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Working Party No. 2 on Competition and Regulation

**Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by Mexico**

4 December 2017

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More documents related to this discussion can be found at: www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm

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Mexico

1. Introduction

1. In January 2014, Mexico undertook an ambitious financial reform as part of a wider strategy to promote economic growth in the country.
2. The reform sought to strengthen the sector's performance, through a four-pronged approach: 1) by fomenting credit through Development Banks; 2) by increasing competition; 3) by expanding private financial institution credit and 4) by ensuring financial sector solidity and prudence. For the first time in a reform in this sector, the boosting of competition was an objective.
3. As part of the second thrust of this reform, the Mexican Congress commanded that the Federal Economic Competition Commission (Cofece or Commission) conduct a market study on competition conditions within the financial system and its related markets.
4. The Commission's analysis of the structure and functioning of the financial system in Mexico has served as a baseline to propose pro-competitive regulatory changes and implement a competition policy.

2. The Relationship Between the Competition Commission and Regulatory Agencies in the Financial Sector

5. *ility* among different institutions. While the Federal Economic Competition Commission (Cofece or Commission) is the authority responsible by constitutional mandate to enforce the Federal Economic Competition Law (FECL or competition law) in all sectors of the Mexican economy, including the financial sector, other public financial authorities have the powers to intervene where competition conditions in the sector are at stake.
6. As the current regulatory framework establishes, Cofece and other key authorities such as the Central Bank (Banco de México, Banxico); the Ministry of Finance (Secretaría de Hacienda y Crédito Público, SHCP); the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores, CNBV); the National Insurance and Bonding Commission (Comisión Nacional de Seguros y Fianzas, CNSF); the National Retirement Savings System Commission (Comisión Nacional del Sistema de Ahorro para el Retiro, CONSAR); and the National Commission for the Protection and Defense of Financial Services Users (Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros, Condusef) work together to i) address more effectively those business practices of financial institutions that could damage or hinder competition and ii) to protect the rights and interests of customers and users of financial services.

7. The Financial Services Transparency and Regulation Law (LTSOF) sets up coordination mechanisms between most of these financial authorities and Cofece to ensure consistent and effective enforcement of financial regulation and the competition law.

8. For instance, Article 4 of the LTSOF provides that Condusef, the CNBV, the Ministry of Finance and Banxico may request Cofece the enforcement of competition law against financial institutions, such as commercial banks, development banking institutions, multiple purpose financial companies (Sofomes), and others, when they deemed it necessary, in terms of fees and interest rates, and even suggest the amount of the sanctions to be imposed in line with those set forth in the FELC.

9. The same article grants Banxico with the power to assess whether a reasonable level playing field on passive and active transactions, exists; and to request the Commission's opinion on the matter. Based on this opinion, Banxico will take the appropriate regulatory measures following Cofece's recommendations. Furthermore, Banxico, the CNBV and the Ministry of Finance may request Cofece to issue an opinion on the continuance of the conditions that motivated the implementation of such regulatory measures.

10. Besides these faculties, the LTSOF provides the legal basis to regulate practices that affect competition and free access to the financial sector markets. The practices prohibited by the said law are exclusive dealing arrangements, refusal to deal, tied-sales, and discriminatory treatment of users or between the financial institutions.

11. Other financial laws, such as the Protection and Defense of Financial Services Users Law (LPSUF), the Credit Institutions Law (LIC), the Investment Funds Law (LFI); the Saving and Popular Credit Law (LACP) and the Securities Market Law (LMV), authorize the corresponding regulatory bodies to impose administrative sanctions when any of the mentioned anticompetitive practices is committed.

12. The Retirement Savings System Law (LSAR) also gives the regulatory agency, CONSAR, the right to ensure that services within the scope of its powers, are provided under conditions of competition and efficiency. In accordance with Article 25 of the LSAR, CONSAR may establish the necessary mechanisms to prevent absolute (cartels) or relative monopolistic (abuse of dominance) practices, defined in the competition law, resulting from the economic agents' behavior or from a concentration of the market. In this case, Cofece will have to give its opinion prior to the implementation of the mentioned mechanisms.

13. As can be seen, the financial reform not only set up coordination mechanisms, it also introduced new coercive and corrective measures for commercial practices that could restrict or limit competition in the financial markets. But some of the criteria set out in the new regulations to analyze prohibited practices, such as exclusive dealing arrangements, refusal to deal, tied-sales, and discriminatory treatment of users or between the financial institutions are different to those established in the competition law.

14. The financial reform also contained provisions that increased financial authorities' powers to supervise and sanction financial institutions. Even though these powers refer to violations to financial laws, such as refusal to deal, exclusivities, tied sales, or putting in place discriminatory access conditions in payments and means of disposition networks for financial intermediaries, in many cases these market practices may be considered relative monopolistic practices under the FECL. However, for Cofece, to sanction a relative monopolistic practice it is not sufficient to prove that the conduct

occurred, the Commission must evaluate the efficiency gains derived from the conduct against its effects on competition, and determine if the economic agent involved has substantial power in the relevant market. In contrast, the financial reform prohibits and sanctions the mentioned commercial practices per se, given that the only condition to be satisfied is that a financial entity is engaged in the practice without assessing its effects on competition and on consumers.

