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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Mexico**

- Session III -

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Please contact Ms. Lynn Robertson [E-mail: Lynn.Robertson@oecd.org], if you have any questions regarding this document.

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Interactions between Competition Authorities and Sector Regulators

- Contribution from Mexico -

Part 1. Mexico's Federal Economic Competition Commission (COFECE or the Commission)

1. Introduction

1. The Federal Economic Competition Commission (COFECE or Commission) is a competition authority that has the constitutional mandate to safeguard the competitive process in all markets of the Mexican economy, except for the telecommunications and broadcasting sector, for which the Federal Telecommunications Institute (IFT) is responsible.¹

2. This contribution contains the following information. First, it describes the cooperation agreements and sectoral regulation that facilitate coordination between COFECE, sectoral regulators and other public authorities. In the section that follows provides examples of collaboration between the competition authority and regulators. Finally, in the last two sections of the contribution it describes the main challenges of such collaboration; as well as lessons learnt and areas of further collaboration with sectoral regulators and other public authorities.

2. Cooperation agreements

3. Cooperation agreements are a mechanism that promotes coordination between the Commission and sectoral regulators. To date, the Commission has entered into 15 agreements with authorities from different sectors, such as energy, financial, transport, health, amongst others.² The purpose of these agreements are, among other aspects, to strengthen institutional collaboration in order to promote the principles of competition within the actions of the authorities with which are signed. The collaboration mechanisms included in these agreements may vary according to the nature of the authority, for example, the agreement with the:

- IFT provides the basis for the collaboration of both authorities and has facilitated the exchange of information and technologies between them, strengthening the analyses of both institutions.

¹ Article 5 of the LFCE. Available in Spanish at: <https://www.cofece.mx/ley-federal-de-competencia-economica/>

² Agreements available in Spanish at: <https://www.cofece.mx/publicaciones/marco-juridico-y-normativo/>

- Ministry of Public Administration (SFP) establishes the commitment to inform the other party when, within any of its investigations, there are identified elements that could be subject to investigation or sanction by the other agency.
- Federal Consumer Attorney's Office (PROFECO) establishes mechanisms for such agency to receive documentation addressed to COFECE, as well as to provide its facilities for the performance of proceedings.
- Tax Administration Service (SAT) establishes the communication and coordination channels through which COFECE may request tax information from market participants, and on the forwarding of fines so that such authority may collect them.
- Ministry of Economy establishes a mechanism for COFECE to consult the commercial information of market participants contained in the Ministry's databases.
- National Institute of Statistics and Geography (INEGI) allows access to its information via the use of the Institute's databases and software applications, this data has been useful for the analysis of markets related with enforcement proceedings and advocacy actions.

3. Sectoral regulation

4. In addition, some sectoral laws provide for the review or opinion of COFECE. In 2015 the Commission published the Compendium of Norms of the Commission with a chapter related to sectoral regulations.³ In this exercise, COFECE identified regulations that require its intervention in the energy, transportation, financial and other relevant regulated sectors.

5. An example of the type of intervention requested from the Commission in sectoral laws is found in the Hydrocarbons Law, which provides, among many other aspects, that the bases for the bidding and awarding procedure for exploration and extraction contracts, must have prior opinion of the Commission, focusing exclusively on the prequalification criteria and the awarding mechanism.⁴

6. Another example is provided by the Ports Law. This law states that the Ministry of the Navy is responsible for establishing the basis for tariff regulation (when in a given port there is only one terminal, or there is only one service provider) and that for this the Ministry may request the intervention of COFECE.⁵ In addition, when the regulated parties consider that the competition conditions are not met, they may request COFECE to issue an opinion on the matter. In case that the Commission finds that the regulation in whole or in part is, such regulation must be eliminated or modified, within thirty days following the issuance of the resolution.⁶

³ "Compendio Normativo de la Comisión Federal de Competencia Económica, 2015", available in Spanish at: https://www.cofece.mx/cofece/phocadownload/Normateca/Marco/Compendio_Normativo_Agosto_2015.pdf

⁴ Article 24, subsection III of the Hydrocarbons Law. Available at in Spanish: https://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro_200521.pdf

⁵ Article 16, subsection VIII of the Ports Law. Available at in Spanish: https://www.diputados.gob.mx/LeyesBiblio/pdf/65_071220.pdf

⁶ Articles 61 and 62 of the Ports Law.

