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**Optimal Design, Organisation and Powers of Competition Authorities – Note by Mexico**

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More documents related to this discussion can be found at  
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## Mexico

### Federal Economic Competition Commission (COFECE or the Commission)

#### 1. Introduction

1. The Federal Economic Competition Commission (Cofece or Commission) has developed an institutional model that has provided it with the necessary tools and processes to successfully address the demands and contemporary challenges of enforcing competition law.
2. This contribution will present the procedures that have been incorporated into Cofece's toolbox in recent years, as well as its organisational model and the way in which these have helped to meet the issues posed by the current economic, social and technological dynamics.

#### 2. Contemporary challenges

3. The constant change in the economy, the digitalisation, globalisation and technological advancements have brought new challenges for competition authorities and Cofece is not an exception. Some of these challenges are:
  - **Proper analysis of the markets influenced by digital transformation and the management and use of data:** The growing importance of digitalisation in the economy has led to the emergence of new markets, where innovative companies face no competition due to their disruptive surge. In addition, the increasing relevance of data use for technology companies brings with it challenges as consumer information requires proper handling that does not jeopardise competitive processes. This poses challenges for the Commission, as in its pursuit to prevent the accumulation and abuse of market power, it could discourage innovation or efficiency gains that the use of technology and data could bring.
  - **Adopt the use of digital tools to analyse markets:** Addressing competition processes related to the use of digital tools by economic agents implies challenges not only in analytical terms but also in the use of technologies for Cofece, as taking advantage of its efficiencies in monitoring, analysing and investigating markets requires the adjustment of regulations, processes and human capital.
  - **Broaden the transversal impact of competition policy benefits:** Changes in economic and social dynamics have an impact on public policy objectives. An example of this is the growing importance of social policies to combat poverty, gender perspective or environmental responsibility. Although the objectives of Mexican competition policy do not include fighting poverty, reducing gender gaps, or fighting climate change, Cofece's actions can generate indirect benefits through effective competition enforcement. This may pose challenges for the correct diagnosis, design, and alignment if the agencies' institutional objectives.
  - **Adapting to economic globalisation:** The analysis, investigation and management of cases involving international markets requires not only collaboration between authorities, but also a perspective that considers national and regulatory

specificities. This has required the Commission to strengthen its relations with peer authorities and international organisations to exchange experiences and thus strengthen its analytical capacities.

### 3. Resources

#### 3.1. Investigative tools and processes

4. To face these challenges, Cofece relies on its strategic approach and human capital management, which will be explained in the following section, and that has resulted in the implementation and institutionalisation of the use of technology to strengthen the analysis of a constantly evolving economy. As a result of the diagnosis and establishment of objectives and goals for the 2014-2017 period, the General Directorate of Market Intelligence was created. In 2020, the General Directorate of Digital Markets was created, and Digital Markets were established as a priority sector in Cofece's the Strategic Plan 2022-2025.

5. With these institutional actions, progress is being made in adapting to technological change using different tools to strengthen analysis and monitoring capacities. This includes the adoption of specialised software and platforms that allow the efficient processing and analysis of large volumes of data.

6. In its pursuit to address recent challenges, such as increasing digitalisation and the use of data, as well as the complexity of today's markets, Cofece has a set of investigative tools and procedures that contribute to the fulfilment of its institutional objectives, including the following:

- **Advanced data analysis:** Using data analysis tools and techniques allows valuable information to be extracted from complex and extensive data sets. This facilitates the detection of patterns of anticompetitive behaviour and provides strong evidence to support investigations.
- **Collaboration with experts:** Collaboration with external experts enriches Cofece's investigative capacity. Experts provide knowledge that complements the work of the authority; as part of this collaboration, the Commission coordinates *ex-post* assessments of its actions by experts, thus ensuring objectivity in the exercise, but also drawing on external perspectives to address competition issues.<sup>1</sup>
- **Digital forensic investigation tools:** The growing importance of technology and digitalisation makes it necessary for a competition authority to have specialised tools for digital forensic investigations. This includes the ability to track and analyse data to detect possible anticompetitive practices. In this sense, Cofece's Investigative Authority has an area specialised in market monitoring and market analysis for the timely detection of dynamics that could imply anticompetitive practices.
- **Advanced economic analysis:** The application of advanced economic techniques and models makes it possible to assess the harm of anticompetitive conducts on consumer welfare, as well as to analyse the possible competitive impacts that the accumulation of market power would have. In its resolutions, the Commission

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<sup>1</sup> The document compiling the ex-post assessments is available at: <https://www.cofece.mx/what-does-mexico-gain-when-there-is-competition/>

makes use of advanced economic analysis as an essential element in its decision-making.

