



Asia-Pacific Economic Cooperation

2004/SOMII/CPDG/SEM/008

Federal Competition Commission Mexico

Purpose: Information
Submitted by: Mexico



**Seminar on Best Practices in the Enforcement
of Competition Policy
Pucón, Chile
26 May 2004**



Federal Competition Commission Mexico

May 26, 2004



Mission

Protect the process of competition and free market access through the prevention and elimination of monopolistic practices and other restrictions for efficient markets; to enhance social welfare.

Competition policy



Promote competition to:

- Facilitate the adequate functioning of markets as a source of competitiveness and social welfare.
- Assure free and nondiscriminatory access to markets and foster entrepreneurial initiative.

Based on:

- Institutions and the enforcement of the Law.
- Activities directed to make the general public aware of the benefits of competition.

Competition policy in Mexico



The adoption of a modern competition regime was part of an integral reform aimed at strengthening Mexico's competitiveness in the new economic era of:

- Market openness
- Privatization
- Liberalization that allows private participation in activities previously reserved to the State.
- Regulatory policies based on efficiency principles.

Competition policy in Mexico



- Competition policy in Mexico began in June 1993, when the Federal Law of Economic Competition (FLEC) entered into force.
- The FLEC created the Federal Competition Commission (FCC) as the independent institution responsible for its enforcement.
- The powers of the FCC have been strengthened by other legislations and sector regulations.

Activities of the FCC



The FCC protects and promotes the process of competition and free market access through the following instruments:

- Merger control.
- Prevention, prosecution and sanction of monopolistic practices.
- Evaluation of agents interested in privatizations and allocation of concessions, permits and licenses.
- Declarations of substantial market power and existing competition conditions.
- Competition advocacy.

