



**Asia-Pacific  
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Agenda Item: 8

## **Developments of Competition Policy in Mexico**

Purpose: Information  
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COMISIÓN FEDERAL DE COMPETENCIA  
MÉXICO

## Developments of Competition Policy in Mexico

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### Competition Policy in Mexico

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- Although the 1917 Constitution explicitly prohibits monopolies and monopolistic practices, competition policy was not part of the policy landscape until the early 90s.
- Until then, the Mexican economy was characterized by strong protectionism and heavy government intervention.
- As a result, most sectors of the economy were highly concentrated and presented important barriers to entry.

## The adoption of competition policy

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- In the early 1990's Mexico embarked into a radical program of economic reform which included:

The privatization of some state owned companies.

The opening of the economy.

The deregulation of key sectors.

- In 1993, within the framework of the modernization effort, Congress passed the Federal Law of Economic Competition and the Federal Competition Commission was created.

The passage of this law was key for the progress of the NAFTA negotiations.

## Features of the competition law

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- The law objective is to prevent restraints to the efficient functioning of markets.
- To achieve this, it provides the enforcement agency independence and several key powers:

To investigate and sanction monopolistic practices.

To control mergers.

To qualify prospective participants interested in obtaining concessions or licenses issued by sector regulators.

To engage in competition advocacy.

- **The law reflected a well-concieved synthesis of economic principles.**

## The enforcement of the FLEC

- In 2004 the OECD concluded that the FCC had matured into a credible organization, viewed with respect both domestically and internationally.
- However, it pointed out that in order to increase the impact and effectiveness of competition policy some adjustments to the FECL were needed.
  - a) the law presented some gaps that had been weakening the position of the agency before the courts.
  - b) CFC's powers were still insufficient.
  - c) More clarity was needed on the role of competition criteria in regulated sectors.

## The 2006 reform to the FLEC

- In April 2006 Congress unanimously voted several reforms to the FLEC.
- Although less ambitious than those demanded by the FCC, the reforms were in line with its proposals.

Clarified procedures in investigations and mergers.

Streamlined the notification of mergers.

Specified additional monopolistic practices.

Introduced a leniency program.

Introduced on-site inspections.

Increased fines for violations.

Authorised divestiture of assets as a measure of last resort.

Increased the importance of competition criteria in policy design.

## 2010: More changes?

- The 2006 reforms have contributed to improve the effectiveness of the FCC's work.
- Today there is increasing discussion on the need to further strengthen competition policy.
- Frequent elements in the discussion are:

<b>Increase fines</b>	Currently, fines foreseen in the LFCE are based on minimum wages. The international standard considers fines that can reach up to 10% of the annual turnover of the responsible agent.
<b>Enforce criminal remedies</b>	In Mexico, article 253 of the current Penal Code foresees criminal sanctions for absolute monopolistic practices. Nevertheless, the current language of the criminal sanctions article is ambiguous and inconsistent with the LFCE. This limits the ability to enforce it.

<b>Improve legal rulings involving structural remedies</b>	The LFCE considers structural remedies only in cases involving illegal mergers or repeat offenders in cases of dominance abuse. There is a proposal to eliminate recidivism as requisite for imposing structural remedies.
<b>Allow cautionary measures</b>	Empower the CFC to order the ceasing of acts or conducts that may gravely harm the process of competition and free market access, during the course of an investigation.
<b>Expedite on-site searches</b>	Align the CFC's powers with International practice to allow the agency to undertake on-site searches.
<b>Settlement of an investigation procedure</b>	Consider the closing of an Investigation procedure by allowing economic agents to offer conditions that favor the process of competition and free market access.

<b>Oral hearings</b>	Include the possibility of offering oral hearings at the request of the party under investigation prior to the issuing of a resolution.
<b>Reducing the regulatory burden associated with merger notifications</b>	Exempt from the obligation to notify certain type of mergers that may meet notification thresholds but in the FCC's experience they rarely raise competitive concerns.



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**Thank you for your attention!**

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