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LATIN AMERICAN COMPETITION FORUM

Session II - Measuring Competition Advocacy's Impact in Latin America and the Caribbean

-- Contribution from Mexico --

23-24 September 2015, Montego Bay, Jamaica

The attached document from Mexico is circulated to the Latin American Competition Forum FOR DISCUSSION under Session II at its forthcoming meeting to be held on 23-24 September 2015 in Jamaica.

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Session II - Measuring Competition Advocacy's Impact in Latin America and the Caribbean

-- CONTRIBUTION FROM MEXICO --

1. Introduction: Measuring instruments of law as the missing piece of competition policy

1. Competition policy is a key factor in the sustained increase in business competitiveness, in economic growth and in the well-being of society as a whole.

2. The Mexican Federal Economic Competition Commission (COFECE) encourages competition and free market participation by:

- Exercising the power to **enforce competition law**¹. This branch of activity relies on a general acceptance that the benefits derived from the actions of the competition authority are recognised and quantified. With this in mind, there exist studies and established methodologies that allow for assessments of the COFECE's involvement in different markets. These can be *ex-ante* as well as *ex-post*, and enable the benefits that result from the elimination of an anti-competitive practice to be quantified. For example, a recent study relating to a penalty imposed by the Commission in the freight transportation sector brought an end to a collusive practice that was estimated to have caused accumulated damage to the market to the tune of some USD 723 million.²
- The **promotion of competition** in all areas of the economy. Various obstacles to market competition emerge from regulations, laws and policies promoted by governments and other public authorities. In addition, the increase in awareness of competition policy and its advantages can help to achieve numerous benefits for individuals, companies and markets. Measuring the impact of these initiatives is complex. In fact, it is a little-studied topic that has only recently garnered the attention of the various competition agencies.

¹ In the case of the Federal Law of Economic Competition, law enforcement activities consist of merger monitoring procedures and investigations into monopolistic practices, as well as investigations identifying barriers to competition and essential consumables.

² Using an exchange rate of MXN 13.00 to USD 1.00.

3. Recognising this challenge and adhering to its Strategic Plan for 2014-2017³, the COFECE set a goal for 2015 to develop analytical tools that would enable it to objectively measure the impact of the Commission's involvement in the markets.⁴ This is because, although the application of the Federal Law of Economic Competition (LFCE) and the promotion of market competition do contribute to market efficiency, it is vital that the impact of competition policy is reflected in the well-being of society as a whole. The COFECE was keen, therefore, to carry out an analysis of the results and impact of its involvement in the markets to discern the actual performance and effectiveness of its approach.⁵

4. The analysis of the advocacy tools implemented by the COFECE must be adapted on a case-by-case basis and to each target group. This way, actions aimed at specific audiences (market research and opinions) and those that contribute to a greater recognition of competition policy among the general public⁶ (reports on the Commission's actions, mass media campaigns) can be evaluated.

5. The assessment initiatives that the COFECE is undertaking to measure the impact of its actions are described below. In the first instance, the impact on public authorities is considered, and this is followed by a look at the impact in terms of the economic benefits for society, and then lastly, in terms of the knowledge that society as a whole has of competition policy and its benefits.

2. Measuring the impact of advocacy actions aimed at public authorities

6. The advocacy tools that the COFECE uses to establish regulatory frameworks and public policies that are favourable towards economic competitiveness in domestic markets include:

- **Opinions:** The COFECE produces draft opinions on regulatory frameworks:
 - under the agreement with the Federal Regulatory Enhancement Commission (COFEMER), in order to analyse and identify whether the draft regulations outlined by different government bodies could have a positive or negative impact on economic competitiveness.
 - that are non-binding on laws, regulations, decrees, rulings, rules, agreements, memorandums and other administrative actions of a general nature, as well as projects which could have an effect on economic competitiveness and free competition.

These opinions make up an important part of the COFECE's activities; in 2014, the institution issued 54 opinions in the energy, foreign trade and transport sectors, among others.

³ Strategic Plan for 2014-2017: https://www.cofece.mx/cofece/attachments/article/37/PE_2014-2017_act_2015.pdf.

⁴ 2015 Annual Work Programme: https://www.cofece.mx/cofece/phocadownload/Normateca/Informe/Programa_Anuar_de_Trabajo_2015.pdf.

⁵ Some of the specific actions that were established for this purpose include: i) preparing a study pinpointing the actual damage caused to consumers as a result of lack of competition, ii) carrying out *ex-post* assessments of representative cases in which there is sufficient information to clearly identify market effects that originally came about via the Commission's involvement and iii) devise a methodological tool to assess the impact of the Commission's opinions and recommendations.

⁶ It should be noted that, in 2009, only 1% of the Mexican public was aware of which authority promotes economic competitiveness in the country. Currently, the COFECE has set itself a target of increasing this figure to 25% by 2025.

- **Market research surveys:** Analyses that are carried out with the goal of identifying competition-related problems in a given market and advancing potential solutions, alternatives and actions. Therefore, a market survey can lead to specific recommendations from public authorities.

These are carried out in line with a prioritisation strategy for analysable markets that ensures that COFECE efforts are focused on priority sectors for the national economy. These criteria are: a) economic growth, b) widespread consumption, c) cross-cutting impact, d) low-income households, e) regulated sectors, and f) risk of monopolistic behaviour.

