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USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES – Contribution from Mexico

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More documentation related to this discussion can be found at: oe.cd/mktcomp.

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Using market studies to tackle emerging competition issues

- Contribution from Mexico -

Federal Economic Competition Commission (COFECE)

1. Introduction

1. In-depth analysis and understanding of markets are crucial for competition authorities to fulfil their mandates of promoting competed and efficient markets, which work in favour of consumers. The Federal Economic Competition Commission (Commission or COFECE per its acronym in Spanish) may conduct such analyses through two tools considered in the Mexican competition law. On the one hand, market studies, usually understood as a flexible advocacy tool by which the Commission assesses the degree of competition in a market, and when competition problems are identified, provides non-binding recommendations to address them. On the other hand, market investigations, an enforcement tool that is presently found only in a limited number of jurisdictions which allows COFECE to intervene with structural and behavioural remedies when barriers to competition that restrict competition are identified, or to determine the existence of essential facilities and regulate their access.

2. This contribution presents the scope of both and emphasizes the potential of market investigations as a tool to address emerging competition issues in digital markets.

2. Market studies

3. Market studies are used when a market is not working for the benefit of consumers, but the causes may not be necessarily or solely found in conducts or actions led by an economic agent; therefore, a thorough analysis of a market from a competition perspective is needed.

4. The Commission produces two different types of studies.¹ One type are the market studies conducted by the General Directorate of Economic Studies and the other are sectoral advocacy papers. The former involves a more in-depth quantitative and economic analysis of the competitive dynamics of a market and its possible constraints. On the other hand, analyses in advocacy papers are less thorough but allow the Commission to react rapidly to unplanned yet relevant situations. Moreover, both types posit recommendations to address such concerns.²

¹ Article 12 section XXIII of the Federal Law of Economic Competition (LFCE per its acronym in Spanish) empowers COFECE to conduct various types of advocacy activities, such as the elaboration or order of studies, research projects and general reports on topics related to market access and competition.

² COFECE decides which markets and sectors will be subject to a study on the basis of priorities identified in its strategic plans, and may also decide to conduct a market study on the basis of ex officio research identifying, for example, a non-competitive market, or for addressing specific suggestions from government or other regulatory authorities, business' concerns, or complaints from individual consumers and consumer associations (Strategic sectors are those that contribute

5. Since 2014, the Commission has released five market studies:³ on the financial sector, the agri-food sector, on expired-patent drugs, the interurban passenger transportation sector, and on the modern channel of retail commerce of food and beverages. COFECE has also published five sectoral advocacy papers:⁴ two on the transition to competed energy markets of gasoline and diesel (of 2017 and its update of 2019) and a similar one on LP gas, a competition agenda towards integrity in public procurement, and a document about competition in the digital economy. The Commission has also carried out similar unpublished efforts to increase its understanding of competition issues in the electricity sector.

6. These studies provide an in-depth knowledge of the market dynamics, which is useful both for the Commission itself, as well as for external stakeholders.

7. On the one hand, the knowledge acquired by COFECE is usually disseminated amongst its different units, which may use it to strengthen the analyses that accompany future enforcement actions (such as an investigation of anticompetitive conducts or a merger review) or in an advocacy initiative (such as a non-binding opinion). This allows the Commission to be ready to quickly react to address emerging competition issues.

8. For example, the financial sector study found competition concerns regarding the use and flow of information between Credit Information Companies (CICs) and derived from these findings, an ex officio investigation was opened.⁵ Also, the Commission issued an opinion with recommendations to eliminate regulatory obstacles affecting the wholesale and retail links of the gasolines and diesel chain. Knowledge about these competition problems can be traced back to the papers on the transition to competed energy markets of gasoline and diesel.⁶

9. On the other hand, these studies can be a valuable resource for policymakers and public authorities of different levels of government, who are interested in i) a better understanding of the markets they regulate, ii) recognizing the competition concerns and

substantially to economic growth, have a horizontal impact on other productive activities, produce goods mainly demanded by low income households, and have market regulations limiting competition or have characteristics that increase the likelihood of collusion or abuse of dominant position behavior. The 2018-2021 Strategic Plan of the Commission identifies six priority sectors in which COFECE will focus its attention: financial, agri-food, energy, transport, health and public procurement. More information on how the Commission prioritizes sectors and actions is available (in Spanish) at https://www.cofece.mx/wp-content/uploads/2018/02/PE_2018-2021.pdf. The decision regarding who will elaborate the study is defined in COFECE's Annual Work Plans, which often imply that the aforementioned General Directorates work together. (The 2020 Annual Work Plan and the plans for previous years are available (in Spanish) at <https://www.cofece.mx/publicaciones/documentos-de-planeacion-y-evaluacion/>).

