

Unclassified

English - Or. English

23 May 2022

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

## Annual Report on Competition Policy Developments in Mexico

-- 2021 --

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

JT03495852

## Table of contents

<b>Mexico .....</b>	<b>4</b>
<b>1. Changes to competition laws and policies, proposed or adopted .....</b>	<b>5</b>
1.1. Summary of new legal provisions of competition law and related legislation .....	5
1.2. New guidelines and technical criteria.....	5
<b>2. Enforcement of competition laws and policies .....</b>	<b>6</b>
2.1. Actions against anticompetitive practices, including agreements and abuses of dominant positions.....	6
2.2. Antitrust cases in the courts.....	8
2.3. Significant cases .....	9
<b>3. Mergers and acquisitions .....</b>	<b>15</b>
3.1. Enforcement statistics: mergers.....	15
3.2. Significant cases: mergers .....	16
<b>4. Competition Advocacy .....</b>	<b>17</b>
4.1. The role of competition authorities in the formulation and implementation of other policies .....	17
4.2. New reports and studies on competition policy issues .....	19
4.3. Online Courses .....	21
<b>5. Resources of competition authorities .....</b>	<b>21</b>
5.1. Annual Budget.....	21
5.2. Audits .....	21
5.3. Changes in the Commission’s Leadership.....	22
5.4. Human Resources .....	22
<b>6. International Activities .....</b>	<b>23</b>
6.1. ICN / WB Advocacy Contest 2021 .....	23
<b>7. Period covered by the above information.....</b>	<b>23</b>
<b>8. Executive Summary .....</b>	<b>24</b>
<b>9. Changes to Competition Laws and Policies, Proposed or Adopted .....</b>	<b>24</b>
9.1. Other Relevant Measures, Including New Guidelines.....	25
9.2. Government Proposals for New Legislation.....	27
<b>10. Enforcement of Competition Laws and Policies .....</b>	<b>27</b>
10.1. Action against Anticompetitive Practices, including Agreements and Abuses of Dominant Positions ...	27
10.2. Mergers and Acquisitions .....	30
<b>11. The Role of Competition Authorities in the Formulation and Implementation of other Policies, e.g. Regulatory Reform, Trade and Industrial Policies .....</b>	<b>32</b>
11.1. Public Bids .....	32
11.2. Grant, Renewal and Transfer of Licenses.....	32
11.3. Substantial Market Power Investigations .....	33
11.4. Opinions on Draft or Existing Law and Regulations.....	34
<b>12. Resources of Competition Authorities .....</b>	<b>34</b>
12.1. Resources Overall (Current Numbers and Change over Previous Year).....	34
12.2. Human Resources (Person-Years) Applied to: .....	35
12.3. Period Covered by the Above Information:.....	36
<b>13. Summaries of or References to New Reports and Studies on Competition Policy Issues .....</b>	<b>36</b>
13.1. Studies .....	36

13.2. Advocacy.....	36
---------------------	----

## TABLES

Table 1. Anticompetitive practices and other restrictions to competition	6
Table 2. Fines imposed (in USD)	7
Table 3. Effective competition conditions	8
Table 4. Defense of the Commission's decisions before specialized courts	9
Table 5. Mergers	15
Table 6. Mergers 2021: value of transactions (in million USD)	16
Table 7. M&A resolved by IFT in 2021	31
Table 8. Number of Cases Related to Licenses Reviewed in 2021	33
Table 9. IFT's Annual Competition Budget Broken down by Administrative Units 2021	34
Table 10. Number of IFT Employees in 2021	35
Table 11. Number of IFT Employees by Administrative Unit Broken down by Profession in 2021	35
Table 12. Number of IFT Employees Applied to Competition Practice in 2020	35

## *Mexico*

### **Mexican Federal Economic Competition Commission (COFECE)**

1. In 2021, the Mexican Federal Economic Competition Commission (COFECE or Commission) continued enforcing its mandate of safeguarding competition and free market access, this in the context of the ongoing COVID-19 pandemic. Despite this scenario, the Commission demonstrated its capacity for adaptation and continuity in the exercise of its powers by issuing the necessary modifications to its regulations to mitigate the impact of the emergency on its procedures.
2. During this period, the Commission concluded five investigations, one concerning possible relative monopolistic practices (abuse of dominance) in the markets of access to the federal passenger transportation service at Mexico City's airport, and four on possible absolute monopolistic practices (cartels) in the markets of sugar, passenger land transportation, drafting of professional soccer players, commercialization, storage and transportation of oil products.
3. In addition, it issued resolutions in four cartel cases for which sanctions were imposed in the markets of medicines, hygiene products made from cellulose, drafting of professional soccer players and government debt securities.
4. The Commission imposed fines amounting 85 million 247 thousand 301 hundred USD<sup>1</sup>, an increase of 71% in comparison to the fines imposed in 2020. It is worth mentioning that 85.75% of the total of fines imposed this year for breaching the law correspond to the sanctioning of cartel cases.<sup>2</sup> Regarding merger analysis, COFECE authorized 137 transactions, imposed conditions in one operation and blocked another one.
5. Also, this year the Commission issued a resolution on the lack of effective competition conditions in the market of maritime passenger transportation in the southern state of Quintana Roo and the Investigative Authority preliminarily determined the lack of effective competition conditions in the market for the distribution of LP Gas to final users.
6. On the advocacy side, the Commission continued its efforts to call for competition to prevail in the market of electricity by issuing opinions to the proposed Electricity Industry Law and by publishing a sectorial advocacy paper on the role of Clean Energy Certificates in Mexico. Also, a market study regarding competition in the public service of rail freight transport was published.
7. Finally, at the international level, COFECE was a winner of the 2021 Competition Advocacy Contest for its efforts to promote competition in the electricity sector in Mexico. Also, the Commission was elected and appointed as Co-Chair of the Agency Effectiveness Working Group of the International Competition Network (ICN).

---

<sup>1</sup> An exchange rate of 20.87 Mexican pesos per USD is used throughout the document.

<sup>2</sup> Of the total fines imposed for breaching the law, fines for failing to comply with commitments account for 14.19%; while fines for failing to notify a merger represent 0.06%.

## 1. Changes to competition laws and policies, proposed or adopted

### 1.1. Summary of new legal provisions of competition law and related legislation

#### *1.1.1. Emergency regulatory provisions for the processing and handling of complaints in matters of the Advertising Law*

8. In August 2021, the Board of Commissioners issued the *Emergency Regulatory Provisions for the processing and handling of complaints about possible infringements to the Transparency, Prevention and Combat of Undue Practices on matters of Advertising Contracting Law (Advertising Law)*, as a result of the entry into force of said law, with the objective of providing legal certainty in the procedures that the Commission will handle in this regard.<sup>3</sup>

9. The Advertising Law, published in the Federal Official Gazette on June 2021<sup>4</sup>, empowers COFECE to substantiate and process the complaints presented for possible infringements to its article 10 regarding unduly practices in matters of advertising contracting. Thus, the Emergency Regulatory Provisions establish the process for presenting a complaint before the Commission, its investigation by the Investigative Authority and its resolution and possible sanctioning by the Board of Commissioners.

### 1.2. New guidelines and technical criteria

#### *1.2.1. Update to the Guide for the Notification of Concentrations*

10. In April 2021, the Commission published the update to the *Guide for the Notification of Concentrations* which is intended to provide more certainty to economic agents regarding the way in which the Commission analyzes mergers to comply with its mandate to prevent those operations that could negatively affect competition in the markets.<sup>5</sup> The updated document now provides guidance on the elements that COFECE considers when analyzing collaboration agreements between economic agents, also known as joint ventures. Also, the Guide clarifies questions related to the calculation of notification thresholds, the parties that are obliged to notify a concentration when it involves multiple buyers and the information that economic agents must submit to make the case of a company under a precarious situation.<sup>6</sup> The update of this Guide is in compliance with the Federal Economic Competition Law (LFCE) which provides that all guides, guidelines and technical criteria issued by the Board of Commissioners must be reviewed at least every five years.<sup>7</sup>

<sup>3</sup> DOF 03-09-2021 *Emergency Regulatory Provisions of the Federal Economic Competition Commission for the Processing and Handling of Complaints about Possible Infringements to the Law for the Transparency, Prevention and Combat of Undue Practices in Advertising Contracting* (in Spanish). Available at <https://www.cofece.mx/wp-content/uploads/2021/08/Acuerdo-CFCE-203-2021.pdf>

<sup>4</sup> *Law for the Transparency, Prevention and Combat of Undue Practices in Matters of Advertising Contracting*. Available in Spanish at <https://www.cofece.mx/wp-content/uploads/2021/08/Ley-de-Publicidad.pdf>

<sup>5</sup> Press Release COFECE-010-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-010-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-010-2021_ENG.pdf)

<sup>6</sup> The complete Guide is available, in Spanish, at [https://www.cofece.mx/wp-content/uploads/2021/06/GUIACON\\_2021.pdf#pdf](https://www.cofece.mx/wp-content/uploads/2021/06/GUIACON_2021.pdf#pdf) An English translation of the Guide will be available soon at the Commission's website.

<sup>7</sup> Article 138 of the Federal Economic Competition Law.

## 2. Enforcement of competition laws and policies

### 2.1. Actions against anticompetitive practices, including agreements and abuses of dominant positions

11. During 2021, the Commission concluded the analysis of 32 complaints, of which two led to investigations.<sup>8</sup> Despite the continuation of the pandemic and thanks to the handling of investigations through electronic means, five investigations were concluded in 2021, of which four resulted in the notification of statements of objections for possible cartels in the markets of) passenger land transportation in the Center, Center-South, South-Southeast regions, and the state of Tamaulipas, ii) the drafting of professional soccer players, and iii) the commercialization, storage and transportation of oil products, and for a possible abuse of dominance in the market for the access to the federal passenger transport in Mexico City's airport; and one was closed due to lack of evidence regarding a possible cartel in the market for the production, commercialization, storage and distribution of sugar.<sup>9</sup>

12. As for trial-like procedures, the Board of Commissioners concluded 4 cartel cases, all of them resulting in fines in the markets of the i) production, distribution, and commercialization of medicines; ii) the production, distribution and commercialization of hygiene products made from cellulose; iii) the drafting of professional soccer players, and iv) the secondary market for the intermediation of government debt securities.

**Table 1. Anticompetitive practices and other restrictions to competition<sup>10</sup>**

	Complaints				Total
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	

<sup>8</sup> File DE-027-2020 in the market for the generation, wholesale commercialization and supply of electricity and associated products and file DE-010-2021 which is reserved information.

