



CPI TALKS



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Thank you, Commissioner Estavillo, for granting this interview to CPI.

Since 2013, the Federal Telecommunications Institute (“IFT”) is not only a telecoms regulator but also an administrative entity in charge of applying competition policies in the telecoms and broadcasting sectors. Could you tell us more about this new role?

That’s true. With the 2013 constitutional reform, the IFT was in fact created as an autonomous body - that is, an agency independent from the executive. In this new institutional design all competition powers were granted to the IFT for telecommunications and broadcasting. That means that we now have two competition agencies in Mexico: We have the same powers and we apply the same laws, but we’re responsible for different sectors. The Competition Commission reviews all sectors except telecommunications and broadcasting.

This has been a very interesting change, considering that the realities of our markets, how they have behaved in the past and experiences we’ve had with our past agencies - both regulatory and competition agencies - and that may explain why Mexico has taken this course.

As for the institutional design, the IFT has very broad responsibilities in regulation as well - broader than the old regulatory agency used to have. We are now responsible for telecommunications and broadcasting, so we have to impose asymmetrical regulations for “preponderant” and “dominant” agents. We have to impose limits to concentration of the broadcast spectrum; limit also the cross-ownership of this spectrum; we have to manage the spectrum and grant licenses; and we have to foster plurality, diversity and competition.

This is interesting because, as a regulatory agency, one of our main objectives is to foster competition... but we are also the competition agency. So we authorize the mergers, we investigate and sanction cases of abuse of dominance, cartels... We’re in charge of advocacy



too in these sectors. And one interesting change to the competition law that applies both for the competition commission and for us, is that we also have to identify “essential facilities” in cases where we define the conditions for access. We also have to identify barriers to competition in the market, and either order their removal or simply “recommend” - it depends on the nature and origin of these barriers.

I would also say that we have some interesting advantages by having these two responsibilities in the same agency. The first is that we have specialized knowledge of our sector, and this helps in making better competition decisions. This is a very complex sector, very technical, so this is helpful in decision-making. We have directly available information because of our knowledge and because of our administrative power over the sector, and this also helps us to base our decisions on. We bring a competition perspective to all regulatory decisions, and this is also an interesting change.

And we also have the capacity to create, adjust and remove specific regulations, which a traditional competition authority doesn't have. A traditional agency may recommend making changes to the regulation, but in our case, if we detect that some regulation is causing competition problems then we may act directly on those rules. And we also have a direct capacity to remove some other regulatory barriers to entry, for example by granting licenses for the broadcast spectrum, which is very important in this case.

One of the most controversial concepts coined during the telecoms reforms is "preponderancia" or in other words, the application of asymmetric regulation for the incumbents in Mexico. How is this relevant for Mexico at this time?

I would first like to talk about our recent history, which explains this new concept of “preponderance.”

We had in the past gone through at least 15 years of efforts by the former regulators - both the Commission for Telecommunications and the Competition Commission under the ancient institutional design - where they made several attempts to regulate the incumbent agent in telecommunications using the old laws and powers, and all these attempts did not arrive at success.

So, we have to look at this “solution” - this new constitutional solution - in the view of this history of trying to draft some kind of asymmetric regulation that couldn't come to life.

In a practical sense, we can say that this is a practical solution to an important problem that we've had. But I can also say that this practical solution is not so different from the first decisions to impose ex-ante regulations in other countries - and particularly in Europe - where the decision was made to impose regulations on incumbents who had more than 40 percent of the market. Those were decisions made several years ago, so maybe they're not so close to our own history, but they are past experiences. So, as for this concept of “preponderance”: we named it, but it's not really the first time that regulators have adopted these kinds of measures.

I would say that for the moment this has been a real success because, after trying so hard to come to asymmetric regulation in our country for 15 years or more, we managed to do it in only six months after the constitutional reform and the institution was created. In fact, we had a constitutional mandate to do it in this period of time, which was really short and



optimistic - but we managed to do it. So I would say it has been a very great success up to this point. We still have to work a lot in perfecting and making sure that all these regulations are enforced and are effective. But for the moment this has been a very good change, because we are now working with new rules that can help to enhance competition.

Is Mexico a reference for other Latin American countries in this regard? Do you see other regulators interested in adopting this rule?

There has been a lot of interest, particularly in Latin American countries. In fact, there is at the moment a proposal in Colombia to adopt this concept of preponderance exactly, to work in the same manner as in Mexico.

A much debated topic nowadays is the effect of market concentration on inequality. Experts claim that merger consolidation is raising inequality in some countries. Mexico has in fact very concentrated markets in telecommunications and broadcasting. How is the IFT addressing these concerns?

Concentration is a really big challenge for us. We understand that the telecommunications and broadcast sectors are always concentrated, because there are some conditions that stimulate this concentration: We have economies of scale and scope, network externalities... So these phenomena make it so that there is always some degree of concentration in these markets. Nevertheless, we know that the market is more concentrated than those in other countries, and we look at this as one of our biggest challenges.

