

Unclassified

English - Or. English

31 May 2022

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

Working Party No. 2 on Competition and Regulation

Competition and Regulation in the Provision of Local Transportation Services – Note by Mexico

20 June 2022

This document reproduces a written contribution from Mexico submitted for Item 3 of the 73rd OECD Working Party 2 meeting on 20 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

Federica MAIORANO
Federica.MAIORANO@oecd.org

JT03496525

Mexico (COFECE)

1. Introduction

1. The institutional model of the Federal Economic Competition Commission (Commission or COFECE) includes, among other elements, a strategic planning system based on the definition of institutional objectives and medium-term goals. This involves the design of strategic plans, which are affective for four years and seek to ensure that the fulfilment of COFECE's constitutional mandate is achieved efficaciously, efficiently and effectively. To this end, every four years, sectors of the Mexican economy that will be priorities for the Commission are identified. In the 2022-2025 Strategic Plan, the following criteria are established for the selection of these sectors: (1) contribution to economic growth, (2) demand among the general population, (3) transversal impact on the production of goods and services, (4) effects on the expenditure of lower-income households, (5) characteristics that favor anti-competitive market structures and require government regulation, (6) prevalence of anti-competitive behavior, and (7) those in which competition agencies from other countries have placed special interest.

2. Using these criteria, since 2014, COFECE has considered transport as a relevant sector for the national economy; the 2018-2022 Strategic Plan included it among its priority sectors, in the same way as the most recent Strategic Plan, developed for the period 2022-2025.¹ The contribution presents COFECE's some of the actions carried out in the transportation sector, particularly in the provision of local transportation services. Therefore, the document is structured as follows: firstly, it briefly describes how the provision of local transportation services in Mexico is regulated. The following section explains COFECE's work to promote competition in the transport sector; this includes a study to identify provisions in state regulations that could affect the competition process in various sectors (including local public transport). It also describes the opinions issued by COFECE on (i) the regulation of passenger transport in the state of Tlaxcala, (ii) markets for the transport of people by means of mobile platforms, and (iii) taxi services at domestic airports. Finally, summarizes cases in which sanctions were imposed for anti-competitive conducts in the provision of transportation services at airports.

2. The Mexican legal model for the provision of local transportation services

3. In Mexico, the Political Constitution of the United Mexican States provides that it shall be the power of the state and municipal governments to formulate and enforce the regulation of transport at the local level.² This regulation includes: (i) state laws, issued by the legislatures of the states;³ (ii) regulations, circulars, and administrative provisions

¹ The Strategic Plan 2022-2025 identified eight economic sectors as priorities: (1) financial food and beverage sector, (2) transport and logistics, (3) financial, (4) construction and real estate services, (5) energy, (6) health, (7) public procurement and (8) digital markets. COFECE's strategic plans are available in Spanish at: <https://www.cofece.mx/planeacion-y-evaluacion/>

² Art. 115, section V, Political Constitution of the United Mexican States. Available in Spanish at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

³ For example, the General Law of Public Transportation of the State of Baja California; the Transportation Law for the State of Baja California Sur; the Mobility Law of the Federal District, the Traffic and Transportation Law of the State of Guanajuato, among others. More information in

issued by states or municipalities in accordance with state laws; and (iii) public passenger transportation programs formulated by state and municipal governments.

4. Likewise, local governments are responsible for providing public transportation services in their territory, mainly in the modality of taxis (individual transport) and buses (collective transport), directly through state-owned enterprises or decentralized agencies,⁴ or through concessions and permits.^{5 6}

5. When local public transportation services are provided on roads, which are jurisdiction of the federal government, as is the case with taxi and bus services offered at airports,⁷ the federal authority, the Ministry of Infrastructure, Communications and Transportation (SICT),⁸ is the responsible for enforcing the corresponding regulation. In this regard, the different federal regulations, the Regulation of the Airports Law,⁹ Law of Roads, Bridges and Federal Motor Transport,¹⁰ Regulation of the Federal Motor Transport

Annex I of the document developed by COFECE: *Miscelánea de obstáculos regulatorios a la competencia, análisis de la normativa estatal* (Miscellaneous of regulatory obstacles to competition, analysis of state regulations), available in Spanish in: <https://www.cofece.mx/miscelanea-de-obstaculos-regulatorios-a-la-competencia-analisis-de-la-normativa-estatal/>

⁴ An example of this type of company is the Collective Transport System, a decentralized public body of the government of Mexico City that provides metro services in Mexico City and the Metropolitan Area of the Valley of Mexico.

