

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

**Cancels & replaces the same document of 2 June 2017.**

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

-- 2016 --

**21-23 June 2017**

*This report is submitted by Mexico to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.*

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*Report by Federal Economic Competition Commission  
(COFECE)  
Annual Report on Competition Policy Developments in  
Mexico*

## **Executive Summary**

1. After having established in the last two years the institutional foundations governing the work of the authority, 2016 provided very positive results in terms of advancing COFECE's constitutional mandate. In enforcement, there was a significant increase in the number of investigative procedures initiated and concluded. In terms of advocacy, the Commission has a growing incidence in the design of pro-competitive regulatory frameworks. As a result, a growing culture of competition is beginning to take shape among various sectors of society.
2. The year 2017 is presented as an opportunity to consolidate what the Commission has invested over its three years of existence as an autonomous government agency, as many of the investigations initiated in 2015 and 2016 will come to an end.

## **1. Changes to competition law and policies**

### **1.1. New guidelines and technical criteria**

3. In February 2016, COFECE updated the existing Regulatory Provisions in the following areas: fees to notify a merger; deadlines for issuing opinions and resolutions granting government concessions when sector laws require COFECE's opinion; failure to notify a concentration; rules to verify compliance with the obligation to notify a merger; and terms to notify of a Preliminary Statement Opinion.

## **2. Enforcement of competition law and policies: actions against anticompetitive practices**

4. In 2016, the Commission conducted 34 investigations, some concluded (11), others continue. In cartel investigations, COFECE sanctioned colluding economic agents in the automobile sector (international cartel in the market of air conditioning compressors); maritime transport (fixing prices and market allocation in the state of Quintana Roo); and sugar market (price fixing). COFECE also sanctioned the International Airport of Mexico City (AICM) for engaging in discriminatory practices in the market of taxi services operating at the airport.
5. COFECE is intervening in sectors that substantially impact the most impoverished households. In the pharmaceutical market, the authority resolved to initiate a market study on competition conditions in the market of off-patent drugs, considering that lower income households spend around 42% of their overall healthcare expenditure in medicines. COFECE's efforts in this market also include the issue of a statement of objection (and the initiation of a trial-like procedure) for possible bid rigging in the

market for medical latex gloves and the imposition of structural remedies in a merger review between two global pharmaceuticals.

6. The Commission also issued two preliminary rulings on essential inputs and barriers to competition in the transportation sector: on slot allocation in Mexico's major airport hub and freight transportation in the State of Sinaloa, Mexico's leading producer of export agro-products.

## 2.1. Enforcement statistics: anticompetitive practices

7. During 2016, COFECE received 41 complaints on anticompetitive practices and other restrictions to competition, 5 of which led to new investigations (cartels and abuse of dominance).

ANTICOMPETITIVE PRACTICES AND OTHER RESTRICTIONS TO COMPETITION 2016					
Complaints					
	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
Received in 2016	12	12	8	9	41
Pending from 2015		-	-	-	5
Analysis concluded	14	5	13	7	39
Leading to investigations	4	1	0	0	5
Dismissed	10	4	13	7	34
Investigations					
Initiated in 2016	4	2	2	2	10
Pending from 2015	-	-	-	-	24
Concluded investigations	4	2	1	4	11
No evidence of anticompetitive practice	0	1	0	1	2
Notification of probable responsibility	4	1	1	2	8
Early closure with commitments	0	0	0	1	1
Trial-like procedures					
Statement of probable responsibility issued	4	1	1	2	8
Trial-like procedures concluded	0	1	2	2	5
Sanctions imposed	0	1	2	1	4
Closed without liability	0	0	0	1	1

Source: COFECE. Fourth Quarterly Report 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucional>

**BARRIERS TO COMPETITION AND ESSENTIAL FACILITIES 2016**

<b>Investigations</b>						
	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	2016	
Admitted	1	0	0	1	2	
Concluded	1	0	1	0	2	
Statement of Probable Responsibility issued	1	0	1	0	2	
Closed: no evidence found	0	0	0	0	0	
<b>Phase II</b>						
Phase II proceedings pending from the previous period	0	1	1	2	na	
Statement of Probable Responsibility issued	1	0	1	0	2	
Phase II proceedings concluded	0	0	0	0	0	
Pending for the next period	1	1	2	2	na	
<b>Statements of substantial market power and opinions on the existence of effective competition</b>						
Admitted	0	1	0	0	1	
Concluded	1	0	0	0	1	
Pending for the next period	0	1	1	1	na	

Source: COFECE. Fourth Quarterly Report 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucional>

**FINES IMPOSED 2016 (Mexican pesos)**

	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
Total value	508,414.88	131,538,556.09	67,806,704.08	51,571,583.88	251,425,258.93
Enforcement measures	508,414.88	5,845,789.03	4,716,704.08	2,173,863.88	13,244,771.87
Sanctions for breaching the Law	0	125,692,767.06	63,090,000.00	49,397,720.00	238,180,487.06

Source: COFECE. Quarterly Reports 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucional> MXN 18.6774 = USD 1

**2.1.1. Antitrust cases in the courts**

8. In 2016, the Judiciary confirmed 77% of COFECE's proceedings (34 out of 44 cases). Relevant judicial criteria were created from some of these rulings.

**AMPARO JUDGEMENTS**

	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
Received	4	12	17	11	44
Dismissed	0	0	0	3	3
Resolved by the Judiciary	8	14	13	9	44
Amparos dismissed	2	2	4	1	9
Amparos denied	5	6	7	7	25
Amparos granted	1	6	2	1	10

Source: COFECE. Fourth Quarterly Report 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucional>

9. For example, the Specialized Courts ruled that there is no need to prove the formal and legal relationship between the legal person (company) and the natural person (such as the company's directors and officers) to establish the liability of a natural person who commits absolute monopolistic practices on behalf of the company. Thus, the

competition authority does not need to prove the “business relationship” to impose a sanction.

