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Competition Law in Mexico: New
Rules, Same Game?.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

Is Economic Competition Important in Mexico?

In a country in which monopolistic practices have been an historical rule, rather than an exception, the search to regulate and combat evident market faults such as the concentration of commodities and services in a few hands (deriving in monopolies) must be a State priority.

Mexican case is particularly important, since historically we have been behind other nations regarding market competition. In order to put this into perspective, our former Federal Law of Economic Competition (*Ley Federal de Competencia Económica*) was enacted on December of 1992, during the presidency of Carlos Salinas de Gortari. This is relevant since our neighboring country, the United States of America has regulated economic competition since 1890, with the well known Sherman Act of 1890, which is the first historical record of antitrust regulation.¹

The Federal Law of Economic Competition of 1992 stipulated the existence of the Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*), which for more than 20 years was in charge of regulating economic competition and markets in Mexico. Unfortunately, the Federal Institute of Telecommunications lacked of the coercive tools required to enforce its attributions. Proof of this is the current existence of various comercial monopolies in our country.

Structural Reforms on Economic Competition

In a clear attempt address Economic Competition and aiming to improve the existing regulatory framework regarding market competition in Mexico, on June 11, 2013, the Congress approved and passed a bill proposed by President Enrique Peña Nieto, which amended several dispositions of our Federal Constitution.

“...the instauration of two independent and autonomous institutions (which replaced the former Federal Competition Commission), specialized in regulating and preventing monopolistic practices in Mexico.”

In opinion of the author, the most significant contribution introduced in our legal system by such bill, is the instauration of two independent and autonomous institutions (which replaced the former Federal Competition Commission), specialized in regulating and preventing monopolistic practices in Mexico. On one hand, the Federal Economic Competition Commission (*Comisión Federal de Competencia Económica*), became the general competition authority, and on the other, the Federal Institute of Telecommunications, was incorporated to be the sole authority in charge of telecommunication and broadcasting antitrust issues.

The autonomy of both the Federal Economic Competition Commission and Federal Institute of Telecommunications becomes even more relevant from a procedural point of view, since the rulings issued by such authorities can only be challenged through the amparo trial which will be vented before specialized federal courts in charged of competition,

1.- DEL PILAR MIRANDA, Diego Aarón, *Paradigmas Económicos*, <http://www.dineroenimagen.com/2014-03-03/33500>, Wednesday, March 4th, 2015.

broadcasting and telecommunications matters. It is important to state, that such specialized courts are another relevant contribution of the structural reforms.

Additionally, in order to secure the independence and to prevent bribery acts, the approved bill endues both the Federal Economic Competition Commission and Federal Institute of Telecommunications with governing bodies composed of seven members (including its president) who will be proposed by the Executive Branch (the President) to the Senate, who will remain in office for a 9-year term.

Additional Material Reforms to the Competition Law's in México

Continuing with the clear objective of creating a modern Economic Competition regulatory framework, on April 29, 2014 the Senate approved a second bill that resulted in the creation of a new Federal Economic Competition Law (*Ley Federal de Competencia Económica*).²

The new Federal Economic Competition Law contains several relevant aspects regarding the organic structure and attributions of both the Federal Economic Competition Commission and Federal Institute of Telecommunications from which we would like to highlight the following:

- a) The creation of new internal areas, such as the “investigating authority” and the “accountability office” that guaranty the independence and due processes in all acts renders by the Commission and the Institute;
- b) Substantial increase in fines that can be imposed for anticompetitive conducts;
- c) The authority to prevent and deny any merger or acquisition that could have adverse economic effects;
- d) Criminalization of anticompetitive conducts³; and
- e) The mechanisms to resolve conflicts regarding the jurisdiction of the Federal Economic Competition Commission and Federal Institute of Telecommunication.

Conclusion

In conclusion, even if the bills subject matter of this analysis have gone relatively unnoticed for the public opinion (in comparison with the energy and tax reforms), in the personal opinion of the author, this set of bills will bring significant changes in the market, beneficiating consumer pockets by increasing the quality of goods and services through the increase in market competition, as well as by encouraging new market entrants and foreign capital by leveling the current playing field. We have been equipped with relevant tools to promote and guarantee our rights for a competitive markets, it is our duty to enforce such rights, and directly benefit from this game changing rules.

