



Mexico is located in Middle America, bordering the Caribbean Sea and the Gulf of Mexico, between Belize and the US and bordering the North Pacific Ocean, between Guatemala and the US. Elections held in July 2000 marked the first time since the 1910 Mexican Revolution, when the opposition defeated the party in government, the Institutional Revolutionary Party (PRI). Vicente Fox of the National Action Party (PAN) was sworn in December 2000 as the first Chief Executive elected in free and fair elections.

Economy

From the early fifties to the early eighties, Mexico followed a model of import substitution. Economic liberalisation began in the mid-1980s when the Government undertook a process of privatisation of several state-owned enterprises, followed by trade liberalisation and liberalisation of interest rates, in the late 80's among other things. It is important to mention that some of the privatised sectors exhibited natural monopoly characteristics; as a consequence, regulatory regimes were instituted to deal with market failures.

Today, Mexico enjoys a more open economic and political system. Being more integrated into the world economy, it has one of the highest per capita incomes in Latin America and is firmly established as an upper middle-income country¹. Ongoing economic and social concerns include low real wages, under-employment for a large segment of the population, inequitable income distribution, and few advancement opportunities for the largely Amerindian population in the impoverished Southern states.

Competition Evolution and Environment

In the mid-1980s the Mexican Government sought to move from an over-regulated economy toward a market-based one. Mexico's competition policy was introduced as part of a reform initiative aiming at this. Although the Constitution of 1857 established the prohibition of monopolies it was not until December 1992 that the Federal

PROFILE	
Population:	102.3 million***
GDP (Current US\$):	626.1 billion***
Per Capita Income: (Current US\$)	6,230 (Atlas method)*** 8,970 (at PPP)**
Surface Area:	2 million sq. km
Life Expectancy:	73.3 years**
Literacy (%):	90.5 (of ages 15 and above)**
HDI Rank:	53***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Law of Economic Competition (LFCE) was approved and came into force in June 1993.

The law makes certain anticompetitive practices illegal and creates a Federal Competition Commission (*Comision Federal de Competencia*) to implement competition policies. This paper describes the considerations involved in drafting the law and the first four years of the Commission's efforts to implement it. This is intended to support a discussion of the role of competition policy in a developing country, the enforcement priorities for a new competition agency, and the problems of building political support and technical capacity in a competition agency.

The Government ended most domestic price controls and reduced entry constraints. To open the economy to foreign trade and investment, Mexico eliminated most compulsory import licenses, abolished official import prices, reduced tariffs, and adhered to the General Agreement on Tariffs and Trade (GATT).

1 According to the World Bank Indicators for July, 2004.

Further, in 1994, Mexico entered the North American Free Trade Agreement (NAFTA), which included the USA and Canada, followed subsequently by free trade agreements with the European Union and a litany of Latin American countries.

Today, virtually all of Mexico's foreign trade is covered by such accords. Trade with the US and Canada tripled after the implementation of NAFTA. In the period from the beginning of the liberalisation process in 1984 until 2002, annual imports increased by more than 1000 percent, while exports increased by 555 percent. Import liberalisation, as anticipated, beneficially stimulated domestic competition in Mexico's tradable goods sectors.

Competition Law and Institutions

The basic instrument of competition policy, issued by the CFC is the National Programme of Economic Competition (PNCE) 2001-2006. This is particularly significant, since it represents the first effort aiming at the conception of a document establishing the objectives, strategies and guidelines that will rule the actions of the CFC in order to contribute to the achievement of the National Development Plan's objectives with regard to competition policy.

It is also worth noting that it incorporates citizens' views. It was constructed by integrating some important factors for the Commission, such as its vision, quality policy and of course the mandate established in the Law. It also takes into account harmonisation with other programmes of the Ministry of Economics, such as Foreign Trade and Promotion of Investment 2001-2006.