## 2.2. Significant enforcement actions

### 2.2.1. Sanction for manipulating prices and restricting the supply of sugar at national level.

10. The Commission sanctioned seven companies, 10 individuals and the National Chamber of Sugar and Alcohol Industries (CNIAA for its acronym in Spanish) with a fine of 88.88 million Mexican Pesos<sup>1</sup> (approx. USD 4.7 million) for committing absolute monopolistic practices during 42 days between October and December 2013. The sanctioned economic agents agreed to manipulate sugar prices and restricted sale to wholesalers and suppliers, leading to an increase in prices of approximately 6.2 percent and a market damage of 106 million Mexican pesos (USD 5.6 million). Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Asuntos%20Juridicos/V162/1/3530816.pdf>

### 2.2.2. Withdrawal of immunity and sanction to international cartelists in the market of compressors for air conditioners.

11. The Commission fined *Mitsubishi Heavy Industries* and *Denso Corporation* for 72 million Mexican pesos (USD 3.8 million) for their participation in an absolute monopolistic practice. Both economic agents participated in a private tender issued by *General Motors* for the purchase of air conditioning compressors for automobiles. During this process, *MHI* and *Denso* held several meetings and exchanged sensitive commercial information to manipulate the prices of compressors, instead of participating independently as competitors. The sanctioned agents were part of an international cartel. In this case, due to a lack of full cooperation with the Commission, COFECE decided to remove the Leniency Program benefits granted to one applicant. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Asuntos%20Juridicos/V164/1/3547846.pdf>

### 2.2.3. Sanction for fixing prices and allocating the market in maritime transportation services in the State of Quintana Roo.

12. In November, COFECE sanctioned the companies Golfo Transportación, Naviera Ocean GM and Naviera Magna, and three individuals who acted on behalf of these companies, with fines exceeding 45 million Mexican pesos (USD 2.4 million) for committing absolute monopolistic practices in the maritime transportation services industry in the state of Quintana Roo. COFECE found that the economic agents had colluded to fix prices and allocate markets through the coordination of their schedules to provide their services between Playa del Carmen and Cozumel. Between September 2013 and November 2015, the prices of the services differed by one Mexican peso, and their schedules were coordinated so that vessels departed on different days and times. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Asuntos%20Juridicos/V174/0/3661018.pdf>

<sup>1</sup> The exchange rate used is MXN 18.6774 = USD 1, as published in the Mexican Federal Official Journal.

#### ***2.2.4. COFECE fined Mexico City's International Airport for relative monopolistic practices in the market of taxi services operating at the airport.***

13. Mexico City's International Airport (AICM) has substantial market power as it is the sole entity that can authorize access to federal parking zones provided to taxi services departing from the airport. COFECE found that the AICM was establishing different requirements to access the facilities provided to taxi services, which included discriminatory clauses in contracts between groups and concessionaires already established in the AICM, thus preventing market entry to new competitors. AICM was fined with 63 million Mexican pesos for "discriminatory dealing" and was ordered to suppress the anticompetitive terms in its contracts. COFECE must revise tenders of new contracts to access federal zones at the AICM needed to provide taxi services. The AICM's Manual for the Commercialization of Airport Services must also be modified. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Asuntos%20Juridicos/V167/3/3575352.pdf>

#### ***2.2.5. Commitments in the market for oil products.***

14. In September, for the first time in its existence, COFECE made use of its power to exempt or reduce a fine for relative monopolistic practices or unlawful concentrations, when the offenders offer commitments to restore competition.<sup>2</sup> In 2015, the state-owned oil company *Pemex Transformación Industrial* (Pemex TRI) was denounced for applying different supply and first-hand sales terms to similar distributors. However, before the Statement of Probable Responsibility was issued, the company requested immunity from fines. The company offered commitments to restore competition in the markets for commercialization and distribution of special marine diesel and liquefied petroleum gas, gasoline, jet fuel, diesel, fuel oil and intermediate fuel oil. These commitments included: i) no granting of benefits on discretionary basis to buyers of oil products and ii) no suspending first-hand sales to contractual users, among others. Thus, COFECE decided to close the investigation. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/INVESTIGACIONES/V1718/1/3650672.pdf>

#### ***2.2.6. Statement of Probable Responsibility for possible absolute monopolistic practices in the market of pension funds administration services (AFORES).***

15. In 2016, COFECE issued a Statement of Probable Responsibility for possible absolute monopolistic practices in the market of pension funds administration services. According to the investigation, the economic agents had entered into agreements to reduce transfers between Afores (Retirement Funds Administrators), which could reduce competition between the companies competing for workers' preference.

16. In a second phase, during 2016 and part of 2017 the case continued as a trial-like procedure in which economic agents had the right to argue in their favor and submit evidence related to the allegations presented against them. Defense arguments were heard and allegations were brought forth. In May 2017, COFECE's Board of Commissioners ruled that several companies and individuals were responsible of manipulating the market of pension funds administration services. Fines totaled 1,100 million Mexican pesos (USD 58.8 million).<sup>3</sup>

<sup>2</sup> Established in article 100 of the Federal Economic Competition Law.

<sup>3</sup> Public version of the final resolution is not yet available.



***2.2.7. Statement of Probable Responsibility for bid-rigging in the market of medical-grade latex gloves purchased by public health institutions.***

17. Several economic agents were notified of a Statement of Probable Responsibility for their alleged bid-rigging in the market of production, distribution and commercialization of latex gloves for surgery and examination purchased by Mexican public health institutions. The trial-like procedure is still in process.

