COMPETITION ADVOCACY PROVISIONS IN MEXICO: THEIR IMPORTANCE IN REGULATORY REFORM AND TRADE OPENNESS

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Introduction

It is the purpose of this paper to describe the different types of competition advocacy provisions by means of which the Mexican Federal Competition Commission (FCC) undertakes its advocacy role. Furthermore I want to highlight the importance that these provisions have had for regulatory reform and trade openness.

Since its creation in 1993, the FCC has been very active in its advocacy role, by promoting a competition culture and especially by encouraging competition in regulated sectors, through numerous initiatives. Part of the advocacy activities of the FCC are institutionalized to a certain extent, but they are also undertaken on an informal ad-hoc basis.

More specifically, the FCC has undertaken its advocacy role mainly by the following activities:

1) raising competition issues in the divestiture of state-owned companies;
2) giving opinions on competitive aspects of laws, regulations, and administrative rulings;
3) deciding on competitive aspects of concessions, permits and authorizations to participate in regulated activities;
4) determining the existence or nonexistence of market power or conditions of effective competition in regulated markets, as a requisite for sector authorities to issue regulations;
5) several actions to raise competition culture in the public.

The main instruments by which the FCC has undertaken these activities are the following:

6) the power granted to the FCC to undertake several advocacy activities provided in the Federal Law for Economic Competition (FLEC) and the Code of Regulations to the FLEC;
7) the requisite established in sector legislation that the FCC must decide on competition matters;
8) participation of the FCC in interministerial commissions established by law;
9) participation of the FCC in commissions established ad-hoc;
10) the powers granted to the FCC to authorize participants in biddings, provided in Public Bidding Conditions;
11) the publication of reports and decisions of the FCC, as well as the organization of seminars on competition directed to several kinds of public.

The advocacy role of the FCC has comprised a big number of sectors, including telecommunications, satellites, railroads, aviation, airports, navigation, ports, roads, natural gas, electricity, the financial sector, foreign trade, etc. It has not been an easy task, due to the complexity of the analysis of very diverse sectors. Additionally, the competition authority has frequently promoted competition values with other government

∗. The opinions expressed in this paper are those of the author and do not necessarily reflect the formal opinion of the FCC.

authorities that have different objectives. An important characteristic of the FCC is that it is the only authority in charge of evaluating competition matters. Unlike in other economies, in Mexico sector regulators do not have expressly the faculty to evaluate competition aspects related to the sectors they regulate. This and other aspects of institutional design have facilitated the advocacy role of the FCC.

The advocacy role of the FCC can be considered successful because its efforts have often been decisive for the introduction of competition criteria in laws and regulations, for helping to define the boundaries of regulation, for preventing market concentration and anticompetitive practices in regulated sectors, and for making clear the costs of protectionist measures, among the most important achievements. Furthermore, amongst public officials and the general public there has been an increasing knowledge and awareness of the importance of competition.

At early stages of competition policy implementation in Mexico, the advocacy activities were undertaken on the basis of the powers established in the Federal Law for Economic Competition (FLEC). Later on, the Code of Regulations to the FLEC was promulgated providing clearer procedures for the FCC in certain competition advocacy activities. Furthermore, since the beginning of its operations the FCC has promoted the inclusion of several advocacy provisions in sector legislation.

I am considering as advocacy provisions those that grant powers to the competition authority to undertake advocacy activities. I am also including those provisions that support the advocacy activities of the competition authority.

Competition advocacy provisions can be of different types. The following is a classification of provisions according to its level of hierarchy and formality:

1) Provisions established in the competition and sector laws;
2) provisions established in the competition and sector regulations;
3) provisions established in decrees and agreements;
4) other provisions of a more informal character, like circular letters and administrative acts.

In general terms, it is considered that the most important advocacy activities of a competition authority should be established by the competition law. Regarding some activities that support the advocacy role, like the collaboration and coordination of the competition authority with regulators, provisions of a more informal character could be workable.

First I will address the advocacy provisions established in the FLEC; second the provisions established in the Code of Regulations to the FLEC; third, sector legislation advocacy provisions; fourth, other advocacy formal provisions, among them those included in foreign trade and standardization legislation; fifth, informal advocacy provisions. The background, importance and possible drawbacks of the different types of advocacy provisions are explained. Finally, some conclusions are presented.

