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LATIN AMERICAN COMPETITION FORUM

Session III - Advocacy: Mainstreaming competition policy into the overall economic policy and government actions in Latin American and the Caribbean

-- Contribution from Mexico --

16-17 September 2014, Montevideo, Uruguay

The attached document from Mexico is circulated to the Latin American Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 16-17 September 2014 in Uruguay.

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Session III - Advocacy: Mainstreaming competition policy into the overall economic policy and government actions in Latin American and the Caribbean

-- CONTRIBUTION FROM MEXICO --

1. Competition policy is a fundamental instrument of economic policy and is considered an essential tool for increasing the productivity of the Mexican economy, because a competitive environment encourages resources to be allocated to their most productive use, thus reducing input costs and enabling consumers to acquire lower-priced and better-quality products and services.

2. In Mexico there is a broad consensus in regards to the benefits of competition policy and its importance to the country. Its significance is recognized as part of the ongoing government strategies to develop a competitive domestic market, which is one of the stated objectives of the National Goals set out in the current administration's National Development Plan.

3. Although more than 20 years have passed since competition policy was enshrined in Mexican legislation and an institution was created to oversee and ensure its enforcement, the importance of the policy to the country's economic development received a powerful boost through constitutional reforms relating to the economy approved in 2013.

4. Since then, the newly created Federal Economic Competition Commission (*Comisión Federal de Competencia Económica – COFECE*) has been working on the instrumentation of two broad areas of public policy in order to fulfill its mandate: enforcing competition legislation and fostering competition culture.

1. Competition policies and their significance on the government's economic strategy

1.1 *Pact for Mexico*

5. During the first days of the current administration, the President of the Republic, together with the leaders of the country's main political parties, laid the foundations for a new political, economic and social agreement aimed at securing the country's democratic transition and boosting its economic growth.

6. This “Pact for Mexico”¹ (*Pacto por México*) was incorporated through the signing of five agreements, one of which – the agreement on “Economic Growth, Employment and Competition” – is the focus of this contribution. This agreement aims to generate conditions that will enable economic growth of over 5% a year.

7. One of the priority actions established for the fulfillment of these objectives was “To extend the benefits of an economy made up of competitive markets,” for which the need was recognized to strengthen the Federal Competition Commission (*Comisión Federal de Competencia*) and create specialized courts dealing in economic competition and telecommunications issues.

8. As such, the Pact for Mexico proved vital as a cornerstone for public policy planning during the current administration’s six-year term.

1.2 2013-2018 National Development Plan

9. The National Development Plan (*Plan Nacional de Desarrollo – PND*) is a working document that governs the entire budget allocation and planning of the Federal Public Administration in Mexico. This document outlines key public policy objectives, sets out specific actions for their fulfillment and stipulates indicators for measuring progress.

10. The PND’s general assessment found negative productivity growth to be one of the key factors limiting national development, since productivity in Mexico has not been sufficiently dynamic as a result of the various crises suffered by the country, and because barriers are still present that limit our productive capacity. These barriers were grouped into five broad areas: institutional strength, social development, human capital, equal opportunities and international outreach.

11. On this basis, the 2013-2018 PND² emphasizes the importance of a “Prosperous Mexico” (*México Próspero*): one of the five National Goals set forth to accelerate economic growth.

12. A “Prosperous Mexico” promotes sustainable productivity growth within an economically stable environment through the creation of equal opportunities.

13. The above goal aims to provide conditions for economic growth via a regulation that allows for healthy competition between companies and the design of a modern, economic-incentive based policy that focuses on generating innovation and growth in strategic sectors.

14. The PND therefore sets out three specific lines of action intended to ensure that clear rules are in place to encourage the development of a competitive domestic market: i) the effective enforcement of legislation in issues of economic competition to prevent and eliminate monopolistic practices and market concentrations that undermine competition; ii) the promotion of regulatory frameworks that embrace competition and market efficiency; and iii) the planning and development of standards that embrace domestic products, and the promotion of consumer confidence in these products.

15. These lines of action, together with those of the Program to Democratize Productivity (*Programa para la Democratización de la Productividad*) described in the section below, will later take shape in the institutional development and strengthening of the newly created Federal Economic Competition Commission (*Comisión Federal de Competencia Económica – COFECE*).