***2.2.8. Issuance of the Preliminary Investigative Opinion on essential facilities and barriers to entry in slot allocation at the AICM.***

18. The Investigative Authority of COFECE issued a Preliminary Investigative Opinion on essential facilities, barriers to entry and allocation of slots at Mexico City's International Airport (AICM). The investigation found that the allocation, evaluation, and monitoring procedures of takeoff and landing schedules at the AICM has anticompetitive effects on air transport services. These inefficiencies affect the entry of new national and international airlines providing flights from to Mexico City, low industry growth, high prices and little innovation on routes. The opinion outlines corrective measures that may help eliminate the restrictions to access the essential facility. More information (in Spanish):

<https://www.cofece.mx/cofece/index.php/prensa/historico-de-noticias/dictamen-preliminar-sobre-investigacion-a-insumos-esenciales-en-el-mercado-de-la-provision-de-los-servicios-de-transporte-aereo-que-utilizan-el-aeropuerto-internacional-de-la-ciudad-de-mexico-para-sus-procedimientos-de-aterrizaje-y-despegue>

***2.2.9. Issuance of the Preliminary Investigative Opinion on barriers to entry in the freight transport services market in the state of Sinaloa.***

19. COFECE's Investigative Authority issued a Preliminary Investigative Opinion on essential facilities and barriers to entry in the market for freight transport services in the state of Sinaloa. The Authority found that the regulations had anticompetitive effects in the provision of services and hindered the potential growth of the State of Sinaloa. The provisions of the regulatory framework led to: i) low quality; an obsolete and expensive fleet (35 years old on average, 18 years more than the national average) ii) high maintenance costs; iii) excessive concentration of permits on a few transporters (in 11 out of 18 municipalities of the state only one only one concessionaire concentrates 50% of the permits for freight transport of both agricultural products and building materials and iv) 40% greater costs of service. To remove barriers to competition that hinder the efficient functioning of the investigated market, the opinion provides a set of corrective measures to allow market entry by new competitors, increase competitive pressure through self-supply and liberalize transport services' fees. Preliminary Investigative Opinion (in Spanish): <https://www.cofece.mx/cofece/images/AI/17-08-16-DICTAMEN-TRANSPORTE-SINALOA.pdf>

***2.2.10. Initiation of investigation in the market for the production, distribution and commercialization of medicines.***

20. In 2016, COFECE's Investigative Authority initiated an investigation of the market for the production, distribution and commercialization of medicines to determine the existence of absolute monopolistic practices. This market is a priority for COFECE because it includes essential products of widespread consumption for 120 million Mexicans. Between 2010 and May 2016, the consumer price index for medicines was 10.4% higher than the national consumer price Index. In addition, in 2014, the lowest

income households dedicated 42% of their spending on health care to buy medicines. Initiation decision (in Spanish), file IO-001-2016: <https://www.cofece.mx/cofece/index.php/cofece/autoridad-investigadora/publicaciones-de-la-autoridad-investigadora>

### 3. Enforcement of competition law and policies: mergers and concentrations

21. Merger review remains among COFECE's priorities. Applicable thresholds provide for three multidimensional criteria under which the notification of a merger is compulsory: financial value of the transaction, control over an economic agent of a certain size or financial importance, and financial value and participation of agents with a certain financial size or importance.

#### 3.1. Enforcement statistics: mergers

22. During 2016, the Commission authorized 134 mergers, including two mergers that were approved subject to conditions: *Delta-Aeromexico* and *Sanofi-Boehringer*.

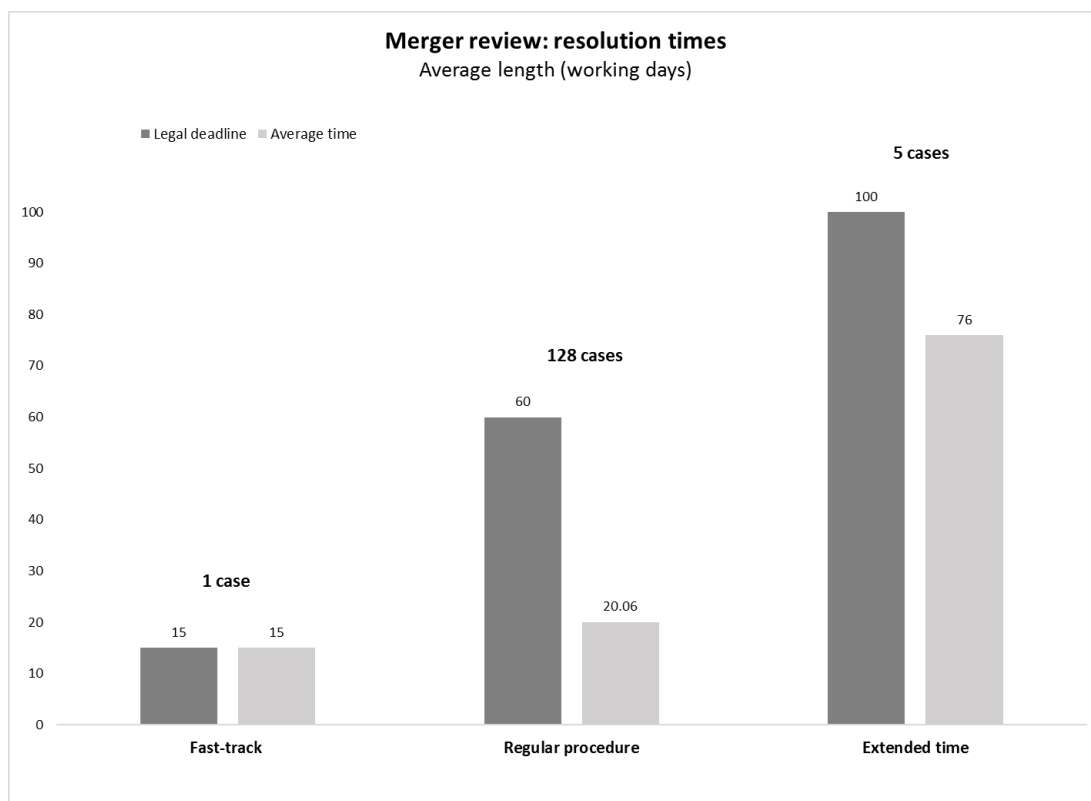
MERGERS 2016					
	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
Received in 2016	31	41	34	43	149
Analysis concluded	33	35	31	39	138
Authorized	32	33	29	38	132
Subject to conditions	0	1	0	1	2
Rejected	0	0	0	0	0
Other	1	1	2	0	4
Pending for next period	22	28	31	35	Na