A clear proof of the positive actions brought by this bills is the resolution issued on march 5, 2015, by the specialized federal courts in charged of competition, broadcasting and telecommunications matters, confirming the resolution issued by the Federal Telecommunication Institute (*Instituto Federal de Telecomunicaciones*) on march 6, 2014, in which the Federal Telecommunication Institute declared Grupo Televisa (one of the biggest television and broadcast commercial empires in the word), as a preponderant actor in the field of broadcast, and therefore subject to the sanctions and rulings of the Federal Institute of Telecommunications.

2.- Ministry of Economy, *Presentación de Iniciativa de Nueva Ley Federal de Competencia Económica*, <http://www.economia.gob.mx/eventos-noticias/informacion-relevante/10141-boletin14-020>, Tuesday, March 3rd, 2015.

3- *Federal Criminal Code, 2015, Article 254 bis.*

OECD worried for the High barriers for Foreign Investment.

The OECD has suggested Mexico reconsiders their policy on foreign investment. In the Annual conference "Betting for Growth" held at Istanbul, the General Secretary of the Organization stated that Mexico has one of the highest barriers for investment, especially under the service and infrastructure sectors. It is preoccupying how high this barriers are set in comparison to the average of those held by members of the OECD. www.informador.com.mx 09/02/2015.

Mexican Economy on rise.

According to the Minister of Finance, Luis Videgaray Caso, the Gross Domestic Product (GDP) in Mexico has increased by 2.1 percent in regards to last year. This is seen by the minister of finance as sign for an acceleration of the Mexican economy for the foreseeable future. Furthermore, Videgaray Caso believes that Mexican economy is on a very positive note especially in manufacturing and construction sectors. It has yet to be announced the first figure for GDP in 2015. Nevertheless, this is a positive indication for what's to come in regards to Mexican Economy. www.excelsior.com.mx 20/02/2015.

National Anticorruption System approved by Deputies.

The Mexican Chamber of deputies has passed the constitutional reforms to implement the National Anticorruption System. The reforms passed with a total of 331 votes in favor to be now taken to the Chamber of Senators in order for the reforms to be passed. Said reforms were proposed by Mexican President Enrique Peña Nieto in order to fight corruption in all three levels of Mexican Government, federal, local, and municipal. In order for the reforms to be implemented they will now have to be discussed in the Chamber of Senators. www.animalpolitico.com 26/02/2015.

US inflation rate remains negative.

The Consumer Price Index fell by 0.7% in the month, and by 0.1% from a year earlier - the first annual drop in five years - the Department of Labor said. Petrol prices fell by 18.7% in January. Had petrol prices remained stable, the index would have risen by 0.1%. Earlier this week, US Fed Chair Janet Yellen said she expected inflation to start rising in the coming months. Petrol prices were likely to stabilize as oil price falls began to moderate, she said. US rates have been close to zero since 2008. Analysts said a short period of falling prices would do nothing to damage the US economy. BBC NEWS. 26/02/2015.

Mexico replaces Attorney General.

On Friday February 27, 2015, Mexican President, Enrique Peña Nieto, announced that Attorney General Jesus Murillo Karam would be leaving his position as Attorney General and would be sworn as the head of the Department of Rural and Urban Development. In his place senator Arely Gomez Gonzalez will occupy the spot being only the second woman in Mexican history to take the position. All of this comes 5 months after the disappearance of 43 students in the town of Iguala, Guerrero which became the biggest case which Murillo Karam was part of. www.animalpolitico.com 27/02/2015.

Spending cuts to Energy Sectors in Mexico.

The low in oil prices has had an important downfall impact in the federal budget of the Mexican government. As a result, several Mexican government entities are to reduce their spending substantially as the oil prices go lower and lower. The Head of the Secretary of Energy, Pedro Joaquin Coldwell has stated that PEMEX, Mexico's exclusive and state owned oil company and Comisión Federal de Electricidad, Mexico's exclusive and state owned energy production company have a reduced budget for the year, resulting in the cancellation of major programs such as oil search in deep waters. www.elfinanciero.com.mx 28/02/2015.

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