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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - SESSION I:
COMPETITION, FINTECHS, AND OPEN BANKING**

- Contribution from Mexico -

9-10 October 2024

This attached document from Mexico is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 9-10 October 2024 in Santo Domingo, Dominican Republic.

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Session I: Competition, Fintechs and Open Banking

- Contribution from Mexico¹ -

1. Introduction

1. Market digitisation is having an unprecedented impact on the economy and on society, not only in terms of size but also in terms of the speed of transformation. Just as there is widespread interest in promoting their growth and adoption, there is also concern that digital markets should develop efficiently.
2. In Mexico, the Federal Economic Competition Commission (COFECE in Spanish) has undertaken various actions to promote open, stable and efficient digital financial markets with high levels of transparency, trust and integrity, and that promote an environment of free competition and competitiveness to encourage financial inclusion.
3. This contribution presents an overview of the fintech sector in Mexico, its regulatory framework and action taken by COFECE to promote competition in this sector.

2. Fintech sector in Mexico²

4. Mexico is one of the countries with the most fintech ventures in Latin America. At the beginning of 2024 there were more than 700 fintech companies in Mexico, of which about 21% are credit grantors, 16% provide payments or transfer services, 4% could be considered as digital banking providers and 2% are crowdfunding companies. Mexican fintech is largely concentrated in the credit sector. This is due, in part, to the fact that under financial legislation, credit can be granted to any individual without being subject to supervision by the financial regulator, as long as it uses the provider's own resources.³
5. The digitisation of the financial sector has taken several forms: the emergence of fintech ventures, the purchase of existing financial institutions by fintech companies, the development of a digital financial services brand by traditional banks, and the digitisation of traditional services by traditional banks.
6. With regard to the first example, numerous fintech ventures have entered the market, most of which operate nationally. Some stand out for their links with companies in other sectors, such as Mercado Pago – the financial arm of the Argentine e-commerce company Mercado Libre – which entered the Mexican financial market as an electronic payment fund institution.

¹ Comisión Federal de Competencia Económica (Federal Economic Competition Commission, COFECE)

² The Law to Regulate Financial Technology Institutions uses the term "financial technology" to refer only to electronic payment fund institutions and collective financing institutions. However, in this contribution we use the term "fintech" broadly to refer to any innovative financial technology.

³ Finnovista (2024), *Finnovista fintech radar México [Finnovista: Fintech Radar in Mexico]*, VIII Edition, <https://www.finnovista.com/wp-content/uploads/2024/02/Radar-Finnovista-MEXICO-VIII-Edicion.-Def.pdf>.

7. As for the second case, the most relevant example is the Brazilian fintech Nubank, which consolidated its operations in Mexico by acquiring an existing financial company.⁴ Another example is Ualá, the Argentinean fintech that entered the Mexican market by buying an existing bank.

8. Lastly, five banks out of the 56 existing banks have, as at May 2024, launched their fintech brand. This shows that traditional banks are mainly adopting digital financial services in parallel to the traditional financial services they already offer.⁵ The two largest banks (BBVA and Citibanamex) are following this strategy.

9. The use of digital financial services has become increasingly relevant. The latest official data are from the National Financial Inclusion Survey 2021, which showed that by 2021 there were 2.6 million users of fintech savings and credit accounts. The most recent figures reported by institutions themselves show the fast-moving nature of the fintech sector.⁶ By the end of 2023, there were 27.5 million electronic payment fund accounts, in other words electronic money, representing 15% of existing transactional or savings accounts in the financial system.⁷ It is worth noting that, in 2019, e-money accounts did not yet exist.

10. In terms of loans, at the end of 2023, the number of personal loans granted by the main fintech institutions (including two non-bank fintech entities, two co-financing entities and two non-regulated institutions) amounted to 8.6 million loans. In addition, there were around 7.7 million credit cards issued that year by four fintech institutions that offer this product (Nu, Stori, Klar and Mercado Pago), the main issuer being Nu with 3.4 million.^{8,9}

11. Collective financing institutions, entities that carry out co-financing or crowdfunding transactions, still grant very few personal loans, amounting to only 4.6 billion pesos. This is only 0.3% of the total balance of personal loans granted by the financial system.¹⁰ In July 2024, there were only 80 companies operating these business models.