³ Studies published by the Commission are available in Spanish, and some with a courtesy English translation, at <https://www.cofece.mx/publicaciones/estudios-en-materia-de-competencia/>.

⁴ All studies published by the Commission are available in Spanish, and some with a courtesy English translation, at <https://www.cofece.mx/publicaciones/estudios-en-materia-de-competencia/>.

⁵ The executive summary of the study and its recommendations is available at: <https://www.cofece.mx/executive-summary-research-and-recommendations-on-competition-conditions-in-the-financial-sector-and-its-markets/>, and see Press Release COFECE-011-2019 available at <https://www.cofece.mx/wp-content/uploads/2019/02/COFECE-011-2019-English.pdf>

⁶ The first version of the study is available at: <https://www.cofece.mx/cofece/ingles/attachments/article/38/DOCUMENTO-GASOLINAS-FINAL-INGLES.pdf> and the 2019 update is available at: <https://www.cofece.mx/wp-content/uploads/2019/01/CPC-GasolinasyDiesel-30012019.pdf#pdf>

the solutions to address them, and ii) adopting the recommendations made by the Commission.

10. Box 1 provides examples of the recommendations made by the Commission in market studies that propose regulatory changes or suggest changes to the practices of public institutions in the markets of expired patent drugs, financial services, passenger transportation and the retail of foods and beverages. It also points out some instances where recommendations have been addressed.

Box 1. Main findings and recommendations from COFECE's market studies

Expired patents drugs market⁷

Published in 2017, the study found that i) the entry of generic drugs into the markets was late and slow, ii) generics did not pose enough competitive pressure, iii) the excess of litigations could deter potential entrants, and iv) several obstacles to competition derived from industry regulations. To address these concerns, recommendations focused on modifying the current regulatory frameworks to increase transparency in the patent system and its procedures, promote the Bolar-Roche clause, establish restrictions on the granting of some types of secondary patents and oblige doctors to write the generic name of the drug in their prescriptions instead of the brand name. Some of these recommendations have already been implemented. For example, in 2020 the Industrial Property Law was reformed to allow the procedure for the sanitary registration of generics to begin immediately after a patent is published, and to simplify the consultation process between sanitary and industrial property authorities in order to allow better management of the sanitary registration systems. More recently, the Mexican authority in charge of protecting intellectual property announced a publicly available search engine where information related to patents and their expiry may be consulted. COFECE has identified these as important steps to reduce the time of entry into the market of generic drugs once patents expire, which will allow consumers to access medicines at better prices.

Financial sector⁸

Published in 2014, the study determined a lack of competition in several areas of the financial sector, with two elements posing as an obstacle for clients to have access to better prices and services: i) few options to migrate between suppliers, products and services, and ii) a lack of incentives for financial institutions to attract new clients through better terms and conditions. To address these issues, COFECE issued 36 recommendations to boost competition in the sector aimed at having more informed consumers that can take better decisions among more options through, for example, the entry of more FinTechs, and modifying the current legal framework to allow for customer mobility and to increase financial businesses' incentives to compete. Several recommendations of this study have been adopted, such as changes to the regulation which i) eliminate the possibility for clearing houses of diverse documents to discriminate against agents that are not their shareholders, and ii) others which allow the celebration of agreements between credit institutions in order to share ATM infrastructure.

⁷ The complete study is available at https://www.cofece.mx/wp-content/uploads/2017/11/Studies-drug-markets_vF-BAJA.pdf

⁸ The executive summary of the study and its recommendations is available at: <https://www.cofece.mx/executive-summary-research-and-recommendations-on-competition-conditions-in-the-financial-sector-and-its-markets/>

Federal passenger transportation⁹

The study published in 2019, identified that only four big economic agents dominate the market without facing any competition in most of their routes. Furthermore, regulatory barriers to entry, such as the obligation of having origin and destination terminals; as well as arbitrary criteria for authorizing the installation of terminals, were identified. Finally, the study also found that 27% of the public terminals operate under a concession granted to one of the four big economic agents, without guaranteeing non-discriminatory access for other competitors. To address these concerns, COFECE recommended i) to retrieve public terminals whose concessions has expired or are about to expire and re-tender them under non-discriminatory access rules, ii) to eliminate regulatory barriers such as the requirement for having terminals and allow buses to be used in several routes, and iii) make transparent the application processes for establishing terminals and for the permits to operate.

