

Unclassified

English - Or. English

29 November 2024

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

**The Interaction between Competition and Democracy – Note by Mexico**

6 December

This document reproduces a written contribution from Mexico submitted for Item 8 of the 144<sup>th</sup> OECD Competition Committee meeting on 5-6 December 2024.

Antonio CAPOBIANCO  
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

**JT03556618**

## Mexico

### 1. Introduction

1. In Mexico, competition policy has evolved over the years as a key tool to address inequality, economic concentration and power which may undermine democracy. Competition is about ensuring that all citizens have access to goods and services of their choice, according to their income levels, without restrictions generated by the exercise of market power by certain economic agents.

2. In this regard, this contribution presents the relationship between competition and democracy in Mexico, and the evolution to a competition policy that promotes a more democratic and inclusive country.

### 2. The relationship between competition and democracy: the case of Mexico

3. Economic and social inequality is a persistent issue that affects a large portion of the global population. Essentially characterized by the concentration of power and economic resources in the hands of the very few, inequality broadens the gap of opportunity and development for people around the world, creating social unrest and threatening the very basis of democracy.

4. In Mexico, historic increases in the cost of living have been a constant that is attributed to companies seizing economic shocks by capturing nearly 60% of price increases in the economy to their profit.<sup>1</sup> This is possible as key sectors of the economy remain heavily concentrated, and companies are able to exercise market power.

5. Recent studies indicate that Mexican families pay 98.2% more because of market power. That is, a 15.7% loss in household purchasing power compared to situation without market power; this disparity widens for low-income families who lose five times more than high-income families, and the regional impact is even greater as the Southwest of the country experiences 47% greater welfare loss than the North<sup>2</sup>. Furthermore, evidence from the World Bank shows that monopolistic practices also take a toll on Mexican workers by creating less jobs and potentially damaging productivity.<sup>3</sup>

6. Competition law promotes a consumer-friendly functioning of the economy that results in low prices, high quality goods and services, freedom of choice, pluralism and innovation.<sup>4</sup> Accordingly, countries where antitrust authorities are empowered to ensure competition benefits are enjoyed by all, tend to be more democratic states.

---

<sup>1</sup> Oxfam International. (2024) *Desigualdad S.A.* Report in Spanish, available at: <https://www.oxfam.org/es/informes/desigualdad-sa>

<sup>2</sup> Cofece, (2018) Market Power and Social Welfare, available in English at: <https://www.cofece.mx/wp-content/uploads/2022/05/Libro-CPC-PoderyBienestar-verING-2.pdf>

<sup>3</sup> Reed, T., Mariana, P. L., Ana, U. A., & Iacovone, L. (2022). Cartels, antitrust enforcement, and industry performance: Evidence from Mexico. Policy Research Working Papers. Available at: <https://doi.org/10.1596/1813-9450-10269>

<sup>4</sup> K. Stylianou and M.C. Iacovides, 'The Goals of Competition Law: A Comprehensive Empirical Investigation', (2021) KONKURRENSVERKET; Case T-168/01, Judgment of the Court of 27 September 2006, GlaxoSmithKline Services Unlimited v Commission, EU:T:2006:265, para. 118, T-321/05; Judgment of the Court of 1 July 2010, AstraZeneca AB and AstraZeneca plc v Commission, EU:T:2010:266 para. 804; Joined cases T-213/01 and T-214/0, Judgment of the Court of 7 June 2006, Österreichische Postsparkasse AG and Bank für Arbeit und Wirtschaft AG v. Commission, EU:T:2006:151, para. 115

### 3. Development of a democratic competition policy in Mexico

7. Mexico is a representative, democratic, secular, federal Republic, composed of sovereign States united in a federation<sup>5</sup>.

8. The current institutional design of competition policy provides that there are two competition authorities: the Federal Institute of Telecommunications (IFT, per its initials in Spanish) and the Federal Economic Competition Commission (Cofece, for its acronym in Spanish). The first foresees competition conditions in the telecommunications and broadcasting sectors, whilst the second serves as an antitrust authority for all the rest of the economy. Several stages unfolded for this institutional design to materialize.

