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## **The Role of Competition Policy in Promoting Economic Recovery – Note by Mexico**

2 December 2020

This document reproduces a written contribution from Mexico submitted for Item 2 of the 134th OECD Competition Committee meeting on 1-3 December 2020.

More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/promoting-economic-recovery.htm>

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## Mexico

### Federal Economic Competition Commission (COFECE)

#### 1. Introduction

1. The health crisis derived from the COVID-19 pandemic has caused the partial or total closure of some economic activities around the world, which consequently has led to significant production downturns in most economies. The reduction in economic activity can also be seen through the shutdown or bankruptcy of companies and the loss of jobs, which mainly affects small companies that do not have the capacity to face drastic changes in their businesses. Accordingly, some markets can become more concentrated, and the remaining market participants increase their market share and power. Given this difficult economic scenario, competition agencies have a role to play in the process of economic recovery and in guaranteeing that markets remain competitive and contestable.

2. During this health contingency, the Mexican Federal Economic Competition Commission (Commission or COFECE per its acronym in Spanish) has ensured the continuity of its operation amidst the crisis. In the field of competition law enforcement, COFECE ensures the continuity of merger review through the Electronic Notification System;<sup>1</sup> issued emergency regulatory provisions for implementing electronic procedures for other enforcement procedures through an Electronic Filing Office; noted the importance of avoiding unduly collaborations between competitors; and issued warnings to avoid collusion in some markets.<sup>2</sup>

3. As for advocacy, the Commission remained active by issuing opinions to ensure competitive neutrality in key markets of the Mexican economy as a route to accelerating economic recovery. In particular, we published a document with proposals for regulatory improvement which may foster economic resurgence by drawing on our previous experience with market studies, opinions and other advocacy papers.

4. The following sections will describe the most relevant efforts made by COFECE to respond to the crisis and to contribute to the recovery of the Mexican economy in the aftermath.

#### 2. The role for competition enforcement in the recovery

5. Even when the COVID-19 pandemic has given rise to several challenges, especially for ongoing enforcement proceedings, the Commission has taken measures to ensure continuity in its operations and deliver decisions that benefit the Mexican population during these difficult times.

6. In the case of merger notification and review, procedures were processed normally, hence supporting continued business activity in diverse sectors of the economy. This was mainly due to the fact that since January 2020, it is compulsory for all merger notifications

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<sup>1</sup> Sitec. Available (in Spanish) at: <https://www.cofece.mx/sitec/>

<sup>2</sup> All the information related to the handling of the COVID-19 pandemic by COFECE is available at: <https://www.cofece.mx/information-generated-by-cofece-related-with-the-epidemic-covid-19/?lang=en>

to be conducted through the Electronic Procedures System (SITEC) which has allowed the procedures to be carried out in a remote environment, further fulfilling the Commission's commitment to expedite the review of mergers and not hindering recovery from the crisis.

7. On March 27<sup>th</sup>, 2020, after the General Health Council recognized COVID-19 as a serious disease for immediate attention, the Commission issued an official position for enforcing the Federal Economic Competition Law (LFCE per its acronym in Spanish) in light of the health emergency aimed at contributing to ensure the continuity of operations of supply chains and to avoid artificial restrictions of the supply that could raise the prices of goods and services.<sup>3</sup>

8. The Commission's position included aspects such as i) not prosecuting collaboration agreements between competitors as long as they take place in the context of the emergency, they comply with the law, they do not displace competitors and have been authorized by the Commission,<sup>4</sup> ii) a call to economic agents to ensure that any price increase should obey individual and independent decisions and not be induced, promoted or recommended by business associations, chambers or confederations, iii) reassuring that any practices to manipulate prices, restrict the supply of goods and/or services, allocate markets or rig bids would be prosecuted and sanctioned in accordance to the law, iv) the commitment of COFECE to keep close attention to the behavior of sensible markets, and iv) a commitment to expedite the review of mergers derived from the need to create synergies and increase production capacities to timely and sufficiently satisfy the needs resulting from the crisis.