Modern channel of retail commerce of food and beverages¹⁰

COFECE's most recent study, published in October 2020, found a highly concentrated structure in the market in which one out of ten large-surface stores does not face competitors in the local market. Also, the study found the existence of local regulatory obstacles that hinder the entrance of new competitors and the expansion of regional chains. The high concentration of the market implies that some chains have purchasing power with respect to their small suppliers, which could result in abusive commercial practices. Even when there is a code of conduct to avoid these practices, this instrument is not widely known by economic agents, especially those of medium or small size. In this study, the Commission proposes local governments to eliminate regulations that limit the entrance and expedite authorizations through "one-stop shops". Also, recommendations are made for promoting the code of conduct between small suppliers and enhance it by including clauses in line with the best international practices.

11. Although market studies have the advantages mentioned in the previous paragraphs, they also have some limitations. For example, given that they provide a deep and broad knowledge of the markets, the competition problems that are found through them can be numerous. Consequently, a large number of very diverse recommendations can also be derived from them, making the likelihood of their implementation in the short-term low.

12. Moreover, since these recommendations are non-binding, they may or may not be considered by relevant stakeholders. In addition, their possible adoption may require extensive advocacy and outreach efforts and the investment of resources that, for many authorities, could be difficult to afford.

13. Against these limitations, COFECE has another tool that analyses markets in depth and that allows the Commission to impose measures beyond non-binding recommendations when competition problems are identified. This tool are COFECE's market investigations which are explained in the next section.

⁹ The complete study is available, in Spanish, at: <https://www.cofece.mx/wp-content/uploads/2019/04/Estudiocompetenciaautotransportefederalpasajeros.pdf>

¹⁰ See Press Release COFECE-040-2020 available at: https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-040-2020_ENG.pdf The complete study is available, in Spanish, at: https://www.cofece.mx/wp-content/uploads/2020/11/EE_comercio-031120-FINAL-002.pdf

3. Market investigations

14. COFECE's market investigations are established in Article 94 of the Federal Law of Economic Competition (LFCE per its acronym in Spanish). It is an enforcement tool and because of that they are conducted by our Investigative Authority.¹¹

15. Article 94 empowers the Commission to determine i) the existence of barriers to competition and free market access,¹² or ii) of an essential facility in a specific market.¹³

16. To eliminate such barriers to competition, Article 94 empowers the Commission to impose two types of remedies:

- *Behavioural*, which oblige economic agents to act in a specific way or to stop acts that distort the competitive process.
- *Structural*, which allow to modify the structure of a market, including the possibility of divestment of assets, rights or stock, with the objective of creating or restoring competition conditions in the market.

17. Moreover, COFECE can issue recommendations to authorities of any level of government to eliminate regulatory barriers identified in a market investigation.

18. On the other hand, through the procedure foreseen in Article 94, the Commission can establish rules for access to an essential facility and its use by other economic agents, when the existence of these is determined as a result of the market investigation.

19. Due to the aforesaid characteristics, Article 94 constitutes a "*hybrid*" competition and regulatory tool with the advantage that it allows to conduct a thorough market assessment employing the Commission's investigation tools (among which are salient forensic analysis, screening, onsite searches, requests for information, depositions and international cooperation with other competition authorities), and to impose appropriate remedies when competition problems stemming from the market's structure and other characteristics not directly related to traditional anticompetitive conducts are identified.

20. More specifically, the procedure provided for in Article 94 is not intended for sanctioning anticompetitive practices carried out by economic agents, but rather, through a specific market investigation, aimed at identifying structural problems, to order their correction through various remedies or, if necessary, to identify an essential facility and regulate the conditions for its access.

¹¹ Article 30 of the Commission's Organizational Statute provides that the General Directorate of Regulated Markets "[...] shall carry out and process the investigations referred to in articles 94, 96 and 97 of the Law."

¹² Article 3, Section IV of the LFCE defines a barrier to competition and free market access as any structural characteristic of the market, fact or act of economic agents that has the objective or effect to deter the access of competitors or limit their capacity to compete in the markets; that impedes or distorts the process of competition, as well as any legal provision that unduly produce such adverse effects to the competitive process.

¹³ The analysis for determining an essential facility is established in Article 60 of the LFCE. Accordingly, essential facilities are considered to be the sets of elements (goods, infrastructure, rights, among others) whose access by other economic agents is indispensable for the provision of goods or services in one or more markets, which are controlled by one economic agent with substantial power, do not have close substitutes and whose reproduction is not viable from the technical, legal or economic point of view by any other economic agent.

