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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**The Concept of Potential Competition – Note by Mexico**

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This document reproduces a written contribution from Mexico (IFT) submitted for Item 2 of the 135<sup>th</sup> OECD Competition Committee meeting on 9-11 June 2021.

More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/the-concept-of-potential-competition.htm>

Please contact Mr Antonio Capobianco if you have questions about this document.  
[Email: Antonio.CAPOBIANCO@oecd.org].

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## *Mexico (IFT)*

### 1. Introduction

1. The IFT is an autonomous competition authority and regulator of the telecommunications and broadcasting (T&B) sectors in Mexico.
2. This document presents an overview about how the IFT addresses the analysis of potential competition and barriers to entry, and three relevant case studies that illustrate its application.

### 2. Potential Competition & Barriers to Entry

3. Broadly defined, barriers to entry are the obstacles and difficulties that potential competitors experience to entering into a market. Therefore, the possible existence of potential competitors is directly related, inversely, to the intensity of the barriers to entry inherent to a market.
4. When barriers to entry are lower, there is a greater likelihood of potential competition. The above mentioned, represents a disciplining or contestability factor for incumbent competitors, limiting the exercise of their possible market power. On the other hand, if barriers to entry are high, incumbent competitors could act without fearing the entry of new entrants competing for their profits, that is, potential entry.

### 3. Potential Competition Analysis

5. The evaluation of the barriers to entry experienced by potential competitors is essential to analyze mergers, the existence of market power (or the evaluation of competition conditions) and anticompetitive practices.
6. Thus, as the competition authority and regulator in T&B sectors, the IFT considers the protection of potential competition as equally important as the protection of existing or current competition.
7. In this regard, the Federal Law on Economic Competition (LFCE) establishes that competition analysis must consider both, the existence of barriers to entry and the elements that may foreseeably alter those barriers as well as the supply of other (possibly potential) competitors.
8. The LFCE establishes a special investigation procedure to determine the existence of essential facilities or barriers to competition<sup>1</sup> in a certain market that may generate anti-competitive effects. Here, the IFT can issue:
  - Recommendations to public authorities when there are legal provisions that prevent or unduly distort free access and/or competition in the market.

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<sup>1</sup> According to section IV of article 3 of the LFCE, barriers to competition are “Any structural characteristic of the market, or act of Economic Agents that has the purpose or effect of preventing the access of competitors or limiting their ability to compete in markets; that prevent or distort the process of competition, as well as the legal provisions issued by any government order that unduly impede or distort the process of competition”.

- An order to the corresponding economic agent to eliminate a barrier that unduly affects competition;
- Guidelines to regulate access, prices or rates, technical conditions and quality, of essential facilities, or
- An order for the divestiture of assets, rights, equity interests or equity participations of the economic agent.

9. Additionally, the sectoral law applied by the IFT, the Federal Telecommunications and Broadcasting Law (LFTR), includes various provisions on competition policy that favor the existence of potential competition in the T&B sectors. These provisions include, among other issues, the access, use and sharing of passive infrastructure, the promotion of secondary markets, the elimination of barriers to entry for new competitors, the leasing and exchange of spectrum, the prohibition to establish contractual, technical, commercial or barriers of any other nature that prevent other concessionaires from competing in the markets, the establishment of limits to the national and regional concentration of the spectrum and to cross-ownership in communication media, as well as the creation of a shared network in wholesale markets to facilitate access to spectrum and infrastructure to Mobile Virtual Network Operators, among other participants.

10. Regarding IFT's practical criteria for analyzing potential competition, it is important to highlight the following:

- A source of competitive pressure has been considered to exist when the entry of a potential competitor can occur within a period of approximately two years. For example, in the assessment of transactions involving undertakings that require spectrum to provide T&B services, a two-year period has been deemed as a reasonable horizon to consider as competitive pressure for those undertakings that will use the spectrum that will foreseeably be available in the market, and that could be used by others than those already established in some locality, region or national level, depending on the geographical dimension.<sup>2</sup>
- Some indicators that can be considered to assess potential competition are the investment capacity of potential competitors, the time-length they have been providing services (their experience), and their participation in other markets in the T&B sectors.
- Likewise, the following elements can be considered in the analysis: previous entry experience of competitors, including a consideration of the costs of such entry and the effects of their entry to competition; evidence of planned entry by third parties; the existence of entry and expansion barriers; the minimum efficient scale necessary to achieve a reasonably competitive cost level; the period of time over which entry costs might be recovered or whether entry or expansion will be profitable; the potential effect of technological change and innovation; the ability and incentives of customers to sponsor market entry, and the likely reaction of established customers to the entry of new competitors.
- An important challenge in analyzing potential competition in the T&B sectors, mainly in digital platform markets and distribution of audiovisual content over the Internet, is that the structure and characteristics of these markets, such as the presence