1. Provisions in the FLEC

1.1. Faculty of the FCC to issue opinions

First of all, article 24 of the FLEC gives the faculty to the FCC of being involved in several activities of advocacy, namely to comment on the adjustments of federal public administration programs, to give its opinion regarding the laws, regulations, agreements, circular letters and administrative acts and about the amendments of laws and regulations, as regards competition and free market access. In issuing its opinions and comments, the FCC is empowered by the FLEC to act ex officio or upon request by policymakers.

The reason for the establishment of the advocacy faculties by the FCC in the FLEC is the recognition that Mexico's competitive environment depends largely on the laws and regulations which govern the activities of economic agents, as well as on the programs and actions of federal agencies. Furthermore, it was recognized that the advocacy activities should be undertaken by the FCC since the beginning of its operations. Since the beginning, it is also necessary both for the enforcement and for the advocacy role of the competition authority to give powers to this institution to request information, and provide for protections of confidential information. Articles 28 and 31 of the FLEC, provide for such powers.

Importance of the provision

Article 24 of the FLEC is of utmost importance because it establishes by law that the FCC has the faculty to advocate with other governmental agencies, and the legal terms of its opinions. The exercise of this power allows the FCC to contribute to create a favorable environment for the functioning of markets and the efficiency of economic activities.

It is very important that the competition authority be the one who has the faculty to issue specialized opinions on competition matters, because it is this authority that has the expertise to advise in these matters. In case of a competition authority recently created, it is this authority who can develop such expertise. Also, because it could be designed so as to have no other objectives besides enhancing competition. Giving sector authorities the faculty of evaluating competition matters of their sector does not ensure that competition objectives are clearly envisaged, because these authorities often have other priorities over competition.

Possible drawbacks

In terms of article 24 of the FLEC, opinions issued by the FCC are not legally binding. In general terms, the legal status of the opinions is not considered as an important limitation to the advocacy activities of the FCC. Laws, regulations, and administrative acts generally have multiple objectives, and protecting competition could only be one of their objectives. The competition authority can not be given the ultimate word in this respect because it is the sector authorities, the legislative or the executive authorities in each case, who must balance the several objectives in order to take a decision. The role of the competition authority in issuing its specialized opinion is to make clear the benefits of preserving and promoting competition, and the costs of maintaining anticompetitive structures or measures. Furthermore, the specialized opinions that the FCC issues enhance the awareness of the importance of competition criteria in the activities of the public sector.

Nevertheless, there are cases in which the status of the opinions of the FCC as not legally binding could be seen as a limitation. For example, this is the case of some recommendations that the FCC has given to state authorities. Some of these authorities have not complied with the recommendations of the FCC, in this way impeding competition. As it has been mentioned, the FCC does not have faculties to sanction local authorities, or to interfere directly with the measures adopted by them.

The non binding status of the opinions of the FCC directed to sector authorities can also be seen as a limitation for its advocacy role. To overcome this limitation, the FCC has promoted the establishment of provisions that stipulate the compulsory request for its opinion on competition issues, in sector legislation in which it is deemed to be necessary. The establishment of this kind of provisions strengthens the advocacy activities of a competition authority. The process has generated new challenges and fields of action for the FCC and the regulatory authorities, together with new opportunities for combined efforts.

1.2. Interstate barriers to commerce

The FLEC also establishes in articles 14 and 15 the power of the FCC of investigating, either ex-officio or upon request, on acts of state authorities which could impede the entrance into or exit from their territory of goods or services. This applies both to Mexican or foreign goods or services. These acts are stipulated as prohibited by the Mexican Constitution. The reason for legislating provisions 14 and 15 of the FLEC is the recognition of the need for an integral competition policy, that also includes barriers to competition at the state and municipal levels. Another reason was the aim of promoting integration of the Mexican market.