¹ Available at: <http://www.pactopormexico.org>

² Available at: <http://pnd.gob.mx/>.

1.2.1 Program to Democratize Productivity

16. In addition to its five National Goals, the 2013-2018 National Development Plan also specifies *Democratizing Productivity* as one of its cross-cutting strategies,³ whose lines of action include furthering public policies that remove obstacles which restrict productive potential, promoting the use of productive resources by all economic agents, and analyzing revenue and expenditure policy in full so that government actions encourage adhesion to the formal economy.

17. Pursuant to the program in question, recent studies on the causes of the poor rate of growth in the Mexican economy indicate – to a greater or lesser extent – a series of aspects such as insufficient competition, particularly in the network industries (telecommunications, electricity and transport), which result in high strategic input prices for companies, thus raising companies' operating costs and hindering proper factor allocation in the medium term. However, market concentration⁴ also exists in other key economic sectors that produce non-commercial services, such as the media, construction and banking services.

18. The third objective of the Program to Democratize Productivity is the strengthening of the business environment in which the country's enterprises and businesses operate. Actions focused on achieving this purpose have included: a) promoting regulatory frameworks that embrace competition and market efficiency; and b) supporting the efforts of states and municipalities to foster competition in local markets.

2. Telecommunications and economic competition reforms

19. Guided by the aforementioned public policy instruments – and with evidence from other countries showing that the implementation of pro-competition reforms could contribute to growth in GDP of approximately 2.5%⁵ – in 2013 the Mexican Congress approved the most significant economic reforms package in the country's recent history. On June 11, 2013, the Decree enacting the Constitutional Reform of Telecommunications was published in the Official Gazette of the Federation⁶ and the Federal Economic Competition Commission was set up as an autonomous body vested with new powers over and above those held by the Federal Competition Commission (*Comisión Federal de Competencia – CFC*), the now-disbanded competition authority under the auspices of the Ministry of Economy. Below are four key aspects of the constitutional reform:⁷

20. **Constitutional autonomy of competition authorities** As a result of the reforms, two agencies responsible for competition issues were set up: the COFECE and the Federal Telecommunications Institute (*Instituto Federal de Telecomunicaciones – IFT*), both of which are constitutionally autonomous with separate scopes of action. Whereas the IFT has exclusive powers in issues of economic competition in the broadcasting and telecommunications sectors, the purpose of the COFECE is to ensure free competition and market participation, to prevent, investigate and combat monopolies, monopolistic practices, anti-competitive concentrations and any other restrictions on efficient market operation in all other sectors of the economy.

³ Available at: http://dof.gob.mx/nota_detalle.php?codigo=5312422&fecha=30/08/2013.

⁴ See Appendix 1.

⁵ Competition and Markets Authority (CMA), 2013. "Vision, values and strategy for the CMA." Consultation Document. October 1st 2013.

⁶ Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5301941&fecha=11/06/2013

⁷ See Appendix 2.

21. **Constitutional mandate for the separation of investigation and resolution functions:** In the interests of strengthening the impartial exercise of the functions of the COFECE and of contributing to an environment of greater legal certainty, the Constitutional Reform in Telecommunications enshrined in the constitution the separation of the authority's functions into: (i) jurisdiction over the investigation process; and (ii) rulings on the behavior or practice investigated.

22. **New tools for competition authorities:** The powers set out in the Constitutional Reform in Telecommunications to ensure that the COFECE effectively fulfills its purposes include: the issuance of measures to remove barriers to competition and free market participation; the regulation of access to essential inputs; and the legal requirement for the divestiture of the assets, rights, equity interests or shares of economic agents.

23. **New legal environment for competition protection:** The Constitutional Reform in Telecommunications stipulates that the actions of the COFECE may only be challenged by presenting an indirect writ of *amparo* and may not be suspended except in cases where the Commission imposes financial penalties or orders the divestiture of assets. On the other hand, resolutions emanating from trial proceedings may only be challenged when they stop proceedings due to violations committed in the ruling or during the trial itself. Finally, the reform states that writs of *amparo* shall be substantiated by constitutional courts and judges. These measures allow the COFECE, as the administrative authority, to interact with the judicial bodies to construct a more technical and open environment for competition protection.

24. These arrangements have a significant impact on the enforcement and scope of competition policy as they establish a new institutional setup in which the COFECE shall materialize the objectives of the government's economic strategy.