The LFCE implements Article 28 of the Mexican Constitution; it is applicable to all economic agents and to all sectors of economic activity in the Mexican Republic. Its objective is to protect the competitive process and free market access by preventing and eliminating monopolies, monopolistic practices, and other restraints to the efficient functioning of markets for goods and services.

The general ban set forth in Article 8 of the LFCE prohibits monopolies, and those practices which diminish, impair or prevent competition and free participation in the production, processing, distribution and marketing of goods and services.

Exceptions to the monopoly prohibition are the functions exercised exclusively by the State in specific 'strategic areas' (Article 28 of the Constitution). These sectors include postal services, telegraph and radiotelegraphy, petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals, nuclear energy, electric power, and the functions of the central bank in producing coins and paper currency. Besides, privileges granted to patent and copyright owners, labour associations and export trade associations are not treated as monopolies.

The LFCE makes no distinction between foreign and domestic actors; the CFC has stated that the LFCE "applies to all agents whose actions impact markets in the Mexican territory". This is what has been named extraterritorial applicability.²

The CFC is an independent agency, attached to the Economics Ministry for purposes of budgetary administration, endowed with technical and operational independence and it is the only agency responsible for applying the competition law. The Regulations of the Law contain the fundamental aspects for its application, such as the definition of substantial market power, certain monopolistic practices, relevant market analysis and well time-delimited defined proceedings.

It also sets out the CFC's organisation structure, according to which the highest decision-making body is the Plenum, which is constituted by the Commission's Chairman and four Commissioners. They are appointed for staggered ten-year terms by the President of Mexico, and are removable only through proper enquiry. This is particularly relevant since it guarantees the agency's independence. The plenum takes decisions in a collegiate fashion.

Further, the CFC has one Executive Secretary and 11 General Directorates, six are operational and 5 provide support. In general, enforcement or other proceedings before the CFC begin either in response to a complaint by an affected party or *suo moto* at the Commission's own initiative.

The Commission regularly provides updated information regarding its national or international activities.

International activities of the CFC comprise undertaking agreements and participation in the main international discussion forums on competition issues. Among the former are: Free Trade Agreements (FTA) containing a competition chapter, such as NAFTA, G-3 subscribed with Venezuela and Colombia, the FTA with the EU (Title V. Competition. Article 39) and those undertaken with EFTA, Israel, Chile and with Uruguay.

Also, there are several inter-agency cooperation agreements regarding the application of the competition law with some governments and competition authorities of the world. These include agreements with the Governments of Canada, the United States, the National Economic Prosecutor's Office of Chile, the KFTC, and the statement of intention between the Economic Ministry of Mexico and the Ministry of the Russian Federation for the anti-monopoly policy and enterprise support.

2 Competition Law and Policy in Mexico. An OECD Peer Review.

Anticompetitive Business Practices

The Commission's main activities in pursuit of its obligations under the LFCE may be grouped as follows:

- 1) pre-merger control;
- 2) investigation and sanctioning absolute and relative monopolistic practices;
- 3) evaluation of firms interested in participating in privatisation activities or obtaining either permits or concessions;
- 4) issuing statements of the existence of competitive conditions or substantial market power in regulated sectors;
- 5) declaring the existence of inter-state barriers to trade; and
- 6) promoting competition culture and principles (competition advocacy).

1) *Pre-merger Control*: Article 16 of the Law defines concentration as the: "merger, acquiring the control or any other action through which corporations, associations, stocks, equity interest, trusts and assets in general are carried out amongst competitors, suppliers, customers or any other economic agents".

The Commission is empowered to disallow those mergers whose objective or effect is to diminish, hinder or damage competition. Pre merger notification is mandatory for those transactions exceeding certain asset or equity thresholds defined in terms of the minimum daily wage. The CFC is empowered to condition and block notified mergers deemed to be anticompetitive, to impose pecuniary sanctions for failure to notify a transaction and to order divestiture of an unlawful merger.