9. By the end of March, COFECE, through its Investigative Authority, issued two warning letters with the purpose of calling out price increases that could be the result of possible agreements between competitors in the COVID context:

- The first letter was directed to the National Chamber of the Sugar and Alcohol Industry (CNIAA per its acronym in Spanish) and raised concerns about possible increases in the prices for pure alcohol, alcohol products and some inputs for its production, such as molasses; which could be the result of possible agreements between competitors to manipulate prices.<sup>5</sup> These products are important inputs in hygiene consumables (such as alcohol-based products used for sanitization) that have observed an increased demand during the pandemic.
- In a second letter, COFECE warned the National Association of Real Estate Developers (ADI México) to avoid promoting among its members the granting of coordinated discounts to tenants, which could represent a breach to the law if said discounts were to be established or fixed via an agreement between developers with the object or effect of establishing a quota or a maximum discount to be granted.<sup>6</sup>

<sup>3</sup> See Press Release COFECE-012-2020 available at: [https://www.cofece.mx/wp-content/uploads/2020/03/COFECE-012-2020\\_COFECE-COVID-19.pdf](https://www.cofece.mx/wp-content/uploads/2020/03/COFECE-012-2020_COFECE-COVID-19.pdf)

<sup>4</sup> The agreements must be reported to the Commission's Investigative Authority assuring that they are temporary and aimed at addressing the situation derived from the COVID-19 pandemic, so that the Investigative Authority, in the shortest time possible, conducts the corresponding analysis and, if it is the case that, in effect, the agreement does not have as its main or preponderant object to fix or manipulate prices, reduce supply or allocate the market in detriment of consumers, inform the applicant that such conduct will not be investigated during the contingency.

<sup>5</sup> See Press Release COFECE-014-2020 available at: <https://www.cofece.mx/wp-content/uploads/2020/03/COFECE-014-2020-ALCOHOL.pdf>

<sup>6</sup> See Press Release COFECE-015-2020 available at: <https://www.cofece.mx/wp-content/uploads/2020/04/COFECE-015-2020-English.pdf>

This warning is especially important to avoid aggravating the complex economic scenario of stores within shopping centers as they faced a relevant decrease in the number of customers and sales. Agreements between vendors and tenants in terms of temporal rental discounts is a valid measure, but an agreement between tenants to fix limits to rent discounts to their clients, beside breaching the LFCE, could lead to more closures than would have occurred without the agreement, deepening the slump and slowing down recovery.

10. In both of aforementioned cases, the Commission strongly urged the parties to oversee and encourage their members to make strictly individual decisions in accordance to their business strategies and avoid any unlawful coordination or agreement between competitors to manipulate prices or displace competitors.

11. To further contribute to the continuity of investigations in the context of remote work and social distancing restrictions, in June the Commission published the *Emergency Regulatory Provisions of the Federal Economic Competition Law on the use of electronic means*,<sup>7</sup> applicable to procedures related to the processing of complaints, monopolistic practices investigations, unlawful mergers, essential inputs, barriers to competition and competition conditions, as well as the leniency and immunity program and the fine reduction benefit. The provisions also implemented an Electronic Filing Office which allowed to resume trial-like procedures remotely thanks to an additional platform prepared for conducting appearances, oral hearings, confessionals, testimonials, among other proceedings.<sup>8</sup>

12. Rounding up the efforts of the Commission to continue operations at all levels, in March the Board of Commissioners issued an Agreement to allow its sessions to be conducted remotely.<sup>9</sup> This has enabled the Board to resume its decision-making processes by issuing resolutions or imposing sanctions. For example, in the past months the Board has fined companies and natural persons who colluded in tenders for services for laboratory tests and blood blanks convened by public health institutions,<sup>10</sup> fined two mergers for failing to notify the transaction<sup>11</sup> and sanctioned several companies and natural persons for agreeing retail gasoline prices in the north of the country.<sup>12</sup>

### 3. The role of competition advocacy in the recovery

13. Economic recovery can result in greater benefits for consumers when the dynamics of competition not only allow a greater number of participants to enter the market but also

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<sup>7</sup> See Press Release COFECE-024-2020 available at: <https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-024-2020.pdf>

