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***Ways and Means to Strengthen Competition Law
Enforcement and Advocacy***

Contribution

By

Mexico

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How Mexico enforces competition in the broadcast and telecommunications sectors.

After twenty years into the application of competition policy in Mexico, in 2013 the federal government initiated a process of constitutional reform, having as objective to extend the benefits of an economy formed by competitive markets, with an emphasis especially in the broadcasting and telecommunications sectors, that would increase the penetration of services related to these sectors and help to improve de consumers welfare.

This arises from the recognition by the federal government that the prosperity of nations lies in their ability to successfully join the Information and Knowledge Society, therefore the lawmakers considered a priority to ensure the competitive development of telecommunications and broadcasting to boost the economic growth and development of Mexico.

Also, considering the interrelation between various sectors of the economy, the constitutional reform also included the objective to promote competition in other sectors of the economy, aside from the telecommunications and broadcasting sectors, and provide more and better tools to the competition authority to fulfill that mandate.

Thereby, two new autonomous agencies were created, with the purpose to implement and enforce competition law in Mexico. On the one hand, it was created the Federal Economic Competition Commission (COFECE) -a body which replaced the Federal Competition Commission, authority that applied the competition law until then- and also the Federal Telecommunications Institute (IFT), which is the agency responsible for applying the competition law in the areas of broadcasting and telecommunications sectors, as well as being the regulatory authority for both sectors.

The main changes in terms of the application of competition policy in Mexico that included the constitutional reform can be grouped into three main areas:

- Provide autonomy and transparency to the decision-making bodies in the implementation of the competition law;
- Strengthen the authorities with tools and instruments for the promotion and combat against monopolies and constraints on the process of competition and free market practices; and
- Specific measures to facilitate the entry of operators in the telecommunications and broadcasting sectors, in order to promote a competitive environment in these sectors.

The first two changes are common duties for the authorities in charge of applying and enforcing competition law, however the actions being mentioned in the last point are only responsibility of the IFT.

Providing autonomy and transparency to the decision-making bodies in the implementation of the competition law

In addition to the creation of the two constitutional autonomous bodies, the COFECE and IFT, with the constitutional reform the selection process of the officials in charge of the government agencies becomes a more transparent and professionalized the selection of both organizations.

As a result of the constitutional reform, both the COFECE and the IFT have a decision-making body made up of seven commissioners who are selected through a process carried out by an autonomous evaluation committee who apply a knowledge test and fulfill a curriculum vitae review of the candidates, which must demonstrate knowledge on the subject.¹ Once they are selected the candidates, the Senate must ratify the appointment, thus to avoid a deliberate choice from the executive branch.

In addition, the constitutional reform established that there should be a separation between the authority in charge of the investigations of possible violations of the competition law and those responsible for dealing with the procedures arising from the investigation.

Thereby, the Federal Law of Economic Competition (LFCE), which emerged as a result of the constitutional reform foresees the creation of an Investigative Authority, which is the body responsible of the proceeding of the investigation phase and is party to the subsequent proceedings to the investigation. This body has technical autonomy and management in the performance of their duties.

This separation arises to ensure the impartiality and objectivity of the decisions of the bodies.

Strengthen the authorities with tools and instruments for the promotion and combat against monopolies and constraints on the process of competition and free market practices

The applicable competition law before the constitutional reform, provided the legal framework for the promotion of free competition. It had common elements for combat and prevention of abuse of dominance and vertical restraints activities; prohibition of cartels and collusion of competitors; and prevention of mergers and acquisitions that could affect markets.

The LFCE enacted after the constitutional reform includes several tools for investigation and prevention of barriers to the competition, rulings of essential inputs and competitive conditions that exist in the markets.

¹ The former Federal Competition Commission had five commissioners who were elected by the executive branch.

In an explicit way, the LFCE includes the procedures to follow to consider each of these elements and gives the agencies the ability to impose measures or asymmetric regulation in order to allow access to essential inputs or reduce and eliminate barriers to the competition.

The sanctions that can be imposed for violation of the LFCE range from fines, which can reach up to 10% of companies' revenues; to order to disinvest or disincorporate assets.

In addition to the new tools that were provided to the competition authorities, the constitutional reform also changed the legal proceedings that may be followed as a result of the decisions of the authority.

First, it is highlighted the fact that the resolutions of the competition authority are not subject to a suspension by a judicial authority, except for fines, and can only be combated through an indirect *amparo* proceeding,² which reinforces the importance of economic competition as a matter of public interest.

These modifications in the role of the judiciary authorities are accompanied by the creation of specialized courts on competition, broadcasting and telecommunications areas.

Specific measures to facilitate the entry of operators in the telecommunications and broadcasting sectors, in order to promote a competitive environment in these sectors

In addition to allowing or increasing foreign investment in various activities of the broadcasting and telecommunications sectors, the constitutional reform established the obligation of the IFT to accomplish tasks with the objective of promoting a competitive environment in those sectors. These tasks include:

- A declaration of preponderant economic agents in the broadcasting and telecommunications sectors, as well as the imposition of measures with the objective to improve the conditions of free competition in those sectors.

The preponderant economics agents are those agents that have more than 50% of market share in each of the sectors.

In the case of the broadcasting sector, it was declared as a preponderant economic agent the company named "Grupo Televisa", which is the largest producer of spanish-language television content in the world.

Among the measures that were imposed to Grupo Televisa, it is the inability to hold exclusive contracts regarding relevant contents; infrastructure sharing; and the obligation to provide content and sell advertising spaces on non-discriminatory terms.

Meanwhile, in the telecommunications sector, it was determined as preponderant economic agent the companies that conform America Movil (Telmex and Telcel),

² Previously there was the possibility that the economic agents concerned by the decision of the competition authority, could fight the ruling within the same authority through a process known as motion for reconsideration.

the holding company of the most important fixed and mobile telephony concessionaires.

Among the measures imposed on that operator are the interconnection obligation; the unbundling of the local loop; public offers to serve mobile virtual network operators (MVNOs); infrastructure sharing; commitments of quality in the provision of services; elimination of roaming charges, etc.

- In order to allow the entry of new competitors and increase plurality and preservation of social values, it was instructed to the IFT the planning and implementation of an auction process for band frequencies in order to create two national television networks.

The bidding process was completed in March 2015, which allowed the creation of a new national television channel.

- The establishment of obligations "*must offer - must carry*" for broadcasters and pay television providers.

These obligations consist in the retransmission of broadcast channels available in the localities where pay TV service is provide, and the obligation of broadcasters to provide in a free and non-discriminatory manner access to its signals to all pay TV providers who request them.

In the case of satellite television services, the pay TV providers are forced to include in their packages the channels of broadcasters who have a coverage of more than fifty percent of the Mexican territory. Due to those reasons, the IFT decided that some signals from Televisa and all the signals operated by TV Azteca should be retransmitted through satellite television services.

Final remarks

Although the constitutional reform provided a new legal framework to strengthen the fight against monopolistic practices and restraints on the markets, it presented new challenges for competition authorities and in particular for the IFT.

As an industry regulator and competition authority, the IFT must balance and prioritize the means by which can be attain efficiency in the markets. Thus, the IFT must accommodate a flexible system that allows to tackle the problems in the markets in different aspects and at the same time trying to cause a minimal distortion in the markets, taking into account the changing circumstances of highly dynamic sectors as telecommunications and broadcasting.