21. In addition, given that these are an enforcement proceeding, the structural, behavioural or regulatory remedies imposed by COFECE could be subject to a judicial review through appeals filed before specialized courts.

22. Thus far the Commission has opened seven market investigations into: i) slot allocation at the Mexico City airport;¹⁴ ii) local freight transportation in Sinaloa;¹⁵ iii) barley production and distribution for beer factories;¹⁶ iv) port services and transportation for bulk grains in Puerto Progreso in the state of Yucatan;¹⁷ v) distribution and transportation of unprocessed milk in Chihuahua;¹⁸ vi) norms and standards for evaluation of conformity assessment;¹⁹ and vii) card payment systems.²⁰

23. Of these, three cases were closed by the Board of Commissioners (barley, norms and standards, and port services) and one is still ongoing (payment systems). The cases related to freight transportation and unprocessed milk determined the existence of regulatory barriers to competition. In these cases, we learned that if the Commission identifies beforehand the investigation will only address regulatory barriers to competition and is likely to result solely in recommendations for public authorities to amend that regulation, then the outcome will be the same as that of a non-binding opinion. Hence, it might not be reasonable to devote too many enforcement resources to this type of cases.

24. Finally, in the airport slot allocation case, COFECE determined the existence of an essential facility. This case generated important lessons related to the Commission's scope to regulate access to essential facilities since the Judiciary interpreted that COFECE's powers are limited in issuing this kind of regulation when a sectoral regulator exists. However, this precedent is not mandatory as caselaw. Additionally, as in other countries, no regulatory body for digital markets exists in Mexico, which would allow COFECE to exercise its powers related to regulatory measures for essential facilities in said markets.

¹⁴ Press Release COFECE-030-2019, available at: <https://www.cofece.mx/wp-content/uploads/2019/05/COFECE-030-2019-English.pdf>

¹⁵ Press Release COFECE-041-2016, available at (in Spanish): <https://www.cofece.mx/la-autoridad-investigadora-de-la-cofece-dictamino-la-existencia-de-barreras-a-la-competencia-en-el-marco-normativo-del-servicio-publico-de-transporte-de-carga-en-sinaloa/>. Press Release COFECE 032-2017, available at: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-032-2017.pdf#pdf>

¹⁶ Press Release COFECE-003-2016, available at (in Spanish): <https://www.cofece.mx/inicia-cofece-investigacion-por-probables-barreras-a-la-competencia-en-mercado-de-semilla-y-grano-de-cebada-maltera-par-la-produccion-de-cerveza/>

¹⁷ Press Release COFECE-60-2016, available at (in Spanish): <https://www.cofece.mx/investiga-cofece-possibles-barreras-a-la-competencia-en-los-servicios-portuarios-y-de-transporte-en-puerto-progreso/>

¹⁸ Press Release COFECE-050-2017, available at: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-050-2017.pdf#pdf>. Press Release COFECE-056-2018, available at: <https://www.cofece.mx/wp-content/uploads/2018/12/COFECE-056-2018-English.pdf>

¹⁹ Press Release COFECE-052-2017, available at: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-052-2017.pdf#pdf>

²⁰ Press Release COFECE-047-2018, available at: <https://www.cofece.mx/wp-content/uploads/2018/11/COFECE-047-2018-English-.pdf>

25. Moreover, the experience with this tool shows that Commission is able to conduct deeper analyses of market structures, bringing to light elements which hinder competition but are usually unnoticed in the investigation of anticompetitive practices, such as behavioural biases, practices which affect competition but are not included in the catalogue of abuse of dominance practices,²¹ use of personal information, behaviour of other competitors, among others. The analysis of these elements is relevant in digital markets which exhibit characteristics that often result in high concentration, accumulation and control over large volumes of data, strong network effects, bundling of digital products or services, etc.

26. COFECE's experiences with its market investigations have made it possible to identify five advantages to effectively use this tool intervene in digital markets, these are:

1. The appropriate use of Article 94 facilitates the analysis of behavioural barriers carried out by economic agents who do not necessarily enjoy substantial market power but who participate in markets with very few players and characteristics (i.e., network externalities, economies of scale and scope, etc.) that generate competition *for* the market. In this sense, the international discussion has warned that the intervention of competition authorities through traditional tools could happen too late, when the rest of the economic agents or potential entrants can no longer compete with the consolidated platforms, even to offer improved or innovative features against dominant economic agents (in the competition jargon this phenomenon is known as "*tipped markets*", which favor "*winners-take-all*" outcomes). This situation could generate irreversible harmful effects on the market. Market investigations allow the Commission to intervene at an early stage and establish behavioural or structural remedies that promote procompetitive processes.
2. Article 94 also allows for the analysis of conducts that are not expressly found in the catalogue of abuse of dominance practices of Article 56 of the LFCE. Some behaviours that have been identified in the international discussion as potential abuse of dominant position but that do not necessarily fit in the list of abuse of dominance practices are self-preferencing practices or the imposition of abusive contract terms, which are likely to occur when a platform holds a *gatekeeper* position (that is to say, platforms that have control over distribution and/or entry channels to other lines of business and that benefit from network effects).
3. This tool can also be used to analyse possible collusions or agreements reached using algorithms, a situation in which the will of competing economic agents to collude (an essential element for initiating an investigation into absolute monopolistic practices in the LFCE) would be difficult to prove.
4. With the use of this Article 94 the Commission can impose structural remedies such as:
 - Interoperability of data and protocols, possibly compulsory for all market participants, that could occur in different forms. For example, through compatible interoperability for third parties under discriminatory conditions (by only making a protocol of one digital platform interoperable for others participating in the same market), or by establishing specific requirements to provide interoperability in relation to specific areas of a business model (such as where publications in one social network can be shared in others), and by generating interoperability in various related digital markets (such as amongst networks, devices, applications and data repositories).

²¹ Established in Article 56 of the LFCE.

- Data portability to allow the migration of each user’s data from one platform to another, so it can be reused independently and without losing information previously created. This measure can reduce the high switching costs faced by users when they want to use a competing platform and thus counteract the market power of dominant platforms.
 - Establishment of codes of conduct applicable to dominant platforms in order to self-regulate the behaviour of these agents and prohibit certain conducts (such as self-preferential practices or “abusive” contracts), thus counteracting their ability to distort the competition process in the markets in which they participate.
 - Prohibition of discriminatory treatment or self-preferencing measures which could warrant diverse measures. One may be the application of an *ex ante* regulation to a vertically integrated digital platform, as well as its enforcement to constrain such discrimination practices carried out by vertically integrated digital platforms that have the role of *gatekeepers*. A pre-emptive alternative is the elaboration of guidelines that allow competition authorities to infer dominance from the conducts of economic agents observed in the market, especially where there is a vertically integrated digital platform that has been found to be engaged in discriminatory practices.
 - Divestiture and functional separation of digital platforms that have the ability to exercise market power and distort the competition process. For example, considering the possibility of allowing a single technological company to venture into several lines of business but imposing the organizational form that such entity must have.
5. Finally, this mechanism allows the Commission to analyse whether an economic agent possesses an essential facility and to regulate its access. In the international level, discussions have focused on whether the data or databases in possession of certain economic agents and even their processing capacity, could be considered as essential facilities, because these can generate a competitive advantage that is difficult or impossible to achieve or replicate by their competitors.

27. Currently there are very few countries that have mechanisms such as Article 94 that, independently of anticompetitive conducts, allow to analyse, and when appropriate correct, market structures and conditions through remedies that favour the entry of new competitors, foster innovation and generate environments favourable to competition. The United Kingdom, Iceland, Greece and South Africa are amongst the countries that have tools of this nature.

28. Precisely because of these characteristics, as well as the advantages that such market investigations can provide in the analysis of digital markets, the international community turned their attention towards the analysis of Article 94, which has even become a reference in the search for a tool that allows for interventions in the digital markets, different from traditional abuse of dominance and cartel enforcement.

29. In fact, there is currently an intense global debate within the antitrust community about market analysis tools – such as the discussions around the “*New competition tool*” of the European Commission,²² which has the specific objective of analysing structural competition problems that prevent the proper functioning of certain markets – such as digital ones -, as well as mitigate the conditions inherent to them that favour few economic agents. This tool aims to re-establish competition conditions and reduce possible distortions which will translate into lower prices, greater quality, better options and innovation – and which may well end up looking the same as Article 94 of the LFCE.

²² European Commission. Public consultations. Impact Assessment for a possible *New Competition Tool*, available at https://ec.europa.eu/competition/consultations/2020_new_comp_tool/index_en.html

Federal Telecommunications Institute (IFT)

1. Introduction

1. Market studies are tools available for competition authorities to:
 - Better understand the structure and functioning of markets or sectors, especially when they are complex or dynamic;
 - Evaluate the competition conditions that prevail in the market and its evolution;
 - Evaluate the impact of regulations and public policies on the competitive process; and
 - Examine situations where there are signs or *prima facie* evidence of possible risks to competition in the markets, but no violation of the law or specific condition is identified that would justify an *ex post* investigation procedure.
2. In this document, the IFT describes the legal framework applicable to market studies in Mexico in the telecommunications and broadcasting sectors (T&B); it identifies some of the challenges it faces as a competition authority and regulator, due to the dynamism of these sectors; and it shares the experience gained from conducting recent market studies.