Source: COFECE. Fourth Quarterly Report 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucional>

MERGERS2016					
Value of transactions(million Mexican pesos)a					
	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
Total value	131,438.92	180,741.77	107,583.01	693,196.49	1,112,960.19
Mergers	32	34	29	39	134
National scope	88,926.00	85,088.84	73,344.43	348,411.25	595,770.52
Number of mergers	19	12	15	27	73
International scope	42,512.92	95,652.93	34,238.58	344,785.24	517,189.67
Number of mergers	13	22	14	12	61

Source: COFECE. Quarterly Reports 2016. Available at: <https://www.cofece.mx/cofece/index.php/planeacion-y-evaluacion-del-desempeno-institucionalaMXN> 18.6774 = USD 1

23. In 95.5% of the mergers reviewed by COFECE (128 cases) in 2016, resolutions were issued in an average time of 20.06 working days, almost 40 days below the legal deadline (60 working days). Five mergers required an in-depth review and took COFECE 76 days to issue a decision; the legal deadline provided by the FECL is 100 working days.



## 3.2. Significant cases: mergers

### 3.2.1. Merger between Aeromexico and Delta Air Lines subject to conditions

24. In 2016, the Commission challenged the concentration between *Aeromexico* and *Delta Airlines*. If approved in its original terms, this transaction could have substantially reduced competition in the market of passenger air transportation between Mexico and the United States in both direct and connecting routes. The Commission found that a cooperation agreement between both economic agents to jointly operate their flights between Mexico and the US could reduce competitive pressure on cross-border flights, since *Delta* disciplines *Aeromexico's* prices and because there is a limit to the expansion of competitors since Mexico City Airport (AICM) is completely saturated. Therefore, the Commission imposed several conditions on the airlines, that included the surrender of a number of slots at the AICM, equivalent to the ones used by *Delta* in 2015. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V5325/0/3648710.pdf>

### 3.2.2. Merger between Boehringer Ingelheim International consumer healthcare division and Sanofi Aventis

25. The Commission had concerns that the merger, in its original form, could harm competition in the market for over-the-counter (OTC) cough medicines. As presented, the Commission considered that the transaction would have the following effects in the consumer healthcare business: i) *Sanofi* would lose competitive pressure from its closest competitor, *Boehringer*, in the market for OTC cough medicines in Mexico. This competitive pressure disciplines prices of medicines; and that ii) *Sanofi* would increase

the gap between itself and its competitors in terms of market share, which would allow the company to strengthen its leadership in this market. To ensure that *Sanofi* keeps the competitive pressure in the market of over-the-counter cough medicines, as well as to maintain the current competition conditions in the Mexican market, COFECE rendered the authorization of the mergers dependent on the companies' acceptance of the conditions imposed, including that Sanofi cannot acquire the brands *Bisolvon*, *Mucosolvan* and *Sekretovit*, which are sold in the Mexican market by *Boehringer*. Final resolution (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V5391/1/3683630.pdf>

## 4. The role of COFECE in the formulation and implementation of other public policies

### 4.1. Energy sector

26. In 2016, COFECE issued several opinions containing recommendations to sector regulators and relevant authorities from all levels of government, to promote competition in the markets of gasoline and diesel. Such recommendations range from the terms of contract models for fuel service stations; gasoline and diesel import permits; standards on the design, operation and maintenance of service stations; local regulations for the construction of service stations; and criterias that may be useful during the process of defining the timing of price liberalization.

27. The Commission published the document “Transition to competitive retail gasoline and diesel markets” with 26 recommendations on the adoption of regulatory and public policy measures, ranging from the price system, quality standards and infrastructure to retail in the process of liberalizing these markets. This document has proven to be very influential and has hastened public decisions by different public actors. Full document (in English): <https://www.cofece.mx/cofece/ingles/attachments/article/38/DOCUMENTO-GASOLINAS-FINAL-INGLES.pdf>

28. COFECE also issued other documents with recommendations to promote competition in the markets of gasoline and diesel, such as:

- Recommendations to accelerate gasoline and diesel imports into the country and advance availability of alternative sources of supply and reduce PEMEX dominance. Full document (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Mercados%20Regulados/V9/1/2429105.pdf>
- General principles and criteria for the pricing liberalization schedule (for gasoline and diesel) to be established by the Federal Energy Commission for 2017-2018. Full document (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Opiniones/V14/1/3662827.pdf>
- Recommendations on the applicable rules for the construction and operation of gasoline service stations at the local level. Full document (in Spanish): <http://www.cofece.mx:8080/cfcresoluciones/docs/Opiniones/V2/3/3464136.pdf>
- Recommendations to promote pro-competitive supply and franchise contracts signed between PEMEX and retailers to increase independent commercialization models and higher mobility of retailers. Full document: <http://www.cofece.mx:8080/cfcresoluciones/docs/Mercados%20Regulados/V9/1/2312874.pdf>

## 4.2. Other relevant opinions issued by COFECE

29. Throughout 2016, COFECE issued eight opinions concerning different economic sectors including energy, professional services, the agri-food industry and ground transportation.

