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**Rethinking competition law enforcement:
Lessons learned from the pandemic, particularly in socially important
markets – Challenges and opportunities for an effective response during the
pandemic and economic recovery in the post-pandemic period**

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Item 7. Rethinking competition law enforcement: Lessons learned from the pandemic, particularly in socially important markets – Challenges and opportunities for an effective response during the pandemic and economic recovery in the post-pandemic period

**Contribution by Mexico
Federal Telecommunications Institute (IFT)**

Introduction

The unprecedented COVID-19 pandemic has brought economic, social, and legal challenges across the globe that have required the design of also unprecedented and creative measures. While some of those measures were or will be temporary, others will become permanent. During such an extraordinary time, it was publicly known that some competition authorities implemented limited exemptions, fast-track reviews or ad-hoc processes to clear agreements and cooperation activities between businesses in essential industries, such as health, food, or transportation. However, in Mexico, when it comes to the telecommunications and broadcasting industries, the Federal Telecommunications Institute (IFT) adopted a clear stand: law enforcement will remain the same with no exceptions.

Although the COVID-19 pandemic resulted in an economic fallout in several industries, market dynamism in the telecommunications and broadcasting industries in Mexico carried on. During the sanitary emergency, the GDP showed a small but positive rate during 2020;¹ meanwhile telecom operators increased their revenue in 2.9%, compared to 2019,² and they also increased direct investments on telecom services and infrastructure by 6.5% and 21.1% respectively.³ Regarding competition issues in telecommunications, from the first partial national lockdown in March 2020 to the present (mid-2022), the IFT cleared 10 mergers and acquisitions, it reviewed and cleared competition concerns in approximately 518 regulatory transactions, and it assessed bidders under the competition law to participate in one telecommunications auction, involving spectrum for wireless communications,⁴ and in one auction of national radio broadcasting stations.⁵ In addition, the IFT conducted a successful divestiture of the Fox Sports business in Mexico as a result of a structural remedy imposed to the Disney-Fox merger transaction.

¹ Analysis on the telecommunications and broadcasting sectors, 2020. Assessment of the effects caused by the sanitary emergency (IFT Report 2020). Available in Spanish at: http://www.ift.org.mx/sites/default/files/contenidogeneral/estadisticas/analisis2020_4.pdf

² Idem.

³ Idem.

⁴ Auction IFT-10. Information available in Spanish at: <http://www.ift.org.mx/industria/espectro-radioelectrico/telecomunicaciones/2021/licitacion-no-ift-10-servicio-de-acceso-inalambrico>

⁵ Auction IFT-8. Information available in Spanish at: <http://www.ift.org.mx/industria/espectro-radioelectrico/radiodifusion/2021/licitacion-ift-8-radiodifusion-am-y-fm>

Under this positive market dynamism the IFT determined i) to keep an ordinary level of competition scrutiny; ii) to keep vigilant of any attempt from any market participant to bypass the law asserting the exigent circumstances of the pandemic as an excuse and iii) to perform its duties remotely during the lockdowns to not impinge on investments and innovation. More importantly, electronic filing and processing of cases was implemented and tested by the IFT as a new method to process and manage competition cases. Electronic filing ended up being by far the most important adaptation during the pandemic and it will be preserved forward.

Timeline and emergence of electronic filing

During the first half of 2020, the IFT issued several orders to limit proceedings to only essential and urgent matters, while it suspended legal times, deadlines, and processing of the non-essential ones. The list of essential matters in competition policy proceedings was issued on May 8 and July 3, 2020, and it comprised merger control and general consultations on competition law. Under the basis that those proceedings impact the national economy through investment, innovation and efficiencies, the IFT would keep processing those cases, but no exemptions, leniency or fast-track reviews were established. This was the first time the IFT outlined the basics for the electronic communications to be valid in its proceedings, subjected to the terms, conditions, and formalities that were lay out in the order P/IFT/EXT/290620/20 issued on July 3, 2020.⁶ This order included some rules as follows:

- Parties must have consented to electronic filing.
- Emails would be the primary mean of communications between the agency and interested parties.
- In-person activities were suspended, except from the filing office that remained opened during certain seasons using safety protocols and following the health authorities' recommendations.
- Government officials would operate in remote work.
- Government officials would be using electronic signatures to issue legally binding documents and decisions.
- Virtual meetings and phone conversations between IFT's officials and interested parties would be authorized to handle non-legally binding questions or concerns.
- Once the IFT lifted the suspension and restored its normal in-person operations, interested parties subject to electronic proceeding would have to provide a physical version of all the documents that they submitted electronically, so the IFT could confirm their authenticity. Otherwise, the proceeding would have been considered invalid.