15. To avoid tensions between the competition authority and the financial regulators, when seeking to promote greater competition in the sector, the Commission, in its 2014 market study (described in the next section) recommended the implementation of cooperation and coordination mechanisms between authorities, which enable Cofece to monitor on an ongoing basis the conditions of competition in financial markets and strengthen competition criteria adopted by sector regulators.

2.1. Institutional Devices (Formal Cooperation)

16. In addition to what it is set forth in different financial laws, Cofece cooperates with financial authorities on the basis of collaboration agreements or informal channels established through cooperative relationships. The general objective pursued by the Commission in these agreements and relationships with other authorities and regulators is to facilitate cooperation activities on enforcement of competition law and financial laws, and mutual technical assistance in financial and competition matters.

17. In 2014, Cofece engaged several federal government entities, through the signing of six collaboration agreements, with the objective to, among others, obtain relevant statistical and documentary information necessary for the development of the market study; and through working sessions, gain a more detailed understanding of the functioning of the different segments of the financial sector.

18. The public institutions with which collaboration agreements have been signed in the last years are: Banxico, the National Banking and Securities Commission (CNBV); the National Insurance and Bonding Commission (CNSF); the National Retirement Savings System Commission (CONSAR); the National Commission for the Protection and Defense of Financial Services Users (Condusef); and the Trust Funds for Rural Development (FIRA).

19. For example, the investigation Cofece carried out regarding collusion in the pension funds market, or Afores, required data from the sector regulator, CONSAR, to prove that in the periods in which the agreements were

2.2. Informal Cooperation

20. Informal cooperation between competition authorities and sector regulators in Mexico has largely grown over time even in the absence of formal cooperation arrangements.

21. While there is no agreed distinction between formal and informal cooperation, most cooperation does not depend on the use of formal instruments and agreements.

22. In this sense, an important cooperation mechanism for the Commission with financial sector regulators has been to engage in informal collaborations such as consultations and meetings to exchange views, setting and fostering trust among regulators and Cofece's officials, among others.

23. A clear example of this is the informal coordination is a recent opinion the SHCP asked Cofece regarding a Conduct Code in the Mexican bond and fixed income markets adopted in early November 2017, where at least seven banks agreed on implementing this code of conduct governing its bond and fixed income trading activities. Particularly, they asked the Commission to look at possible competition issues arising from the Code.

24. This type of informal cooperation, however, faces important limits when cooperation requires the exchange of confidential information. This can only take place if a formal instrument expressly allows for it.

3. Cofece's Market Study into the Mexican Financial Sector

25. As earlier mentioned, the 2014 financial reform mandated Cofece to conduct and submit an evaluation (market study) of the state of competition within the financial sector.

26. In July 2014, Cofece presented the "Market study and recommendations regarding competition conditions in the financial sector and its markets" (*Trabajo de Investigación y Recomendaciones sobre las Condiciones de Competencia del Sector Financiero y sus Mercados*),¹ which is an assessment of how financial services markets worked in Mexico – in terms of efficiency, competition and consumer welfare –; and made 36 recommendations to improve competition in the sector and/or further enforcement of the competition law.

27. These 36 recommendations relate to five types of conducts that may affect efficiency and competition, according to Mexico's antitrust law: (1) reduce barriers to entry; (2) avoid displacements or access deterrence for competitors in the financial market; (3) diminish the risk of collusion or coordinated effects among competitors; (4) prevent and eliminate restrictions to market efficiency; and (5) increase Cofece's effectiveness on sanctioning conducts that violate antitrust law.

28. The market study identified the activities that would have the greatest impact on the overall functioning of the Mexican Financial System. To do that, the Commission analyzed the different products and services offered by the various economic agents that make up the financial system. Then, the Commission identified structural elements of sectoral regulation, and the concurrent powers of the authorities on the services analyzed. This allowed identifying cross-cutting functions within the system itself and understanding the disaggregated functioning of different products and services, aiming at having an initial classification of the activities for the study.

29. Several common factors that could influence the level of competition in the financial sector were identified. Thus, Cofece made the following classification to integrate the study: i) relevant cross-cutting issues, such as prudential regulation, establishment requirements and payment systems, among others; ii) and then gave a closer look at the following activities: credit; savings; stock market financing; and insurance.

30. For each of the financial products and services of this typology, the Commission considered in its analysis the characteristics of the demand, the structure of supply, the

¹ Executive summary in English available at: https://www.Cofece.mx/Cofece/images/Estudios/ExecutiveSummary_10022015.pdf

applicable regulation, and the expected impact of the legal amendments derived from the 2014 financial reform. Based on this analysis, structural elements, regulatory aspects, market failures, as well as behaviors that could inhibit competition for each of the analyzed financial products and services were identified.

