

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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Implications of E-commerce for Competition Policy - Note by Mexico

6 June 2018

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More documents related to this discussion can be found at www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm

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Mexico

1. Introduction

1. E-commerce has transformed the face of business, consumer and vendor relations, customers' expectations, and challenged minds to innovate and increase competition in Mexico and the world.
2. With over 70 million internet users¹ and 17.4 million households with access to internet (50.9% of the total population) Mexico has a growing e-commerce economy and a strong emerging middle class.
3. On both sides of the equation, access to Internet and Internet ready devices are a *sine qua non* of e-commerce; a challenge that Mexico has faced through diverse public programs and agencies to increase internet penetration in society as well as promote greater business endeavours, from SME's (small and medium enterprises) to incentivizing FDI (foreign direct investment) in the country, which has led Mexico to compete for first- and second-place in e-commerce in Latin America over the past years.
4. From Mexico's inclusion to the digital world in 1989 via the first Internet connection using the -.mx- domain: dns.mty.itesm.mx,² to first -.com.mx- domain registration in 1993,³ which signalled Mexico's inclusion in the electronic commerce or e-commerce sector, to 2017 which saw Mexico competing for first place in e-commerce volume in Latin America. It is a story in which barriers to competition stem from firms' conduct, but also from social characteristics that include the digital divide, which reveals the face of inequality in the country.
5. For many years, competition in e-commerce was hindered partly by the telecommunications sector as Telmex was the monopolistic telecom operator in the country.⁴ During the 1990s, the government carried out significant efforts to privatize state-owned enterprises. In the case of the telecoms sector, aiming at maximising revenues, in 1991 the government sold the whole existing infrastructure to a single entity, when there was no regulatory agency to oversee the transaction. The regulatory inadequacies in this sector caused numerous disputes over network access by competitors on long distance and mobile telephony services.
6. To address these and other shortcomings, in 2013, Mexico embarked on several far-reaching reforms.⁵ Accordingly, reforms were focused on further intensifying competition in strategic sectors such as telecommunications and on ensuring equal access

¹ INEGI. (2017). 2017 National Survey on Availability and Use of Information Technology in Homes (ENDUTIH). INEGI. Retrieved from <https://goo.gl/sgvA7o>

² The address registered was 131.178.1.1 with a digital Microvax-II, the first server for .mx domains.

³ NIC Mexico. (2017). Our History. Retrieved from <https://goo.gl/8rVQxB>

⁴ For an assessment on telecommunications policy in Mexico, see: Noll, R. (2013). Assessing Telecommunication Policy in Mexico. SIEPR Discussion Paper No. 12-030. Stanford Institute for Economic Policy Research. Originally published in Spanish in *El Trimestre Económico* Vol. 80. No. 3 (July-September 2013). Pp. 603 – 650. English translation available at <https://goo.gl/3bbbma>

⁵ Further on the Pact for Mexico available at <https://goo.gl/bMjCbj>

to world class telecommunications. To achieve the objectives set, among other measures, the constitution was amended to recognize the right to broadband access and a new institutional framework was established.^{6,7}

7. While new legislation and government initiatives potentially increased availability and ease of access, the real-world impact of these changes in some parts of the country remains to be seen, as the country still suffers from a wide digital divide between cities and rural areas.

2. E-commerce in Mexico: current state of play

8. The Mexican economy has provided the middle class with greater spending opportunities, which, in turn, create a fertile ground for business, including e-commerce.

9. According to *Asociación de Internet.mx (Association)*, a Mexican association that monitors online trends and key issues on the use of Internet in the country, in the Latin American and Caribbean region, Mexico has reached second place in e-commerce, just after Brazil, and it is expected to grow 21.5% on average in the next three years.

10. In 2016, the estimated value of the e-commerce market in Mexico was 329.85 thousand million Mexican pesos (17.63 billion U.S. dollars). A 28.3% increase relative to the 2015 estimate of 16.22 billion U.S. dollars.^{8,9}

11. Also, according to the study developed by ATKearney, “2016: The Tipping Point for E-Commerce in Mexico”, it is projected that in 2019, e-commerce (business to consumer, B2C) in Mexico will reach more than 40 billion U.S. dollars.¹⁰

12. Although in almost every jurisdiction of significant size, the bulk of e-commerce is domestic, at least for the B2C category and takes place within a country’s borders, a 2015 survey made by the Association revealed that 57% of shoppers, shopped cross-border, with two-thirds of those making a purchase in the United States.

