Chapter 1.

The Mexican telecommunication and broadcasting reform: Building on the progress

This chapter provides the context of the OECD Telecommunication and Broadcasting Review of Mexico 2017, by recalling the outcomes of the 2012 OECD review, assessing the measures implemented since the 2013 reform, and providing recommendations for the continued improvement of telecommunication and broadcasting in Mexico.
The OECD Review of Telecommunication Policy and Regulation in Mexico published in 2012 (OECD, 2012) provided recommendations for policy makers to reform the legislative and regulatory framework. When requesting that review, Mexico recognised the potential role the telecommunication sector could play to increase productivity and economic growth while enabling governments to improve the provision of public services. At the time, the country had the lowest gross domestic product per capita in the OECD, a high inequality of income distribution, and a relatively high rural population, many of whom had limited communication services. The drivers for reform were, therefore, very clear.

Mexico needed the stimulus that stronger growth in the communication sector could provide to make its economy more competitive and address long-standing inequalities. In addition, the policy and regulatory settings at that time were not going to meet these goals and almost every effort for previous reforms had been frustrated under that framework. Mexicans who had access to telecommunication services had a lower quality of service (QoS) compared to their peers in other OECD countries and paid relatively high prices for these services. Furthermore, many were without service at all. Mexico needed the opportunities for social and economic development that could be provided by greater access to more efficient communication services, in particular high-speed broadband.

The “Pact for Mexico”, a national political agreement signed in December 2012 by the country’s leaders, underpinned subsequent reforms, including in the communication sector. Its commitment – to further the democratisation of civic engagement, address inequality and create opportunities, as well as to expand the effective implementation of social rights – had arisen from a consensus that widespread reforms were essential but would not be without challenges.

In the telecommunication sector, the subsequent constitutional reform of 2013 and other regulatory changes took bold steps to ensure these issues were addressed with closely targeted measures. For the purposes of this review, the constitutional reform together with telecommunication and broadcasting sector legislation of 2014, including the Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR) and the Federal Economic Competition Law (Ley Federal de Competencia Económica, LFCE) are collectively referred to as “the reform”, although it comprises several structural changes in the sector over a period of roughly three years. Among the key initiatives brought about with the reform were reduced barriers for market entry, including through foreign direct investment (FDI); the elimination of the systematic overturning of virtually every decision taken by regulatory authorities through the establishment of a specialised court; and the removal of the so-called “double window”, whereby regulatory processes were conducted twice by two different authorities, through a clearer separation of responsibilities for policy formulation and regulatory and market monitoring functions. The establishment of two independent oversight authorities, one specifically responsible for the telecommunication and broadcasting sectors, was a critical step in this process.

Moreover, the reform aimed at fostering pro-competitive measures, so that a more efficient communication market could expand access, improve service quality and render communication services more affordable for the people of Mexico. In addition to these pro-competitive measures, the reform established clear public policy mandates that must be implemented by the government. The purpose of these mandates was to guarantee the implementation of a set of projects that, on the one hand, contribute to promoting competition in the sector, and on the other, expand access and use of communication services.
The reform in the telecommunication markets introduced in Mexico has gone beyond the telecommunication sector. In the area of broadcasting, it initiated changes to introduce more choice and more competition to meet goals related to democratisation, through greater plurality, and addressing, as in the telecommunication market, very high levels of market concentration. Such changes would have been needed irrespective of the convergence between the two sectors, which is increasingly evident around commercial and technological change, but in its light are even more essential.

The digital switchover, which in large part was completed in 2015, was a critical step for both the telecommunication and broadcasting sectors and was swiftly finalised after many years of slow progress. During this time, Mexico prioritised this transition to enable the entry of new digital players in the broadcasting market and to free up spectrum to be used by the Red Compartida, a shared wholesale long-term evolution (4G) wireless network. Considered together, all these changes are aimed at improving service quality, coverage and choice in a more competitive market for both broadcasting and telecommunication services.

In 2017, Mexico stands again at a critical junction in terms of the contribution that improved communication services could make to its economic and social development. For this reason, the Mexican government invited the OECD to undertake this review with three objectives in mind:

1. to assess the implementation of the reform against the OECD’s 2012 recommendations
2. to examine the evidence for the outcomes in terms of how Mexicans are being served by communication services compared to when the first review was undertaken
3. to make recommendations where the reform has not fully met the goals, to address new developments or, where progress has been made, to build on that momentum.

This report reviews the reform to the telecommunication and broadcasting sectors, which encompasses changes since 2012, in terms of policy and regulation in Mexico, and puts forward a number of further recommendations in both areas. These recommendations are not necessarily novel. They reflect to a large part good practice frameworks already in place in many OECD countries which have helped spur competition and meet goals such as media plurality. While evidence-based, the report is cognisant of the fact that the outcomes of the reform are nascent in nature or, where they are in place, still may require modifications or enforcement.

The objectives of policy and regulation evolve over time and nowhere more so than in communication services, which are critical for going digital and improving people’s lives. The evidence examined here indicates the progress Mexico has made in delivering outcomes against its objectives. The challenge, as always, is to build on these achievements, to address shortfalls where they exist and to be forward looking.

Recalling the recommendations of the 2012 OECD review

The 2012 OECD review provided a comprehensive examination of the telecommunication sector in Mexico at the time. It assessed the strengths and weaknesses of the sector, and highlighted possible areas of reform. Those recommendations were based on the assessment of the Mexican market and were coupled with good practices compiled from OECD countries’ experience. Some recommendations called for revisions in existing laws while others required only a change in procedural practices. Many of the recommendations
were directed at strengthening the telecommunication sector regulator – the Federal Telecommunications Commission (Comisión Federal de Telecomunicaciones, COFETEL), at the time – which has since been replaced by a new authority which is constitutionally autonomous – the Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones, IFT) – which has both regulatory and competition responsibility over the telecommunication and broadcasting sectors. Finally, while the focus of the 2012 review was on the telecommunication sector, it also touched on the broadcasting sector.

The first group of the 2012 recommendations aimed to ensure low barriers to entry and “contestable” telecommunication markets in order to exert pressure on existing operators and avoid monopolistic behaviour. A “contestable” market is one where the barriers to entry and exit are low enough to allow new entrants to enter the market and “contest” market share. In Mexico’s case, the foreign investment and ownership restrictions in fixed-line networks were an obvious barrier to entry, especially with respect to network development. The OECD therefore recommended the elimination of all foreign investment restrictions on fixed-line telecommunication operators, with the eventual goal to eliminate all restrictions on foreign investment caps.

Another suggestion to facilitate lower barriers to entry was to abandon the individual concession system for licensing in favour of a class-licensing regime. The licensing regime in 2012 was time-consuming and an obvious barrier to entry. By reforming the framework, one license could be used for all companies, requiring only that the company subject itself to reporting requirements and COFETEL’s regulation. Recommending a streamlined licensing regime sought to ease the obligations on licensees and thereby simplify entry procedures. It was also recommended that more information be required in areas where there are resource constraints, as in the case of spectrum for wireless licenses. The OECD review further recommended that the entry process for new players be simplified. This included the entry of mobile virtual network operators (MVNOs), which, the 2012 review said, should be facilitated by making national roaming obligatory among operators.

The second group of recommendations proposed by the OECD in 2012 was to ensure that regulations and regulatory processes are transparent, non-discriminatory and effectively applied, which is a key requirement for long-standing change. At the time of the 2012 review, there were many instances where operators abused the amparo process to challenge regulatory decisions which were suspended while under review. This gave operators an incentive to challenge regulation with which they did not wish to comply, undermining the timeliness and legal certainty of the regulation itself. Therefore, the OECD 2012 review put forward that the legal system needed to be reformed so that the regulator’s decision remained in force until the appeal process had been resolved.

Prior to the reform, both COFETEL and the Mexican Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) were involved in the decision-making process for policy making and regulation. This created a “double window” whereby COFETEL provided an opinion that the SCT did not have to accept, and then the SCT conducted its own investigation and reached a conclusion. The redundancy of efforts by the regulator and the SCT generated long delays and uncertainty in the regulatory process. The OECD recommended eliminating the “double window” by clearly separating responsibilities between the two entities: the SCT to set policy and the regulator to establish regulation and monitor the market.

Following this distinction, the OECD recommended reinforcing COFETEL’s power to effectively carry out its mandate to supervise, review and promote competition in the
telecommunication sector by granting it greater autonomy to make and enforce decisions in order to carry out its responsibilities without the necessary oversight of the SCT. In conjunction, the recommendation included granting the regulator budgetary independence from the SCT. At the time of writing the previous review, COFETEL’s budget was set by the SCT, with COFETEL having the right to 35% of annual fees paid by spectrum holders, as well as a percentage of the excess price paid in auction bids. Furthermore, the 2012 review suggested that COFETEL’s mandate should also be clearly defined with respect to the other regulators in the government, so that there was not any ambiguity as to the competence for regulatory oversight in the telecommunication sector. However, the 2012 review recommended that co-operation between the various entities should remain, and indeed should be formalised into written rules and procedures to define the agreed interaction on both sides. For instance, the Federal Competition Commission (Comisión Federal de Competencia, COFECC), which was at that time Mexico’s communication competition authority, should assist COFETEL to understand the competitive implications for regulations, but the power to enact regulation should lie with COFETEL. The 2012 review recommended that COFETEL’s jurisdiction include the authority to declare an operator that has substantial market power (SMP) and be able to enforce asymmetric regulation against it.

The level of fines that COFETEL could impose on firms at the time of the 2012 review was low. It was recommended to increase the amount of these fines so that they could act effectively as a tool to enforce regulations and as a deterrent even for large companies. COFETEL should, the OECD review said, also have the right to request information from companies regarding QoS and performance in order to ensure they are meeting their obligations and conducting fair market practices. If firms failed to comply with the request for information, COFETEL should be allowed to sanction them appropriately. Additionally, the review recommended that the QoS information from existing market participants be expanded to include information regarding broadband quality (real vs. advertised speeds), in addition to wholesale and performance indicators. The OECD recommended the publication of these indicators on a regular basis to inform the public, and to share the incumbent’s wholesale indicators, particularly with new entrants.

In order to make the decision-making process for regulation more clear and transparent, the OECD suggested that COFETEL establish and adhere to clear reporting procedures to give market participants and consumers more insight into the process. Along with information sharing, the review said that COFETEL should allow the relevant stakeholders the opportunity to comment on proposals within a given time frame, and make these comments public while upholding commercial confidentiality issues. Increased transparency, the review said, would reduce the risk of litigation and improve the overall quality of regulatory decisions. In conjunction, it was recommended that COFETEL employees uphold a code of ethics and establish rules on reporting personal interests and behaviour with respect to companies under its jurisdiction.

A third key strand of the proposed recommendations was to highlight necessary reforms to existing regulations that were needed to stimulate competition, but also to acknowledge the need to reduce regulation unless required by market conditions. At the time of the 2012 review, the OECD acknowledged that Mexico’s regulatory framework was inadequate. Therefore, the emphasis at that point was to reform the policy and regulatory framework, as the streamlining of regulation would have to come at a more mature stage. In order to develop regulation in tune with the needs of the market, the review said that COFETEL should be able to regulate interconnection tariffs \textit{ex ante} rather
than waiting for disputes to arise, which was the then *modus operandi*. Additionally, the review said that COFETEL should have the authority to require Telmex to consolidate local dialling areas according to the regulator’s recommendations. It was said that this consolidation would help to decrease the calling costs within the country, as calls between two areas would be considered a local instead of a long-distance call. It also was noted that this would also have an effect on the interconnection rates charged to new entrants, who were required to pay significantly higher long-distance charges in so-called non-competitive areas, instead of local interconnection rates.

The 2012 review said that other rights that should be established within COFETEL’s remit included the power to declare bottlenecks and essential facilities, and to establish non-discriminatory conditions for access to these facilities. Access to essential facilities, it was said, should include the unbundling of the incumbent’s local loops, and co-location at cost-based pricing in order to help new entrants in the market. It was recommended that COFETEL also have the authority to undertake market reviews, declare that an operator has SMP and enact appropriate remedies, such as asymmetric regulation in order to promote competition. In order to fully enforce such decisions, the 2012 review recommended that COFETEL be able to impose functional, and if necessary, structural separation on an operator that continued to abuse its market power to ensure equal access and equivalence of inputs.

The 2012 review said the price regulation of a dominant operator is important and the responsibility of setting and administering the price-cap scheme should fall under the regulator’s jurisdiction, including the determination of the “X factor” in the cap (i.e. the CPI-X formula used to ensure a fall in the real, inflation-adjusted, prices of telecommunication services). The framework of the cap itself, it was suggested, should also be restructured to include sub-caps, to avoid a drop in prices for some services resulting in an increase in others. However, it was noted that the practice of registering prices by telecommunication operators should be required only for wholesale prices of operators with SMP.

The 2012 review also observed that the market settings at that time would be unlikely to provide widespread geographical coverage of fixed broadband access. As such, it stated that it was important for the mobile broadband market to be developed into a competitive market, with no obvious single dominant firm. Mexico, it was said, should revise its rights of way framework to remove barriers facing new entrants, and release sufficient spectrum to meet the growing demand for mobile broadband services. The OECD also suggested that the government auction more of the Federal Electricity Commission’s (Comisión Federal de Electricidad, CFE) “dark fibre”, and provide incentives to promote efficient infrastructure sharing. In conjunction with encouraging growth for national coverage by mobile broadband operators, it was noted that the government should clarify its policy on universal service and articulate explicit plans on how to implement it.

Consumer protection and empowerment is another essential element to develop competitive markets. In order to accomplish this goal, the 2012 review recommended a clear division of roles and responsibilities between COFETEL and Mexico’s Federal Consumer Protection Agency (Procuraduría Federal del Consumidor, PROFECO). The 2012 review suggested that the actions that each could take to empower consumers should also be considered and clarified. For instance, to make it easier for consumers to switch providers, operators could be required to allow number portability and unblock mobile telephones after a set time period.
In the broadcasting sector, several recommendations were made in order to increase competition in this market. At the time of the 2012 review, there were only two free-to-air (FTA) television stations and many cross-ownership links with the pay TV industry. In an effort to have media plurality, the OECD suggested that the government award two additional FTA national television licenses on a fair, non-discriminatory basis. The 2012 review recommended lifting restrictions on foreign ownership of Mexican television broadcasters. Moreover, it was said that cable operators should be able to benefit from a simpler class-licensing framework which would allow them to have one national license in lieu of several regional licenses, as was the case in 2012.