Article 14 establishes that these acts shall not have legal effects. But the FCC does not have power to sanction them, neither to directly interfere upon the measures that a state government could adopt. The FCC can only declare the existence of an act that constitute an interstate barrier to commerce and issue a recommendation to the state authority. Even though the FLEC establishes that this kind of acts will not have legal effects, we consider the role of the FCC in this regard as part of its advocacy activities, because of the lack of powers of the FCC to sanction them. Also, because in some cases state authorities do not even know they are incurring in an act forbidden by the law when they issue this kind of measures, so the role of the competition authority in this respect is to make the competition law known, and promote the importance of competition at all levels of government.

Importance of the provision

Interstate barriers to commerce are often established by state authorities regarding basic products, like agricultural and livestock products at a low level of processing. The state authorities frequently argue that these measures are established because of zoo-sanitary risks, but the real reason could be the aim to limit competition. The role of the FCC in this regard is ruling out the possibility of zoo-sanitarian reasons for its imposition, when it is the case according to the federal sanitary authority, and promoting the opening of these markets. This kind of limitations to competition can have an important negative impact as they are directed to basic products for the population.

Possible drawbacks

In some cases State authorities have not complied with the recommendations issued by the FCC in this regard, and have challenged the declaration of the FCC before the Supreme Court of Justice of the Nation. The legal status of the declarations of the FCC as non sanctionable could be seen as a limitation, but it was established this way to give respect to the different spheres of powers of the federation.

2. Provisions in the Code of Regulations to the Federal Law for Economic Competition

The Code of Regulations to the FLEC was issued on March 4, 1998. In general, the provisions in the Code of Regulations have been designed taking advantage of the experience of the FCC in its four years of work. The provisions related to the advocacy role of the FCC are the following.

In general terms, the advocacy provisions on the Code of Regulations to the FLEC were established to clarify the application of the FLEC in this respect and to stipulate procedures for the most important advocacy activities of the FCC.

2.1. Consultations on the subject of competition

Chapter VI of the Code of Regulations to the FLEC provides for procedures related to opinions and consultations. Throughout the four years of operations of the FCC before the adoption of the Code of Regulation, consultations have been brought before the FCC by private and public parties on many occasions. Consultations include those regarding clarification of criteria for the interpretation of the FLEC, and those concerning certain conducts, for the FCC to clarify whether they could be considered as infringements to the FLEC.

The Code of Regulations to the FLEC establishes rules for the consulting mechanism, formalizing what has been done in practice, focusing on guaranteeing prompt and appropriate response. In this effort, article 49 provides for the possibility that any economic agent, both of the public sector or private agents, may approach the FCC to resolve any doubts that arise regarding the application of the FLEC and the powers of the FCC.

The provision formalizes the process of consultation establishing that the economic agent must present all pertinent information to support the consultation put forth, so that the FCC can have enough background for an adequate answer. A period of thirty days has been established within which the FCC is to resolve issues raised, following the presentation of the request, or the delivery of the information, according to the case.

2.2. Judgment on questions of effective competition or existence of substantial power provided on legal or regulatory provisions

In this regard, article 50 of the FLEC expressly stipulates that the proceedings may be initiated by the FCC ex-officio, except when a ruling is made to the contrary or if the request is already filed by an interested party or the corresponding regulatory authority. Once the FCC has analyzed the necessary information, it shall issue a preliminary ruling and notify all economic agents involved in the market in question so that they may respond as serves their interests. Later, the FCC shall emit its definitive resolution and shall deliver it to the competent authority so that within the latter's corresponding sphere of authority it may impose the necessary regulatory measures.

2.3. Favorable opinion in public bidding processes

The reason for legislating article 51 of the Code of Regulations to the FLEC is to clarify the procedure and timing for the opinion that the FCC must issue in public bidding processes. It is specified that this opinion must be issued within the procedures and periods established by the corresponding terms of reference of the public bidding.

Importance of the provisions

The importance of the advocacy provisions established in the Code of Regulations to the FLEC is that they contribute to a more effective role of the FCC regarding advocacy activities, establishing simple and quick procedures, and that they provide greater legal certainty to economic agents.

Drawbacks of the provisions

Not precisely a drawback of the provisions, but a difficulty often encountered in the application of provisions regarding judgments on matters of effective competition is the adequate coordination of the FCC with the sector regulators. To resolve this difficulty, coordination mechanisms between the FCC and several sector regulators have been created.

