

[Slide 1 - Competition Assessment Sub-Module]

[Slide 2 - Alejandra Palacios Chairwoman La Comisión]

ALEJANDRA PALACIOS: Welcome. Hello, this is the ICN training module on competition assessment. My name is Alejandra Palacios. I chair the Mexican Competition Agency, the Federal Commission of Economic Competition, COFECE.

In this short module, I will address the process for conducting a competition assessment on a proposed or existing law or regulation. First of all, I will explain the different types of anticompetitive restrictions we can find in any given regulation, providing a few examples from my own jurisdiction. Let me start by emphasizing the importance of this tool.

Competition depends on many factors. Experience tells us that state measures may do great good or harm to the efficiency of the markets. Sometimes the lack of competition in a given market is not to be explained by anticompetitive conducts from the market players, but to regulations that inhibit it. Eliminate unjustified restrictions to competition and this will automatically benefit consumers. It will also strengthen the investment climate and, in general, faster growth and development.

Therefore as competition agency, we must accompany enforcement with a strong advocacy agenda. To maximize impact, interventions for this sort need to be solid and, therefore, need to be elaborated under technical criterias. In general, there are four main elements involved in a regulatory competition assessment exercise.

Number one, considering the goals of the regulation under review. Number two, assessing the competitive restraints. Number three, where possible identifying potential less restrictive alternatives that may achieve the intended policy objectives, and number four,

ICN Training on Demand Module V-3 Competition Assessment: Mexico Case Study
delivering the competition assessment. It is very important to identify the goals of the proposed or existing measure since this will help you to understand valid or undue policy objectives, effects and its alternatives.

Having done this, we need to decide if the regulation under analysis restricts competition by different manners. To do this, competition agencies may consider the OECD competition assessment toolkit. Basically, we must ask and answer ourselves the following questions. Does the policy under analysis limit the number or range of suppliers, for instance, by raising barriers to entry, to expansion with, for example, exclusive rights or licenses? Does the policy limit the ability of suppliers to compete, for instance, through restrictions on price setting?

Another question, does the policy limit the incentives of suppliers to compete? This may be through exemptions from the application of the competition law or, for example, by allowing the exchange of pricing information amongst competitors. Finally, does the policy limit the choices and information available to consumers, for example, by limiting the ability of consumers to switch between suppliers? A yes answer to any of these questions would signal a competition concerns and it will need a more detailed review.

This would not necessarily mean that the measure is anticompetitive. Certain norms do restrict competition, but for valid reasons. However, to know this, a deeper analysis is required in order to verify whatever the rule is needed, and if it is needed, whenever it uses the proper means to achieve the ends.

Let me provide you of a couple examples where COFECE issued recommendations on proposed regulations having, of course, undertaken a competition assessment as the one I've just explained. In the first example, I would like to share an opinion

ICN Training on Demand Module V-3 Competition Assessment: Mexico Case Study
issued by COFECE in 2016, upon the request of a Mexican Senate, regarding a proposed constitutional amendment on professional services. First, we analyzed the explanatory notes of the bill to identify the goal of this amendment. It was established that the initiative intended to use compulsory membership to a professional association regarding legal services, all this to accomplish quality and integrity standards. However, there was no explanation on how this requirement would, in fact, take us there.

Taking that into account during the second phase of the assessment, the Commission analyzed competitive restraints. In doing so, we came aware that the implementation of such provisions would result in greater requirements and cost for any professional to provide its services. This, in turn, would lead to a reduction in the supply of legal services and lesser competition among professionals, resulting in higher prices for the public. In addition, there was a clear conflict of interest as incumbents were the ones who would decide the entry of new professionals. Of course, this creates incentive to restrict the number of participants or to reduce competition amongst the member of those associations.

After that, we tried to look for an alternative that could achieve the policy objectives without harming competition. According to international best practices, what we learned is that any scheme by means of which a legal professional should necessary be part of a bar in order to provide a service is highly restrictive. Also, we found the policy objectives of such regulation were rarely achieved. Instead, certifications by neutral bodies are more effective.

So we finally delivered our opinion to the Senate. The conclusion was very clear. Compulsory membership to a professional association restricts free entry and competition and it restricts supply and this increases prices. In the end, the initiative was dropped by the Mexican

The second example concerns local regulation of gasoline service stations. In 2015, the local Congress of the Mexican State of Coahuila approved an amendment to the [indiscernible] law to establish a requirement for minimum distances between fuel service stations. This new regulation was set so they say because the government tried to safeguard the local ecology and wildlife. Usually requirements of minimum distances of certain risky establishment like gasoline stations with respect to schools or a hospital seek a legitimate public objective, like security. However, this was a case about minimum distances between competitors. So the Commission did not see how these provisions could preserve the environment.

As the assessment unfolded, several anticompetitive effects were found. The requirements eliminated the possibility of entry into the area where a service station already existed. Therefore, it limited the number and options of suppliers. In other words, the reform would prevent consumers from choosing between a wider range of suppliers in their local markets. COFECE suggested the government of Coahuila not to enact or publish such reform. At first, this was done. However, earlier this year, the local Congress passed the reform in the same terms, this time bluntly arguing it was important to protect margin sales of incumbents. So this time, COFECE requested the executive power to challenge, before the Supreme Court of Justice, the constitutionality of this reform.

Both examples illustrate in practical ways how a regulatory impact assessment may be done. According to the ICN recommended practices, competition agencies should consider carefully the most appropriate way to communicate a particular assessment, this given

ICN Training on Demand Module V-3 Competition Assessment: Mexico Case Study
the particular situation. Competition agencies may wish to share their expertise with policymakers through informal consultations and advice. They may decide to issue a written opinion or a letter. They could also decide to engage directly in hearings or meetings during the decision-making process or they might decide actively to participate in a more formal role, for instance, in the context of a committee.

In any case, I strongly suggest to advocate for rules of the game that enhance competition. To be heard, we, as competition agencies, need to build credibility and reputation. If we manage to become trusted advisors, our work will influence policy decisions.

Thank you very much for your attention.

[Slide 3 - Thank you Alejandra Palacios, Chairwoman]