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<sup>2</sup> See, for example, the Resolution by which the IFT's Board decided on the merger under file No. UCE/CNC-001-2020, notified by Radiomóvil Dipsa, S.A. de C.V. and Axtel, S.A.B. de C.V. Available in Spanish at: <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vp170620177.pdf>

of strong network effects, have allowed large platforms to emerge with substantial control over access to digital markets (gatekeepers). This reinforces the existence of barriers to entry and, therefore, affects the contestability of the markets involved. In the analysis, it is possible to consider and evaluate if any of the competitors in platform markets has the capacity to operate as a gatekeeper, for which, in general, it must be analyzed if the platform has a significant impact on the market; if it operates one or more important ways of access to customers; and whether it enjoys or is expected to enjoy an entrenched and lasting position in its operations.<sup>3</sup>

#### 4. Relevant Cases

11. The following are cases exemplify the IFT's analysis regarding potential competition and how the IFT, as a competition authority, and even as regulator, prevents the exclusion of potential competitors and promotes the entry of new competitors in the markets.

##### 4.1. Red Compartida and AT&T's acquisition of Nextel México

12. In April 2015, the IFT authorized the acquisition of Nextel México by AT&T. Nextel México was the fourth provider of mobile telecommunications services in the country through nationwide networks, with a market share of 2.9% in terms of subscribers. AT&T had just entered the Mexican mobile market through the acquisition in the 4Q2014 of Iusacell, the 3rd mobile telecommunications provider with a nationwide network and a market share of 5.8% in terms of subscribers.

13. In the upstream mobile spectrum market, the transaction meant the accumulation of 42% of the total megahertz (MHz) assigned (an average of 106.8 MHz per region).

14. In the analysis of the transaction, the potential competition that the *Red Compartida* would exert over the combined entity was crucial. The 2013 Constitutional Reform in Telecommunications that created the IFT also contained in its transitory dispositions the creation of a public shared telecommunications network (*Red Compartida*). This mobile network would use 90 MHz in the 700 MHz band. According to the constitutional disposition, the *Red Compartida* would not provide services directly to the consumer but would only act as a wholesaler and be in operation before the end of 2018.

15. The IFT considered various elements, for instance, that the two remaining operators had bigger subscriber bases, the public bids of spectrum the IFT planned to carry out in the short to medium term, and the potential competition the *Red Compartida* would bring to the markets. Once deployed and in operation, the *Red Compartida* would facilitate the entry of new competitors and the expansion of established ones, despite high barriers to entry, exerting important competitive pressure to all participants. It should be noted that considering the creation of the *Red Compartida*, AT&T's spectrum ownership post-operation was located at approximately 31.8% of the total allocated, while, after the Bid No. IFT-3<sup>4</sup>, its assigned spectrum ownership was approximately of 29.8%.

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<sup>3</sup> Proposal for Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act). Available at : [https://ec.europa.eu/info/sites/info/files/proposal-regulation-single-market-digital-services-digital-services-act\\_en.pdf](https://ec.europa.eu/info/sites/info/files/proposal-regulation-single-market-digital-services-digital-services-act_en.pdf)

<sup>4</sup> The relevant information of this bidding process is available in Spanish at: <http://www.ift.org.mx/industria/espectro-radioelectrico/espectro/2015/licitacion-ift-3-banda-aws>

16. In this case, the likelihood, timing and nature of the entry of the *Red Compartida* was given by legal disposition and the IFT relied in this kind of evidence to reach the conclusion of the analysis.

## 4.2. Bidding Procedures and potential competition

17. In the radio spectrum bidding procedures, in order to prevent hoarding events and the creation of barriers to entry that make it difficult for potential competitors to enter, the IFT has implemented various measures to protect and promote competition. For example, the participants in the bids must be subject to certain limits of spectrum accumulation, applied according to the evaluation of the interested parties under their economic interest group dimension. Likewise, some bidding procedures have also had incentives for the entry of new competitors in the form of prizes in the evaluation of their offers. The table below illustrates this.