2.1. Internet penetration

13. Mexico places seventh among all OECD member countries in terms of broadband internet subscriptions and third on mobile broadband subscriptions.^{11,12}

⁶ The State has a constitutional mandate (Mexican Constitution, article 6, paragraph 3) to guarantee the right to access information technology and communication, as well as broadcasting and telecommunication services, including broadband internet.

⁷ Two new authorities were established, the Federal Institute of Telecommunications (IFT) responsible exclusively for the telecommunications and broadcasting sectors, and the COFECE, created to protect and promote competition in all other sectors of the economy.

⁸ Asociación de Internet.mx. (2017, October 26). Ecommerce Study Mexico 2017. Retrieved from <https://goo.gl/syUxaG>

⁹ Average exchange rate 2016: MXN 18.71 = 1 USD

¹⁰ A.T. Kearney (2016) 2016: Tipping Point for E-Commerce in Mexico. A.T. Kearney. Retrieved from <https://goo.gl/s8bGcQ>

14. The Broadband OECD Update reports Internet coverage has improved in Mexico.¹³ Furthermore, between June 2013 and December 2015, prices fell by 23.2%, household internet services experienced 12.5% growth, fixed broadband services experienced a 20% increase, internet speed increased and more than 50% of the population have mobile internet.^{14,15}

15. However, there is still a great amount of population without connectivity, issue that becomes relevant to Mexico's e-commerce and its insertion in the digital economy.

16. The 2017 National Survey on Availability and Use of Information Technology in Homes (ENDUTIH) carried out by the National Institute of Statistics and Geography (INEGI as per its acronym in Spanish), reports that only 17.4 million Mexican households, approximately 50.9% of the population, have access to the Internet either through a mobile or fixed connection.^{16,17}

17. Efforts to improve Mexico's Internet penetration have increased. The government has launched different initiatives with the purpose of digital inclusion, i.e., the Program *Mexico Conectado*, through which families become recipients of decoders connected to televisions, providing them with access to 5 gigabytes of Internet to be used for online governmental services, aid school children in their assigned school activities, provide access to online job postings and **online shopping**.^{18,19}

2.2. Online Shopper Profile in Mexico

18. The *Asociación de Internet.mx*'s "Ecommerce Study Mexico 2017" indicates that the highest number of online shoppers in Mexico, that is 42% of online shoppers, belong to the AB socio-economic level, 34% belong to the C+ socio economic level, 14% to C-, 6% to C-, 2% to D and 1% belong to the D/E demographic.²⁰

¹¹ Mexico has 16,477,839 broadband internet subscriptions, placing the country in seventh place. The United States is in first place with 108,678,000 subscriptions and Iceland is in last place with 130,131 subscriptions. In terms of mobile broadband, Mexico has 76,934,161 subscriptions.

¹² OECD. (2017, June). OECD Broadband Statistics Total Fixed and wireless broadband subscriptions by country. Retrieved from: <https://goo.gl/3vuk5k>

¹³ OECD. (2018, February). OECD broadband statistics update. Retrieved from <https://goo.gl/KUsxrL>

¹⁴ By late 2015, only 22% of households had internet services with speed below 10 Mbps while more than 75% of households had internet services with speed between 10 and 99.9 Mbps. (IFT, 2016)

¹⁵ IFT. (2016, June). Telecommunications in Mexico, Three Years after the Reform. Retrieved from <https://goo.gl/FRCyUV>

¹⁶ According to the INEGI (2017) the survey's purpose is to identify the availability and use of communication and information technology in homes, and their use by individuals as young as six years old to generate statistical information on the issue and aid in the public policy decision making processes, likewise offer other analytical elements to national and international studies and the public in general.

