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**LATIN AMERICAN COMPETITION FORUM**

**-- Session III: Strategies for Competition Advocacy --**

**Contribution from Mexico**

**8-9 September 2010, San José (Costa Rica)**

*The attached document from Mexico is circulated to the Latin American Competition Forum FOR DISCUSSION under session III of its forthcoming meeting to be held in Costa Rica on 8-9 September 2010.*

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## **LATIN AMERICAN COMPETITION FORUM**

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**Session III: Strategies for Competition Advocacy**

### **-- CONTRIBUTION FROM MEXICO --**

*Federal Competition Commission*

#### **1. Regulatory reform in Mexico**

1. During its 17 years of existence, the Federal Competition Commission (CFC) has made numerous efforts to promote the principles of competition in intergovernmental circles. These efforts are based on actions taken by the federal government that preceded creation of the Commission.

2. Beginning in the mid-1980s, the federal government took three important steps to boost competition in the Mexican economy: 1) it implemented a deregulation policy; 2) as well as a privatisation policy; and 3) conducted a review of the legal framework in various sectors in order to eliminate unnecessary burdens and reduce barriers to investment, trade and credit.

3. However, these efforts did not eliminate the distortions in the country's markets, primarily those pertaining to priority sectors such as financial services, energy, telecommunications and transportation.

4. Consequently, and with a view to eliminating those distortions, the Federal Law on Economic Competition (LFCE) came into force in mid-1993, creating the CFC as a decentralised, technically and operationally independent body of the Ministry of Economy. As the horizontal regulator of the Mexican economy, the purpose of the CFC is to protect the competition process and free market access, by

preventing and eliminating monopolies, monopolistic practices and other restraints on the efficient functioning of markets for goods and services<sup>1</sup>.

5. During the 1990s the deregulation process lost some momentum: along with the new CFC, a number of sectoral regulators emerged with differing degrees of independence from the federal government. Examples of such institutions are the Energy Regulatory Commission (CRE), the National Retirement Savings System Commission (CONSAR), the National Banking and Securities Commission (CNBV) and the Federal Telecommunications Commission (COFETEL).

## **2. The relationship between the competition authority and the sectoral regulators**

6. The LFCE empowers the Commission to issue opinions at its own initiative, or at the request of a third party, on proposed laws and draft regulations relating to competition and free market access<sup>2</sup>.

7. Under this prerogative the CFC has adopted competition criteria in priority sectors of the Mexican economy. It has also been an essential tool for strengthening the relationship between the CFC and the sectoral regulators, and with other government institutions, as the issuance of these opinions and the adoption of the recommendations contained in them have in the majority of cases offered the opportunity to create consultation and working links with those institutions.

8. Among the opinions issued by the Commission, particular interest attaches to those for: (i) promoting a more competitive retail banking structure; (ii) improving efficiency and competitiveness in the private pension system; (iii) facilitating technological convergence and promoting a more competitive environment in telecommunications; (iv) minimising inefficiencies in the delivery of airport services; and (v) eliminating barriers to international trade.

9. In the foregoing cases, the CFC worked closely with the following regulatory bodies and government ministries to include principles of competition in their regulatory frameworks: CONSAR, Banco de Mexico, CNBV, COFETEL, Ministry of Communications and Transport, and Ministry of the Economy.

10. Following are some specific cases

### **2.1 Financial sector**

11. The financial sector is perhaps the clearest example of reforms that have favoured competition on the basis of CFC recommendations.

12. In April 2007 the Commission issued an opinion pointing to the high cost of banking services and the existence of regulatory incentives for banks not to compete on prices. Under these conditions, banks were earning greater profits and these were not being passed on to consumers.

13. Another problem identified in the CFC opinion was that users found it hard to compare products and services among banks. That situation limited user mobility between banks, and was made worse by the high costs of transferring accounts from one bank to another.

14. On the basis of the CFC recommendations, the National Congress approved a series of pro-competitive legal reforms in early 2010 to enhance transparency and facilitate comparison of bank

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<sup>1</sup> LFCE, article 2.

<sup>2</sup> LFCE article 24 (VII).

products, to facilitate transfers between accounts and make them more mobile, to reduce the minimum capital required to establish new banks, to guarantee non-discriminatory access to retail payment systems, and to promote competitive banking fees.

## **2.2 Pension system**

15. In November 2006, the CFC issued an opinion on the private pension system, in which it called for strengthening prudential supervision, expanding the portfolio of fund investors, and eliminating fees levied on the flow of funds.

16. As a result of that opinion, a draft reform to the Retirement Savings System Act was presented to Congress in early 2007. It was approved later that year, and included most of the Commission's recommendations.