7. Another relevant example is in the financial sector. The Law for the Transparency and Ordering of Financial Services (LTOSF) establishes the coordination mechanisms between financial authorities and COFECE to ensure an effective and coordinated application of financial and competition laws.⁷ Likewise, the LTOSF establishes that the Banco of Mexico (Banxico), the national Banking and Securities Commission (CNBV) and the Ministry of Finance and Public Credit (SHCP) have the power to request the Commission to issue opinions on the conditions of competition related to the enforcement of financial laws. In addition, merger notifications in the financial sector are subject to the approval of the CNBV and the National Insurance and Surety Commission (CNSF). The CNSF, in such cases, must request the opinion of COFECE. Also, when a merger in the financial sector meets the notification threshold established in the LFCE, in addition and in parallel to the CNSF approval procedure, must be submitted for approval by COFECE.

4. Cooperation in practice

8. COFECE is part of several working groups and inter-agency consultation groups. For example, the Commission participates in the:

- Sessions of the Foreign Trade Commission (COCEX), which is a mandatory consultation body of the agencies and entities of the Federal Public Administration, chaired by the Ministry of Economy, and is responsible for issuing opinions on foreign trade matters.⁸
- National Commission for Quality Infrastructure (CNIC), a collegiate body responsible for directing and coordinating activities in the areas of normalization, standardization, conformity assessment and metrology. COFECE participates in three of its advisory committees chaired respectively by the Ministry of Economy, the Ministry of the Navy and the Ministry of Public Security and Citizen Protection.
- Network of regulators with a competition mandate in the financial sector which comprises the Commission, SHCP, Banxico, CNBV, CNSF, the National Commission of the Retirement Savings System (CONSAR), and the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF). The aim of this network is to address those commercial practices of financial entities that may harm or hinder competition, as well as to protect users rights in financial services.

9. Among the different types of institutional collaboration carried out by COFECE, the most frequent are with SAT and PROFECO. With the first for the consultation of fiscal information and the forwarding of fines for their collection, and with the latter for the use of their facilities to carry out proceedings, and to request support in the notifications to economic agents throughout Mexico.

10. Regarding the Commission's cooperation with other public authorities in enforcement proceedings, the following are five successful cases.

- In 2011 the Commission began a collaborative relationship with the Mexican Social Security Institute (IMSS) and the Ministry of Public Administration, for the advice

⁷ Law for the Transparency and Ordering of Financial Services (LTOSF). Available at: https://www.diputados.gob.mx/LeyesBiblio/pdf/LTOSF_090318.pdf

⁸ As established in the Law of Foreign Trade, with the aim of fostering procompetitive public policies.

in the design of competitive bids in the health sector. As a result of this collaboration, the Commission opened a series of investigation procedures for possible collusion in contracting carried out by the IMSS.⁹ Two of these began with complaints filed by the IMSS, one involving suppliers of latex products and condoms, and the other in laboratory and blood bank services. Likewise, there was another complaint against suppliers of polyethylene gloves. As a result of these collaborations with the IMSS, an agreement of information exchange was signed with the Commission.¹⁰ This agreement allowed gathering key information for the investigations and sanctions for collusive practices.