In the course of its implementation, relatively few transactions have been either conditional or blocked. Some outstanding mergers objected include the acquisition of Cadbury Schweppes by Coca-Cola, the proposed merger between Televisa and Radio Acir and the combination between Ferromex and Ferrosur, two of the three main railroads granted in concession to private agents.

2) *Investigation and Sanctioning Absolute and Relative Monopolistic Practices*: Absolute monopolistic practices include hard-core horizontal agreements among competitors, such as: price fixing, output restrictions, market division and bid rigging which are subject to *per se* prohibition (under Article 9 of the Law).

On the other hand, relative monopolistic practices may not be deemed illegal unless the respondent is found to have 'substantial power' in a defined relevant market and fails to prove an efficiency defence. Article 10 of the LFCE establishes behaviour considered as relative monopolistic practices and identifies six types of such vertical conducts: vertical market division, resale price maintenance, tied sales, exclusive dealing, refusal to deal, collusive boycott (typically horizontal but may have a vertical component).

Additional conduct is identified under Article 7 of the regulations: predatory pricing, exclusive distribution, cross subsidisation, discrimination and actions leading to increase the cost or reduce demand of competitors.

In this area, the Commission has handled many important cases. For example, there was a case in which the CFC's actions were aimed at terminating a contract between a TV broadcasting company and the Mexican Football Federation. Further, in 2000 the CFC responded to a complaint from PepsiCo and two Mexican soft drink companies.

It has investigated the case of a group of LP gas distribution companies who were raising rival's costs by delaying the opening of a new plant and several cases in which Telmex (the incumbent telephone services provider) was accused of relative monopolistic practices.

Box 113.1: Mexico Discontinues Pharma-Investigation

Mexico's Federal Competition Commission has voted to stop an investigation of pharmaceutical distribution companies. The Commissioners took the view that there was no evidence to sustain the case.

In December 2004, the Commission began an investigation into potentially anti-competitive practices in the pharmaceutical industry. The investigation was the result of a complaint filed by multinational company Roche-Syntek against Grupo Saba and Nadro, two pharmaceutical distributors that between them enjoy a 60 percent market share.

Allegedly, the two companies had pressurized pharmaceutical companies to reduce the prices imposed on distributors for the purpose of increasing their own profit margins.

However, the Commission after investigation closed the file in May 2005 in the absence of any evidence against the accused.

Source: *Global Competition Review*, June 2005

3) *Evaluation of Agents Interested in Participating in Privatisations or Obtaining either Permits or Concessions*: When dealing with the Government owned companies, if the intention is to divest them, the Commission is responsible for determining which economic agents may participate in any privatisation proceeding aiming at this. Furthermore, in some sectors such as railroads, telecommunications, satellite services, and natural gas distribution, prospective participants must obtain a favourable opinion from the Commission before obtaining any concessions or licenses issued by sector regulators

either through public auctions or directly through administrative proceedings.

4) *Issuing Statements of the Existence of Competitive Conditions or Substantial Market Power in Regulated Sectors.* Sector regulations entitle the Commission to assess competitive conditions in civil aviation, railroads, navigation, federal auto transport and auxiliary services, telecommunications, LP gas, natural gas, satellite communications, among other sectors.

If the Commission finds an absence of effective competition in the relevant market (or, in telecommunications, the existence of an economic agent possessing substantial market power) that sector regulations allow the regulator to establish price regulation, access controls and other requirements on sector participants.

Also, the Commission is allowed to determine that effective competition was restored, so that regulatory controls imposed must end. The sectors in which the Commission has participated have been airports, seaports, LP gas distribution and telephony.

5) *Declaring the Existence of Inter-state Barriers to Trade:* Article 15 of the Law empowers the Commission to declare that a certain regulation constitutes an interstate barrier to trade. Even though it cannot order the state to repeal the offending regulation it can issue a recommendation to cease that conduct. In this area, the Commission has resolved 11 cases during the past five years, issuing recommendations in seven cases and making 4 public declarations that an interstate trade barrier existed.