Additionally, the 2012 review said “must-carry” obligations for all terrestrial broadcasting signals should apply to all pay TV carriers, while FTA broadcasters should be obliged to offer their signals (“must-offer”). In the absence of such reciprocal obligations, it was noted, each pay TV player had to negotiate for the right to offer FTA channels, giving large pay TV players a distinct advantage over small operators. Conversely, given Telmex’s market power in the telecommunication sector, the 2012 review recommended to carefully assess whether Telmex should be provided a television license for pay TV or not. If it were granted a license, this should depend on the successful implementation of asymmetric regulation in the telecommunication market, such as access to passive infrastructure or the acceptance of full local-loop unbundling.

Finally, the OECD urged Mexico to continue its transition to digital terrestrial television (DTT), and phase-out analogue systems by 2016. In order to ensure that the transition was completed successfully, the 2012 review said coverage should be comparable across the country; TV receivers needed to be replaced at an acceptable rate, and public subsidies should only be relied upon where the market-only approach proved to be insufficient. The switchover plans, it was said, should also carefully consider the most inclusive way to achieve the switchover, given the high share of low-income population, who were historically terrestrial-only viewers. In this context, the 2012 review said, the licensing of new DTT broadcasters should move forward.

Measures implemented since the 2013 reform

The Mexican telecommunication sector has experienced substantial progress vis-à-vis the deficiencies identified in the 2012 OECD review, not only from a legal and regulatory perspective, but also in respect to current market dynamics, which have derived, to an important extent, from the public policy, legal and regulatory transformations that have taken place in Mexico since 2013. Many of these changes closely reflect the recommendations from the 2012 review.

The current review summarises the main recommendations and indicates the degree to which they have been implemented (Table 1.1). Some 28 of the 31 recommendations have been fully implemented. A further three recommendations have been implemented in part or are in the process of being implemented. Annex 1.A1 provides a detailed description of how these measures have been implemented and how the changes are reflected in the constitutional, legal and regulatory framework.
3. The IFT plans a forthcoming assessment of the guidelines and outcomes of the must-carry must-offer obligations.

2. A third national licence is operational and a 2017 auction process will grant the spectrum which was initially offered for the fourth national broadcasting network.

1. A recent judicial decision to allow both regulatory bodies to work jointly on the same case may undermine the progress made to close the “double window” between the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) and the Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) by opening one between the IFT and COFECE.

Table 1.1. State of implementation of the 2012 OECD recommendations

<table>
<thead>
<tr>
<th>Telecommunication sector</th>
<th>State of implementation</th>
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<tbody>
<tr>
<td><strong>Ensure low barriers to entry and “contestable” telecommunication markets</strong></td>
<td>✓</td>
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<tr>
<td>Eliminate all foreign investment restrictions/caps on fixed-line telecommunication operators in Mexico.</td>
<td>✓</td>
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<tr>
<td>Reform the existing concession system to a simpler class-licensing regime (except for resource scarcity restraints, i.e. spectrum).</td>
<td>✓</td>
</tr>
<tr>
<td>Monitor and enforce existing obligations.</td>
<td>✓</td>
</tr>
<tr>
<td>Simplify and encourage entry of resellers to the market (including mobile virtual network operators).</td>
<td>✓</td>
</tr>
<tr>
<td><strong>Ensure that regulations and regulatory processes are transparent, non-discriminatory and applied effectively</strong></td>
<td>✓</td>
</tr>
<tr>
<td>Reform the current legal system to prohibit courts from suspending and overturning policy/regulatory decisions systematically, and provide protection for individuals acting on behalf of a public authority.</td>
<td>✓</td>
</tr>
<tr>
<td>Separate responsibilities for policy formulation (ministry) from regulatory/marketing functions (regulator) (e.g. granting concession process) in order to eliminate the “double window”.</td>
<td>✓</td>
</tr>
<tr>
<td>The Federal Commission of Telecommunications (Comisión Federal de Telecomunicaciones, COFETEL) should have greater autonomy to carry out its mandate and should have the power to enforce/revoke concessions.</td>
<td>✓</td>
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<tr>
<td>COFETEL should have the authority to declare significant market power and subject that company to appropriate remedies.</td>
<td>✓</td>
</tr>
<tr>
<td>The jurisdictions of COFETEL and the Federal Competition Commission (Comisión Federal de Competencia, COFECE) and the various other regulatory bodies should be clearly defined and co-operation should be formalised.</td>
<td>✓</td>
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<tr>
<td>The regulator should have greater budgetary independence and a clearly defined and sufficient source of funding.</td>
<td>✓</td>
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<tr>
<td>The regulator should have the power to impose fines high enough to ensure regulatory adherence.</td>
<td>✓</td>
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<tr>
<td>Quality of service indicators should be published regularly.</td>
<td>✓</td>
</tr>
<tr>
<td>Wholesale indicators from dominant firms should be available to new entrants (e.g. access to leased lines, etc.).</td>
<td>✓</td>
</tr>
<tr>
<td>Establish formal public consultations and transparency procedures for COFETEL to follow to ensure increased accountability and transparency.</td>
<td>✓</td>
</tr>
<tr>
<td><strong>Reform regulations to stimulate competition and eliminate regulations, except where clear evidence demonstrates that they are the best way to serve the broad public interest</strong></td>
<td>✓</td>
</tr>
<tr>
<td>COFETEL should be authorised to regulate interconnection tariffs ex ante to foster competition among operators.</td>
<td>✓</td>
</tr>
<tr>
<td>Telmex (fixed-line incumbent) should be required to consolidate local dialling areas as determined by COFETEL.</td>
<td>✓</td>
</tr>
<tr>
<td>COFETEL should be authorised to declare bottlenecks and essential facilities and to establish non-discriminatory conditions to access these facilities.</td>
<td>✓</td>
</tr>
<tr>
<td>COFETEL should be able to undertake market reviews, declare market powers, and apply remedies as appropriate, and impose regulations to protect consumers.</td>
<td>✓</td>
</tr>
<tr>
<td>COFETEL should have the authority to impose a functional and structural separation of an operator that abuses its dominate power.</td>
<td>✓</td>
</tr>
<tr>
<td>COFETEL should set the “X factor” and administer price caps to regulate Telmex’s end-user prices, including the use of “sub-caps”.</td>
<td>✓</td>
</tr>
<tr>
<td>Only operators with significant market power should have to register their wholesale prices.</td>
<td>✓</td>
</tr>
<tr>
<td>Sufficient spectrum should be released to meet the growing demand for mobile broadband data service, including releasing some of the Federal Electricity Commission’s (Comisión Federal de Electricidad, CFE) dark fibre. Incentives also should be put in place to promote infrastructure sharing.</td>
<td>✓</td>
</tr>
<tr>
<td>Modify the legal framework to promote infrastructure sharing and to remove barriers to obtain rights of way, by making governmental facilities available for mobile operators to deploy their networks and accelerating procedures to grant permits for rights of way.</td>
<td>Partial/in progress</td>
</tr>
<tr>
<td>The government should clarify the policy of universal service and define plans on how to effectively implement it.</td>
<td>Partial/in progress</td>
</tr>
<tr>
<td>The Federal Consumer Protection Agency (Procuraduría Federal del Consumidor, PROFECO) and COFETEL should clarify their roles and take action to facilitate consumers to switch service providers.</td>
<td>✓</td>
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<table>
<thead>
<tr>
<th>Broadcasting sector</th>
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<tbody>
<tr>
<td>Telmex should only be allowed to provide TV services when it's subject to asymmetric regulations and is in compliance with such regulations.</td>
<td>✓</td>
</tr>
<tr>
<td>The government should award a third and fourth free-to-air (FTA) national TV licence on a fair, non-discriminatory and neutral process.</td>
<td>✓</td>
</tr>
<tr>
<td>Must-carry obligations should apply to all pay TV providers, which should be obliged to carry all terrestrial broadcasting signals. Must-offer obligations should also apply to FTA broadcasters and the conditions (e.g. price, channel bundling) should be reassessed periodically.</td>
<td>✓</td>
</tr>
<tr>
<td>Ensure the transition to digital terrestrial television progresses to meet completion date of 2016.</td>
<td>✓</td>
</tr>
<tr>
<td>Foreign ownership restrictions on Mexican TV broadcasters should be lifted.</td>
<td>Partial</td>
</tr>
<tr>
<td>Cable operators should be able to obtain one national license for the whole country, instead of multiple regional ones.</td>
<td>✓</td>
</tr>
</tbody>
</table>

1. A recent judicial decision to allow both regulatory bodies to work jointly on the same case may undermine the progress made to close the “double window” between the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) and the Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) by opening one between the IFT and COFECE.

2. A third national licence is operational and a 2017 auction process will grant the spectrum which was initially offered for the fourth national broadcasting network.

3. The IFT plans a forthcoming assessment of the guidelines and outcomes of the must-carry must-offer obligations.
As a consequence of regulatory reform, the relevant markets in the telecommunication industry have developed positively: increased penetration levels can be observed in broadband markets, new players have entered the mobile market and QoS has improved (the latter, particularly with respect to broadband speeds and data volumes, where investment in higher capacity mobile technologies and further availability of spectrum for mobile telecommunication services, including via the digital switchover, has led to an acceleration of gains). In the national economic context, between 2012 and 2016, prices for telecommunication services significantly decreased, leading to an important increase in subscriptions, especially in mobile markets: over 50 million new mobile subscriptions to the mobile Internet and, from a small base, the number of people using the Internet for online transactions has multiplied by a factor of four (INEGI, 2017). In addition, foreign investment increased and the telecommunication and broadcasting sectors grew faster than the overall Mexican economy. A third national FTA television network has been introduced and plans have been announced for a fourth set of licenses to be made available and awarded on a regional basis.

Therefore, many of the rules adopted in the 2013 constitutional reform (SEGOB, 2013), as well as a significant part of the secondary legislation and further regulation or policy implementation by institutions such as the IFT and the SCT, have made an essential contribution to fostering a more competitive telecommunication marketplace in Mexico, benefiting businesses and consumers through lower prices, higher quality service, and a wider array of service offerings. Furthermore, the increased legal certainty derived from a clear separation of policy formulation functions and regulatory duties, and the assurance that the regulatory bodies’ decisions are not subject to unpredictable suspension recourse, has attracted new foreign and national investors, fostering dynamic efficiency in the sector.

Strengths of the reformed constitutional, legal and regulatory framework

Against this overall assessment, Mexico has undergone very positive developments and significantly strengthened its constitutional, legal and regulatory frameworks. This section discusses the main strengths of the current frameworks.

A clear division between public policy and regulation

The OECD welcomes Mexico’s efforts in establishing a clear division between public policy formulation, which is assigned to the SCT, and the issuance and enforcement of sector-specific ex ante regulation, vested upon the IFT. By eliminating the “double window” issues that were identified in the 2012 review, decision-making procedures have become more expeditious and efficient (i.e. no administrative and financial resources are put to waste), ultimately bolstering legal certainty among the subjects to whom such rules are addressed. Furthermore, it can be noted that the risk that final determinations issued by the ministry or the regulator are contested decreases, considering that there are fewer procedural stages to be covered in the adoption of these determinations. Again, this streamlining of the regulatory process helps create an environment of regulatory certainty which supports longer term investments.

The creation of two autonomous bodies with ample powers

One of the main pillars of the reform was the establishment of two autonomous bodies: the IFT and the Federal Economic Competition Commission (Comisión Federal de Competencia Económica, COFECE). The IFT acts as an autonomous body, from a functional and budgetary standpoint, freed from political influence and now able to
provide independent regulation based on transparent processes and evidence-based decision making. Moreover, the procedure for nominating and appointing the IFT’s commissioners is transparent and involves the participation of different public powers. This, coupled with the fact that said public servants have a fixed term in deploying their functions, ensures these can be, in effect, carried out autonomously.

At the same time, the constitution of COFECE as a fully autonomous competition agency with wide enforcement powers, whose commissioners are also subject to a transparent nomination and appointment procedure in which diverse public powers intervene, for fixed terms, further strengthens the entity’s independence in performing its mandate.

The IFT’s independence is one of the most significant breakthroughs of the reform, but so is the fact that the IFT has been endowed with ample powers to enforce both the regulations it issues and the LFTR generally, hence enabling the IFT’s decisions to be adopted in an effective and timely manner, without the need for prior opinion or approval by a ministry or the executive branch. Among such powers, it is worth highlighting: the ability to issue asymmetric regulation on preponderant market players as well as those with SMP, in areas such as local-loop unbundling, compulsory access to active and passive infrastructure, interconnection, and the possibility of imposing accounting, functional or structural separation of such undertakings; the capacity to impose administrative fines and other sanctions on infringing parties; and its powers in the granting, reform and revocation of concessions pertaining to the radio spectrum. At the same time, other legal provisions relating to preponderant operators and those with SMP in voice calls and message termination markets, such as the prohibition to differentiate between on-net and off-net retail prices, were very much needed under the market dynamics observed before the reform.

Empowering the IFT to impose asymmetric regulations on preponderant firms as well as those with SMP was crucial in an environment that was, prior to the reform, characterised by the presence of substantial market failures, such as high concentration levels in most markets, high prices, deficient service quality, and insufficient investment and penetration levels (OECD, 2012). Furthermore, the fact that both the preponderance declaration and the imposition of specific remedies are carried out within the same administrative proceeding, by a single public institution, enhances administrative efficiency. Thus, broadly speaking, these provisions are adequate and were undeniably required in the Mexican context; however, some questions can be raised regarding the preponderance framework, particularly as it concerns the constitutional provisions that establish it and the balance between principles and detailed implementation.

Significant improvement has been made with respect to the sanctioning regime, considering that fines are currently set at levels that can effectively deter violations by market players, taking into account the thresholds enshrined in the LFTR, which imply that the amount of the sanctions are contingent on the seriousness of the infringement and the transgressor’s specific financial circumstances. The latter aspect is particularly important, considering that tailoring fines to the situation of the infringer by establishing percentage thresholds, rather than a fixed maximum statutory amount, contributes to materialising the principle of proportionality. Nonetheless, some important recommendations can be made in order to further enhance the effectiveness and proportionality of these measures.

At the same time, concerning the fines applicable to antitrust violations, it can be noted that, in general terms, they are set at levels that are appropriate and congruent with the sanctions observed in other jurisdictions. Pertaining to the criminalisation of some categories
of anticompetitive conduct, while this topic has been subject to extensive debate, it must be acknowledged that several countries have decided to apply these sanctions to what the literature has identified as hard-core cartels, i.e. horizontal price fixing, output limitations, market allocation and bid-rigging schemes. Therefore, it is an additional deterrence tool that Mexican authorities may employ in their fight against cartels and other harmful anticompetitive practices.

