
CASE STUDY 4 – MEXICO

Is it possible to institutionalize a public-private dialogue mechanism to reform economic regulation and policy in Mexico by the end of the current administration?

Miguel Flores Bernés, Coordinator General for Regulatory Impact Assessment, COFEMER

Summary

There is currently no formal or institutional mechanism that allows for a wide-ranging public-private dialogue between the Mexican government and the private sector, to define economic public policy and regulation. However, there are existing mechanisms which could be formalized and institutionalized – before the end of President Fox’s administration (30 November 2006).

The Mexican Federal Government as a generator of economic regulation, and its influence in economic activity of citizens and business.

Economic regulations intervene directly in market decisions such as pricing, competition, market entry or exit. The OECD has stated that reforms should aim to increase economic efficiency by reducing barriers to competition and innovation through the improvement of regulatory frameworks for market functioning¹. All regulation, and of course economic regulation, should be simple, clear and practical. Good regulation should have a sound legal and empirical basis, minimize costs and market distortions, be consistent with other regulation - and policies - and produce more benefits that justify the costs.

In Mexico, in addition to federal laws enacted by the legislature, the executive issues a broad array of regulation that generates obligations for citizens and business. Mexican ministries and other agencies that are part of the executive branch issue regulations. Every day new regulations are proposed on diverse matters such as telecommunications, financial services, international trade, energy and other economic sectors. Official figures estimate that every year the Mexican federal government issues around 1,100 new regulatory proposals; of these proposals approximately 350 will generate new obligations for citizens and business, and most of them will have an impact on economic operators².

The new “think tank” that studies competitiveness issues in Mexico, the “*Instituto Mexicano para la Competitividad A.C.*” (IMCO), has defined competitiveness as “*the capacity of a country to attract and retain investment*”.³ A country with no investments and without efficient markets will not be able to generate the jobs and welfare needed by the citizens. If a country does not pay attention to the design of regulation, inefficiencies will be created and negative effects in the economic activity - as well as market distortions - will be reflected in the competitiveness of the country.

¹ OCDE, “*Regulatory Reform in Mexico*”, Paris, OCDE, 1999, p. 17.

² The reports that COFEMER presents annually to the Mexican Congress can be viewed in Spanish at:

http://www.cofemer.gob.mx/index.php?option=com_content&task=view&id=46&Itemid=95, (December 2005)

³ Instituto Mexicano para la Competitividad “*Situación de la competitividad de México 2004, hacia un pacto de competitividad*”, Monterrey, N.L., IMCO, January de 2005, p 19.

It is a responsibility of the Mexican federal government to promote the creation of better economic regulation. Sometimes, public servants struggle to explain that a public policy to improve economic regulation is not only for the benefit of enterprises and business. The “Doing Business 2006” study, prepared by the World Bank, provides a good insight into regulatory reform. While explaining the benefits that can come from reforms to make it easier to do business, it highlights the beneficiaries of said reforms. Reforms allow firms to grow faster and create more jobs, particularly in the formal economy. More formal jobs will mean that more workers are protected by pensions, safety regulations and health benefits. The study also stresses that women, “*who now make up three-quarters of workers in the informal sector, will be big beneficiaries. So will young and inexperienced workers looking for their first job*”.⁴ Not a bad message for Mexican politicians.

The role of certain agencies and ministries inside the Mexican government to assure better economic regulation.

Many different agencies intervene in the process of the creation of regulation; however, some of these agencies play a more important role to assure sound economic regulation to do business. The coordinated work of the Ministry of Economy and some of its related agencies, in particular the *Comisión Federal de Mejora Regulatoria* (COFEMER), the *Comisión Federal de Competencia* (CFC), and PROFECO, is crucial to accomplish that task.