3. COFECE: 2014-2017 Strategic Plan⁸

25. The above is evidence of the Mexican State's commitment to competition policy in the country, which it recognizes as one of the most significant tools for achieving its economic policy objectives.

26. In accordance with its high degree of responsibility, the COFECE's 2014-2017 Strategic Plan articulated the mission behind the authority's actions, its underlying values, its stated objectives and the strategic courses of action that drive its day-to-day activities.

27. All of this is built around four key objectives: 1) Fulfilling its constitutional and legal mandate in issues of economic competition; ii) Promoting competition culture and benefits among economic actors and society in general; iii) Contributing to economic growth and social wellbeing by promoting free market competition; and iv) Being acknowledged as an institution for excellence due to its legal compliance, impartiality, objectivity, transparency and professionalism.

3.1 Promoting competition

28. For the purposes of promoting a competition culture in the various economic, political and social environments, the Commission – pursuant to its strategic courses of action – issues opinions on the impact of legislation on market competition; establishes communication channels with the executive, legislative and judicial branches at all three levels of government; holds working meetings and discussion forums with groups of entrepreneurs, professional associations and academic institutions; and develops a communication strategy targeted at society in general.

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Available at: <http://www.cfc.gob.mx/cofece/index.php/normateca>.

3.1.1 Towards a culture of competition

29. To better address the promotion of competition, the COFECE has set itself the task of producing a specific Working Program for advocacy efforts, entitled “Together for a Culture of Economic Competition” (*Juntos por una Cultura de la Competencia Económica*). This document is, in its own right, a tool that promotes a competition culture, and its wording and style call upon various stakeholders in Mexican society to join forces in creating a competition culture.

30. The document sets out five key areas of cooperation that should contribute to a greater integration and impact of competition policies on general economic policy: 1) implement public policies and regulations that promote more efficient, inclusive and dynamic economies, where each barrier is clearly in the public interest and does not unfairly jeopardize competition and consumer wellbeing; 2) increase knowledge and understanding of economic competition legislation to facilitate and incentivize its compliance; 3) position economic competition and its benefits as a core issue in public, professional and academic discourse; 4) increase consumer awareness of the benefits of economic competition and how COFECE works on its behalf; and 5) leverage cooperation opportunities with international bodies that promote economic competition for the adoption and exchange of best practices.

31. To maximise the program's impact, the COFECE has considered a series of actions to be carried out in conjunction with the key players and stakeholders identified for each area of collaboration. The result is a working program with different stakeholders and authorities. In collaboration with the legislative branch (Congress), the COFECE will seek to implement actions targeted at improved regulation, and co-operation during lawmaking through, among others, the delivery of opinions. Second, with the academic sector, it will engage in promoting the training of experts and incentivising research in economic competition. Third, together with the business sector, it will seek to increase firm's compliance with the Federal Economic Competition Law. Finally, the COFECE will also implement actions aimed at raising awareness of the issue of economic competition among the general public as well as embedding it further within the public opinion agenda.

4. Recent experience

4.1 Legislative outreach: revision of state laws

32. One key activity for promoting regulatory frameworks and public policies aimed at boosting domestic market competition is to raise awareness among all three levels of government of the benefits provided by competition as a principle of organizing our economy. As a consequence, the COFECE has proposed to carry out a local legislative and regulatory analysis of the strategic sectors of the national economy.

33. The ultimate aim of this analysis is to inform state governments of the regulatory reforms necessary from a competition perspective to strengthen the healthy development of the economy's key sectors and activities. Furthermore, it will strengthen the actions of states in promoting competition and free market participation.

34. The ongoing assessment includes a review of the following legislation in seven productive sectors across the 32 states: public works, procurement, health, transport, urban development, housing and construction, economic and MSME development, agriculture, beekeeping and rural development. The analysis being carried out will strengthen the actions of states in promoting competition and free market participation.

35. On November 21, 2013, the Commission issued a ruling on the Animal Husbandry Law of the State of Baja California Sur and the Internal Regulation of the State Milk Commission of Baja California Sur in relation to the potential impact of these regulations on competition and free market participation. The analysis found actions running counter to competition such as the participation of established livestock organizations in decision-making processes reserved to the authority (i.e. appointment of inspectors), and unfair barriers to market entry and exit such as territorial criteria that unfairly protect local producers.