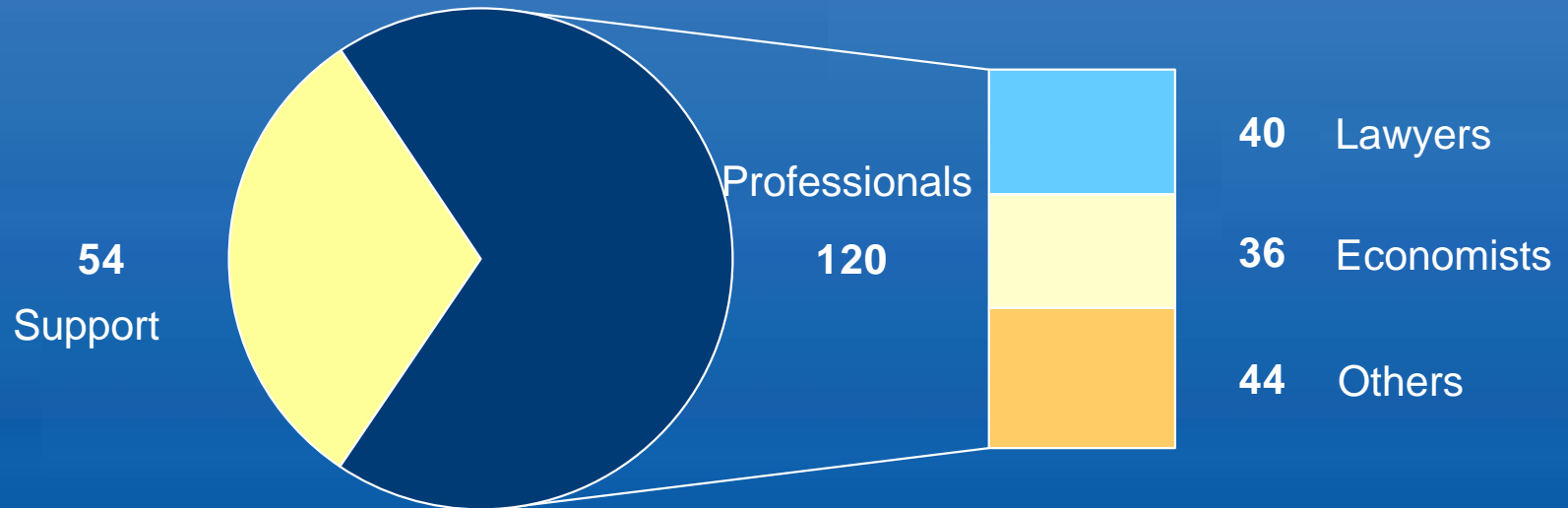


Personnel



Employees as of December, 2003

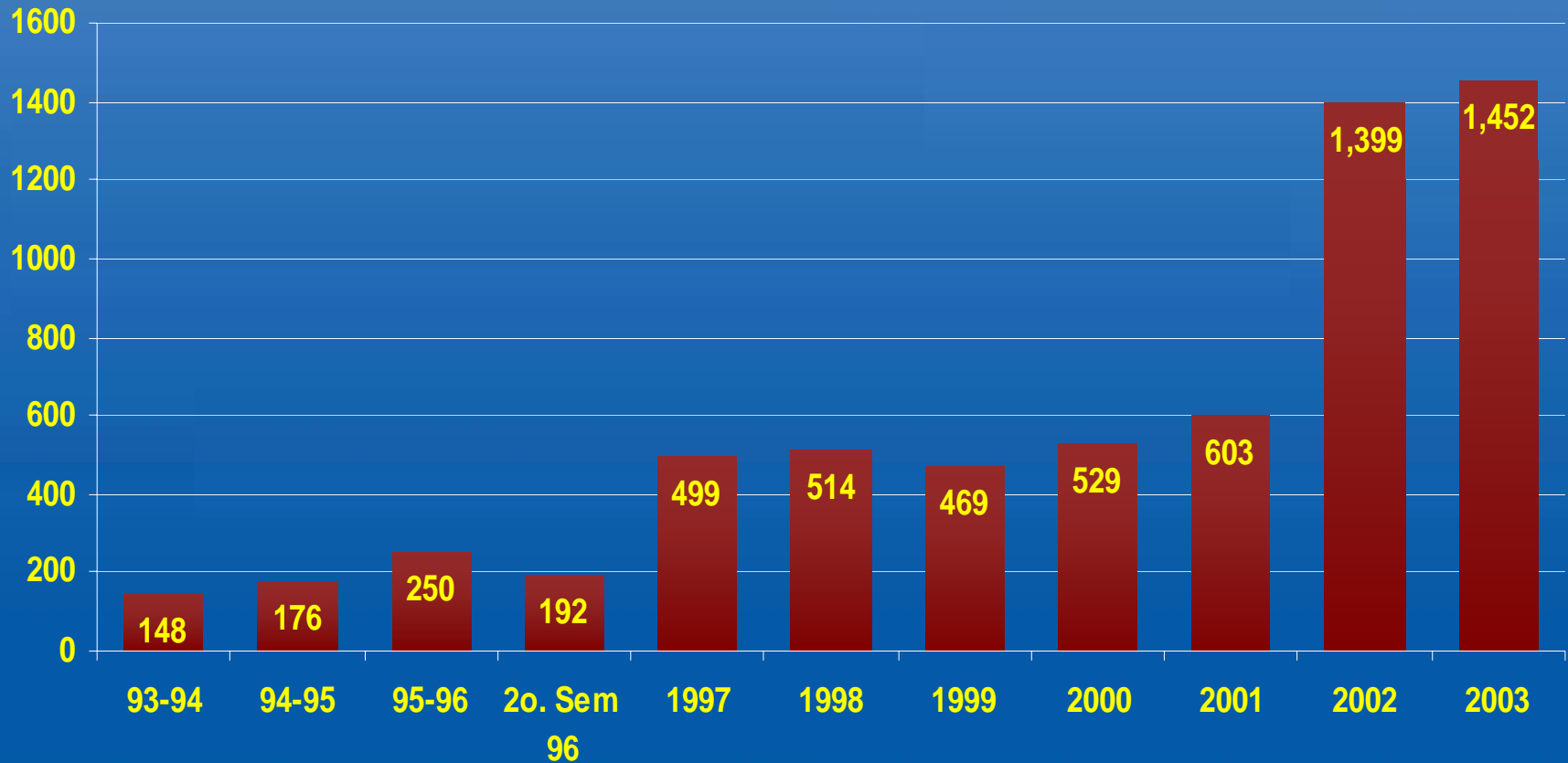
Total: 174



Enforcement



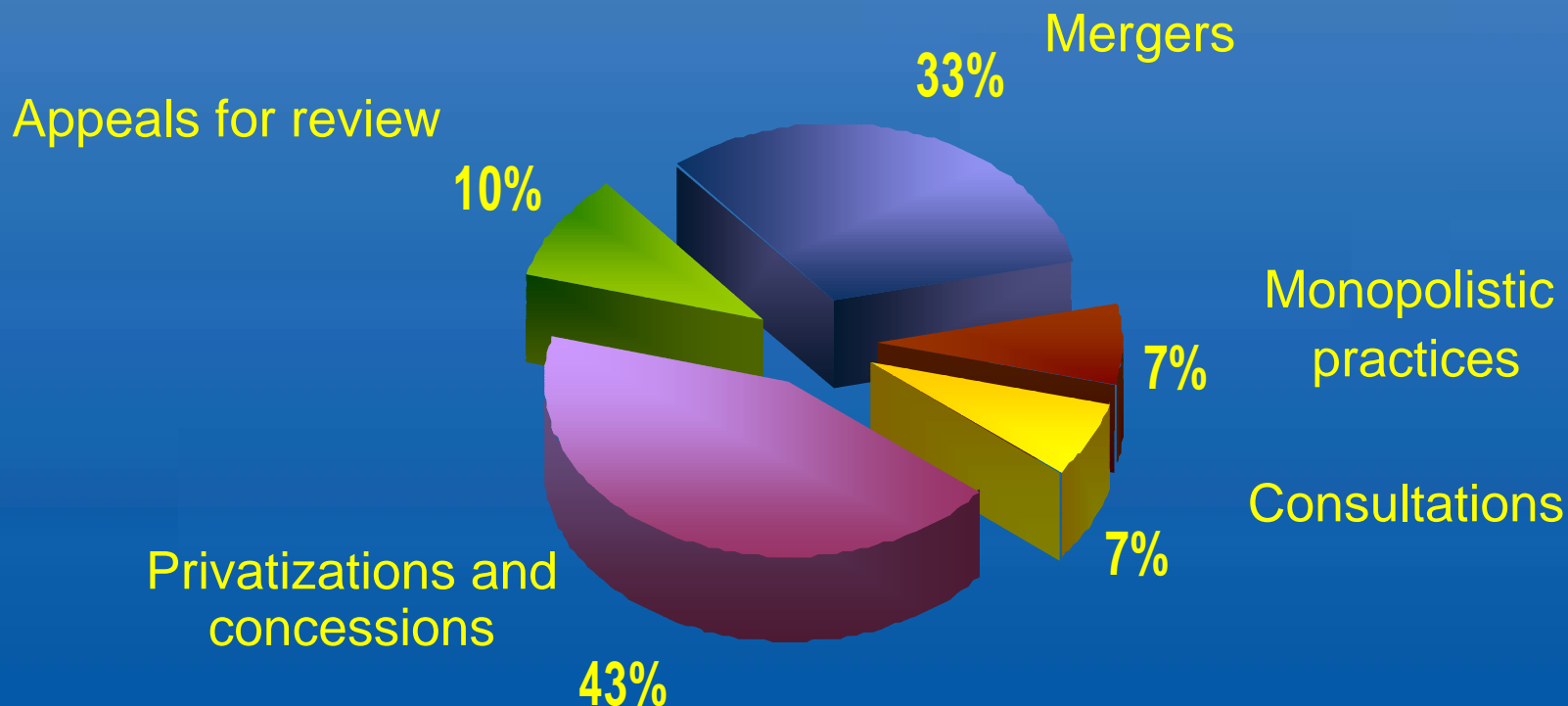
Cases resolved 1993-2003



Enforcement



Distribution of cases resolved 1993-2003



Competition advocacy



- Promoting competition principles in the design and implementation of public policies, and in the way of doing business in Mexico.
- Reviewing and issuing opinions on legislative initiatives.
- Advocating for sector regulations to promote competition and increase private investment in quality infrastructure and services.



- Web page.
- Publication of resolutions:
 - Summaries in Internet (weekly);
 - Summaries in the *Federal Official Gazette* (monthly);
and
 - Full resolutions in the *Economic Competition Gazette* (quarterly).
- *Annual Report on Economic Competition*, which summarizes the activities of key sectors.
- Seminars, workshops and conferences, as well as press releases and publications of related articles.

