

Unclassified

English - Or. English

22 November 2023

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

Out-of-Market Efficiencies in Competition Enforcement – Note by Mexico

6 December 2023

This document reproduces a written contribution from Mexico submitted for Item 12 of the 141st OECD Competition Committee meeting on 5-8 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/out-of-market-efficiencies-in-competition-enforcement.htm>.

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Mexico

1. 1. The Impact of Telecommunications and Broadcasting Services

1. An analysis of out of market efficiencies in the telecommunications and broadcasting sectors in Mexico is relevant if we consider that:

- Telecommunications are public services of general interest, so the State guarantees that they are provided under conditions of competition, quality, plurality, universal coverage, interconnection, convergence, continuity, free access and without arbitrary interference.
- Broadcasting is a public service of general interest, so the State guarantees that it is provided under conditions of competition and quality and provides the benefits of culture to the entire population, preserving the plurality and veracity of information, as well as the promotion of the values of national identity.
- The State guarantees the right of access to information and communication technologies, as well as to broadcasting and telecommunications services, including broadband and Internet. To this end, the State shall establish conditions of effective competition in the provision of such services.

2. As a general rule, efficiencies¹ are analyzed in the context of probable anti-competitive conduct or unlawful concentration. However, it is true that cases of out-of-market efficiencies benefiting users and audiences can be assessed under competition law and policy on a case-by-case basis.

3. Prior to the 2013 constitutional reform in telecommunications, Mexico's telecommunication sector was marked by high market concentration. This resulted in elevated prices, limited-service availability, and lower service quality.

4. Since the constitutional reform and the implementation of specific measures, several benefits have emerged. These include a decrease in prices, higher penetration and adoption of services, and notable economic growth in the telecommunications sector, surpassing the growth rates of the national Gross Domestic Product.

5. These conditions or measures have ensured the realization of the right to information and access to Information and Communication Technologies (ICTs), digital

¹ Article 55 of the Federal Economic Competition Law establishes that some of the efficiency gains are the following:

- The introduction of new goods or services;
- The use of balances, defective or perishable products;
- Cost reductions resulting from the creation of new production techniques and methods, the integration of assets, increases in the scale of production, and the production of different goods or services with the same factors of production;
- The introduction of technological advances that produce new or improved goods or services;
- The combination of productive assets or investments and their recovery that improve the quality or enhance the attributes of goods or services;
- Improvements in quality, investments and their recovery, timeliness and service that have a favorable impact on the distribution chain, and
- Others that demonstrate that the net contributions to consumer welfare resulting from such practices outweigh their anti-competitive effects.

inclusion, universal coverage, improved service, and content quality, along with a reduction in the prices of services available in the market.

2. Efficiencies in the telecommunications and broadcasting sectors

6. So far, no cases of anti-competitive conduct have been solved in which efficiency gains are presented and demonstrated. Nevertheless, there are conditions in the market that may have efficiencies in related markets. An example of this is the bundling and discounts of fixed telecommunications services in the Mexican scenario, which was studied by the IFT's Investigative Authority.

2.1. Bundling and discounting of fixed telecommunications services²

7. Bundling in fixed telecommunications services is becoming increasingly prevalent. It is customary for users to subscribe to double and triple packages that include fixed telephone, fixed broadband and pay TV services. Furthermore, the recent commercial practice of bundling in fixed services also incorporates over-the-top services.

8. In recent years, the provision of telecommunications services has shifted from single purpose to multi-purpose networks. With this transformation, companies can offer multiple services over the same network and even deliver services from other companies through their own infrastructure.

9. When positive effects are present, bundling provides consumers with savings in prices, time, and the acquisition of goods or services. However, when the effects are negative, bundling can impede the competitive process. This is exemplified by the utilization of advantages gained through economies of scale or scope to raise competitors' costs, exploit market power, limit the demand faced by competitors, or deter their entry. Ultimately, this harms end consumers.

10. Bundling refers to a pricing strategy wherein a company sells two or more products together at a single price³; In this sense, bundling can be viewed as a form of discount.

11. According to Nalebuff⁴, there are several reasons why a company might choose to offer bundled packages, and these reasons are closely tied to market competition. One of them pertains to the economies of scale that a company can achieve by standardizing the combination of two goods. Another reason is to mitigate costs or make more efficient use of technology, particularly in cases where it may not be economically viable to sell the two goods separately. Additionally, price discrimination, enhanced quality, and safety of service are also factors influencing companies' decisions to offer bundled packages.

12. Packaged sales are aimed at enhancing a company's profit margin. This objective can be accomplished through either efficiency or strategy. The first involves cost reduction resulting from economies of scale or scope. The second pertains to the augmentation or consolidation of market power.

13. Packaging can lead to a reduction in the shared costs associated with producing, distributing, or marketing different goods or services. For instance, by offering two goods

² Study on Bundling and Discounting of Fixed Telecommunications Services, available at: <https://autoridadinvestigadora.ift.org.mx/estudios.php>

³ Goolsbee, Austan; Levitt, Steven; Syverson, Chad (2015), Microeconomics, 2015.

⁴ Nalebuff, B. (2008) Bundling and Antitrust. Issues in competition law and policy. Editorial Board.

as a package, a company can decrease billing and collection expenses. These efficiency gains can, in theory, lead to lower prices for consumers, thereby increasing their overall benefit.

14. From a consumer's perspective, bundling can be convenient in certain scenarios, particularly if it lowers search costs. This means the consumer wouldn't need to search for each individual component of the product they're interested in purchasing separately^{5,6}.

