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Taxi, ride-sourcing and ride-sharing services - Note by Mexico

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Mexico

1. Taxi regulation can inhibit competition between different transport modalities, but also among taxis.

1. In recent years the debate as to whether governments should regulate platforms for the transport of people (such as Uber, Cabify and Easy Taxi, to name a few) has taken place in many countries. Mexico was not the exception and as such was faced with the question of design. When the case for regulation is deemed necessary, how should it be designed to avoid limiting competition? In June 2015, COFECE issued an opinion on Network Transportation Services (TNCs).
2. COFECE identified that local transport regulations had fallen behind this new wave of innovation, producing -similar to what happened in other cities around the world- a degree of conflict among interest groups (traditional taxis and users) and certain ambivalence by local governments. In the Commission's opinion, this tension needed to be resolved by pursuing consumer welfare and ensuring that the competition process was duly protected.
3. For COFECE, TNC services correct market failures, offer new alternatives and generate consumer welfare, foster the innovation process, contribute to mobility and produce network efficiencies. Therefore, any prohibition or restriction under false premises would pose a risk to the competition process.
4. That is why, the opinion recommended local governments -Governors and local Congresses- to encourage these services by legally recognizing them and, if there was any need to regulate them, to address only security concerns. Regulation should not hinder competition, for instance, by limiting entry, regulating TNCs as if they were taxis or interfering with the pricing mechanism (or other pro-competitive aspects of the business models) they use.
5. The opinion helped to effectively position the topic on the public agenda from a competition perspective and to guide some local governments to act accordingly. This was the case of Mexico City and Puebla, and around 10 other states that up to date have regulated these services.
6. COFECE's opinion was influential in these regulatory efforts. TNCs now operate relatively free from uncertainty and may expand over time, complementing mobility options and offering new services that are highly demanded and appreciated by specific segments of consumers. In fact, new platforms have announced their start of operations in the country.
7. Moreover, with this opinion, COFECE recognizes the ever-present importance of addressing the issue of disruptive technologies, such as TNCs, which by definition, threaten the status quo and are typically marked by an empowerment of consumers.
8. However, this debate also shed light on the fact that regulation can hinder competition between different transport modalities, but also among taxis by: i) including unjustified obstacles to competition; and ii) facilitating anticompetitive conducts.

2. Obstacles to competition in taxi regulation at the local and the federal levels

9. Taxi regulation in Mexico is issued at a state level. Nevertheless, there are common requirements that might inhibit competition between taxis. Some examples of barriers to entry are: multiple authorizations mechanisms (such as special plates, licenses, permits, etc); expensive entry fees that vary among states, but that in most cases are non-proportional to the administrative cost; limits to the number of permits; preferences to local suppliers and incumbents when granting new concessions; and the request of specific car models to grant an authorization. Some examples of provisions that inhibit differentiation among suppliers are: i) tariff regulations; ii) prohibition to provide the service through different means (telephone, platforms, taxi sites); iii) geographic restrictions to pick up and drop off passengers (when changing states for example).

10. In 2015, COFECE published the document “Miscellany of regulatory obstacles to competition: a state-level regulation analysis”, and found that many of these provisions are common in several states.¹

11. Specifically, the operation of taxis in Mexican airports is regulated at a federal level by the Federal Airports’ Law and Bylaw. Additionally, the Federal Roads, Bridges, and Motor-transport’s Law establishes that the Ministry of Communications and Transport (SCT as per the acronym in Spanish) is the authority responsible for issuing the permits required to offer ground transport services in federal airports, including taxis. In order to do so, the SCT must consider the opinion of the administrators of the respective airport. Once the supplier gets the airport’s favorable opinion and the SCT’s permission, a contract is signed with the airport.

12. With this regard, in December 2016, COFECE issued an opinion recommending modifications to the regulatory framework for taxi transport services from airports, and a transition from the current model of exclusive access or restricted towards an open model.

13. This opinion has a precedent in a previous set of recommendations made by COFECO (the former competition authority) in 2007. Back then, the Commission identified that the regulatory framework was limiting the supply of ground transportation services to and from federal airports.

14. In 2016, COFECE recognized that the various limits to competition summarized above remained. First, taxis authorized to operate in the airport, can only transport people from airports (passenger pick - up outside of the airport occurred only when they had previously agreed the address) and cannot freely pick up passengers outside the airport. This increases their costs as they must ride back to the airport without any passengers. Similarly, taxis dropping off users at the airport cannot pick up other users once there, so they must assume the cost of picking up their passenger which entails leaving the airport with an empty vehicle. Second, the airport administrators establish the tariffs that authorized taxis must charge, thereby inhibiting price-competition. Third, the regulation does not indicate what elements the airport administrators must consider when issuing a favorable opinion on a supplier; this provides them with the possibility to incur in discretionary decisions on who is to be authorized and could lead to an artificially low

¹ Available in Spanish here: https://www.cofece.mx/cofece/images/Promocion/Miscelanea_Estatal_210916.pdf#pdf

number of cars. In COFECE's opinion, supply and demand must determine the number of vehicles that operate at the airport.

15. Therefore, COFECE recommended: i) that, the elimination of barriers to entry required the SCT to grant all suppliers that comply with the respective requisites, permissions to operate at the airport without conditioning the decision to the opinion of the airport administrators; ii) that regulation should only safeguard safety and quality without artificially limiting supply or including requirements that could unjustifiably exclude potential competitors.