- During an investigation of the debt securities market issued by the Mexican Federal Government for possible collusion within traders of the main Mexican banks,¹¹ Banxico was contacted in order to obtain advice regarding the functioning of the market. Also, collaboration was sought with the CNBV in order to understand the complexity of the financial operations of debt securities, as well as the type of information that is generated in the referred market.¹²
- In a probe initiated by request of the Ministry of Economy for abuse of dominance in the market for affiliation services to public brokers¹³; associations, there was constant communication with the Ministry, both as a complainant and as a sector regulator.¹³ The collaboration agreement with the Ministry served to obtain information and insights that were useful to understand the market. In addition, in this proceeding, an application was filed for the procedure of Exemption and Reduction of the Amount of Fines. Given that the investigated economic agents can only submit this application for a single occasion every 5 years, multiple meetings were held with them to guide them on the measures that would most effectively resolve the competition concerns. When the request was submitted, the support of the Ministry was key in determining the appropriateness of the commitments presented by the economic agents, as well as their legal and economic feasibility. When the resolution of COFECE's Board was issued, the Commission informed the Ministry.¹⁴
- During the investigation to determine the competition conditions in the railroad transportation market of chemical and petrochemical products in Veracruz,¹⁵ there

⁹ Case files: DE-024-2013-I, DE-024-2013, DE-020-2014, DE-011-2016. In addition, the Investigative Authority opened the ex officio case file IO-005-2016.

¹⁰ Agreement available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2017/12/doc071614-07162014163627.pdf>

¹¹ Case file: IO-006-2016

¹² See Press Release COFECE-001-2021. Available at: https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-001-2021_English.pdf

¹³ Case file: DE-018-2018. In Mexico, a public broker is a notary with the mixed function of expert appraiser in commercial law and in financial-economic aspects. Public brokers are authorized by the Ministry of Economy, through an examination, in order to act as a commercial agent of a company.

¹⁴ See Press Release COFECE-022-2020. Available at: <https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-022-2020-English.pdf>

¹⁵ The determination of the lack of effective competition conditions in a market takes place when the laws or regulations of a sector provide for the intervention of COFECE. The purpose of this is that, in the absence of competition and if deemed necessary, the regulator may implement

was an exchange of specialized knowledge on the functioning of the market with the Regulatory Agency of Railroad Transport (ARTF).¹⁶ Later, in 2020, as a result of the investigation COFECE issued a declaration on the lack of effective competition conditions in 20 routes of the public service of rail freight transportation of chlorine, ethylene oxide, anhydrous ammonia and caustic soda with origin in the southern area of the state of Veracruz. Based on this resolution, ARTF was empowered to regulate service tariffs and/or determine rights of way for the routes analyzed in this case.¹⁷ In the same year, the ARTF issued a new tariff regulation, addressing the recommendations issued by the Commission.¹⁸

- During the investigation to determine the competition conditions in the distribution of LP gas to end users,¹⁹ the Energy Regulatory Commission (CRE) provide, in a prompt and effective manner, robust, reliable, and verifiable data on the market. Such data was obtained effectively thanks to the collaboration agreement signed with the Commission. The data encompass gas prices, databases of gas flows between municipalities, sales volumes to define market participants and their market shares, investment amounts in recent years, among others. This helps the Investigative Authority to only issue requests for information to a limited number of economic agents, significantly reducing the procedural burden for agents and the Commission. With this information, the Investigative Authority was able to perform the economic analysis on the competition conditions prevailing at a national level.²⁰ The resolution of the case was issued last October 2022, and it was notified to the President of Mexico, the Ministry of Energy and CRE.²¹

additional regulations, such as tariffs, prices or establish rules of access between competitors. In this case, according to Article 96 of the LFCE and Articles 36 and 47 of the Railroad Service Regulatory Law, concessionaires are free to set tariffs, as well as to determine new rights of way. These tariffs may be regulated by the ARTF as long as there is a COFECE resolution that determines that there are no conditions of effective competition.

¹⁶ Consequently, and with the purpose of making a correct determination regarding the investigation, a collaboration agreement was signed between COFECE and ARTF, with the purpose of exchanging database information, as well as carrying out mutual training and exchange of specialized knowledge.