The website of the Ministry of Economy states that its mission is to: “*Create the necessary conditions to strengthen competitiveness of Mexican enterprises, particularly of small and medium size enterprises, in the Mexican and international markets. Implement a new enterprise development public policy to promote the creation and consolidation of productive projects that will contribute to sound economic growth and the generation of welfare for all Mexicans*”.⁵

PROFECO is an independent agency in charge of consumer protection – a very well known institution in Mexico, since it has the power to enforce the Mexican Federal Law for the Protection of Consumers and to impose sanctions.⁶ In the past, PROFECO had a major role in the inspection of “official prices” of goods and services. Such a role has been left in the past, and now PROFECO focuses on providing more information to consumers, and preventing and correcting unfairness in consumer-supplier relationships. PROFECO also states on its website that one of its institutional objectives is to foster more competition and reduce distortions in consumer relations that could derive from monopolistic practices. PROFECO is popular in Mexico and has general public trust.

Following Article 23 of the Federal Law of Economic Competition (FLEC), the *Comisión Federal de Competencia* (CFC) is a technically and operationally autonomous administrative entity of the Ministry of the Economy. This means, according to the Mexican administrative law, that the entity has decision power and is exclusively qualified to deal with competition matters and has responsibility “*for the prevention, investigation and contesting of monopolies, monopolistic practices and concentrations*”⁷. The CFC is empowered to:

- Conduct investigations of competition violations initiated at the request of interested parties or the Commission itself (ex-officio)
- Issue administrative rulings and impose remedies that eliminate or prevent anticompetitive conduct
- Render advisory opinions regarding competition policy consultations

⁴ World Bank and the International Finance Corporation, “*Doing Business in 2006*”. Washington, D.C., 2005, p.1

⁵ See web page of the Ministry of Economy: <http://www.economia.gob.mx/index.jsp?P=174> (December 2005)

⁶ See PROFECO’s web page: www.profeco.gob.mx (December 2005).

⁷ .See CFC’s web page at: www.cfc.gob.mx (December 2005).

The CFC also reviews mergers and acquisitions of large companies, and renders opinions to avoid unlawful concentrations in relation to economic agents interested in obtaining certain concessions that are related to public interest sectors. In recent times, the CFC has been promoting more competition through less orthodox means. Lately, the CFC has become more aggressive in preparing opinions addressed to the Mexican Congress, ministries and agencies advocating regulatory reforms to foster more competition.

While preparing these opinions, the CFC has not been shy to conduct discussions with private sector participants. A certain public-private dialogue has emerged from such discussions. Some of these opinions have been provided to Congress in reaction to law proposals that could affect competition in certain sectors; recent opinions include strong recommendations in broadcasting and telecommunications, as well as in relation to a law that could affect competition between large and small supermarkets. One of the latest opinions is quite relevant since it emerged from a petition made by a particular association of cable television broadcasters, and was sent to the Ministry of Communications and Transport for its consideration.⁸ These opinions, although not legally binding, have been creating expectation and support from the specialized media.

In 2000, Mexico reformed the Federal Administrative Procedures Law to institutionalize a wide-ranging regulatory improvement program, creating COFEMER, a body technically and administratively independent of the Ministry of Economy, which coordinates and supervises the regulatory improvement program of the government.

COFEMER oversees the process of preparing federal regulations, promoting and developing cost-effective regulations that produce net benefits for citizens and businesses. This is done through: 1) the elimination and simplification of business and citizen's formalities; 2) transparent and analytical review of all draft regulations and their Regulatory Impact Assessment (RIA); 3) diagnosis and proposal to reform existing laws and regulations in specific areas or economic sectors; and 4) support for state and municipal regulatory improvement programs.⁹

To improve regulatory quality, COFEMER uses the RIA. An RIA is a policy tool which assesses the impact, in terms of costs, benefits and risks of any proposed regulation; an RIA should reflect the results of consultation since it is important that all those who will be affected by a proposal are given the opportunity to comment.¹⁰

Transparency is a very important component of the RIA process conducted by COFEMER. It has contributed to fostering high quality regulation as more open negotiation mechanisms with stakeholders and more transparent consultations with public opinion have been developed. All regulatory proposals and their respective RIAs can be consulted by interested parties in the COFEMER website. Occasionally, COFEMER invites private sector participants to meet with the authorities that are proposing the regulation. A specific public-private dialogue arises from this exchange of opinions that takes place through the RIA process.