As a result of the pertinent constitutional and legal provisions, the IFT must comply with transparency and information access principles, involving the mandatory publication of their decisions, all of which must be sufficiently motivated. This undoubtedly represents substantial progress regarding the previous legal framework, not only on the grounds of legal certainty for the subjects to whom the IFT’s rules and regulations are addressed, but in accentuating its accountability vis-à-vis other public institutions. Additionally, the elimination of the obscure decision-making processes that existed during the COFETEL era decreases the likelihood that the regulator’s determinations are subjected to constant judicial scrutiny, which would impede their effective implementation in practice.

Associated with the above, it is of pivotal importance that the attribution of greater powers to the regulators, namely, the IFT and COFECE, be complemented with accountability mechanisms before other branches of government. In this sense, it is appropriate that both regulators be obliged to present annual work plans and quarterly activity reports before the federal executive and legislative branches, and to appear before the Senate to account for their actions on an annual basis.

A further critical improvement is the fact that indirect amparo trials against the general rules, acts or omissions of the IFT and COFECE do not entail the suspension of such determinations while the respective judicial resolution is pending, save specific exceptions. Moreover, the 2013 constitutional reform (SEGOB, 2013) is explicit in determining that such decisions may only be disputed through an indirect amparo trial, hence excluding other forms of judicial redress, such as administrative action. In addition, the regime clarifies that an indirect amparo can only be invoked regarding final resolutions issued by the aforementioned authorities. Consequently, avoiding the complications that existed under the previous framework, where even intermediate determinations were suspended, further stalling pivotal decision-making procedures (i.e. dominance declarations and subsequent imposition of asymmetric regulations).

These rules are crucial in ensuring that regulatory provisions aimed at promoting a more competitive playing field are effectively applied, regardless of the expected resistance from market players that benefit from the status quo. That being said, in order to respect stakeholders’ rights, it is of utmost importance that such regulations are issued in abidance with due process of law on the part of the regulator, which naturally involves adequate assessment of the factual and legal basis of the case, and ample motivation on the need to impose a specific measure. In any case, some pertinent recommendations follow later in this section.

The creation of the special courts

The establishment of specialised judges and courts for the substantiation of indirect amparo trials pertaining to the telecommunication and broadcasting sectors, and in general any conflict arising in relation to the application of the LFTR, is a further breakthrough in the regulatory reform in Mexico. This not only alleviates the workload of other judicial institutions, it also guarantees decision making by public servants with sufficient background on these highly complex and technical issues, stimulating greater
efficiency within the whole judicial apparatus, and increasing the soundness of judicial resolutions. Some recommendations are made in the second part of this section on how to further strengthen this area.

**Measures to drive investment and extend connectivity**

A measure to spur investment and enable substantial progress has been the elimination of the restrictions on FDI in all telecommunication and satellite communication services. This change not only allows new entrants to join these markets and thereby boost competition, but also encourages an increase in the availability of advanced technologies and the acquisition of specialised knowledge by national firms, all of which benefit users of telecommunication services.

In recognition of the growing convergence between telecommunication and broadcasting markets, it is appropriate that the current regime not only constitutes the IFT as the sole authority in charge of enacting sector-specific _ex ante_ regulation, but also that it establishes a single licensing scheme, whereby operators are enabled to provide all types of services through their networks, and are only required to request additional spectrum licenses, should they need to use and exploit this scarce resource.

The Red Compartida, a wholesale wireless network with a target to cover 92.2% of the population and one of the cornerstones of the reform, is a significant development in the Mexican telecommunication market. A key objective of the project is to expand accessibility in underserved areas, thereby addressing entrenched inequalities derived from decades of deficiencies in policy and regulatory approaches (i.e. leading to insufficient availability of access, choice and investment in rural and remote areas [OECD, 2012]). The Red Compartida will offer data capacity to operators, mobile network operators (MNOs) and MVNOs, and has the potential to enable new business models that can take advantage of a nationwide 4G infrastructure. Red Compartida will not act as a retail operator in the market, but as a wholesale supplier.

While aspects of the project experienced delays, authorities are confident the roll-out of the network will proceed as scheduled. Success for the Red Compartida would place Mexico at the forefront of digital inclusion strategies and will be followed with tremendous interest around the world. Such a large and, in some ways pioneering, undertaking will, of course, not be without challenges. It is necessary to remember that at the close of 2016, some tens of millions people did not have a mobile broadband subscription in Mexico. This is by far the largest number of people without this service in the OECD area.

It is paramount, therefore, that the relationship between wholesale and retail roles and responsibilities promotes the efficient use of this resource. This will be critical to ensuring that the Red Compartida responds to rapidly evolving demand and promotes innovation in areas such as the Internet of Things (IoT). One of the key factors for future success is the access conditions for entities that will want to use this network; to this end, several recommendations are provided later in this section.

Furthermore, the continued focus on promoting an efficient use of existing telecommunication and broadcasting infrastructures, in particular through the passive infrastructure sharing between operators and the mandated access to public real estate and the availability of the CFE’s energy transmission networks, is the key to enhancing competitive dynamics within the sector. Indeed, in high-cost industries such as the telecommunication sector, taking advantage of existing and underutilised infrastructure is
a means for reducing costs and thereby steering investment towards areas that are crucial in providing services of improved quality at lower prices.

An improved measurement framework

Finally, important progress has been made in collecting and publishing statistics on the development of the telecommunication sector, both on the supply and the demand side. In May 2017, the IFT launched a new statistics website called the Banco de Información de Telecomunicaciones (BIT). This new open data and interactive platform for telecommunication statistics was designed to improve knowledge on and monitoring of the sector and can be considered state-of-the-art in many ways. It includes data such as market shares and penetration of communication services as well as adoption and use of information and communication technologies (ICTs) at a granular level of localities in Mexico. In addition, both the SCT and the IFT have worked with the National Institute of Statistics and Geography (Instituto Nacional de Estadística y Geografía, INEGI) to provide data on ICT take-up and usage since the reform, which is welcome for better informing policy makers.

Recommendations for the future

Notwithstanding substantial progress, a few weaknesses persist in the policy design of the reform as well as within the legal and regulatory framework. In particular, some elements in the framework have remained unaltered since the 2012 OECD review and raise concerns, such as some taxation and foreign investment provisions. In contrast, other elements that have emerged due to the evolution of market dynamics in recent years are not addressed, such as the high concentration of ownership in pay TV.

Further modifications to policies, regulation and the legal framework are important to consolidate the success of the 2013 reform. One of the main objectives of the reform was to increase access to high-quality telecommunication and broadcasting services for Mexico to build the foundation necessary for a vibrant digital economy. To sustain the momentum and move further towards achieving this objective, it is important to continue making progress (Figure 1.1):

- by further promoting competition in the Mexican market
- by further improving market conditions to set the right incentives for market players to grow their networks and innovate
- by further using national digital policies, such as through programmes to expand connectivity to underserved areas.

A sound and strong legal and institutional framework is essential to build a strong and sustainable foundation in these three key areas.

The following section provides specific recommendations in each of these three areas as well as recommendations to further improve the legal and institutional framework. The recommendations may differ in complexity of implementation. Some of the recommendations may require changes to the legal and regulatory framework, while others relate to changing or streamlining responsibilities between different entities, and still others only require changes in policies, approaches or practices.
Recommendations to promote competition

Mexico took important steps to foster competition in its telecommunication market during the 2013 reform, ranging from the introduction of asymmetric regulation for preponderant players to eliminating FDI restrictions in the telecommunication sector. In February 2017, the IFT further undertook a biennial review of the preponderance remedies and strengthened the asymmetric regulation. This section provides a set of recommendations to further spur competition in the Mexican telecommunication and broadcasting market, starting with the preponderance review.

The 2017 preponderance review on telecommunication

The measures proposed by the IFT in its preponderance review of telecommunication services are found to be balanced and proportionate. The additional measures, namely the equivalence of input requirements and the functional separation of the preponderant agent, are suitable to fostering competition in the market. Access seekers need to have elements such as local loops and leased lines available to them, together with the use of an effective Electronic Management System. With respect to the composition of the separated wholesale company board, while it will be important that the industry as a whole is represented and heard by the members of the board, the IFT must be aware of the risk of collusion.

Although the changes to Mexico’s legal and regulatory framework are admirable in light of the substantial deficiencies that were identified in the 2012 OECD review, there appears to be a gap in some areas between the formal establishment of the rules and their practical implementation. A particularly concerning gap is related to the wholesale regulation applicable to the preponderant agent in the telecommunication market.

Even though the regulator has been vested with sufficient tools to ensure access to the preponderant telecommunication operator’s infrastructure (e.g. local-loop unbundling, compulsory infrastructure sharing and interconnection), there have been significant delays in América Móvil disclosing information about infrastructure to the market, specifically regarding the infrastructure-sharing offer for the fixed network (for the mobile network, an information mechanism was established consistent with Article 269 of the LFTR). There was also a delay in the implementation of the local-loop unbundling. In particular,
the Electronic Management System (EMS) required in the LFTR is yet to be fully operational for some wholesale services. Additionally, the unbundling reference offer was approved by the IFT only in December 2015. Finally, under the preponderance rules issued by the IFT, an extensive time frame was granted to América Móvil for disclosing the information on its infrastructure.

The 2017 preponderance review addresses deficiencies in this area by establishing the criterion of equivalence of inputs, determining that the preponderant undertaking must deliver all the relevant information and services to requesting third parties, including MVNOs, under the same conditions it applies to its own operations. In this regard, it is critical that the IFT ensures that the EMS is fully implemented and operational as soon as possible. Any further delays will hamper the effective attainment of the main goals of the reform, for they obstruct access seekers to essential productive inputs and impede the efficient exploitation of scarce resources by telecommunication operators.

The introduction of functional separation obligations where the wholesale provision of access products is separated from retail operations, through the creation of both a new wholesale undertaking and a retail division within Telmex and Telnor, is a suitable tool for attempting to increase competition in sectors with a preponderant agent, possibly forestalling anticompetitive practices that could derive from its fully vertically integrated structure. It will be essential that the governance provisions establish incentives to guarantee that managing directors’ actions maximise each individual entity’s interest, and not those of América Móvil’s economic group as a whole.

In this respect, while it is commendable that the two entities will have two independent boards, it will be important that the industry as a whole is represented and heard by the members of the board. The IFT must, however, be vigilant to avoid any undue influence notably stemming from potential collusion among industry players.

Overall, the general measures proposed by the IFT in its preponderance review on telecommunication address the primary bottleneck to the development of both fixed and mobile communication services: opening fixed networks, in terms of backbone, backhaul and local loops to access seekers, at a time where there is still insufficient alternative infrastructure competition. Mexico, therefore, aims not only to provide access for the first time to some of its citizens and to improve existing telecommunication services to others, but also to establish the necessary conditions to increase economic competitiveness and social well-being in the country.

If the implementation of the functional separation of América Móvil is successful according to the terms outlined above, some of the existing remedies may become unnecessary and hence ought to be removed. Examples could include eliminating regulation pertaining to the preponderant operator’s retail activities or harmonising zero termination rates for all operators.

The IFT should assess the entry of Telmex into pay TV as soon as possible, following the successful implementation of its functional separation. This change would prevent the current preponderant agent, América Móvil, from leveraging its existing power from bottleneck infrastructure while, at the same time, allowing América Móvil to compete with rivals by offering a full bundle of services including pay TV.

The effective implementation of functional separation could bring regulatory relief to the preponderant agent, not in the least with regard to allowing it to offer pay TV and broadcasting services should it so wish. Eliminating the current restrictions, after ensuring
access to bottleneck facilities, would allow all players to enter each other’s markets. This could have several advantages.

First, it may provide increased incentives for the wholesale provider to invest in high-speed infrastructure in the knowledge that demand will increase if all retail providers can offer such services. Second, if the preponderant agent does enter these markets, it is likely to be a very effective participant, adding competition and improving choice for consumers in an otherwise concentrated market. Third, the concession title of Telmex provides for some universal service conditions, expansion and modernisation of the network, as well as an obligation to install and maintain coverage in urban and rural areas. As such, enabling the provision of a full range of services may assist in providing incentives for these activities and reaching agreements. Therefore, the flexibility to allow the people in these localities to access pay TV services offered by the preponderant agent through its own network is considered desirable.

If considered necessary, after a thorough assessment, a scheme could be initiated for granting a pay TV license to allow a gradual convergence (temporarily and geographically), replacing the restrictive rule which currently applies to América Móvil.

The 2017 preponderance review on broadcasting

It is too early to assess the success or failure of the current preponderance measures for broadcasting. Nonetheless, if market developments and the new preponderant measures do not increase competition over time, research and consultation should be carried out on options such as functional and structural separation of the preponderant agent as a last resort.

Mexico declared the Televisa Group to be the preponderant agent in the broadcasting sector in 2014, though that company has been the sector’s leading firm for some 60 years. Notwithstanding recent developments (e.g. the third national FTA broadcaster launched in October 2016 and the IFT published revised preponderance measures published in March 2017), it remains to be seen how much new competition the preponderant agent, which also has SMP in the pay TV market, will actually face. Not only has the Televisa Group maintained elevated market shares in both FTA and pay TV markets, it has also been successful in having its pay TV operations cross-subsidising its broadcasting and programming arms (Televisa Group, 2016). Therefore, if the new measures to increase competition by encouraging market entry, along with enforcement through preponderance and SMP measures, prove ineffective, the IFT should consider a functional or structural separation rather than a behavioural solution (essentially an injunction that requires the performance or avoidance of certain conduct, e.g. must-carry must-offer [MCMO]) to foster meaningful competition.

Since the Televisa Group, along with its subsidiaries, has already been declared preponderant, if the IFT chooses further measures in the future, the next step would be to research the remedy that is most appropriate to the Mexican context. Several remedies beyond the 2014 and 2017 behavioural preponderance conditions exist. These remedies, from least to more interventionist regulatory approaches, can be deployed to separate the preponderant agent as a last resort, either functionally or structurally, in any of the existing points in the value chain. This could be done, for example, by separating upstream programming (production and premium rights) from transmission (spectrum ownership, broadcast transmission and channel advertising sales) or from carriage (on pay TV satellite and cable platforms).
While competition is expected to increase with Internet Protocol television (IPTV) and over-the-top (OTT) services, with the entrance of new digital broadcasting players and with the measures improving access to the preponderant agent’s infrastructure, it may be that the position of the preponderant agent is too strongly entrenched for effective competition to take root. Any additional preponderance measure should be a topic of extensive research and consultation. Only then, given the evolution of competitive dynamics in the future, would authorities in Mexico need to consider further preponderance measures.

