

Three for one: austerity initiative to blend regulatory and antitrust institutions

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Reform initiative Comment

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On 10 June 2020 Senator Ricardo Monreal of the National Regeneration Party (MORENA) **(1)** presented a reform initiative to amend Articles 27 and 28 of the Constitution. Through this reform, Monreal proposed to join (and extinguish) three state organs which he believes share certain powers and competencies – namely, the Federal Economic Competition Commission (COFECE), the Federal Telecommunications Institute (IFT) and the Energy Regulatory Commission (CRE). The resulting organ would be the National Institute of Markets and Competition for Welfare (INMECOB).

According to the initiative, INMECOB would:

- gather COFECE's, IFT's and CRE's responsibilities; **(2)** and
- have a five-member council, as opposed to the current total of 21 commissioners (ie, seven in each organ). This council will be divided in two chambers: one for competition matters and the other exclusively for network regulation (telecoms and energy).

At present, the candidates to be part of COFECE's and IFT's boards of commissioners are selected and nominated by the Federal Executive and ratified by the Senate from the highest approbatory grades in the technical exam applied by an evaluation committee. **(3)** Instead, the initiative proposes that INMECOB's council members will be appointed by the Federal Executive on a Senate motion. To be a part of this council, the candidates would no longer have to take the exam that is currently necessary to credit their technical knowledge and expertise. According to Monreal, the reason for eliminating the exam is to "avoid inbred formation, incorporate external visions and avoid a bias towards exclusive technocratic training".

The initiative is based on the Spanish model, where the National Commission for Markets and Competition (CNMC) gathers the responsibilities of six state organs relating to competition, energy, telecoms, postal service, audiovisual media, railways and airports.

Likewise, the initiative indicates that its motivation is to reduce costs, pursuant to the austerity policy of the president's self-appointed Fourth Transformation. Allegedly, the initiative's proposed modifications would save approximately Ps500 million, equivalent to a reduction of 21% of the three state organs' current expenditure. According to the initiative, austerity is more important than ever, given the current condition of the national economy as a result of the global health emergency caused by COVID-19.

The initiative was immediately questioned and criticised by industry members and experts indicating that a reform under these terms would jeopardise the state organs' independence from and autonomy in relation to the executive branch and the economic agents they oversee.

In this context, on 17 June 2020 Monreal asked the Senate to withdraw the initiative. He indicated that the withdrawal's sole purpose would be to open up a dialogue with consulting experts on these matters in order to strengthen the initiative for a subsequent occasion. Moreover, in his morning conferences President López Obrador has repeatedly stated his intention to reform or even extinguish several autonomous state organs which he considers costly (eg, COFECE, the IFT and the CRE).

Comment

Mexican competition law was established in 1993 as a consequence of the North American Free Trade Agreement. At that time, the Federal Competition Commission (COFECO), part of the Ministry

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of Economy, was the only organ in charge of competition policy. In 2013 COFECE and the IFT were established and granted more responsibility to carry out their mandate (eg, constitutional autonomy). Ever since, COFECE and the IFT have come a long way in promoting, protecting and strengthening competition policy. For example, COFECE and the IFT have helped to move Mexican competition policy from 117th to 64th in the World Economic Forum's ranking. COFECE currently has a 3.5 star ranking on performance and effectiveness in the *Global Competition Review* and is considered a reference point in Latin America. In addition, since the IFT's creation, telecoms services have been more accessible and reduced their costs. (4)

A reform that affects the standing of Mexican competition policy would be regressive and have a serious and counterproductive effect on free competition. Such a reform would carry high administrative costs not only for the implementation and transition to a new regime, but also from the competition authorities' hampered ability to exercise power.

While the aforementioned governmental institutions may have similar responsibilities, their aims and technical characteristics are very different and require highly specialised public officials. To amalgamate them and reduce their workforce would diminish their effectiveness and efficiency, particularly considering that the regulatory sectors they would oversee are strategically important and highly dynamic. Moreover, the criteria to become a council member would diminish the role's expertise and deny members the ability to effectively carry out their constitutional mandate. On the contrary, these organs require a robust, experienced and long-term structure.

While on paper INMECOB would be constitutionally autonomous, a reform like this could pose a risk to its independence in practice given that:

- the Federal Executive would be in charge of appointing the members of its council without any constraints, which could allow the possibility of appointing them based on loyalty considerations instead of on whether they are fit for office. (5)
- To create a single organ with powers that were originally held by three different organs and with relatively few council members could make it vulnerable and an easy target for economic groups that wish to exert their control thereof.

Moreover, the initiative is motivated by a misunderstood austerity policy which views COFECE's and the IFT's budget as a cost to the state as opposed to an investment. Indeed, the benefits that these institutions have brought to Mexico are not considered and weighed against their budget (eg, savings generated to the state by penalising and eliminating anti-competitive practices, as well as the fines that they have collected). For instance, in July 2020 COFECE published a report on the economic benefits in favour of consumers that derived from the cases it resolved in 2019 (including mergers and investigations of monopolistic practices). (6) This document quantifies the total benefit in Ps\$3,940,391,660, which is equivalent to 6.79% of its yearly budget. (7) Therefore, the preventive function of both government institutions has generated savings by safeguarding consumers and the market from potentially irreparable damages.

Although the initiative has been put on hold, it is of utmost importance to avoid such modifications. While there is still room for improvement and work to be done, the enforcement of Mexican competition policy has brought several benefits to economic agents, consumers and the market in general. In this sense, if there were to be any modifications to these government institutions, they should be in terms of building on their current status and responsibilities (which have provided positive results and proven to be effective) as opposed to carrying out potentially costly, ineffective and harmful experiments.

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Endnotes

(1) Partido Regeneración Nacional.

(2) In the case of CRE's responsibilities, those that would pass to INMECOB would be limited to the those regarding the electric industry. Its current responsibilities regarding hydrocarbons would be passed on to the National Commission of Hydrocarbons. The initiative indicates that this would be because it is considered vitally important for the Federal Executive to continue to exercise its technical and economic regulatory powers in the hydrocarbons sector.

(3) The committee is made up of the heads of the Bank of Mexico, the National Institute for the Evaluation of Education and the National Institute of Statistics and Geography.

(4) For instance, mobile prices fell by 43% due to the elimination of domestic long-distance and

lower interconnection rates. Moreover, Mexico is among 10 countries in Latin America with the lowest fixed and mobile internet prices, according to a 2018 International Telecommunication Union report.

(5) This is already the case for the CRE, where in 2019 President López Obrador appointed six out of seven members of the board of commissioners. They were criticised for their lack of technical knowledge and expertise, as well as independence from the executive branch. There is no examination process to appoint a CRE commissioner: the executive branch proposes three candidates, from which the Senate selects one; where the Senate selects no candidates, the executive branch decides which of its own candidates will be appointed.

(6) Available [here](#).

(7) COFECE indicates that these calculations are a conservative approximation based on the information available. The benefit of COFECE's interventions is understood as the harm to competition conditions that was prevented due to the suspension of monopolistic practices or the non-authorisation of mergers with anti-competitive effects. It is the sum of the difference between consumers' surplus and the net welfare loss that was prevented due to COFECE's intervention.

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