3.1. Regulatory Considerations and Recommendations

31. Cross-cutting aspects considered by the Commission's market study include regulatory provisions, such as legal requirements, low-risk-associated measures and prudential regulation, whose objectives may not be fully compatible with competition policy.

3.1.1. Requirements for the Establishment and Operation of Financial Institutions

32. Legal requirements to be met by economic agents in order to establish and operate financial institutions could constitute barriers to entry. These include requests for additional information, on a discretionary basis, requirements to prove shareholder honorability, credit and business histories, unjustifiable high minimum capital requirements and long response times.

33. Given this situation, Cofece recommended financial authorities grant authorizations or concessions using controls that guarantee non-discriminatory treatment; to replace subjective criteria with objective criteria, alongside precise and accurate requirements in the corresponding legal regulations; and to improve authorization and granting of concessions transparency.

3.1.2. Prudential Regulation

34. More rigorous prudential regulation is consistent with the goal of preserving system stability; however, its operational and supervisory burden is not necessarily aligned with risk, affecting small size financial institutions to a greater degree. From a prudential point of view, risk-diversification for financial entities is a common requirement. Nevertheless, this has structural implications for credit-granting. Small banks may find themselves at a disadvantage since they do not enjoy the same capacity for risk diversification that larger financial institutions do.

35. Cofece recommends that operational and/or supervisory burden take into consideration the institutions' risk profiles as well as the complexity, scope and scale of its activities.

3.1.3. Systemic Risk: Financial Crisis and Competition Policy

36. The Mexican legislation considers specific measures of governmental intervention in times of financial crisis or risk of crisis, which includes i) early actions, such as issuing reports on the situation and capital-level regularization to abstaining from some specific risky activities, suspension of officer bonuses, in cases where capitalization is below 8%; ii) abstaining from revoking authorization of a bank with low levels of capitalization when it is deemed that the financial institution is systemically important; iii) liquidation or judicial liquidation when assets are insufficient to cover liabilities; and iv) a mechanism in case of systemic risk consisting in reorganizing, liability payment or balance transfer from one institution to another.

37. Cofece has recommended to reinforce competition objectives within the financial legal framework. For instance, the legal criterion of “obtaining the greatest possible recovery value” of a bank in liquidation could be against a criterion of market economic efficiency. Allowing a financial institution to assume a monopolistic position to mitigate a financial problem implies a consumer “bail-out” of the financial institution that could end up more onerous and difficult to reverse than a fiscal intervention. Thus, it is necessary to implement the appropriate measures so financial regulators consider the impact of their interventions on competition prior to its implementation. It is also needed that Cofece and sector regulators coordinate short- and long-term stability goals, as it is done in other jurisdictions.

4. Overall Recommendations

38. The Commission found areas of opportunity in terms of regulation or sectoral policy, and made 36 specific recommendations (see Annex), in five key aspects:

1. Avoid displacement or impede access to competitors to the financial markets. Thus, recommendations were made, on the one hand, seeking that regulation promotes that economic agents share and grant access to their competitors to networks and infrastructure; and on the other, that all participants in the sector have access to the same information.
2. Reduce risks of coordinated anticompetitive actions among competitors. Cofece found that there are conditions in the Mexican financial sector that facilitate the coordination of economic agents, which may generate anticompetitive effects. These recommendations are aimed at inhibiting this type of behavior.
3. Reduce barriers to competition. Recommendations focus on improvements to the regulatory framework to increase the potential number of competitors in the markets.
4. Eliminate restrictions to the efficient functioning of markets. The recommendations in this area seek to improve the availability of information on financial markets to facilitate decision-making and progress regulation or state intervention, to achieve greater efficiency in the financial markets.
5. Increase Cofece’s investigation and sanction powers effectiveness. It seeks to improve monitoring and analysis of financial markets through enhanced access to data, so the Cofece is able to effectively fulfill its constitutional mandate.

4.1. Assessment of the Recommendations

39. In the years following the release of the study, Cofece has been monitoring the implementation by financial regulators of the 36 specific recommendations.

4.1.1. Prudential Regulation

40. To make operative and supervisory burdens faced by banking proportional to the risk they imply to overall system stability, in 2015 the Central Bank issued its Supervision Rules, Self-correction and Disciplinary Proceeding Programs. The purpose of these Rules is to apply the proportionality principle to the supervision of the institutions considering its risk profile, complexity, reach and activities they perform.

4.1.2. Low-Value Payment Systems (ATMs)

41. To guarantee users non-discriminatory access to ATM infrastructure, Banxico modified the regulation to allow credit institutions sign agreements to share ATMs. As of August 2017, Banxico has authorized fourteen agreements.

42. Between 2015 and 2016, more than 18.5 million cash withdrawals took place generating savings for more than 450 million pesos (US\$24 million).

4.1.3. Electronic Transfers, Mobile Payments, Payment systems, Regulated- and Correspondent-Entity Deposits

43. On February 2017, a modification to Mexico's inter-bank check-clearing system (Cecoban) access protocol was published. The main changes include the elimination of the rule that required being a Cecoban shareholder to directly participate in the clearing house; the prohibition of differentiation of charges depending on the volume of operations, and the prohibition of tied house arrangements.