30. For example, on February 2016, COFECE issued an opinion regarding a proposal in Congress to modify the Constitution with the objective of establishing higher entry requirements to legal professionals. COFECE recommended, among others, to eliminate compulsory membership to a bar or any other entry requirement not duly supported by a public purpose. The Mexican Congress abandoned the proposal. Full document: <http://www.cofece.mx:8080/cfcresoluciones/docs/Mercados%20Regulados/V9/1/2415052.pdf>

## 4.3. Other advocacy activities

31. COFECE has made great efforts to create greater awareness about competition benefits, trying to reach all different sectors of society. In 2016, these efforts included (1) establishing an award to encourage entrepreneurs and small enterprises to identify unjustified regulatory obstacles or barriers to open a business or compete in a market; (2) publishing an interactive story for children; (3) launching an award to the best poster illustrating the concept of collusion; and (4) inviting recent graduates and students to submit research work addressing the functioning of markets.

32. As mentioned, an interactive story for children named “Pan Rico en Pueblo Nuevo” (Tasty Bread in New Town) was launched, aiming at promoting competition culture from an early age and to communicate its benefits in a simple way. Story (in Spanish): <https://www.cofece.mx/cofece/index.php/promocion/cuento-interactivo>

33. As previously mentioned, COFECE established an award and invited graphic designers to design a poster illustrating the concept of collusion. The purpose of this award is to promote the principles and benefits of competition among a broad segment of the Mexican population, and to offer designers, artists and communicators a chance to contribute in the promotion of public policies. Press release (in Spanish): <https://www.cofece.mx/cofece/index.php/prensa/historico-de-noticias/anuncian-ganadores-del-premio-cofece-en-comunicacion-visual-2016>

34. COFECE was also the host of two important international competition events: the OECD’s Latin American and Caribbean Competition Forum and the ICN’s Advocacy Workshop.

## 5. COFECE resources

### 5.1. Budget

35. For 2016, the annual budget was 478,057,464 Mexican pesos (approximately USD 25.59 million), 0.1 percent lower than the previous year.<sup>4</sup>

<sup>4</sup> In 2015, the annual budget was 478,332,005 Mexican pesos (approx. USD 30.14 million). Taking into consideration the depreciation of the peso against the dollar, and comparing both figures, the 2016 budget was 15.1% lower than the budget assigned for 2015.

## 5.2. Number of employees

36. In 2016, the Commission employed 375 people, of which 211 people are non-administrative staff that worked on competition enforcement, while 39 worked in competition advocacy.

37. Of the 250 non-administrative staff, 112 are lawyers, 97 are economists and 41 come from other professions (engineers, political scientists and foreign affairs specialist among others).

38. The information provided covers the period 1 January to 31 December 2016.

## 5.3. Other

39. In 2016, COFECE received the gender equity certification by EDGE Certified Foundation, which recognizes institutions that proactively work to create an optimal workplace with equal opportunities for men and women. EDGE is the leading global assessment methodology and business certification standard for gender equality. This initiative was launched at the World Economic Forum in 2011 to reduce gender gaps worldwide.

## *Annual Report on Competition Policy 2016* *Federal Telecommunications Institute (IFT)*

### Executive Summary

40. In 2016, the Federal Telecommunications Institute (IFT) issued a non-binding technical criterion to estimate the Herfindahl-Hirschman index (HHI) and the thresholds that would serve as reference to assess if a market concentration poses risks to competition in a given market of the telecommunications or broadcasting sectors.

41. Along the year, the IFT carried out two public auctions to increase the supply of radio electric spectrum for telecommunications and broadcasting services, whose design and implementation embedded measures to promote competition in both the proceeding and in the markets. Public auctions were called to allocate up to 80 MHz of spectrum in the AWS band, and 157 AM and FM radio stations.

42. The IFT also collaborated with the Ministry of Communications and Transportation (SCT) to carry out a public auction aimed to award a private public partnership contract to deploy the Public and Shared Telecommunications Network (*Red Compartida*), designed to provide exclusively wholesale telecommunication services with national coverage. In this process, the IFT issued opinions and resolutions in competition and regulatory matters about the auction and potential bidders, which were taken into consideration by the SCT.

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

#### 6.1. Summary of new legal provisions of competition law and related legislation, proposed or adopted

43. Technical criterion to calculate the HHI and threshold references to assess the level of concentration in the markets that belong to the telecommunications and broadcasting sectors

44. On April 11<sup>th</sup> 2016, the IFT issued a non-binding technical criterion that sets the methodology to estimate the Herfindahl Hirschmann Index and to establish the thresholds that serve as reference to identify whether a merger or acquisition poses a risk to competition in a given market of the telecommunications or broadcasting sectors.

45. The thresholds are set when any of the next conditions is met following a transaction:

46. a)  $IHH \leq 2,000$  points; b)  $2,000 < IHH \leq 3,000$  and  $\Delta IHH \leq 150$  points or; c)  $IHH > 3,000$  and  $\Delta IHH \leq 100$  points.