2. Legal Framework

3. The IFT is the competition and regulatory authority in the T&B sectors in Mexico and its objective is to regulate and promote competition and the efficient development of those sectors. To this end, one of the tools at its disposal is conducting market studies, which legal basis are:
 - The Federal Economic Competition Law (LFCE, by its acronym in Spanish), which empowers the IFT to carry out market studies and to include proposals for deregulation or regulatory modifications when it detects competition risks.²³ For its implementation, the IFT may request information from public and private entities²⁴ and the law does not contemplate conducting a public consultation.²⁵
 - The Federal Telecommunications and Broadcasting Law (LFTR, by its acronym in Spanish), which establishes that the IFT may carry out studies and research on telecommunications and broadcasting.²⁶
4. The IFT has flexibility for planning and implementing market studies, by taking into account that market studies are tools for promoting competition and analyzing whether there is any competition risk. In addition, by considering that they have purposes and scopes that differ from other instruments provided for in the LFCE, such as investigations on

²³ Article 12; subsection XXIII, of the LFCE.

²⁴ Article 156; subsection V, of the Regulatory Provisions of the LFCE for the T&B sectors, and Article 15 of the LFTR, subsections XXVIII and XXIX.

²⁵ Which does happen in other jurisdictions such as the United Kingdom, the United States, the European Union or Germany.

²⁶ Article 15; subsection XXXIX, of the LFTR.

anticompetitive practices, on the existence of essential inputs or barriers to competition, and on the existence of economic agents with substantial market power.

5. Although the IFT is not empowered to take direct measures in any market based on the conclusions of market studies alone, these findings can help the IFT to identify possible risks to competition in markets and may result in the launch of an *ex officio* investigation.²⁷

3. Emerging Competition Issues in the T&B Sectors

6. The T&B sectors present high dynamism and accelerated transformation due to technological evolution, emergence and expansion of new services and business models, technological and services convergence, and integration between different economic agents. These characteristics have various competition implications, therefore the IFT considers essential:

- Monitoring:
 1. the emergence of business models based on the Internet and their interaction with traditional telecommunications services;
 2. the integration of value chains and economic agents;
 3. the conditions of access to inputs; and
 4. the conditions of services' provision to users.
 - Ensuring that regulation does not:
 1. create competition distortions;
 2. inhibit innovation, supply or the emergence of new business models; or
 3. provide undue advantages to certain economic agents.
 - Identifying and evaluating possible competition restrictions associated with potentially anticompetitive practices, barriers to entry, and input bottlenecks.
7. Faced with this scenario, the IFT considers that the role of market studies are increasingly relevant, since:
- due to their flexibility and scope, they offer a low-intrusive alternative that can be effective in understanding and addressing competition issues without restricting market dynamics; and
 - as an advocacy tool, they can foster collaboration between competition authorities and other authorities on emerging issues that may distort market dynamics to the detriment of users.

4. IFT's Experience in Market Studies

8. In Mexico, the systematic elaboration of market studies in the T&B sectors is relatively recent, mainly due to the lack of availability of public and organized information on relevant market indicators in these sectors.

²⁷ OECD (2015) Competition and Market Studies in Latin America The case of Chile, Colombia, Costa Rica, Mexico, Panama and Peru. Pg. 47 at <https://www.oecd.org/daf/competition/competition-and-market-studies-in-latin-america2015.pdf>

9. Currently, as regulatory authority, the IFT collects information that can be used to elaborate market studies, such as user and consumer surveys, statistical data and economic indicators.²⁸
10. In general, market studies and analysis by the IFT fulfill the following functions:²⁹
- **Diagnosis and knowledge of markets.** They allow a better understanding of the functioning, evolution and perspectives of markets, as well as the characteristics or aspects that may constitute restrictions on competition and that could require some type of intervention.
 - Insights into IFT's regulatory processes, to:
 1. Identify if regulation proposals could generate restrictions on competition.
 2. Evaluate the results and impact on the competitive process of the current asymmetric regulation.
 3. Identify emerging competition problems in the markets and provide elements for better understanding them, in order to design possible regulatory interventions by the IFT.
 - **Competition Advocacy.** They make it possible to identify emerging aspects that may restrict innovation or competition, and to present alternative solutions that could be applied by various public authorities.