4.1.4. Mobile Payments

44. To reduce the risk of discrimination regarding mobile network access, given that one of the mobile payment networks is operated in conjunction with the predominant telephone company, Banxico required the only electronic funds transfer clearing house in Mexico, to provide secure bidirectional communications services to any processor or financial intermediary who so request regardless the mobile carrier.

45. The obligation was implemented during the first trimester of 2017 and since then, almost 100 thousand clients, from different mobile carriers have subscribed to the service.

4.1.5. Credit Reporting Agencies (acronym in Spanish: SICs)

46. In 2014, the Central Bank issued its Regulatory Provisions regarding the information financial institution must provide to SICs. During the first trimester of 2016, the information regarding National Worker Housing Fund Institute's credit holders was added to the SICs database. Therefore, the number of credit holders registered in the credit bureau grew 15.8% against the same period the year before.

4.1.6. Transparency

47. To facilitate consumers the comparison of financial products and evaluation of alternatives, Banxico has worked together with Condusef to include at least twice a year on user's Bank's financial statements, comparisons with regards to consumer cost. Also, both institutions are currently working on a project to improve information systems feeding the price comparatives.

4.1.7. Mortgages

48. National housing institutions must act according to principles generally accepted for financial institutions in all matters surrounding their credit activities. With this in mind, in December 2014, the CNBV issued General Regulations applicable to development entities, over which the accounting and prudential regime ruling Mexican housing Institutions, (Infonavit, Fovi and Fovissste) was established. These dispositions include norms that are in line with current standards applicable to other banks regarding mortgage granting, credit report filing, risk management and diversification, credit

portfolio, unexpected losses derived from the institution's operation requirements, and financial reporting to the CNBV. Additionally, these norms aim at ensuring their solvency, stability and operation.

4.2. Additional Assessments

49. In early 2017 the Commission decided to develop a status report on the implementation of six of the 36 recommendations, since the relevant secondary regulation in those segments had not been yet issued when the study was published.

50. These revisions involved analyzing the ATM network, credit card markets, credit card balances portability, mobile payments, investment funds markets, and the regulation on constitution and operation of financial institutions.

51. The revision analyzed, through quantitative and qualitative methods, the structure and performance of the markets under examination. Herfindahl-Hirschman Indexes (HHI) and concentration ratio measures were calculated, and using an econometric model, the effect of ATM surcharges on larger versus smaller banks was tested. The Commission also interviewed economic agents to collect evidence, as well as regulators to review the advances in the implementations of the 2014 recommendations.

52. At the time of this contribution, conclusions are in a preliminary stage and the report has not been approved by the Board of Commissioners. The final report will be available at the beginning of 2018.

5. Advocacy Actions in the Financial Sector

53. Over the last four years, Cofece has used different means to advocate for competition principles in government policy-making and address the prevalence of anti-competitive restraints in regulated sectors, particularly in the financial sector.

54. The Commission has found that publishing its opinions on laws and regulations has made regulators more inclined to take them into account. That is why on October 30, 2017, the Commission submitted to the Mexican Senate pro-competitive considerations on the Draft Law to Regulate Financial Technology (Fintech) Institutions.

55. The Draft Law seeks to regulate services provided by financial technology institutions (FTIs) also known as FinTechs, which, through the use of digital platforms and innovative businesses, have created new models to provide financial services, such as crowdfunding or payment through cryptocurrencies.

56. In the document presented, the Commission identified elements in the Draft Law that could restrict the potential intensity of competition in the market for financial services, which include the discretionary power given to authorities in the granting of authorizations, among others. Additionally, it does not ensure nondiscriminatory access of certain essential inputs so that they can effectively compete with incumbents, such as information pertaining to customer's transactional data or access to traditional banking financial services- necessary for fintech's operation.

57. The financial sector undergoes constant innovation and it is highly important that companies have an adequate legal framework, which is flexible in terms of technologies and business models. Cofece considered that the Draft Law is restrictive in the use of these elements.

58. The considerations submitted to the Senate also include recommendations to avoid regulatory burdens or unjustified requirements to operate.

6. Competition Policy Enforcement in the Financial Sector

59. Another field of interaction between Cofece and financial authorities concerns competition policy enforcement, such is the case of merger analysis, abuse of dominance and cartels.

6.1. Mergers

60. In Mexico, mergers in the financial sector require authorization from their regulatory authorities and Cofece when certain thresholds are met.² In addition, for specific circumstances, authorization from the foreign investment authorities may also be required.

61. Mergers and acquisitions in the financial sector are receiving a great deal of attention at present.

62. The trend in Mexico has been toward the blurring of the boundaries that separated the various parts of the financial sector, particularly commercial banking, investment banking and insurance such as the Banco Walmart – Banco Inbursa deal in 2015. Or more recently, Banco Banorte and General Atlantic³, an American Investment Fund.