6) *Competition Advocacy:* This comprises all the activities designed to promote the understanding and implementation of sound competition policy but excluding Commission's functions that have independent legal effect. The Commission dedicates a great amount of time and efforts to foster an environment suitable for competition in governmental sector and society in order to effectively promote and protect the competition process.

Among its main activities, it participates in some inter-ministerial Commissions to advocate competition principles in the design and implementation of governmental policies and programmes which include: 1) the Inter-Ministerial Privatisation Commission, 2) The Inter-Ministerial Public Expenditure and Financing Commission, 3) The Foreign Trade Commission (COCEX) and 4) the Federal Regulatory Reform Council.

Regulatory Framework

As mentioned above, several laws of some sectors explicitly refer to the LFCE and the CFC. Among these we find the Law of the Energy Regulatory Commission (CRE), the Regulation of Satellite Communication, the

Regulation of Rail Service, the Airport Law, the Federal Telecommunications Law, the Civil Aviation Law, the Regulation of Natural Gas, the Navigation Law, the Ports Law, the Federal Law of Administrative Proceedings.

It is within this legal framework that the Commission interacts with the Federal Telecommunications Commission (COFETEL), COFEMER, the Energy Regulatory Commission (CRE), the Ministry of Communications and Transportation (SCT) aiming at promoting the efficient and competitive development of these sectors by participating in the design of their privatisation processes, granting concessions and regulatory frameworks and in the design and instrumentation of sectoral economic policies

Because some of the privatised sectors exhibit natural monopoly characteristics, regulatory regimes were instituted to deal with defects in market operation. Difficulties arose in some sectors where the regulatory schemes were not sufficiently well conceived or not implemented at the right time.

In telecommunications, the lure of revenue maximisation led the Government to sell the existing system to a single entity, and regulatory inadequacies in that sector led to years of quarrelling over how much long distance and cellular competitors should pay the monopoly for network access.

In railroads, the Government sold off geographic segments of the national system to different buyers, which produced better results than the telephony experience, but disputes have arisen among the segment operators over access fees to be paid for track usage rights in adjoining regions.

Further actions are currently being taken with the intention of strengthening the relationships between the COFEMER, which plays a critical role in reviewing all regulations proposed by federal government agencies, and PROFECO, which is in charge of enforcing the Federal Consumer Protection Law.

In addition, the Commission has negotiated and concluded 14 agreements of administrative cooperation in the area of technical assistance and information with state governments, in order to train public servants on competition issues.

Telecommunications Sector

The introduction of a new Federal Telecommunications Law, is consistent with the North American Free Trade Agreement (NAFTA) principles, which came into effect on June 08, 1995. This new legal framework grants the Ministry of Communications and Transport better mechanisms to promote investment by making the licensing process transparent, thus promoting investment in services and infrastructure with unparalleled legal security.

Furthermore, the new law contemplates modern financial mechanisms and ensures that telecommunications networks will be able to offer new and creative services.

In order to allow private investment in the satellite communication sector, article 28 (paragraph 4) of the Mexican Constitution was modified. This historic step allowed private investors to establish, operate and sell satellite communications services in Mexico for the first time. The State, however, still administers the radio spectrum and the orbital positions assigned to the country, and ensures the availability of capacity for national security services.

Consumer Protection

In Mexico, the activities aimed at protecting consumers' rights began in 1976 with the enactment of the Federal Law for Consumer Protection (LFPC or the Law), which gives operative force to the provisions set out in Article 28 of the Constitution. Its objective is to promote and protect consumer's rights and culture and to procure equity, certainty and juridical security in the relations between suppliers and consumers.³

This Law created the Office of the Federal Attorney General for Consumer Protection (Profeco) as the authority responsible for its implementation and for supervising the observance of the Mexican official norms issued by the Ministry of Economics, and the remaining applicable provisions related to consumer laws.