<sup>9</sup> File IO-006-2017, Possible cartel in the market for the production, commercialization, and distribution of sugar in the national territory.

<sup>10</sup> The number of received investigations may not equal the number of concluded investigations since these could include inquiries that were initiated in another year or are pending from other periods.

Received complaints	4	6	12	8	30
Analysis concluded	5	9	7	11	32
Leading to investigations	1	0	1	0	2
Dismissed	4	9	6	11	30
Integrated to a case file	0	0	0	0	0
Investigations					
Initiated	1	1	1	3	6
Concluded	3	2	0	0	5
No evidence of anticompetitive practice	1	0	0	0	1
Notification of statement of objections <sup>11</sup>	2	2	0	0	4
Early closure with commitments	0	0	0	0	0
Trial-like procedures					
Concluded	1	0	3	0	4
Sanctions imposed	1	0	3	0	4
Closed without liability	0	0	0	0	0
Closure with commitments	0	0	0	0	0

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

13. In 2021, COFECE imposed fines totaling 85 million 247 thousand 301 hundred USD. This represents an increase of 71% in comparison to the fines imposed in 2020. It is worth mentioning that 85.75% of the total of fines imposed this year for breaching the law correspond to the sanctioning of cartel cases.

**Table 2. Fines imposed (in USD)**

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Sanctions for breaching the law	1,726,476.44	11,397,996.09	67,548,816.10	0	80,673,288.63
Enforcement Measures <sup>12</sup>	3,092,147.1	84,418.13	839,371.56	558,075.19	4,574,012.29
Total Value	4,818,623.85	11,482,414.12	68,388,187.66	558,075.19	85,247,300.92

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

14. Article 96 of the LFCE empowers the Commission to resolve on the existence of effective competition conditions in the markets. If COFECE finds a lack of these conditions, it must issue a resolution in this sense so that the corresponding sectoral

<sup>11</sup> Pursuant to article 78 of the LFCE, after the Investigative Authority finishes its investigation, it shall present an investigative opinion to the Board of Commissioners proposing either the initiation of the trial-like procedure or the closure of the file due to a lack of elements. If the Board decides to initiate the trial-like procedure, the involved economic agents are notified of the Statement of Objections and this phase formally begins.

<sup>12</sup> Enforcement measures refer to those fines imposed on economic agents when failing: i) to submit information and documents requested by the Commission within the applicable legal timeframe; or ii) to submit complete information required by COFECE.

regulators can exercise certain powers, such as setting tariffs or access terms, to improve competition in the market.

15. In 2021, the Investigative Authority concluded one investigation regarding maritime passenger transportation in the State of Quintana Roo and issued a Preliminary Opinion that was submitted to the Board of Commissioners which in turn resolved to declare the lack of competition conditions in said market (this case is further described in section 3.3.4 of this report).

16. Additionally, the Investigative Authority also initiated an ex officio investigation on the existence of effective competition conditions in the distribution of LP Gas not related to ducts. In this case, the Investigative Authority preliminarily determined the lack of effective competition conditions in 213 relevant markets consisting in the distribution of LP Gas to final users<sup>13</sup>, this marks the initiation of Phase II of the procedure in which the Board of Commissioners will have to issue a resolution regarding this case.

**Table 3. Effective competition conditions**

	Phase I				Total
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	
Initiated	0	1	0	0	1
Concluded with the Issuance of a Preliminary Opinion	1	0	0	1	2
Pending for next period	0	1	1	0	-
<b>Phase II</b>					
Initiated	1	0	0	1	2
Concluded	0	0	0	1	1
Pending for next period	0	1	1	1	-

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

## 2.2. Antitrust cases in the courts

17. In 2021, the Judiciary confirmed 84.21% of the Commission's decisions, which means that 47 out of 58 cases were upheld. Only in 10 cases the specialized courts ruled in favor of the economic agents who filed appeals against COFECE's decisions and in 1 case there were no actions attributable to the Commission. It is worth mentioning that the ratio of cases upheld by the Judiciary rose 31% with respect to the previous year.<sup>14</sup>

<sup>13</sup> The Preliminary Opinion of file DC-001-2021 is available, in Spanish, at [https://dof.gob.mx/nota\\_detalle.php?codigo=5636961&fecha=01/12/2021](https://dof.gob.mx/nota_detalle.php?codigo=5636961&fecha=01/12/2021)

<sup>14</sup> In 2020, 64.29% of COFECE's decisions were upheld by the Judiciary.



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

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Pending from the previous period	227	247	239	231	-
Admitted/Received	26	19	8	30	83
Resolved by the Judiciary	6	27	16	9	58
<i>Amparos</i> * dismissed	1	19	10	4	34
<i>Amparos</i> denied	2	2	5	4	13
<i>Amparos</i> granted	3	6	1	0	10
Others**	0	0	0	1	1

Notes: \*Amparos are appeals against the decisions of the Commission that are filed before the specialized courts.

\*\* Amparos in which there were no actions attributable to the Commission.

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

18. Also, this year, the First Collegiate Circuit Tribunal on Administrative Matters Specialized in Economic Competition, Broadcasting and Telecommunications resolved that COFECE is the competent authority over the markets for online search services, social networks, and cloud computing. This determination came as a result after COFECE and the Federal Telecommunications Institute (IFT), the competition authority for the markets or telecommunications and broadcasting, could not agree on which authority was competent to resolve the matter.

19. Thus, the Judiciary was requested to determine which was the corresponding authority to resolve on the markets that were part of an investigation initiated by the IFT in October 2020 for possible barriers to competition and essential facilities in the markets for online search, social networks, mobile operating systems, and cloud computing services. In its decision, the Tribunal determined that COFECE was the competent authority to resolve on the markets for online search services, social networks, and cloud computing systems and the IFT is competent over the market for mobile operating systems.<sup>15</sup>

## 2.3. Significant cases

### 2.3.1. Financial

#### *Sanction for collusion in the secondary market for the intermediation of government debt securities*

20. In January, the Board of Commissioners imposed fines totaling 1 million 680 thousand 594 hundred USD to seven banks<sup>16</sup> and eleven traders who colluded in some operations of the secondary market for the service of intermediation of debt securities issued by the Mexican government.<sup>17</sup> The Commission proved that the banks and traders established 142 agreements to manipulate prices and established the obligation to not

<sup>15</sup> Press Release COFECE-020-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-020-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-020-2021_ENG.pdf)

<sup>16</sup> The sanctioned banks were Barclays Bank, Deutsche Bank, *Santander*, *Banamex*, Bank of America, *BBVA Bancomer* and J.P. Morgan. It is worth mentioning that given the period in which these conducts were carried out, the applicable competition law is prior to the one in force and establishes lower amounts for sanctions in comparison to the current LFCE.

<sup>17</sup> Press Release COFECE-001-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-001-2021\\_English.pdf](https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-001-2021_English.pdf)

commercialize and/or acquire certain government securities in specific transactions, having a direct impact on the price of the related instruments in said transaction of the secondary market.

21. This case is relevant since, as a result of these illegal conducts, a harm was done to the investing public who acquired the bonds object of the collusion. According to the Commission's calculation, between 2010 and 2013, a harm to the market of approximately 1 million 408 thousand 194 hundred USD was inflicted. Thus, this resolution enforces the law in the financial sector, deterring illegal conducts or agreements between banks or persons who act on their behalf.

### 2.3.2. *Agri-Food*

#### *Abuse of dominance in the market of the conformity assessment of mezcal*

22. In March, derived from a complaint, the Investigative Authority of the Commission initiated an investigation for abuse of dominance in the market of the conformity assessment of the alcoholic beverage known as *mezcal*. The probe looks into probable anticompetitive conducts that could significantly reduce the options to which mezcal producers can turn to comply with standards, increasing their costs and thus the final price paid by consumers. This is an ongoing investigation.<sup>18</sup>

### 2.3.3. *Energy*

#### *Statement of objections in the market of distribution and commercialization of LP Gas*

23. In March, COFECE notified a statement of objections to several companies and natural persons for their probable responsibility in illegal agreements to manipulate prices or allocate the market for the distribution and commercialization of liquified petroleum gas (LP Gas). This investigation is the widest yet carried out by the Investigative Authority since it has implied the analysis of conducts carried out by various participants in multiple states of the country. The case will continue to the trial-like procedure stage in which the Board of Commissioners will resolve in accordance with the Law.<sup>19</sup>

#### *Effective competition conditions in the distribution of LP Gas*

24. LP Gas is the fuel for domestic use most used in the country as 76% of the Mexican families consume it. Hence, any anticompetitive practice that derives in price increases has an important negative effect on consumers, especially in lower income households who allocate 3.5 times more of their spending to this energy. Bearing this mind and as a result of price monitoring activities conducted by COFECE, in May 2021 the Investigative Authority initiated an ex officio investigation to determine whether effective competition conditions exists or not in the distribution of LP Gas at the national level.<sup>20</sup>

25. This inquiry analyzed the market related to the sale of LP Gas through portable vessels (cylinders) and tank trucks (tankers), which directly supply households and businesses equipped with gas tanks. Consequently, in December 2021, the Investigative

<sup>18</sup> Press Release COFECE-007-2021 available at <https://www.cofece.mx/wp-content/uploads/2021/03/COFECE-007-2021ENG.pdf>

<sup>19</sup> Press Release COFECE-008-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/03/COFECE-008-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/03/COFECE-008-2021_ENG.pdf)

<sup>20</sup> Press Release COFECE-018-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-018-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-018-2021_ENG.pdf)

Authority preliminarily determined that there are no effective competition conditions in 213 out of 220 geographic markets defined for the distribution of this fuel.<sup>21</sup> In its preliminary opinion, the Investigative Authority found that there is high concentration in multiple regional markets as well as entry and regulatory barriers for potential competitors. Moreover, there are *commission agents* and *clandestine groups/pseudo unions* who hinder the concurrence of distributors, especially in the Metropolitan Zone of the Valley of Mexico.

26. After the issuance of this preliminary opinion, the economic agents interested in this procedure may present statements and arguments that they deem appropriate in order for the Board of Commissioners to issue a final resolution in this matter. If the sense of the opinion is confirmed, the Energy Regulatory Commission (CRE per its acronym in Spanish) would be able to establish regulation for compensations, prices or fees in the market.