63. So far neither of the mergers the Commission has analyzed in this sector in the last four years has raised concerns that competition in the sector could be diminished. However, Cofece is aware of that special attention must be paid to the impact on competition in the sector when a merger is being reviewed.

64. On the other hand, according to Mexican legislation in the financial sector, some special cases may arise where prudential concerns override competition concerns for public interest or stability reasons.

65. Mexican legislation considers special intervention mechanisms for financial institutions in cases of crisis or risk of crisis, where the institution that has the “final say” over a bank-merger review is not the competition authority.

66. In these cases, in contrast to that stipulated by the FECL, the Mexican Law for Credit Institutions requires Cofece’s opinion on competition within a narrow timeframe of three days. Of course, this timeframe is insufficient for making an analysis of said merger’s implications to market structure and efficient functioning, more so when Cofece has not been involved in all the previous decisions where the financial authorities decided it was a case of financial stability risk.

67. Therefore, for these cases, the goal of protecting competition and free market entry is subordinated to financial authority decisions and their goal of fiscal cost minimization.

68. These actions could prevent the exercise of Cofece’s faculties to later correct competition problems that might arise.

² Article 86, FECL.

³ CNT-091-2017

69. Because of this, in its 2014 market study, Cofece proposed to modify the regulatory framework for financial entity resolution situations to allow pertinent authorities to make their own resolutions such that the Commission need not get involved in the short term, while assuring that it can take necessary measures based on its mandate to eliminate anti-competitive practices and barriers to competition if they arise after the merger.

6.2. Abuse of Dominance

6.2.1. Credit Reporting Agencies

70. On February 2015, Cofece initiated an abuse of dominance investigation in the generation, processing and commercialization of credit information market. According to Cofece's Investigative Authority, the main objective of the investigation is to determine if there were practices unduly reducing the demand faced by competitors in this market.

6.3. Cartels

6.3.1. Mexican Government Securities

71. In April 2017, Cofece's Investigative Authority initiated an investigation for possible absolute monopolistic practices in the market for intermediation of debt securities issued by the Mexican government.

72. Illegal agreements affecting financial intermediation of government securities could damage public finances and investors, considering that every year Mexican government places hundreds of billions of Mexican pesos in these markets and that the daily volume of the instruments traded may reach approximately 100 billion Mexican pesos.

73. The ongoing investigation and the 120-day period of investigation, which started on October 28, 2016, may be extended four more times.

6.3.2. AFORES: Retirement Fund Administrators

74. In 2016 Cofece issued a statement of probable responsibility for suspected collusion in the pension fund administration services market.

75. The investigation alleged that economic agents colluded to reduce transfers among Afores (ie, retirement fund administrative entities), possibly reducing competition between companies that offer these services.

76. In May 2017, Cofece's Board of Commissioners confirmed that several companies and individuals (Profuturo GNP Afore, Afore Sura, Afore XXI Banorte and Principal Afore, as well of 11 individuals) were responsible for manipulating the pension fund administration services market.

77. Fines totaled 1.1 billion Mexican pesos (US\$58.8 million), the highest Mexico's antitrust agency has ever imposed.⁴

⁴ Exchange rate used \$19.10 pesos per USD \$1.00.

78. The sanctioned economic agents entered into agreements to reduce transfers between *Afores* (Retirement Funds Administrators). This conduct reduced competition between the companies to win the workers' preference.

79. In a market in which investments and commissions charged by *Afores* are regulated, transfers are a key source of competition. In agreeing to limit these, the incentives to offer a better service are reduced, and the possibility that workers have to reward or punish their *Afore* according to their degree of satisfaction is eliminated.

80. In Mexico, every worker that is listed or has made contributions to the social security system (Mexican Social Security Institute: IMSS or Security and Social Services for State Workers Institute: ISSSTE) has a personal and individual savings account, administered by an *Afore*, to which these contributions are sent. The workers have the right to choose which *Afore* will manage their retirement savings, in accordance with the restrictions on registration and transfer of account established in regulation. However, six times between November 2012 and June 2014, general directors and chief operation officers of the *Afore's* above mentioned, agreed to reduce transfer of accounts between them, by establishing maximum amounts of weekly transfers that varied depending on the agreement.

81. Implementation of the agreements was monitored through emails in which mechanisms were established to hide the identity of the *Afores* committing the conduct, by using nicknames for the companies, which shows that the sanctioned knew about the illegality and consequences of their actions. In addition, based on data provided by the sector regulator, CONSAR, it was proven that in the periods in which the agreements were in force, the transfers of accounts between the *Afores* involved were reduced.

82. The objective of this illegal practice was to reduce commercial expenses, which would have great benefits for the *Afores*. As it is a market in which it is complex to modify the amount of the commissions, and in which investments are regulated, the funds administrators sought to increase their profits from a reduction of their commercial expenses of those destined to carry out account transfers.

7. Conclusions

83. A well-functioning banking system is a prerequisite for the adequate operation of any economy. Hence the promotion of a competitive environment in the Mexican financial system is part of a global trend that bears an active role of financial regulators and competition authorities.⁵

84. In order to improve the level of competition and efficiency of the financial system, President Peña Nieto enacted the Financial Reform in January 2014 and empowered the newly created Cofece to sanction anticompetitive practices in the sector.