47. A transaction may also be considered to represent a risk to competition if:

1. The resulting economic agent reaches a market share higher than 35%;
2. The acquired economic agent is a “maverick” (a disruptive competitor that may discipline prices in the market based in its ability and incentives to expand rapidly):

3. One or more of the economic agents involved in the transaction has participated during the previous 5 years in transactions in the same market that jointly do not meet any of the above said conditions.

48. The IFT will use the IHH as a quantitative measure of market concentration in mergers and acquisitions that are processed under the Federal Law of Economic Competition (LFCE, for its acronym in Spanish) and the Federal Law of Telecommunications and Broadcasting (LFTR, for its acronym in Spanish).

## 7. Enforcement of competition laws and policies

### 7.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

#### 7.1.1. Summary of activities

##### *Investigative Authority*

49. During 2016 the Investigative Authority (IA) processed ten cases. Five of them were initiated in 2016 and five in 2015 or prior. Two cases regarded prohibited mergers, seven were about unilateral behavior (abuse of dominance) and five were market investigations (substantial market power inquiries).

50. In three of such cases a statement of objections was issued in order to proceed against the suspected offenders, and three preliminary reports found the existence of substantial market power in order to proceed to further stages of inquiry. The rest of cases is still under investigation.

##### *Economic Competition Unit*

51. During 2016 the IFT brought one trial-like procedure to close, which regarded anticompetitive practices without sanctions, and issued a resolution that imposed obligations to economic agents that in 2015 were found liable to participate in a cartel to segment the provision of Pay TV services.

Economic Agents	Practice	Main affected market	Decision
Radiomóvil Dipsa, S.A. de C.V. (Telcel)	Since 2007, setting the mobile termination at rates higher than those it charged to its final customers for end-to-end on-net mobile calls.	Relevant market: termination in Telcel's own network. Related market: Mobile telephony services to the end user.	The process was closed without imposing sanctions.
Cablevisión, S.A. de C.V. (Cablevisión) and Mega Cable, S.A. de C.V. (Megacable)	Market segmentation by geographical area through a joint marketing agreement.	Fixed telephony, internet and Pay TV services in the segmented geographical markets.	To set the specific terms of the steps the agents shall take to suppress the practice.



### *7.1.2. Description of significant cases, including those with international implications*

#### *Investigative Authority*

##### *Abuse of Dominance Investigations*

52. In strict compliance with a judgement of the Federal Judiciary Power, an investigation was initiated, regarding alleged unilateral conducts consistent of a refusal to deal, setting conditions to purchases or discounts, and raising rival costs, in the markets of distribution and merchandising of credit score for mobile telephone services in all the country.

53. An investigation of one alleged unilateral conduct consistent of raising rival costs in the market of Pay TV service in certain locations of the State of Sinaloa was conducted.

54. The IA also undertook the investigation of the alleged unilateral conducts consistent of predatory pricing, cross-subsidization, price discrimination, and raising rival costs in the markets of merchandising of telecommunications services, marketing, and provision of Internet service in the country; and the acquisition, distribution and merchandising of contents transmitted in the country by Internet and Pay TV. A statement of objections was issued to certain investigated economic agents.

55. An investigation was initiated regarding an alleged unilateral conduct consistent of a refusal to deal, boycott, price discrimination, and raising rival costs in the market of sales of advertisement on public television broadcasting.

56. The IA undertook an investigation of the alleged unilateral conduct consistent of the refusal to deal, raising rival costs, and the refusal to deal an essential facility in the markets of interconnection services, access to broadband Internet services, direct enterprise Internet, access and use of shared passive and/or active infrastructure, and dark fibre, all of them nationwide.

57. The IA initiated ex officio an investigation of a unilateral conduct consistent of tied sales, exclusionary practices, predatory pricing and rising rival costs, in the market of sales of advertisement on public television broadcasting and cable or satellite television in all the country.

58. An investigation was started of the alleged unilateral conduct consistent of predatory pricing, price discrimination, raising rival costs, and margin squeeze in the market of the production, distribution and commercialization of the sale of public telephone services to the final user through public telephone devices in all the country.

59. In strict compliance with a judgement of the Federal Judicial Branch, the IA issued a statement of charges against certain economic agents investigated for the probable conduct of unilaterally refusing to sell advertising space on broadcast television to another economic agent.

#### *Market Investigations (Substantial Market Power inquiries)*

60. A market investigation was initiated on June 28, 2016, in order to assess the probable existence of undertakings with substantial market power in the markets of telecommunication networks providing voice, data or video services, at national, state, regional and/or local level; filed with number AI/DC-002-2016. This procedure was

carried out pursuant to transitory article 9th of the FTBL, as a result of the merger between Alestra S. de R.L. de C.V. and Axtel, S.A.B. de C.V., and their subsidiaries. The investigation stage finished on September 14, 2016. The IA issued the preliminary statement on October 25, 2016 and concluded that there was no evidence to suggest that, as a result of the merger, the entity formed by the above-mentioned companies had acquired substantial market power in the relevant markets. IFT's Board of Commissioners decided to close the file on the same date.

### *Economic Competition Unit*

#### Complaint of margin squeeze against Radiomóvil Dipsa, S.A. de C.V. (Telcel) in the mobile termination services

61. On March 17, 2016 the IFT resolved that Telcel, the largest mobile operator in Mexico, could not be prosecuted and sanctioned for an alleged margin squeeze in the provision of voice services.

62. Telcel was subjected to an investigation in which it offered remedies aimed to address the competition concerns identified by the Federal Competition Commission (Cofeco, for its acronym in Spanish), now extinct. In 2012, Cofeco resolved to accept the proposed remedies and consequently the case was concluded and Telcel was bound to comply with the remedies.