#### *Abuse of dominance in the market of electric energy and associated products*

27. In May, the Investigative Authority initiated an investigation derived from a complaint for possible abuse of dominance in the market for the generation, wholesale commercialization and supply of electric energy and associated products, in addition to services and activities related to these markets in the national territory. The probe will focus on determining if the actions of any economic agent or agents with substantial power in the investigated market have infringed the LFCE. This is an ongoing investigation.<sup>22</sup>

#### *Statement of objections in the market of oil products*

28. In August, the Commission notified a statement of objections to an economic agent for possible abuse of dominance in the market for the commercialization, storage and transport of oil products and related services. After its investigation, the Investigative Authority concluded that the notified economic agents could have possibly engaged in the establishment of different prices or conditions of sale or purchase for different buyers or sellers under equivalent conditions, a practice that is against section X of Article 56 of the LFCE. The case continues to the trial-like procedure stage in which the Board of Commissioners will have to resolve accordingly.<sup>23</sup>

### **2.3.4. Transport**

#### *Competition in maritime passenger transportation*

29. In February, the Investigative Authority preliminarily concluded the lack of competition conditions in six routes<sup>24</sup> of the maritime passenger transportation service in the modality of ferries in the state of Quintana Roo. In its preliminary opinion, the Investigative Authority concluded that *Naviera Magna* has a high market participation in

<sup>21</sup> Press Release COFECE-032-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/12/COFECE-032-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/12/COFECE-032-2021_ENG.pdf)

<sup>22</sup> Press Release COFECE-014-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-014-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-014-2021_ENG.pdf)

<sup>23</sup> Press Release COFECE-023-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-023-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-023-2021_ENG.pdf)

<sup>24</sup> Routes that have as origin and/or destination *Isla Mujeres to Puerto Juarez, Gran Puerto, El Caracol, Playa Tortugas* and *El Embarcadero* and from *Cozumel to Playa del Carmen*.

the routes and there are economic and regulatory barriers that enable it to fix rates without any other of its competitors being able to counteract this conduct.<sup>25</sup>

30. After an ex officio investigation initiated in 2020, the Investigative Authority found that the economic barriers to enter the market are a result of the high investments needed for the acquisition and/or lease of vessels, the term for the return and indivisibility of investment, the expenses in advertising as well as the acquisition of insurance. As for regulatory barriers, these are mainly related to the Navigation Law in force which imposes nationality requirements to those interested in providing the ferry services.

31. This market is sensible as users do not have other options (aerial or land) for transportation between the islands and the mainland. Although there are other maritime transportation modalities such as shuttle, nautical tourism, as well as private vessels and boats, these satisfy different needs that those covered by ferries and are not provided on a regular or continuous basis. Moreover, even though that during the investigated period (January 2015-July 2020) several companies did enter the market, *Naviera Magna* did not lower its rates as a natural response to competition.

32. Consequently, in December, the Board of Commissioners confirmed the sense of the preliminary opinion and determined the absence of effective competition conditions in the service of passenger maritime transportation in the modality of ferries in the routes with origin or destination in the north of Quintana Roo.<sup>26</sup> The Board of Commissioners ruled that there are high market shares of the economic agents that provided the service, barriers to entry, infrastructure limitations and several conditions that reduce the levels of competitive pressure. Also, it was confirmed that users of the service do not have other options to travel between the destinations without recurring in additional costs. After this resolution, it corresponds to the regulatory authority, the Ministry of Navy, to establish, if it deems it pertinent, the regulation for the rates of these services.<sup>27</sup>

### *Abuse of dominance in the federal land passenger transport service at Mexico City's Airport*

33. In April, the Commission notified a statement of objection to an economic agent for its probable responsibility for abuse of dominance in the market for the access to the provision of the federal land passenger transport service with Mexico City's Airport (AICM per its acronym in Spanish) as an origin or destination.<sup>28</sup> In the investigation, derived from a complaint, the Investigative Authority indicated that the economic agent in question engaged in practices known as refusal to deal, that is, refusing to sell, commercialize or provide to determined persons goods or services that are available and normally offered to other parties. The lack of competition in this market could have limited the options to travelers which in time, results in higher rates and lower quality conditions in the transport

<sup>25</sup> Press Release COFECE-004-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-004-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-004-2021_ENG.pdf)

<sup>26</sup> Press Release COFECE-034-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/12/COFECE-034-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/12/COFECE-034-2021_ENG.pdf)

<sup>27</sup> In March 2022, the Ministry of the Navy issued the basis for regulating rates for the provision of the service of maritime passenger transportation in the northern zone of the State of Quintana Roo. According to the Ministry, this regulation will allow the service to be provided in reasonable competition conditions and to guarantee its permanence, quality, security and competitiveness for the benefit of both consumers and the providers of the service. The regulation is available, in Spanish, at [https://www.gob.mx/cms/uploads/attachment/file/710489/2022.03.18\\_DOF\\_-\\_BASES para el establecimiento de regulacion en Norte Estado Q.Roo\\_1 .pdf](https://www.gob.mx/cms/uploads/attachment/file/710489/2022.03.18_DOF_-_BASES_para_el_establecimiento_de_regulacion_tarifaria_en_Norte_Estado_Q.Roo_1.pdf)

<sup>28</sup> Press Release COFECE-013-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-013-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-013-2021_ENG.pdf)

services. The case continued to the trial-like procedure stage in which the Board of Commissioners resolved accordingly.<sup>29</sup>

### 2.3.5. Health

#### *Statement of objections and sanctions in the market of hygiene products manufactured with cellulose*

34. In February, the Commission notified a statement of objections to several companies and natural persons after founding evidence of a probable collusion in the market of hygiene products (baby diapers, feminine hygiene and incontinence products) manufactured with cellulose.<sup>30</sup> After concluding the trial-like procedure in October, the Board of Commissioners resolved that that *Essity Higiene y Salud México*, *Kimberly Clark de México* and *Productos Internacionales Mabe*, as well as nine individuals who acted on their behalf exchanged information through regular meetings to agree on price increases of said products and/or eliminate promotions. Consequently, a fine totaling 15 million 20 thousand 173 hundred USD was imposed.<sup>31</sup>

35. Between 2008 and 2014, the companies participated in meetings to exchange information, agree on price increases and/or eliminate promotions, and to verify compliance with the agreement. Furthermore, the Commission determined that the participants of the agreement knew the illegality of their actions and conducted several actions to ensure the secrecy of their communications. This practice caused a harm to the market of approximately 75 million 85 thousand 606 hundred USD; thus, and pursuant to the Law, the maximum fines were imposed since the conducted was prolonged and affected the supply conditions of essential products for the health and hygiene of Mexican families.

#### *Sanction for non-compliance with commitments in the market of industrial gases*

36. In June, the Board of Commissioners sanctioned *Praxair México* with a fine of 11 million 397 thousand 988 hundred USD for repeatedly and extensively failing to comply with commitments made before the Commission to restore competition in the markets of oxygen, nitrogen and liquid industrial argon distributed and commercialized in bulk.<sup>32</sup> In April 2014 *Praxair Mexico* was investigated, derived from a complaint, for possible relative practices in the aforementioned markets; at that time, the company requested the early closure of the trial-like procedure in exchange of complying with several commitments to suppress the conduct and restore the process of competition. However, the Board found that *Praxair México* failed to comply with the commitments and continued to induce exclusivities and limiting the entry of competitors. Along with the fine, the Commission imposed a 45-working-days term for the company to prove compliance with the commitments.

<sup>29</sup> Although this is out of the period covered by this report, it is worth mentioning that in March 2022 the Commission resolved to sanction Mexico City's airport after confirming that it refused to provide access, without a justification to do so, to an economic agent, thus granting unduly advantages to established permit holders who maintained their position without facing competitive pressures. See Press Release COFECE-011-2022 available at [https://www.cofece.mx/wp-content/uploads/2022/03/COFECE-011-2022\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2022/03/COFECE-011-2022_ENG.pdf)

<sup>30</sup> Press Release COFECE-005-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-005-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-005-2021_ENG.pdf)

<sup>31</sup> Press Release COFECE-029-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-029-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-029-2021_ENG.pdf)

<sup>32</sup> Press Release COFECE-019-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-019-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-019-2021_ENG.pdf)

### *Collusion in the market for the distribution of medicines*

37. In August, the Commission sanctioned *Casa Marzam*, *Casa Saba*, *Fármacos Nacionales*, *Nadro* and *Almacen de Drogas*, 21 natural persons who acted on behalf of these companies, as well as the Association of Distributors of Pharmaceutical Products of the Mexican Republic for their participation and/or collaboration in a collusion in the market for the distribution of medicines. A fine of approximately 43 million 290 thousand 800 hundred USD was imposed and 10 executives from the sanctioned companies were disqualified from serving as advisors, administrators, directors, managers, executives, agents, representatives, or proxies of said companies for terms that range from 6 months to 4 years.

38. The Commission proved that the sanctioned economic agents conducted agreements to both restrict the supply and fix, manipulate, and increase the prices of medicines. These agreements were carried out through the following schemes:

- *Days off*: Through this conduct, the distributors agreed to not distribute medicines on mandatory holidays provided by the Federal Labor Law, as well as on other holidays such as *Good Friday* or the *Day of the Dead*. This practice was carried out for almost 10 years between 2006 and 2016.
- *Credit Committee*: The sanctioned economic agents agreed not to distribute or commercialize only a restricted or limited amount of medicines to certain pharmacies, in accordance with their accounts payable to the distributors.
- *Limited discounts*: Through the collusive agreement, the companies standardized a list of products on which they established a maximum number of discounts that had to be observed by all participants.
- *3.66 conduct*: Through this practice, the companies agreed to increase, in a coordinated manner, the pharmacy price for different medicines by 3.66%
- *Quadrants conduct*: In this conduct, the directors of the companies executed a mechanism that allowed them to standardize sale prices to pharmacies in a staggered manner and to coordinately improve their profit margins without losing any market share. This prevented retail customers from immediately noticing the coordinated price increase.

39. These conducts restricted the supply to pharmacies and distorted the conditions of availability, access and purchase of medicines to the detriment of consumers, therefore, the Board of Commissioners estimated that the practice caused a harm of approximately 113 million 33 thousand 62 hundred USD which mainly affected lower-income Mexican households who spend approximately 24 thousand million Mexican pesos on the purchase of medicines.