Electronic filing of merger control and competition cases came up as an unparalleled tool that allowed both the agency and the interested parties to save time and costs, and to conduct efficient exchange of information and communications. Although in the past the use of an electronic method to process cases had faced reluctance, technical difficulties and even distrust, this method has proven to be effective during the pandemic, and its implementation was easier than expected for both the agency and users. The well-delineated procedure as established in the Federal Economic Competition Law

⁶ Available in Spanish at: https://www.dof.gob.mx/nota_detalle.php?codigo=5596159&fecha=03/07/2020

(LFCE), the expertise of companies and individuals in competition proceedings, the incentives for obtaining a quick resolution, and the convenience of receiving and processing high amounts of information electronically rather than physically were all aspects that influenced a smooth implementation of electronic filing.

This scheme lasted a little over a year, as it partially came to an end on August 20, 2021, when the IFT reinstated the traditional physical filing for the public and it partially resumed in-person operations. In spite of it, the IFT decided to maintain electronic filing for those parties who started their cases in such a manner. Interestingly, once the suspension was lifted, a substantial majority of users still chose electronic filing, as it also has added expediency and efficiency specially for law firms and companies.

Therefore, the IFT released a new regulatory framework based on the experience gained in the last two years of pandemic, following the preference and convenience of this electronic filing scheme. On March 14, 2022, the IFT published at the Federal Official Gazette (“Diario Oficial de la Federación”) the rules of the new electronic filing scheme for merger notification that will be available to the public before the end of 2022. The goal of this new regulation will be to provide legal certainty by designing rules to authenticate communications coming from users (who would be using a valid electronic signature as registered at the Ministry of Finance), protecting the confidential information from all the parties involved and preserving a complete record of each case that may be available for both the IFT and the parties at the same time.

Dynamism in the telecommunications and broadcasting sectors that never stopped

As stated above, during the pandemic, the telecom, media and broadcasting industries experienced an interesting positive dynamism that demanded that the IFT were cautious on making exemptions or lowering the standards to assess competition law concerns. In 2021, the demand for Subscription Video-on-Demand (SVOD) services increased by 13.8%, compared to the previous year;⁷ the number of users that have more than one SVOD services increased by 19%;⁸ telecom operators increased their revenue by 2.9% in 2020 as compared to 2019 and by 6.0% in 2021 as compared to 2020, and they also increased direct investments on telecom services and infrastructure by 6.5% and 21.1% respectively.⁹ Although it is true that specific markets suffered a slight decrease of users (such as mobile telephone or mobile internet services), other telecom markets experienced the opposite effect and received new users and subscriptions such as fixed internet services, pay TV services and audiovisual online platforms. E-commerce transactions increased in the aggregate, as well as online banking operations. In fact, considering that the lockdown increased people’s demand for telecom services, this raised red flags to perform not only an ordinary level of scrutiny, but to discourage also any attempt from any market participant to use the exigent circumstances of the pandemic as an excuse to incur in anticompetitive conducts or to bypass the merger control process.

⁷ The Competitive Intelligence Unit, April 13 2022, available at: <https://www.theciu.com/publicaciones-2/2022/4/13/competencia-y-preferencia-por-plataformas-svod-al-4t-2021>

⁸ Idem.

⁹ IFT Report 2020: http://www.ift.org.mx/sites/default/files/contenidogeneral/estadisticas/analisis2020_4.pdf

Despite the economic meltdown across the globe, the following national and international M&A transactions were cleared by the IFT under the LFCE:

Case number	Notifying parties	Purpose of the merger
UCE/CNC-001-2020	Radiomovil Dipsa S.A. de C.V. (Telcel) and Axtel S.A.B. de C.V (Axtel).	Telcel acquired licenses in the 3.5 GHz band from Axtel.
UCE/CNC-002-2020 UCE/CNC-004-2020	Operadora de Sites Mexicanos S.A. de C.V. (Opsimex) and Banco Actinver (Actinver).	Structure of an investment vehicle (FIBRA) for the leasing and operation of telecom towers.
UCE/CNC-003-2020	Transtelco Inc. (Transtelco) and Maxcom Telecomunicaciones S.A.B. de C.V.	Transtelco took control over Maxcom, a fixed telecommunications services provider.
UCE/CNC-003-2021	Grupo Lauman Holdings, S.de R.L. de C.V. (Grupo Lauman) and TFCF Corporation.	Grupo Lauman acquired the Fox Sports channels business in Mexico due to the divestiture ordered by the IFT as a structural remedy to the Disney-Fox merger from 2019.
UCE/CNC-004-2021	Grupo Televisa, S.A.B.; Tritón Comunicaciones, S.A. de C.V; Univision Holdings, Inc; Torch Investment Holdings LLC; Forgelight (Univision) Holdings II, LLC; Raine Associates III Corp (AIV2) GP LP, and Google LLC.	Univision acquired the content business of Televisa with effects on the media and entertainment industries.
UCE/CNC-008-2021	Opsimex and Telesites S.A.B. de C.V.	Corporate restructuring of a leasing and operation of telecom towers business.
UCE/CNC-010-2021	Mercury Data Center Holdings Limited (Mercury), SixSigma Networks Mexico, S.A. de C.V. (Kio 4etworks), LSC Ventures, S. de R.L. de C.V. and others.	Mercury took control over telecom licenses and services of Kio Networks, including data centers.
UCE/CNC-011-2021	Live Nation Entertainment Inc. (Live Nation), Ticket Master New Ventures S. de R.L. de C.V, Grupo Televisa S.A.B., Promo-Industrias Metropolitanas S.A. de C.V. and Corporación Interamericana de Entretenimiento, S.A.B. de C.V. (CIE).	Live Nation took control over Ocesa and some CIE's subsidiaries, who has a license of radio spectrum frequencies.
UCE/CNC-013-2021	Patagonia Holdco LLC, Level 3 Financing Inc, and Level 3 Communications, LLC.	Patagonia acquired Lumen Technologies LATAM, an optical fiber operator.