4.2 Working with COFEMER

36. For the purposes of enhancing regulation quality by ensuring it produces greater benefits than costs, and to prevent restrictions on market competition, the COFECE in coordination with the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*) – and as part of the convention signed between both parties – agreed that, from 2013 onward, Regulatory Impact Assessments (*Manifestaciones de Impacto Regulatorio – MIRs*) would include a section to determine whether draft regulations have an impact on economic competition. The COFECE analyses any draft regulations that, in accordance with this section, could harm the competition process, and issues an institutional ruling thereupon.

37. In 2014, the COFECE has issued 21 rulings on draft regulations as part of its cooperation with COFEMER. Of the legal provisions ruled upon, four were favorable, 13 were neutral, and four were determined to run contrary to competition. Appendix 3 shows the competitive impact section of the MIR.

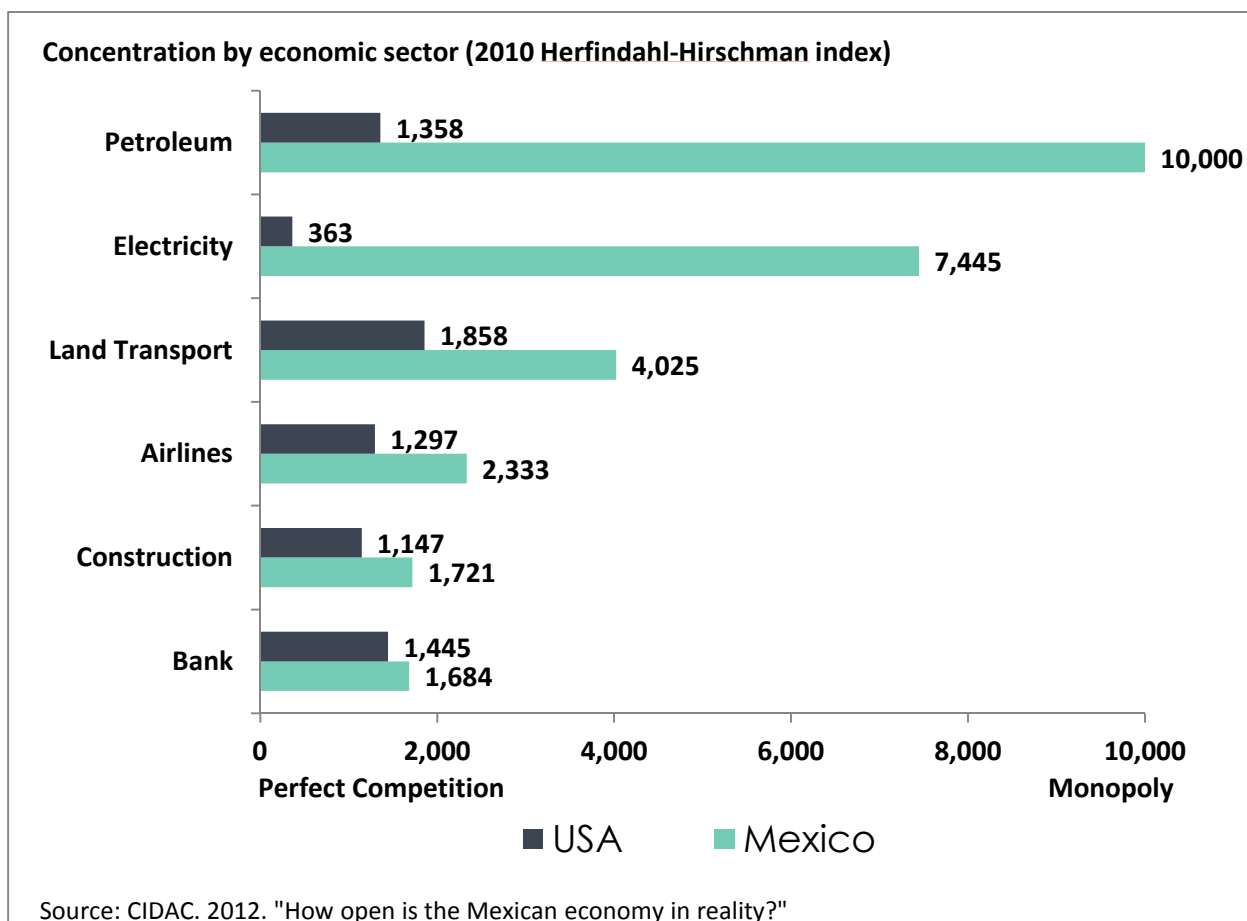
4.3 LFCE Compliance Program Guidelines

38. Bearing in mind that the Federal Economic Competition Law (*Ley Federal de Competencia Económica – LFCE*) applies throughout Mexico in relation to all economic activities and all economic players including associations, chambers of commerce and professional groups, the Commission has promoted discussions with a number of organisations. For example, it approached the Coordinating Business Council (*Consejo Coordinador Empresarial – CCE*), which coordinates the principal Business Confederations and Chambers of Commerce to promote the free market, full democracy, social responsibility and equal opportunities for the population. It also sought closer contact with the Confederation of Mexican Employers (*Confederación Patronal de la República Mexicana – COPARMEX*), an employers' union comprised of entrepreneurs from all sectors who seek representation through the organisation in employment and social matters. Its more than 36,000 member companies from all over the country account for 30% of GDP and 4.8 million formal jobs. The purpose of this outreach was to produce guidelines prepared by the COFECE that would provide a basic summary of the LFCE and highlight the steps that companies can take to elaborate their own compliance program.

39. These “Guidelines for a Program of Compliance with the Federal Economic Competition Law” also aim to help detect anti-competitive behavior in all markets – except telecommunications – and provide guidance on what to do in the event of a suspected breach of the LFCE by a company.

40. These guidelines contain sections on absolute monopolistic practices, relative monopolistic practices, unlawful concentration, requirements for an effective compliance program, and identification, assessment and mitigation of risks, among others.