7. By integrating these elements into its investigations, the Commission enhances its capabilities to address current challenges and ensure competitive and efficient markets. In the search for excellence in its procedures, as well as in anticipating new contexts, the authority permanently revises its operation through self-critical exercises that provide feedback to the processes for the implementation of adjustments, if necessary. Building a strong competition authority benefits efficiency in markets, which translates into greater welfare for families.

### 3.2. Organisational Model

8. The organisational model has been key for Cofece to address the current challenges, as the implemented tools and processes are aligned to strategic actions derived from Cofece's Institutional Strategic Planning Model.<sup>2</sup> This model is composed of four components: i) Strategic approach, ii) Efficient procedures and legal certainty, iii) Human capital management, and iv) Accountability and transparency, which are described below.

9. **Strategic approach.** Cofece has a strategic approach with the objective of optimizing allocated resources, ensuring efficient and effective operation, and not losing sight of what the goal is and what is needed to achieve it. This strategic approach has three pillars:

1. *The Institutional Strategic Planning*, composed of two phases for different time horizons: long-term, that allows the effectiveness of the strategy designed to fulfil its constitutional mandate to be reviewed every four years; and short-term, which defines annual strategic actions. Long-term planning evaluates current and future needs in terms of skills and resources, which allows for the identification of priority areas where resources can be focused on acquiring the knowledge, skills, and tools necessary to meet the challenges posed by the current economic context. In the design of Cofece's Strategic Plan, diagnosis of the environment is carried out to evaluate strengths, opportunities, challenges, and areas for improvement, so that efforts are planned accordingly.
2. *The Institutional Performance Evaluation System* which is a formal, systematized, and orderly mechanism that allows for an objective evaluation of Cofece's processes at a specific time, by defining key actions and metrics to evaluate the effectiveness of its actions as competition authority. This makes easier to identify areas for improvement and optimize resources.
3. *The Monitoring and Control System* which makes it possible to anticipate situations that may undermine the fulfilment of Cofece's institutional objectives.

10. **Efficient procedures and legal certainty.** To ensure the correct enforcement of the competition law, the Commission has set the task of providing certainty on the development of its procedures through the elaboration of manuals, guides, criteria and guidelines. Such legal instruments are subject to public consultation so that they incorporate, without being binding, the concerns and comments of specialized external actors and society in general. This is done to improve the quality, technical soundness, and efficiency of Cofece's procedures, in addition to providing certainty and predictability to society and economic agents regarding their actions. In addition, the Commission has

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<sup>2</sup> The Institutional Strategic Planning Model of Cofece is available at: [https://www.cofece.mx/wp-content/uploads/2022/08/Modelo-COFECE\\_web-verEng.pdf](https://www.cofece.mx/wp-content/uploads/2022/08/Modelo-COFECE_web-verEng.pdf)

developed various administrative provisions that allow for the strengthening of its actions in the areas of human resources, budget and finance, procurement, and information and communication technologies, among others.

11. **Human capital management.** As part of the strategic actions that respond to the challenges the Commission faces, the human capital management focuses on the encouragement of professional development, as well as the acquisition of knowledge, specialisation and development of new skills for public officers. Cofece promotes it by the means of training programmes, exchange programmes, promotion schemes and work-life balance programmes.

12. In this sense, the Commission has been able to adapt to changes in the economy by equipping its human capital with the necessary knowledge and tools to address the challenges implied by the global transformation for the enforcement of competition policy, most notably the following:

- **Economic skills:** A deep understanding of economic principles and market dynamics is essential. This implies an ability to analyse the structural, behavioural and regulatory specificities of each sector, thereby generating an understanding of production and consumption dynamics.
- **Sectoral analysis:** A detailed knowledge of the specificities of each sector, as well as its impacts and linkages with the rest of the economy is crucial. This implies being aware of the national and international trends, regulations and challenges that characterise each industry.
- **Technological and digital skills and tools:** Given the increasing importance of technology and digitalisation in today's markets, experience and knowledge in technology and data analytics is essential. Professionalisation and training of competition authorities' staff allows them to address the complexities of highly digitised markets and to better assess their competitive dynamics.
- **Legal-economic knowledge:** The ability to link knowledge with economic analysis is key. Accurate interpretation of competition law gives legal certainty to market participants.
- **Understanding public policies:** Analysing the impact that regulations have on economic competition is key. This involves monitoring, analysing and issuing recommendations so that sectoral and government policies do not affect competition in markets.
- **International experience:** Given the globalised nature of many markets, collaboration and exchange of experiences between competition agencies allows for a multi-jurisdictional approach to complex cases with international impact.
- **Knowledge in matters related to economic competition:** Market access and competition not only bring benefits in terms of market efficiency but can also impact on social phenomena such as gender discrimination and environmental protection. Therefore, knowledge in related matters is essential to address cases involving these considerations.
- **Accountability and transparency.** Cofece complies with the applicable transparency and accountability regulations since its funding is provided with public resources.

## Federal Telecommunications Institute (IFT)

### 4. Introduction

13. The IFT, as a competition agency and regulator for the telecommunications and broadcasting sectors, is designed to confront the challenges that arise in terms of competition in these sectors, including the technological advances presented by the digital ecosystem. In this sense, its actions are strengthened by this dual regulatory and competitive vision, ensuring that all its actions and procedures are directed towards promoting competition and providing free market access for the benefit of users.

### 5. Resources

14. Given IFT's dual composition, it is responsible for issuing general administrative provisions, fundamental technical plans, guidelines, cost models, conformity assessment procedures, approval and certification procedures and technical regulations in the telecommunications and broadcasting sectors.

15. Likewise, IFT is responsible for publishing the regulatory provisions that are necessary for the fulfillment of its attributions as a competition agency, which include: a) imposition of sanctions; b) monopolistic practices; c) determination of substantial power for one or more economic agents; d) identification of relevant markets; e) barriers to competition and free market access; f) essential facilities, and g) disincorporation of assets, rights, equity interests or shares of economic agents.

16. Regardless of the publication of the regulatory provisions mentioned in the previous paragraph, the IFT must issue directives, guides, guidelines, and technical criteria in the following areas: a) concentrations; b) investigations; c) exemption and fine reduction benefit; d) suspension of acts constituting probable monopolistic practices or probable unlawful concentrations; e) determination and granting of bonds to suspend the application of precautionary measures; f) request for the dismissal of criminal process in the cases referred to in the Federal Criminal Code; and g) those that are necessary for the effective compliance with the competition law.

17. It is important to note that, in the process of drafting these administrative instruments, it is necessary to conduct a public consultation process to allow any interested party to provide feedback and any opinion on the respective preliminary draft.

18. Here are some examples that have facilitated the enforcement of competition law in the digital age within the telecommunications and broadcasting sectors.

#### 5.1. Guide to determine relevant market<sup>3</sup>.

19. The Institute has collaborated internationally in the development of elements and recommendations for the analysis of economic competition in digital platforms. These include: i) recognizing the significance of indirect network effects as a key economic characteristic of digital platforms. ii) understanding the importance of considering the platform's business model. iii) acknowledging the potential for simultaneous use of more

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<sup>3</sup> Approved by the IFT Plenary in November 2021. Available at: [https://autoridadinvestigadora.ift.org.mx/legislacion\\_y\\_normatividad\\_en\\_materia\\_de\\_competencia\\_economica.php](https://autoridadinvestigadora.ift.org.mx/legislacion_y_normatividad_en_materia_de_competencia_economica.php)

than one platform (multi-homing). iv) taking into account non-monetary variables such as quality in the definition of the relevant market.

20. The IFT has also analyzed digital platforms, either as relevant markets or as related markets, within in the telecommunications and broadcasting sectors.

21. The purpose of publishing the guide to determine relevant markets is: i) to offer guidance to economic agents, interested parties, and the general public regarding the criteria, elements, and tools that the IFT may consider in determining the relevant market in the analysis of competition in the telecommunications and broadcasting sectors. ii) to enhance the transparency and consistency of the criteria used by the IFT for determining the relevant market. iii) to provide economic agents with assurance regarding the exercise of the Institute's authority in economic competition and its regulatory role in the telecommunications and broadcasting sectors. The referred guide serves as a reference framework that the IFT may use for determining the relevant market in matters processed under the Federal Economic Competition Law (LFCE) or the Federal Telecommunications and Broadcasting Law (LFTR).

