



International
Competition
Network

ICN Competition Advocacy Work Group

Competition Advocacy with
Lawmakers

March 28, 2011

Questions addressed by the speakers

- 1. Chile: Where to initiate advocacy? Dealing with the Executive Branch.
- 2. Poland: Convincing NOT to legislate in an anticompetitive way.
- 3. Zambia: Working with Parliamentarians in drafting legislation
- 4. Spain: Assessment of regulation already in effect.
- 5. Mexico: Advocacy Efforts to Strengthen Competition Law & Enforcement
- 6. France: Advocacy Toolkit

Teleseminar on
Promoting competition principles among law makers



The FNE's challenges

Javier Tapia

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Fiscalia Nacional Economica - Chile

March/28, 2011

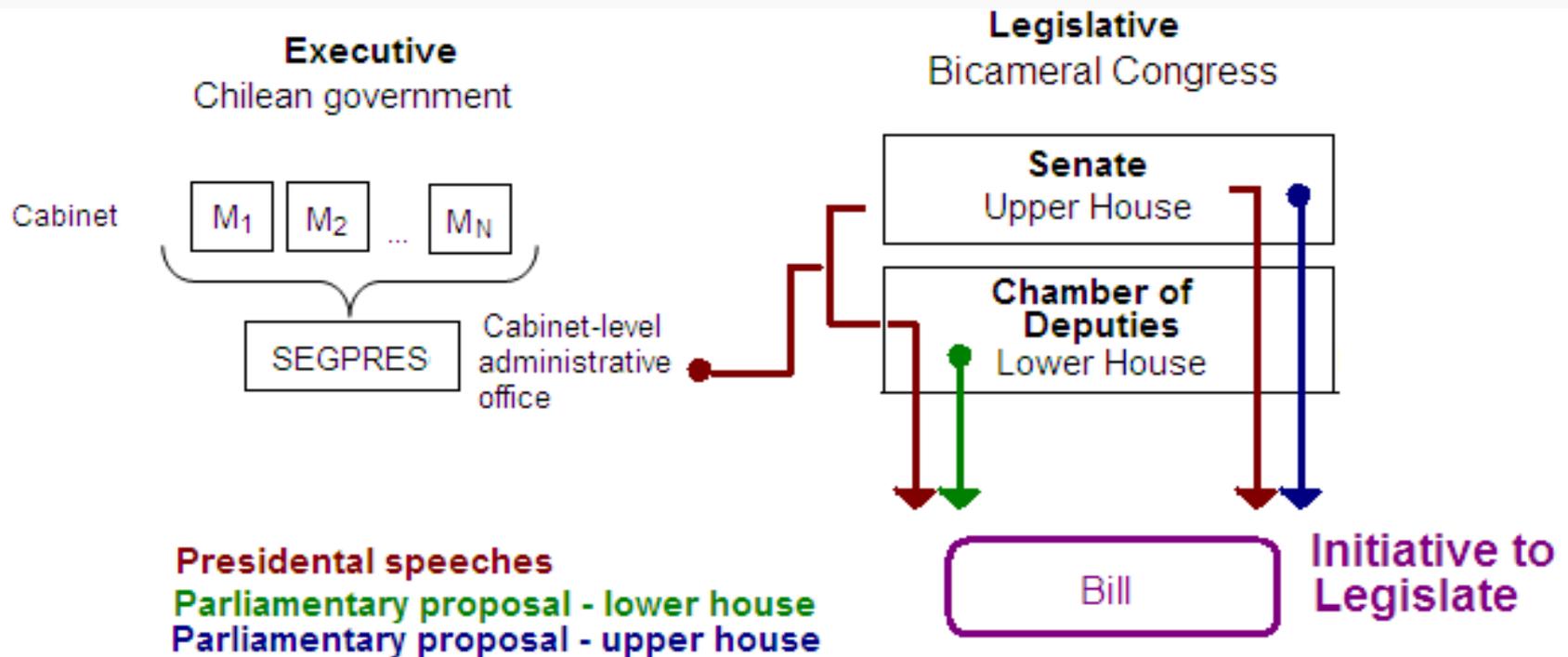
Background

- Competition Act (“Decree 211”) states as objectives both the *defence* of competition in markets and the *advocacy* of competition
- Defence is thoroughly provided for in the Law
 - Traditionally, the FNE’s role has been centred on defence
- There are no clear provisions on how to advocate competition
 - The FNE has “to figure out” how to carry out advocacy among policy makers