¹⁷ See Press Release COFECE-004-2020. Available at: <https://www.cofece.mx/wp-content/uploads/2020/02/COFECE-004-2020.pdf>

¹⁸ The new regulation consists of “establishing a maximum rate per ton-kilometer for each combination of route, portion of route and product. The maximum rate is calculated based on the average total costs associated with the provision of the service multiplied by a differentiating factor per product plus the calculation of a reasonable profit that allows the concessionaire to invest in a particularly capital-intensive sector”. Available in Spanish at: <https://www.gob.mx/artf/articulos/resoluciones-en-materia-de-regulacion-tarifaria>

¹⁹ Case file: DC-001-2021

²⁰ Specifically, the information made it possible to define 220 relevant markets (both geographically and in terms of product), identify economic interest groups and determine the structure of the markets and barriers to entry. This information was key to preliminarily determine the lack of competition conditions in the market by the Investigative Authority. In December 2021 it was determined preliminarily that there are no conditions of effective competition in 213 of the 220 geographic markets defined for the distribution of liquefied petroleum gas (LPG) to end users through distribution plants and autotanks.

²¹ See Press Release COFECE-033-2022. Available at: https://www.cofece.mx/wp-content/uploads/2022/10/COFECE-033-2022_ENG.pdf

11. Regarding advocacy actions, the Commission has also had successful experiences, the most recent being the analysis of the access system proposed by the Felipe Angeles International Airport (AIFA) to the provision of taxicabs and bus services at airport. The analysis was derived from a collaboration between the two institutions, even without an inter-institutional agreement in place, in which it was concluded by the Commission that the proposed system, unlike the one that prevails in other airports in Mexico, would be open, would favor a greater supply of providers of these services and would generate incentives for these to provide better price and quality conditions.²²

5. Challenges of cooperation

12. Currently, four main challenges that limit the cooperation between the Commission and the sectorial authorities have been identified.

5.1. Overlapping regulatory powers

13. Besides its competition powers, the Commission is empowered to use a “hybrid regulatory” tool, that on the one hand, has the rigor of an investigation and complies with the essential formalities of this proceeding, and on the other hand, allows the application of regulatory remedies. This tool is provided in Article 94 of the Federal Economic Competition Law (LFCE) and correspond to the market investigations for barriers to competition and essential facilities, which serve to determine the existence of regulatory, structural, or behavioral barriers in regulated markets, as well as to determine the existence of essential facilities.

14. When using this tool, the Investigative Authority has all the investigative powers and tools it uses to detect anticompetitive conducts, including information requests, on-site searches, hearings, forensic analysis, and screenings. Then, after a preliminary opinion is issued by this authority, this article provides a post-investigation stage similar to the trial-like procedure of monopolistic practices, where the economic agents involved have the opportunity to present arguments and offer evidence to defend themselves from wrongdoing which will be assessed by the Board of Commissioners before a final decision is reached. The resolutions issued by the Board of Commissioners in these investigations may include the following elements: (i) submit regulatory recommendations for public authorities, when in the existing legal provisions there are elements that prevent or distort competition and free market access; (ii) order to an economic agent to remove a barrier to competition; (iii) order the divestiture of assets or shares of an economic agent participating in the market; and (iv) when the existence of an essential facility is determined, the resolution will include the criteria to regulate the access to such essential facility, as well as the modalities of access, prices or tariffs, technical conditions and quality, and the calendar of implementation of these measures.