## 5.2. Net neutrality<sup>4</sup>

22. Digital transformation is acknowledged as a factor that brings beneficial contributions to the population. It has the potential to significantly increase productivity, aid in combating climate change, promote inclusion, and reshape institutions<sup>5</sup>. Achieving these benefits requires coordinated regulatory efforts from a comprehensive perspective that considers the entire digital ecosystem. A digital ecosystem is defined as an environment encompassing technological advancements, the telecommunications and broadcasting sectors, with the Internet as its foundation. According to the International Telecommunication Union (ITU)<sup>6</sup>, digital markets are evolving at an accelerating pace and have the capacity to invigorate all economic sectors through digital transformation.

23. From an economic view, Internet access services<sup>7</sup> meet the criteria to be categorized as a two-sided market. On one side, there are consumers of content, applications, and services, while on the other side, there are the providers of such content, applications, and services. Both groups are mutually dependent and rely on the platform (Internet) to access or offer content, applications, and services. This distinction means that the functioning of this type of market differs from a traditional one, primarily because the demand faced by the platform on each side is influenced not only by the pricing for a client but also by the critical mass on the other side of the platform<sup>8</sup>. Consequently, the success of the Internet

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<sup>4</sup> Available at: <https://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/piftext28062113.pdf>

<sup>5</sup> OCDE. (2020). Latin American Economic Outlook 2020: DIGITAL TRANSFORMATION FOR BUILDING BACK BETTER. Available at: <https://www.oecd-ilibrary.org/docserver/e6e864fben.pdf?expires=1623192142&id=id&accname=guest&checksum=58841707DCE946D96D87B53AA661E7FF>

<sup>6</sup> International Telecommunication Union. News. Digital regulation: 7 ways to move the cursor. Available at: <https://www.itu.int/es/myitu/News/2021/02/15/10/44/Digital-regulation-7-ways-to-move-the-cursor>

<sup>7</sup> Economides, N. & Tag, J. (2012). Network neutrality on the Internet: A two-sided market analysis. *Information Economics and Policy*, 91-104.

<sup>8</sup> D.Evans & R. Schmalensee. (2014). The Antitrust Analysis of Multisided Platform Businesses. *The Oxford Handbook of International Antitrust Economics*, Volume 1.

joints on the fact that users on one side find value in the Internet platform to the extent that they find value on the other side of the platform (indirect network externality).

24. In this context, Internet access presents various regulatory challenges concerning user protection, availability of content, applications, and services, as well as the quality of services delivered through the telecommunications network, and conditions of access to such services, among other factors.

25. Regarding the above, the IFT issued the Guidelines for Traffic Management and Network Administration to be followed by concessionaires and authorized providers of Internet access service (Guidelines)<sup>9</sup>.

26. The Guidelines aim to achieve the following objectives: i) ensure that end users have the freedom to make decisions regarding the content, applications, and services they access through their Internet service. This includes understanding how their traffic is managed and how the network is administered. ii) provide legal clarity to the industry regarding net neutrality by offering clear guidelines on acceptable traffic management and network administration policies, as well as the services and offers they can provide to end-users and public administration and civil society. iii) foster innovation within the sector by encouraging the use of more efficient network technologies. iv) promote efforts to reduce the digital divide through commercial offerings with specific objectives. v) create conditions conducive to competition and free market access. vi) encourage investments in networks to provide both fixed and mobile Internet access with higher quality and broader coverage.

27. While there is a legitimate technical need for Internet Service Providers (ISPs) to implement mechanisms enabling them to manage traffic and administer their networks, separating this use from technical criteria can have adverse effects on the digital ecosystem. Hence, the core issue revolves around defining the boundaries of how ISPs can employ various traffic management and network administration policies in their networks. This is to ensure the contracted service's quality, capacity, and speed for the end user. Simultaneously, it safeguards users' right to an open Internet, protects users, networks, and communications, and fosters conditions for the sustained development of infrastructure and content, applications, and services. This must be done in a manner that doesn't constitute a practice counter to fair competition and free market access.

28. While ISPs have the authority to implement traffic management and network administration policies, it is imperative to institute additional safeguards concerning the offerings of Internet access service to end-users. This is crucial to ensure that end-users have unimpeded access to content, applications and/or services, and to prevent any detrimental impact on competition and free market access.