#### 3.1. First stage – First Competition Law and Competition Authority

9. The 1990s decade represented a period of economic liberalization with several events that served as milestones for free market in Mexico. The major development was the signing of the North America Free Trade Agreement (NAFTA, for its initials in English) in 1992, which included in its Chapter XV conditions for all member states to ensure economic competition within their borders through an authority created for such purposes. Mexico created the Federal Competition Commission (CFC, for its initials in Spanish).

10. The regulatory changes from NAFTA included the entry into force of the first Competition Law in 1993. The objective of this first law was to ensure that markets were open and there was free access for competitors to participate through a competition process in the economy. The major attribution of the CFC was to oversee the transition to competitive markets, setting the first step towards democratizing the economy and public policy decision-making in the country.<sup>6</sup>

11. In the institutional set-up, the CFC was attached to the Ministry of Economy, which resulted in budgetary needs and restrictions tied to those of the Ministry beforehand. This in turn, limited its budget management as the Ministry was directly dependent on the Executive Branch. The latter could adjust the budget during the course of the fiscal year if required, which could affect not only the commitments acquired by the CFC, but also its capacity to investigate, to allocate resources for strategic operations and to issue opinions.<sup>7</sup>

12. This design as a decentralized body of the Ministry of Economy resulted in more than just the budgetary restraints; the CFC lacked legal powers to dissolve or restructure monopolies, to effectively sanction law violations, to operate effectively with sector regulators, and to conduct sufficient investigations.<sup>8</sup>

13. This was particularly problematic in Mexico, given its high degree of economic concentration. The CFC's lack of powers to restructure monopolies was a critical point in this context. The 1993 Law did not grant the CFC faculties to dissolve companies or

---

<sup>5</sup> Article 40 of the Mexican Constitution.

<sup>6</sup> Heredia Rubio, Blanca (2023). La Política De Competencia Económica En México: Retrospectiva, Balances Y Retos, Chapter 1. Cofece, p. 52. Available in Spanish at: [https://www.cofece.mx/wp-content/uploads/2023/11/Libro\\_aniversario\\_Cofece\\_vf.pdf](https://www.cofece.mx/wp-content/uploads/2023/11/Libro_aniversario_Cofece_vf.pdf)

<sup>7</sup> OECD and Inter-American Development Bank (2006). Competition Law and Policy in Latin America Peer Reviews Argentina, Brazil, Chile, Mexico, Peru, pp. 285-286.

<sup>8</sup> Aydin, Umut. (2016). Competition Law and Policy in Mexico: Successes and Challenges, p.172.

sanction abuse of dominant position; it could only challenge mergers in which firms were found to concentrate market power.<sup>9</sup>

14. Although the CFC was responsible for determining whether an economic agent exercised market power in a specific market, the sectoral regulator was responsible for issuing the necessary measures to correct anti-competitive behavior. In general, the CFC was not involved in drafting regulation or in negotiations to address competition problems. Moreover, in some cases the regulator lacked the institutional strength and faculties to sanction or solve cases against major economic powers.<sup>10</sup>

15. Furthermore, the CFC's investigative tools were limited, as it could not conduct dawn raids, obtain documents from the investigated parties or own any compulsory powers to obtain documents for investigations. Plus, additional faculties to collect information, such as the Leniency Program, were nonexistent. The Commission relied on official statements of the companies and individuals involved. Additionally, potential fines could only be imposed on companies and not individuals, and the amounts were insignificant. Finally, the 1993 Law also lacked an amnesty or immunity program to effectively combat cartels.<sup>11</sup>

### 3.2. Second stage - Redesigning the institutional architecture

16. In an effort to improve competition policy and as part of a process of institutional redesign that sought to grant the Commission powers to ensure free market access and a competitive process in the economy, the first reform to the competition Law was carried out in 2006, with the objective of providing the authority with more investigative tools, higher sanctions that would serve as a deterrent to anti-competitive conducts. New illegal conducts were added to the Law and the fines that the CFC could apply when a violation of the Law was proven were increased.