System of Quality Control (SQC)

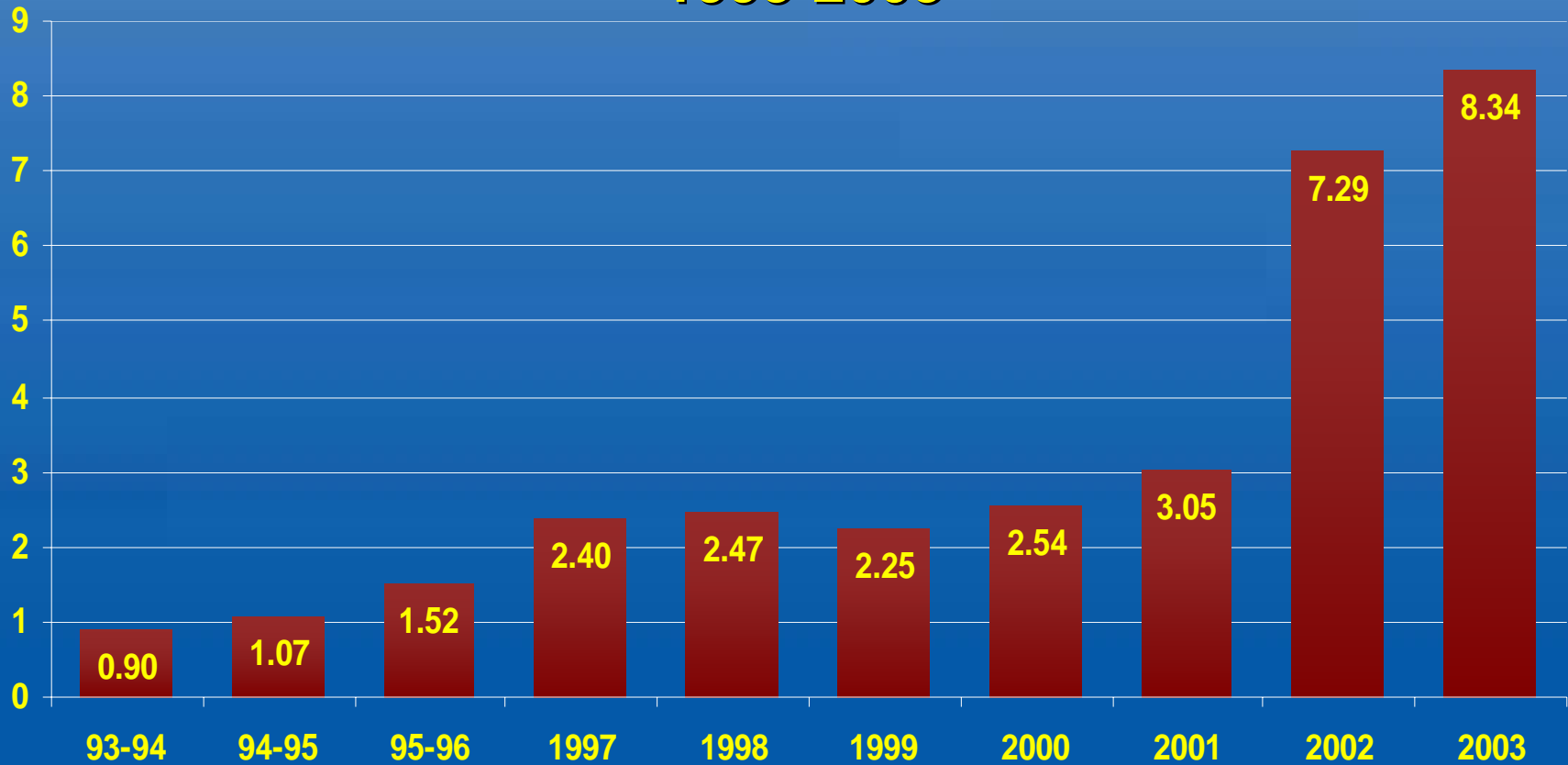


- The FCC started its SQC in 1996; in 1998 it adopted the ISO 9002:1994 norm which was certified in 2000; in 2003 it received certification under the ISO 9001:2000 norm.
- The SQC has allowed standardization and transparency of procedures, a user satisfaction approach and the accomplishment of FCC's goals.
- Additionally, it assures that its personnel has the appropriate qualifications to perform their responsibilities, increase their productivity and attain the highest standards of public services.