Chilean legislative process (in a nutshell)

- Chile is a presidential regime, with strong separation of powers
- As most countries, Chile follows a *civil law system*.
 - Main source of law is (codified) legislation — especially constitutions, statutes and (to a much lesser extent) custom
- Generally speaking, the process of passing an statute may commence in two ways
 - The Executive Power send a bill to the Congress for its consideration and enactment (the so-called “Presidential speeches)
 - Any congressman presents its own bill to the Congress for its consideration and enactment (the so-called “Parliamentary proposals”)
- However, statutes affecting specific matters must be initiated by Presidential speech

Chilean legislative process (in a nutshell)



The dilemma:

Where should the FNE focus its advocacy efforts?

Advocacy so far (... not so good)



It has been focused on the Congress

Upon the Congress' request, the FNE assess competition issues on bills

In high impact cases, the National Economic Prosecutor (head of the agency) appears before Congress to describe the FNE's position:

- *Pharmacy chains* (cartel case, 2010-11)
- *Soprole/Nestlé* (merger, dairy products industry, 2011)

The trade-off (1) – The *ex-ante* option

Focus on Presidential speeches *before* they are sent to the Congress?

PROS

- Opportunity to act “from the scratch”
- Full access to the information which serves the base for the bill
- “The invisible hand” – possibility of persuading lawmakers before the bill goes to the Congress

CONS

- Loss of agency’s independence (?)
- If persuasion is not successful: “politically incorrect” to present same concerns to the Congress

Should the FNE’s opinions on drafts be made publicly available?

The trade-off (2) – The ex-post option

Focus on bills once they are discussed in the Congress?

PROS

- Agency's independence is not undermined
- Broader awareness of competition concerns (?)
- More chances that competition concerns are dealt with in the final product

CONS

- Less information
- Modifications in the Congress can be substantial, but the fundamentals are normally laid out by the Executive

Should the FNE's opinions on drafts be made publicly available?



*Promoting competition by non-enforcement
tools- UOKiK's experiences in advising law-
makers*

*Marta Skrobisz, Head of Unit
Office of Competition and Consumer Protection*

Law-makers actions can harm competition as much as private actions therefore we involve in:

- influencing government policies and regulations to lower barriers to entry, support the liberalization and deregulation processes of selected sectors
- convincing authorities to refrain from adopting anti-competitive measures
- making law-makers more familiar with the benefits of competition by spreading knowledge and awareness
- ensuring compliance of adopted legislative proposals with the competition regulations

Tools for promoting competition among law- makers:

- lobbying /meetings, cooperation
- preparing and presenting own reports and market analyses
- participating in the works of the Council of Ministers, and its bodies, i.e. the Permanent Committee and the European Committee
- providing opinions and comments on draft legal acts as part of inter-ministerial consultations, assessing their impact on competition,
- shaping appropriate attitudes by educational and information activities: debates, seminars
- explanation of results of anti-competitive mergers
- cooperation with media

Case study:

- energy report / merger in the energy sector

discussing the key issues related to the functioning of power market, in particular the negative consequence of further consolidation of the largest companies in the sector

- draft act on maintaining cleanliness and order in *gminas*

questioning amendments to provisions leading to monopolization of waste management markets

- draft act on collective public transport

opposing to proposed provisions that local authorities may be given the power to grant chosen contractors exclusive rights to transport persons on particular routes or whole transport networks

- actions targeted at raising awareness about bid-rigging

Factors for success

- position of a national competition agency within the structure of the public administration - structural and operational independence
- possibility to influence the state of competition on the market by actively participating in the legislative process.
- process of reasoning supported by economic evidence/ examples from other countries
- making opinions public and using media coverage to create a public debate
- targeting central as well as local law-makers

Challenges

- still low awareness of the importance of competition principles among other government authorities and Members of Parliament
- lack of a veto right for UOKiK
- greater direct government involvement in markets and higher acceptance for adopting protectionist or anticompetitive solutions during economic downturn
- lack of natural supporters and small „competition protection“ circle