Another aspect that could be considered as a drawback is that the term "effective competition" that is stated in the Code of Regulation to the FLEC, is not defined neither in the FLEC, nor in its Code of Regulations. As we will mention in next section, it is defined in some sector legislation.

3. Provisions in sector legislation

Categorization of the advocacy sector legislation provisions, importance and possible drawbacks

Advocacy provisions in sector legislation in Mexico can be categorized in three main types, that relate with the following aspects:

I. Concessions and permits

II. Imposition of regulation subject to an evaluation of *effective competition*

III. Imposition of specific obligations to agents with *substantial power*

Some sector provisions are very specific regarding competition advocacy, assigning precise roles for the FCC or mentioning the FLEC. There are also other provisions in several sector legislation that only establish in general terms the importance of competition in certain aspects of the legislation, but do not provide for a specific role of the FCC. Because of the fact that in Mexico the FCC is the only authority in charge of evaluating competition matters, in principle, all provisions that establish in general terms the importance of competition in certain respect could give a competition advocacy role to the FCC. But the list could be very long, and we will only consider as competition advocacy provisions the former type of specific provisions, as the most important advocacy activities of the FCC relate to them.

The different issues covered by the three types of advocacy provisions in sector legislation, the importance, possible drawbacks, and examples of each category are described next.

I. Concessions and permits

Before the emission of the Code of Regulations to the FLEC in 1998, the FCC had the faculty of issuing opinions on concessions by virtue of article 24 of the FLEC. But more formally, provisions in sector legislation gave the power to the FCC to issue opinions in this regard. The process was improved by the emission of the Code of Regulations to the FLEC.

The opinions of the FCC on participants in public biddings of concessions have the purpose of avoiding market concentration which impedes the development of competition. The analysis of the FCC for the emission of these opinions considers the characteristics of the assets subject to the public bidding, the structure of the market and the possibility to broaden the entry to more participants.

The provisions in sector legislation deal with the following issues:

(i) Granting of concessions, authorizations and permits taking into account criteria that foster competition

Some sector legislation establishes in general terms that the granting of concessions, authorizations and permits should take into account criteria that foster effective competition, or that should be adjusted to the provisions on matters of economic competition. Examples of this kind of provision are article 25 of the Aviation Law, article 36 of the Navigation Law, article 29 of the Law on Ports and article 10 of the Law on Roads, Bridges and Federal Road Transportation.

(ii) Authorization of participants in the public bidding of concessions

In some laws it is provided that among the requirements for participating in the public bidding of concessions it is necessary to obtain the authorization or favourable opinion of the FCC. Examples of this kind of provisions are article 9 and 15 of the Regulatory Law on the Railroad Service, articles 8 and 21 of the Regulations on Satellite Communication, articles 18 and 43 of the Natural Gas Regulations.

(iii) Requirement that the Conditions for the Public bidding of concessions include the favourable opinion of the FCC

More specific provisions establish that the Conditions for the Public Bidding of concessions should require a favourable opinion from the FCC. Examples of this kind of provision are articles 16 and 29 of the Federal Telecommunications Law, and article 4 of the Regulations on Satellite Communication.

(iv) Transfer of rights in concessions or permits

Some sector legislation provides that the parties must notify the FCC in case of a transfer of the rights of concessions or permits. Examples of this kind of provisions are article 18 of the Regulatory Law of the Railroad Service, article 35 of the Federal Telecommunications Law and article 49 of the Natural Gas Regulations.

It can be considered as a better approach that the concession provisions not only consist of a general requirement that concession granting should take into account criteria that foster competition, but that it also includes more specific stipulations. The provisions could establish the requirement that the participants of the public auctions need the favourable opinion of the FCC, and that the Public Auction Conditions include the favourable opinion of the FCC as a requirement for participating. Specific provisions relating to the notice to the competition authority of transfers of concessions or permits are also very relevant, they ensure the preventive action of the competition authority.

In the FCC a specific Directorate-General is in charge, among other duties, of evaluating participants in public biddings.

II. Imposition of regulation subject to an evaluation of *effective competition*

Several sector legislation requires explicitly the opinion of the FCC regarding whether *effective competition* conditions prevail or not, in the latter case for the establishment of regulation by the Ministry in charge. The concept of *effective competition* is different from the concept of *substantial power in the relevant market*, the latter defined in the FLEC.