15. In 2017, COFECE determined in a market investigation’s resolution that the management of slots of the Mexico City International Airport (AICM) was generating anticompetitive effects in air passenger transportation market and a series of corrective measures were issued, within which included the allocation of slots by means of auctions.²³

²² See Press Release COFECE-007-2022. Available at: https://www.cofece.mx/wp-content/uploads/2022/03/COFECE-008-2022_ENG.pdf

²³ See Press Release COFECE-36-2017. Available at: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-036-2017.pdf>

Subsequently, the Ministry of Communications and Transportation (SCT) and the Federal Executive issued a decree for the allocation of slots, which contradicted the measures issued by the Commission. COFECE filed a constitutional controversy based on the power granted in the Constitution to regulate essential facilities and that,²⁴ therefore, SCT may have violated such powers by issuing a decree with possible anticompetitive effects. In 2019, the Supreme Court of Justice (SCJN) ruled against COFECE's controversy, stating that the Commission is not the regulatory body in the sector; and the SCT is the responsible authority for issuing the pertaining regulation in the sector. It is important to note that this has been the only case in which this challenge has arisen.

5.2. Jurisdictional conflicts with the IFT

16. Collaboration with the IFT in several merger cases has been successful. However, according to the LFCE, in those competition cases in which it is not clear whether COFECE or the IFT has jurisdiction and the authorities do not reach an agreement as to who should handle a case, the Federal Judicial Power, through a Collegiate Circuit Tribunal specialized in matters of economic competition, broadcasting and telecommunications, shall decide which authority has attributions over it.

17. Given the rapid technological evolution that has generated numerous applications, multisided platforms and business models that comprise the digital economy, and the fact that in Mexico there is no regulatory authority for digital markets, has generated some gray areas in which collaboration between COFECE and IFT has not been possible given that both authorities have claimed jurisdiction over digital markets. In such cases, Tribunals have had to determine the authority with the exclusive power over the matter. For example, in some cases the Tribunals have ruled in favor of COFECE over the merger operation between Uber and Cornershop,²⁵ as well as a case related to the market for online search services, social networks and cloud computing services.²⁶

18. Still, Tribunals' rulings over these jurisdictional conflicts, which should be issued in 10 days, in practice, have taken on several occasions more than 6 months, causing uncertainty for economic agents, COFECE and the IFT.

5.3. Tensions with regulatory agencies

19. In the Energy Reform of 2013, which liberalized different sectors, the basis of cooperation within regulatory authorities and COFECE was established. However, there are certain frictions as state-owned productive companies remain as the main participants in the country's energy markets. This occurs mainly in the electricity and gasoline sectors, where federal economic policy may not be aligned with competition principles by establishing a regulatory framework that creates advantages in favor of certain market participants.

²⁴ Article 28, paragraph 14 of the Mexican Constitution.

²⁵ See Press Release COFECE-020-2020. Available at: https://www.cofece.mx/wp-content/uploads/2020/05/COFECE-020-2020_-cornershop-uber.pdf

²⁶ See Press Release COFECE-020-2021. Available at: https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-020-2021_ENG.pdf

5.4. Termination of the collaboration between COFECE and CONAMER

20. Since the creation of the Commission in 1993, the authority has had formal and informal collaboration with the National Regulatory Improvement Commission (CONAMER). Even this collaboration merited an honorary mention in the 2015 edition of the Advocacy Contest organized by the International Competition Network (ICN) and the World Bank.²⁷ However, last February 2022, CONAMER announced the termination of this collaboration, specifically that related with the notification to COFECE of any draft regulation or administrative norms that could have a negative effect on competition.

21. COFECE alerted of the risks that this cancellation could have, particularly because without the possibility of conducting a competition assessment, the likelihood of having regulation that restricts competition in the markets is bigger.²⁸ However, the Commission will continue monitoring CONAMER's web page in order to issue recommendations on those regulatory projects that may pose a risk to competition.

6. Lessons learnt and areas of further cooperation

22. COFECE has identified that an effective enforcement of the LFCE requires the use of formal and informal cooperation mechanisms that allow collaboration with sector regulators.

- Informal cooperation has served to initiate discussions to solve inquiries regarding a market under investigation, establishing the best mechanism to request information and obtain prompt responses. Moreover, this type of cooperation has been useful when developing advocacy documents, such as opinions and market studies.
- Formal cooperation allows the exchange of information that probably could not be obtained without the existence of the agreements.