Case number	Notifying parties	Purpose of the merger
UCE/CNC-014-2021	Canadian Pacific Railway Limited (CPR) and Kansas City Southern (KCS).	CPR acquired telecom licenses from KCS, which has a license of radio spectrum frequencies.

Source: IFT

Divestiture of Fox Sports pay-TV channels' business

A relevant event during this unparalleled season was the successful divestiture of the Fox Sports pay-tv channels' business in Mexico, as a consequence of a structural remedy imposed by IFT to the Disney-Fox merger transaction.¹⁰ In November 2021, Grupo Lauman Holdings, S. de R.L. de C.V. (Grupo Lauman), an independent third-party purchaser, took over the divested business with the purpose to preserve a suitable and viable competitor in the market of sports pay-tv channels as ordered by the IFT.¹¹

Unlike traditional business divestitures that only require the selling of physical infrastructure or tangible assets, Fox Sports' divestiture comprised mostly intangible assets of an ongoing business, in which the market value of the company resided on its licensing agreements and content rights. As a full description of the divestiture process would take dozens of pages, it suffices to say that substantive decisions of the IFT in this process involved: i) identifying and separating all the assets necessary to preserve the value of the divested company; ii) taking proper measures to guarantee a successful transfer of the business; iii) approving and coordinating the activities of international selling trustees and a monitoring trustee; iv) assessing potential purchasers, and iv) overseeing the assignments and license transfers of the sports pay-TV content from Fox Sports to the new independent third-party purchaser in competitive, viable and suitable terms.

Despite several attempts and petitions from Disney to retake the divested business or to transfer it to a trust with the purpose of achieving its dissolution, the IFT and the monitoring trustee, in coordination, took interim measures to: i) maintain the value of the business; ii) ensure the renewal of content rights and licensing agreements that were essential to the business, iii) enforce non-compete clauses and transfer of trademarks, and iv) prohibited the parties from exerting behaviors that may have impinged on the effective activities of the monitoring and selling trustee.

Since the successful transferring of the Fox Sport channels' business to Grupo Lauman, the IFT continues overseeing any misconduct that may lead to antitrust violations in terms of its Disney-Fox merger's decision issued on March 2019. Specifically, some of the remedies imposed to the merger will expire later in time (none of them earlier than November 2024), such as the remedies of not compete, not repurchase, not recruit key personnel and not affect the viability and competitiveness of the divested business. Moreover, behavioral remedies that were imposed in the market for Factual

¹⁰ Decision available in Spanish at:

<http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/verpubpift110319122canxuce.pdf>

¹¹ Decision available in Spanish at:

<http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vpext07062111.pdf>

pay-TV channels' business in which Fox operates will also remain enforceable at least until March 2026.¹²

Post-pandemic opportunities

Due to the Covid-19 pandemic the IFT and the industry implemented electronic filing as a new method to process competition cases in a less costly and more efficient manner. The pandemic accelerated the design, testing and implementation of such procedure at IFT. When the lockdown took over and in-person contact was no longer possible across the country, relying on electronic communications arose as the only way to continue operating.

Statistics showing a positive dynamism in the telecom sector during the pandemic compelled the IFT to be cautious when assessing merger control and antitrust enforcement; and taking a closer look to all the telecom markets in the post-pandemic period might not be discarded yet. The telecom industry was a good ally offsetting the negative impact of the pandemic, and it also became a good ally for everyone keeping us on track with something akin to a "normal" life. However, a great responsibility lies ahead for the IFT to keep vigilant and to prevent any antitrust misconduct given how fast telecom services have evolved. The good news is that a new method for filing and processing cases arose from all this, and that we learned how to protect the competition process "remotely."

¹² Decision available in Spanish at:
<http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdoliga/vp1201227.pdf>