In general terms, an agent is considered to have *substantial power in the relevant market* when he can unilaterally set the prices or restrict the supply without the competitors being able to counteract that power. Article 13 of the FLEC considers as criteria for determining *substantial power*, the market share of the firm, the barriers to entry, the existence and power of its competitors, their access to inputs.

The evaluation of the existence of *substantial power in the relevant market* is required by the FLEC as an element in the analysis of relative monopolistic practices and mergers. It is also required in some sector legislation for the establishment of specific obligations to only one of the concession holders of the market (*i.e.* asymmetric regulation).

On the other hand, the non-existence of effective competition in a market can be defined as a situation in which any market participant in particular is considered to have substantial power, but the conditions in the market are such that they only allow for the existence of few competitors. Competition can not develop under these conditions due to the existence of entry barriers and specific characteristics of the sector such as the importance of economies of scale and network economies.

Thus an important difference between the concept of *effective competition* and *substantial power* is that the former refers to conditions of a market in which *substantial power* is not imputed to any agent, and the latter concerns the establishment that one particular agent in the market holds that power.

In Mexican sector legislation, several provisions establish that when conditions of *effective competition* do not prevail, the Ministry in charge will be empowered to establish regulation on prices or rates. That regulation would then apply to all market players symmetrically. Other provisions state that the sector authority could impose specific obligations to a holder of a concession if he has *substantial power* in the relevant market (asymmetric regulation). Specific obligations are broader than price regulation, including service quality and information.

So in general terms the provisions establish that conditions of *effective competition* are assessed in order to determine the imposition of regulation, and the evaluation of whether an agent holds *substantial power* is required for the imposition of specific obligations by the sector authority.

In this subsection we will consider provisions concerning the imposition of regulation when *effective competition* conditions do not prevail, and in the next subsection, provisions regarding the imposition of specific obligations. The different types of provisions establishing the requirement for the opinion of the FCC in order to impose regulation are the following.

(i) Opinion on the existence of *effective competition* as a requirement for the establishment of regulation

Several sector legislation provide for the requirement of the opinion of the FCC on the non-existence of *effective competition* for the establishment of regulation by the Ministry in charge. Examples of this type of provisions are article 47 of the Regulatory Law of the Railroad Service, article 43 of the Aviation Law, article 68 of the Law on Airports, article 19 of the Law on Roads, Bridges and Federal Road Transportation, article 64 of the Regulations on Federal Road Transportation and Auxiliary Services, article 14 of the Regulatory Law of Article 27 of the Constitution in the Petroleum Sector, article 3 (VII) of the Law of the Energy Regulating Commission and articles 12 and 81 of the Natural Gas Regulations.

Effective competition is not defined as such in FLEC, the FCC undertakes the analysis of effective competition considering the criteria established in article 13 of the FLEC, regarding the determination of substantial power. Some sector legislation provides for a definition of *effective competition* applicable to them.

(ii) Definition of *effective competition*

The definition of the term *effective competition* is included in several legislations, for example in article 47 of the Regulatory Law of the Railroad Service and article 64 of the Regulations on Federal Road Transportation and Auxiliary Services.
These provisions define *effective competition* similarly, considering that effective competition exists in general terms when there are at least two providers of the same service or viable substitutes of it on the same route or along alternative routes.

(iii) User's request to concession or permit holders to adjust rates

In some sector legislation it is provided that users can request to concession or permit holders to adjust rates when they consider there is no *effective competition*. As part of the procedure for resolving requests for the establishment of regulation, an opinion of the FCC regarding conditions of *effective competition* is required. For example in articles 171, 172 and 173 of the Regulations of the Railroad Service. More specifically, the timing for the emission of the opinion of the FCC is established in Article 173 of the Regulations of the Railroad Service.

(iv) Possibility of the FCC of requesting rate bases

In some sector legislation the possibility is established for the FCC to request rate bases from the Ministry when it considers that there is no *effective competition*. For example, in article 174 of the Regulations of the Railroad Service.

(v) Methodology for setting rate bases

More specifically, some sector legislation requires that the Ministry request the opinion of the FCC on the methodology of setting rate bases. For example, article 175 of the Regulations of the Railroad service.