¹⁷ INEGI. (2017). 2017 National Survey on Availability and Use of Information Technology in Homes (ENDUTIH). INEGI. Retrieved from <https://goo.gl/sgvA7o>

¹⁸ Further information on this program available at <https://goo.gl/2cWVFC>

¹⁹ Digital inclusion is made possible through technological convergence, which, according to *México Conectado* (2017) is the capacity of a network to transport diverse signals as well as a device's capacity to receive diverse services. An example of this service is triple play (internet, television and telephone service).

²⁰ According to the Mexican Association of Marketing Research and Public Opinion Agencies (AMAI), socio-economic levels are defined as follow: A/B: Upper Class – This is the segment with the highest life standards. The profile of the family head of these homes is composed by individuals with an education level

19. Income is a variable that contributes to connection; the greater the income level, the greater the probability the user makes online purchases, payments, and carries out bank operations. The likelihood ranges from 5% to 20%, which might reflect lack of access to the financial system in lower-income level populations. As for smartphone use, the demographic with higher use were women aged between 18 and 24 with higher education, employment, and a high-income level.²¹

20. In 2017, the preferred device for connecting to the Internet was mobile phones.²² The insight drawn from this data is that social media sites have an untapped e-commerce potential in the Mexican market, which raises questions of oversight and legislation in this area. The social media site most used is *Facebook*, followed closely by *WhatsApp* and *YouTube*.

2.3. What is commercialized?

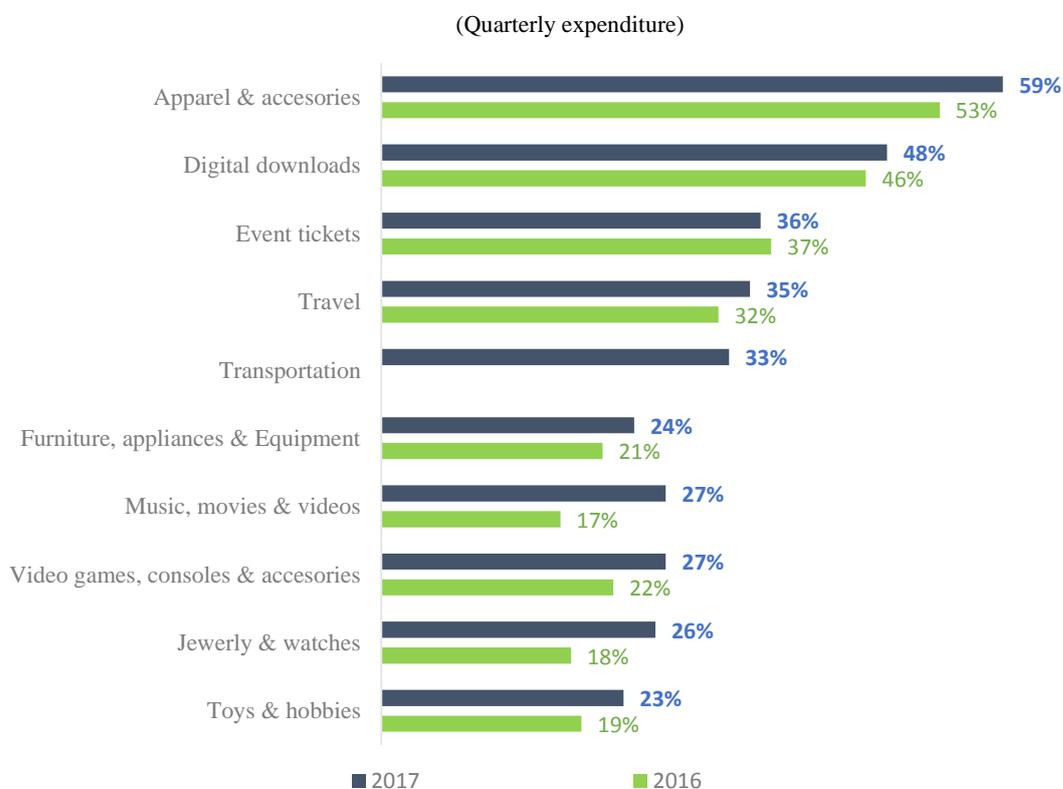
21. According to *Asociación de Internet.mx*, in 2017 online shoppers spent their money mainly on apparel and accessories, digital downloads, event tickets, travel, transportation, entertainment, among others (See figure 1).