63. During the investigation, another firm filed a complaint for the same alleged conducts. Following the LFCE, Cofeco dismissed this complaint. However, in 2015 the IFT had to reopen this case in compliance of a judiciary order to preserve the complainants' right of audience. Once the complainants' participation in the markets and their arguments were assessed, the IFT ordered to close the case based on the principle of *non bis in idem*.

#### Remedies imposed to Cablevisión, S.A. de C.V. (Cablevisión) and Mega Cable, S.A. de C.V. (Megacable) to suppress a sanctioned cartel

64. On February 20, 2014 the IFT sanctioned Cablevisión and Megacable for reaching an agreement aimed at segmenting geographical markets in the Pay TV service.

65. In its decision, the IFT ordered the sanctioned parties to present specific mechanisms to effectively suppress the behaviors that constituted the cartel and warned them that if their proposal did not fulfill the specific requirements, then the IFT would impose them.

66. On May 18, 2016 after analyzing the mechanisms proposed by the sanctioned firms, the IFT decided that those did not comply with the conditions imposed and, as warned, the IFT imposed the suitable mechanisms to effectively suppress the cartel. The mechanisms mainly involve the order that one of the parties divest its share in the co-owned trademark used as a mean to segment the geographical markets of Pay TV services. Currently, the procedure to verify the remedies' compliance is ongoing.

## 7.2. Mergers and acquisitions

### 7.2.1. Summary of activities

67. Throughout 2017, the IFT finalized two proceedings related to mergers and acquisitions. One of them was filed through an *ex ante* (traditional) notification and one pursuant to transitory article 9th of the LFTR, which exempts certain mergers of being notified *ex ante* to this authority<sup>5</sup>. The total value of the analyzed transactions was \$43.6 billion MXP (over \$2.3 billion USD at year's average exchange rate).

	Main affected market	Decision	Dimension
Ex ante procedure			
Acquisition of 100% of Televisión Internacional by Grupo Televisa	Pay TV and fixed telecommunications services	Authorized with conditions	National
9th Transitory Article of the FLTB, the ex post notice procedure			
Acquisition of Axtel by Alestra	Production and resale of video programming for Pay TV networks	Reviewed	National

### 7.2.2. Description of cases

#### Investigative Authority

##### Cases referred by CFC

68. Investigation was conducted of an alleged prohibited merger in the markets of mobile telephone services; fixed line telephone services; access to broadband Internet; dedicated lines; interconnection pay television; broadcasting; advertising in media; production, transmission and distribution of audiovisual and audio contents at the national and international level through licenses and services. A statement of objections was issued to certain investigated economic agents.

##### Cases initiated by IFT

69. The IA initiated ex officio an investigation of a prohibited merger in the market of the use, exploitation and commercialization of audio broadcasting services in all the country.

<sup>5</sup> See paragraphs 72-74 of the 2014 *Annual Report on Competition Developments* for an explanation of this provision of the law. The review of a 9th Transitory Article merger notice has the purpose of verifying that the merger meets specific criteria set at sectorial level – not at a market level – to be exempt from the *ex ante* authorization established in the general merger control provided by the LFCE. In other words, this transitory disposition allows parties to merge first and, within the following ten-day period, to file a notice to the IFT. The standard of analysis established in this transitory disposition does not follow the traditional LFCE criteria or proceedings for carrying out cases. This proceeding is transitory because it will be effective only as long as there is a preponderant economic agent in the sector involved, telecommunications or broadcasting.

### *Economic Competition Unit*

#### Acquisition of 100% of Televisión Internacional, S.A. de C.V. (TVI) by Corporativo Vasco de Quiroga, S.A. de C.V. (Grupo Televisa)

70. On February 19, 2016 the IFT authorized, subject to certain conditions, the acquisition by Corporativo Vasco de Quiroga, S.A. de C.V. (Grupo Televisa) of 50% of Televisión Internacional, S.A. de C.V. (TVI) from Grupo Multimedios. Grupo Televisa already owned the other 50% of TVI. TVI operates cable networks in the northeast region of the country through which it provides Pay TV, fixed telephony and internet services. In addition, both groups own broadcasting licenses that allow them to provide free-to-air television and radio in the northeast region of Mexico.

71. As part of its payment, the selling party would receive a shareholding in the firm that would control all the operations of Grupo Televisa in the provision of the Pay TV service. By virtue of the granted shareholding, a member of Grupo Multimedios would have the right to be part of the controlling firm, in which persons involved in the control of Grupo Televisa's operations in broadcasting services also participate.

72. Due to this significant coincidence of both economic agents in broadcasting services, the proposed merger raised the risk of collusion in some local markets of broadcasting services. Thus, the IFT authorized the concentration subject to the condition of modifying some terms of the transaction that mitigated the identified risks. In consequence, the merging parties agreed that the selling party would not be a shareholder or board member in any firm that belongs or is under the control of Grupo Televisa.

#### Acquisition of Axtel, S.A.B. de C.V. (Axtel) by Alfa, S.A.B. de C.V. (Grupo Alfa)

73. The IFT reviewed the *ex post* notice of the acquisition of Axtel by Grupo Alfa pursuant article 9th Transitory of the LFTR. Grupo Alfa has Alestra, S. de R.L. de C.V. (Alestra), as a subsidiary. Alestra and Axtel provide fixed telecommunications services in several regions of the country. They coincided horizontally in the provision of fixed telephony, fixed broadband, dedicated circuits, fixed call termination and IT services. In the provision of fixed telephony services, at a national level, Alestra has a 0.3% share (67.3k subscribers) and Axtel has a 4.1% share (815.2k subscribers).

