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**Enforcing Competition Law in Digital Markets and Ecosystems: Policy
Challenges and Options**

Contribution

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1) INTRODUCTION

I would like to start by saying that Competition Agencies, new or well stablished ones, may face different challenges due to differences in their legal and institutional framework, human capital, and material resources to deal with digital markets.

Therefore, instead of giving them any advise, I will briefly describe the challenges faced by Mexico's Competition Agency (COFECE) to illustrate the general difficulties that Competition Agencies may face.

Following the OECD (2016)[1] outlook on innovation, a starting point could be to say that, not only competition agencies, but also regulators in general, must act in a world of rapid technological change in many areas such as: **biotechnologies, advance materials, energy, and environment, all of them linked to digital technologies.**

Thus, according to the OECD's report, the main challenges are: **the speed of innovation, disruptive business models, possible monopolization of digital platforms, socio ethical considerations arising for example from AI and other technologies, and data privacy and security.**

Therefore, Competition Agencies must interact with other regulators whose mandate is to protect, among **other values, health, privacy, security, consumer rights and some other goals. This is not new, but it is happening in a period of rapid technological change all at once**.

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[1] OECD (2016), Science, Technology and Innovation Outlook, Paris.

2) METHODOLOGIES

So, what can competition agencies do to meet the challenge?

It seems that a lot comes from the legal tools, the institutional environment, the human capital, the material resources and most **importantly the application of robust analytical and empirical methods of investigation in the different cases that Competition Agencies may pursue.**

That is to say, the application of the scientific method to antitrust and regulation as stated by **Joskow (2005) in a paper called: Regulation and Deregulation after 25 Years: Lessons Learned for Research in Industrial Organization.**[2]

It is frequently said that competition agencies do not have sufficient tools to deal with the challenge posed by digital markets.

However, I believe that the application of a robust methodology is paramount to have solid cases either for law enforcement and merger control, or to conduct market studies and investigations just to have a better understanding about how markets work, to improve their performance or even to recognize that no intervention is necessary or applicable.

Of course, as discussed by the OECD (2018)[3] it is necessary to adapt those tools to specific cases and to think creatively. As Joskow says: "questions first, tools second."

As I have mentioned before, the evolution of digital markets also affects the sphere of other regulators, therefore building **formal and informal channels of communication between Competition Agencies and regulators is crucial.**

Competition policy is not superior to the values protected by other regulators (such as heath, security, privacy or consumer rights), but Competition Agencies must make them aware of the need to balance those values with competition policy, that is, to introduce

[2] Joskow, P. (2005), Regulation and Deregulation after 25 Years: Lessons Learned for Research in Industrial Organization, Review of Industrial Organization, 26: 166-193.
[3] OECD (2018), Rethinking Antitrust Tools for multi-sided platforms.

neutrality to competition in the regulations. The same could be said regarding legislative and executive branches.

3) COFECE's ACTIONS

The Mexican Competition Law not only provides COFECE with specific tools to investigate any breach of the law regarding collusion and abuse of dominance, but also establishes a merger control system and enables COFECE to conduct market studies and investigations to identify barriers to competition or essential facilities (art. 94) and to declare the lack of effective competition conditions (art. 96).

COFECE can also make recommendations on any regulatory framework.

In the case of digital markets COFECE has been active in:

a) merger control, an example are cases like Walmart/Corner-shop (not authorized) and UBER/Corner-shop (authorized);

b) market investigations to detect barriers to competition, as an example we have the investigation of the Mexican electronic payments system;

c) market studies, like the one in the fintech sector;

d) the submission of opinions and recommendations to authorities and legislators, two examples are an opinion to local legislators in the case of taxi services provided by digital platforms and an opinion to federal legislators in the context of the Fintech Law bill debate.

4) THE LESSON

One important lesson from all these cases is that "life is hard" investigations take time, require a lot of resources (human and material), and at the end they are challenged in the judiciary system which also takes time and resources.

However, I believe it is worth the effort, especially for new competition agencies, because the only way to understand how markets work and how the legal and economic tools work is to learn by doing.

In fact, in countries where internet and digital services penetration is low, understanding the reasons behind the low penetration and the interaction between digital markets and traditional ones is of great importance.

It does not matter if learning comes from an investigation for law enforcement, merger control, or a market study (or investigation). The point here is that by doing their work, competition agencies build knowledge and experience for future cases.

In my opinion, even in jurisdictions where some kind of regulation or code of conduct is in place, in general, Competition Agencies have not only the duty to pursue investigations for law enforcement purposes where there are elements to do so, but also the responsibility to understand how markets work.

5) INTERNATIONAL EXPERIENCE

However, given the complexity of digital markets and the fact that they are global, it is also very important to learn from international experience.

The study of enforcement experiences in different jurisdictions and their approaches to ex-ante regulation, including the proposal for a code of conduct presented by UNCTAD (2022) may contribute to the construction of a more coherent and convergent application of competition law and regulation.

In this regard, in 2018 and 2020 COFECE produced policy documents on its digital strategy[4], and also created a Digital Market Unit (DMU).

Even though COFECE needs more economic resources to strengthen its DMU, to this day it has delivered several reports and has helped COFECE to organize internal discussions and to participate in national and international conferences.

The work done by COFECE's DMU has produced material that has contributed to the analysis of merger control, investigations of collusion and abuse of dominance, market studies and also, barriers to competition and essential facilities investigations.

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[4] COFECE (2018), Rethinking Competition Policy in Digital Economy; COFECE (2020) Digital Strategy.

Also, that work has contributed to the discussion with other regulators such as the agencies for consumer and data protection, and the finance and telecom regulators.

In the case of AI, COFECE has participated in various events discussing various regulatory initiatives. In particular, in a series of events organized by the legislative branch which produced a report this year, incorporating analysis and proposals from the Readiness Assessment Methodology to Mexico by UNESCO.

6) CONCLUSIONS

In conclusion, given the complexity of digital markets, Competition Agencies must use **all their legal and analytical tools available to understand how these markets work**.

The use of robust methodologies, the adaptation of antitrust tools, and the search for robust theories of harm are paramount to build a good reputation with the judiciary system and produce solid remedies.

Given the global nature of digital markets, Competition Agencies must consider international experience either for enforcement, merger control, market studies or the implementation of a code of conduct, or an ex-ante regulation.

Thank you,