JA)</b>					
Initiated	103	101	173	98	475
Concluded	477	160	53	69	759

SOURCE: COFECE

### 2018-2021 Strategic Plan Performance Indicators

The 2018-2021 SEDI had strategic and managerial indicators that were evaluated on an annual basis to have relevant and timely information for decision-making and continuous improvement of COFECE's procedures. This SEDI had an aggregated measure of COFECE's performance, the Competition Policy Performance Index (IDPC per its acronym in Spanish), which is fed by internal and external information sources and is formed by four strategic indicators: E.1 Management compliance sub-index, IE.2 Fulfillment of the Annual Work Program, IE.3 Ratio of the benefits of competition policy with respect to the budget allocated to COFECE and IE.4 GCR Rating Enforcement annual evaluation.

The following tables present the results of the IDPC (2018-2021), and of the strategic indicators on an annual basis.<sup>57</sup>

#### Results of the strategic performance indicators (cut-off December 2021)<sup>a</sup>

Indicators	2021 Goal	Result	Weighting factor IDPC	Weighted result
<b>IE.1</b> Management compliance sub-index	95%	98.5%	70.00%	70.0%
<b>IE.2</b> Fulfillment of the Annual Work Program	95%	98.6%	20.00%	20.0%
<b>IE.3</b> Ratio of the benefits of competition policy with respect to the budget allocated to COFECE	5 times	4.21 times	5.00%	4.2%
<b>IE.4</b> GCR Rating Enforcement annual evaluation	3.5 stars	3.5 stars	5.00%	5.0%
<b>Subtotal of strategic performance indicators</b>			<b>100.00%</b>	<b>99.2%</b>
<b>Result of the IDPC of COFECE (cut-off December 2021)</b>				<b>99.2%</b>

Source: COFECE.

NOTES:

- a. The Report of Results of the 2021 Institutional Performance Assessment System is available in Spanish at <https://www.cofece.mx/wp-content/uploads/2022/03/Reporte-de-Resultados-SEDI-2021.pdf>

#### Results of the strategic performance indicators (cut-off December 2020)<sup>a</sup>

Indicators	2020 Goal	Result	Weighting factor IDPC	Weighted result
<b>IE.1</b> Management compliance sub-index	95%	92.6%	70.00%	68.3%
<b>IE.2</b> Fulfillment of the Annual Work Program	95%	92.2%	20.00%	19.4%
<b>IE.3</b> Ratio of the benefits of competition policy with respect to the budget allocated to COFECE	4.5 times	4.00 times	5.00%	4.5%
<b>IE.4</b> GCR Rating Enforcement annual evaluation	3.5 stars	3.5 stars	5.00%	5.0%
<b>Subtotal of strategic performance indicators</b>			<b>100.00%</b>	<b>97.2%</b>
<b>Result of the IDPC of COFECE (cut-off December 2020)</b>				<b>97.2%</b>

Source: COFECE

NOTES:

- a. The Report of Results of the 2020 Institutional Performance Assessment System is available in Spanish at <https://www.cofece.mx/wp-content/uploads/2021/03/Reporte-de-Resultados-SEDI-2020.pdf>

57. More information on the results of the SEDI in the years from 2018 to 2021 is available on COFECE's website.

**Results of the strategic performance indicators (cut-off December 2019)<sup>a</sup>**

Indicators	2019 Goal	Result	Weighting factor IDPC	Weighted result
<b>IE.1</b> Management compliance sub-index	95%	93.2%	70.00%	68.7%
<b>IE.2</b> Fulfillment of the Annual Work Program	95%	98.8%	20.00%	20.0%
<b>IE.3</b> Ratio of the benefits of competition policy with respect to the budget allocated to COFECE	4 times	6.78 times	5.00%	5.0%
<b>IE.4</b> GCR Rating Enforcement annual evaluation	3 stars	3.5 stars	5.00%	5.0%
<b>Subtotal of strategic performance indicators</b>			<b>100.00%</b>	<b>98.7%</b>
<b>Result of the IDPC of COFECE (cut-off December 2019)</b>				<b>98.7%</b>

Source: COFECE

NOTES:

- a. The Report of Results of the 2019 Institutional Performance Assessment System is available in Spanish at <https://www.cofece.mx/wp-content/uploads/2020/03/Reporte-de-Resultados-SEDI-2019.pdf#pdf>

**Results of the strategic performance indicators (cut-off December 2018)<sup>a</sup>**

Indicators	2018 Goal	Result	Weighting factor IDPC	Weighted result
<b>IE.1</b> Management compliance sub-index	95%	99.9%	70.00%	70.0%
<b>IE.2</b> Fulfillment of the Annual Work Program	95%	98.6%	20.00%	20.0%
<b>IE.3</b> Ratio of the benefits of competition policy with respect to the budget allocated to COFECE	3.5 times	7.50 times	5.00%	5.0%
<b>IE.4</b> GCR Rating Enforcement annual evaluation	3 stars	3.5 stars	5.00%	5.0%
<b>Subtotal of strategic performance indicators</b>			<b>100.00%</b>	<b>100.0%</b>
<b>Result of the IDPC of COFECE (cut-off December 2018)</b>				<b>100.0%</b>

Source: COFECE

NOTES:

- a. The Report of Results of the 2018 Institutional Performance Assessment System is available in Spanish at <https://www.cofece.mx/wp-content/uploads/2019/03/Evaluacion-SEDI-2018.pdf#pdf>

## Results of the 2018-2021 Annual Work Programs

During the 2018-2021 period, COFECE established 69 strategic actions in its PATs to contribute to the fulfillment of its long-term objectives. In this cycle, 43.5% of the actions were focused on the three first institutional objectives, that is, to enforce the regulation in economic competition matters, encourage the prevention and correction of anticompetitive market structures and legal frameworks, and defend the legality of the Commission's actions; while the remaining 56.5% was directed to the contribution of the fulfillment of its fourth and fifth objectives, related to the positioning of the topic and culture of competition and the consolidation of the organizational model. For its part, the global fulfillment of all the actions established in the PATs was of 97.1%. The actions that did not conclude in its year of planning were incorporated to the activities of COFECE in the following year to ensure their fulfillment.

### Results of the Annual Work Program<sup>a</sup>

PAT	Number of established actions						Global Fulfillment
	Objective I	Objective II	Objective III	Objective IV	Objetivo V	Total	
2018	7	2	1	8	3	21	98.6%
2019	3	3	0 <sup>b</sup>	8	3	17	98.8%
2020	5	3	0 <sup>b</sup>	6	3	17	92.2%
2021	3	3	0 <sup>b</sup>	6	2	14	98.6%
<b>Total</b>	<b>18</b>	<b>11</b>	<b>1</b>	<b>28</b>	<b>11</b>	<b>69</b>	<b>97.1%<sup>c</sup></b>

Source: COFECE.

Notes:

- The reports of results are available in Spanish at:  
[https://www.cofece.mx/wp-content/uploads/2022/03/Resultados\\_PAT-2021.pdf](https://www.cofece.mx/wp-content/uploads/2022/03/Resultados_PAT-2021.pdf)  
<https://www.cofece.mx/wp-content/uploads/2021/03/Resultados-del-PAT2020.pdf>  
[https://www.cofece.mx/wp-content/uploads/2020/02/Resultados\\_PAT\\_2019.pdf#pdf](https://www.cofece.mx/wp-content/uploads/2020/02/Resultados_PAT_2019.pdf#pdf)  
[https://www.cofece.mx/wp-content/uploads/2019/03/Resultados\\_PAT\\_2018.pdf#pdf](https://www.cofece.mx/wp-content/uploads/2019/03/Resultados_PAT_2018.pdf#pdf)
- Since the actions included in Objective III "Defend the legality of the Commission's actions and exercise the powers conferred on it" are not programmable, no specific action was included to address this objective in the PAT of the corresponding year.
- Total global fulfillment is obtained from the simple average of the fulfillment of the 69 actions established in the PAT in the period from 2018 to 2021.