In 2014, the COFECE published research work and recommendations on the financial sector and its markets, issuing 36 recommendations to public authorities. Of those, various entities such as the Ministry of Finance and Public Credit and the National Commission for Retirement Savings, as well as legislators, confirmed that they support the Commission's suggestions.

7. Both tools, and this is especially true of opinions, are subject to an impact assessment that considers whether the recommendations set forward were taken into account by the authorities. This measurement occurs on two levels:

- **Complete evaluation of the opinion:** The opinion is viewed as a single unit, without specific recommendations being detailed. In this regard, if a public authority adopts one or more of the recommendations included in the opinion, the opinion is considered as having been adopted.
- **Evaluation based on the recommendations:** The unit of measurement used equates to the individual recommendations included in the opinions or market research surveys. Was each recommendation adopted or not?

In both measurements, the total number of opinions/recommendations issued and the percentage of proposals adopted by public authorities are taken into account.

As regards the first measurement, an effective implementation rate of opinions by legislators and regulators of 83.3%⁷ was estimated in 2014.

8. **Advantages:** This type of measurement is straightforward and depends on receiving information from the specific stakeholders, such as regulators and state ministries, among others.

9. **Disadvantages:** This is a dichotomous measurement since an opinion/recommendation can only be considered as adopted or not adopted. In this regard, this measurement does not allow for the adoption of recommendations to be looked at in context, or for an analysis of which provisions take on greater importance than others, or for the possibility that, in order to be effective, some recommendations must be adopted in conjunction with others.

⁷ First Report on Follow-up to Strategic Plan for 2014-2017: <https://www.cofece.mx/cofece/attachments/article/37/1er PE COFECE 2014-2017.pdf>.

3. Estimated benefits associated with the implementation of recommendations and suggestions issued by the COFECE

10. The COFECE is currently developing guidelines for the implementation of a methodology that will enable a better understanding of the effect of advocacy actions on society.

11. The aim is that when a recommendation is made and is adopted by a public authority, its impact on the markets and society as a whole can be determined. Therefore, the COFECE has developed the aforementioned methodology for assessing the impact of adopted recommendations where the effect on the market has been reflected in: a) the number of offeror firms and b) the ability of operators to compete with one another.

12. In order to estimate the impact of the Commission's opinions and recommendations on consumer and manufacturer well-being, a variety of factors are taken into account, such as:

- Identification of the market or sector affected (geographical area and goods or services affected, among other aspects);
- Effects of legislation in the markets;
- Consumer surplus in the market/sector under the spotlight;
- Deadweight loss.

It is worth noting, that, in general, a linear demand function in the market being analysed is included in the assumptions of the research.

13. However, these estimates have significant limitations, for example:

- They do not take into account how effective the competent authority has been at implementing the COFECE recommendations;
- They do not consider the economic impact of regulatory frameworks the effects of which are unrelated to competition policy;

14. Nevertheless, this type of assessment constitutes a sound initial estimate of the impact of advocacy actions on people's wallets.

4. Impact of advocacy actions on public awareness of the COFECE

15. Both individual advocacy initiatives and law enforcement activities – and the reporting of how these actions translate into tangible gains for the wider population – contribute to an increase in public awareness of economic competition policy and its benefits for the general public. In this way, the creation of a veritable culture of competition can be measured.

16. Initiatives should therefore be undertaken to measure the effectiveness of competition law in society in general terms.

17. With this in mind, the COFECE carried out a “Survey to identify the knowledge and perception of economic competitiveness in Mexico”.⁸ The Commission, with the support of the market research firm Ipsos Public Affairs and the United States Agency for International Development, published the first edition of the survey in February 2015:

- **Objective:** Identify the knowledge and perception of the public and of small and medium-sized businesses in Mexico with respect to issues related to economic competitiveness, the functioning of the markets, price regulation, and activities carried out by the Commission.
- **Methodology:** The survey was based on a sample of 1,136 face-to-face interviews nationwide, with men and women aged between 19 and 64 years of age and from all socioeconomic backgrounds.
The survey’s margin of error was +/- 3.10%, with a confidence level of 95%.
- **Findings:** General awareness of competition policy and the agency charged with implementing it is still low:
 - The COFECE had a level of awareness of 3% among respondents and a positive opinion of 47%.
 - Among the government institutions, 2% of those polled identified the COFECE as the body responsible for promoting competition.
 - From a selection of cases resolved by the COFECE, between 5% and 12% of the survey respondents had heard of or had seen information connected to said cases.

18. It can therefore be deduced that greater efforts are still required to make the general public aware of the Commission’s actions, both in terms of advocacy and of legal enforcement. With this in mind, the COFECE has launched mass media marketing campaigns and sought to increase its presence in the media, on social networks and at events featuring multiple groups and target audiences.

19. Similarly, initiatives have been undertaken to present information to the public in a clearer and more straightforward manner, via computer graphics, guides and training manuals.

5. Conclusions

20. Both the COFECE’s advocacy actions and law enforcement activity contribute towards generating a culture of competition. Concrete data that shows the benefits that economic competition can bring to individuals, companies and countries needs to be presented.

21. Very little previous work has been done on measuring the impact of competition agencies’ advocacy actions worldwide. However, methods do exist that can estimate its value. These approaches must adapt to the tool implemented as well as to the target group on which it is focused so that the same action can be assessed at various levels.

22. Consequently, the COFECE has developed initiatives to determine the following: success rates, impact estimates, and awareness levels of the COFECE and its work.

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<http://www.alianzaxcompetencia.mx/infografia-percepcion-de-la-competencia-en-mexico/>.