⁵ The concession is the act by which an individual is granted the management and exploitation of a public service or the exploitation and exploitation of assets owned by the State. Fraga Gabino, *Derecho Administrativo*, 43rd ed. Mexico, 2003, cited in: Jimenez Bautista, *Concesión del Transporte Individual*, available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/6/2654/9.pdf>

⁶ Article 28 of the Constitution establishes that the State (understood as the federal, state or municipal authority) may, in cases of general interest, concession the provision of public services, including public passenger transport. Likewise, the Constitution provides that the laws shall establish the modalities and conditions that ensure that these services are provided effectively, avoiding concentration contrary to the public interest.

⁷ OPN-010-2016. Opinion on the regulations applicable to the service of access to the federal zone and parking for the provision of the public service of federal passenger transport in its taxi modality, with origin in national and international airports. Available in Spanish at: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V13/0/3653400.pdf>

⁸ Previously, Ministry of Communications and Transport (SCT). See *DECRETO por el que se reforman diversas disposiciones de la Ley Orgánica de la Administración Pública Federal* (DECREE amending various provisions of the Organic Law of the Federal Public Administration), published in the DOF on 20 October 2021, available at: https://dof.gob.mx/nota_detalle.php?codigo=5633365&fecha=20/10/2021.

⁹ Article 55, sections VIII and XI of the Regulation of the Airports Law defines the taxi service at Mexican airports as i) the parking for cars and vehicles of the transport services and ii) the right of access to a given airport for taxi services and those provided for that service. Available in Spanish at: https://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LAero_210618.pdf.

¹⁰ Articles 5, section II, 8, section I and 47 of the Law of Federal Roads, Bridges and Motor Transport establish the requirement to have a permit issued by the SICT to provide taxi and bus services at airports and provides that in order for the SICT to be able to issue said permit, it must have a favorable opinion from the administration of the airport involved. Available in Spanish at: https://www.diputados.gob.mx/LeyesBiblio/pdf/27_011220.pdf.

and Auxiliary Services,¹¹ establish the way in which this type of local transport service is provided and the criteria with which concessions and permits are granted.

6. From the study and analysis of the markets under these regulations for the provision of local transport service, COFECE has carried out various efforts to promote competition and law enforcement in this sector, which are explained in the following sections of the contribution.

3. Advocacy interventions in local public transportation services

7. With respect to local transportation services, COFECE has conducted a general analysis of state laws and issued specific opinions to federal, state and local authorities. This work includes the publication of the document *Miscelánea de obstáculos regulatorios a la competencia, análisis de la normativa estatal* (Miscellaneous of regulatory obstacles to competition, analysis of state regulations), as well as different opinions with recommendations on (i) services of transport in the state of Tlaxcala; (ii) services of transport of people by means of mobile platforms; (iii) taxi service at domestic airports; and (iv) taxi and bus services at Felipe Angeles International Airport (AIFA). This work is briefly described below.

3.1. Regulatory obstacles to competition, analysis of state regulations

8. In 2016, COFECE published the document *Miscellaneous of regulatory obstacles to competition, analysis of state regulations*,¹² which reviews and evaluates state laws and regulations applicable to 5 sectors: (i) agricultural, (ii) public procurement, (iii) public transport, (iv) urban development and (v) professional practice.

9. Regarding the public transport sector, the publication covers the following local transportation modalities: collective (buses, trucks or other vehicles of intermediate or minimum capacity); individual rental or taxi (taxi bases, radio service or without base and the Transport Network Companies (TNCs)); and mass transportation (vehicles with capacity for a hundred people or more). It also analyzes public freight transport.