## DEFINITIONS

- **Economic agent:** all natural or legal person, whether for profit or not for profit, agencies of the federal, state, or municipal public administration, associations, chambers of commerce, professional groups, trusts, or any other form of participation in the economic activity.<sup>58</sup>
- **Barriers to competition:** any structural characteristic of the market, fact, or act of the economic agents, that has as an object or effect to impede access of competitors or limit their capacity to compete in the markets.<sup>59</sup>
- **Barriers to entry:** obstacles that hinder the entrance of companies into a market. These barriers can be artificial, such as government regulations, or a result of the own conditions of the industry (economic barriers).
- **Economic competition:** the rivalry that its generated between two or more companies that participate in a same market to win consumers' preference. Thanks to it, companies have the incentive to be more efficient and attract a greater number of consumers by satisfying their need though the best conditions such as low prices, added value services, greater quality and variety of products, closeness, availability, specialization, and innovation.
- **Effective competition:** effective competition happens when two or more companies participate in a same market to win consumers' preference. When there is effective competition, the needs of consumer are met through best conditions such as lower prices, added value services, greater quality and variety of products, closeness, availability, specialization, and innovation.
- **Concentration:** acquisition of control or any other act by virtue of which societies, associations, stock, social parts, trusts or assets in general are joined and this is done between competitors, suppliers, clients or any other economic agent.<sup>60</sup>
- **Unlawful concentration:** that which has as an objective or effect to hinder, diminish damage or impede free market access or economic competition.<sup>61</sup>
- **Resolution:** procedure foreseen in the competition legislation in force through which Mexico's competition authority can resolve about existence or inexistence of effective competition conditions in the markets.
- **Ex ante assessments:** assessments that calculate the benefit obtained by consumers by the suspension or prevention of an anticompetitive practice, or, when COFEC objects or conditions a concentration. This based on the

58. Definition included in section I of article 3 of the LFCE.

59. Definition included in section IV of article 3 of the LFCE.

60. See article 61 of the LFCE.

61. Definition included in article 62 of the LFCE.

information of the market, observed prior to the intervention of COFECE, such as the duration of the practice, the size of the market, the price distortion, the forecasted projection in these and the commercialized quantity of the goods and services analyzed in the absence of said anticompetitive practice.

- **Essential input:** an element or group of elements that is essential for the production of goods or services. They have the characteristic of being irreplaceable.
- **Ex officio investigation:** investigation of COFECE that initiates by own initiative from indications (public information, immunity applications, among others) about the probable commission of an anticompetitive practice.
- **Free market access:** the possibility that any person or company participates in any economic activity, either in the production, distribution, sale or consumption, with full liberty to decide when to enter or exit the market and without no one being able to impose conditions in the exchange relations. Thus, free market access tends to achieve a benefit for consumers, and at the same time it propitiates economic development and allows free trade.
- **Relevant market:** it is determined by identifying what products or services compete among themselves, that is, which products are substitutes (which determines the product dimension of the relevant market) and where competition between these takes place (which determines the geographic dimension of the relevant market). The purpose of the determination of the relevant market in concentration analysis is to establish the framework of analysis to resolve if the parties that are merging would acquire or consolidate power in this relevant market.
- **Absolute monopolistic practices:** contracts, agreements, arrangements or combinations between competing economic agents, whose purpose or effect is I. Fix, raise, arrange or manipulate the price of sale or purchase of goods or services; II. Establish the obligation not to produce, process, distribute, market, or acquire but only a restricted or limited quantity of goods or the provision or transaction of a restricted or limited number, volume, or frequency of services; III. Divide, distribute, assign, or impose portions or segments of a current or potential market for goods and services, through customers, suppliers, times or determined or determinable spaces; IV. Establish, arrange, or coordinate bids or abstention in bids, tenders, or auctions, and V. Exchange information with any of the objects or effects referred to in the previous sections.<sup>62</sup>
- **Relative monopolistic practices:** actions consisting of any act, contract, agreement, procedure or combination that I. Meets any of the assumptions referred to in article 56 of the LFCE; II. It is carried out by one or more economic agents that individually or jointly have substantial power in the same

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62. Article 53 of the LFCE

relevant market in which the practice is carried out, and III. Has or may have as its object or effect, in the relevant market or in any related market, unduly displace other economic agents, substantially impede their access, or establish exclusive advantages in favor of one or several economic agents.<sup>63</sup>

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63. Article 54 of the LFCE

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