5. Case Study: Diagnostic Studies in Free-To-Air Radio & TV Services

11. In 2020, the IFT carried out the following diagnostic studies of recent developments, changes and trends of the economic conditions in the provision of broadcasting services:³⁰

- Diagnostic Study in Free-To-Air Radio Service,³¹ and
- Diagnostic Study in Free-To-Air TV Service.³²

12. The purpose of these studies is to offer detailed and objective information for the public to have a clearer view of the recent evolution and the current state of economic conditions in the provision of free-to-air radio and TV services in Mexico. In addition, they aim to identify and to make the public aware of the main effects of the spectrum administration and allocation policies for said services carried out by the IFT, including their impact on the concentration levels existing in different geographical areas of the country.

²⁸ See Telecommunications Information Bank (BIT), available in Spanish at: <https://bit.ift.org.mx/BitWebApp/>

²⁹ The content of the studies and their conclusions are not binding for the IFT nor do they reflect its position on the issues analyzed.

³⁰ As part of this effort, the IFT plans to publish in 2020 a diagnosis study of the Pay TV Service in Mexico, and a study of approach to business models in the digital ecosystem.

³¹ Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/competencia-economica/estudiodediagnosticodelservicioderadiodifusionsonora-completo.pdf>

³² Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/competencia-economica/estudiodediagnosticodelserviciodetelevisionradiodifundida-completo.pdf>

13. These studies were motivated by technological, structural and regulatory changes that have occurred and affected the conditions in which services are provided, in addition to the need to consolidate fragmented and dispersed information. As a result, the following was identified:

- There is a favorable evolution in the concentration, availability, coverage and quality of services due to:
 1. public tenders and allocation of concessions that allowed the entry and expansion of suppliers; and
 2. the use of multiprogramming in digital television.
- These services continue to be relevant sources of information and entertainment for users, given their open and free access, and their wide coverage.
- It is necessary to continue promoting competition and facilitating access to services, particularly in rural areas, through the various mechanisms available to the IFT.

14. These studies provide inputs to identify and evaluate emerging aspects in the structure and dynamics of markets that may constitute restrictions on competition, under a comprehensive approach that considers regulatory, technological and economic features.

6. Case Study: Advocacy in Public Procurement Processes³³

15. In 2020, the IFT published an analysis of public procurements in the telecommunications sector, aiming to contribute to the promotion and strengthening of competition and free market access in that activity.

16. IFT analyzed the information from 4,219 contracting procedures carried out between 2010 and 2018, specifically: allocation procedures used (tender, direct assignment or invitation to at least three people), average value and duration, main suppliers and results of particular cases. In addition, it included a compilation of competition principles in public procurement that have been adopted by authorities in other jurisdictions and recommended by international organizations, which can be used by contracting entities in the design of public procurement procedures.

17. The analysis allowed the identification of contracting practices that could have restricted competition and free market access, illustrating the need to apply adequate contracting principles to promote competitive processes for the procurement of telecommunications services by public entities. Among said practices there are: the imposition of unnecessary requirements on the interested parties; consolidated acquisitions of services as a disincentive to participation; and the lack of information for the operators to formulate competitive offers.

7. Case Study: OTT Service Analysis

18. The IFT has published studies that analyze aspects related to the provision of OTT (Over-the-top) services in Mexico, such as the characteristics of supply and demand, the competition strategy of suppliers, their relationship with traditional services and the

³³ Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/competencia-economica/analisisdecompraspublicasenelsectordetelecomunicaciones-completo.pdf>

regulatory alternatives that can be implemented to address emerging issues associated with their growth. These studies are:

- Supply and demand of OTT services for audiovisual content in Mexico,³⁴
- Competition analysis in the convergent services environment,³⁵ and
- Regulatory policy options resulting from the growth of audiovisual content services provided through the Internet.³⁶

19. From the referred studies, the IFT identified that:

20. OTT services have shown a strong dynamism in Mexico in recent years and constitute relevant alternatives for communication and entertainment, mainly for the consumption of audiovisual content.

21. OTT services and traditional services face different regulations, so it is important to explore and analyze whether it is necessary to eliminate asymmetries in the regulatory burden on providers.

22. Given the growing wave of mergers (horizontal, vertical and conglomerate) in the provision of audiovisual content, it is convenient to monitor the supply of audiovisual content, particularly when the value chain extends to telecommunications networks.