85. For the first time, competition policy was an important ingredient of the financial reform reflected in both modification of various financial laws and the mandate by Congress to Cofece to undertake a comprehensive study on the competition conditions of the market.

⁵ In recent years, competition became an important issue for regulators since policies that address the global financial crisis of 2008 might have restricted competition with stronger regulation.

86. Currently, Mexico has a well-capitalized financial system with low default rates, however, users have low mobility and financial intermediaries still lack incentives to attract customers through quality and innovation at lower prices; furthermore, a high concentration of suppliers of certain products and services remain, and banks' profits are higher than those in countries with a similar income level; because financial services penetration and inclusion of population is limited. This is why regulation must be complemented and coordinated with the promotion of competition.

87. Since the report was published, only a few out of the 36 recommendations have been adopted, whereas the others are in progress. Furthermore, the number of ongoing antitrust investigations that Cofece has undertaken in the financial sector has significantly increased.

Annex

Market Study and Recommendations Regarding Competition Conditions in the Financial Sector and its Markets

In its 2014 market study, Cofece made 36 specific recommendations to promote competition in financial services:

Key Aspects	Specific Area	Issue	36 Recommendations
1. Avoid displacement or reduced access to financial markets	1.1 Prudential Regulation	The operative and supervisory burdens for banking institutions are not proportional to the risk they represent to the overall stability of the system, which greatly affects smaller institutions.	1. Ensure operative and supervisory burdens are proportional to each type of institution and its risk profile.
	1.2 Low-Value Payment Systems (ATMs)	Replicating the ATM coverage large banks have, by other financial intermediaries and even newly authorized banks is difficult. The ATM system is fragmented because most accountholders use ATMs from their own banks as it is very expensive to withdraw funds from other bank's ATM (between 20 and 30 pesos on average).	2. Guarantee that users have non-discriminatory access to ATM infrastructure. To that end, a reduction of the differential of fees should be promoted.
	1.3 Electronic Fund Transfers, Mobile Payments, Payment Systems, Deposits in Regulated and Correspondent Organizations	To participate in Cecoban's clearing and settlement house, one must either be a shareholder or gain access through a shareholder. This can represent a barrier to non-banking entities when it comes to direct debits and checks.	3. Review access of financial intermediaries to Cecoban's clearing and settlement services in terms of entry and requirements to facilitate access to direct deposits, clearing checks and settling services.

	1.4 Mobile Payments	Reduce the risk of mobile network access discrimination, given that one of the mobile payment networks is jointly operated by the dominant telephone company.	4. Require that telecommunications operators provide mobile-phone transfer services by means of short messages for any financial processor or intermediary that requests it.
		Mobile payment platforms continue to operate in a closed manner, i.e., they are only available at banks that offer the service and among account holders from the same bank.	5. Evaluate the effectiveness of regulation issued by Mexico's Central Bank on interoperability of fund transfers via mobile devices at the end of 2013, two years after coming into effect and, as necessary, enact pertinent corrections.
	1.5 Credit Reporting Agencies (SICs)	Banks hold 70% of the Credit Bureau's shares thus granting them property and control over this agency; in turn they grant more than 85% of housing, consumer and business credits. Under current regulation, the governing bodies of the abovementioned and the other SIC could be favoring shareholders and not the efficient functioning of the credit information system.	6. Adjust the regulatory and operational framework to legally require banks to equally provide credit information to all authorized SICs, under accepted quality standards. In addition, revise and - when necessary - adjust the volume discount policy of the consultation services offered to users by SICs as a means of avoiding explicit discrimination of economic agents.

		Small banks face information limitations that prevent effective competition in some segments of the population when it comes to specific products. Legal uncertainty with regards to the possibility of anonymously reselling or using SIC data limits analysis of such information as well as the provision of value-added services.	7. Issue guidelines for SICs—while respecting standards of information anonymity—to offer their anonymous database to other SICs and third parties to create value-added services.
		Information on the purchase of services or payments of credits to the government are not available to creditors. Consequently, users are precluded from or have less possibility of being granted credit as they do not have a credit history.	8. Issue norms that ensure any SIC has access to databases with information on payments made to government entities (Infonavit or Fovissste contributions, among other services)
	1.6 Business Loans	In addition to efforts to facilitate credit guarantees for solvent small and medium enterprises, it is key that such businesses secure access to financing and investment capital.	9. Support the development and, where needed, the regulation of electronic capital investment and productive-project-financing platforms that disclose small and medium business capital and financing needs and that receive project financing and co-investment offers from financial institutions.