(vi) Possibility of the agents subject to regulation to request the opinion on the persistence of conditions that motivated its imposition

Some legislation provides for the possibility that holders of concessions and permits, or providers of services subject to regulation request the opinion of the FCC on the persistence of conditions of no *effective competition*, so that the regulation could be eliminated or modified. For example, article 43 of Aviation Law, article 70 of Law on Airports, article 62 of the Law on Ports, article 21 of the Law on Roads, Bridges and Federal Road Transportation, and article 81 of the Natural Gas Regulations.

(vii) Re-establishment of regulation if the FCC determines the existence of anti-competitive practices

Specifically regarding first hand sales of natural gas and liquefied petroleum gas, article 3 of the Law of the Energy Regulating Commission and article 12 of the Natural Gas Regulations provide for the possibility that the sector authority re-establishes regulation if the FCC determines the existence of anti-competitive practices.

We consider advisable that sector advocacy provisions include not only a statement that provides for the requirement of the competition authority opinion before the establishment of regulation, but also, when necessary, that the legislation includes more specific provisions. These specific provisions could address users' requests to concession or permit holders to adjust rates, the possibility that the competition authority requests rate bases, opinion of the competition authority in the preparation of the methodology for setting rate bases, and the possibility that agents subject to regulation request the opinion of the competition authority on the persistence of conditions that motivated regulation.

III. Imposition of specific obligations to agents with *substantial power*

As mentioned before, some sector provisions require the determination of the FCC regarding whether an agent has *substantial power in the relevant market*, in order to impose specific obligations to this agent in particular (asymmetric regulation). Specific obligations are broader than price regulation, including service quality and information. The establishment of specific obligations to concession holders of essential inputs could be very important for preserving competition in vertically related components of a sector.

The different types of provisions regarding specific obligations deal with similar issues as for regulation, they are the following:

(i) Specific obligations that could be imposed if the existence of *substantial power* is determined.

Some provisions stipulate that specific obligations could be imposed when operators or concession holders have *substantial market powe*r in the opinion of the FCC. For example, in article 63 of the Federal Telecommunication Law, article 23 of the Regulations on Satellite Communication, article 2 of the Decree by which the Federal Commission on Telecommunications is created, article 15 of the Rules of Procedure of the Federal commission on Telecommunications, and thirty first rule of the Rules for Local Service.
Specifically, the thirty first rule of the Rules for Local Service provides that the FCC should listen to the licensee for its determination of *substantial power*.

(ii) Possibility that the FCC requests for the establishment of specific obligations.

For example, this is established in article 23 of the Regulations on Satellite Communication.

(iii) Possibility of the agent subject to specific obligations to request the opinion on the persistence of circumstances that motivated their imposition.

Some legislation provides for the possibility that the concession holder or licensee could request the FCC to issue an opinion on the persistence of circumstances for which it was considered to have *substantial power in the relevant market*, so as to annul the specific obligations imposed by the regulator. For example, in article 23 of the Regulations on Satellite Communication and thirty first rule of the Rules for Local Service.

As in the case of provisions on regulation precise provisions are advisable regarding specific obligations, for example for the possibility of the competition authority to request for the establishment of specific obligations, and the possibility of the agent to request the competition authority opinion on the persistence of circumstances that motivated the imposition of specific obligations.

4. Other advocacy formal provisions

Besides the advocacy activities of the FCC provided in competition and sector legislation, the FCC also undertakes advocacy roles by virtue of other types of formal provisions, concerning public policies that could have an adverse impact on competition.

For example, by virtue of Foreign Trade Law and its Code of Regulations, the FCC participates in the Commission on Foreign Trade. It also participates in other interministerial commissions, regarding standardization, privatization, regulatory reform, etc. Additionally, several Bidding Conditions, both concerning public and private assets, require for the favorable opinion of the FCC on participants, without this requirement being established in sector or other legislation.

The advocacy provisions establishing these advocacy activities can be categorized in the following types:

I. Provisions in foreign trade legislation

II. Provisions concerning standardization

III. Provisions concerning privatization

IV. Participation in other interministerial commissions

V. Provisions in Bidding Conditions

VI. Collaboration agreements with sector authorities

Like provisions in sector legislation, some provisions cited in this section only refer in general terms to the importance of competition in certain respect. We will only focus on provisions assigning a specific role to the FCC.