22. The average increase in quarterly expenditure was 6% from 2016 to 2017, excluding travel.

of Bachelors or higher. They live in luxury houses or apartments with all the services and amenities; C+: Upper Mid – This segment contains those with income and/or lifestyle slightly superior to those of the middle class. The profile of the family head of these homes is of individuals with an educational level of Bachelor's degree. Generally, they live in houses or apartments of their own, some are luxury homes and they have all the amenities; C: Middle Class – This segment contains what is typically known as middle class. The profile of the family head of these homes is of individuals with an educational level of high school mostly. Homes belonging to this segment are houses or apartments that can be owned or rented with some amenities; D+: Lower Mid – This segment includes those homes with income and/or lifestyle slightly inferior to those of middle class. They possess the best life standards among the lower class. The profile of the family head of these homes is composed of individuals with an educational level of junior high or elementary school completed. Homes belonging to this segment are, in their majority owned; although some people rent the property and some are social interest homes; D: Low – This is the middle segment of lower classes. The profile of the family head of these homes is formed by individuals with an educational level averaging elementary school (completed in most cases). Homes belonging to this segment are owned or rented like, tenement houses and social interest habitational units or they are under frozen rents; E: Lowest - This segment is not usually included in marketing segmentation. The profile of the family head is of individuals with an educational level of unfinished elementary school. These people usually lack properties, so they live or use other resources to acquire housing. Usually many generations live under the same roof, and they are totally frugal.

²¹ *Asociación de Internet.mx*. (2017, October 26). *Ecommerce Study Mexico 2017*. Retrieved from <https://goo.gl/syUxaG>

²² Further information on the use of information technology and internet in Mexico available in Spanish at <https://goo.gl/4vepLL>

Figure 1. Mexico: Categories of goods and services purchased through e-commerce, 2017

Source: Information taken from Asociación de Internet.mx. Ecommerce Study Mexico 2017.

2.4. Main players

23. Main players include, on the one hand, authorities overseeing the implementation of the applicable legal framework and government institutions carrying out actions to encourage e-commerce and, on the other, businesses devoting greater resources to start or improve their online presence.

24. COFECE as the competition authority in Mexico plays a key role in e-commerce.²³ The Commission's work includes fostering a regulatory environment that promotes competition in economic sectors, in which companies offer goods and services with the help of digital technology and that compete with companies that abide by a "traditional" business model, and the enforcement of the competition regulatory framework when these firms break the law.

25. On the consumers' side, the Federal Consumer Bureau (PROFECO as per its acronym in Spanish) oversees electronic commerce, particularly, regarding the relationships among vendors and consumers and enforcement of consumer rights and vendor obligations in compliance with Federal Consumer Protection Law. In the domain of e-commerce, one of PROFECO's programs designed to this end is the *Monitoreo de*

²³ Except when it comes to the broadcasting and telecommunications sectors.

Tiendas Virtuales or MTV (Virtual Shop Monitor).²⁴ To date, PROFECO monitors 866 e-commerce sites in Mexico.²⁵

26. To promote the insertion of businesses, especially small and medium-sized enterprises, in e-commerce, the Mexican government has launched different initiatives. For example, PROMEXICO, a federal agency in charge of coordinating strategies for promoting Mexico's participation in the global economy, has launched a program through which entrepreneurs can be reimbursed for consulting services when developing an e-commerce strategy and digital marketing, including social media for international product sales.²⁶ This, as well as many other programs, has great potential toward fostering growth and greater competition.

27. On the firms' side, main players are purely online leaders, such as *Amazon*, and mega retailers such as *Walmart*.²⁷ These companies have implemented diverse strategies to expand their participation in e-commerce, e.g. improving logistics to offer free delivery in less time, creating a friendlier platform for mobile devices and making electronic payments easier and safer.