74. In most of the services, the IFT found that even though the transaction took place in highly concentrated markets the parts held small shares of each of them that lead to small increases in concentration. The highest increase occurred in the dedicated circuits market for corporate clients at the national level, since Axtel and Alestra have the third largest combined optic fiber network and hold several microwave spectrum concessions throughout the country. Notwithstanding, the IFT concluded, the combined enterprise would face much bigger competitors, as Telmex and Grupo Televisa (the former with an optic fiber network ~4.8 times larger), which would prevent any harm to competition.

75. On June 17, 2016 the IFT concluded that the transaction complied with the requisites set by the 9th Transitory Article since it would not decrease, harm, or hinder competition in the telecommunications sector.

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

76. During 2016, the IFT strengthened the practice of integrating economic competition analysis into its regulatory procedures and those carried out by other authorities in the telecommunications and broadcasting sector, in compliance with the mandate to protect and promote competition established in the 2013 Constitutional Reform and the 2014 LFCE and LFTR. This practice is aimed at benefiting suppliers and consumers, by carrying out regulatory processes more efficiently, imposing less regulatory burden on economic agents, and providing new ways to promote competition in the telecommunications and broadcasting sectors.

77. The Economic Competition Unit (UCE) of the IFT is responsible for competition assessments while other units carry out the regulatory proceedings, and the specific regulations or measures are defined based on an integral analysis. In 2016, competition assessments were included in the following relevant regulatory activities:

1. the design and implementation of public auctions to allocate radio electric spectrum;
2. decisions about whether to grant, renew and transfer the licenses that authorize the provision of telecommunications and broadcasting services.

### 8.1. Public Auctions

78. Competition assessments are applied at two stages of the public auction proceedings:

- the review of the conditions and specifications of the public bid documents prior to their publication. At this stage, the UCE reviews and issues recommendations to eliminate unjustified requirements that may restrict participation or competition for the spectrum or in the related markets, and proposes measures to enhance competition in the auction process itself and in the markets in which the auction would have effects. Once the IFT Board issues the auction call, the proceeding starts;
- the review of potential participants, which constitutes a requirement to participate in the auction. This requirement is imposed to assure that the license allocation would not decrease, harm, or hinder competition in affected markets.

#### *8.1.1. Public auction to allocate up to 80 MHz of spectrum for mobile services in the AWS band (1710-1780 MHz/2110-2180 MHz)*

79. The UCE reviewed the two applicants to this public auction: Radiomóvil Dipsa, S.A. de C.V. (Telcel) and AT&T Comunicaciones Digitales, S. de R.L. de C.V. (AT&T). On January 26, it defined the economic interest group of each applicant, quantified the amount of spectrum it held and stated up to how many spectrum blocks it could bid for, out of the 80 MHz in the AWS band cap set in the public auction rules.

### ***8.1.2. Public bid for the award of a public-private partnership contract for the deployment of the Public and Shared Telecommunications Network (Red Compartida)***

80. The *Red Compartida* is a telecommunications project mandated in the Constitutional Reform of 2013. It will be a national telecommunications wholesale network to be deployed through a public-private partnership with a special commitment to cover as much population as possible using 90 MHz of the 700 MHz band, that is part of the digital dividend gained from the transition from analogue to digital television which was finished in December 2015.

81. As a wholesale network, the *Red Compartida* will not sell its services directly to the public, but through third parties, including MNOs. The government contributed to the project with the spectrum, while the rest of the resources and operation is to be offered by the winner of the partnership contract.

82. On January 28, the IFT issued a series of recommendations regarding the rules of the public bid to be conducted by the SCT to allocate the said contract. These recommendations were mainly aimed at improving the quality of the information available to bidders in order to enhance qualified participation, and then, better competition conditions in the auction. The bids were to be placed as the percentage of national population covered in certain number of years, and an economic offer.

83. On October 13, the IFT issued the review of the applicants to the public bid: Consorcio Rivada (a joint venture composed of 9 investors) and Consorcio Altan (a joint venture composed of 11 investors). The IFT conditioned the participation of the former to modify part of its partnership agreement in case it won the contract. This was aimed at restricting the influence that a provider of telecommunications services to the public in Mexico (Echostar Technologies L.L.C.) would have had on the operation of the *Red Compartida*.

### ***8.1.3. Public auction for the allocation of 191 FM and 66 AM radio stations in several localities throughout the country***

84. This was the first public auction carried out in Mexico to allocate spectrum for these services. The IFT designed this auction in order to eliminate historical spectrum scarcity and barriers to entry, and to promote new entrance and effective capacity expansions, as well as preventing anticompetitive concentration of this input.

85. On May 6, the UCE issued a series of recommendations regarding a draft of the public auction rules. These recommendations included the use of a 15% discount on quantities bid by new entrants in the respective localities, and a 30% frequencies cap by type of service to prevent anticompetitive spectrum accumulation.

86. On December 21, the UCE issued the review of 174 applicants to the public bid. In 51 reviews, the UCE recommended to impose a restriction to the participation of the applicant pursuant to the frequencies cap the bid rules contained. In 9 more reviews a restriction to the participation of the applicant was issued because of detected risks of coordination in the corresponding radio market.

## 9. Resources of competition authorities

87. The Federal Spending Budget for the 2016 fiscal year allocated MXN \$2,000,000,000 (over \$107.2 million USD at year's average exchange rate) for the IFT.

88. Human resources applied to enforcement against anticompetitive practices, merger review and advocacy efforts are concentrated in the AI, UCE and Legal Affairs Unit (UAJ for its acronym in Spanish) offices.

IFT's Human Resources				
	UCE	AI	UAJ	
Substantive staff	50	60		50
Supporting staff	5	5		11
Total	55	65		61