10. The document states that local rules contain four types of obstacles to competition in public transportation services:¹³

- *Requirements or criteria that grant advantages in favor of local agents*: in 12 states the place of birth or residence is established as a requirement or criterion of preference for obtaining concessions. This type of criteria reduces the universe of potential suppliers and favors certain agents that are not necessarily the most competitive. On the other hand, 20 states allow the transfer of permits in favor of beneficiaries selected by the permit holder in case of death and/or disability. This

¹¹ Article 28 of the Federal Motor Transport and Auxiliary Services Regulations establishes the scope of permits, while Articles 61 and 62 establish the tariff system. Available in Spanish at: https://www.sct.gob.mx/fileadmin/migrated/content_uploads/10_Reglamento_de_Autotransporte_Federal_y_Servicios_Aux.pdf

¹² COFECE (2016), *Miscellaneous of regulatory obstacles to competition, analysis of state regulations*. Available in Spanish at: <https://www.cofece.mx/miscelanea-de-obstaculos-regulatorios-a-la-competencia-analisis-de-la-normativa-estatal/>.

figure of reissuance in favor of a family member or beneficiary chosen by the permit holder generates exclusive advantages and limits the entry of new suppliers.

- *High participation costs*: in four entities, vehicles incorporated to provide transportation services are required to be new. In this case, establishing disproportionate requirements raises entry costs and limits concurrence.
- *Limits on the ability of companies to compete and differentiate themselves*: in 17 states, regulations establish that local public transportation services in general will be subject to rates. Establishing price regulation as a rule could affect the conditions of supply.
- *Widespread absence of institutional mechanisms that favor competition in the processes to grant concessions*: in 2 cases, no process is established, while in 19 states the process is not competitive. On the other hand, the regulations of 12 entities do not determine the duration of the concessions. Finally, 9 states contemplate the participation of transport associations in the preparation of feasibility studies, creating incentives to restrict free market access. In this sense, non-competitive allocation mechanisms, in addition to generating discretion, can result in the granting of rights to inefficient economic agents.

3.2. Opinions related to public transportation services.

11. The Commission has issued four opinions. The first opinion (OPN-006-2015) examined and recommended changes to the regulatory framework for the provision of public transportation services in the state of Tlaxcala. The second opinion (OPN-008-2015) analyzed and issued recommendations on passenger transportation services through mobile platforms. The third (OPN-010-2016) evaluated the regulations applicable to the taxi service at national airports. The fourth and most recent (OPN-001-2022) dealt with the proposed scheme for taxi and bus services at the Felipe Angeles International Airport (AIFA). These opinions are summarized below.

3.2.1. *Opinion on the effects on competition of regulations for public transport in the state of Tlaxcala*

12. On April 23, 2015, COFECE's Board of Commissioners (Board) issued the opinion OPN-006-2015 on the effects on the process of competition and free market access of the Communications and Transportation Law of the state of Tlaxcala (LCT, for its acronym in Spanish), its Regulation, and the "*Decreto que suspenden indefinidamente el otorgamiento de nuevas concesiones y autorizaciones para la prestación del servicio público de transporte de pasajeros*" (*Decree*).¹⁴

13. The *Decree* indefinitely suspended the granting of new concessions and authorizations for the provision of passenger transportation services in the state of Tlaxcala. COFECE observed that it constituted a barrier to entry, as it generated undue advantages in favor of established economic agents, who lost incentives to compete and offer better services and rates. This barrier also implied a high opportunity cost, preventing new investments and greater supply.

14. From the analysis of the *Decree*, it was observed that the regulatory framework for passenger transport in Tlaxcala opens up spaces of discretion for the authority. The granting

¹⁴ OPN-006-2015, p. 6- Available in Spanish at: <https://www.cofece.mx/CFCR resoluciones/docs/Mercados%20Regulados/V6/16/2040437.pdf>.

of concessions depends on the prior issuance of a declaration on the "*existence of a public need for these services and their satisfaction*".¹⁵ The criteria, conditions or terms under which such declarations must be issued are not provided.

15. The regulations also dictate that the establishment of rates corresponds to the Ministry of Communications and Transport of the State, after the corresponding study has been carried out. However, it does not specify the type of study to be developed, nor the parameters or criteria that support it.

16. Finally, these regulations establish undue advantages and preference criteria for those individuals born or residing in Tlaxcala, as well as for companies registered in that entity. These advantages are also granted by allowing that, in the event of death, the concession may be transferred to immediate relatives.

17. Accordingly, the Commission recommended: (i) eliminate the restriction on competition and free market access contained in the *Decree*; (ii) establish objective criteria for the granting and renewal of concessions; (iii) use competitive schemes for the allocation of passenger transport concessions; (iv) establish the principle of rate freedom in passenger transport, reserving control for exceptional cases; (v) extend the validity of concessions; and (vi) remove from the LCT and its Regulation the rules establishing undue advantages and preference criteria in favor of certain economic agents.