3. Regulatory framework for fintech

12. In 2018, the Law to Regulate Financial Technology Institutions¹¹ (LRITF in Spanish or Fintech Law) was enacted with the aim of "regulating financial services provided by financial technology institutions, and their organisation, operation and

⁴ It acquired a people's finance corporation (SOFIPO in Spanish), which is an institution that provides services similar to a bank.

⁵ Information obtained from various newspaper articles.

⁶ INEGI (2023), Encuesta Nacional de Inclusión Financiera (ENIF) 2021 [National Financial Inclusion Survey 2021], www.inegi.org.mx/programas/enif/2021/.

⁷ Financial statements of electronic payment fund institutions, obtained from their websites .

⁸ Press releases and websites of the institutions.

⁹ CNBV (2024), Financial inclusion databases, as at December 2023.

¹⁰ Annex 17 of the collective financing institutions, obtained from their websites

¹¹ The Law to Regulate Financial Technology Institutions is available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LRITF.pdf>

functioning, and financial services that are subject to any special regulations that may be offered or performed by innovative means."

13. The Fintech Law applies to two business models: i) companies engaged in the issuing, administration, repayment and transmission of electronic payment funds (electronic payment fund institutions) and ii) platforms that connect financing providers and borrowers (collective financing institutions).

14. In a cross-cutting manner, the Fintech Law also regulates transactions involving virtual assets, operating a regulatory sandbox and the exchange of information (commonly known as "open banking").¹² Open banking allows public, aggregated and transactional information about financial institutions (and other participants in the financial system) and customers to be easily exchanged. This promotes competition and allows products and services to be tailored to users.

15. In this regard, the Fintech Law establishes three formats for sharing data and information: (i) open financial data, (ii) aggregated data and (iii) transactional data. With regard to open financial data (those that do not contain confidential information), the regulation states that participants in the sector must establish standardised application programming interfaces (APIs) that enable connectivity and access to other interfaces developed or managed by the same entities referred to in the relevant article and third parties specialising in information technologies. It also determines that the sectoral authorities must issue general provisions and considerations establishing the standards and mechanisms for this format to operate. The foregoing is established in order to facilitate the possibility of sharing data and information, with the client's prior authorisation.

16. There are separate, independent authorities for financial regulation and regulation for data protection. Financial regulation and regulation for data protection are complementary, since institutions regulated by the Fintech Law such as collective financing institutions and electronic payment fund institution must process personal data.

17. Thus, on the one hand, there are the authorities with powers to authorise, regulate, supervise and sanction the various sectors and entities that make up the financial system in Mexico, which are responsible for supervising compliance with the Fintech Law, namely the National Banking and Securities Commission (CNBV in Spanish) and the Bank of Mexico (Banxico). These entities are complemented by the National Insurance and Bonding Commission (CNSF in Spanish), the National Commission of the Retirement Savings System (CONSAR in Spanish) and the National Commission for the Protection and Defence of Users of Financial Services (CONDUSEF in Spanish) within the scope of their respective competencies. In addition, the Ministry of Finance and Public Credit (SCHP in Spanish) is authorised to interpret the Fintech Law for administrative purposes.

18. Furthermore, there is an authority with specific powers for data protection: the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI in Spanish). This autonomous body is in charge of facilitating and guaranteeing people's access to public information and access to, and protection of, personal data.

19. INAI's work in the fintech sector includes a series of recommendations, issued in 2021, to financial technology institutions to protect their users' personal data. These recommendations relate to the registration and identification of customers, the transfer of

¹² A regulatory sandbox is a model that uses technological tools or means to provide financial services through modalities that differ from those in the existing market at the time the temporary authorisation is granted regarding LRITF terms.

personal data for the provision of services, the monitoring of customer transactions, risk classification and information exchange, among other activities.¹³

20. With regard to competition policy, there is no overlap between the responsibilities of the financial regulatory authorities and the competition authority, COFECE. This is because COFECE's powers are focused on monitoring, promoting and guaranteeing competitiveness and free competition across all sectors of the economy (whether regulated or not), so that markets function efficiently, while the financial authorities are responsible for regulating and supervising their respective sector or subsector.

21. Notably, there is close, formal collaboration between financial regulators and COFECE, through collaboration agreements, including specifically the Ministry of Finance and Public Credit,¹⁴ Banxico,¹⁵ CNBV,¹⁶ and CONDUSEF.¹⁷ These formal instruments provide mechanisms for authorities to exchange information. COFECE also favours close and open communication with regulators.