	1.7 Investment Funds	Investment funds enact price differentiation policies of commissions and multi-series fees, by distribution channel, whether internal or external, which carry potential anti-competitiveness risks.	10. Guarantee neutrality and non-discrimination in the promotion and billing of operation and distribution services of mutual funds (proprietary and third-party). Additionally, evaluate in terms of the standard of 'reasonableness' and other criteria, in two years' time, the effects of the secondary regulation of the new investment fund law on proprietary and third party fund-placement composition, among other issues, and, as necessary, make needed adjustments.
	1.8 Insurance	The use of the Mexican Association of Insuring Institutions (AMIS) database of insurance customer risk histories to conduct actuarial measurements is very limited. As such, this data does not necessarily impact insurance policy prices and/or the development of new products that cover potential-client needs.	11. Create a risk bureau owned and operated with independence from insurers, to which they are obliged to provide information, and that serves as a mechanism for insurers to make more precise actuarial calculations regarding potential clients.
2. Reduce Risks of Coordinated Anticompetitive Actions Among Competitors	2.1 Systemic Risk	The three-day period that financial legislation allows for the issuance of a resolution on accumulation via bank liquidation is insufficient if Cofece is to undertake an analysis of its market-structure and -the implication of the transaction; this limits the Commission's capacity to enforce corrective actions.	12. Modify the regulatory framework for financial entity resolution situations to allow the pertinent authorities to make their own resolutions in such a way that Cofece need not become involved yet is still enabled to take necessary measures based on its mandate to eliminate anti-competitive practices and barriers to competition.

	2.2 Low-Value Payment Systems (Credit and Debit Cards)	It is possible that cardholders face difficulties when transferring outstanding balances to a new bank that offers improved terms (a mere 5% of credit card customers switched institutions between 2011 and 2012). It is unclear if banks use interest rates to compete for customers.	13. Financial reform calls for conditions that favor portability. As such, the rules that govern credit portability, in relation to how well they support switching creditors and reducing credit card nonmonetary cancellation costs, must be evaluated in two years.
	2.3 Transparency	Users may face difficulties when choosing financial products since it is not easy to access information or compare available services. Examples include car loans, retirement insurance, and annual profitability outcomes for savings and investments at institutions that are not mainline retail banks.	14. Expand Condusef's services to incorporate values expressed in pesos in addition to percentages when comparing banking services commissions and requirements; establish platforms for on-line credit and insurance comparisons; consolidate comparative information that includes all financial intermediaries on a single platform; among other services.
	2.4 Consumer and Housing Credit	Debt-holders have little mobility when it comes to switching between consumer and mortgage creditors. They may find themselves bound to unfavorable contractual obligations that feature high interest rates or commissions, inflexible payment terms and methods.	15. Support the development and, where necessary, the regulation of electronic consumer and housing credit platforms where a) consumers present their financing needs and authorize consultation of their credit histories by SICs; and 2) financial intermediaries make financing offers.
	2.5 Payroll Loans	There is virtually no client mobility between payroll loan providers, which tends to limit competition in this credit sector.	16. Issue secondary regulation originally considered as part of financial reform that allows for effective payroll loan portability.

	2.6 Mortgages	Transferring mortgage guarantees between lenders is burdensome and blocks refinancing.	17. Promote state-level, civil legislation reform that allows for paper work and other procedures to be carried out in public registries in regard to mortgage- and mortgage-modification-related administrative tasks, in a homogeneous manner and at a low-cost.
	2.7 With Regard to Points-of-Contact	The fact financial system competitors share multiple points of contact (some legally mandated) weakens competition by facilitating information-exchange and strategy collusion	18. Review all points-of-contact between competitors and maintain only those that are indispensable to the operation of the financial system.
	2.8 Insurance	Evidence shows possible overpricing in the credit-related insurance industry, especially when comparing auto and housing loan-insurance policy prices for products that are not linked to a credit to those that are linked.	19. Review regulations to establish mechanisms that force financial intermediaries to provide individuals seeking credit (largely requesting auto and housing loans) alternatives for acquiring economical insurance that meets minimum requirements for third-party acceptance as a guarantee.
		There is little flexibility and dynamism in the individually-written or personalized insurance sector.	20. Drive development of standardized insurance policies focused on basic coverage (via adhesion contracts) by requiring financial intermediaries to offer them.

3. Reduce Barriers to Competition	3.1 Business Incorporation and Operation Requirements	Numerous requirements are established for the incorporation and operation of financial intermediaries. This provides regulatory authorities discretion on their decisions.	21. Review financial intermediary incorporation and operation requirements and licensing processes in accordance with standards established by Mexico's Federal Commission for Regulatory Improvement (acronym in Spanish: COFEMER) to simplify and improve market accessibility conditions.
	3.2 Trusts	There are barriers that prevent economic agents that are not part of the financial system from providing fiduciary services.	22. Evaluate the risks and benefits of allowing other economic agents to serve as fiduciaries of non-financial trusts (family or property).
	3.3 Low-Value Payment Systems (Credit and Debit Cards)	There are no new bank and non-bank-based entrants interested in competing for credit and debit card segments, not served by traditional banks. One limiting factor could be the access to the card payment systems.	23. Over the course of two years, evaluate the effectiveness of eliminating restrictions on card issuing and acquiring services (regulations on interbank facilitation organizations) and make pertinent corrections as necessary.
4. Eliminate Restrictions to the Efficient Functioning of Markets	4.1 Low-Value Payment Systems (Credit and Debit Cards)	Card acceptance in commercial establishments is low, as is the frequency with which consumers that have cards use them. Additionally, interchange fee differences between different business categories do not appear to be related to businesses' willingness to accept cards and cardholders' willingness to use them.	24. Regulation of credit and debit card interchange rates to optimize the use and coverage of payment cards. A reduction of the average interchange fee would boost consumer welfare.