### **2.3.6. Labor**

#### *Collusion in the draft of professional soccer players*

40. In May, the Commission notified a statement of objections to several economic agents for their alleged participation in a cartel in the market for the drafting of professional soccer players in the national territory.<sup>33</sup> After the conclusion of the trial-like procedure, in September the Board of Commissioner confirmed the anticompetitive practice and fined

---

<sup>33</sup> Press Release COFECE-015-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-015-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-015-2021_ENG.pdf)

17 soccer clubs<sup>34</sup>, the Mexican Football Federation and 8 natural persons with more than 8 million 481 thousand 73 hundred USD.<sup>35</sup>

41. COFECE determined that the clubs colluded to avoid or inhibit competition in the market by engaging in two conducts:

- Imposing maximum wage caps for female soccer players, further deepening the pay gap between female and male players.
- Segmenting the market of male players by establishing a mechanism known as “Gentleman’s Pact” that prevented them from freely negotiating and signing with new teams.

42. In the first conduct, the prices (that is, the wages of female players) were manipulated, thus preventing clubs from competing for the hiring of female players through better wages, not only negatively impacting the latter’s income, but also widening the gender pay gap. As for the second conduct, the collusive agreement segmented the market and limited competition of clubs in the hiring of players, unduly restricting their mobility and limiting their bargaining capacity to obtain better wages by signing with another club. Together, the conducts generated a harm estimated in approximately 3 million 994 thousand 969 hundred USD 83 million 375 Mexican pesos.

### 3. Mergers and acquisitions

43. This year, the Commission analyzed 152 mergers of which 137 were authorized, one was subjected to conditions, one was rejected and 13 were deemed as not presented, not admitted or the parties desisted from the operation.

#### 3.1. Enforcement statistics: mergers

Table 5. Mergers

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Pending from last period	24	29	31	46	-
Admitted	34	39	53	40	166
Analysis concluded <sup>36</sup>	28	26	38	50	152
Authorized	23	32	34	48	137
Subject to conditions	1	0	0	0	1
Rejected	1	0	0	0	1
Other	3	4	4	2	13
Pending for next period	29	31	46	36	-

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

<sup>34</sup> The sanctioned clubs were *América, Pachuca, Cruz Azul, Monarcas, Chivas, Santos, TIGRES, Toluca, Universidad, Rayados, Necaxa, Atlante, Tijuana, Atlas, León, Gallos Blancos* and *Puebla*.

<sup>35</sup> Press Release COFECE-028-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021_ENG.pdf)

<sup>36</sup> Mergers analyzed during the year include those notified in the current period and those which analysis was not completed in the previous year. At the end of the year, mergers that are still under analysis are accounted for at the beginning of the following year.

44. The value of the mergers analyzed by COFECE during 2021 amounted approximately 40 thousand 410 hundred USD. More than half of these operations had an international scope.

**Table 6. Mergers 2021: value of transactions (in million USD)**

	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
Total value	12,748.34	68,782.59	49,570.77	54,496.80	185,598.51
Number of cases	28	36	38	50	152
National scope (total value)	973.30	34,491.83	5,831.23	4,092.75	45,389.11
National scope (number of cases)	17	21	21	22	81
International scope (total value)	111,775.04	34,290.76	43,739.54	50,404.05	140,209.40
International scope (number of cases)	11	15	17	28	71

Source: Internal Statistics and COFECE. Quarterly reports 2021, available in Spanish at: <https://www.cofece.mx/category/planeacion-informes/informes-trimestrales/>

## 3.2. Significant cases: mergers

### 3.2.1. G500 / Corporación G500 / G500 Network

45. In March, the Commission conditioned an operation consisting of the creation of a franchise for selling gasoline and diesel through gas stations, subject to future expansions.<sup>37</sup> While the Board of Commissioners cleared the transaction for 213 gas stations initially, it imposed the condition that every time a new group wants to be part of the franchise, a notification must be made before the Commission before signing the franchise agreement. To comply with this condition, a mechanism was approved in which when incorporating new franchisees, G500 Network must provide COFECE information of the partners or shareholders and their services stations in order to verify the impact of the new incorporation on competition in the market.

### 3.2.2. Tiendas Soriana / Famsa México

46. In 2015, the Commission analyzed a merger between supermarket chains *Soriana* and *Comercial Mexicana* and identified risks to competition in 27 markets if the operation was cleared in its original terms. Therefore, COFECE conditioned the operation through a divestment program which was accepted by *Soriana*.<sup>38</sup> In March 2020, *Soriana* and *Famsa* notified the Commission of their intention to conducting a merger consisting in the assignments of lease rights of some stores in favor of *Famsa* so that these would operate as a competitor to *Soriana*. However, in November, the Board of Commissioners resolved to object the operation as they considered that it did not comply with the requirements of the divestment program, since *Famsa* did not had the ability of means to remain as a viable and effective competitor, nor it would operate as a self-service store if the merger was indeed authorized.<sup>39</sup>

<sup>37</sup> Operation under file CNT-022-2020

<sup>38</sup> A case analysis document summarizing the main aspects of this operation is available, in Spanish, at <https://www.cofece.mx/wp-content/uploads/2017/11/Soriana-Comer-v8.pdf#pdf>

<sup>39</sup> A public version of the resolution is available, in Spanish, at <https://resoluciones.cofece.mx/CFCResoluciones/docs/Concentraciones/V6068/3/5360047.pdf>



### 3.2.3. ABC Aerolineas / HBC International

47. In February, the Commission authorized a concentration between *ABC Aerolineas (Interjet)* and *HBC International* but fined the companies for not notifying the operation before carrying it out. The merger, which took place in June 2020, consisted in the acquisition of a part of *Interjet's* social capital by *HBC* and was notified to the Commission until August of that year.<sup>40</sup> The parties recognized that they should have provided prior notification and wait for clearance by the Commission, thus they provided all necessary elements and information for the respective analysis. While the Board of Commissioners determined that the merger did not pose any risks to competition and authorized it, a fine of 955 thousand 680 Mexican pesos was imposed to the parties for their non-compliance with the LFCE.

## 4. Competition Advocacy

48. The Commission actively advocates for the benefits of competition among several audiences. To achieve this goal, it implements several actions to position economic competition in the public agenda. During 2021, COFECE issued several opinions, a market study, a sectoral advocacy paper and other documents aimed at promoting the principles of competition and free market access.

### 4.1. The role of competition authorities in the formulation and implementation of other policies

49. In accordance with the LFCE, the Commission has the power to issue non-binding recommendations regarding laws and regulations and other legal frameworks that could have an adverse effect on competition. In 2021, the most significant opinions were:

#### 4.1.1. Opinion and constitutional controversy regarding the Electricity Industry Law

50. Since 2020, the Commission has actively advocated to ensure that the principles of competition and free market access prevail in the Mexican electricity sector. In February 2021, the Commission issued an opinion to the Congress of the Union recommending not to approve the *Draft Decree by which several provisions of the Electricity Industry Law are reformed and supplemented*.<sup>41</sup> In its opinion, COFECE determines that the proposed reform would severely affect the process of competition in the generation and commercialization of electricity which would ultimately translate into higher final electricity supply rates to be paid by consumer and/or the government, through subsidies.<sup>42</sup>

51. Electricity transmission and distribution networks, as strategic areas in charge of the State, must be operated in a neutral manner and under an open and non-unduly discriminatory access. By ensuring this dynamic, the production and supply of energy at competitive prices is incentivized. However, if approved, the reform would prevent competition in the following ways:

<sup>40</sup> Press Release COFECE-002-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-002-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-002-2021_ENG.pdf)

<sup>41</sup> Press Release COFECE-006-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-006-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-006-2021_ENG.pdf)

<sup>42</sup> The complete opinion is available, in Spanish, at <https://resoluciones.cofece.mx/CFCResoluciones/docs/Opiniones/V173/9/5363212.pdf>

- The economic dispatch of electricity would be eliminated, thus erasing competition between generators through the reduction in costs and discouraging the installation of more efficient and cleaner generation projects.
- By granting the National Energy Control Center (CENACE per its acronym in Spanish) broad discretion to deny access to transmission and distribution networks, the guarantee of open access is breached.
- It would allow the state-owned *CFE Suministrador de Servicios Básicos* to acquire electricity without employing competitive mechanisms, such as auctions, to guarantee the best prices possible and would eventually derive in an increase in rates or subsidies.
- The Energy Regulatory Commission (CRE per its acronym in Spanish) would be able to deny permits based on the planning criteria of the National Electric System established by the Ministry of Energy. The ambiguity of this power would allow the regulator to stop granting permits and close the generation market without a justified cause.

52. Finally, the reform would also disarticulate the market of Clean Energy Certificates (CEL, per its acronym in Spanish), by multiplying its supply and eliminating the effectiveness of this mechanism to promote the installation of greater clean energy generation capacity in Mexico, which could derive in the country being unable to comply its international clean generation commitments to be achieved by 2024.

53. Following its opinion, in April, the Commission filed a constitutional controversy before the Supreme Court of Justice of the Nation (SCJN, per its acronym in Spanish) against the draft decree as it considered that part of its content is against articles 25, 27 and 28 of the Mexican Constitution, which order a competition regimen in the markets for the generation and supply of electricity.<sup>43</sup> The former, to the detriment of the Commission's sphere of competence by preventing it from guaranteeing competition and free market access. This controversy was admitted by the SCJN.

#### ***4.1.2. Opinion to the Hydrocarbons Law***

54. In another action to safeguard the principles of competition and free market access in the energy sector, in April, the Commission issued an opinion recommending not approving the *Initiative with a draft decree by which the Hydrocarbons Law is reformed and supplemented*.<sup>44</sup> In the Commission's view, if approved, this reform would damage the process competition of the value chain of hydrocarbons, petroleum products and petrochemicals and would result in a decrease of the supply of goods and services offered in the industry and in a subsequent increase in the prices paid by Mexican households.

55. The current constitutional framework established a permit regime for both the state-owned company and private parties to be able to participate in the activities that comprise the value chain of hydrocarbons, petroleum products and petrochemicals. Bearing this mind, the Commission's opinion<sup>45</sup> states that the proposed reform would:

<sup>43</sup> Press Release COFECE-012-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-012-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-012-2021_ENG.pdf)

<sup>44</sup> Press Release COFECE-11-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-011-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-011-2021_ENG.pdf)

<sup>45</sup> The complete opinion is available, in Spanish, at <https://resoluciones.cofece.mx/CFCResoluciones/docs/Opiniones/V187/0/5410784.pdf>

- Discourage the entry and reduce the supply by distorting the permits' regime since it grants broad discretion to the Ministry of Energy and to the CRE to temporarily suspend permits when they consider there is an imminent danger to the national security, the energy security or for the national economy, with neither these concepts being clearly defined nor providing clear criteria for their application.
- Create uncertainty by changing from an *afirmativa* to *negativa ficta* in the resolution of the request for the cession of permits, thus reducing the authority's incentives to resolve them in an expedite way.
- Reduce the number of competitors and the supply by establishing the verification of certain storage capacity required by the Ministry of Energy for the granting of permits and allowing the revocation of those permits in force who do not comply with the requirement, which would constitute a violation to the acquired rights and an unjustified restriction to the supply.