15. The packaging of goods or services can have both positive or negative effects on the conditions of competition and consumer welfare. Among the positive effects, the following should be considered: the generation of economies of scale and scope, improvements in quality, reduction of search costs, greater diversity of options, among others. While for the negative effects the following must be considered: barriers to entry, problems and costs when comparing packages, hidden costs, flexibility problems, exclusion from competition, to mention a few.

16. In conclusion, the bundled offering of services that encompasses various markets such as pay TV, telephone and internet access brings benefits to each of these markets. Users benefit from improved services and a broader selection at a lower overall cost.

2.2. Must carry-Must offer

17. The Must Carry - Must Offer rule mandates broadcasters providing television services must permit pay TV providers to retransmit their signal within the same geographic coverage area. This must be done without charge, in a non-discriminatory manner, and in its entirety. The retransmission should be simultaneous and unaltered, including advertising, and with the same signal quality as the original broadcast.

18. Similarly, pay TV providers are required to retransmit the broadcast television signal within the same geographic coverage area. This must be done without charge, in a non-discriminatory manner, and in its entirety. The retransmission should be simultaneous and unaltered, including advertising, and with the same signal quality as the original broadcast. Additionally, pay TV providers must include this service at no extra cost for their subscribers and users as part of their contracted services.

19. These conditions enable pay TV users to access free-to-air TV signals within their programming in the same coverage area. This not only enhances the offerings of both free-to-air and pay TV, but also grants viewers access to a wider range of channel programming. Additionally, it serves as a safeguard against a dominant group seeking to acquire excessive market power with the intention of stifling competition.

20. Regarding free competition, this measure mitigates the effects of asymmetry in the television sector in Mexico. It encourages companies with adequate infrastructure to provide access to users, preventing their competitors from monopolizing this access. This levels the playing field in terms of programming and broadcasting. This measure enables companies without significant market power in open or restricted television to reach a broader user base, thereby promoting competition based on services and quality rather than simple access.

21. The obligations to offer and retransmit broadcast content free of charge will cease to apply once conditions of competition are established in both the broadcasting and

⁵ Motta, Massimo. (2004). *Competition Policy Theory and Practice*. Cambridge University Press.

⁶ Kenney, Roy W.; and Klein, Benjamin. (1983). *Journal Article: The Economics of Block Booking*, *Journal of Law and Economics*. Vol. 26, No. 3, pp. 497-540.

telecommunications markets. This determination will be made by the Federal Institute of Telecommunications (IFT).

2.3. Elimination of national long-distance charging and asymmetry in interconnection rates⁷

22. The removal of the national long-distance charge and the adoption of asymmetric policies for interconnection tariffs since the 2013 Constitutional Reform have fostered greater competition. This is evident in the reduction of prices for end-users. Furthermore, it has contributed to an increase in the penetration and adoption of various telecommunications services.

23. Since January 2015, operators offering telephone services, whether mobile, fixed, or both, ceased charging their users for domestic long-distance calls made to any destination within the country. From that point forward, calls would be billed as if they were local calls. Additionally, the IFT implemented an asymmetric policy for interconnection tariffs once the dominant economic agents had been identified⁸.

24. To guarantee that users obtain the benefits of the removal of national long-distance charges, the IFT issued administrative provisions. These provisions explicitly state that, as of that date, the entire national territory will be treated as one unified local service area.

25. From the end-user's perspective, the removal of the long-distance national charge led to an increase in service utilization, marked by enhanced quality and reduced costs. Additionally, it brought about a wider selection of services and packaging options.

26. However, the purpose of the interconnection service between public telecommunications networks is to connect and communicate users between different telecommunication networks, both fixed and mobile. The Federal Telecommunications and Broadcasting Law (LFTR), defines interconnection as the physical or virtual, logical, and functional connection between public telecommunications networks that allows the conduction of traffic between those networks and/or between telecommunications services provided through them, so that users of one of the public telecommunications networks can connect and exchange traffic with users of another public telecommunications network and vice versa. or allows users of a public telecommunications network to use telecommunications services provided by or through another public telecommunications network.

27. The purpose of the interconnection service between public telecommunications networks is to facilitate communication between users across various telecommunication networks, including both fixed and mobile networks. The LFTR itself defines interconnection as the physical or virtual, logical, and functional connection between public

⁷Analysis of the regulatory policies for the elimination of national long-distance charges and the implementation of the asymmetric policy of interconnection rates by the IFT, available at: <https://www.ift.org.mx/sites/default/files/contenidogeneral/estadisticas/analisisdelaspoliticaregulatorias.pdf>

⁸ In accordance with the Eighth Transitory Article of the Decree of Constitutional Reform on telecommunications published in the Official Gazette of the Federation on June 11, 2013, any person who owns a national or telecommunications broadcasting service shall be considered as the preponderant economic agent, by reason of its national participation in the provision of broadcasting or telecommunications services. directly or indirectly, with a national participation of more than fifty percent, measured either by the number of users, subscribers, audience, traffic in its networks or by the capacity used thereof, according to the data available to the IFT.

telecommunications networks that enables the transmission of traffic between those networks and/or between telecommunications services offered through them. This enables users of one public telecommunications network to connect and exchange traffic with users of another public telecommunications network, and vice versa. It also allows users of one public telecommunications network to access telecommunications services provided by or through another public telecommunications network.

28. Consequently, users of telecommunications services in Mexico benefit from the establishment of interconnection conditions between networks operated by different providers. This expansion of service coverage across the national territory enhances accessibility and availability for users.