18. In 2019, the *Decree* was reformed to authorize the provision of taxis services using technological platforms, but only to those that already have a concession. Then, in 2020 the *Decree* was amended again to set the rules for Transport Network Companies (TNCs).

3.2.2. Opinion on the impact of passenger transportation services via mobile platforms

19. On June 4, 2015, the Board issued an opinion about the impact of passenger transportation services through mobile platforms on the process of free market access and economic competition,¹⁶ addressed to governors and state legislatures. The Opinion highlights the importance of local transport of people for economic growth and development; it also argues that its efficient operation has an impact on the quality of life of consumers and reduces costs associated with road congestion.

20. On individual public transport (taxis), the Opinion detects problems of information asymmetries and coordination between drivers and passengers that reduce incentives to improve the quality of the services and generate both undersupply and oversupply in different parts of a locality. Therefore, attention is drawn to the way in which the efficient and transparent self-regulation model of TNCs based on mobile applications solves these market failures, for the benefit of consumers.

21. As a result, the Commission considered the presence of several TNCs on the Mexican market to be positive. Given the fact that the regulations in force in Mexico did not contemplate the TNCs, COFECE recommended their recognition in the applicable normative. Specifically, it pointed out that the regulation should privilege competition and free market access, avoiding restrictions, limiting itself to protecting the elementary public objectives of safety and user protection, even allowing the verification of compliance with

¹⁵ Article 46 of the Communications and Transportation Law of the state of Tlaxcala; cited in OPN-006-2015, p. 6.

¹⁶ OPN-008-2015. Opinion on the impact of passenger transport services through mobile platforms on the process of free market access and economic competition. Available in Spanish at: <https://www.cofece.mx/cfresoluciones/docs/Mercados%20Regulados/V6/16/2042252.pdf>.

these obligations to be carried out by third parties or the TNCs themselves. Finally, it is proposed that, in the absence of the necessary legal amendments, decisions in this area should be taken in the public interest, ensuring choices for consumers.

22. This opinion positioned the issue, from a competition perspective, on the public agenda and guided local governments in Baja California, Coahuila, Colima, Guanajuato, Jalisco, Mexico City, Nuevo León, Puebla, Querétaro, San Luis Potosí, State of Mexico, Sonora and Tlaxcala, which amended their laws to regulate this type of services.

3.2.3. *Opinion on the regulations applicable to taxi services at national airports*

23. On November 10, 2016, the Board issued the Opinion OPN-010-2016, "on the regulations applicable to the service of access to the federal zone and parking for the provision of the public taxi service, originating in national airports, in order to promote the application of principles of competition and free market access."¹⁷ The opinion was addressed to the Chambers of Senators and Deputies, as well as to the head of the SICT.

24. The Opinion analyzed the international experience and identified that to organize the access of taxis to airports, Mexico has opted for the restricted access model.¹⁸ Therefore, to provide the service it is necessary to have a permit granted by the SICT, in addition to signing a contract or agreement with the airport administrators, in which payments and compensations for these services are established.¹⁹

25. With respect to this model, it was observed that: (i) taxi services to and from airports are inefficient and imply the underutilization of available vehicles, since after providing a service, taxis must return to the airport without passengers (*deadheading*); (ii) airport administrators establish rates or compensation for the access and parking service in the terminals, affecting prices for end users; and (iii) the granting of permits depends on the discretion of the administrators of each terminal, since the applicable regulations do not establish the necessary assumptions for them to issue of favorable opinions, artificially restricting the supply of vehicles.

26. Based on the above, the Commission recommended making amendments to the Law of Roads, Bridges and Federal Motor Transport and the Regulation of the Federal Motor Transport and Auxiliary Services, to: (i) remove barriers to entry, removing the requirement to have a favorable opinion from the airport administrator to obtain the permit

¹⁷ OPN-010-2016. Available in Spanish at: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V13/0/3653400.pdf>

¹⁸ Airports worldwide choose between two access models for the provision of individual transportation services: restricted and open. In the restricted model, the airports grant one or several groups the right to provide the service. In contrast, the open access model allows the entry of cars registered and approved by the city or locality to pick up and transport passengers from airports.