<sup>8</sup> The complete Emergency Regulatory Provisions are available at: [https://www.cofece.mx/wp-content/uploads/2020/06/EP\\_Electronic\\_Procedures\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/06/EP_Electronic_Procedures_ENG.pdf)

<sup>9</sup> The complete Agreement is available, in Spanish, at: <https://www.cofece.mx/wp-content/uploads/2020/03/DOF-31marzo2020-01.pdf>

<sup>10</sup> See Press Release COFECE-031-2020 available at: [https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-031-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-031-2020_ENG.pdf)

<sup>11</sup> See Press Release COFECE-32-2020 available at: [https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-032-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-032-2020_ENG.pdf)

<sup>12</sup> See Press Release COFECE-034-2020 available at: [https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-034-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-034-2020_ENG.pdf)

encourage their efficiency and capacity to compete and remain in it. Thus, under the current health and economic crisis scenario, it is of the outmost importance that government measures ensure competitive neutrality and avoid favoring certain participants, for example state-owned entities, over others. In other words, in a context of lesser demand, the government should not pick or promote winners and losers in of a market by granting regulatory advantages.

14. In this sense, COFECE has been proactive by pointing this out through the issuing of two opinions related to the energy sector, as measures taken by the federal government have put competitive neutrality at risk.

15. In the electricity sector, the Commission promptly reacted by issuing an opinion noting adverse provisions to the competition process in the Agreement issued by the independent operator of the Electric System, the National Energy Control Center (CENACE per its acronym in Spanish),<sup>13</sup> which established extraordinary measures in light of an alleged reduction in the electric energy consumption due to the COVID-19 pandemic.<sup>14</sup> In its opinion, COFECE noted that the measures could cause an increase electricity prices, in detriment of Mexican consumers and businesses, and open space for discriminatory actions in favor of certain power plants, compromising the competitive dispatch of electricity.

16. As for the gasoline and diesel markets, the Commission has been closely monitoring the process for the granting for permits for the import of gasolines, which would facilitate the opening of this sector in accordance to the 2014 energy reform. However, COFECE noted that since 2018 SENER has not granted new long-term importation permits and this year, due to the crisis, SENER suspended its legal timeframes for these procedures further preventing the entrance of new competitors to the wholesale market of fuels and risking the permanence of those whose permits are about to expire.<sup>15</sup> A similar situation was found in the granting for permits for the retail of gasolines of brands different to *Petróleos Mexicanos* (PEMEX). In addition, the health crisis has caused a decrease in the demand for gasolines due to the mobility restrictions, further aggravating the conditions of the market and the capacity of other competitors to remain in it. Thus, in July the Commission issued an opinion directed to SENER and the Energy Regulatory Commission (CRE per its acronym in Spanish) with recommendations for implementing the regulations for the granting of new permits in an expedite and non-discriminatory way.<sup>16</sup> The opinion also recommended the Ministry of Economy to promptly issue a guideline to eliminate local regulatory obstacles for the installation and operation of more gas stations.<sup>17</sup>

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<sup>13</sup> The complete opinion (OPN-006-2020) is available in Spanish at: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V132/28/5125826.pdf>

<sup>14</sup> See Press Release COFECE-018-2020, available at: <https://www.cofece.mx/wp-content/uploads/2020/05/COFECE-018-2020-Opinion-to-the-Energy-Control-Center.pdf>

<sup>15</sup> For example, at the beginning of 2020 there were 80 valid one-year gasoline import permits, of which 21 have already expired without a renovation being granted and other 27 will expire in the remainder of 2020. If legal timeframes are not resumed, by the end of 2020 only 32 will remain valid, representing a 60% reduction in the number of valid permits.