#### **4.1.3. Warning regarding the Agreement on strategic projects and works of the Federal Government**

56. In November, the Commission issued a press release warning the possible risks in matters of competition and free market access derived from the Agreement by which the agencies and entities of the Federal Public Administration are instructed to carry out the actions indicated, in relation projects and works of the Government of Mexico considered of public interest and national security, as well as a priority and strategic for the national development, which grants preferential treatment to a wide range of projects that qualify as of public interest and/or national security.<sup>46</sup>

57. As a result of this Agreement, agencies and entities of the Federal Public Administration are instructed to grant a provisional authorization of 12 months in relation to the statements, permits or licenses needed for the conduction of said projects and/or works in a maximum timeframe of 5 business days, and if these are not issued, it establishes an *afirmativa ficta*. This, besides being inconsistent with the applicable laws, could grant asymmetric and preferential treatment with respect to public and private projects.

## **4.2. New reports and studies on competition policy issues**

### **4.2.1. Transition towards competed energy markets: Clean Energy Certificates in the Mexican electricity industry<sup>47</sup>**

58. In May, COFECE published the final version of the advocacy document *Transition towards competed energy markets: Clean Energy Certificates in the Mexican electricity industry*, a study mandated by the Energy Transition Law<sup>48</sup> in order to evaluate the market of CEL and issue recommendations to improve its performance.

- The study covers a wide range of topics including: i) an overview of the electricity industry as of the energy reform of 2013, and a definition of the CEL emphasizing their importance to comply with Mexico's international clean energy goals, ii) an analysis of the demand and supply sides of the CEL market, considering the aspects

<sup>46</sup> Press Release COFECE-031-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/11/COFECE-031-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/11/COFECE-031-2021_ENG.pdf)

<sup>47</sup> The complete document is available, in Spanish, at [https://www.cofece.mx/wp-content/uploads/2021/05/CEL\\_doc\\_vb2.pdf](https://www.cofece.mx/wp-content/uploads/2021/05/CEL_doc_vb2.pdf)

<sup>48</sup> Twenty-Second Transitory article of the Energy Transition Law enacted on December 24, 2015 that regulates the obligations regarding clean energy and reduction of pollutant emissions of the Mexican electricity industry.

that favor or hinder their performance and providing recommendations from a competition perspective, iii) the aspects that impact the commercialization of CEL and recommendations to address them, iv) a description of the mechanisms for monitoring and compliance of CEL obligations, and v) a conclusion, with the aid of forecasting methods, on Mexico's ability to comply with its clean energy commitments.

- It is worth mentioning that this document was elaborated during 2020 and submitted for public consultation in January 2021. During this time, several regulatory changes, such as the reform to the Electricity Industry Law, took place which had a clear negative impact on competition in the market for the generation and supply of electricity.

#### 4.2.2. *Study of competition in the public service of rail freight transport*<sup>49</sup>

59. In August, the Commission published its *Competition study in the public service of rail freight transport* which concluded that competition in the Mexican Railway System is scarce, and that the railway network operated in a disarticulated manner, both conditions have as a result low efficiency in the service to the detriment of Mexico's competitiveness.<sup>50</sup>

60. Among the elements that distort competition identified by the study are that i) the network's original design does not favor competition since two companies concentrate the concessions to operate infrastructure and railway equipment, ii) the network operates in a fragmented manner since concessionaires provide their service almost exclusively in their own networks, iii) there are high tariffs in the "first and last mile", iv) the network has not grown despite private participation in the System, v) the participation of railroads in freight transport is low, and vi) the intensity of competition among concessionaires is low.

61. As a result of a thorough analysis, the study suggests that when current concessions expire, a reconfiguration of the networks will be necessary in order to implement a more equitable design to ensure an articulated and procompetitive operation. In the meantime, regulatory changes are required, thus, the Commission issued 25 recommendations to legislators and regulators that cover mainly three areas:

- The elimination of obstacles to take advantage of the existing rights-of-way and create new ones through reforming the Law.
- The elimination of bottlenecks in the railway system by promoting interlineal services and by empowering the Railway Transport Regulatory Agency to regulate last and first mile tariffs.
- The strengthening of the Agency's institutional design to empower it to sanction non-compliance from concessionaires.

<sup>49</sup> The complete study is available, in Spanish, at <https://www.cofece.mx/estudio-de-competencia-en-el-servicio-publico-de-transporte-ferroviario-de-carga/>

<sup>50</sup> Press Release COFECE-024-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-024-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-024-2021_ENG.pdf)

### 4.2.3. A converging competition agenda for the prosperity of Mexico and the United States<sup>51</sup>

1. In light of President Joe Biden's Executive Order on Promoting Competition in the American Economy which recognizes the benefits of competition by indicating that sustained economic prosperity requires an open and competitive economy and in the context of the U.S.-Mexico High Level Economic Dialogue, COFECE published a document which highlights some of the markets it has analyzed and that match those covered by the Executive Order. In addition, the agenda summarizes the recommendations made by COFECE to increase competition in the Mexican economy which, in many cases, appear to be similar to those put forth by the Executive Order. In this regard, the document covers freight railway transportation, regulatory improvement, generic drugs, public procurement, airport services, financial services, professional services, maneuvering services in ports and the relation between small businesses and sales platforms.

### 4.3. Online Courses

62. In 2020, the Commission decided to use and transform an e-learning platform (acquired in 2017 with the intention to provide internal trainings and develop future advocacy projects) to deliver free, on-going and open courses, accessible to anyone needing capacity-building. This advocacy tool has allowed COFECE to continue providing training on economic competition and related subjects to the business community and the general public despite the health emergency. The platform provides four free online courses: i) Competition Policy in Mexico for students, ii) Antitrust Rights and Obligations for the Private Sector, iii) Analysis of Regulation from a Competition Perspective, and iv) Competitive Procurement Design and Bid Rigging Detection. During 2021, COFECE worked on the development of three more courses on the topics: digital economy, investigations' proceedings, and merger notification. These are expected to be launched in 2022 and 2023. So far, this platform has been well received as 1550 people have enrolled in the trainings and have rated it with an 89.3% of general satisfaction.<sup>52</sup>

## 5. Resources of competition authorities

### 5.1. Annual Budget

63. For 2021, the annual budget was MXN \$598,670,029 (equivalent to approximately 28 million 685 thousand 675 hundred USD) which represented a 3% increase in comparison to the budget for 2020.

### 5.2. Audits

64. In 2020, the Superior Auditor of the Federation (ASF per its acronym in Spanish) conducted an audit to evaluate that the design and implementation of the budget by the Commission allowed it to effectively meet the objectives set forth in its plans and programs. The ASF determined that the Commission complied satisfactorily with all the information requirements made and issued 10 recommendations that were addressed over 2021. Also,

<sup>51</sup> The complete document is available at: <https://www.cofece.mx/wp-content/uploads/2021/09/Alp4-ingles.pdf>

<sup>52</sup> The courses are available, in Spanish, at <https://cursos.cofece.mx/>

during 2021, the ASF conducted another audit regarding COFECE's fulfillment of its constitutional mandate. The results of this audit will be released in the first months of 2022.

### 5.3. Changes in the Commission's Leadership

65. In September 2021, Commissioner Brenda Hernández assumed as Acting Chair Commissioner due to a vacancy in COFECE. This, in terms of article 19 of the LFCE and article 49 of the Commission's Organic Statute, while the Senate of the Republic appoints a new Chair.<sup>53</sup> This transition took place as Alejandra Palacios' second and last term as Chairwoman came to an end, so in accordance with the Law she had to be replaced by the longest-serving member of the Board of Commissioners, which in this case is Commissioner Hernández.

66. Also in September, José Manuel Haro Zepeda was appointed by the Board of Commissioners as the new Head of the Investigative Authority for a four-year term.<sup>54</sup> Manuel Haro replaces Sergio Rodríguez who left COFECE in June 2021.

### 5.4. Human Resources

67. In 2021, the Commission employed 437 people, of which:

- 309 are non-administrative staff working in competition enforcement, of which:
  - 134 work in the Investigative Authority (cartels, abuse of dominance, market intelligence and forensics)
  - 21 work on Litigation Affairs
  - 30 work in the Board of Commissioners (including 4 Commissioners)
  - 79 work in the Technical Secretariat (including merger review and market studies)
  - 6 work in the Digital Markets Unit
  - 12 work on Competition Advocacy

68. In terms of professions, of the total of non-administrative staff:<sup>55</sup>

- 132 are lawyers
- 103 are economists
- 19 are data scientists
- 74 come from other professions (engineers, political scientist, foreign affairs, among others)

<sup>53</sup> Press Release COFECE-027-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-027-2021\\_ENG\\_Acting-Chair-Commissioner-Brenda-Hernandez.pdf](https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-027-2021_ENG_Acting-Chair-Commissioner-Brenda-Hernandez.pdf)

<sup>54</sup> Press Release COFECE-026-2021 available at [https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-026-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-026-2021_ENG.pdf)

<sup>55</sup> It is important to point out that some non-administrative staff works in more than one area of competition enforcement: therefore, numbers add up more than the number of total staff.

## 6. International Activities

### 6.1. ICN / WB Advocacy Contest 2021

69. In October, the Commission was announced as winner of Theme 1 *Promoting an inclusive, sustainable, and green recovery while preserving contestability* of the 2021 edition of the Competition Advocacy Contest organized by the International Competition Network (ICN) and the World Bank (WB). The Commission was awarded for its actions to ensure competition in the electricity market aimed at encouraging lower costs, both economical and environmental, for the benefit of consumers and productive sectors.<sup>56</sup>

#### 1.1. COFECE is selected as Co-Chair of the ICN AEWG

2. Also in October, the Commission was selected as Co-Chair of the Agency Effectiveness Working Group (AEWG) of the ICN. The mission of this working group is to identify key elements of a well-functioning competition agency and good practices for strategy planning, operations and enforcement tools and procedures.<sup>57</sup> COFECE shares the Co-Chair role with the Competition and Consumer Commission of Singapore and the Competition Authority of Botswana.