29. Therefore, the Guidelines reasonably and proportionally include the following provisions for Internet access service offerings:

- Ensure that end users, within the framework of an open Internet, have the freedom to choose and access content, applications, and services available on the Internet.
- Offers involving data exchanges that provide restricted access to specific content, applications, or services, without constituting additions to the subscribed Internet access service plan or package, should only be permitted if they are associated with and limited to the duration of the plan or package of the Internet access service.

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<sup>9</sup> The content of the Guidelines is available at: <https://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdolina/piftext28062113.pdf>



- Enforce a non-discriminatory treatment for content, applications, and services accessible on the Internet. This entails prohibiting any preferential treatment, such as allocating specific attributes and network resources, to any particular content, application, or service in comparison to others. This also extends to the application of fair use policies or equivalent measures, which must be applied uniformly to any subset of traffic.

## 6. Investigative tools and processes

30. Investigations into potential anticompetitive behavior are carried out by the IFT's Investigative Authority. This entity possesses both technical and managerial autonomy to make determinations regarding its operations and decisions. Furthermore, upon conclusion of the investigative phase, if relevant, the Investigative Authority participates in the subsequent proceedings in the form of a trial.

### 6.1. Investigative Authority's Electronic System<sup>10</sup>

31. The Investigative Authority is the entity within the Institute tasked with conducting investigations in accordance with the LFCE, as well as the Ninth Transitory Article of the Decree issuing the LFTR, and the Public Broadcasting System of the Mexican State Law<sup>11</sup>. It also has the authority to process procedures related to exemption or reduction of fines. Furthermore, the Investigative Authority is responsible for overseeing the general orientation procedure concerning matters of free market access and competition, within the scope of its responsibilities. Additionally, it handles incidents falling under its jurisdiction in accordance with the LFCE and the Regulatory Provisions.

32. On this regard, the IFT published the Guidelines for Processing Investigations, Procedures, and Proceedings by the Investigative Authority of the Federal Telecommunications Institute through Electronic Means (Electronic Investigations Guidelines). The Electronic Investigations Guidelines stipulate the implementation of an electronic system that enables the conducting of investigations, procedures, and proceedings by the IFT's Investigative Authority utilizing information and communications technologies. Therefore, the objectives of the Electronic Investigations Guidelines are to establish the relevant provisions governing the conducting of investigations, procedures, and proceedings by the Institute's Investigative Authority through electronic channels.

33. According to these Electronic Investigations Guidelines, the Investigative Authority shall conduct the following investigations, procedures, and proceedings through electronic means:

1. processing of complaints related to monopolistic practices and unlawful concentrations,

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<sup>10</sup> The content of the Electronic Investigations Guidelines is available at: <https://www.ift.org.mx/sites/default/files/contenidogeneral/autoridad-investigadora/lineamientosmediosElectronicospift031121596va.pdf>

<sup>11</sup> As long as there is a preponderant economic agent in the telecommunications and in the broadcasting sectors, in order to promote competition and develop viable competitors in the long term, concentrations between economic agents holding concessions, as well as the transfers of concessions and changes of control resulting from these, will not require authorization from the IFT if they meet the legal requirements.

2. investigations pertaining to monopolistic practices and unlawful concentrations,
3. investigations aimed at determining the presence of essential facilities or barriers to competition and free market access,
4. processing of requests for investigation intended to address issues related to effective competition, the existence of substantial power, or other similar terms,
5. investigations intended to address issues related to effective competition, the existence of substantial power, or other similar terms,
6. investigations pursuant to the Ninth Transitory Article of the "Decree issuing the Federal Telecommunications and Broadcasting Law, and the Public Broadcasting System of the Mexican State Law; and reform, add and repeal various provisions on telecommunications and broadcasting", published in the Federal Official Gazette on July 14, 2014<sup>12</sup>,
7. procedure for exemption or reduction of the amount of fines,
8. general orientation procedure in matters of free market access and competition before the IFT's Investigative Authority, and
9. incidents whose processing falls under the responsibility of the IFT's Investigative Authority in accordance with the LFCE and the Regulatory Provisions.

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<sup>12</sup> IFT will investigate such concentrations within a period not exceeding 90 days. In the event that it finds substantial market power in the telecommunications networks providing voice, data, or video services, or in the radio and television sector as applicable, it may impose the necessary measures to protect and promote free competition and free market access in said market, in accordance with the provisions of the Federal Telecommunications and Broadcasting Law and the Federal Economic Competition Law, without prejudice to the concentrations between economic agents holding concessions, as well as the transfers of concessions and changes of control resulting from these.