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**THANK YOU
FOR YOUR ATTENTION**

Please visit:
www.uokik.gov.pl/en

Promoting Competition Principles Among Zambia's Law Makers

By Brian M. Lingela & Liya B. Tembo

Competition & Consumer Protection
Commission

Presented to Advocacy Working Group (ICN)
Teleseminar; 28 March 2011

Presentation Outline

- Introduction
- Parliamentarians
- Legal Draftspersons
- Student Draftspersons
- Conclusions

Introduction

- Law makers are critical in ensuring up-take of competition principles in their various domains;
- CCPC shares its brief experiences sharing competition principles with various law makers.

Parliamentarians

- Since enacting Competition & Fair Trading Act CAP 417 of 1994, the Commission has not adequately interacted with Parliamentarians on competition until 2009;
- Seminar for 100 Parliamentarians at Parliament Grounds in 2009;
- CCPC facilitated seminar on provisions of Competition Act (Mergers, abuse of monopoly power, Restrictive Business conduct, consumer protection & Role of the Commission;

Parliamentarians Cntd.

Responses/Reactions:

- Limited understanding of role of Commission e.g. *“Is your organization an NGO?”, How to you protect us against unfair competition from foreign companies they are too many especially the Chinese?”*
- Most MPs did not understand the Commission’s role in the economy.

Parliamentarians cntd.

Lessons Learnt:

- Need for constant engagement/sensitisation through seminars, meetings etc, however expensive;
- Prior & adequate sensitisation in policy & legislative actions necessary;
- Inadequate sensitisation impacted on quality of debate during consideration of new Competition & Consumer Protection Act 2010;

Legal Draftspersons

- The Commission interacted with draftspersons from Ministry of Justice in 2009 during the process of revising the law
- Shared information on principles of competition and consumer laws with reference to materials from the region and at international level (UNCTAD, COMESA, etc)

Responses/Reactions:

Draftspersons

- The principles were generally accepted by draftspersons
- It is noted however that reservations were expressed with regard to some legal provisions e.g. powers of the Commission, administration of the Commission viz-a-vis government policy – e.g. manner of appointing the Board of Commissioners

Draftspersons

Some lessons learned:

- Engaging draftspersons in early stages of law review is important so as to enable better understanding of principles and enforcement measures & ultimate buy-in.

Student Draftspersons

- The Commission engages with professionals often and one forum used is the Zambia Institute for Legal Education
- Specifically students of legislative drafting are targeted through regular presentations by the Commission either at Commission premises or through guest lectures annually.

Student Draftspersons contd.

- The nature of the presentation is that the Commission highlights the scope of competition law viz-a-viz sector regulated activities (students represent various sectors in which they work)
- Thus the Commission shows how other sector laws interlink with competition and consumer law (as practitioners draft other laws they have in mind the competition law)

Student Draftspersons contd.

Lessons Learnt:

- If professionals working in various sectors assist formulation of sector-specific laws, a lot would be achieved in terms of putting competition principles in their laws

Conclusions

- It is critical to engage all stakeholders particularly those engaged in policy/legislative formulation through adequate sensitisation for them to fully comprehend competition principles;
- Sensitisation should be on-going due to turnover of players like MPs, etc



AWG teleseminar on Competition Advocacy with Lawmakers

The Spanish NCA´s experience

Juan Espinosa

**Head of the Relations with Public Administrations Unit
Advocacy Division**

March 28th, 2011

– 1. Overview of activities

- Regulatory scrutiny has been one of the cornerstones of CNC's advocacy activities since its creation in 2007
 - «Preventive» developments
 - Competition assessment in Regulatory Impact Analysis (2009) as a compulsory exercise
 - CNC's *Guide to Competition Assessment* of Draft Regulation
 - Impact on drafting of regulation
 - Quick, informal advice at different stages
 - Position papers in foreseeable reforms (eg retail regulation)
 - Formal reports (in-depth analysis) in undergoing proposals
 - Legal obligation to refer draft regulation that might affect competition to CNC
 - Assessment of regulation already in force (market studies, follow-up efforts)