## 7. Period covered by the above information

70. The information provided in this report covers from January 1<sup>st</sup> to December 31<sup>st</sup>, 2021.

---

<sup>56</sup> Press Release COFECE-030-2021 available at: [https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-030-2021\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-030-2021_ENG.pdf)

<sup>57</sup> More information on the Agency Effectiveness Working Group is available at: <https://www.internationalcompetitionnetwork.org/working-groups/agency-effectiveness/>

## Report by the Federal Telecommunications Institute (IFT)

### 8. Executive Summary

71. In 2021, the IFT issued guidelines on the simplification of administrative processes; the conduction of investigations by electronic means; the strengthening of the leniency program; the determination of relevant markets in the telecommunications and broadcasting (T&B) sectors; the trial-like procedure for the enforcement of competition law; and the suspension of the emergency measures to enable merger review proceedings remotely in the midst of the Covid-19 pandemic.

72. The IFT conducted nine investigations. One of them on the possible existence of entry barriers; six on unilateral conducts; one to determine an economic agent with substantial market power; and one on an unlawful merger.

73. The IFT resolved on seven proceedings related to mergers and acquisitions, including the acquisition of the audio-visual content business property of Televisa by Univision, which is significant in Mexico because it implies a horizontal concentration of the production and licensing of that content for distribution through multiple platforms.

74. In the matters of competition assessments and opinions, the IFT issued 260 opinions related to the grant, renewal and transfer of licenses to provide T&B services; it followed up on one substantial market power investigation; and it issued four opinions on bills and existing laws regarding freedom of expression in online social networks, protection of digital users, air infrastructure in Mexico City and undue advertising practices; and 5 opinions to broadcasters.

75. The IFT published two studies: one on Digital Platforms and their Business Models, another on Over-the-Top (OTT) Digital Platforms and a Document on Advocacy of Economic Competition in the T&B Sectors, along with other advocacy efforts.

76. Finally, IFT's annual budget amounted to \$73.67 million USD, with a total staff of 1256 employees, out of which 69 were dedicated to enforcement against anticompetitive practices; 31, to merger review and other enforcement; 17, to advocacy efforts; and 342 to support activities; for a total of 459 officials involved in competition activities.

### 9. Changes to Competition Laws and Policies, Proposed or Adopted

#### Summary of New Legal Provisions of Competition Law and Related Legislation

77. None were adopted in 2021.



## 9.1. Other Relevant Measures, Including New Guidelines

### 9.1.1. Simplification of Administrative Processes<sup>58</sup>

3. The IFT issued a general administrative provision aimed at guiding and facilitating to any economic agent<sup>59</sup> their requests or information deliveries to the IFT, in compliance with their obligations or, in the exercise of any right, in order to make more efficient and speed up the management of administrative processes related to competition procedures and services in T&B sectors. The use of these formats is optional and applicable to procedures related to merger and simplified merger notifications, to the issuance of opinions or resolutions related to the grant, renewal or transfer of licenses, concessions, permits, among others.

### 9.1.2. Investigations by Electronic Means

4. The IFT issued guidelines aimed at establishing provisions for the substantiation of investigations, procedures, and formalities by the IFT's Investigative Authority (AI) through electronic means<sup>60</sup>. They establish the operational terms and conditions of the Electronic System, observing the principles of digital government and open data, and the applicable provisions on electronic signatures; the mandatory use of electronic means for the substantiation of investigations, procedures and paperwork by the AI; the advanced electronic signature; the creation of the electronic file; the presentation of promotions and notifications through the Electronic System; appearances through electronic means; as well as the use and operation of the Electronic System.<sup>61</sup>

---

<sup>58</sup> “Agreement whereby the IFT’s Board issues the formats that may be used to carry out various procedures and services in matters of economic competition before the IFT.” Available in Spanish at:

<http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/dof180821364acc.pdf>.

<sup>59</sup> Article 3, subsection I of the Federal Economic Competition Law (LFCE) defines Economic Agents as “Any for profit or nonprofit individual or legal person, dependencies and entities of the federal, state or municipal public administration, associations, business chambers, professional groups, trusts or any other form of participation in the economic activity”;

<sup>60</sup> “Excerpt of the Guidelines for the substantiation of investigations, procedures and procedures in charge of the Investigative Authority of the IFT, through electronic means. Available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/extractodof031121596acc\\_0.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/extractodof031121596acc_0.pdf)

<sup>61</sup> The Electronic System will start operating on November 2022.

### 9.1.3. Strengthening of the Leniency Program

78. Following an OECD recommendation,<sup>62</sup> the IFT modified its Regulatory Provisions regarding the procedure for reducing penalties for absolute monopolistic practices, with the purpose of making more efficient IFT's competition powers<sup>63</sup>.

79. In addition, the IFT issued the Guide of the procedure for the reduction of sanctions of absolute monopolistic practices for the T&B sectors<sup>64</sup>, aimed at identifying anticompetitive conducts that may benefit from sanction reductions; requirements, temporality and means of submission of the application; information and appropriate documentation to provide sufficient evidence of conviction to enable the opening of an investigation or to presume the existence of the absolute monopolistic practice, as per the LFCE; the actions that the AI may take once it receives the request; the meaning of the resolution that can be issued by the IFT's Board and the benefits it would grant; and the confidentiality of the information submitted.

### 9.1.4. Determination of Relevant Markets in the T&B Sectors

80. Following an OECD recommendation,<sup>65</sup> the IFT issued the Guide to Determine Relevant Markets in the T&B sectors<sup>66</sup> with the purpose of: guiding economic agents, stakeholders and the public, regarding the criteria, elements and tools that the Institute may consider in the determination of relevant market; contributing to the transparency and consistency of these criteria; and providing certainty to economic agents on the exercise of IFT's powers as a competition authority and regulator of the T&B sectors.<sup>67</sup>

---

<sup>62</sup> The *OECD Peer Reviews of Competition Law and Policy: Mexico 2020* recommends that "Competition authorities should adopt clear guidelines on the requirements for entering the leniency program and its benefits. Clarification should cover, for instance, how fine discounts are calculated, what full and continuous co-operation entails, whether markers can be readjusted if conditional leniency ends up not being granted to one or more of the leniency applicants." Available at: <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-mexico-2020.htm>

<sup>63</sup> "Agreement whereby the IFT's Board modifies the Regulatory Provisions LFCE for the T&B sectors." Available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/dof171121662acc\\_0.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/dof171121662acc_0.pdf).

<sup>64</sup> "Excerpt of the Agreement whereby the IFT's Board issues the Guide of the Procedure for the Reduction of Sanctions for Absolute Monopolistic Practices, for the T&B Sectors." Available in Spanish at:

[http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/extractodof171121663acc\\_0.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/extractodof171121663acc_0.pdf)

<sup>65</sup> The *OECD Peer Reviews of Competition Law and Policy: Mexico 2020* recommends the development of common standards and best practices between the IFT's Investigating Authority, the Economic Competition Unit and the Board. This guide was drafted and reviewed collaboratively and subsequently approved by the Board.

<sup>66</sup> "Agreement whereby the IFT's Board issues the Guide to Determine Relevant Markets in the T&B Sectors" Available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift171121661acc.pdf>.

<sup>67</sup> The definition of a relevant market is useful to evaluate the object and/or effects of a conduct or operation and to determine the existence of substantial power, or to resolve on the conditions of effective competition and free market access. Likewise, it supports the evaluation of other

### ***9.1.5. Emergency Measures to Enable Merger Review Proceedings Remotely in the Midst of the Covid-19 Pandemic***

81. On August 20<sup>th</sup>,<sup>68</sup> the IFT ended the suspension of all ongoing economic competition proceedings and the applicability of the emergency measures to enable the remote treatment of merger authorization proceedings, which allowed the submission of information and documents by the economic agents via e-mail and the presentation of their paper backup once the Covid-19 restrictions were lifted. The possibility to ask for the reception of notifications via email in merger authorization proceedings remains available for economic agents.

### ***9.1.6. Trial-Like Procedure for the Enforcement of Competition Law***

82. Following an OECD recommendation, the IFT issued a guide regarding the performance of the trial-like procedure for the enforcement of competition law, with the objective of providing orientation to stakeholders on the purpose and way of complying with each stage of the trial-like procedure; describing in a simple and transparent fashion the performance of the authority regarding the procedure; explaining the temporality and actions that must be fulfilled in each stage; and disseminating the most relevant judicial criteria applicable to the procedure.

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

83. None were issued during 2021.

## **10. Enforcement of Competition Laws and Policies**

### **10.1. Action against Anticompetitive Practices, including Agreements and Abuses of Dominant Positions**

#### ***10.1.1. Summary of Activities***

##### ***Competition Authorities***

84. In 2021, the IFT processed nine investigations. Three of them were initiated in 2021; two, in 2018; two, in 2019; and two, in 2020. One of them on the possible existence of entry barriers; six on unilateral conducts; one to determine an economic agent with substantial market power; and one on an unlawful merger.

---

competition analysis, i.e. in: i) the granting of concessions (by public tender or direct assignment); ii) the assignments of concession rights; iii) the extensions of concessions; iv) the sale of shares, disposals, disincorporation or movements in the shareholding structure of economic agents with a concession; and v) the lease or change of frequency bands of the radio spectrum.

<sup>68</sup> “Agreement that concludes the applicability of the Agreement whereby the IFT’s Board, due to force majeure, determines the cases in which the deadlines and terms of law are suspended, based on the provisions of Articles 28, second and third paragraphs of the Federal Law of Administrative Procedure; 115, second paragraph and 121 of the LFCE, due to the contingency measures for the COVID-19 pandemic, as well as its exceptions, in order to preserve the main functions of the Institute and to guarantee the continuity and quality in the provision of T&B services.” Available in Spanish at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5627260&fecha=20/08/2021](https://www.dof.gob.mx/nota_detalle.php?codigo=5627260&fecha=20/08/2021).