Transitory Article 9

Transitory Article 9 of the Federal Telecommunication and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR), which provides a fast track for non-preponderant agents to concentrate, should be eliminated.

Transitory Article 9 of the LFTR states that when there is a preponderant agent in either the telecommunication or broadcasting sectors, economic concentrations, concession transfers or control changes arising between non-preponderant concessionaires in that sector shall not require the IFT’s prior approval provided that certain conditions are met. Due to the manner in which the sectors have been defined, however, those conditions have proven to be inadequate to protect competition, at least in the pay TV market. Nevertheless, the article strips the IFT of its *ex ante* merger review powers on the premise that doing so will not only lead to greater competition, but do so quickly. Given that the concentration has actually increased in the pay TV market and that the competition law already sets out an *ex ante* merger review process, Transitory Article 9 is an unnecessary and indeed anticompetitive measure that codifies a lack of confidence in the IFT. The legal framework should allow the IFT to exercise its authority in all cases, which includes clearing transactions quickly when they obviously pose no threat to competition, but also includes thoroughly reviewing and, when appropriate, blocking proposed concentrations before they have anticompetitive effects.

In short, this exemption to the law is not consistent with the overall goal of the Constitution and the law to promote competition in the telecommunication and broadcasting sectors. On the contrary, it facilitates concentration. Transitory Article 9 should therefore be eliminated.

Revision of sector definitions

The sector definitions of the telecommunication and broadcasting sectors should be revised periodically, taking the convergence of different communication services into account.

The infrastructure, applications and content ecosystem are evolving in the telecommunication and broadcasting sectors. This has important implications for the definitions of sectors and relevant markets, and thus for the preponderance and SMP concepts. In recent years, previously separate services and markets have begun to converge. Some commercial offers already include not only access and services, but also applications and content. In addition, although broadband penetration is still relatively low in Mexico, it is improving. Furthermore, the rise in mobile telephone subscriptions has made smartphones or similar devices much more prevalent; unsurprisingly, these devices are the most commonly used devices for consuming audiovisual content on line, the majority of which is consumed at home. OTTs are beginning to compete with television for audience attention as people increasingly view content on line instead of via broadcasts, satellite and cable. With growing broadband penetration and quality, the competitive landscape will be altered more and more, for instance through OTT services.
There is currently no specific regulation for these services, in part due to their nascent nature. OTTs are increasingly contributing to meeting policy objectives, for example by helping create demand for broadband access, improving users’ choice and increasing competition, particularly for audiovisual services.

These trends beg the question of whether the preponderance and SMP provisions will remain fit for purpose. To do so, they will need to be adaptable. Therefore, it is recommended that Mexico periodically revisit the definitions of the telecommunication and broadcasting sectors that apply in the preponderance analysis, so as to ensure that they are realistic and up to date. For example, it is unclear as to why pay TV has been historically classified as a telecommunication service. This classification, along with Transitory Article 9 of the LFTR, have allowed the Televisa Group to gain high market shares in the pay TV market. By the same token, it is recommended that the IFT take a flexible and adaptable approach to market definition as broadband improves and convergence continues.

**Interconnection**

The IFT should continue to reduce termination rates, based on a thorough assessment of competition levels in the Mexican market. This can be done gradually over time at the discretion of the IFT. With respect to Internet interconnection, the functioning of the existing Internet exchange point (IXP) should be improved. Access to the IXP should be enhanced and additional IXPs developed across Mexico.

Notwithstanding the important initiatives on the part of the Mexican regulator aimed at lowering termination rates for fixed and mobile telephony services, the potential benefits that may derive from applying symmetrical zero termination rates to all operators, and not only to preponderant players and players with SMP, are manifold. The most relevant experience is from countries with calling party pays given that this is the system in place in Mexico.

The European experience, for example, demonstrates that lowering mobile termination rates tends to lead to decreased mobile retail prices for consumers, resulting in greater consumption of services, thereby benefiting consumers (Growitsch, Marcus and Wernick, 2010). Consumer welfare could further be enhanced through lower termination charges, as Ofcom, the communications regulator in the United Kingdom, has acknowledged. These lower charges may provide operators with greater retail pricing flexibility, thus enabling them to offer their users a wider range of packages and tariff structures (Ofcom, 2009).

Along these lines, the IFT should continue to reduce termination rates or determine a general rule on the subject matter, whereby all telecommunication operators charge zero interconnection rates for terminating traffic in their networks, and only allow, as an exceptional measure vis-à-vis new market entrants, higher termination fees, geared at guaranteeing that such entrants may be able to effectively recoup their costs and thus establish themselves within the market. The IFT can do this gradually over time based on an evidence-based assessment.

With respect to Internet interconnection, the functioning of the first IXP in Mexico should be improved, mainly through participation by América Móvil. Even though the LFTR levies on preponderant operators the obligation to have a physical presence in the country’s IXPs, as well as to conclude agreements allowing Internet service providers (ISPs) to exchange local traffic in a more efficient and less costly manner, Telmex has yet to comply with this legal mandate (Martínez, 2016). In addition, it appears that Telmex still employs IPv4 connectivity in its traffic exchange agreements, and has not progressed IPv6 schemes, which is a potential barrier to market entry (Martínez, 2016).
Mandating the participation of the preponderant agent, however, is only one step to improving the functioning of the first IXP. A second policy goal is that new market entrants are physically able to reach the IXP and establish peering sessions with other networks, contributing to the growth of a local industry of service providers and other players. At the moment, there is one unique operating IXP in Mexico which has only ten participants, which represents less than 3% of the total possible networks as measured by autonomous systems. Attempts by any market player to not provide access to the IXP premises would have to be documented by the service provider and the IFT could be required to mediate in the conflict.

A broader high-level goal for traffic exchange could be encouraging that domestic traffic generated by any of the 347 autonomous systems registered in Mexico predominantly stays in the country. A further option could be that the government requires in its own procurement contracts with telecommunication operators that domestic traffic stays within the country. Gathering such information would be possible, as ISPs are able to trace the path that packets take between their network and any other given network using free and open source available tools. The IFT could act as a neutral party to monitor progress.

In addition, the IFT could play a facilitating role in promoting the development of IXPs in Mexico. Among other actions, the IFT could be involved in the following:

- Facilitate the creation of a task force leading the efforts in the development of new exchange points using existing neutral players for the industry, such as NIC Mexico and the Corporación Universitaria para el Desarrollo de Internet. A very successful example in the region is the IXP.br programme run by the Comitê Gestor da Internet no Brasil (CGI.br), the multidisciplinary governance body for Internet-related technologies in Brazil.

- Organise awareness sessions on the benefits of keeping the local traffic local with service providers in some of the major cities of the country. The Canadian Internet Registration Authority (CIRA) played a similar role to stimulate the creation of exchange points and reduce dependency on foreign infrastructure.

- Identify barriers to private national and foreign investment in the areas of neutral data centres and promote investment in urban and inter-city fibre optic networks.

Finally, the outcomes of the 2017 preponderance review, by addressing structural incentives and safeguards, may have positive implications for IXPs in Mexico. To take the example of the United Kingdom, which in some ways mirrors the changes proposed by the IFT in the area of functional separation, BT actively participates in LINX, a major IXP based in London, and in others in that country. BT uses these locations for public and private peering in the United Kingdom. Meanwhile, in Mexico, if units of a functionally separated Telmex act to maximise their own interests and not those of the wider group as a whole, participation in the existing or new IXPs could improve. In addition, it is notable that Megacable, which is one of the founding industry players in Mexico’s first IXP, is also a member of Altán Redes, the consortium developing the Red Compartida. To the extent that Megacable’s backhaul is used by the Red Compartida, this may provide synergies for the IXP. In other words, direct connectivity could add momentum as traffic exchange grows over the shared network and thus may increase the attractiveness of the IXP to other ISPs.

The IFT should assess whether once Telmex is functionally separated, the company should be required to publish its peering policy principles applicable at Mexican ISPs.
Continue to foster the adoption of Internet Protocol version 6 (IPv6) standards throughout Mexico.

In order to deal with the exhaustion issues related to the IPv4 addressing system and to facilitate Internet interconnection within the IXP, all stakeholders in Mexico involved in the digital economy must foster the widespread adoption of IPv6 standards, so as to ensure scalability of the Internet, to enable innovative applications, to satisfy public procurement mandates and to support mobile data services (OECD, 2008). The National Digital Strategy contains a recommendation to entities of the federal public administration to consider requiring in their public procurement that equipment preferably support both IPv4 and IPv6. It is important that this recommendation is implemented throughout and at all levels of the government. In addition, the government, along with the regulator, should also promote the adoption of IPv6 among other stakeholders in the Mexican economy as the issue is becoming more pressing. In the United States, for example, one major fixed and mobile operator (Verizon) announced in March 2017 that it would no longer issue new public static IPv4 addresses due to a shortage of available addresses. If long-standing participants in such markets are acting similarly, it becomes even more critical that new entrants, such as the Red Compartida and its MVNOs, with no legacy networks, have a pathway towards IPv6.

Recent experience in India, associated with the entry of a 4G-only network similar to the Red Compartida, bears this out. Reliance Jio, the new 4G Indian entrant, added around 100 million subscriptions in its first six months of operation and relied on using IPv6 to the extent that 90% of its customers were enabled with around 80% of traffic being on IPv6 (Ghosh, 2017). Major content delivery networks and content providers, such as Akamai, Facebook and Google, only provide IPv6 on Jio’s network. As a result, India’s IPv6 traffic increased from 1% to 16%, indicating that the Red Compartida could act as a catalyst for this important development in Mexico; that it is in the commercial interests of the Red Compartida and its MVNOs to do so; and that connecting to IXPs in Mexico to enable its MVNOs to exchange public and private traffic could attract content providers to use such IXPs and create a mutually beneficial outcome.

Audiovisual content

Competition and plurality in audiovisual content should be enhanced through an evidence-based assessment of the provision of audiovisual services and of the diversity of media ownership, and a clarification of must-carry must-offer rules by the IFT.

In 2017, the IFT plans to carry out an objective exercise to expand its knowledge of audiovisual content plurality and explore ways to better measure it, which will be used as input to the formation of regulatory policies. Such an evidence-based analysis of media pluralism and ownership diversity is crucial to assess the current and future scenarios of audiovisual content in Mexico and to meet policy objectives. It should consider the changing nature of media consumption (e.g. increased IPTV offers) and the role played by public service broadcasting. The IFT’s role in undertaking such a review should be strengthened to encompass the collection of information from new converged services.

Furthermore, MCMO rules should be reassessed, despite the complexity of achieving this under current frameworks. These rules are established in the Constitution (the LFTR merely reproduces them), so that clarifying them would imply a process of amending existing rulings and issuing complementary guidelines. Nevertheless, some considerations for future modifications include the following:
• Clarifying whether non-preponderant broadcasters and carriers could be enabled to charge pay TV operators a fair, reasonable and non-discriminatory price for must-offer transmission, with potential exceptions for specific local conditions (especially underdeveloped and geographically isolated communities). While current rules enforce the obligation for all carriers to retransmit all the local broadcasted signals, only preponderant agents and agents declared to have SMP lose the right to a free carry regime and are required to negotiate with their counterparts. Therefore, it would be favourable for the legal certainty of both broadcasters and carriers that the IFT publishes a ruling or guideline on how disagreements on the terms of broadcasting content or retransmission should be resolved in these cases. The IFT should consider evidence from other OECD countries that suggests that a non-payment regime from carriers with SMP can disadvantage certain broadcasters.

• The declaration of the Televisa Group as having SMP in pay TV services on MCMO should be monitored by the IFT and enforced accordingly. As defined in the Constitution, the mere declaration of the Televisa Group as an SMP agent in the pay TV market causes it to lose the right to not be charged for the retransmission of broadcast signals under MCMO, thus requiring it to negotiate retransmission terms with broadcasters. The implications for FTA operators, including public broadcasters, on prices and conditions regarding access to signals of the Televisa Group’s pay TV subsidiaries, should receive due attention from the IFT.

• The MCMO guidelines state that pay TV operators must retransmit broadcast signals with the highest quality available on air, and forbid any signal degradation. In this respect, the IFT should monitor the QoS.

Competition in audiovisual content should also be promoted by moving forward with the round of regional licences for broadcasters. The entry into the market of national and local digital multiplex operators will further improve media plurality and ownership diversity in Mexico.

The IFT should strengthen its research into cross-ownership, production and programming agreements related to telecommunication services and broadcasting.

Increased convergence is shifting the competition dynamics in both telecommunication services and broadcasting. Internet video streaming and pay TV services will increasingly compete against traditional FTA services for viewer attention, with implications for advertising revenue. In this environment, broadcasters will need to attract new investment and find new markets. Some of this investment could come from the telecommunication sector, as has occurred in other countries. Players in different markets may have extensive foreign operations presenting opportunities for exports and economies of scale. Such a development may enhance the economic case for a fourth national digital FTA licence given that content could be used across different platforms and in different countries. However, this would be likely only in the longer term, as the government’s current preference is to create opportunities for FTA market entry at the regional level instead of at the national one.

When considering pluralism, diversity, foreign ownership and market concentration in Mexico, the IFT needs to continue to strengthen its research into cross-ownership, production and programming agreements between Mexican and foreign television companies, as well as between broadcasting operators and print and video media companies, sporting clubs, stadiums and so forth.
Substantial market power

Substantial market power investigations could be improved by giving the Investigative Authority (Autoridad Investigadora, AI) of the IFT more time than currently allowed to conduct them and by adding to the list of factors to be considered, information on changes in market shares over time, profit margins, and the history of entry and exit in the market.

Under Article 96 of the LFCE, the AI of the IFT is allowed a maximum of 90 days to conduct an SMP investigation. Any extension of the initial 15-45 day period must be justified. Given the elements of proof that must be satisfied to establish SMP, and particularly given the IFT Board’s rigorous expectations concerning the level of that proof, it is unclear why the AI is given such a short time frame to develop its evidence and analysis. That period is the same as the one for conducting a preponderance investigation, yet the burden of proof for SMP is far greater than it is for preponderance. In addition, considering that these proceedings may result in asymmetrical regulation, it would be reasonable to give the AI more time to conduct SMP investigations, both before and after a justification for an extension is required.