– 2. Philosophy and aims of intervention

- Influencing lawmakers
 - Target: mainly Governmental stages of regulation but also pure legislative phase
- Objectives
 - Main aim: direct impact on lawmaking
 - Secondary aim: generating public debate and awareness of harm to competition
 - Making other stakeholders «amplify» our proposals
- Variable intensity of messages
 - Depending on the moment of participation
- Prioritisation (where possible): Strategic approaches
 - Services Directive in 2009
- Pro-activeness if CNC participation is neglected

3. Effectiveness

- Reasonable degree of satisfaction considering both aforementioned objectives
 - More difficult to influence philosophy of proposals than fine-tuning
- However, great margin for improvement in:
 - Scope (number/importance of projects reviewed)
 - Impact (following of recommendations)
- Key issues
 - Hard to enforce (timely) submissions of proposals
 - «Trusted advisor» vs. «public watchdog»? No clear conclusion on what strategy is better
 - Often: combined effort is required; balance is decided *ad hoc*
 - Informal co-operation: pros and cons and diverging attitude of lawmakers
 - Hard to convince «on our own»
 - A dynamic game: coherence vs. less ambitious, but still positive results

4. Ways forward

- Sorting out the «scope» conundrum
 - Less projects to be reviewed but earlier appraisal, allowing for full deployment of instruments (formal/informal)
- Lobbying in more sensitive segments of Government/Parliament
- Increasing awareness of CNC's opinions while the process is still ongoing
 - Legislative process
 - Opinion fora
- Timely reaction if end result is unacceptable
 - New car distribution regulation (Feb 2011)
- Better conveying of non-compliance costs (both in terms of social welfare and later reversal of inappropriate regulation)
- Exploring a robust method for measuring effectiveness



COMISIÓN FEDERAL DE COMPETENCIA
MÉXICO

AWG Teleseminar

Advocacy Efforts to Strengthen Competition Law & Enforcement: Mexico's experience

Ángel López Hoher

March 2011

- Competition policy in Mexico faces important challenges.
- The CFC has made extensive use of the advocacy powers granted by the Competition Law to help channel legislative and regulatory outcomes in favor of competition.

For decades Mexico's development model was contrary to competition ...

Trade policy:

- Ad valorem tariffs
- Official import prices
- Import licenses



Foreign
competition

Government



Domestic industry
sheltered
from competition

Industrial policy:

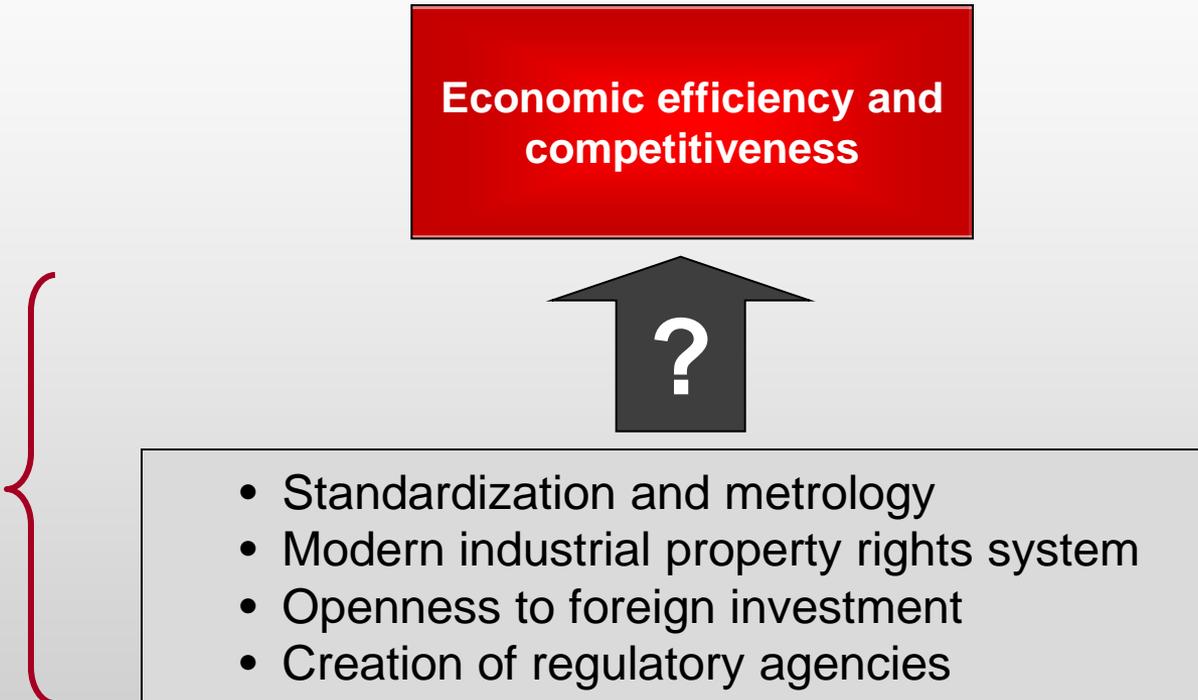
- Controlling entry & exit
- Price controls
- Restrictions to foreign investment
- Sectoral subsidies