Productivity



Cases per employee 1993-2003





The report concludes that “the FCC’s accomplishments are remarkable given the difficult environment in which it operates” and notes the following strengths:

- Analytical quality of the Law and its regulations;
- Respected and credible institutional scheme;
- Active participation in the elaboration of public policies that are favorable to competition;
- Willingness to engage powerful opponents;
- Domestic and international credibility and respectability;
- Best principles of management and highest standards of public service; and
- Effective use of limited resources to the highest priorities.

Constitutional Validation



- The FCC promotes the scrutiny and validation of its resolution by the judicial branch.
- It has obtained favorable resolutions from the Supreme Court of Justice (SCJ), which determined the constitutionality of 22 articles of the competition legislation
- The SCJ has resolved unfavorable only in 4 articles.



This constitutional validation represents an incommensurable step forward.

Some SCJ resolutions



The following are among the most relevant resolutions:

- When issuing the FLEC, Congress did not interfere with the powers of the States.
- The FCC has constitutional powers to investigate and prosecute monopolies and monopolistic practices.
- Procedures before the FCC assure agents an adequate defense.
- Terms and conditions of the FLEC must be interpreted within their economic context, and do not put at risk the guarantee of legal certainty (the Law is not a dictionary).
- The nature of the procedures included in the FLEC is not civil but administrative, since public interest predominates and requires efficiency and certainty.

Internationalization of competition policy



- Globalization has internationalized competition policy by integrating markets and increasing the number of merger and anticompetitive practices with international dimensions.
- The benefits of competition have led to a generalized implementation of competition regimes: more than 90 countries have competition legislations and more than half of these have been enacted since 1990.
- Therefore, the effectiveness of competition policy requires international convergence and cooperation.
- Competition policy is very relevant to the discussions and/or negotiations of the main international economic organizations.

The FCC in the international arena



- The FCC maintains permanent contact with its international counterparts.
- Mexico has subscribed cooperation agreements regarding cooperation in the application of competition legislation with the USA, Canada, European Union, Korea and Russia (and it is in the process of signing one with Chile).
- There is a competition provision in FTAs with: Chile, North America, Uruguay, European Union, Colombia and Venezuela, Israel and EFTA.
- The FCC actively participates in discussions and negotiations of the most important international economic organizations.

Key challenges



1. Limited resources to address an increasing workload (in volume and complexity).
2. Excessive litigation.
3. Lack of an integral competition policy across all economic sectors.
4. Lack of a competition culture.
5. Legal limitations.

Budget



Million dollars



Personnel



Number of employees



Amparos*



Between 1993 and 2003, 706 *amparo* cases were filed:

- 34% are pending resolutions and have been open, on average, for 1.9 years.
- Cases completed took, on average, 401 days to be resolved.
- There have been 1.2 *amparos* for each appeal for review.
- 49% are intra procedural.



Excessive litigation delays the application of the Law, leaves public interest unprotected, while affecting third parties.

* The *amparo* is a proceeding established in Articles 103 and 107 of the Constitution to provide all persons with protection against unconstitutional acts by the government.

Key challenges



1. To continue the institution's development.
2. To appoint three Commissioners, including the President of the FCC, during this federal administration.
3. To define the role of competition policy within the whole set of public policies.
4. To consolidate the independence of the FCC, as well as its powers to prevent and eliminate anticompetitive practices.
5. To expedite enforcement of the FLEC.

Proposed reforms to the FLEC



To consolidate these achievements it is fundamental to reform the FLEC to:

- Reinforce FCC independence
- Apply competition principles to all economic and sector policies
- Enhance the prevention and elimination of monopolistic practices.
- Expedite Law enforcement.

Priorities



- Effective and timely application of the FLEC.
- Efficient use of limited resources according to priorities.
- Further institutional development and higher public service standards.
- Broad promotion of competition principles.
- Active participation in favor of international cooperation and convergence.

Final remarks



- Competition policy in Mexico was conceived as a fundamental instrument to promote the competitiveness of the economy.
- The FCC has achieved remarkable achievements in the application of the FLEC and the promotion of competition principles.
- However, to consolidate these achievements it is necessary to reform the FLEC in order to reinforce the independence of the FCC, extend the competition principles to all economic sectors and expedite its enforcement.