So in fact, PROFECO, CFC and COFEMER have related activities and it is clear that the more coordination there is in their work, the better is the economic regulation that could be designed. In March 2005, the three institutions signed a collaboration agreement to set an institutional framework to enhance coordinated work.¹¹ COFEMER has begun making consultations on specific proposed regulations to both PROFECO and CFC under the framework of the collaboration agreement.

⁸ These resolutions are public and can be consulted in <http://www.cfc.gob.mx/contenedor.asp?P=Results.asp?txtDir=http://xeon2/cfc01/Documentos/Esp/Resoluciones>

⁹ See www.cofemer.gob.mx

¹⁰ For more information on the Mexican experience with RIA see: <http://www.cofemermir.gob.mx/cracerca.asp?headingid=H3> (December 2005).

¹¹ The agreements can be consulted in Spanish at: http://www.cofemer.gob.mx/images/stories/CONVENIOS/convenio_cfc_cfmr.pdf (December 2005).

Public-private dialogue to develop economic public policy and regulation in Mexico: the private sector has knocked on many doors, and coordination of initiatives is lacking

Mexico, as most parts of the world, is awakening to the recognition of diversity and the necessity to embrace it. This is especially important in a country with so many extremes and different realities. Mexico is part of North America and part of Latin America; Mexico is a rich country with evident and unacceptable differences in living standards among the population. A healthy position for Mexican society should be to continue developing a dialogue culture, a predisposition to enter into discussions with ideas that are different than those of traditional groups.¹²

This is also true for the way economic public policy and regulation should be implemented and designed in Mexico, to enhance competitiveness and generate more desperately-needed jobs. To design practical solutions that will work in the real world, Mexican politicians and bureaucracy need to develop better communication skills. But there is also a need to foster efficient public-private dialogue mechanisms and better define economic public policy priorities and regulations.

A recent study conducted by the World Bank reveals that many countries are trying to increase their competitiveness.¹³ The World Bank study reveals that there is no one-size-fits-all policy, but it also signals and proves that communication between government and the private sector is vital to generate sound economic regulatory reform. Likewise, if the private sector understands the intentions of such reforms it could be more likely that they accept them and support them.

Mexico has some experience of developing this sort of mechanism – a successful one was created in the 1980s. However, at that time Mexico was living a very different political situation and did not have a full democracy. There was only one real political party, which controlled the whole political system and the development of economic and regulatory policy. Almost all labor unions and private sector representatives were also under the control of that party, and getting “consensus” was not so difficult for the government.

In 2000, this one-political-party-system disappeared. However, democracy has not facilitated the developing of economic public policy and regulation. In fact, reaching agreements among political rivals is cumbersome and in some cases consensus seems impossible to reach. Achieving agreements within the private sector and with the public sector has been very difficult during these years; citizens sometimes have wonder if democracy is worth it, and there is a common feeling that nothing can really change for good. Major political and economic reforms – on energy, taxation and labor flexibility – presented by the current administration to the Mexican Congress during the first years of government, were repealed and forgotten by almost everyone.

During 2001 and 2002, people in Mexico began to worry about competitiveness issues, as Chinese products were gaining more market share in Mexico and – even worse, for Mexican exporters favored by NAFTA – in the US market. A Presidential Council was established and the Minister of the Economy was designated as the chair. Private sector representatives and trade unions were invited to participate. Although there was a sense of urgency, very little progress was reported and the Presidential Council vanished as a practical and formal mechanism, transforming itself into some informal mechanism of dialogue between the Office of the President and the higher-ranking private sector representatives.