28. According to the consulting firm Endeavor, *Mercado Libre*, a main Latin American online marketplace, *Amazon Mexico*, *Walmart*, *Linio*, an e-commerce retailer, and *Liverpool*, a Mexican chain of department stores, have positively influenced market expansion.²⁸

29. Among the hybrid firms, that is, those that combine online and offline experiences, the omnichannel has become a trend as it encompasses all platforms and devices available to customers that come into contact with the firm. Mobile e-commerce or m-commerce has increased in part with smartphone access, which has opened the door to mobile first business models such as *Rappi* and *Cabify*.

2.5. E-commerce limitations

30. As mentioned above, e-commerce in Mexico is rapidly expanding; however there are still some obstacles to overcome. In terms of users, the *Asociación de Internet.mx* reports that lack of information and variety of goods offered to users continue to generate e-commerce barriers. Those surveyed for the aforementioned study expressed the reasons why they did not make online purchases after seeing online advertising; among the most mentioned: **preference for shopping at brick-and-mortar stores, lack of need and lack of interest**.²⁹

31. Consumer's **offline consumer culture** predominates over that of the online consumer culture – **92% of the population prefers to pay in cash** – mostly due to security concerns, **lack of a credit card or debit card**. Considering the lack of access to

²⁴ Further information of MTV, in Spanish available at <https://goo.gl/eAwbjU>

²⁵ PROFECO. (2018, March 21). Monitoreo de Tiendas Virtuales. Retrieved from <https://goo.gl/UKHYYo>

²⁶ PROMEXICO. (2017, May 14). Pymes mexicanas podrían exportar a través de Alibaba. *PROMEXICO Blog*. Retrieved from <https://goo.gl/tgVpkm>

²⁷ A.T. Kearney (2016) 2016: Tipping Point for E-Commerce in Mexico. A.T. Kearney. Retrieved from <https://goo.gl/s8bGcQ>

²⁸ Coppel & AMVO. (2018, February). La Economía digital y el inicio de una nueva era. *Endeavor México*. No. 1 February 2018. Retrieved from <https://goo.gl/f99LuL>

²⁹ Asociación de Internet.mx (2018, May) *13° Estudio sobre los Hábitos de los Usuarios de Internet en México 2017*. Retrieved from <https://goo.gl/Fifn98>

credit cards or debit cards, several sites opt for payment methods such as *Paypal*, bank transfers, payment at convenience stores, bank deposits and *Mercado Libre's* payment processor. Other companies, such as *Linio*, offer cash-on-delivery options. **Fraud and lack of trust** are also reasons cited as well as the need for customers to be in touch with the sales person, especially when dealing with a transaction.³⁰

32. Applicable legislation and licensing practices and scope of rights (for digital content: marketing, streaming or downloading) which may be related to technology and usage rights, release and duration rights and geographic rights are also commonly cited as limitations to e-commerce.

33. On the consumer side, there have been reports of abusive practices or unlawful practices as per the federal consumer protection law. PROFECO has registered several irregularities and infractions to the consumer protection law. Some experts explain that legal lacunas failing to encompass all aspects of e-commerce and lack of oversight by authorities which result in damage to the market.³¹

3. The impact of e-commerce on competition

34. Businesses strategies to reap the benefits of e-commerce can impact several areas in terms of competition. New business models are introduced, completely changing the established relations in traditional markets and creating strong competitive pressure among businesses that operate in a traditional manner and innovative firms.

35. As has been said at many discussions on the matter, the traditional analytic focus of competition authorities will not necessarily work in these markets. The following could present challenges to competition authorities: definition of markets, multi-sided markets and market power, as competition tools and cases require a more holistic approach which should include variables such as access to data, innovation leading to fast market evolution, implementation of vertical agreements due to concerns of free-riding by online retailers that could inhibit intra-brand competition, and may unjustifiably prohibit vendors from selling certain products online to protect brick-and-mortar stores. Horizontal coordination is also a factor, prices are readily available on Internet but also through algorithms which use mechanisms yet to be discovered and understood.³²

3.1. Antitrust cases involving e-commerce in Mexico

36. E-commerce platforms have been a growing issue for competition authorities worldwide and Mexico has not been the exception.