### 10.1.2. Description of Significant Cases, including those with International Implications

#### Started Investigations

85. An investigation initiated by a complaint for probable commission of a relative monopolistic practice in the markets of distribution of mobile terminal equipment and commercialization of mobile telecommunications services, in the states of Colima, Guanajuato, Jalisco and Michoacán.<sup>69</sup>

86. An investigation initiated by a complaint for probable commission of a relative monopolistic practice in the distribution and commercialization market, through chains of convenience stores, of modules of subscriber identification (SIM cards) to offer mobile telecommunications services, with national dimension.<sup>70</sup>

87. An investigation initiated *ex officio* of a merger, provided for in the fifth paragraph of Transitory Article Ninth of the Federal Telecommunications and Broadcasting Law (LFTR), to determine the probable existence of economic agents with substantial power in the network market(s) of telecommunications that provide voice, data or video services, at the national, state, regional and/or local level.<sup>71</sup>

#### Investigations in Progress

88. In 2018, the IFT undertook an investigation for a probable commission of a relative monopolistic practice in the markets of production, distribution and commercialization of contents transmitted through a platform with an Internet connection; distribution and commercialization of electronic devices for the reproduction of contents through Internet, and television and audio restricted services, in the national territory.<sup>72</sup>

89. In 2018, the IFT initiated an investigation by a complaint for probable unlawful mergers that could have the object or the effect of hindering, diminishing, damaging or preventing free concurrence or economic competition in the markets for the provision of restricted television and audio services, fixed and mobile telephone, and access to fixed and mobile broadband Internet, in the national territory.<sup>73</sup>

90. In 2019, the IFT initiated an investigation by a complaint for probable commission of a relative monopolistic practice in the market of the provision of wholesale services of disaggregation of the local network of the preponderant economic agent in the telecommunications sector, in the national territory.<sup>74</sup>

---

<sup>69</sup> File AI/DE-006-2020, available in Spanish at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5624004&fecha=15/07/2021](https://www.dof.gob.mx/nota_detalle.php?codigo=5624004&fecha=15/07/2021).

<sup>70</sup> File AI/DE-004-2021, available in Spanish at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5638397&fecha=15/12/2021](https://www.dof.gob.mx/nota_detalle.php?codigo=5638397&fecha=15/12/2021).

<sup>71</sup> File AI/DC-001-2021, available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5623707&fecha=13/07/2021](http://www.dof.gob.mx/nota_detalle.php?codigo=5623707&fecha=13/07/2021).

<sup>72</sup> File AI/DE-003-2018, available in Spanish at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5538189&fecha=18/09/2018](http://dof.gob.mx/nota_detalle.php?codigo=5538189&fecha=18/09/2018).

<sup>73</sup> File AI/DE-001-2018, available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5524245&fecha=28/05/2018](http://www.dof.gob.mx/nota_detalle.php?codigo=5524245&fecha=28/05/2018).

<sup>74</sup> File AI/DE-002-2019, available in Spanish at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5559511&fecha=06/05/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5559511&fecha=06/05/2019).

91. In 2019, the IFT initiated an investigation by a complaint for probable commission of a relative monopolistic practice in the retail markets of mobile telecommunications services and of commercialization of mobile terminal equipment, in national territory.<sup>75</sup>

92. In 2020, the IFT initiated an investigation by a complaint for probable commission of a relative monopolistic practice in the market of the wholesale services of leasing of local dedicated links and between localities, in national territory.<sup>76</sup>

93. In 2020, the IFT initiated an *ex officio* investigation in the markets of online search services, social networks, mobile operating systems, cloud computing services and related services to determine the possible existence of barriers to competition and free market access or essential facilities that can generate anticompetitive effects.<sup>77</sup>

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

94. All the investigations are in progress.

*Closed Investigations*

95. All the investigations are in progress.

*IFT's Board of Commissioners' Resolutions on Competition Issues*

96. Regarding barriers to competition and free market access, the IFT's Board issued the following resolutions:

- Resolution by which the IFT's Board decides on the existence of effective competition conditions (there are regulatory barriers to competition) in the provision of fixed broadband Internet service access in 43 municipalities of the state of Guanajuato.<sup>78</sup>
- Resolution by which the IFT's Board decides on the existence of effective competition conditions (there are regulatory barriers to competition) in the provision of fixed broadband Internet service access in 123 municipalities of the State of Mexico.<sup>79</sup>

---

<sup>75</sup> File AI/DE-003-2019, available in Spanish at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5578364&fecha=11/11/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5578364&fecha=11/11/2019).

<sup>76</sup> File AI/DE-001-2020, available in Spanish at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5589097&fecha=11/03/2020](http://dof.gob.mx/nota_detalle.php?codigo=5589097&fecha=11/03/2020).

<sup>77</sup> File AI/DC-001-2020, available in Spanish at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5603327&fecha=22/10/2020](http://dof.gob.mx/nota_detalle.php?codigo=5603327&fecha=22/10/2020). Derived from an administrative jurisdictional conflict, the First Collegiate Circuit Court Specialized on Economic Competition, Broadcasting and Telecommunication Matters determined that the analysis of the investigation corresponds to both competition authorities. On one hand, COFECE will know the markets of online search services, social networks, cloud computing services and related services and the IFT, the market of mobile operating systems. In this regard, COFECE closed the investigation in its corresponding markets. The investigation carried out by IFT is open.

<sup>78</sup> File AI/DC-002-2018, available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vp171121659acc.pdf>.

<sup>79</sup> File AI/DC-001-2018, available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vp171121658acc.pdf>.

- Regarding substantial market power, the IFT's Board issued the following resolutions:
- Resolution by which the IFT's Board decides on the existence of an economic interest group with substantial power in relevant markets corresponding to the provision of pay TV.<sup>80</sup>

## 10.2. Mergers and Acquisitions

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

97. The IFT finalized seven proceedings related to mergers and acquisitions (M&A). A brief description of the reviewed transactions is provided in the following table. The total value of the analyzed transactions was \$45.48 billion USD and the average value was of \$5.6 billion USD<sup>81</sup>.

---

<sup>80</sup> File AI/DC-003-2019, available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vpext29112136acc.pdf>.

<sup>81</sup> Amounts shown at the exchange rate of \$1 USD = \$20.4945 MXN.

Source: <https://www.xe.com/currencytables/?from=MXN&date=2021-12-31#table-section>.

Table 7. M&amp;A resolved by IFT in 2021

	Main affected market	Decision	Dimension
<b>Ex ante procedure</b>			
Acquisition of the business of Fox Sports Mexico, property of 21 <sup>st</sup> Century Fox, by Grupo Lauman, as part of the remedies imposed on the acquisition of 21 <sup>st</sup> Century Fox by The Walt Disney Company in 2019.	Acquisition and provision of licenses for the transmission of sports audio-visual content.	Authorized	National
Acquisition of the audio-visual content business, property of Televisa, S.A.B., by Univisión Holdings II, Inc.	Production, licensing and online distribution of audio-visual content in Spanish.	Authorized	International
Acquisition of Six Sigma Networks Mexico, S.A. de C.V., by Mercury Data Center Holdings Ltd.	Data center infrastructure services and external IT services.	Authorized	International
Acquisition of 51% of OCESA Entretenimiento, S.A. de C.V., property of Grupo Televisa, S.A.B., and Corporación Interamericana de Entretenimiento, S.A.B. de C.V., by Live Nation Entertainment, Inc.	Production, promotion and selling of live entertainment events.	Authorized	National
Acquisition of the Latin American division of Lumen Technologies Inc. by Patagonia Holdco LLC	Fixed internet access, dedicated circuits, business connectivity, hosting, content delivery network and international connectivity through submarine cables services.	Authorized	International
Acquisition of Kansas City Southern by Canadian Pacific Railway	Licenses for rendering of private radiotelecommunications services.	Authorized	National
Corporate restructure consisting on the merger between Telesites, S.A.B. de C.V., (holding society) and Operadora de Sites Mexicanos, S.A. de C.V. (subsidiary), both belonging to the economic interest group of América Móvil.	Mobile sites leasing.	Authorized	National
<b>Transitory Article Ninth Ex Post Procedure</b>			
Change of the capital structure of Celmax Móvil, S.A. de C.V., in favor of some of its stockholders and exit of Maxcom Telecomunicaciones, S.A. de C.V.	Resell of mobile telecommunications services to end users.	Reviewed	National

Source: IFT

### 10.2.2. Summary of significant cases

#### *Acquisition of the audio-visual content business property of Televisa, S.A.B., by Univision Holdings II, Inc.*

98. On September 8<sup>th</sup>, the IFT authorized the acquisition of Televisa, S.A. de C.V., by Univision Holdings II, Inc. The acquired society was part of Grupo Televisa, an economic group with interests in fixed telecommunications services by cable, pay TV by satellite, open air TV and production, licensing and online distribution of audio-visual content in Spanish. The buyer is part of Univision, an economic group with interests in open air radio and TV in the United States and Puerto Rico and content production, licensing and online distribution of audio-visual content.

99. The operation is significant in Mexico because it implies a horizontal concentration of the production and licensing of audio-visual content for its distribution through multiple platforms. After the operation, the addition of a new market share in these services was non-significant, since Univision and Grupo Televisa already had a commercial agreement whereby Grupo Televisa could distribute in Mexico every audio-visual content that

Univisión had the right to transmit in Mexico; furthermore the market share of the online distribution platforms of Univision in Mexico is also non-significant. Consequently, the IFT considered that the operation did not have anticompetitive effects.

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

100. The IFT integrates competition assessments into various regulatory procedures, carrying them out more efficiently, imposing less regulatory burden on economics agents, and opening new ways for promoting competition in the T&B sectors.

101. These competition assessments are grouped into four categories: i) public bids, ii) grant, renewal and transfer of licenses, iii) substantial market power investigations, and iv) opinions on draft and existing regulation.<sup>82</sup>

### 11.1. Public Bids<sup>83</sup>

102. In 2021, the IFT's Economic Competition Unit (UCE) reviewed one public bid: the IFT-10 public bid for the allocation of several blocks of mobile spectrum in the 814-824/859-869 MHz (800 MHz), 1710-1780/2110-2180 MHz (AWS), 1850-1915/1930-1995 MHz (PCS) and 2500-2530/2620-2650 MHz (2.5 GHz) bands<sup>84</sup>. On Q3 2021, the UCE issued two favorable competition opinions regarding the participation of two economics agents (the incumbent operators, AT&T and Telcel). These opinions evaluated the economic interest groups; linked and related legal or natural people; the effects of the participation of the interested agents in competition and free entry; if the interested agents fulfilled the requirements to be considered a "new entrant" and receive a 20% incentive; and the quantity of spectrum they could acquire considering the spectrum caps established in the bidding rules. The bid ended on February 2022, granting two blocks of spectrum in the 800 MHz band to AT&T and one block of spectrum in the 2.5 GHz band to Telcel.

### 11.2. Grant, Renewal and Transfer of Licenses

103. In 2021, the UCE issued 260 opinions related to the grant, renewal and transfer of licenses to provide T&B services. The opinions perform an analysis akin to that of mergers,

---

<sup>82</sup> The integrated economic competition assessments are carried out by the IFT's Economic Competition Unit (UCE), while the regulatory procedures are carried out separately by other Units.