<sup>16</sup> See Press Release COFECE-027-2020 available at: <https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-027-2020-English.pdf>

<sup>17</sup> The complete opinion (OPN-007-2020) is available in Spanish at: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V161/2/5192301.pdf>

#### 4. COFECE's recommendations for economic recovery

17. On October 2020, the Commission issued the *Proposals on Economic Competition to Support the Recovery of the Mexican Economy*, which represents a clear statement of the Commission regarding its commitment to ensure a sustainable economic recovery. This document includes 12 proposals that draw from COFECE's previous market studies, opinions and other advocacy works, covering a wide range of key sectors of the economy in which pro-competitive changes are needed not only to promote competition but to allow greater welfare and consequently an economic recovery in the aftermath of the crisis.<sup>18</sup>

18. The proposals include: i) creating a public credit bureau in which all financial sector parties (both traditional banking and FinTechs) have non-discriminatory access to information in custody of the government (for example, information related to the payment of public utilities, that would allow for a credit assessment of unbanked sectors of the population), ii) expediting the entrance of generic drugs to market, iii) guaranteeing the compliance of the legal framework in force for the economic dispatch of electricity and the non-unduly discriminatory access to transmission and distribution grids, iv) the expedite and non-unduly discriminatory granting of importation and retail permits for gasoline and diesel, v) adding provisions to the Acquisitions Law to increase competition in public procurement, vi) modernizing the regulation for passenger transportation to reduce concentration and promote better prices, vii) the issuance of directives from the National Council for Regulatory Improvement so that state and municipal governments eliminate restrictions to competition in key sectors, viii) avoiding the imposition of restrictive foreign trade measures without a previous analysis on the damage to consumers, ix) retrieving public goods and services whose concessions are about to expire or have expired, x) reforming the Ports Law to add competition principles, xi) reforming the Railway Service Bylaw to incorporate competitive provisions that allow the articulation of the network, and xii) reforming article 105 of the Constitution to empower COFECE to lodge actions of unconstitutionality against general laws that hamper competition.

#### 5. Conclusion

19. In spite of the health emergency of COVID-19, COFECE continues its work to effectively enforce competition law and to advocate for pro-competitive markets, regulations and policies; in order to contribute to the acceleration of the recovery of the Mexican economy, also seeking to enforce its powers in sectors and markets that can provide the most tangible and effective results for the benefit of consumers.

20. The crisis scenario also calls for increased international cooperation in order to share best practices and exchange knowledge not only on how to deal with the crisis in terms of competition law enforcement and advocacy, but also on how competition agencies are adapting to the new reality of social distancing, health restriction and remote work. While competition agencies must comply with health and security provisions, they also need to continue conducting investigations and merger control, as well as advocacy efforts. In this sense, for example, both the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) have played a key role by bringing together competition agencies to discuss and exchange experiences on these matters. COFECE will continue to actively participate in these efforts.

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<sup>18</sup> The full document is available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2020/10/reactivacion.pdf>

## Federal Telecommunications Institute (IFT)

### 6. Introduction

21. The purpose of this document is to highlight the actions carried out by the Federal Telecommunications Institute (IFT), in times of the pandemic caused by the SARS-CoV2 virus (COVID-19), as the exclusive national competition and regulatory authority for the telecommunications and broadcasting (T&B) sectors.

### 7. IFT's Actions in Times of COVID-19

#### 7.1. Actions to Care of and Protect IFT's Human Capital

22. The IFT implemented pertinent measures to safeguard the health of over 1,200 officials and personnel working at the institution. In this sense, since March 26, 2020, the IFT's Board of Commissioners determined a labor suspension due to COVID-19 pandemic, establishing that essential functions continued, and adopting the teleworking (home-office) modality. This statement was updated on various occasions<sup>19</sup> and in July 2020, they decided to lift the suspension, while maintaining telework.

23. The main functions in the fundamental sectors of T&B continued at all times. Derived from this teleworking modality, the IFT enabled 84% of the total of its procedures through the use of available electronic means of communication.

#### 7.2. General Orientations on Economic Competition Issues

24. The Federal Economic Competition Law (LFCE) establishes that, without prejudice to the procedure for issuing formal opinions, the Institute must offer general orientations to any person, as well as to any public authority, in relation to the application of the aforementioned law, in the terms indicated in the Regulatory Provisions of the LFCE for the T&B sectors.

25. In this sense, and in attention to the reality of social distancing generated by the pandemic, the Board of Commissioners of the IFT determined that the general orientation procedure was exempted from the suspension of activities and, consequently, it remained into force.