¹² A brief explanation on the influence of postmodernism in the development of a community vision, was consulted in Spanish in Mc Namee Sheila *“Reconstrucción de la identidad; la construcción comunal de la crisis”*, en *“La terapia como construcción social”*, Paidós, México, D.F., 1996, p. 224.

¹³ See Herzberg Benjamin & Wright Andrew, *“Competitiveness Partnerships Building and Maintaining Public-Private Dialogue to Improve the Investment Climate. A Resource Drawn from 40 Countries’ Experience”*, at: <http://ideas.repec.org/p/wbk/wbrwps/3683.html> (December 2005).

Today, there are several fora for competitiveness issues to be discussed. The Senate House created a special competitiveness committee, as did the deputies' chamber. The Senate House committee is an example of diversity: private sector representatives participate; the secretariat is shared by the IMCO (*Instituto Mexicano para la Competitividad*) and the Office of the President; the committee is chaired by a dynamic senator from the opposition party, and all parties participate.

Another current example is the “*National Agreement for Unity, Rule of Law, Development, Investment and Employment*”, popularly known as the “*Pacto de Chapultepec*”. This is a document prepared by owners of very large Mexican enterprises, that considers economic objectives referred to as “basic issues to develop consensus”. This National Agreement has already been signed by all State Governors, two of the main political parties and important business sector representatives.¹⁴ However, this agreement does not have any practical solutions; it expresses mostly only desires and has no answers about how to do things or even how different stakeholders might sit at a table to discuss how to make things happen.

A more plural but manageable instrument is necessary for the discussion of economic public policy and regulation that affects competitiveness in Mexico. This mechanism should be both political and technical – but a little bit more technical than political. For example, France developed the “*Conseil Économique et Social*”, an unusual assembly body independent from the executive and legislative branches and consisting mainly of members designated by nationwide social and economic groups; it issues opinions and recommendations to the French government on matters of economic and social relevance. This may be a peculiarly French institution and difficult to emulate, but it is a worthwhile example of organized dialogue that recognizes diversity of thinking – as is the European Economic and Social Committee.

COFEMER has an advisory body called the Regulatory Improvement Council. The president of the Council is the Minister of the Economy, and other members are the Minister of Finance, Minister of Labor, the Minister of the Public Function, the General Director of COFEMER, the Governor of the Bank of Mexico, five business sector representatives and representatives of the labor, agriculture and academic sector. The President's Legal Council, the President of the CFC and the President of PROFECO are also members of the Council.

The top level representatives meet at least two times a year. The last three meetings have been accompanied by important announcements and with the presence of the President of Mexico. In 2003, COFEMER and the Office of the President announced a programme to review 63 high impact formalities that were affecting competitiveness, which had been chosen by the Business Coordination Council (*Consejo Coordinador Empresarial*). In April 2004, the President announced a moratorium for one year on regulations as part of an effort to reduce burdens on business. Early in 2005, the Council met again to renew the moratorium for one more year, and in August 2005, the President announced a new programme to define regulatory priorities to foster competitiveness.¹⁵

This last announcement was the product of a new private-public dialogue that started between the CCE and IMCO as representatives of the private sector, and the Office of the President and COFEMER from the part of government. COFEMER had been preparing different sector-specific diagnoses to propose regulatory reforms that did not imply going to Congress to pass any legislation, taking into account the existing difficulties. COFEMER was proposing a “*systemic vision*” for regulation – the idea was that fixing one formality was not enough, since the problem was only

¹⁴ See www.acuerdonacional.org.mx

¹⁵ Likewise, PROFECO has created an Advisory Council. When this Council was established, the President of PROFECO stressed that we are living times in Mexico in which one voice to protect consumers is not enough, and citizens require more diversity in the expressions and thinking, to make comments and critics to how things are working See: <http://www.profeco.gob.mx/html/prensa/prensa05/jun05/43bol05.pdf>