<sup>83</sup> There are two kinds of competition assessments involved in public bids proceedings: i) the review of the rules of the public bid documents prior to their publication, in which the UCE seeks to ensure that no requisite unjustifiably restricts participation, or to propose the inclusion of spectrum caps or any other measure that would promote competition in the markets affected by the bid; and, once the public bid proceeding started, ii) the review of specific applicants to make sure the concentration of licenses that might arise from their participation does not decrease, harm, or hinder competition in affected markets.

<sup>84</sup> The quantity of spectrum up for bid is 16.8 MHz in the 800 MHz band, 10 MHz in the PCS band, 10 MHz in the AWS band, and 8.30 MHz in the 2.5 GHz band (the spectrum quantity is weighted by population since only some regional blocks are available in certain bands). A total of 41 blocks were available. All the information regarding the IFT-10 Public Bid is available in Spanish at: <http://www.ift.org.mx/industria/espectro-radioelectrico/telecomunicaciones/2021/licitacion-no-ift-10-servicio-de-acceso-inalambrico>



where an economic group is identified, a market is defined, and some indicators of market power are assessed.<sup>85</sup> The following table presents a summary of the opinions issued:

**Table 8. Number of Cases Related to Licenses Reviewed in 2021**

	Telecommunications	Broadcasting
Grant	-	149
Renewal	3	3
Transfer <sup>86</sup>	39	66
Totals	42	218
	260	

Source: IFT

### 11.3. Substantial Market Power Investigations

104. The IFT determined that Grupo Megacable holds substantial market power (SMP) in 9 out of the 16 examined pay TV markets. The declaratory procedure of SMP was started in 2019, as a result of the acquisition by Grupo Megacable, of a fixed service by the optic fiber business, property of Axtel, S.A.B. de C.V. The acquired business included access networks in 16 local markets in some of the main cities of the country, like Guadalajara, Puebla and Querétaro. The IFT found that Grupo Megacable holds the higher market share in all of them (with market shares between 45% and 65%) and their IHH ranged between 3,678 and 4,838 points after the operation, qualifying them as concentrated markets. These facts, along with the existence of high barriers to entry, the stability of the market shares over time, the increasing pricing indexes and the high profitability of the leading provider, led the IFT to declare the existence of SMP. This acquisition did not undergo a traditional merger authorization proceeding under the LFCE, since the parties resorted to the exemption regime established in Transitory Article Ninth of the LFTR<sup>87</sup>. The SMP investigation has to be conducted *ex post*, as part of this exemption regime, to impose specific regulation in order to control Grupo Megacable's exercise of SMP.

<sup>85</sup> Opinions regarding granting of licenses (for social use) can recommend rejecting the application or prioritizing certain applicants, if demand surpasses offer in a certain locality, based on the number of frequencies (for commercial or social use) already held by the economic agents. Opinions regarding transfers of licenses can recommend rejecting the transaction. Opinions regarding renewal of licenses are generally approved, but if a high level of concentration is detected the UCE proposes to the competent Unit of the IFT the inclusion of the corresponding localities in the Annual Program of Frequency Use, so that new licenses for this service are issued in the following year, where spectrum availability exist, aiming to reduce barriers and to promote entry to concentrated local radio markets.

<sup>86</sup> Includes transfer of licenses and total or partial acquisition of the holding society.

<sup>87</sup> See paragraphs 72-74 of the 2014 Annual Report on Competition Developments for an explanation of this provision of FTBL. The review of a 9th Transitory Article merger notice has the purpose of verifying that the merger meets the criteria set by the FTBL to be exempt from the ex-ante authorization, it does not follow the traditional FECL criteria or proceedings for carrying out competition cases.

## 11.4. Opinions on Draft or Existing Law and Regulations

105. In 2021, the IFT issued 4 opinions containing economic competition considerations, comments and suggestions addressed to the relevant authorities for the improvement of regulations, regarding the following bills or existing laws:

- Bill to regulate freedom of expression in online social networks (reforming the LFTR);
- Bill to issue the Federal Law of Protection to the Digital User (affecting the LFTR and other laws);
- Bill to issue the Law for the Use and Exploitation of the Subsoil and the Laying Underground of Air Infrastructure in Mexico City (affecting telecommunications infrastructure); and
- Law for the Transparency and Prevention and Fight Against Undue Practices in the Contracting of Advertising (affecting T&B services providers).

106. Also, the UCE issued 5 competition opinions following requests of independent broadcasters asking to stop being considered part of the broadcasting preponderant economic agent (Grupo Televisa) in Mexico. These opinions assess if the independent broadcasters ceased to depend on Grupo Televisa in a significant degree, so that they can act as independent competitors in their respective markets. All opinions granted the request of the broadcasters.

## 12. Resources of Competition Authorities

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

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

**Table 9. IFT's Annual Competition Budget Broken down by Administrative Units 2021**

Administrative Unit	Amount <sup>88</sup>	Percentage	Change over 2020 <sup>89</sup>
Total IFT Budget	\$1,510,000,000MXN \$73,678,304 USD	100%	-22.96%
Investigative Authority (AI)	\$71,141,266 MXN \$3,471,237 USD	4.71%	+6.67%
Economic Competition Unit (UCE)	\$61,710,347 MXN \$3,011,069 USD	4.09%	+8.14%
Competition Activities in Other Units	\$413,144,516 MXN \$20,158,799 USD	27.36%	-29.68%

Source: IFT

<sup>88</sup> Amounts shown at the exchange rate of \$1 USD = \$20.4945 MXN.

Source: <https://www.xe.com/currencytables/?from=MXN&date=2021-12-31#table-section>

<sup>89</sup> Total IFT's budget in 2020 in MXN: \$1,960,015,000.00; AI: \$66,695,000.00; UCE: \$57,066,000.00; Competition Activities in Other Units: \$587,477,777.00.

### 12.1.2. Number of Employees Person-Years (and Change over 2020)

**Table 10. Number of IFT Employees in 2021**

Year	Employees
2021	1256
Change over 2020 <sup>90</sup>	+1.62%

Source: IFT

**Table 11. Number of IFT Employees by Administrative Unit Broken down by Profession in 2021**

Administrative Unit	Economist	Lawyer	Other Professional	All Staff Combined
AI	26	31	7	64
UCE	23	21	9	53
All Staff Combined	49	52	16	117
Change over 2020 <sup>91</sup>	+2.08%	-3.7%	+23.08%	+1.7%

Source: IFT

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

**Table 12. Number of IFT Employees Applied to Competition Practice in 2020**

	Enforcement against anticompetitive practices <sup>a</sup>	Merger Review and Enforcement <sup>b</sup>	Advocacy Efforts <sup>c</sup>
	69	31	17
	117 <sup>d</sup>		
Support	342		
Total <sup>e</sup>	459		

Notes: a. This includes the following staff of the AI: General Directorate (GD) of Monopolistic Practices and Unlawful Mergers; GD of Economic Analysis; Assistant GD of Legal Analysis; plus the following staff of the UCE: GD of Competition Procedures; plus the Heads of the AI and UCE.

b. This includes the following staff of the AI: GD of Market Conditions; plus the following staff of the UCE: GD of Mergers and Concessions.

c. This includes the following staff of the UCE: GD of Economic Consultation; plus 2 Advocacy officials; and the following staff of the AI: 1 Advocacy official.

d. This includes the total staff of the AI and the UCE.

e. This includes the staff of AI, UCE and 30% of the staff of the IFT supporting with competition analyzes in ex ante regulation.

Source: IFT

<sup>90</sup> Please refer to Mexico's OECD Annual Report on Competition Policy Developments of 2020 available at: [https://one.oecd.org/document/DAF/COMP/AR\(2021\)23/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2021)23/en/pdf).

<sup>91</sup> *Idem*.

### 12.3. Period Covered by the Above Information:

107. January 1, 2021 to December 31, 2021.

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

### 13.1. Studies

108. Two economic competition studies were finalized by the IFT in 2021.

#### *13.1.1. Study on Digital Platforms and their Business Models<sup>92</sup>*

109. The study identifies relevant variables and methodologies to determine the market shares of digital platforms that allow the evaluation of possible anticompetitive conduct, barriers to competition or essential facilities. The most representative business models of the digital platforms were reviewed, and the best international practices were considered. The foregoing allowed the identification of relevant indicators to evaluate the structure of platform markets related to the T&B sectors, that could affect competition and free market access. Likewise, it will favor decision-making in terms of economic competition and its promotion in these markets.

#### *13.1.2. Study on OTT Digital Platforms<sup>93</sup>*

110. The purpose of this study is to argue that non-licensed digital services provided through internet platforms are an integral part of the T&B sectors in Mexico. This distinction, between T&B sectors and the rest of the economy, is important in Mexico because the Constitution establishes exclusive powers as competition authorities for the IFT and COFECE, correspondingly. The study connects the convergent evolution of telecommunications networks in the Internet, with the economic integration of these services, to construct and support the argument.

### 13.2. Advocacy

111. The main advocacy efforts implemented in 2021 are the following.

#### *13.2.1. Forum "Challenges of Competition in the Digital Environment 2021"<sup>94</sup>*

112. With the organization of this virtual Forum, the interest of the IFT in disseminating issues and experiences of the current digital environment is confirmed, and in strengthening competition to promote sector development and user welfare.

---

<sup>92</sup> Study and annexes available in Spanish at: <http://www.ift.org.mx/industria/autoridad-investigadora/estudios>.

<sup>93</sup> Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/competencia-economica/plataformasdigitalesott.pdf>.

<sup>94</sup> Recordings available at: <https://www.youtube.com/watch?v=bwaMkBMz1c8>; <https://www.youtube.com/watch?v=77PT9P8J49w>; and [https://www.youtube.com/watch?v=O\\_wi4e3ykTg](https://www.youtube.com/watch?v=O_wi4e3ykTg).

*13.2.2. Document on Advocacy and Promotion of Economic Competition in the T&B Sectors*<sup>95</sup>

5. This report presents the conceptual and legal framework of competition advocacy in Mexico, describes the advocacy actions taken so far and develops a strategy that several areas of the IFT can follow in the short and medium terms. The publication of this report follows an OECD recommendation regarding its competition advocacy efforts towards the business community and consumers.

---

<sup>95</sup> Available in Spanish at:

<http://www.ift.org.mx/sites/default/files/contenidogeneral/competencia-economica/abogaciaypromociondelacompetenciaenlossectoresdetelecomunicacionesyradiodifusion-uce.pdf>.