4. Fintechs and competition policy

22. It is important to understand how the digital financial services market functions in order to regulate the generation of new digital financial products and services. This will not only mean users of financial services have more options within their reach, but will reduce interest margins and promote financial inclusion and access to credit for households and small and medium-sized enterprises alike.

23. In this regard, COFECE has been taking relevant action in the digital financial services sector and its regulation since 2017. Its first opinion¹⁸ addressed the possible effects that the proposed Fintech Law might have on the competitiveness and free competition process and made recommendations, including possible improvements to the Fintech Law initiative, to protect the competition process. These recommendations included the following:

- Provide legal certainty. Mainly in the process for authorising new financial technology institutions and regulatory sandboxes, as well as increasing the time periods for temporary authorisation of sandboxes.
- Guarantee the provision of financial services by credit institutions to fintech companies under non-discriminatory conditions.

¹³ Available at: https://home.inai.org.mx/wp-content/uploads/TratamientoDP_FINTECH.pdf

¹⁴ Available at: <https://www.cofece.mx/wp-content/uploads/2022/03/COFECE-SHCP-05-01-2015.pdf>

¹⁵ Available at: https://www.cofece.mx/wp-content/uploads/2019/02/Convenio_COFECE_BANXICO.pdf

¹⁶ Available at: https://www.cofece.mx/wp-content/uploads/2018/12/Edit_Convenio_COFECE-CNBV.pdf

¹⁷ Available at: https://www.cofece.mx/wp-content/uploads/2018/12/Edit_Convenio_COFECE_CONDUSEF.pdf

¹⁸ Opinion OPN-007-2017, available at <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V20/6/3953499.pdf>

- Establish a legal framework that guarantees neutrality with respect to technology, infrastructure and business model.
- Establish the principle of non-discrimination between companies under equal terms.
- Do not establish requirements and procedures regarding the companies' relevance, their activities and/or clients in the markets, which may give advantages to the entities with which the financial technology institutions may compete.

24. In 2022, COFECE issued a second opinion¹⁹ in which it identified elements of the regulation that might limit the competitiveness and free competition process, and made recommendations to promote competitive conditions in financial technology institutions in relation to the following topics:

- Disproportionate or differentiated requirements for cloud storage considered in the provisions applicable to electronic payment fund institutions.
- Discriminatory requirements for the use of commission agents in the provisions for electronic payment fund institutions.
- Risks to the protection of financial technology institutions' clients' savings contained in the Fintech Law and the Bank Savings Protection Law.
- Different requirements for domestic and foreign standardised software APIs.
- Absence of regulation on open banking.

25. Thus, the opinion recommended:

- That the authorities review the proportionality of certain measures based on the risks associated with activities that are regulated, such as the possibility of interruptions to services provided in the cloud, the use of commission agents by various financial entities, and the protection of funds managed by financial technology institutions.
- That the authorities issue the outstanding regulation on open banking.

26. The opinions issued by the Commission have helped adjust the regulatory framework to generate a more competitive environment and a level playing field. Certainty in the legal framework is essential to create a level playing field for companies to enter, remain and grow in the market. The competent authorities must keep this in mind in order to promote competition.

27. Finally, the COFECE plenary session approved a study on free competition and economic competition in fintech markets and related markets in order to analyse their impact on competition conditions in the savings, credit and payments markets.²⁰

28. While digital financial services have created several benefits for the population, such as ease of contracting and better prices, there may be conditions that limit their development potential.

29. This study has been carried out in conjunction with the CNBV and Banxico in an attempt to create conditions that enable the population to benefit from a wider range of

¹⁹ Opinion OPN-009-2022, available at: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V197/1/5837843.pdf>

²⁰ See press release on this subject at: <https://www.cofece.mx/inicia-estudio-sobre-servicios-financieros-digitales/>

financial services at lower prices. This sector is particularly relevant as it has a cross-cutting impact on a large number of production activities. It also has the potential to help the growth of small and medium-sized enterprises and to increase options and inclusion for users of financial services.

30. For example, a key point is to boost the use of instant settlement payment systems such as CoDi (short for Digital Collection in Spanish) and DiMo (short for Mobile Money in Spanish) with the aim of reducing transaction costs, lowering costs for small businesses and reducing financial exclusion.