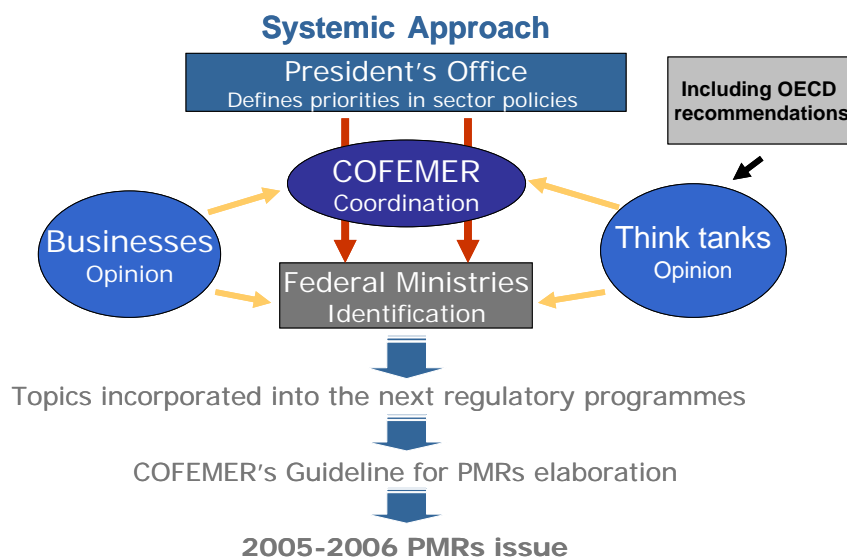
changed to another formality in the regulatory system. Likewise, IMCO had just launched a wide-ranging analysis calling for a “national agreement to enhance competitiveness”.

The first step was to exchange notes, and COFEMER prepared a document to compare IMCO’s document with COFEMER findings. To enrich the vision, other documents prepared by the OECD (*Mexico, Progress in Implementing Regulatory Reform*) and the Doing Business studies were consulted. COFEMER identified several sectors where progress could be made and presented a proposal to CCE, IMCO and the Office of the President. Several meetings took place, and the CCE representatives were in charge of making consultations with other private sector representatives.

Some basic agreements were accepted by the participants in the discussions: 1) the issues that were to be picked should foster the competitiveness of the country in general; 2) results should be accomplished before November 2006; and 3) reforms should not entail passing law amendments or new laws through Congress.

Ten priorities were selected and several specific actions were prepared. The negotiations began with the ministries and other regulators. The Office of the President sent the specific proposals to ministers and agencies, annexing the studies prepared by IMCO and COFEMER. CCE continued its consultations with the private sector. Difficult negotiations continue, both within the public sector and among the private sector representatives. The results were 36 specific actions to make reforms, and the government’s pledge to consult the private sector through the implementation process.

In August 2005, the president issued a decree to officially indicate to ministries and governmental agencies that they had to implement the 36 actions of regulatory improvement to foster competitiveness.¹⁶ However, not all actions were well received by everybody, as some affected private sector and public sector actors’ interests.



The process is reflected in the graphic above. After the definition of the actions and the issuing of the presidential decree, the actions were reflected in the *Biennial Programmes (Programas de Mejora Regulatoria – PMRs)*, the specific regulatory improvement programmes that Ministries and agencies have to present to COFEMER every two years. These Biennial Programmes establish a discipline relating to the presentation and evaluation of activities of regulatory policy, which is fundamental for tracking the reform inside the administration.

¹⁶ Acuerdo por el que se establecen los lineamientos para la presentación de los programas de mejora regulatoria 2005-2006”

The sectors include actions in the following issues: transport and telecommunications, labor and social security, health, energy, foreign trade, financial sector, technical standards, immigration and regulatory reform in states and municipalities. To implement the actions and keep track of advances an internet based system was prepared. Every month the government has to report advances directly to COFEMER's web page (www.cofemer.gob.mx), and any citizen can send comments. However, this system was supplemented with the formation of several private-public sector sub-groups in which the initial proposals have been refined. Likewise, COFEMER has tried to gain the attention of the media to disseminate progress.