**Table 1. Bidding Procedures Carried out by the IFT**

Bid No.	Services	Incentives in the form of prizes	Accumulation Limits
IFT-4	Radio broadcasting services in the FM and AM bands	(i) Incentive for operating in hybrid format (~3% for operating with analog and digital signal, only in FM contests), and (ii) Incentive to new competitors (~15% in radio and TV).	Up to 30% of frequencies to provide broadcasting services in the main location to be served, including the frequencies in the tender.
IFT-6	Digital broadcasted television	Incentive to new competitors (~15% new competitor in TV and radio, and ~10% new competitor in TV)	12 MHz accumulation limit (locally).
IFT-7	Mobile wireless access service	Incentive to new competitors (in the PCS, AWS and 2.5 GHz bands) (~30%)	Spectrum accumulation limit from 32.5% to 35%.
IFT-9	Complementary terrestrial service of the mobile satellite service	-	Spectrum accumulation limit of a 10+10 MHz paired spectrum block

Source: IFT, with information from the Bidding Rules, available in Spanish at: <http://www.ift.org.mx/industria/espectro-radioelectrico/telecomunicaciones/2021>.

## 4.3. Granting of radio broadcasting concessions for social use

18. Responding to requests for radio broadcasting concessions for non-commercial uses (social or public), the IFT has adopted various measures (including various applications being denied<sup>5</sup>) to protect potential competition in radio broadcasting for

<sup>5</sup> See for example, in Spanish:

- The “Resolution by which the IFT’s Board determines the applicants that are subject to the granting of a concession of frequency bands to provide the service of audio broadcasting in modulated frequency in the locality of Zacatecas, Zacatecas, corresponding to the five requests of permission submitted under the Federal Radio and Television Law”. Available in Spanish at: [http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift191217940acc\\_0.pdf](http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/pift191217940acc_0.pdf) In this resolution, the IFT’s Board concluded that with the granting of the concession for social use requested by one of the analyzed interested parties, the possibility of entry of potential competitors in the commercial service in the town of Zacatecas, in the state of Zacatecas, would be reduced. In that market, the applicant already had 55% percent of the frequencies with coverage; consequently, its request was denied.

commercial use, and to favor the common presence of the different modalities of spectrum use provided for in the Mexican Constitution (CPEUM) and in the LFTR.

19. In the assessment, the IFT considers that spectrum concessions for non-commercial uses do not intend to commercialize advertising space through broadcast signals, as is the case with commercial concessions. However, both types of concessionaires require radio spectrum for the provision of the corresponding broadcasting service, which is a limited resource. In other words, the available spectrum can be assigned to alternative and exclusive uses, sometimes limiting the access of new entrants to the market.

20. The IFT has observed that the granting of spectrum concessions for non-commercial use may have effects on the competition conditions in the commercial service when:

1. The applicant economic agent has one or more spectrum concessions (commercial or non-commercial) to provide the radio broadcasting service in the location set in the application, or if its service area covers said location.
2. The request for spectrum concessions for non-commercial use has or may have the purpose or effect of limiting the availability of spectrum and thereby preventing the access of other economic agents to that necessary facility to provide the commercial service in the target location. In these cases, the applicant could have incentives to amass spectrum with the purpose or effect of reducing the spectrum available for commercial service and establishing barriers to entry in the provision of that service.

21. Furthermore, the IFT has adopted the following criteria as reference for the distribution of FM radio broadcasting frequencies, among the different types of use, in order to favor the presence of the different modalities provided for in the CPEUM and in the LFTR. The distribution criteria is flexible and must be adjusted to the particular situation of each request and it guides the IFT to obtain more elements of analysis to finally resolve the corresponding issues.

**Table 2. IFT's Criteria for the Distribution of FM Radio Broadcasting Frequencies**

Frequencies in FM by type of use by location		Reference Distribution (%)
Commercial		65 - 70
Public		10 - 15
Social	For Communities and Indigenous Groups	10
	For private higher education institutions, civil associations and individuals, with cultural, scientific, educational, or community purposes	5 - 10
Total		100

Source: IFT

- The “Resolution by which the IFT’s Board determines the applicants that are subject to the granting of a concession of frequency bands to provide the service of audio broadcasting in modulated frequency in the locality of Morelia, Michoacán, corresponding to the five requests of permission submitted under the Federal Radio and Television Law”. Available in Spanish at : <http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/pift140318235.pdf>. In the analysis of five applications submitted for concessions of radio broadcasting for non-commercial uses (one for public use and four for social (non-community or indigenous) use in the town of Morelia, state of Michoacán, the IFT’s Board resolved to authorize only one of them (the one for public use), although eight available frequencies were identified. The Board resolved that the rest of the frequencies could be used for commercial, public and social community and indigenous uses.