17. Also in 2011, a second amendment was made to both the Law and the Federal Criminal Code to criminalize collusive practices, and the mechanism for imposing fines was modified, allowing fines to be determined on the basis of a company's income, instead of using minimum wages as reference, which increased the value of the fines and thus their deterrent nature.

### 3.3. Third stage – Ensuring economic efficiency

18. In 2013 the country experienced a series of unprecedented reforms including a constitutional reform that revoked the 1992 Competition Law and created a new Federal Economic Competition Law (LFCE, per its initials in Spanish). In addition, Article 28 of the Constitution was amended to create the Federal Economic Competition Commission (Cofece or Commission) as an “*autonomous body, with legal personality and its own assets, whose purpose will be to guarantee free competition and concurrence, as well as to prevent, investigate and fight monopolies, monopolistic practices, concentrations and other restrictions to the efficient functioning of markets, under the terms established by this Constitution and the laws*”.<sup>12</sup> The same article further states that the Commission shall be

---

<sup>9</sup> Sánchez Ugarte, Fernando., et.al, (2004). La Primera Década de la Comisión Federal de Competencia Económica, Comisión Federal de Competencia, p. 122.

<sup>10</sup> Heredia Rubio, Blanca. op cit., p. 60.

<sup>11</sup> Sánchez Ugarte, Fernando., et.al, op.cit., pp. 121-123.

<sup>12</sup> Article 28, paragraph 14, Mexican Constitution.

independent in its decisions and functioning, professional in its performance and impartial in its actions.<sup>13</sup>

19. With this reform, international best practices from different jurisdictions were included in the new Law. As a result, new powers were granted to the Commission to strengthen the enforcement of competition policy in the country with the focus of ensuring efficient markets, whereas the previous law sought only to ensure “open markets”.

20. The current model in which Cofece operates as a constitutional autonomous body allows it, through the LFCE, to:

- Authorize or deny all M&A’s that exceed a legal threshold in Mexico.
- Impose fines of up to 10% of annual revenues for violations of the LFCE.
- Conduct surprise dawn raids on any company without the need for a court order.
- Order the divestment of companies and assets, with the power to force companies to spin off or to order the sale of certain assets or business units.
- To file criminal charges before the Attorney General's Office against directors who violate the LFCE, with an applicable sentence of 5 to 10 years' imprisonment.
- Be the only authority entitled to authorize regulators to issue price regulation.

21. For Cofece, autonomy implies Commissioners who are appointed (after a technical examination) by the Executive Power, an accountability agenda, actions and budget audited by the Federal Supreme Audit Office (ASF, per its initials in Spanish) and technical independence to investigate and impose sanctions, among other responsibilities.

22. Cofece’s Board of Commissioners consists of seven Commissioners (compared to five that the CFC had), including the Chair, appointed on a staggered basis, at the proposal of the Federal Executive with the Senate's ratification. The Chair is appointed by the Senate, by a two-thirds vote of the members present, for a period of four years, renewable once. This form of integration of the Board allows for resolutions to be highly technical, impartial, and based collegiate decisions.

23. Furthermore, to ensure institutional transparency and in accordance with articles 28, paragraph 20, section VIII of the Mexican Constitution, as well as article 12, section XXV and 49 of the LFCE, Cofece issues quarterly reports that are submitted to the Senate, in which the actions by the Commission and the use of its budget are detailed. This report guarantees that the Commission is a body that is constantly monitored both by the Legislative Branch, and the public.<sup>14</sup>

24. Another important element of Cofece's institutional design is the separation and independence of the Investigative Authority, a technical area that handles the investigation process; one Technical Secretariat that carries out the trial-like procedure and the Board of Commissioners that reviews and imposes sanctions, when applicable. In the current institutional design, it is the Investigative Authority who receives complaints, opens investigations and has the faculty to issue Statements of Objections. In a second phase, and before the Technical Secretariat, economic agents have the opportunity to present evidence and arguments as their right to defense. The division of these procedures allows for the investigative party, the administrative trial, and the decision-making-body to be separate to

---

<sup>13</sup> Article 28, paragraph 20, Mexican Constitution.