8. Case Study: Market Study on Bundling and Discount of Fixed Telecommunications Services³⁷

23. In 2018, the IFT published a study on bundling and discount in the provision of fixed telecommunications services from three perspectives:

- a statistical analysis of the bundling practices of fixed telecommunications services in Mexico;
- a review of the theory on bundling and its main definitions; and
- a review of the international experience in cases of bundling.

24. The main motivation to conduct this work was that, in a context of technological convergence and the emergence of new internet services, the study of bundling is essential for the analysis of competition in telecommunications markets. Moreover, bundling can have both positive and negative effects on competitive conditions and consumer welfare. Among the positive effects there are: economies of scale and scope; improvement on product quality; reduction of search for options; discounts and reduction of advertising costs; etc. Among the negative effects there are: intention to displace competitors; comparability problems; and lack of transparency.

³⁴ Available in Spanish at: <http://www.ift.org.mx/sites/default/files/contenidogeneral/medios-y-contenidos-audiovisuales/ofertaydemandadeottsecontenidosaudiovisualesenmexico2019.pdf>

³⁵ Available in Spanish at: [http://centrodeestudios.ift.org.mx/documentos/publicaciones/2018/Analisis de la competencia en el entorno de servicios convergentes.pdf](http://centrodeestudios.ift.org.mx/documentos/publicaciones/2018/Analisis%20de%20la%20competencia%20en%20el%20entorno%20de%20servicios%20convergentes.pdf)

³⁶ Available in Spanish at: http://centrodeestudios.ift.org.mx/documentos/publicaciones/2020/sem_Estudio_OTT_TV_R_JM.pdf

³⁷ Available in Spanish at: <http://www.ift.org.mx/industria/autoridad-investigadora/estudios>

25. The following results stand out regarding the consumption of fixed telecommunications services in Mexico:

- The number of offers and prices available to consumers vary between locations.
- Spending at the national level has decreased in real terms, but not proportionally for all services.
- There is no clear user preference between individual services and bundles. In addition, consumers tend to purchase services indistinctly from one or more providers (users make up their own bundles from individual services).
- According to the results of an applied hedonic pricing model, the following characteristics are significant for determining the price of individual or bundled offers: speed in broadband service, unlimited calls in telephone (voice) service, and the number of channels and number of televisions included in the Pay TV service.

9. Case Study: Market Study on the Audiovisual Content Market and Vertical Relationships in the Telecommunications Industry³⁸

26. This study was carried out in 2018 and addresses the audiovisual content market and vertical relationships in the telecommunications industry. The authors used vertical arithmetic methodology with various assumptions to quantify the incentives of a vertically integrated company to refuse to sell an input to rival companies in the downstream market.

27. The study indicates that the value chain of audiovisual content distributed through television platforms in Mexico shows high vertical integration between the phases of programming/wholesale distribution, and retail distribution. Likewise, it is concentrated in the programming phases, especially in open TV channels and retail distribution via pay TV and free-to-air TV.

10. Conclusions

28. Market studies are a tool with enormous potential to identify and address the new challenges faced by competition authorities, mainly in highly dynamic markets or sectors strongly impacted by the development of the digital economy, such as the T&B sectors. In particular, convergence in the telecommunications sector involves not only the evolution of technology but the evolution of services, which affects the structure and operation of markets.

29. Market studies allow us to understand the dynamics of market competition and are a useful and a complementary tool to investigations in competition law, as a result of their:

- Flexibility: offering a low-intrusive alternative that can be effective in understanding and addressing emerging aspects of competition without unnecessarily restricting market dynamics.
- Usefulness as an advocacy tool: they favor timely collaboration between competition and other authorities, which is increasingly necessary to analyze and address emerging issues that can distort the dynamics and the results of markets to the detriment of users.

³⁸ Available in Spanish at: <http://www.ift.org.mx/industria/autoridad-investigadora/estudios>

- Comprehensive approach: they are suitable for analyzing markets and sectors in a comprehensive manner, considering the different aspects that affect their performance and evolution, and making it possible to identify the effects and results of certain competition and regulatory interventions.

30. Regarding the possible limitations and areas of opportunity of this tool, the IFT identifies the availability of data and information for its elaboration and the lack of dissemination of its results to the public, particularly among interested agents (stakeholders), in order to scale the understanding of the findings and the adoption of the improvement alternatives identified.

31. The IFT has carried out various market studies in recent years, mainly thanks to the availability of information it has collected as a regulator of the T&B sectors. These studies have allowed for a better understanding of the provision of various services, including those provided over the Internet, to assess the effects that certain regulatory and economic competition policy decisions have had, and to offer alternatives to mitigate identified competition problems.