- Low-quality products
- Few options
- High prices

Since the mid-1980's, the country has engaged in (still incomplete) important reform efforts

Generation of reforms

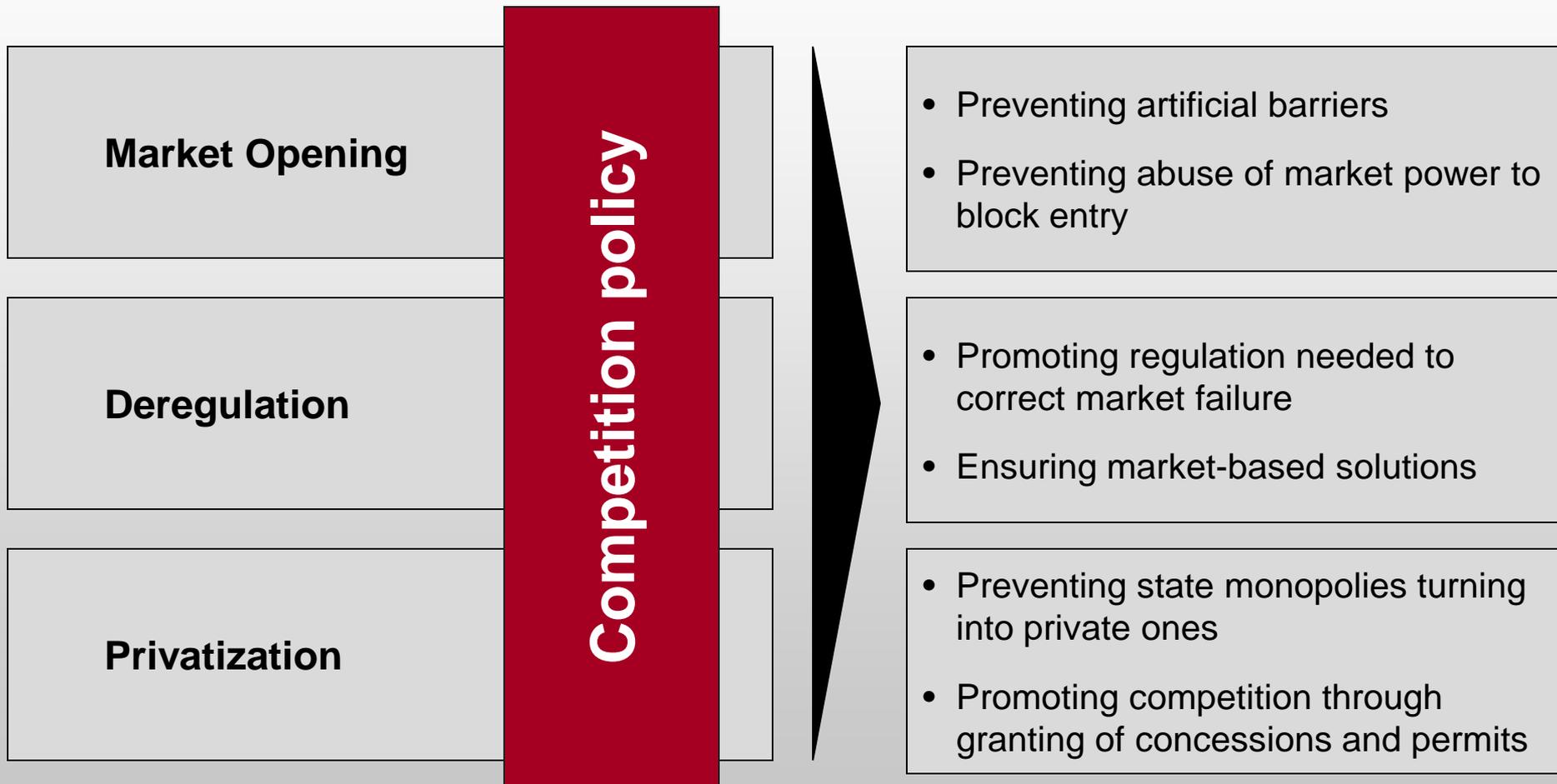
2nd

- 
- Standardization and metrology
 - Modern industrial property rights system
 - Openness to foreign investment