With respect to the determination of SMP, a number of additional factors could be added to the formal list of issues to consider when evaluating whether SMP exists in a relevant market. These include:

- Changes in market shares over time. If a firm’s market share has steadily and significantly declined, that would weigh against a conclusion that the firm has SMP. In contrast, stable or growing shares could be consistent with the presence of SMP. Though not among the formal factors listed in the law (LFCE, 2014, Art. 59), the IFT Board took market share changes into account when it found that a decline in the Televisa Group’s shares suggested an absence of SMP. However, it would be appropriate to interpret relatively small and brief declines conservatively, as well as to account for the accretive effects of acquisitions on a firm’s market share over time.

- Profit margins. Persistently high margins tend to be consistent with SMP whereas persistently low margins or losses do not.

- The history of entry and exit in the market. If there are many more firms exiting the market than entering it, it may point to the presence of SMP. A track record of flourishing entrants, on the other hand, would clearly suggest an absence of SMP.

Mergers and acquisitions

The IFT should publish the commitments merging parties make to win approval for merger and acquisition transactions.

It is unclear why the IFT sometimes does not disclose information to the public about the commitments that merging parties make in order to win approval for their transaction. This is an unusual practice that should be eliminated (OECD, 2016a; 2016b). To be sure, sensitive business information or trade secrets can and should be withheld, but releasing redacted documents or at least a description of the nature of the remedies would greatly improve transparency in these cases.
Network neutrality

The IFT should analyse network neutrality and monitor potential breaches as well as the evolution of differential pricing (zero-rating) and specialised services.

The IFT should move forward with the plan to carry out a public consultation and undertake research on network neutrality. It should monitor market effects and QoS indicators for any potential breaches of the general network neutrality principles established in the LFTR. It should also track the development of differential pricing (“zero-rating”) arrangements and the provision of specialised services. In particular, partnerships between the largest content providers and the largest ISPs should be carefully scrutinised for any anticompetitive practices. This should not, however, justify imposing regulation on services that complement but do not wholly substitute services supplied by telecommunication and broadcasting providers. These services have played a key role in fostering innovation and greater diversity in the products and information available to users.

The measures introduced to promote wholesale competition, and therefore increased retail choice (e.g. local-loop unbundling, Red Compartida), need to be taken into account to maximise competition as a tool to govern behaviour and promote innovation in services and tariffs that benefit users.

Recommendations to improve market conditions

The 2013 reform significantly improved market conditions, such as through lowering barriers for investment and opening the Mexican telecommunication market. In addition, significant efforts have been undertaken to make more spectrum available to the Mexican telecommunication and broadcasting markets. It is critical to further improve market conditions as well as to set the right incentives for telecommunication and broadcasting operators to expand services and innovate. The following section puts forward recommendations in this key area.

Investment barriers

Continue to lower barriers to investment in the telecommunication and broadcasting sectors: 1) abolish the remaining legal restrictions on foreign direct investment in the area of broadcasting; and 2) revise the reserved capacity requirements for satellites.

Mexico has made substantial progress in lowering the barriers to FDI, including the elimination of all such restrictions in the telecommunication sector and raising the permitted threshold in broadcasting from 0% to 49%. In the telecommunication sector, 100% foreign ownership is now permitted. The remaining restriction on FDI in the broadcasting sector (up to 49%), which stems from the legal framework, has no economic or public policy rationale and should be eliminated to allow for 100% FDI in broadcasting companies.

Furthermore, the legal framework includes an additional condition that only permits foreign ownership in broadcasting if there is reciprocity. This requirement, which allows residents of another country to invest in Mexico only under similar terms as those applied to potential Mexican investors looking to invest in that country, is not consistent with Article 9 of the OECD’s Code of Liberalisation of Capital Movements. This article prohibits discrimination among OECD countries (OECD, 2016c).

As the broadcasting market is highly concentrated, it undeniably limits plurality and choice. While an important step has been taken with the licensing of a third commercial national broadcaster, with additional regional licences set to follow, the financial strength
and industry experience of these market entrants will be critical to challenge the two
commercial broadcasting incumbents. Removing all barriers to foreign investment can
therefore assist in meeting policy objectives in broadcasting (e.g. increased investment,
employment, skills, competition, media plurality and opening foreign export avenues).
As a result, it is in Mexico’s interest to abolish its reciprocity rules with respect to FDI
in broadcasting.

Should policy makers require specific measures to maintain national identity, promote
local content or other objectives often associated with broadcasting, these can be implemented
without foreign ownership restrictions and undertaken in ways that foster competitive
neutrality and do not preclude the benefits that can arise from FDI.

A further issue that has raised concerns with respect to investments in the
telecommunication sector is the requirement that satellite providers reserve capacity for
the benefit of the Mexican state (Capacidad Satelital Reservada al Estado, CSRE). Especially
when the satellite providers occupy national Mexican slots, the reserved
capacity requirements appear to be very high.

Changing Mexico’s approach regarding the CSRE is advisable. Such changes should
be neutral in regards to the different satellite service operators in Mexico and, although
beyond the scope of this review, should promote competitiveness in the space sector.
While the current draft satellite policy raises this issue, it does not define any concrete
alternative. The draft policy should promote a more efficient and competitive market, in
which there is certainty for the concessionaires and licensees as to the CSRE required and
the specific processes for their contribution.

As a first step, there should be an assessment of the amount of capacity that is needed
for the state to meet current and future policy objectives. This should take into account
what is currently available through the Mexsat system and what will become available in
the future through a planned third state satellite. It could also assess the needs that could
be met through other networks, in particular the Morelos 3 satellite capacity for mobile
communication services and the Bicentenario’s capacity for fixed satellite services if
available. Together with calculating a value for the state reserved capacity, these could be
viable next steps to make the policy more concrete. The overall objective should be to
lower the reserved capacity or if possible to eliminate it.

Furthermore, no difference should be made between different satellites and satellite
providers. With respect to the reserved capacity requirements for existing satellites, the
government should take into account that these were priced in when establishing the
conditions for the current operators of the satellites. In addition, where the reserved
capacity is currently being used and cannot be eliminated without negative effects on the
provision of social services or national security matters, these considerations would also
need to be taken into account. If it is decided to lower the requirements and to establish
neutral requirements across different orbital slots, existing operators could be given the
choice to lower the requirements on their satellites through paying a fee, which reflects
the value of the freed capacity.

**Taxation**

Eliminate the special tax on products and services levied on telecommunication services.

The 2012 OECD review suggested eliminating the special tax on products and
services (Impuesto Especial sobre Producción y Servicios, IEPS) levied on fixed and
mobile telephony and pay TV services. As the Constitution declared telecommunication
and broadcasting services to be a fundamental right of the Mexican people, and consistent with the previous OECD review, it is recommended to eliminate the IEPS to further foster access and adoption of communication services in line with policy objectives.

In effect, imposing such a tax has a direct influence on the total cost of these services for consumers, placing a higher burden on stakeholders in a sector that creates many positive spillovers throughout the economy, relative to other sectors without such a tax. Thus, it risks hampering levels of adoption, innovation and investment in the communication sector.

In an environment of fiscal stringency, eliminating any form of income from such a tax is challenging as it contributes to the public purse. In addition, to date, the tax has in absolute terms been raised in greater proportions from people in higher income groups. As communication services become more pervasive, however, the tax is more likely to have a disproportionate effect on people with lower incomes. This is because it could discourage the adoption of telecommunication services by the poorest users or by those that have not yet joined a network due to cost. For instance, in 2014, the average monthly expenditure of the 10% least well-off households in Mexico on fixed and mobile communications represented 10% and 6.2% of their monthly income, respectively, whereas this expenditure represented only 1.8% and 1.2% of the monthly income of the wealthiest 10% of households in Mexico.

While the IEPS has already been excluded in some areas of telecommunication services, such as for data used to access the Internet, which is welcome and consistent with the aim to expand the availability and use of these services, the lack of technological neutrality can be noted. The potential for market distortion is, therefore, to the forefront in how people use such services. If wealthier users migrate to data services as a substitute for voice services, not only will this tend to lower receipts from voice services, but it will fall most heavily on those users of feature-phones and older mobile networks rather than smartphones. This is also likely to affect the less affluent people in Mexico.

Since the implementation of the IEPS, the amounts collected from this tax have not reached over 0.30% of the federal government’s revenue. In addition, it has become more ineffective over time as Internet services have been exempted. As a consequence, tax revenues from the IEPS have been declining since 2013. At the same time, through the expansion of the telecommunication sector in recent years, value-added tax (VAT) revenues associated with increased consumption will continue to benefit government revenues (e.g. through the purchase of equipment such as mobile telephones or telecommunication services). While there is a valid budgetary concern with the elimination of the tax on telecommunication services, any such concern needs to be weighed against the VAT garnered from the ongoing growth in the sector since the reform. Although in practice the entirety of the IEPS may not be passed on to consumers (i.e. operators may decide to internalise a portion of it), under this scenario it would nonetheless influence the revenue of operators, hence affecting their incentives to make investments to improve quality and coverage for the services provided (e.g. infrastructure deployment and spectrum acquisition, among other investments).

In summary, an industry as crucial as telecommunication services, which has a decisive influence on a country’s economic growth and development, should not be subject to unnecessary burdens, for they may bring about unintended spillover effects on the productivity of other economic sectors (OECD, 2014a). Finally, before imposing measures such as the IEPS, the Mexican authorities should also consider their implications on the ability of telecommunication services to facilitate relationships between the administration and the general public. To the extent that the additional cost would limit
access for the proportion of the population that remains unserved, it may place a limit on administrative efficiency, which has improved in recent years based on increased telecommunication access (Cave and Flores-Roux, 2017).

**Annual spectrum fees for telecommunication operators**

The way spectrum fees are divided between the auction fee and annual fees should be reconsidered and more analysis should be done on the fee structure to help guarantee that the auction process establishes a fair value for the use of spectrum. As a consequence, there might be a need to lower the current annual spectrum fees in future auctions to take into account the effects of these recurring fees on meeting policy objectives.

One of the reasons OECD countries introduced auctions for assigning spectrum was to have transparent and explainable outcomes. A second reason was to use this as a discovery tool given that, due to their knowledge and experience, industry players are better placed to assess market value. A third reason was that alternative mechanisms for assigning spectrum, such as comparative selection or lotteries, often led to suboptimal outcomes in terms of the value captured by successful parties relative to policy objectives.

In this respect, Mexico has benefited in relation to the process used for the Red Compartida, where the winner’s bid (92.2%) well exceeded the threshold coverage needed to participate in the auction (85%). This suggests that the threshold was reasonable and players have made a market-based judgment on the costs and benefits of exceeding that threshold. The design of the auction was also well founded because it simply asked for participants to nominate the maximum population coverage they were prepared to meet, in a single sealed bid, an outcome closely aligned to the policy objective of expanding coverage to underserved areas. Thus, like many other OECD countries, Mexico uses auctions to determine the value of spectrum. With a well-designed auction, there is a strong tendency for the licenses to go to the parties that value them the most, and thus will make the best use of the spectrum (Cramton, 2002). However, the employment of annual fees in addition to the use of an auction to establish an up-front payment sets Mexico apart from the much more common practice in OECD countries where an auction determines the full amount for payment. The sums of annual fees over the lives of licenses granted under this practice have represented between 70% and 92% of the total cost of spectrum (IFT, 2017a).

According to a report undertaken for the GSMA, in most OECD countries, spectrum pricing is based on a one-time only, up-front payment levied upon winning bidders, whereas spectrum usage fees, if employed at all, are set at relatively low levels, or in some cases, at zero (Coleago Consulting, 2011). While some countries have annual spectrum fees related to the administrative costs of managing spectrum (or some other form of annual regulatory fee), when an auction mechanism is in place, annual fees beyond such cost recovery are not usually employed.

While most countries use an initial auction to determine the total price of spectrum, over the lifetime of a licence, some countries allow bidders to spread payments over a number of years. This method has some of the same benefits as Mexico’s approach for operators. These benefits consist in lowering entry barriers to the auction, by reducing the amount that needs to be paid when the spectrum is auctioned, while taking on less debt, by aligning the payments of spectrum fees with the cash flow generated through the annual revenues of the operators. However, it has the important distinction of using the auction mechanism to set the total fee.
As the up-front payment determined through the auction mechanism has represented no more than 30% of the total amount in Mexico, with the present value of the annual fees being taken into account by the operators as a part of the reserve price, the question can be raised as to whether the market value is discovered under this method.

There seem to be two main potential drawbacks of using a hybrid model (i.e. a payment scheme consisting of an up-front auction fee and an annual fee) instead of an approach that relies entirely on an auction. First, if the sum of annual fees plus the up-front reserve price set by the regulator in an auction is too high, it may deter participation in the auction by players that may have introduced more competition in the market. It may also cause spectrum blocks to go unsold.

Second, if auction participants are not certain of the levels of the annual fees during the lifetime of the license, it may dissuade them from properly revealing their value for spectrum during the auction, leading to a misallocation of this scarce resource (i.e. spectrum being allocated to a player that will not make the most efficient use of it). This effect of dissuading participants from properly revealing their valuation due to uncertainty is known as the “ratchet effect” (Laffont and Tirole, 1988), and results from the mere fact that bidders believe there is a risk of lack of commitment from the seller, in this case, the government. In fact, while the annual fees in Mexico have remained constant in real terms since 2003, the Business and Industry Advisory Committee to the OECD (BIAC) has expressed the view that annual fees cause uncertainty in the amounts operators will pay for licenses over their duration.

In the future, auctioning procedures should take into account the effect of annual fees on the capacity to meet other policy objectives, while maintaining current annual fees at the same level, given that these were priced in when setting the reserve price for the auction fee. It would thus be advisable to reconsider the design of spectrum fees in Mexico and to consider reducing the annual spectrum fee for future auctions to allow the market value of the spectrum to be determined mainly through the auction process. If it is considered beneficial for spectrum fees, which are derived from future auctions that set the total amount upfront, to be paid over several years, this could be part of the auction conditions. Such an approach would permit the market value to be discovered while at the same time enabling the attributes of deferred payments in the current system to be maintained.

**Regulation on deployment of infrastructure**

Barriers should be reduced for infrastructure deployment at the local and municipal levels. The Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) should accelerate the elaboration of guidelines and co-ordination agreements for all levels of government and work with the different levels of government to implement them as soon as possible.