## **2.3 Telecommunications sector**

17. Although there has as yet been no reform to the legal framework for the telecommunications sector, opinions from the CFC persuaded the government to adopt measures that would accelerate the introduction of number portability and interconnection among competitors, and to grant permits to cable television networks to provide telephony services.

## **2.4 Foreign trade**

18. In its opinion published in 2008 to promote the principles of competition in foreign trade regulations, the CFC proposed a gradual reduction in quotas and the elimination of other restraints on international trade. As a result, in that same year the government and representatives of the private sector signed on to a program to simplify foreign trade, including a substantial reduction in those quotas.

## **3. Opinions based on studies conducted as part of the process for strengthening the regulatory framework for competitiveness**

19. In September 2007, the Mexican government signed an agreement with the OECD for a project called "Process for strengthening the regulatory framework for competitiveness" (the "Framework Process").

20. That project was inspired by the "Competition Assessment Toolkit" developed by the OECD Competition Committee with a view to conducting market studies that included a critical evaluation of laws, regulations and policies that unnecessarily restrict competition and market access.

21. For the Commission, the "Framework Process" represents a key tool for promoting competition through dissemination of the recommendations flowing from the studies.

22. Of particular interest among the studies performed as part of the Framework Process are those relating to: (i) competition in bank consumer credit; (ii) competition in interconnection among telecommunications networks; and (iii) competition on the pharmaceuticals market. The first two studies produced significant inputs for adoption of the recommendations cited above, while the third one was used in an investigation of pharmaceutical firms that were raising prices for drugs, as described later in this paper.

#### 4. Other examples of interaction with sectoral regulators

23. The CFC also has the legal power to intervene in privatisation processes and the granting of concessions, in order to introduce competition criteria. Regulations for various economic sectors therefore require that agents interested in obtaining or transferring concessions, rights and other state property, must have secured a favourable opinion from the Commission.<sup>3</sup>

24. The CFC's work in this area can be divided into three stages:

- In the first stage, it participates in formulating public policies, issuing opinions or suggestions with respect to arrangements for privatising a public enterprise or granting concessions or licenses to private parties for the provision of public services.
- In the second stage, it participates in preparing legal instruments that will serve as the basis for the project.
- In the third stage, it analyses, evaluates and issues an opinion on participation of economic agents in tendering processes and the granting of concessions.

25. Some regulatory provisions expressly call for the Commission's intervention in the granting of licenses. For example, the LP gas regulation requires parties interested in obtaining or transferring licenses for storage, transportation or distribution of this product to present notice of the corresponding application to the CFC. Similarly, the natural gas regulation defines those cases in which agents must seek a favourable opinion from the CFC.

26. Lastly, the LFCE empowers any dependency of the federal public administration to consult the CFC on competition matters. Those consultations have no legal or binding effect.<sup>4</sup>

#### 5. Commenting on proposed legislation

27. The CFC makes it a permanent practice to monitor draft bills presented by the legislature and the executive in both houses of Congress, in order to analyse and identify those that could introduce obstacles to competition or could threaten the economic efficiency of markets.

28. The LFCE empowers the Commission to issue nonbinding opinions on draft laws, regulations and decrees with provisions that could restrict competition<sup>5</sup>. The CFC has published more than a hundred opinions of this kind at its webpage<sup>6</sup>, which now constitute an important resource for legislators and public officials responsible for drafting pro-competition laws and regulations.

29. As well, following amendments to the LFCE approved by Congress in 2006, the Commission may now issue binding opinions relating to economic competition, directed at dependencies and entities of the federal public administration, with respect to adjustments to programs and policies when their effects may be contrary to competition and free market access<sup>7</sup>. This prerogative, which has not yet had to be

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<sup>3</sup> LFCE article 33 bis 1.

<sup>4</sup> LFCE article 24 (VI).

<sup>5</sup> LFCE article 24 (VII).

<sup>6</sup> <http://www.cfc.gob.mx>.

<sup>7</sup> LFCE article 24 (VI).

used, has become a mechanism that has facilitated the adoption of nonbinding opinions by the Commission.

30. With respect to the legislative, executive and judicial branches, the CFC has pursued a particular strategy with each of them, in order to establish effective and mutually reinforcing communication. Its activities with these branches include the holding of training seminars, conferences on competition, and high-level meetings.

31. The CFC's communication strategy has also sought to publicise CFC opinions widely and to advocate adoption of their recommendations, using the national, international and regional media. This strategy has positioned the Commission as a respected agency that enjoys high credibility with the public.