Profeco is an independent administrative authority with its own budget and legal status. Its responsibilities include:

- to foster and protect consumers' rights and to take any action aimed at procuring equity and legal security in supplier-consumer relations;
- to resolve differences that may arise between consumers and suppliers;
- to foster and support the establishment of consumer organisations;
- to implement and support analyses, studies, educational and training programmes on consumer protection;
- to act as expert and qualified consultant regarding the quality of goods and services;
- to recommend government authorities to take suitable actions in order to fight, prevent, modify or avoid practices that affect consumers' interests; and
- to advise producers and distributors regarding consumers' needs and problems.

The LFPC has undergone several amendments since its enactment. The most important took place in the years 1982, 1985, 1989, 1991, 1992, 1994 and 2000. 2003 was particularly important due to the approval of the LFPC reform. With such amendments, Profeco's approach has evolved from assisting and supervising to a more modern

one, where preventive activities and the provision of information play a central role in seeking a better functioning of markets and to guarantee consumer's rights and interests.

Other laws related to Profeco's activities are the Official Mexican Standards (NOM), the Regulations for commercialisation systems by means of integrating groups of consumers (article 63 of the Law), Regulations of article 122 of the Law, Federal Law of Metrology and Normalisation (LFMN), Federal Law of Administrative Proceedings, Regulations of the Federal Law of Metrology and Normalisation and the Agreement establishing the criteria for fixing warning labels.

In addition, Profeco has strengthened the relations with the Association of Television Programmers and with the Federal Commission for the Protection against Sanitary Risk (Cofepris). This will allow coordination of actions aiming at informing the public of health-risk products.

As regards e-commerce, Profeco created an internal committee devoted to analyse these issues, seek cooperation from related e-commerce business associations and adhere to the Inter-institutional Coordination Group for Combating against Cybernetics Felonies.

Profeco also participates in the elaboration, modification and updating of the NOMs, which are considered an essential tool in preventing consumer harm, on both short term and long term basis.

It is worth mentioning, that the proceedings against violations of the Law are to be considered as Profeco's last recourse. Through this procedure sanctions are determined. This procedure is initiated only in those cases in which the conciliatory proceedings end without a solution and when the parties refuse to submit to an arbitration procedure.

However, there are several challenges that the Commission has to overcome and some others yet to be addressed, such as those pertaining to the legal profession. Specifically, the *amparo* (judicial review) proceeding established by Articles 103 and 107 of the Mexican Constitution that takes place in a federal district court. It is intended to protect all persons against unconstitutional acts by the Government.

Since the *amparo* involves the review of the Commissions' decisions it delays resolution of the Commission proceedings and constrains its ability to remedy anticompetitive conduct and market conditions. The volume of *amparo* actions either alleging unconstitutionality of the LFCE or errors in the Commission's decisions has increased significantly over the years.

3 Official website of Profeco. www.profeco.gob.mx. Translation from the author.

An additional issue to be addressed is the low record of payment of the fines imposed, which are subject to *amparo* and Fiscal Court Review Proceedings. Moreover, even if the fine is final and payable problems arise for its collection. These facts reduce the dissuading effect of fines and the effectiveness of CFC sanctions generally.

This is critical time for the Commission since there are some important changes just around the corner. First, the recent appointment of a new Chairman. Second, the administration of President Fox has announced an intention to enhance the role of both competition policy and the CFC in Mexico's national economic programme. Indeed, the Commission will have to take advantage of this new possible environment to continue performing its responsibilities, in compliance with the Law.

To enhance consumer decision-making process, Profeco undertakes educative work in five main areas: consumer education; development of training programmes regarding the main themes of consumption phenomenon; training programmes for Profeco staff across the country; preparation of material for seasonal programmes; and finally, broadening the contact network with formal education institutions.