Mexico’s federal structure has created a substantial obstacle: the high level of autonomy of local and regional authorities has resulted in a plethora of divergent regulations regarding infrastructure deployment and the use of land within the different jurisdictions. This creates barriers to entry for operators, especially those intending to access the market in those locations, who need to undertake construction, require use of land or rights of way permits for network deployment. This complexity creates legal uncertainty and consequently delays the adjustments that are necessary for enhancing QoS through increased coverage and capacity, something that is of critical importance in the digital economy.
In order to remove these barriers, the LFTR tasked the SCT to ensure co-ordination among all real estate management departments or agencies of the federal government and to issue binding recommendations to state and local governments. The SCT is in the process of issuing general guidelines and co-ordination agreements that can be observed by all levels of governments to reduce the administrative burden to a minimum. The guidelines will help companies to access rights of way in underutilised assets, and will define specific fees that must be both proportionate and have a direct relationship with the costs objectively generated by the granting of a permit (e.g. by authorising the use of electricity infrastructure, or the opportunity costs that arise from providing a different destination in a specific area). Besides these recommendations, further measures should be considered to ease infrastructure deployment at the local and municipal levels.

**Broadcasting fees**

*Instead of providing airtime for official use, broadcasting concessionaires should pay an annual license and spectrum fees in cash.*

In Mexico, rather than paying an annual or one-off fee, private FTA and radio station concessionaires provide a fixed amount of airtime for official use, as mandated by the law. The time management of the transmission of official content is undertaken by the Ministry of Interior (Secretaría de Gobernación, SEGOB). In an historical environment with a relatively low penetration for other means of communication, including a large underserved rural population relative to other OECD countries, the existence of this system has provided a means for the dissemination of official information over FTA and radio (e.g. education, health, civil announcements and other matters of public policy).

Initially, the airtime for official use was set by a presidential decree in 1968, at 180 minutes/day (that is, 12.5% of the 24 hours available). As part of this system, broadcasters were given the alternative option of paying 12.5% of their total annual revenue. Since 2002, the required airtime for official use in FTA has been reduced to 48 minutes/day, composed of a mandated 30 minutes for official content by the state, daily and on every channel, as well as the 18 minutes/day commercial broadcasters can opt to provide for official use in lieu of the continuing alternative of paying 12.5% of their total revenue. In other words, notwithstanding a considerable reduction of required airtime for official use, from 12.5% to around 3.3% of broadcasting time (or 48 minutes/day), the alternative levy broadcasters could choose to pay has not been proportionally reduced. This situation reinforced the incentive for operators to provide airtime rather than make a payment in cash. As a result, the only FTA operator that has paid some type of cash amount (in the form of a spectrum fee in an auction) was the new entrant, Imagen TV, which commenced operations in 2016.

In Mexico, official time is given to the National Electoral Institute during federal and local electoral campaigns for the dissemination of political-electoral messages. This was set out by the 2007 constitutional reform, with the purpose of reducing the influence of funding on election campaigns and of ensuring equitable access to radio and television to the various political parties. While in many OECD countries airtime is reserved during periods such as elections to promote democratic pluralism, a system requiring airtime for official use from commercial broadcasters in lieu of license fees is far less common.

OECD countries and partner economies alike charge fees for broadcasting licenses. Countries charging such a fee include Australia, Austria, Canada, Ireland, Italy, Japan, New Zealand, Singapore and the United Kingdom. Broadcasters play a critical role in...
OECD countries by informing and entertaining people, but they also use a scarce resource in the form of spectrum. This has generally been reflected in licence fees with those funds being returned to the public purse. Governments, such as those of the countries named above, then purchase airtime for official use or use the funds for other public expenditures. This approach allows greater flexibility for both governments (who purchase airtime according to their priorities) and for FTA broadcasters (who sell this airtime at a market price). It also has the benefit, increasingly important in a converging market for communication services, to ensure competitive neutrality between different players and more efficient allocation of this scarce resource.

There are further benefits in considering an annual licence fee instead of the provision of airtime for official use. For example, over time, the FTA and radio audiences are expected to fragment, as has occurred in many countries. As fixed and mobile broadband access increases, people will have more alternatives to linear FTA television and radio services, resulting in a decline in the effectiveness of mandated airtime. At the same time, in a converged environment, governments may find more value in using a range of media to meet their policy objectives and in being able to meet this cost from the revenue garnered by a licence fee or to use options that did not exist when the system was introduced (e.g. social media).

A licence fee system would enable FTA providers to use the time currently allocated to official use for commercial gain, putting them on a level playing field with other media. It would also eliminate any inequity between current and future licences. As convergence increases and commercial changes continue to disrupt media platforms, the effectiveness of the time allocated for official government use will reach an increasingly fragmented audience, and policy makers and regulators in Mexico will need to have the flexibility to respond to that development to more efficiently achieve policy objectives. Such a mechanism could be implemented following an assessment of evolving market conditions in Mexico and of the trade-off between the revenue generated and the costs levied on operators – especially smaller players or non-commercial concessionaires. The benefits that a change could offer for assigning an opportunity cost to spectrum used by broadcasters could also be considered.

**Sanctions**

The Federal Telecommunication and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR) should be amended to allow for a more flexible imposition of sanctions, taking into account the principle of proportionality, particularly regarding consumer protection regulations. The LFTR should also be reformed to allow the IFT to impose sanctions on any person or entity violating the provisions set out by the IFT in the exercise of its powers.

Strengthening the ability of the IFT to impose sanctions has been a major step forward in the reform. Nonetheless, the fairness of the sanctioning regime enshrined in the LFTR can be questioned, particularly with respect to the principle of proportionality between the fault and the punishment. Although the current levels of the statutory fines may have an important deterrent effect, it is important to stress that deterrence depends not only on the harshness of the sanction, but also on the probability of an infringement being detected and investigated by the authorities. Such levels may be excessive in relation to the seriousness of the fault and the specific situation of the infringer.
The principle of proportionality, as an integral element of the fundamental right to due process, dictates that both the fault and the corresponding punishment be consistent with the objectives inherent to the legal regime, hence the imperative need for the sanction to take account of the gravity of the conduct. Essentially, the principle of proportionality is aimed at avoiding excess and abuse of power on the part of the legislative branch and/or the administration in general, by providing a clear and precise framework for imposing a sanction in each specific case.

The LFTR has, however, grouped a series of sometimes dissimilar transgressions to which particular fine thresholds apply, that may lead the IFT to enforce disproportionate penalties, in light of the gravity of the conduct and the infringer’s circumstances. An example concerns QoS violations, and in general non-compliance with the obligations stipulated in a license that do not constitute a just cause for revocation (e.g. delay in meeting a specific deadline): in such cases, applying even the minimum fine (e.g. where it ranges from 1% to 3% of the transgressor’s revenue) may be excessive to sanction delays in the submission of information to the regulators, or a transitory QoS deficiency in a non-crucial service (e.g. short message system [SMS]).

In light of these examples, the LFTR should be reformed to provide for more flexibility by enabling the regulator to apply reduced fines, below the minimum threshold, when the severity of the breach and the situation of the infringer justify it (e.g. a small enterprise that has recently entered the market and is still in the process of acquiring a sustainable client base).

One advisable option would be to eliminate the minimum percentage of sanctions and only retain the maximum. As mentioned above, this would foster suitable applicability of the sanction in accordance with the criteria established in the law, and, in some cases, avoid the potential risk to ruin some firms. This latter point is also relevant for the IFT’s responsibilities in a converging communication market.

Finally, a further area to consider for potential improvements regards the sanctions imposed by PROFECO. The amount that can be imposed, which is the same for all services and sectors, is MXN 150 000 (USD 8 000), albeit that amount is doubled if associated with transgressions against indigenous communities. The sanctions are very modest, especially when compared with those from the IFT. In some cases, the cost of initiating the process and collecting the fines through the representatives of the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público, SHCP) and fiscal authorities in each state can be greater than the amount levied. Accordingly, PROFECO should be given the power to collect sanctions directly. The range of sanctions should be reviewed and increased to international standards.

The LFTR further provides that the IFT may regulate persons other than concessionaires and authorised persons who are directly involved in the telecommunication and broadcasting markets. Examples include OTT providers, providers of services to concessionaires, test laboratories and equipment manufacturers that connect to the telecommunication networks or make use of the radio spectrum. These players are subject to the resolutions or administrative provisions of a general nature issued by the IFT. In this respect, the LFTR only provides for two cases in which the IFT may impose sanctions on infringing persons other than concessionaires or authorised persons, namely those who provide telecommunication or broadcasting services without concession or authorisation, or those who interfere with or obstruct communication services. It is therefore advisable to amend the LFTR to allow the IFT to impose sanctions on any person who violates the provisions issued by the institute in the exercise of its powers.
Adhesion contracts

Federal Telecommunication and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR) rules requiring registration of adhesion contracts should be reoriented towards enabling the Federal Consumer Protection Agency (Procudaría Federal del Consumidor, PROFECO) to require operators and services to provide contractual information in a format useful for consumers, such as through use of standard and simplified contracts.

Even though, broadly speaking, the changes introduced to the consumer protection framework were among the positive aspects of the reform, a caveat must be made with regards to contract registration at PROFECO. Amendments to regulation should be made so PROFECO can implement alternative intervention approaches, such as contract standardisation and simplification applicable to all operators and services. Other tools aimed at ensuring service providers’ compliance relate to information disclosure and price registration obligations (as in the IFT’s Public Register of Contracts) and the establishment of minimum conditions to be forcefully included in contracts, without costly processes for reviewing each contract.

The rules on contract registration should therefore be reoriented towards other mechanisms that foster informed decision making by consumers.

Concessions

The elements that the Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) should include in its technical opinion to the IFT for granting concessions should be clarified. Accordingly, the SCT should be able to request relevant information from other ministries and authorities to inform its technical opinions.

The telecommunication reform led to two important improvements with respect to concessions: A single concession was created, allowing operators to provide telecommunication and broadcasting services in a converged manner, and the IFT was designated as the competent authority to grant all concessions, eliminating the intervention of multiple institutions in the process. The role of the SCT under the new framework is to provide non-binding technical opinions.

Currently, the aspects to be addressed by the SCT in its technical opinions seem limited to making pronouncements regarding the suitability of possible concessionaires and the origin of the resources for investment. In addition, the SCT has faced challenges in obtaining relevant information from other ministries to establish a technical opinion, as there is no mechanism contained in a law or regulation that clearly indicates the topics on which the SCT must issue an opinion or that can enable the SCT to request relevant information from other ministries (e.g. security agencies and competent supervisory bodies).

Therefore, it would be desirable that the content of the technical opinions be defined through a joint IFT/SCT approach to ensure that these opinions have a concrete purpose and serve the IFT in the process of granting concessions. Accordingly, it would be beneficial to amend the LFTR and the related regulation to grant the SCT the ability to request relevant information from other departments or agencies of the public administration or from competent authorities to inform its technical opinions. In addition, it is desirable that the content of the technical opinions is defined in a joint approach of the IFT and the SCT to ensure that the technical opinions have a concrete purpose and that they serve the IFT in the process of granting concessions.
Recommendations for national policies

Most OECD countries have national digital strategies and policies that aim to seize the benefits of ICTs for economic and social development. These enable policymakers to set clear objectives, taking into account the level of the country’s development, including existing coverage gaps by fixed and mobile broadband networks, and the level of competition in providing services. At the same time, such plans address the adoption of ICT services by addressing issues such as digital skills. The following section puts forward recommendations for the Mexican National Digital Strategy as well as other related policies.

Public policies to extend connectivity

The National Digital Strategy, the Red Troncal and México Conectado

The National Digital Strategy should be updated and revised, and milestones for the different elements of the strategy should be established.

Several programmes derived from the National Digital Strategy have expanded connectivity and spurred the use of ICTs. Further progress needs to be made, given that some programmes have not achieved their objectives due to factors such as budgetary constraints, a potential misalignment of functions or other deficiencies in implementation in the available time since their launch.

As the strategy dates from 2013, its objectives should be carefully assessed and the strategy should be updated to take into account the progress made to date. For the future, it is critical to build on advances made in supply-side policies (e.g. Red Compartida and Red Troncal) and maintain the momentum to promote demand. The surveys undertaken by INEGI, in co-operation with both the SCT and the IFT, are critical because they highlight differences in education, income levels, skills and geographical regions, which may explain low take-up and usage of newly available communication services. When revising the strategy, clear milestones and deadlines should be established for the different programmes in co-ordination with the different governmental and public entities involved. Furthermore, hosting stakeholder consultations and engaging with citizens on social media platforms could provide useful inputs to be considered when revising the strategy.

Promoting private sector involvement for the Red Troncal and México Conectado programmes can help overcome budget constraints and resolve other current implementation challenges.

As Mexico’s public finances are constrained, programmes such as México Conectado and the Red Troncal are being affected. While it would be desirable to ensure the continuity of these programmes through public funding, the private sector (i.e. operators and service providers, content providers, and technological suppliers) can play a crucial role in complementing the government’s efforts within a digital inclusion strategy to further grow the programmes.

Public institutions have a critical role to play in the definition of coherent policies and regulations, as well as in the sound enforcement of decisions. Actions by institutions can attract both national and foreign private investment by offering an environment of legal certainty. Moreover, they can create a robust business case in potentially attractive areas by clearly establishing the economic and social benefits that could emerge, such as satellite connectivity, educational platforms and so forth (OECD, 2014a).
Promoting private sector engagement through appropriate incentives could effectively contribute to addressing other difficulties, such as insufficient service quality and low connectivity. Public-private partnerships, as seen in the case of Colombia for the deployment of a fibre backbone network or the Red Compartida where the private sector provides the investment to build the wholesale network, are some exemplary cases where the private sector plays a considerable role to lower the financial burden for the government.

Co-operation needs to be improved between governmental entities and across the different levels of government (national, state and municipal) for the México Conectado programme. Furthermore, effective monitoring mechanisms should be put in place and satellite connections reduced once the Red Compartida is deployed. For the @prende 2.0 programme, local communities and local levels of government should become involved and the strategy should be revised with regards to devices in the coming years. A close assessment should be undertaken of the effects of the programme as outlined in its monitoring and evaluation section.

Some stakeholders have raised issues in relation to the execution of México Conectado that go beyond budgetary concerns. It is timely that the two agencies involved, the SCT and the Ministry of Public Education (Secretaría de Educación Pública, SEP), have recently engaged to jointly address concerns that have arisen and to build on their initial experiences. This is crucial to ensure appropriate co-ordination in the México Conectado and other digital inclusion programmes. For example, an inter-ministerial body devoted to developing a digital inclusion strategy could be created as an alternative to having a single ministerial body dealing with the digital economy.