¹⁹ The main requirements that the permit holder must meet in order to offer the taxi service at a national airport are the following: (i) Have a federal permit granted individually by the SICT; (ii) Obtain authorization from the airport to operate within the air terminal and the parking lot, considered by law as a federal zone. This authorization is only granted if each permit holder: (i) signs an individual contract for the right of access to said area, b) belongs to a group of taxi drivers or taxi base, and (iii) if said group has a moral contract with the airport. The groups are the ones who offer the service to the consumers; that is, when a user requests a taxi, he/she does not hire a particular permit holder, but one of the taxi bases, identifying them by their name and logo advertised in the ticket purchase modules. Source: COFECE *Servicios de taxis en los aeropuertos de México*. Document available in Spanish at: <https://www.cofece.mx/wp-content/uploads/2021/02/art-taxis-29Oct2019.pdf>

issued by the SICT, and (ii) modify the regulations so that these only focus on objectives of safety and quality of the service, without artificially limiting the offer or including requirements that could unjustifiably exclude potential competitors.

27. A bill to reform the Law of Roads, Bridges and Federal Motor Transport was presented in March 2017 by a Legislator to the Senate. This bill was in line with COFECE's recommendations. However, in 2018 the bill was discarded by a Senate's Committee.

3.2.4. Opinion on the proposed scheme for taxi and bus services at the Felipe Angeles International Airport

28. At the request of the Felipe Ángeles International Airport (AIFA),²⁰ on February 24, 2022, COFECE issued an opinion on the implementation of the system for the provision of taxi and bus services at this airport.²¹

29. The proposed scheme allows any natural or legal person that has signed a contract and paid a compensation, to enter the market (including all local taxis, taxi groups and TNCs that hold a permit and not only taxi groups). The AIFA will grant the favorable opinion required by the SICT to any interested party who submits an application and meets the requirements. The contracts establish standardized rates for all permit holders. The scheme also establishes ending a contractual relationship if they participate in a cartel.

30. In its analysis, the Commission considered that the scheme would favor an environment of competition since: (i) the most efficient economic agents will be offering their services at the airport; (ii) consumers will have more choices and more favorable price and quality conditions; and (iii) the airport will be more attractive to travelers and airlines.

31. The Opinion presents recommendations to ensure and increase the benefits of the proposed scheme in three aspects:

1. *Modifications to requirements, contracts and operating rules:* facilitate the availability of information on rates, include in the contracts the commitment not to engage in monopolistic practices or illegal concentrations, enable the operation of TNCs at AIFA through clear rules that allow them to comply with the airport's requirements, allow bus routes to other states and with variable routes and schedules, limit the discretion of the airport authorities to unilaterally end contracts, or to reserve the right to renew them for the same period or a shorter one, and discard the clauses to reserve the right to authorize the registration of employees.
2. *Mechanism for the prevention of unlawful concentrations:* The AIFA must notify COFECE when there are elements of a possible unlawful concentration between permit holders.
3. *Ensure the effectiveness of the proposed scheme:* The airport must permanently seek competition in this market, avoiding artificial restrictions on free market access and anti-competitive practices.

32. It is relevant to highlight that the AIFA's proposed scheme for the provision of taxis and buses services, in contrast to the other international airport serving Mexico City (the

²⁰ The Felipe Ángeles International Airport (AIFA) is an airport serving Mexico City. It was inaugurated on March 21, 2022.

²¹ OPN-001-2022. Opinion on the scheme in which the participation of those interested in providing the public service of federal passenger transport (taxi), with origin in the Felipe Angeles International Airport, would be developed. Available in: <https://www.cofece.mx/CFRCResoluciones/docs/Opiniones/V192/2/5659145.pdf>

AICM), has considered an open access model following what COFECE has recommended in its cases and opinion, that is that requirements to provide ground transportation services at airports are based on objective elements which avoid discretion and exclusionary practices.

4. Enforcement cases in local public transportation services

33. Since its creation, the Commission has investigated and sanctioned cases of anti-competitive conducts in local transport. These correspond to taxi services at airports. In two separate cases, the Commission found that the international airports of Cancun and Mexico City abused their market power. Also, COFECE sanctioned a cartel of taxi service providers at the Mexico City International Airport (AICM) for colluding to fix rates and share information. In addition to these cases, COFECE recently sanctioned the AICM for abuse of dominance in the federal passenger transport market.