<sup>14</sup> Quarterly reports are published in Cofece’s website. Available in Spanish at: <https://www.cofece.mx/publicaciones/documentos-de-planeacion-y-evaluacion/>

ensure impartiality. Finally, it is the Board of Commissioners that decides based on the elements gathered in the procedure.

### 3.4. Fourth stage – A competition policy in favor of citizens

25. The new law and the new powers granted to the Commission by the constitutional reform has allowed Cofece to intervene in priority markets for the inclusive growth of the country and the welfare of families, such as agri-food, financial, energy, health, transport and public procurement.

26. Since its creation, Cofece has accomplish successfully to:

- Analyze 1,576 mergers and acquisitions between companies, with a value greater than 20.3 billion pesos.
- Retribute at least 35 billion pesos in just 45 cases to Mexican consumers.
- Estimate that in the more than 1,000 cases it has resolved, this value exceeds 143 billion pesos.
- Impose fines of more than 13,000 million pesos on companies that abuse their market power and establish collusive agreements against consumers and the treasury.
- Conduct 438 analyses of federal and local regulatory frameworks to promote a pro-competitive regulatory framework.
- Promote the strengthening of competition conditions through rigorous market studies, such as those on gasoline, LP gas, agri-food, cargo and passenger transportation, digital economy, medicines with expired patents, financial and rail transportation.
- Obtain favorable rulings from the Judiciary in three out of four indirect *amparo* lawsuits<sup>15</sup> filed by economic agents. The Judiciary confirming Cofece's resolutions may be explained by the soundness of its decisions, the growing institutional specialization and the importance of its actions for the protection of markets and consumers.

27. For the past two years it has become apparent that competition policy has to go beyond market efficiency, and also consider the social impact of Cofece's interventions. Today challenges are not the same as 30 years ago, when the first competition law was created, or when Cofece was granted autonomy a decade ago. Today, focus is given to reduce excessive concentration of economic power and to interventions that have a direct impact in improving citizens' welfare.

28. Three actions related to basic goods allow to illustrate this new focus: in 2023 the Commission sanctioned a case in the municipality of Huixtla in the state of Chiapas, for fixing the prices of *tortilla*, a staple in the Mexican diet. This is a very relevant case since 60% of the municipality's population lives in poverty (12.3% in extreme poverty), demonstrating how competition policy can directly impact daily life of Mexicans. Furthermore, in the LP gas market, Cofece sanctioned 53 companies for price manipulation in a market that represents 12% of low-income households' total expenses. This shows how market concentration can directly affect essential services. Finally, in financial services, a

---

<sup>15</sup> Amparo is a judicial action to protect an individual or individuals from the acts or omissions of the authorities that violate the human rights and guarantees protected by the Mexican Constitution.

recent market study revealed how digital financial services impact competition and financial inclusion in Mexico.

29. Shifting the focus towards markets with significant social and welfare impacts responds to increased economic concerns in the face of growing inequality, that have in turn resulted in a broader involvement of society in the debates that surround public policy in Mexico. This involvement presents an opportunity for predominantly technical institutions such as Cofece to open themselves up to the general public and to promote the importance of competition policy and its impacts in the welfare of the Mexican people.

#### 4. Final remarks

30. Today, it is clear that competition policy can have direct impact on closing social and economic gaps fostered by inequality. The debate surrounding this phenomenon has raised the question of its effect on social and political stability, with the concentration of economic power being widely regarded as a threat to democracy itself. This calls for Cofece's efforts to be put on the promotion of a competition culture, where a whole-of-government approach makes it possible to bring competition policy closer to the general public. This in turn leads to integrating competition into the democratic fabric, enabling for fairer, more inclusive markets to thrive.