In addition, Profeco carries out the programme *Quién es quién en los precios* (What is what in prices) in order to provide consumers with the information to improve their purchasing decisions, allowing them to compare prices of about three thousand products among the different suppliers.

Furthermore, Profeco has several publications such as free papers and the monthly Consumers' Magazine (*la Revista del Consumidor*) for sale. *Revista del Consumidor* has published reports on blender machines, ladies underwear, digital cameras, portable computers, disposable diapers, among others.

It is worth mentioning that Profeco has a fixed section in the newspaper *Trato Directo* where it educates consumers on purchase of goods and services.

Profeco also participates in TV and Radio. Experts, manufacturers, and sellers of products and services participate in TV Consumers' Magazine (*TV Revista del Consumidor*). On radio, *El Cuarto del Consumo* (Consumption room) has been broadcast for two years and Profeco has a space in the nationwide programme *La Hora Nacional* (National Hour) and in *Diálogos en Confianza*

Box 113.2: Funeral and Other Death-related Services⁴

In 2002, Profeco began a study aimed at analysing markets for death-related services whose objective was to provide consumers with enough information that would allow them to choose the best services offered by numerous providers. The study was originally limited to funeral services offered in Mexico City and later extended to Guadalajara (the third largest city in Mexico). Its object was to review packages offered for immediate or future use, as well as the general conditions of the offers.

The study showed that some businesses were breaching the law by practising deceptive commercial practices, such as not registering their contracts before Profeco, or irregularities in their contracts. In this situation, Profeco is entitled to initiate an administrative proceeding against funeral homes that are violating the law, and if it is necessary to sanction them with a fine between 20 times the minimum wages up to 8,000 times of the minimum wages (US\$79.02 - US\$31,608.73).

The results from this study also showed that there are 427 death-related service providers in Mexico City, including funeral services agencies, preceding burial businesses and coffin sellers. In addition, there are more than 123 cemeteries. Also, this study allowed Profeco to inform consumers that the most common

options for the final destiny of the corpses include embalming or burial and incineration or cremation.

Based on this study, Profeco confirmed that there is no particular problem related with the supply of these services, the number of firms is relatively large and consumers have not complained about the absence of providers or the presence of dominant businesses. There are a wide variety of price options catered for all budgets.

Profeco recommended that consumers take into account that the price of a package varies depending on the agency's prestige, the coffin's material, as well as the quality of the products and services. It further noted that businesses are obliged to exhibit the total costs of the main products and services offered, provide a general budget in writing, and offer a bill specifying all particular features of the product and its price.

It is important to note that Mexican consumers have been subjected to deceptive, misleading and fraudulent commercial practices in the area of death-related services and have complained about bad quality service firms, not respecting the prices offered, and firms not honouring the conditions originally set down in the contract.

4 Summary of note on Identifying and tackling dysfunctional markets. Submitted to the OECD joint meeting of the Competition Committee and the Committee on Consumer Policy, October 2004.

(Dialogue in confidence) with important information for consumer education.

In addition, Profeco reviews and issues its opinion regarding proposed laws, rulings and administrative provisions such as:

- Law of Federal Transport, its Auxiliary Services, Roads and Bridges;
- Law of Railway Transport, its Auxiliary Services and Railways;
- Reform to the General Health Law;
- Regulations of Gas LP;
- Regulations of the General Health Law; and
- Regulations of Food Labelling.

Profeco's international activities include work underway to strengthen bilateral cooperation with the US Federal Trade Commission aimed at increasing effective levels of consumer protection as well as information and experience exchange regarding consumer protection policy with several countries (Australia, Brazil, Canada, Ecuador, USA, Spain, United Kingdom, Italy and New Zealand).

Concluding Observations and Future Scenario

According to the OECD Peer Review (2004), after eleven years of existence, the Commission has evolved and has become a credible, professional and well-respected agency that has compiled a remarkable record of achievement given the difficulties of its environment.

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