4.1. Abuse of dominance in the market of access to federal zone and parking for the provision of the public services of federal motor transport of passengers with origin or destination in the AICM

34. In 2013, the Commission initiated an investigation under file DE-015-2013 from a complaint against the AICM for abuse of dominance in the market of access to the federal zone and parking for the provision of taxi service to or from said airport.²²

35. In 2016, the Board determined that the AICM has substantial power in the investigated market, since it is the only one that can authorize access to the federal zone and parking for the provision of taxi services, which allowed it to impose:

- Different conditions between groups of taxi drivers operating at the airport and those interested in doing so, through discriminatory clauses. For example, it favors established operators so they can increase the number of vehicles in the AICM.
- Discriminatory clauses in the agreements or contracts of permit holders already established: the AICM granted discounts in the payment of the compensation for the access service, but did not use equitable criteria or methodology, granting discounts for different amounts and temporalities, even when the carriers were in the same circumstances.

36. The AICM sought the early closure of the file, for which it presented commitments. The Commission determined that these commitments were not sufficient or suitable to suspend, suppress, correct or leave without effects the probable monopolistic practice, and therefore a trial-like procedure was continued.

37. On September 1, 2016, the Board unanimously resolved to impose a fine of 3.15 million USD²³. In addition, it ordered the suppression and correction of the sanctioned practice, for which it ordered:

- Eliminate anti-competitive clauses from contracts or agreements.

²² COFECE (2017), *Evaluación ex ante de una práctica monopolística relativa en el servicio de acceso para la prestación del servicio de taxi*. (Ex-ante evaluation of a relative monopolistic practice in the access service for the provision of taxi services). Available in Spanish at: https://www.cofece.mx/cofece/phocadownload/PlaneacionE/de-015-2013_boe_taxi_aicm.pdf

²³ 63,090,000 Mexican Pesos at an exchange rate of 1 dollar=20.03 Mexican pesos used hereinafter.

- Establish tenders or bids for the assignment of new access contracts to the federal zone, as well as for the increase of vehicles. They must request and obtain the opinion of COFECE.

4.2. Collusion in the market of taxi services to and from the AICM

38. In June 2014, the Commission's Investigative Authority initiated an investigation from a complaint, under file number DE-009-2014, for a probable cartel in the market of taxi services to and from the AICM.²⁴

39. In March 2016, a Statement of Probable Responsibility was issued for five groups of taxis of the AICM, as well as natural persons who participated in their representation, for colluding to fix rates in the aforementioned market. As it was proven during the investigation, the economic agents hired the services of a consulting firm to carry out a *Rates Study*, with the aim of determining, "with a technical and solid basis", the prices they had to charge for the next ten years.²⁵ In addition, in order to provide the necessary information for the development of the *Study*, the parties shared strategic information on operating expenses. With the exception of one of the companies, the participants in the committee implemented the rate increases recommended by the *Study* with the SICT, which they applied in a coordinated manner as of August 2011.

40. The economic agents admitted their participation in the anti-competitive practice; consequently, the Board of COFECE resolved to impose economic sanctions totaling 1.18 million USD.²⁶ As an additional measure, COFECE decided to inform about this matter to the AICM, for the corresponding legal effects, since the practice committed is a cause for the termination of the contracts they maintained with the airport.

4.3. Abuse of dominance in the market of taxis at the Cancun Airport taxi

41. In 2016, the Commission initiated an investigation from a complaint, under file DE-008-2016, for probable abuse of dominance in the market of taxis departing from the Cancun International Airport (AIC).²⁷ In August 2019, the Board resolved that the AIC abused its power in the investigated market by preventing the entry of new competitors.²⁸

²⁴ Resolution file DE-009-2014, available in Spanish at: <https://www.cofece.mx/cfcresoluciones/docs/Asuntos%20Juridicos/V233/0/3915851.pdf>. Press release available at: <https://www.cofece.mx/wp-content/uploads/2018/02/COFECE-042-2017.pdf#pdf>.