23. It is also important to have cooperation mechanisms with other non-regulatory authorities. For example, the SAT, which is Mexico's tax authority, can provide tax, customs and taxpayer information to COFECE, thanks to the collaboration agreement that exists with this institution. On the other hand, PROFECO has a series of tools in favor of the consumer, such as price filters for end consumers, a complaints platform and a team dedicated to collective actions against violators of consumer law. Thanks to the agreement that the Commission signed with this authority, information on prices and other statistical information useful for COFECE's procedures can be exchanged.²⁹ Moreover, in 2019, an agreement was signed with the SFP for the joint prosecution of anti-competitive behavior and corruption acts.³⁰

²⁷ See CONAMER's press release. Available in Spanish at:

<https://www.gob.mx/conamer/prensa/reciben-cofece-y-cofemer-mencion-honorifica-por-cooperar-para-impulsar-competencia-economica>

²⁸ See COFECE's First Quarterly Report of 2022. Available in Spanish at:

<https://www.cofece.mx/wp-content/uploads/2022/04/IIT2022.pdf>

²⁹ Agreement available in Spanish at: [https://www.cofece.mx/wp-content/uploads/2017/12/\(24\)Convenio_COFECE_PROFECO.pdf](https://www.cofece.mx/wp-content/uploads/2017/12/(24)Convenio_COFECE_PROFECO.pdf)

³⁰ Agreement available in Spanish at: https://www.cofece.mx/wp-content/uploads/2019/08/Convenio_SFP_08_2019.pdf

24. These cooperation mechanisms with public authorities and sectoral regulators allow the creation of a network of alliances that facilitate the exchange of information for enforcement and advocacy actions, and thus develop more robust and solid cases when issuing a resolution. For this reason, the Commission will continue to use these cooperation mechanisms with regulatory and other authorities to fulfill its constitutional mandate. This could imply the eventual assessment of the possibility of signing new collaboration agreements, including second generation agreements which could allow the coordinated use of investigative tools with other authorities.

Part 2. Federal Telecommunications Institute (IFT)

7. IFT's convergent mandate as a regulator and competition authority

25. Since its creation, the IFT has a dual constitutional mandate. On one hand, it's the economic competition authority for the telecommunications and broadcasting (T&B) sectors and, on the other, it is the regulatory authority in these sectors.

26. Within the scope of its powers, the IFT is responsible for the application of the Federal Economic Competition Law (LFCE) and the Federal Telecommunications and Broadcasting Law (LFTR).

27. Regarding the LFCE, the purpose of this legal framework is to promote, protect and guarantee free market access and economic competition, as well as to prevent, investigate, fight, effectively prosecute, severely punish, and eliminate monopolies, monopolistic practices and unlawful concentrations, barriers to free market access and economic competition and all other restrictions preventing the efficient operation of markets.

28. Regarding the LFTR, this regulatory framework includes a series of references to competition concepts, which facilitates an integration between regulatory attributions and attributions as a competition authority. Below are a couple of examples of the competition provisions of the LFTR.

7.1. Relation between both legal frameworks (LFCE and LFTR)

29. The objective of the LFTR is to regulate the use, development and operation of the radio spectrum, public telecommunications networks, access to active and passive infrastructure, orbital resources, satellite communication, the provision of public services of general interest in T&B, and their convergence, the users and audiences³¹ rights, and the process of competition and free market access in these sectors.

30. In this sense, different steps have been taken to comply with this legal object such as:

³¹ End User means: Individual or business corporation using a telecommunications service as the end user.

Audiences means: People who receive and perceive audiovisual content provided through the broadcasting service and the broadcasting service and/or pay TV, as appropriate.