32. Thanks to the technical soundness of its recommendations and its effective communication strategy, the Commission is today recognised by all branches of State as an independent, technically and professionally solid institution.

## **6. Advocacy with regional (state) and municipal governments**

33. The LFCE applies throughout Mexico<sup>8</sup> and must be observed by all economic agents and all entities of the federal, state and municipal public administrations<sup>9</sup>.

34. The LFCE empowers the CFC to establish local offices around the country<sup>10</sup>. In fact, however, it has not been able to do so because of the budgetary restrictions it has faced since its creation. In order to remedy this deficiency, the CFC has adopted three strategies to promote competition principles with state and municipal governments.

35. The first was to sign a delegation agreement with the Ministry of Economy to strengthen the enforcement of competition legislation throughout the country. That agreement was signed in 1998, authorising Ministry offices to receive complaints, consultations, requests and notifications of concentrations cited in the LFCE.

36. The second was the signature of a co-operation agreement between the CFC and the Federal Consumer Protection Office (PROFECO), to establish mechanisms and bases of co-operation for sharing information that would facilitate timely performance of the respective functions of the Commission and of PROFECO.

37. Because PROFECO and the CFC have similar objectives,<sup>11</sup> they have in recent years conducted a series of joint activities, ranging from publicising the benefits of competition for the consumer to strengthening co-operation between the staff of the two institutions, as well as ongoing joint training.

38. The third stage is to strengthen linkages between the Commission and the economic development departments of the Mexican states, through three types of action: (i) signature of state and municipal agreements; (ii) training for state and municipal officials in competition matters; and (iii) promoting the opinions issued by the CFC on regulations that restrict competition at the local level.

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<sup>8</sup> LFCE article 1.

<sup>9</sup> LFCE article 3.

<sup>10</sup> LFCE article 24 (XV)

<sup>11</sup> Protecting the right of consumers to choose the products and services that best suit them in terms of price, variety and quality.

39. With financial support from international co-operation programs<sup>12</sup>, the CFC is constantly assisting state and municipal governments to improve the quality of their regulations, through training programs for their officials in which participants review selected regulations for the most important markets in order to identify elements that affect or limit competition.

40. For example, in August 2010 the CFC held a regional seminar in the State of Jalisco to assist state and municipal officials in understanding the opinion issued by the CFC in March of that year, proposing guidelines to avoid regulatory restrictions on the efficient functioning of markets for the production, commercialisation and distribution of corn dough and tortillas<sup>13</sup>.

## **7. Interaction between competition advocacy and LFCE enforcement**

41. In Mexico, competition advocacy has increased awareness of the benefits of competition to all participants in national markets: businesses, consumers and government.

42. This has generated greater interest in the CFC's work, and the authority is now being more frequently consulted in the activities of other government institutions, such as in cases of public procurement.

43. In particular, the greater interest now shown by federal and state authorities in competitive procurement stems from a resolution issued by the CFC in 2010 penalising six pharmaceutical laboratories that were exercising an absolute monopoly over the sale of drugs to the Mexican Social Security Institute (IMSS).

44. Those laboratories violated the LFCE by co-ordinating their positions in public tenders called by the IMSS, effectively eliminating competition among themselves and obliging the Institute to pay artificially high prices for drugs needed to treat its subscribers<sup>14</sup>. In addition to the laboratories, the Commission imposed penalties on individuals who had participated directly in this bid rigging on behalf of their employers.

45. The IMSS co-operated fully with the CFC, giving it access to its purchasing databases and assisting the Commission during the investigation, and this was an essential factor in proving and subsequently punishing the illicit practice.

46. The CFC is now working with the federal and local authorities to develop measures to eliminate anticompetitive tendering and to detect collusion in procurement processes. The steps are being taken in co-ordination with the OECD Competition Committee, as one of the CFC's recommendations is to apply the OECD Guidelines for Fighting Bid Rigging in Public Procurement.<sup>15</sup>

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<sup>12</sup> The Commission has four international co-operation programs through which it finances its advocacy of intergovernmental principles of competition. Those programs are: "Program for Opening Markets to SMEs through Competition Policy", financed by the Inter-American Development Bank; the Competition Component of the Program for Facilitation of the Mexico-EU Free-Trade Agreement; and bilateral programs with the United States and the United Kingdom.

<sup>13</sup> <http://www.cfc.gob.mx/0docs/comentarios/optortilla.pdf>.

<sup>14</sup> LFCE article 9 (IV).

<sup>15</sup> [http://www.oecd.org/document/29/0,3343,en\\_2649\\_40381615\\_42230813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/29/0,3343,en_2649_40381615_42230813_1_1_1_1,00.html).