²⁵ COFECE (2017), *Análisis de Caso Sanción impuesta por acuerdos ilegales a taxistas acreditados en el AICM* (Case Analysis: Sanction imposed by illegal agreements on taxi drivers in the AICM), p.3. Available in: <https://www.cofece.mx/wp-content/uploads/2017/11/AnCAs-Taxis-Ver2.pdf>

²⁶ Totaling 23,626,658.04 Mexican Pesos. To *Porto Taxi*, 6.7 million Mexican pesos; to Sitio 300, 6.1 million Mexican pesos; to *Yellow Cab*, 4.6 million Mexican pesos and *New Image*, 5.2 million Mexican pesos. To *Confort*, a symbolic fine was imposed of 23 thousand Mexican pesos, since it did not register or apply the rate increase and left the market

²⁷ Press release available at: <https://www.cofece.mx/wp-content/uploads/2018/08/COFECE-032-2018-English.pdf>.

²⁸ Resolution of file DE-008-2016, available in Spanish at: <https://www.cofece.mx/CFCResoluciones/docs/Asuntos%20Juridicos/V314/1/4904737.pdf>. This file was challenged in an "amparo" trial, whose resolution is currently pending.

42. As a concessionaire, the AIC is the only entity that leases spaces and grants access rights to the use of airport infrastructure to taxi concessionaires. In this sense, from February 2010 and at least until April 2018, the Airport incurred a refusal of treatment by:

- Issuing negative opinions to prevent those interested in entering the market from obtaining the permit required by law; and
- The Airport refused, unjustifiably and unilaterally, to sign the contract for the access and lease with a permit holder who requested it.

43. The Board determined that the Airport has incentives to prevent the entry of new providers of the service, since the rates it charges to the permit holders represent 10 to 12% of the income of each trip. That is, with the entry of more providers of the service to the market, the price per trip would decrease, reducing the payment that each taxi makes to the Airport, as well as the income that the AIC obtains for this concept. This behavior generated a damage to the market estimated at more than 4.8 million USD,²⁹ the result of an estimated average surcharge of 8% that affected several million trips.

44. The Board imposed on the Airport a fine of 3.62 million USD³⁰ and ordered to correct and suppress the anti-competitive conduct through the following actions:

- For the issuance of opinions to grant a permit to a new operator who wants to provide taxi services in the AIC, or for the increase of the vehicle fleet to existing permit holders, the Airport must justify and prove that its opinion is based on technical elements.
- Within a maximum period of 30 working days, provide access to all vehicles requested by the permit holders, on terms and conditions equivalent to the existing providers.

45. For five years, COFECE may require the Airport documents proving compliance with these obligations.

4.4. Abuse of dominance in the federal passenger transport market to and from the AICM

46. On August 15, 2018, the Commission's Investigative Authority reported on the initiation of an investigation from a complaint identified under file number DE-013-2018, for possible abuse of dominance in the federal passenger transport market to or from AICM and related services.³¹ When the investigation was concluded, in March 2022, the Board resolved that the AICM abused its market power to prevent an economic agent from providing the federal passenger transport service, in the modality of an integral bus and / or van with origin or destination to that air terminal.

47. In particular, the AICM prevented a company from accessing the Airport for the provision of the mobility service on the route between the Airport and the city of Puebla. Through this refusal of treatment, the AICM granted undue advantages to the established permit holders, who maintained their position without facing competitive pressure.

²⁹ 98,000,000 Mexican Pesos.

³⁰ 72,540,000 Mexican Pesos.

³¹ Extract from the initiation agreement, file DE-013-2018. Available in Spanish: <https://www.cofece.mx/wp-content/uploads/2019/02/DOF-12feb2019-01.pdf>. This file was challenged in an "amparo" trial, whose resolution is currently pending.

48. This generated a loss of welfare in the users of the service, since it reduced the possible options and increased the prices of transport. For this conduct, and for being a recidivist, the Commission decided to impose a fine of 42.38 million USD³² on the AICM.

49. In addition to the monetary sanction, the Board ordered the suppression of the conduct through the following actions, whose compliance may be required at any time during the next five years:

- Justifying, based on technical and non-discriminatory considerations, the sense of the opinions issued by the entry of new operators, or for the increase of the vehicle fleet to existing permit holders, stating the reasons, motives and circumstances that it deems applicable.
- Guarantee the access service at the Airport for economic agents who obtain or have obtained a permit granted by SICT, as long as the requirements are met, which must be applied in a non-discriminatory manner.

³² 848,888,633 Mexican Pesos.