37. September 2017 saw the beginning of the first investigation on e-commerce platforms and related services in Mexico.³³ The procedure began in response to multiple informal complaints presented to COFECE. The information gathered from the

³⁰ Coppel & AMVO. (2018, February). La Economía digital y el inicio de una nueva era. *Endeavor México*. No. 1 February 2018. Retrieved from <https://goo.gl/f99LuL>

³¹ Sánchez Onofre, J. (2017, marzo 28). *Amazon y MercadoLibre operan con prácticas abusivas en México*. *El Economista*. Retrieved from <https://goo.gl/LeukAx>

³² PWC (2017). Handbook on E-Commerce and Competition in ASEAN. Retrieved from <https://goo.gl/htgyge>

³³ Case file: IO-002-2017

complaints found enough evidence to raise concerns that relative monopolistic practices (unilateral conducts) were conducted in this market, affecting millions of buyers who engage in Internet purchases every day.³⁴

38. This investigation, which is still in progress, is a milestone in competition history in the country. As mentioned before, it is the first digital-related investigation that has ever been opened in Mexico and one of the first in Latin America. There are some challenges associated with this type of investigation. To that effect, COFECE has invested in modernizing its teams by including IT specialists in the investigation process and in infrastructure for systematic monitoring and screening.

3.2. Advocacy: understanding the sector

39. In February 2018, in an effort to better understand the digital economy, including e-commerce, and its effects, COFECE published the document “Rethinking competition in the Digital Economy”.³⁵ In it, important questions are addressed; can traditional detection and investigation tools still be used by antitrust agencies in digital economies? How should data be managed and protected digitally? Should these markets be regulated or must they operate under the competition conditions by which they were created? among many others. In a general sense, the document addresses two possible actions competition authorities could take. The first is to exercise the regular ex-post attributions when conducting investigations or allocating fines. The second is to regulate those digital markets that pose major threats to competition conditions (but not all).

40. In addition, the Commission organized a Digital Economy Forum where regulators and members of industry discussed the development of digital economy and their concerns about government intervention. This event helped to build on the Commission’s knowledge of the markets, the role of innovation and current trends, and antitrust tools better suited for each market.

4. Regulatory efforts outside the realm of competition law

41. Mexico has no specific e-commerce regulation. However, on May 29, 2000, diverse regulations were amended to properly protect any kind of electronic transaction: the Federal Civil Code, the Civil Procedures Code, the Commerce Code and the Consumer Protection Law (LFPC).

42. Some of the main changes were the following:

- **Federal Civil Code:** recognizes the validity of consent expressed by electronic and optical means or by any other new technology, as well as the validity of purchase contracts celebrated by those means. The Civil Code also allows the expression of the offer and its acceptance in an immediate way, without previous agreement of the parties.
- **Federal Civil Procedure Code:** recognizes as evidence the information generated and communicated through electronic and optical means or by any

³⁴ See COFECE’s press release on its probe of e-commerce platform services in Mexico <https://goo.gl/QJd1df>

³⁵ COFECE (2018). Rethinking competition in the digital economy. Retrieved from: https://www.cofece.mx/wp-content/uploads/2018/03/EC-EconomiaDigital_web_ENG_letter.pdf

other technology. The value of evidence will be determined by the security or trustworthiness of the method employed to transfer such information.

- **Code of Commerce:** provides that contracts and agreements entered by those electronic or optical means shall become binding from the moment an acceptance of a public offer is received. It is therefore expressly stated that electronic means may now be utilized in all acts of commerce and all information generated, sent, received, filed or communicated through such electronic or optic means shall be generically denominated “data message”.³⁶
- **Federal Consumer Protection Law:** establishes that all electronic operations between consumers and suppliers, must comply with the basic principles of LFPC, which were reformed according to the “OECD Guidelines for consumer protection in the context of electronic commerce”. Besides, a new chapter was introduced in this Law, in order to set out the consumer’s rights in the field of electronic commerce transactions.³⁷

5. Conclusions

43. As a result of improvements in connectivity, enhanced financial inclusion, more streamlined logistics and increased digital literacy, e-commerce in Mexico is expected to continue growing and become one of the most attractive online markets in Latin America.

³⁶ Mexico’s Federal Code of Commerce available in Spanish at: <https://goo.gl/qji215>

³⁷ A complementary English version of the Federal Consumer Protection Law available at <https://goo.gl/mBdsBT>