 - Creation of regulatory agencies

1st

- Macroeconomic stability
- Trade openness
- Deregulation

... with competition policy becoming an essential instrument to increase competitiveness and welfare

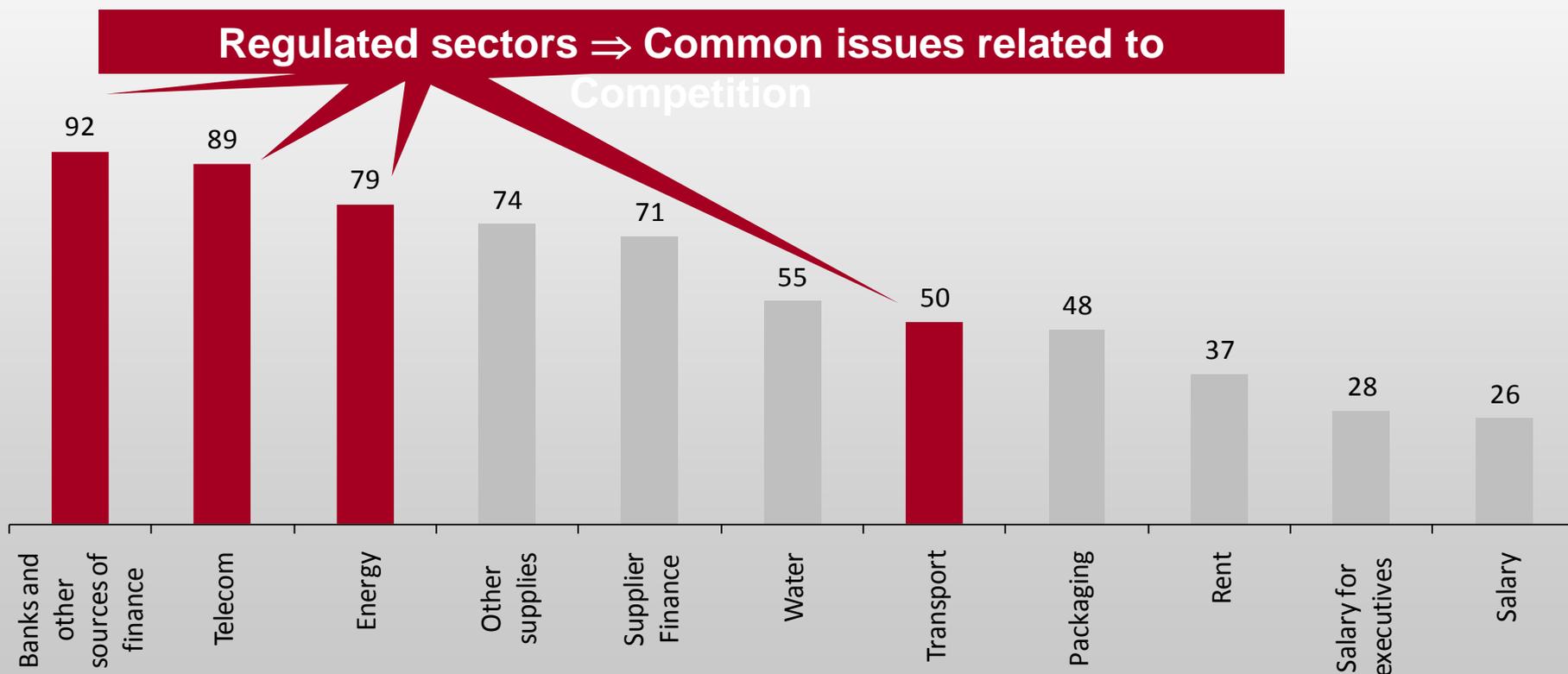


Despite the reforms, important inefficiencies persist in regulated markets.