26. The request had to be made by email addressed to the Investigative Authority or to the Economic Competition Unit. Consequently, the Institute could issue a response within a period of thirty days. In complex cases, the Institute could extend the term for up to thirty additional days.

#### 7.3. Agreements between Fixed Telecommunications Services Providers under IFT's Supervision

27. The IFT, as the competition authority and sectoral regulator, developed collaboration mechanisms with telecommunications service providers in order to support users during the health emergency caused by COVID-19; prioritizing that these

<sup>19</sup> [P/IFT/010420/118](#), [P/IFT/EXT/200420/8](#), [P/IFT/EXT/300420/10](#), [P/IFT/EXT/290520/12](#) and [P/IFT/EXT/290620/20](#).



collaborations do not constitute any anti-competitive practices (especially cartels) that could harm markets and competition.

28. In this regard, internet and fixed telephone services providers, under IFT's coordination, agreed to offer to their residential users the option of temporarily migrating to a low-cost plan (approx. 4.16 USD either per package or per month) which was called "Contingency support" packages during May and June, 2020.

29. The main characteristics of these "Contingency Support" packages were the provision of internet access with a speed of up to 2Mbps, allowing free browsing and unlimited data (email, use of instant messaging or others), receiving calls and dialing emergency numbers and the line authorized by the Federal Government for the attention of the sanitary emergency, free of charge.

#### **7.4. Agreements between Mobile Telecommunications Providers under IFT's Supervision**

30. As part of the actions promoted by the IFT since the beginning of the pandemic, mobile telecommunications providers contributed with "emergency plans" aiming to join efforts to offer support and benefit users who could face difficulties in paying for their services during the health emergency.

31. In this sense, derived from the agreements reached with the IFT under a supervised collaboration, mobile service concessionaires decided to offer "emergency plans", which allowed prepaid users to access, one time only, to a free package of voice calls and short messages service (SMS), during the contingency for COVID-19.

32. This way, prepaid users, that represent 84% of all mobile service subscribers, had a protection that allowed them to keep in touch during the pandemic, in the event of an emergency.

#### **7.5. Broadcasting**

33. On April 20, 2020, the IFT's Board of Commissioners agreed, due to majeure force because of COVID-19, that the concessionaires that had valid concession titles for the provision of broadcast television service, could access multiprogramming or request the change of programmatic identity and would be exempted from compliance and application of the requirements established in the General Guidelines for Access to Multiprogramming ("Guidelines").

##### ***7.5.1. The inclusion of multiprogramming***

34. Those concessionaires that were interested in accessing multiprogramming to broadcast a programming channel which audiovisual content included the school sessions of the Ministry of Public Education (SEP), were exempted from complying with the requirements established in the Guidelines.

35. The interested concessionaire had to send a letter signed by the legal representative via email to the IFT indicating, among other minimum requirements, which population was going to be served; the number of multiprogramming channels they wanted to broadcast; and a statement establishing that the multiprogramming channel would be used for the transmission of audiovisual content, including the school sessions of the SEP.

36. Consequently, the IFT issued the acknowledgment of receipt stating that the document was received in terms of the Agreement issued by the Board of Commissioners



on April 20, so that the interested concessionaire could carry out the broadcast of the multiprogramming channel.

### *7.5.2. The change of programmatic identity*

37. Those concessionaires that already had prior authorization for access to multiprogramming, carried out a temporary programmatic identity change to transmit under this modality a programming channel with audiovisual content that included school sessions of the SEP, with no need to comply with the requirements set forth in the Guidelines regarding the change of programmatic identity.

38. To request this temporary programmatic identity change, the concessionaire had to send a letter signed by the legal representative to the IFT by email. Consequently, the IFT issued the acknowledgment of receipt stating that the writing was received in terms of the Agreement issued by the Board of Commissioners on April 20, so that the interested concessionaire could carry out the transmission of the new multiprogramming channel.

39. The effects and validity of these measures will subsist until the competent authorities in health and educational matters determine by any means or official communication the resumption of face-to-face school activities throughout Mexico.