That's why, in addition to defining and enforcing this asymmetric regulation on incumbents, we are also making different efforts to change this level of concentration. We've been working on eliminating barriers to entry to the market, specifically licensing the available spectrum. We are also working in liberating new frequencies in the spectrum to make it available for the market, and we're facilitating the secondary market for the spectrum. This is a new condition made possible by our new law - this wasn't permitted before - but we're fostering arrangements between licensees of the spectrum that can help them switch frequencies between them, to rent them out... and this helps to make better assignments of the spectrum and use it in a better way.

Using the insights and the information we get through our regulatory activities, we have been in contact and been looking at certain phenomena and problems we see in the markets, and this has helped us to initiate competition procedures: that's also another way for us to act directly in a way we believe can help the competitors to move more freely.

We have also been forcing access to essential facilities, which is very important in these markets. Mainly through ex-ante regulations and also in "must offer-must carry" obligations that are a part of this new legal framework. This has actually been helping in our markets. We've been looking at some results:

In concentration the results are still very modest, that is true. We expect that they will be getting better. But we are also aware that this is a long term effort, so the aim of all these measures is to foster a more competitive dynamic for the market, which will itself lower concentration.

One of the results that we have seen, for example, is a very important decrease in prices for mobile communications. That is the market where we've seen the best results. We



will be pursuing these same efforts and trying to expand our results to other markets, but for the moment we are very optimistic regarding the results we are getting from the mobile sector.

Also, in penetration of the internet - which is one of our most important objectives because of the social and economic impact the internet has for the country - mobile broadband has expanded from 30 percent in 2014, and in the most recent trimester of 2016 we have reached 56 percent, so this is also very good news for the country. In fixed internet broadband we are also at 46 percent, so this is also a good result. These figures that I mention come directly from our carriers, as we prepare statistics for the sector, but we also have statistics come from other sources. Acamaya Media and Telecomm, who measure latent internet velocity for different countries in Latin America, give their latest figures which show Mexico as the No. 1 country in terms of broadband speed. So this is also very good news for us. We were not in first place before, so we moved up a few places, and this is also very good.

I could say that the best results we've had at the moment are in mobile telecommunications, where we also have new players - some very interesting moves. For example, AT&T, which is a global competitor, acquired two... well, I should say "small" competitors because of their share of the market in Mexico. AT&T acquired these two carriers and is now bringing a new dynamic to the market. It has been a very interesting move, because AT&T had not been "absent" from the market. AT&T had been in the same group as the incumbent - América Móvil - for many years. So this movement is a signal of the changes in economic incentives and expectations that are good for competition and investment in our markets. So I would point at this movement as part of a structural change that is very interesting and talks about a positive mood and expectations, which have proved for the moment to be very positive for the market. There have been many changes, so it is difficult to say how much each factor contributes to what we are looking at, but we are seeing good results in the mobile sector.

What are the biggest challenges for an institution that enacts sector-specific regulation and overseas markets for potential competition infringements? Is this better or worse for market players and consumers?

I believe it has worked very well in this sector, mainly because of the specialized technical characteristics of this sector, which make it difficult for non-specialized persons to understand. And this is maybe the most difficult part for a traditional competition agency: To cope with the necessities of such a specialized and dynamic sector, that is changing all the time. So maybe it could work for other sectors with these characteristics. I would not say that it's a recipe for all sectors, because other markets are easier to grasp. Maybe because they don't change all the time, because technology is not such an important factor in changing the market, the definition and attributes of services... So this arrangement works for the sector, but I wouldn't say that it's necessary for all sectors. But it could be that with other markets, which share similar characteristics, it could be considered. I have looked at all these practical advantages of having both responsibilities, and it really works well in this sector.

Also, I wouldn't say that everything that has been working is due to having both responsibilities under the same agency. There are other factors that have helped a lot and that came about because of all the changes in the legal framework. Because the truth is that we now have powers that the ancient competition commission did not have. So this is a



mixture of different factors that have been working well.

What does it mean to be a new "competition agency" in the national and international antitrust community? Any expected project you can mention for the near future?

Our nature is very particular, so we have been working a lot to communicate to other agencies around the world our responsibilities and our nature as a competition agency, which is not always easy to understand because we are so different from other competition agencies. We have been working successfully with international organizations - for example, we are part of the Competition Commission of the OECD, so we have been very active in this organization. We have also been bringing this interest in competition to other organizations that work on telecommunications. For example, at the IFT's proposing, the Group of Economic Competition was created within the Latin American Forum for Telecommunications (what we call Regulatel), so it's interesting that we can bring this perspective to traditional international telecommunications organizations.

We are continually promoting encounters with other competition authorities and experts, and we have started to organize an annual International Competition Seminar in Mexico. We had the first one last year, which was very successful, and this year's event is coming in the next couple of weeks with a very interesting group of experts from all parts of the world. We also created, within the IFT, a "studies center" that is like a think-tank - an internal think-tank- dedicated to studying telecommunications and broadcasting. These experts are in constant direct communication with other experts in the country and abroad, and are focused in matters related to practical cases for the IFT, issues that we see will be very important in the near future. So all of these activities are helping us to keep up with what other authorities are doing, what other academics and experts are thinking about in this sector, and also as a part of our work of communicating to other agencies our responsibilities, our work and objectives, and what we are doing here in Mexico.

Thank you, Commissioner Estavillo, for a wonderful interview and for sharing your time and expertise.