Production costs in Mexico

vs other countries competing for Direct Foreign Investment (FDI)

% of responses from firms with FDI that indicate Mexico has higher production costs



Source: Mexican Central Bank and Ministry of Economy. Survey of the main firms with FDI in México. The survey is from 2007 and it accounts for 202 firms .

- Competition policy in Mexico faces important challenges.
- The CFC has made extensive use of the advocacy powers granted by the Competition Law to help channel legislative and regulatory outcomes in favor of competition.

The FLEC grants the CFC with powers to issue binding and non-binding opinions.

Types of governmental action

Law projects

- Draft laws
(Executive Branch)
- Legislator's bills (at party request)
- Current laws

Secondary regulation

- Decrees
- Agreements
- Administrative actions

¿Does it affect competition?

CFC's power

Formal and public opinion

Binding opinion

- Only in competition matters
- Not an additional procedure

...but it has been necessary to supplement formal powers with other communication tools

Purpose

Public discussion

- Making sure competition isn't ignored in small-table negotiations
- Forcing counterpart to argue point or reveal anticompetitive intent

International experts

- Having unbiased party make your point to avoid accusation of rigidity or radicalism
- Promoting international best practice as guiding light for legislative process

Contact with lawmakers

- Obtaining head start on upcoming bills or votes, to focus advocacy efforts
- Building trust as providers of «outside opinions» and advocates for consumers (i.e., voters)

Some key lessons we have taken away from working with Congress

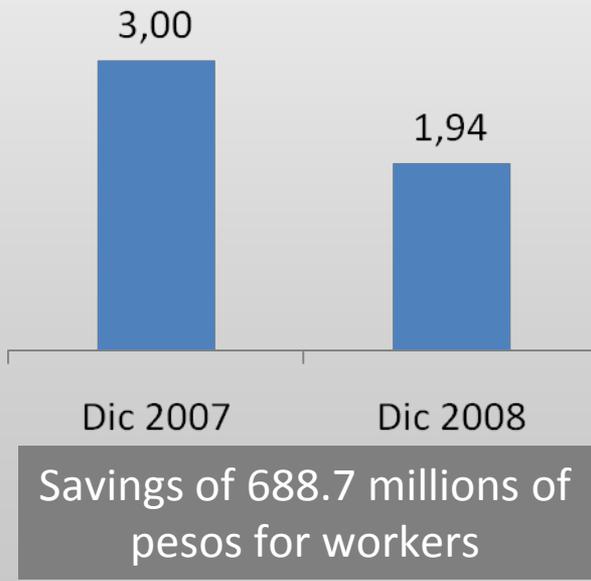
- 1 Get your story straight**, and try it out on non-specialists
- 2 Always refer to consumer benefits/harm** from a decision; nobody understands –or cares about- overall efficiency
- 3 Be prepared to repeat your story** in all fora, formal or informal, and at the slightest provocation (or even unprovoked)
- 4 Never undervalue an opportunity to explain**; you never know for sure what influence your interlocutor has
- 5 Don't get disheartened** – you will probably lose more than you win

Successful advocacy can yield significant benefits very fast

Pensions

Elimination of the on flows commission

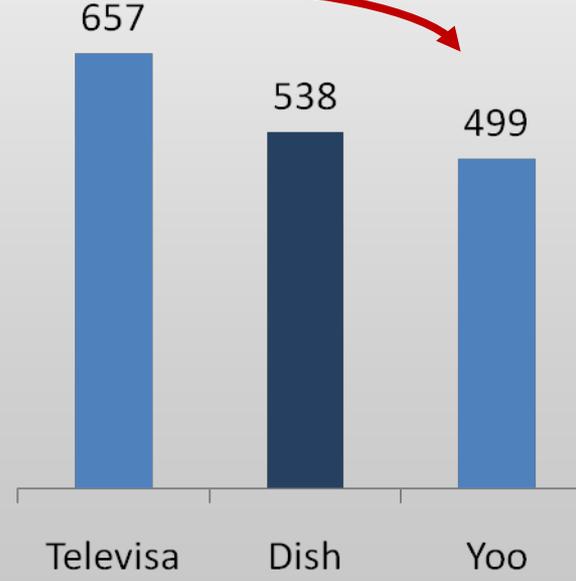
Average commission
annual percentage rate on
balance