After a difficult start, caused by the media highlighting only the tough issues, in October the private sector representatives issued a press release stating that the work under this process has been constant and *"the response of the government more agile than in past processes"*.¹⁷ The difficult start was overcome thanks to: increased involvement of the private sector; technical work prepared by both public servants of different ministries and private sector representatives involved in activities affected by regulation; and strong high-level political support from the Office of the President and the CCE.

A proposal to try to institutionalize public-private dialogue to improve competitiveness, taking into account recent successful and unsuccessful efforts.

The federal government will continue to issue economic regulation that affects economic activity, and a mechanism for private-public dialogue would help with the design and implementation of actions which will improve competitiveness and economic growth, creating more and better paid jobs and reducing the cost of goods and services in the Mexican market.

This private-public dialogue mechanism should help to generate movement and define priorities. It demands both technical work and political will – if the former is done well, by technical institutions of the government meeting with private sector representatives that have the every day knowledge, the latter is more likely to follow.

There is no need to build from scratch. It could be possible to institutionalize the technical work being done to improve competitiveness through the implementation of the 36 regulatory actions in the framework of the Regulatory Improvement Council. PROFECO, CFE and COFEMER are members of the council. The academic, labor and agriculture sectors also participate. Working groups reporting to the Council could be formally established. The technical work would be done at that level, leaving political decisions to the Council meetings. These working groups could undertake the work that now is informally being done by the working groups created to implement the 36 regulatory improvement actions to foster competitiveness. The advances would be reported by the Council to the public.

Before the end of the current administration, the Council could meet and make an evaluation of the process. The Council could also produce a "white paper" documenting the process for further reference to the next administration. The Council might also consider the pertinence of meeting with the "economic transition team" of the president-elect to discuss results.

If the experiment is successful, new avenues could open for the institutionalization of private-public dialogue to enhance competitiveness in Mexico. New topics could be incorporated and different stakeholders from different backgrounds could find a forum for discussion of economic policy and regulation.

¹⁷ Ver: <http://www.cce.org.mx/NR/rdonlyres/DD82638D-E6F7-4538-84F8-C08B07DB0B03/2904/mejreg25oct05.pdf> (diciembre de 2005)

Author:

Miguel Flores Bernés, Coordinator General of Regulatory Impact Assessment, COFEMER

Miguel Flores Bernés has worked in the private sector, the Mexican public sector and academia. He is currently the Coordinator General of Regulatory Impact Assessment in the Mexican Federal Commission for Regulatory Improvement (COFEMER). In the public sector he has been Director-General for International and Legal Affairs in the Office of the President of Mexico for Public Policy (2003-2004), Director-General Adjoint for Foreign Investment and Director for International Affairs in the Ministry of Economy (1997-2002). He was part of the Mexican negotiating team for different Free Trade Agreements that Mexico negotiated with the EU, EFTA, El Salvador, Honduras, Guatemala, Chile, Japan and Singapore. He was also in charge of coordinating the negotiation of Bilateral Investment Treaties.

In the academic sector he has lectured on topics related to foreign investment and international economic law in the *Universidad Nacional Autónoma de México*, *Universidad de las Américas, A.C.* and he was the legal counselor of the *Escuela Iberoamericana de Políticas Públicas (IBERGOP)* in Mexico. He has published several articles in relation to the protection of foreign investment and has contributed in publications made by APEC, OECD and IBERGOP. In the private sector Miguel Flores was part of the legal team of Wal-Mart in Mexico and a partner in the firm *Acosta, Altamirano y Flores A.C.* (1992-1995). He has a Law degree from the *Escuela Libre de Derecho* in Mexico City and a LL.M (Master of Laws) in International Economic Law (with distinction) from the University of Warwick in the UK. He was born in Ciudad Juárez Chihuahua, Mexico, in October 21, 1968.

mfbernes@cofemer.gob.mx