- In radio spectrum management, the IFT has promoted and pursued effective competition in the converging markets of the T&B sectors. For instance, when preparing the annual program of use and operation of frequency bands, the IFT promotes the efficient use of the radio spectrum, the users benefit, the development of competition and the diversity and introduction of new services.
- In public bidding process for the frequency bands of the radio spectrum, the IFT publishes the bidding rules considering criteria that ensure effective competition and prevent concentration phenomena that contradict the public interest. Likewise, the IFT has promoted the secondary spectrum market, observing the principles of promoting competition, eliminating barriers to entry of new competitors and the efficient use of spectrum.
- In the case of the granting of concessions, the IFT considers factors such as favoring lower prices in services to the end user, the prevention of concentration phenomena that contradict the public interest, the possible entry of new competitors into the market, among others.
- In the case of internet access services, the IFT has established for concessionaires and authorized entities the duty to do so under the principles of non-differentiation and traffic management, net neutrality, among others, namely:
 - No Differentiation. Concessionaires and authorized Internet service providers shall not obstruct, interfere with, inspect, filter, or differentiate against content, applications or service.
 - Traffic management. Concessionaires and authorized dealers may take the measures or actions necessary for traffic and network management under policies approved by the Institute, to ensure the quality or speed of service contracted by the user, provided this does not constitute a practice contrary to fair and open competition.
 - Net neutrality. Concessionaires and authorized dealers providing Internet access service shall be subject to: Free Choice, No Differentiation, Privacy, Transparency and Information, Traffic Management, Quality and Sustained Infrastructure Development.
- Regarding public telecommunications networks design, operators must adopt open network architecture designs to ensure the interconnection and interoperability. To this end, the IFT prepares, updates, and administers the fundamental technical plans for numbering, switching, signaling, transmission, pricing, synchronization, and interconnection, among others, to which concessionaires operating public telecommunications networks must be subject. Such plans consider the interests of final users and take into account international recommendations and best practices. Operators are obliged to interconnect their networks with those of other operators under non-discriminatory, transparent conditions based on objective criteria and in strict compliance with the plans issued by the IFT.
- Regarding assignment of rights, only commercial use concessions or private communication purposes concessions, may be assigned and transferred, once the IFT approves the transfer in terms of the LFTR. The IFT authorizes assignments intended to transfer rights and obligations under the concessions to another concessionaire providing similar services in the same geographic area, after completing an analysis of the effects that such action has or may have on fair and open competition in the relevant market. If the assignment produces the obligation to report a concentration in accordance with the LFCE, the IFT shall issue its

resolution within the period established for that procedure, adding the considerations outlined in Chapter IV of the LFTR.

31. The examples mentioned above, are some of the legal provisions that show a very close relation between regulation and competition principles when IFT exercises its powers.

32. As stated above, the IFT, as the competition authority in T&B sectors, is responsible for promoting, protecting, and guaranteeing free market access and economic competition, as well as preventing, investigating, combating, prosecuting, punishing, and eliminating monopolies, monopolistic practices, unlawful concentrations, entry barriers, and other constraints on the efficient functioning of markets.

33. The IFT exclusively exercises the powers provided for in the LFCE and regulates asymmetrically the participants in these markets in order to effectively eliminate barriers to competition and free market access, and imposes limits on national and regional frequency concentration, concession and cross-ownership controlling several media means serving the same market or geographical coverage area.

7.2. Coexistence of preponderance as a regulatory measure with competition concepts

34. The concept of preponderance was born as a result of the 2013 constitutional reform in the telecommunications field in order to establish a regulatory framework that would generate a pro-competitive environment in the T&B sectors. The preponderant economic agent (AEP) is a legal regulatory figure foreseen in the LFTR that coexists with competition figures such as economic agents with substantial power provided for in the LFCE.

35. The declaration of an AEP is given by reason of its national participation in the provision of telecommunications or broadcasting services, to anyone who has, directly or indirectly, a national participation greater than fifty percent, measured either by the number of users, subscribers, audience, by traffic on its networks or by the capacity used thereof, according to the data available to the IFT.

36. The IFT determined the existence of a AEP in the telecommunications sector and a AEP in the broadcasting sector. This determination implied the imposition of specific measures applicable to the AEPs for the benefit of users and audiences and to avoid affecting competition.