16. More generally COFECE recommended that an open access scheme be adopted by Mexican airports' regulation. Under this model, airports may charge an entry fee to those interested in providing the service. Tariffs could be regulated in various ways including: taximeter, minimum prices (for short rides), maximum prices, or a combination of these.²

17. Under an open model, any supplier that obtains the permit issued by the SCT (local taxis, taxi corporations, TNC, etc.) could provide the service, which would intensify the competition among them.

18. Currently, a reform proposal for this regulatory framework (the Federal Airports Law and the Roads, Bridges and Motor-transport's Law) is being discussed in Congress. However, the project does not consider the possibility for all local taxi suppliers to offer the service, nor a provision that authorizes TNCs to provide the service at the airport legally.

3. Taxi regulation can facilitate anticompetitive conducts

3.1. Abuse of dominance at the Mexico City's International Airport

19. It is worth mentioning that one of the motivations to issue the opinion described above was an abuse of dominance case which resulted in fines for Mexico City's International Airport administration (AICM as per the acronym in Spanish) in 2016.

20. According to COFECE's resolution, the AICM has substantial market power because in order to offer the taxi service at that facility, the supplier needs to have the AICM's positive opinion, otherwise the SCT will not grant the necessary permit. As stated above, the supplier also needs to sign a contract with the AICM, were the conditions of supply are specified. In other words, it is the regulation that conveys the AICM (and any other airport administration) with monopolistic power by making it the only authorized entity you can sign a contract with, in order to provide the taxi service at that airport.

21. COFECE resolved that the AICM used this power to impose differentiated clauses in the contracts that were signed with the different suppliers of taxi services. These clauses benefited incumbents because they considered that any increase in the number of vehicles would be dependent on the initial number of cars each registered by each taxi association. Also, the incumbents had preference over possible new entrants

² Source: COFECE's Opinion, available in Spanish here: <http://cofece.mx/CFCResoluciones/docs/Opiniones/V13/0/3653400.pdf>

when auctioning the increase in vehicles. Moreover, the contracts included discriminatory rebates among the associations. Some suppliers obtained 30% rebate while others in equality of conditions obtained only 20%.

22. In September 2016, COFECE fined the AICM with approximately 3.5 million dollars, and instructed it to: i) suppress all the anticompetitive clauses from the contracts; ii) allocate all new contracts and permissions to increase the number of vehicles through a public tender, which must be submitted for COFECE's opinion; iii) explicitly state that the rebates will not be discriminatory and to publish what rebates have been granted to which economic agent.³

23. Also in September 2016, COFECE announced the initiation of an abuse of dominance investigation in the market for ground passenger transport at Cancun's airport.⁴

3.2. Collusion at Mexico City's International Airport

24. The Federal Regulation on Motor Carrier and Auxiliary Services establishes that carriers may determine and modify their rates, without approval from the SCT. In principle, given the freedom of establishing rates, diverse economic agents in the market would generate competition conditions to lower the services' prices. This regulation applies only to taxis operating at federal airports such as the AICM.

25. On April 11, 2011, five taxi associations signed an agreement to jointly hire a consulting firm to carry out a "rate-setting study" to determine the future price of taxi services and improve their revenue. To that end, the taxi associations shared strategic information with the consulting firm, which under normal circumstances would not be shared, such as their operational costs, rates, revenue, number of units, sales statistics, among others.

26. The consulting firm provided each of the taxi associations with the "rate-setting study", in which it defined a scheme and recommendations to determine "competitive rates" to be charged until the year 2021. At the same time, the associations' permit holders, except for one, registered the rates recommended in the study before the SCT, and in August 2011, taxi rates were increased accordingly.

27. In September 2017, COFECE fined five taxi associations with 1.3 million dollars and ordered AICM authorities be informed on the matter for all the legal purposes. As mentioned before, the AICM has signed contracts with the associations' taxis operating in its facilities that provide that engaging in absolute monopolistic practices is a serious ground for termination. If this were the case, the AICM must initiate a procurement

³ Source: COFECE's press release, available in Spanish here: <https://www.cofece.mx/sanciona-cofece-al-aicm-por-la-realizacion-de-practicas-monopolicas-relativas-en-la-prestacion-del-servicio-publico-de-taxi/>

⁴ Source: COFECE's press release, available in Spanish: <https://www.cofece.mx/investiga-cofece-mercado-de-autotransporte-federal-de-pasajeros-en-el-aeropuerto-internacional-de-cancun/>

process for this service, and given the abuse of domination resolution described above, it would have to request COFECE's prior opinion on the process.⁵

3.3. New airport, new platforms, new opportunities.

28. Given that this contribution has been centered on the provision of taxi services in Mexican federal airports, it is worth mentioning that as a new airport is constructed in Mexico City, an opportunity arises to rethink the ground transport services regulation in federal airports.

29. With current regulations, only taxis authorized by the SCT and the airport administrator can provide the service. However, in practice, TNCs are also operating in most federal airports (being Cancun an important exception).

30. This leaves all other taxi regular taxi service suppliers in a disadvantaged position, and inhibits competition between different types of providers.

31. To avoid replicating the competition issues present at Mexico City's current airport, it is important to modify federal regulation before the new airport starts operating. This would benefit consumers that fly to and from any federal airport in Mexico.

32. Additionally, as new TNC platforms start operating in the country (Nesko, Didi, etc.) it will become more relevant to adapt the local regulation not only to include these new services, but also to allow competition from traditional taxi companies.

⁵ Source: COFECE's press release, available in English here: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-042-2017.pdf#pdf>