Telecommunications

Technological convergence

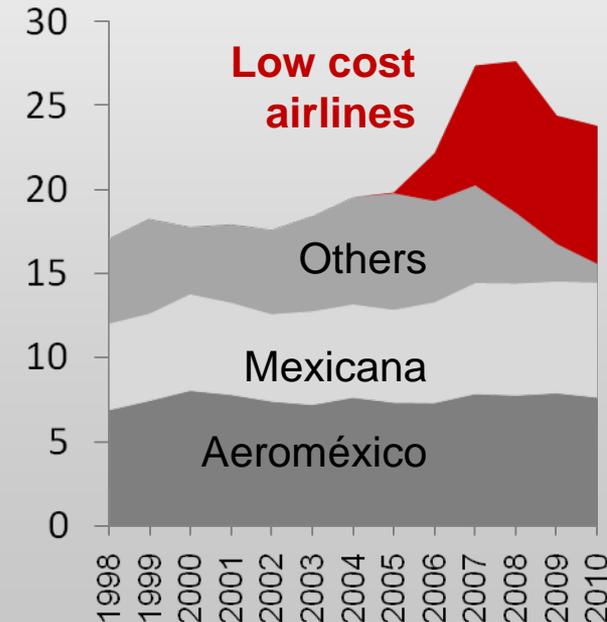
Price of triple play package
Pesos/month



Airlines

Authorization for low cost airlines

Domestic flights passengers
Millions



Reforms to the competition law: the final frontier for advocacy...

Original law
1992

Amendments
2005-2006

Current reform effort
2008-??

- Clarification of procedures
- Specification of additional unilateral conducts
- On-site inspections
- Fourfold increase of maximum fines (flat limit)
- Leniency program
- Fines: max 10% of revenues
- Criminal sanctions
- Dawn raids
- Cautionary measures
- Settlements
- Oral hearings
- Additional transparency obligations



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Thank you !

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March 28, 2011

Marianne Faessel-Kahn

French Autorité de la concurrence

Contents

I. Advocating competition with lawmakers: a frank dialogue

- Starting point: independence but dialogue
- The ultimate goal: convince! Yes, competition is good
- How to do it?

II. Advocating competition in legislative work: different options

- One way: market studies or sector inquiries
- Dialogue through advisory opinions of different types
 - Strategic guidance on a sector before any draft legislation
 - Expert advice on draft legislation or regulation
 - Ex post assessment on existing legislation or regulation

I. Advocating competition with lawmakers

- Starting point:
 - Clear separation of powers with government, and at the same time,
 - Good dialogue with government
- The ultimate goal: convince!
 - We need a robust system of competition
- How to do it?
 - Setting out your priorities
 - guidelines on how to draft competition friendly policies and how to assess the potential competitive impacts of laws and regulations in the pipeline
 - Building support through regular meetings with lawmakers
 - Opinions and assessments must translate into workable recommendations

II. Advocating competition in legislative work

One way of inserting competition issues in the broader public agenda

- Market studies or sector inquiries
 - Upstream of the public debate
 - Can recommend legislative action or not
 - → Internet advertising
 - → Retail

II. Advocating competition in legislative work (cont'd)

Dialogue through advisory opinions of different types

- Strategic guidance on a sector before any draft legislation
→ TV exclusivity July 2009; gasoline prices and consumer goods' distribution in the French territories June and Sept. 2009; milk Oct. 2009

- Expert advice on draft legislation or regulation
→ Regulation of electricity production May 2010; digital equipment in movie theaters Feb. 2010

- Ex post assessment on existing legislation or regulation
→ Commercial facilities Oct. 2007, follow up: wide ranging reform in 2008