The México Conectado programme could involve local levels of government to increase the take-up and use of the connected sites and to create co-funding options where municipalities pay a share of the costs. The shares of municipalities’ contributions could be defined based on income levels. Although such an approach was ineffective in the initial year of México Conectado because the municipalities did not always have long-term resources available, mechanisms could be designed to enhance their involvement in infrastructure projects. This would enable the government to use federal resources in a more efficient manner and concentrate efforts in poorer areas to overcome significant regional disparities in the country.

In addition, effective mechanisms should be put in place to monitor and optimise the performance of devices and installed Internet connections in a more expeditious manner. This is critical to ensure that operators deliver the QoS levels specified in the contracts. Performance measures should be made public on the website of the México Conectado programme. Furthermore, enhanced consultation with communities would improve the location of the points of presence, and should be a requirement for suppliers when installing sites.

Following the roll-out of the Red Compartida, México Conectado should consider switching providers from satellite connections to those on the Red Compartida network, which could provide higher quality connections to schools in rural areas at lower costs. In some cases this will be a more cost-efficient way to provide connectivity to schools in the continuation of the project.

Finally, involving local communities in the @prende 2.0 programme from the start would help attain a higher level of acceptance of the programme and ensure that the technology and the devices are effectively used in classrooms. Over time, given the increasing penetration of devices such as smartphones and tablets, some students may wish to bring their own devices. This may allow funds to be redirected beyond the
3 000 pilot schools. In order to measure the success of the programme, it will be important to closely monitor and evaluate the programme. It is laudable that this evaluation component is built into the programme. Recording the baseline performance and skills levels of students at the start of the programme will allow the effects of the programme to be assessed at a later stage.

The development of digital skills should be furthered through the Puntos México Conectado programme and skill training in firms should be promoted.

The Puntos México Conectado is a sub-programme of the larger México Conectado programme which establishes special “puntos”, which are centres that offer training to promote digital skills among Mexican citizens and firms. Its critics rightly highlight that 32 puntos are too few to accommodate the entire country and that more needs to be done to further develop advanced digital skills in Mexico. While extending the programme could be envisaged, it is equally important to ensure the long-term financial sustainability of the sub-programme which is currently based on government funding. Options include involving local communities or working jointly with companies that could, for example, donate or rent the sites at a lower rate to provide training programmes. In addition, incentives or initiatives to promote skills training in companies should also be considered.

The Red Compartida

The successful deployment of the Red Compartida needs to be a priority for Mexico. Mobile network operators and mobile virtual network operators must have an incentive to use the network via appealing access offers that give them maximum freedom to innovate and design their service offers to end users. Potential obstacles such as access to international mobile roaming agreements need to be addressed from the beginning. Effective oversight by the Organism for the Promotion of Investment in Telecommunications (Organismo Promotor de Inversiones en Telecomunicaciones, PROMTEL) is essential to ensure that milestones are met. The 2.5 GHz auction should be executed as soon as possible.

The Red Compartida initiative has the potential to be a major advancement in addressing deficiencies in Mexico’s geographical and population coverage of communication services. Nevertheless, it is also indisputable that a bold, large and pioneering project of this nature will face challenges. Not meeting objectives will have a high opportunity cost and carry potential reputational damage. In this regard, the government has allocated 90 megahertz (MHz) of the 700 MHz band as its contribution towards the project, an extremely valuable input.

Accordingly, ensuring the project’s success must be a priority for Mexico. It is of critical importance that the SCT, PROMTEL and the other sectoral public institutions, as well as Altán Redes, the winning bidder, actively promote and develop the use of the Red Compartida for its potential customers (i.e. MNOs and MVNOs). MNOs need to be encouraged to use the Red Compartida, something that initially may not be easy in areas where they already have facilities with sunk costs or plans to further develop their own networks. In time, competition is most likely to drive increased use. This will especially be the case if those MNOs using Red Compartida to supplement their own facilities have expanded coverage and improved performance at a lower cost than their rivals. One of the main advantages of the Red Compartida is that its business model is based on maximising the use of capacity and reducing costs by sharing resources, such as towers, links and fibre optics. However, further efforts should be made to ease the path for infrastructure sharing, including the growth of fibre capacity.
As a wholesale network, it is also critical that the Red Compartida be attractive to MVNOs. By the close of 2016, MVNOs had a 1% market share in Mexico. This percentage must be substantially increased for the Red Compartida to be successful. The growth of MVNOs and other new business models can be promoted by easing the process to obtain authorisations. A way to facilitate this could be for the IFT to authorise entities that may not fall within traditional definitions of MVNOs to use the Red Compartida’s wholesale public offer. This could facilitate access for new users of the wholesale services which would not need to be network operators. It should be clearly noted that the latter does not imply that the Red Compartida will act as a retail operator, but as a supplier of wholesale services. For both MNOs and MVNOs, the properties of the 700 MHz band are considered very advantageous for mobile broadband wireless use and it is the largest contiguous assignment made to the Red Compartida. In order to make the best possible use of capacity, terminal equipment should be available in a timely fashion. Terminals especially designed for band 28 (Asia Pacific Telecommunity [APT] 700 MHz band plan) are new to the Mexican markets; these terminals are required to guarantee the rapid adoption of the services provided by the Red Compartida.

To leverage these advantages, however, it is critical that the customers of the Red Compartida have the maximum freedom possible to innovate, as this will likely be the main driver for others to use the network. One key to this will be for access arrangements to ensure that potential obstacles that may arise for MVNOs are promptly addressed (e.g. access to efficient international mobile roaming; ensuring the transition to use of IPv6). It is also essential that PROMTEL provide effective oversight of the Red Compartida to ensure targets are met and to prevent any anticompetitive practices.

Finally, the IFT should execute the public tender procedure for the 2.5 MHz band as soon as possible, which is crucial for providing next-generation mobile services. Altán Redes, the successful bidder for implementing the Red Compartida, can then assess whether this spectrum is advantageous for the project to complement the spectrum in the 700 MHz band in order to compete with other market actors. Overall, the auctioning of the 2.5 GHz band should be beneficial for the entire market.

Coverage obligations

A new social coverage scheme should be adopted that uses market mechanisms for achieving coverage obligations. The successful bidder should be required to indicate how it will monitor service quality, and these data should be made public for open review once available.

While the winning bidder of the Red Compartida pledged to cover 92.2% of the Mexican population, the SCT needs to put in place a strategy to expand and improve coverage in areas that will remain underserved. Any programme that aims to do so should apply an equitable burden between all affected firms and minimise possible distortions in the market.

Coverage obligations may be met in-kind through the provision of telecommunication services. In order for the market to determine the allocation of the sites in which each concessionaire must offer services, a competitive process will be carried out. Concessionaires who do not cover all of their obligations with the provision of services may fulfil them in cash through a universal service fund. The resources obtained in cash would be used, through public tenders, to fulfil the objectives of the programme.
The private sector is generally best placed to estimate the cost of extending services in-cash or in-kind. This is because they can often leverage their existing facilities in ways not necessarily open to a stand-alone project. Using competitive tenders may enable new players to bid to meet the demands of underserved areas. Other initiatives such as the Red Troncal may extend the range of players able to bid for such projects. Overall, these changes may increase coverage to underserved areas, potentially at a lower cost and with the benefit of more competition than was historically the case. Finally, any new programme should require successful bidders to explain how they will monitor service quality, with these data made available for open review.

Satellite policy

*The demand for the Bicentario and Morelos 3 satellites should be assessed and their use should be revised.*

As demand for communication services increases, multiple governmental agencies and public entities are requesting capacity on the Bicentenario and Morelos 3 satellites. Satellite capacity is also in high demand for commercial use and could thus generate revenues. The capacity of the different satellites should be analysed and, if feasible, be considered for further revenue generation for the government. This could provide a source of income to fund alternative connectivity for users under the México Conectado. For example, if the capacity currently being used for schools was made available at commercial rates to other users, this revenue could be used to connect schools to providers using the Red Compartida, at a more economic rate and higher capacity.

Public broadcasting

*A more flexible framework for the funding of public broadcasters should be established to enable them to meet their mandate in a rapidly changing environment.*

There is less financial support for public broadcasters in Mexico than in most OECD countries, which limits their effectiveness in carrying out their mandate. In order to preserve their financial stability and to strengthen their editorial independence relative to day-to-day political concerns, public broadcasters should be given more flexibility and more stable financial resources.

Public broadcasters, for example, would benefit from conditions guaranteeing their direct financing from general revenue and allowing them to have a more suitable and longer term financial settlement, regardless of the political situation. Additionally, the right granted to indigenous and community licensees, by the LFTR, to receive a percentage of the budget spent by public entities on social communication should be extended to public broadcasters as well. Moreover, public broadcasters could potentially charge for content under MCMO rules and could also be permitted to sell a limited amount of advertising that does not compromise the social, cultural and educational objectives for public broadcasting. If those mechanisms are put in place, there would need to be appropriate safeguards to limit unfair competition with the private sector (e.g. advertising airtime limitations). While public broadcasters are allowed to accept sponsorship, a combination of these additional measures could also be considered to lower the burden on the public purse. Enhanced funding and the possibility to sell advertising, accompanied with appropriate safeguards, should be extended to indigenous, rural and community television and radio broadcasters alike.
Further measures could include strengthening both the financial and managerial independence of public broadcasters, and introducing a formal system to disseminate FTA live broadcasts of “listed events” of national importance, as in many other OECD countries, until other platforms enable equally widespread availability. That being said, a careful consideration of the implications for competition between FTA, pay TV and IPTV is required. Finally, a national consultation should be conducted to decide which events of national importance should be included.

**Statistics**

*Mexico should continue to improve the collection and analysis of statistical information in the broadcasting sector and with respect to connectivity coverage maps and the use of applications.*

Official statistics on telecommunication services have been substantially improved in Mexico since the reform. Statistical information on telecommunication is systematically and electronically collected by the IFT to inform regulatory processes and made public on a state-of-the-art interactive platform, the BIT. In addition, the SCT’s and the IFT’s co-operation with INEGI has increased the amount of data available on the use of ICTs. However, some gaps remain in terms of data needed to inform analysis.

First, official data on broadcasting viewing, advertising and production investment are limited or absent. The availability of data on broadcasting is expected to be improved in 2018, with the IFT’s planned “Electronic Formats to Capture Statistical Information on the Broadcasting Market Sector” project. Currently, however, there are no available metrics to monitor the entire viewership of Mexico’s FTA broadcasting market. A programme for measuring both commercial and non-commercial television (e.g. public broadcasters or community and indigenous broadcasters) viewership, including the monitoring of reception for digital channels, should be instituted to improve transparency in the sector. An audience ratings system, independent of commercial broadcasters, would improve the accuracy of available information for all stakeholders of the advertising market and on media plurality and diversity.

In addition, stakeholders would benefit from having access to coverage maps and information on infrastructure availability. As well as geographic coverage, data on availability of household broadband access would also be useful to identify connectivity gaps and to promote competition.

In an effort to make forward-looking regulatory decisions, taking convergence into account, the IFT should assess the possibility of collecting official metrics on Internet-related services, such as those provided by OTTs. To date, there have been some advances in defining and collecting metrics on the IoT (i.e. machine-to-machine connectivity), but implementing a framework where certain information can be requested from Internet streaming video players above a certain threshold would be beneficial (e.g. number of subscriptions, time spent viewing). This would allow the regulation of communication services to be informed by real-time relevant metrics, an increasingly important insight in a converging market.

**Recommendations on the legal and institutional framework**

The result of the reform was a strong legal and institutional framework. Notwithstanding the progress made, some weaknesses still exist in the legal framework and the attribution of roles between different entities. The following section provides some recommendations on how to further strengthen the legal and institutional framework.
Constitutional provisions

From a long-term perspective, the Constitution should retain the key principles and goals pertaining to the telecommunication and broadcasting sectors, such as digital inclusion. The more detailed prescriptions, especially those included in transitory articles, should be removed and, as appropriate, otherwise addressed, once their initial purpose has been achieved, in order to provide more flexibility to the different institutions to effectively perform their mandate in light of technological change.

Prior to the reform, the Mexican telecommunication and broadcasting markets faced severe challenges and this was reflected by the inclusion of very detailed and descriptive provisions in the Constitution. Subsequently, the 2013 constitutional amendments paved the way for overall positive developments, both with respect to the new institutional frameworks and market developments.

However, in the long run, in light of the rapid technological change and the trend towards convergence observed in the telecommunication and broadcasting sectors, the detailed nature of some articles in the Constitution is likely to hamper the ability of the government, legislature and regulators to effectively execute their mandates and keep pace with change.

In the future, consideration could be given to retaining only the key principles and overall objectives for these two sectors, such as digital inclusion and promoting competition, once the reform has firmly taken hold. As significant parts of the detailed text related to telecommunication and broadcasting were set out in the transitory articles to address the challenges mentioned above, their timely elimination once their initial purpose has been achieved would provide the relevant institutions with the flexibility needed to further execute their mandate most effectively.

An example of constitutional rules that would be ideally under the purview of the law is the provision pertaining to foreign investment in the telecommunication and broadcasting sectors. Another example is the provisions for the Red Compartida. As these are defined in the Constitution, there may be less flexibility to act in the event that the initiative encounters difficulties during implementation. The fact that the project is mandated by the Constitution leaves the government with little alternative but to execute it, even if, for example, the shared wholesale network ultimately does not attract sufficient demand to fully cover its costs. Another possible scenario is that the operating conditions of the Red Compartida as defined in the Constitution (e.g. having the right to exploit at least 90 MHz of spectrum in the 700 MHz band) may, in practice, prove to preclude better alternatives as the market develops and technology evolves.

A further example is the provision requiring the federal executive’s digital inclusion strategy to incorporate the following specific broadband penetration thresholds: 70% of all households and 85% of all micro, small and medium-sized enterprises, as well as download speeds consistent with the average speeds in OECD countries. While these are commendable objectives, such thresholds and requirements ought to be established by public policy instruments issued by the SCT under a programmatic but reasonably flexible framework, taking into account the existing market dynamics at a given time.

While it is crucial that the general rules, acts or omissions of the IFT and the Federal Economic Competition Commission (Comisión Federal de Competencia Económica, COFECE) may only be challenged by indirect amparo trials not subject to suspension, the exception rule for fine and divestiture decisions for COFECE should also apply to the IFT.
The current regime on indirect *amparo* trials has notably improved since the decision was implemented that any contested rule or regulation would still apply during the *amparo* trial. However, the scheme still bears some ambiguity with respect to which decisions from which authorities’ determinations will not be suspended.