APPENDIX 1 **SECTOR CONCENTRATIONS IN MEXICO**



APPENDIX 2

KEY ASPECTS OF CONSTITUTIONAL REFORM

 OBJECTIVE OF CONSTITUTIONAL REFORM: EFFECTIVENESS AND CREDIBILITY OF THE COMPETENT AUTHORITY ALONGSIDE A ROBUST LEGAL SYSTEM



PACT FOR MEXICO - Multi-party modernization agenda

“Economic competition will be intensified in all sectors of the economy, with particular emphasis on strategic sectors such as telecommunications, transport, financial services and energy”

APPENDIX 3

MIR COMPETITION SECTION

12. State whether the regulatory proposal contains any of the following actions:		
Competitive impact checklist	Answer options	
1. Does it grant special or exclusive rights to agents for the provision of goods or services?	Yes ()	No ()
2. Does it establish procedures for obtaining licenses, permits or authorizations as a requirement of launching operations or beginning any additional activity?	Yes ()	No ()
3. Does it create preference programs in government procurement to promote or benefit particular agents?	Yes ()	No ()
4. Does it establish technical, administrative or economic requirements for agents to participate in the market(s)?	Yes ()	No ()
5. Does it establish or mark out areas or territories for offering goods or services?	Yes ()	No ()
6. Does it establish exclusive sales or distribution channels (physical, online, phone, etc.)?	Yes ()	No ()
7. Does it establish quality standards or rules for products or services?	Yes ()	No ()
8. Does it give preference or advantages to any kind of agent?	Yes ()	No ()
9. Does it determine the mandatory use of any particular standard, model, platform or technology, or of any product or service protected by intellectual property rights?	Yes ()	No ()
10. Does it in any way restrict the capacity of producers or sellers to innovate or offer new products?	Yes ()	No ()
11. Does it establish or substantially influence the setting of maximum and minimum prices, tariffs or any other mechanism for controlling prices and/or quantities of goods or services?	Yes ()	No ()
12. Does it provide any companies with exemptions from meeting any other standard or regulation, thus increasing costs to competitors or new providers?	Yes ()	No ()
13. Does it or would it make it more difficult for consumers to change provider or company?	Yes ()	No ()
14. Does it change or reduce essential information available to consumers for taking informed decisions?	Yes ()	No ()
15. Does it provide exemptions from the Federal Economic Competition Law?	Yes ()	No ()
16. Does it create or promote a self-regulation or co-regulation regime?	Yes ()	No ()
17. Does it oblige, enable or facilitate the exchange, sharing or dissemination of information on costs, prices, sales, production or other confidential data by market participants?	Yes ()	No ()