	4.2 Foreign Remittances	Programs that publicize conditions under which remittance services can be provided—for example, information regarding impediments to tied sales at locations where products are sold, the prohibition against payment retention, or the absence of reasons to pay commissions above and beyond those that the service initially set—must be reinforced.	25. Regulate the publication and ranking prices and quality of remittance services, in addition to Profeco's (Spanish acronym for: Federal Consumers Protection Office) advisory tools.
	4.2 Trusts	Trustee-reported information on trusts is limited and framed by a mere two variables (total assets and commissions by financial institution). This information is not sufficient to evaluate trust activities.	26. Require trustees to provide regulators with performance-measuring information such as the number of trusts, value and commissions by trust type and financial institution.
	4.4 Development Banking	Development bank financing and ongoing government supports in certain sectors affect efficiency and create risks to competition.	27. Review and, where necessary, modify development bank intervention entry and withdrawal criteria, to avoid unnecessary distortion when it comes to competition in supported sectors.
		Unlike private financial institutions, Mexico's Infonavit and Fovissste development banks directly charge the workers housing subaccount for the opening and administration costs at the same time they automatically discount worker credit installments. They also transfer loan portfolios to	28. Focus Infonavit and Fovissste on activities in which they have competitive advantages (origination and loan servicing), by means of open portfolio tendering among private financial intermediaries or by allowing workers to transfer their housing accounts to the financial intermediary of their choice.

		<p>private financial institutions through direct allocation contracts.</p> <p>The credit conditions offered by these institutions are more burdensome than those of financial intermediaries within the market segments in which they compete; their advantages are not reflected in lower costs to debt-holders.</p>	
		<p>Competition conditions are negatively affected by financial intermediaries' insufficient supply of certain financial services to some sectors of the population.</p>	<p>29. Where an opportunity to strengthen competition, or boost private financial intermediary participation is identified, the development bank or other government programs should get involved. One example would be to open a distribution channel to the public of Cetesdirecto accounts, which would establish a trustworthy reference in regards to the savings yields offered by banks.</p>
		<p>Some administration boards and decision-making bodies at development bank institutions are made up by members who hold interests within the sectors they develop.</p>	<p>30. Review election requirements for development entities' administration-board- and technical committee-members, to identify conflicts of interest that affect decision-making neutrality.</p>

	4.5 Personal Loans	In the case of financial institutions linked to commercial enterprises or other lines of business, customers lack clarity on the retail price of the acquired good or financial service, which in turn generates unequal competition risks that favor integrated economic agents.	31. Require commercial enterprises to publish the prices of their goods/services before and after financing, and which financial institution grants the credit for the purchase said goods/services.
	4.6 Mortgages	Some undertakings of national housing institutions are not governed by principles generally accepted by private financial institutions and distort mortgage-market competition conditions (e.g., interest rates based on x-times the minimum wage).	32. Require national housing institutions act according to principles generally accepted by financial institutions in all matters regarding credit provision.
	4.7 Retirement Savings Systems	Service providers of retirement savings accounts compete mainly through the promotion of their services (40% of afore-style retirement fund expenses are dedicated to that end, with only 4% devoted to investment). Promotional costs increase system operation costs and offer no clear benefit to users. Thus, in 2013, half of all workers that switched <i>Afore</i> , did so to a retirement fund administrator that offered inferior net performance.	33. Require measures that align system incentives aimed at better retirement funds for retirement, e.g., by setting maximum absolute and relative spending limits on promotional costs and establishing that the commission charged on the balance be separated into two parts: account management and funds management.

	4.8 Insurance	Analysis of insurance provision structures in the agricultural sector must be deepened.	34. A comprehensive assessment of the supply and demand conditions of agriculture insurance must be done, considering the role of Agroasemex as a national insurance, development and reinsurer institution.
Increase Cofece's Powers to Sanction Infringement of the Competition Law	5.1 Concurrent Powers	Some regulatory activities constitute areas of opportunity for Cofece to more effectively fulfill its mandate, which are not currently being leveraged (when regulatory authorities are aware of anti-competitive activities).	35. Establish a cooperation mechanism between sector regulators and Cofece to generate information related to economic activity on the part of regulated parties so that Cofece may access the information it needs to perform ongoing monitoring of sector competition conditions.
	5.1 Trusts	Information on transactions involving trusts is protected under banking secrecy, which limits Cofece's access to information that indicates the presence of anti-competitive risks.	36. Require credit institutions provide Cofece with information and documentation related to the operations and services they provide, including trusts.