I. Provisions in foreign trade legislation

Most measures restricting foreign trade have anticompetitive effects. This is the case of transfers of certificates of quota beneficiaries, and the imposition of antidumping and safeguards, among others. For this reason it is relevant to include an evaluation of competition aspects in the establishment of such measures.

The FCC issues its opinion on foreign trade measures that could affect competition in the Commission on Foreign Trade (CFT). This Commission is established by the Foreign Trade Law as a body of compulsory consultation before specific trade-restrictive measures, such as antidumping quota, tariffs, etc. are put into place. It is a collegiate body in which six different Ministries plus the FCC and the Bank of Mexico are represented. The Commission has no veto power over such measures but can issue opinions about them, which in principle are publicly available. Thus, the Commission enhances transparency and the accountability of the Ministry of Economy in giving shape to its foreign trade policy. The role of the Commission is limited to measures of implementation of foreign-trade policy. Amendments of *e.g.* the Foreign-Trade Law or proposals for Free Trade Agreements are not submitted to the Commission. There is an explicit list of measures that must be submitted to the Commission and at what stage. The Commission on Foreign Trade is probably the most institutionalized model of competition advocacy provisions in Mexico.

In general terms, the participation of the FCC in the Commission on Foreign Trade faces difficulties due to the objectives envisaged by the proponents of foreign trade measures, that are usually different from the competition objectives promoted by the FCC.

II. Provisions concerning standardization

Regarding standardization, it could be important to include a provision related to cases in which there is substantial power of accreditation agencies. Official standards can have pro-competitive effects, but when accreditation agencies have substantial market power, they can incur in discrimination among companies that require accrediting, thus lessening competition in the market.

The FCC undertakes its advocacy role regarding standardization by its participation in the National Standards Commission (NSC). This Commission is responsible for elaborating and promoting observance of Mexican Official Norms (Standards). Technical staff from specialized agencies conform this Commission, which is arranged in committees according to the issues analyzed. The role of the FCC in this body is to strengthen aspects of standardization that favour competition, and to avoid that Mexican standards act as artificial barriers for enterprises that could enter the market and displace established enterprises.

III. Provisions concerning privatization

Regarding the Interministerial Commission on Divestiture (ICD), it is this body in which the FCC is informed on proposals of privatization of public enterprises. Once the FCC is made part of a reform process it participates at the formulation stage when laws and regulations are discussed, then when the enterprises are privatized and finally when public properties tendering takes place.

With respect to competition issues raised by privatization processes, it is often important whether State assets are sold as a single package or be split up in sub packages so as to allow competition between them after privatization or to impose a vertical separation from the outset. Furthermore the FCC has advocated in the ICD for the reporting to the FCC of participants in bidding processes of public enterprises and assets. Since 1993, the Commission has worked closely with the ICD and those responsible of the divestiture process to ensure that the process concludes promptly and in accordance with the provisions on concentrations of the FLEC.

IV. Participation in other interministerial commissions

Other commissions in which the FCC participates formally are the Public Expenditure and Financing Inter-ministerial Commission (CIGF), and the Federal Regulatory Reform Commission (COFEMER).

The participation of the FCC in the Inter-ministerial Public Expenditure and Financing Commission (CIGF) in general terms concerns the issuing of opinions regarding government policies and decisions affecting competition.

The functions of COFEMER include assessing the federal regulatory framework to make a diagnosis of its application. In the COFEMER, the FCC promotes enhanced market functioning and advocates for adequate legal and administrative reforms that eliminate unnecessary discretion regarding the decisions of authorities and provide legal certainty for economic agents in order to increase market competitiveness. The FCC also has the function of preventing any Mexican official regulation from having the objective or effect of establishing artificial entry barriers or unduly displacing actual or potential competitors.

V. Provisions in Bidding Conditions

Not provided by any law, but established in Bidding Conditions, the FCC undertakes the advocacy role of evaluating participants in order to issue a favorable opinion in the auction of public or private assets. The analysis of the FCC in this respect is very similar to that of mergers.