37. In the telecommunications sector, some of the measures imposed on the AEP have consisted of not charging its users for roaming, unlocking its users' equipment, not charging its users for services that are not contemplated in their contracts, interconnection, local loop unbundling, wholesale services, among others.

38. In the broadcasting sector, some of the measures imposed on the AEP have consisted of allowing access and use of the passive infrastructure that it possesses under any legal title, not being able to acquire exclusive transmission rights for any place in the national territory on relevant audiovisual content, or carrying out behaviors with similar effects, and publishing on its Internet site and delivering to the Institute the information related to the various advertising services offered in the Concessioned Broadcast Television Service, such as advertisements/commercials, and in advertising within the programs and packages, must allow restricted television concessionaires to retransmit their signal, among others.

39. It is important to mention that the regulatory measures imposed on the AEPs are not permanent and will be extinguished by declaration of the Institute once, in accordance

with the law, there are conditions of effective competition in the market in question. The review of these regulatory measures is carried out every two years to verify their suitability and, where appropriate, to abolish or modify them.

7.3. Collaboration agreements

40. The IFT has celebrated collaboration agreements with authorities in Mexico to improve compliance with its powers and strengthen its functions as a regulator and competition authority. Some examples are mentioned below.

7.3.1. IFT-PROFECO³²

41. In Mexico, the Office of the Federal Prosecutor for the Consumer (PROFECO) and the IFT have been collaborating regarding the first's mandate to protect consumers and the IFT's mandate to regulate, monitor and supervise the quality of telecommunications services. It is up to PROFECO to sanction violations of users' rights by operators, without prejudice to the IFT's powers, with respect to the imposition of sanctions for non-compliance with minimum quality parameters.

42. The agreement aims to establish the collaboration basis, coordination and consultation between PROFECO and the IFT, in which the parties will establish joint work programs and carry out actions to safeguard the rights of telecommunications users. In addition, the agreement aims to promote the exchange of information between both entities, enhancing their effectiveness in the execution of their respective mandates. Within this framework, the agreement provides for cooperation on various topics, from purely regulatory measures to the provision of technical advice for the analysis of prevailing conditions in telecommunications markets, to facilitate the detection of possible anti-competitive or unfair practices by operators.

7.3.2. IFT-INAI³³

43. The IFT and the National Institute of Transparency, Access to Information and Personal Data Protection (INAI) signed an agreement to promote a culture of protection of personal data and promote trust and responsible use of Information and Communication Technologies (ICT) and digital services.

44. The purpose of the agreement is to establish the general bases of coordination and collaboration between INAI and IFT, so that, through the maximum use of their human, material and financial resources they develop actions, programs, events, works or projects, which aim to promote the culture of transparency, proactive transparency, open government, access to information, open data, file management, processing and retention, accountability and protection of personal data, economic competition and its interrelationship with them, as well as the regulation and promotion of trust and the responsible and secure use of telecommunications, ICT and digital services.

³² Available in Spanish at:

<https://www.ift.org.mx/sites/default/files/contenidogeneral/coordinacion-de-archivos-de-transparencia/conveniomarcodecolaboracionift-profeco20deseptiembrede2016acc.pdf>

³³ Available in Spanish at:

https://www.ift.org.mx/sites/default/files/OPNT/LGTAIP/XXXIII/2021/XXXIII_21_ConvenioGernaldeColaboraci%C3%B3nINAIIFT.pdf

8. Conclusion

45. The IFT has a mandate beyond the pure traditional competition authority. The IFT has great strength, it has the necessary powers to achieve a balance between competition and regulation in the telecommunications and broadcasting sectors, since it is endowed with powers that allows it to impose pro-competitive *ex ante* regulation and, at the same time, enforce competition law.

46. With these convergent tools, the IFT not only gives certainty to investments in the sector but is also ensuring the welfare of consumers of services such as mobile telephone, internet access, television, and digital services.