Here the important advocacy activity is stressing the importance of competition, so that the favorable opinion is required for participating in the auctions.

VI. Collaboration agreements with sector authorities

The FCC has several collaboration agreements with sector and other authorities. These agreements support the advocacy role of the competition authority, because they can establish mechanisms for obtaining information, and clarify the roles of the competition and the sector authorities, in order to ensure that there are no overlaps.

5. Informal Advocacy Provisions

The FCC undertakes several important advocacy activities by means of provisions of a more informal nature. This is the case for example, of the FCC's participation regarding proposals for the reform of laws and regulations. Other examples are collaboration agreements of an informal character between the FCC and several sector regulators.

For the purpose of designing new laws or amending existing ones, or for the elaboration of regulatory reform proposals, ad-hoc commissions may be installed with the participation of the Congress, representatives of involved private parties and the public authorities in charge. The FCC has participated in several such commissions. However, the formation of such commissions is not mandated by any code nor are there clear rules as to the procedures within such commissions. They are rather of a consultative nature and the final decision making is either in the hands of Congress (laws) or in those of public authorities (regulations). Also the degree of public access to the findings of such commissions is hardly regulated.

The specialized opinion of the FCC about proposals to reform national laws can be requested by the Federal Executive or by the Legislative power. There is no rule that establishes in which moment of a reform procedure the opinion of the FCC has to be requested. Thus far, the criterion has been adopted by the Federal Government or the Legislative of inviting the FCC to issue its specialized judgment since the early stages of a reform proposal.

In addition, the FCC is in contact with other government agencies and participates in several forums in order to verify the observance of the provisions of the FLEC and to prevent its infringement in time, as well as to enhance coordination with other areas of the public administration in order to enforce competition policy effectively. The goal of this participation is to promote a competition culture among policy-makers, as well as to assess trends on several sector policies, to acquire technical knowledge, and to promote competition policy on a regular basis. This participation is not in all cases formalized.

6. Conclusions

All types of advocacy provisions identified are very important for the advocacy role of the FCC. Of utmost importance is article 24 of the FLEC giving the faculty to the FCC of issuing opinions on competition to other government agencies and the federal Executive. The provisions of the Code of Regulation to the FLEC are also important because they provide clear procedures for some relevant advocacy activities of the FCC. Sector legislation provisions are also very important, because they ensure the compulsory consultation to the FCC regarding matters that could have a serious adverse effect on competition, like concession granting, or the imposition of regulation or of specific obligations. We have argued not only for general provisions in these matters, but also for more specific provisions.

The participation of the FCC in interministerial commissions is also discussed. It is in these bodies in which the FCC undertakes its advocacy activities concerning public policies that could have important adverse effects on competition, like foreign trade, standardization, privatization, etc.

Finally, an important advocacy effort is made in commissions for the drafting and amendment of laws and regulations, this activity is currently not formally institutionalized and until now it has developed well, but in the near future it could be necessary to establish more formal procedures for the consultation of the FCC in these matters.

Challenges of advocacy activities in Mexico

The inclusion of several competition advocacy provisions in sector legislation in Mexico proves that over time there has been a growing awareness of the benefits of competition among the federal government. Advocacy efforts of the FCC have been crucial for ensuring competition in privatization processes and in regulated sectors in Mexico.

Nevertheless there are some challenges. The objectives of other government agencies sometimes differ from the objective of the FCC of enhancing competition. In this circumstances, the FCC must make an effort to make clear the costs and benefits of policy measures that affect competition, so that decision makers take them in to account.

Provisions that ensure more transparency of the opinions of the FCC could also be necessary regarding advocacy work done by rather informal mechanisms. It could be established that if policy-makers decide not to take in to account the opinion of the FCC, they must publicly state their reasons.

Another challenge is enhancing competition culture at the local levels of government, in which unlike at the federal level, there is not a broad use of the market mechanism to deliver public services. Furthermore, on many occasions local governments impose measures that constitute interstate barriers to commerce. This indicates that in some cases state or local authorities do not accept or understand the benefits brought by competitive markets. The lack of faculty to sanction interstate barriers to commerce, enhances the importance of arguing for the benefits of competition in these markets.