As per the Constitutional Reform Decree and the LFTR, it is clear that non-suspension operates relative to the general rules, acts and omissions of the IFT and COFECE, albeit with an explicit exception concerning the imposition of fines or divestiture orders issued by COFECE. Neither the constitutional nor the legal provisions define an exception rule regarding those same decisions when they are issued by the IFT, which was meant to address the problematic situation of persistent suspensions experienced by operators and service providers prior to the reform. Nevertheless, as the imposition of fines and the ordering of divestitures can be one of the most intrusive measures applied by a regulator, substantially affecting operators’ and service providers’ rights, it would be advisable that the pertinent constitutional and legal rules be modified so as to allow for the suspension of the IFT’s decisions in those specific cases.

In the case where a trial is in favour of the challenging party or parties, the current *amparo* rules may not compensate for all the damages inflicted on said affected parties, even if the sanctioning determination is overturned. This is particularly relevant in the telecommunication and broadcasting context, where these decisions can only be subject to indirect *amparo* trials. Such a situation may be remedied if specific decisions taken by the regulator – only those pertaining to fines and divestitures, and not all of them, as was the case prior to the reform – can be suspended while the definitive judicial ruling is pending.

**Institutional framework**

**Attribution of roles between government entities**

Attributions among different governmental entities in formulating and implementing digital economy policy should be better aligned. Different options exist. Skilled personnel are crucial for designing effective digital economy policies; therefore staff should be carefully recruited.

Ensuring a clear delineation of responsibilities in digital economy policy making is a growing challenge. Following best practice, Mexico, along with an increasing number of OECD countries, has adopted a converged regulator for communication markets. However, as in other OECD countries, the government faces outstanding challenges in the governance of its digital economy strategy and policy. In Mexico, functions and responsibilities in digital economy policy and programme implementation are scattered across several entities and would benefit from a clearer mandating of tasks and responsibilities. As the digital economy grows, there is a need for a holistic and integrated government approach. While there is no single solution to this issue, regrouping responsibilities of closely related remits is likely to result in more coherent and effective outcomes. Different options should be considered on how to better delineate responsibilities between government entities. As such, responsibilities should be rearranged to increase the efficiency of the government in this area and build on post-reform momentum.

Improvements need to be made regarding the attributions between different entities, in particular regarding the overall digital strategy, digital inclusion, e-government and the use of ICTs in the public sector as well as the digitalisation of the economy between the SCT, the National Digital Strategy Coordination (Coordinación de Estrategia Digital...
Nacional, CEDN), the Ministry of Economy (Secretaría de Economía, SE) and the Ministry of Public Administration (Secretaría de la Función Pública, SFP). At this stage, the CEDN, located in the President’s Office, is responsible for the elaboration of the National Digital Strategy and for the co-ordination of digital policies to promote the adoption of new technologies by individuals and within the government. The implementation of the policies lies within the respective ministries.

One option to address this challenge is to rearrange remits and to merge the different entities’ units mentioned above that deal with the digital economy and ICT policies into a single body. This new body should be granted the attributions to not only develop and co-ordinate the overall digital strategy, but also to design, implement and evaluate all digital economy policies to promote the adoption of new technologies by individuals, households and firms, and to encourage the use of ICT by people and within the government with the purpose of increasing the transparency, accountability and efficiency of the public service. In addition, such a body should have a role to co-ordinate digital issues with other ministries such as the SEP, SEGOB or the Ministry of Health (Secretaría de Salud). This should be at a ministerial level with cabinet representation. In order to create an efficient entity, it is critical to evaluate the tasks and processes beforehand. This is to safeguard against a merger of different units from different parts of government that would retain any administrative inefficiencies (e.g. centralising “red tape” instead of streamlining processes).

A further option is the creation of a single department that not only develops the National Digital Strategy, but that also develops the major programmes and policies for the digital economy, such as to encourage digital inclusion, to increase connectivity or to promote the adoption of ICTs, and that integrates rather than just co-ordinates the different activities of several ministries. This body, in addition, could act as an advisory unit for other ministries in order to help them adapt their policies for a digital economy and use digital tools in their daily operations, and thus increase transparency and efficiency. In order to guarantee the continuity and periodic update of a cross-sector National Digital Strategy, the new department could either be located within a ministry or in the President’s Office. While both options are possible and have been used in OECD countries, the advantage of locating it within a ministry may provide the department with a certain continuity and stability and keep it closer to the technical expertise.

Due to the wide range of converging and complex topics, it is crucial to have the right leadership and skilled staff to enact any of these or other options. The leadership of this entity or department should be committed to promoting the digital economy in Mexico in an inclusive manner. The person leading the efforts should see him or herself as a facilitator for promoting the digital economy in the country and in supporting other ministries in their digital transformation. At the same time, the staff working in the department should be carefully recruited to ensure that various backgrounds and expertise are represented. Finally, it is important to involve different stakeholders in the work, especially when designing the national strategy and new digital policies.

Division of functions between COFECE and the IFT

The attributions of the Federal Economic Competition Commission (Comisión Federal de Competencia Económica, COFECE) and the IFT should be very clear. Parallel procedures should be avoided as should re-opening a double window.

The 2017 court decision in the AT&T and Time Warner Case, which allowed both COFECE and the IFT to work jointly on the case, must be monitored closely since it has
the potential to recreate a double window between the two entities. The decision did not consider the implications of convergence between voice, video and data. In the future, and given the fact that convergence will only increase, it is suggested that the IFT has the mandate to deal with these competition cases.

PROFECO and the division of functions between PROFECO and the IFT

There should be a clearer definition of roles between the Federal Consumer Protection Agency (Procuraduría Federal del Consumidor, PROFECO) and the IFT on the operators’ compliance regarding the provision of advertising, which should be entrusted to PROFECO. PROFECO could benefit from having a head with a fixed-term appointment.

The LFTR establishes, in general terms, clear divisions between the functions assigned to the different public institutions; this bolsters legal certainty among users and eliminates the inefficiencies related to “double windows”. However, the rules about operators’ compliance with advertising provisions are ambiguous.

Merely clarifying the legal rules for the IFT and PROFECO, however, may not be enough to increase consumer awareness of which authority is responsible for enforcing consumer protection regulations regarding the provision of advertising. Therefore, these efforts should be coupled with educational campaigns on the part of both public entities, informing users not only of their rights vis-à-vis operators’ and service providers’ advertising, but of the competent authority to whom they can address their complaints. In addition to the platform Soy Usuario implemented by the IFT and PROFECO, effective protocols for collaboration must be concluded between the two institutions regarding the provision of advertisement, covering, for instance, procedures to be followed when a complaint is mistakenly directed to the IFT.

PROFECO plays a key role in communication markets by protecting and promoting consumer rights and has a mandate to empower consumers through improved information and education. There has been a large turnover of leadership in recent years and although there may be legal constraints, the ideal solution may be to establish a fixed-term appointment for the head of PROFECO.

Institutional roles on audiovisual content regulation

Audiovisual content regulation could benefit from strengthening the IFT’s role, especially to guarantee the rights of children and people with disabilities. The adoption of an approach that encourages co-regulatory and consumer empowerment mechanisms would also improve current audiovisual content.

Under the current legal framework, several institutions are responsible for audiovisual content regulation in Mexico, notably SEGOB, the Ministry of Health (Secretaría de Salud) and the IFT. These institutional arrangements cause disputes, such as in relation to the rights of audiences which are only defined in a general manner. Disputes of this nature should be resolved and the role of the IFT in informing and instructing the audiovisual content market in the areas of broadcasting and telecommunication should be strengthened as part of its general mission as a converged regulator, while maintaining the contribution of other entities in charge of specific issues, such as health, copyright and so forth.

Moreover, technological developments are expected to make traditional approaches to monitoring audiovisual content more challenging, in terms of classification of breaches to the rights of audiences. Legal instruments addressing this issue may need to be reviewed
in the future. The best way forward may be to develop co-regulatory mechanisms (e.g. industry-driven codes of conduct) and to promote tools to enhance consumer empowerment (e.g. parental control); some of these are already foreseen in the LFTR provisions, but have not yet been implemented. That being said, issues around the protection of children and accessibility have not been given the importance they deserve. Left to self-regulatory mechanisms, they may in the future need the development of specific regulatory measures that consider international best practices. Good practices include the adoption of co-regulatory schemes as a way to balance and respect the rights of audiences, particularly for children and people with disabilities, and at the same time protect and respect human rights, including freedom of speech.

The specialised courts

The specialised courts would benefit from a modicum of in-house technical support. The budget assigned to the courts should allow judges and their staff to receive specific training in their areas of competence. The terms of appointment for the specialised judges should be extended to at least five years, and their appointments should be made in a manner that ensures continuity of expertise.

The creation of specialised courts in highly technical and specialised matters such as telecommunication services, broadcasting and economic competition is a positive outcome of the reform. However, their practical establishment has encountered some obstacles with respect to human resources and their expertise in and experience of such specialised topics. It appears that the training for judicial officials, to date, has primarily relied on academia and contacts with foreign judicial institutions, while the contributions provided by the Mexican state have been limited.

The current situation is therefore less effective than it might otherwise be and could ultimately lead to counterproductive outcomes. The rationale for forming such courts was to create a setting in which judges specialised by subject would be more effective. Certainly, the legal changes regarding the non-suspension of the regulators’ determinations have significantly contributed to improving the efficiency of the judicial apparatus in the telecommunication and broadcasting sectors: decisions that in the past took approximately eight years of appeal are examined today within a one-year time frame. However, adequate training for judges is now instrumental to maximise procedural efficiency.

To this end, the specialised courts and judges would benefit from having a modicum of in-house economic and technical expertise (economists, engineers). This would provide them with permanent support in their assessments, including consultations with any external experts and consultants that the parties hire on a case-by-case basis which is optional under the current system. Moreover, the budget assigned to these judicial institutions should allow judges and justices to receive specific training in their areas of competence, be it through in-house courses or by attending diverse events or conferences to gain technical knowledge and insight.

A related issue is the excessively short term of appointment for the judges of the specialised courts, which ranges from two to three years, depending on the appointment order adopted by the Superior Council of the Judiciary. These terms are insufficient for the judicial officials to build up an adequate base of knowledge, especially when considering the steep learning curves associated with acquiring expertise. In this regard, a minimum of five-year appointment would foster the effectiveness of the courts’ human capital and ensure greater stability and autonomy in the execution of their functions. Concomitantly, however, just causes for removal should be clearly defined to ensure the
continued suitability of the judges to carry out their mandate. Furthermore, the appointment of specialised judges should be made in a sliding manner to ensure a smooth transition and continuity of expertise.

The composition of the Boards of the IFT and COFECE and the IFT’s Advisory Council

The number of Board members of the IFT and the Federal Economic Competition Commission (Comisión Federal de Competencia Económica, COFECE) could be reduced, as should the number of members on the IFT’s Advisory Council.

The size and composition of the IFT’s and COFECE’s Boards could result in delays in the decision-making processes. Although the commission structure is consistent with good practice principles aimed to promote more comprehensive decision making and include individuals with diverse backgrounds, which in turn reduces the risk of industry capture, many regulators around the world, including telecommunication regulators in OECD countries, have adopted smaller board structures. Most have three- to five-member boards, making the seven-member boards of the IFT and COFECE an exception rather than the norm. In this configuration, the benefits of grouping professionals from different backgrounds and with diverse knowledge may be preserved. At the same time, this would provide enough members to guard against industry capture, while countering the stalling of decisions due to disagreements of the members of the Board.

Another aspect worth reviewing is the current configuration of the IFT’s Advisory Council of 15 members, which seems excessive vis-à-vis other jurisdictions and considering the needs of the regulator. Although the role of the advisory council can be valuable to generate more robust discussions within the regulator and provide different positions from knowledgeable professionals from varied backgrounds, the combination of such a sizeable advisory council with a rather large board (pleno) could seriously delay the adoption of key decisions by the regulator. While there is no “golden rule” on the matter, reducing the number of advisory council members by at least half could preserve the benefits derived from the council’s input while decreasing the costs associated with less efficient decision making. An alternative could also be to have different advisory groups for different topics. For instance, there could be three advisory groups on different issues, such as competition, media and content, and telecommunication, each group formed by three or five people. By doing this, the specialised advice could be more useful to the work of the regulator.

Tasks of the IFT Board and contact rules for the Board

The responsibilities of the IFT Board could be reviewed and the Board should be able to delegate some of its responsibilities to the IFT’s internal departments. The obligation to electronically record meetings between regulated entities and IFT commissioners could be simplified so as to retain only the publication of the dates of the meeting and the regulated entities with whom the commissioners are meeting.

The IFT Board is currently confronted with a very high number of tasks and responsibilities as the LFTR established a substantial range of activities that cannot be
delegated. This range of responsibilities could be reduced and the Board could be able to delegate some of the tasks to different departments within the IFT. This would allow the Board to focus on the major decisions that require collegial discussions and resolutions.

The LFTR determines that outside of hearings, the commissioners of the IFT Board can only discuss matters with industry through interviews that are electronically recorded and stored. Yet this procedure prevents agents from regulated entities from revealing sensitive information that the Board might need to take well-founded decisions.

It is common practice for regulators in OECD countries to publish with which entities the commissioners are meeting as well as the dates of the meeting, but most do not make an electronic recording of such meetings. The LFTR could be amended to eliminate the obligation to record and store the recordings of the meetings with industry. However, if such changes are made, a record should be kept of the date/time, the participants as well as their affiliations, and the duration of such meetings. Additionally, these records should be published periodically (e.g. monthly).
Notes

1. The final low-power analogue stations remaining in service were switched off in December 2016.

2. For instance, the fines in the European Union may be up to 10% of the total income – that is, worldwide – obtained by the infringing company during the previous fiscal year, a rule that also exists in Germany and the United Kingdom; Australia provides for an alternative fine of up to 10% of the income earned in the 12 months prior to the occurrence of the breach, if the specific benefit perceived by the infringer cannot be determined; in Switzerland, the cap on the fines equals 10% of the income earned in the Swiss market during the preceding 3 fiscal years.

3. Among which the following countries can be mentioned: Australia, Canada, Ireland, Israel, Japan, Korea, Mexico, Norway, the United Kingdom and the United States, as well as Brazil, Indonesia and the Russian Federation.

4. BT’s peering policy can be found at: www.bt.net/info/peering.shtml.

5. It is worth noting that the co-ordination on matters such as e-government and ICT procurement across the public sector is undertaken by the Interministerial Commission for the Development of Electronic Government (CIDGE), which was created by an Executive Order from 9 December 2005.

6. Notable exceptions include the Canadian Radio-television and Telecommunications Commission (whose board can be eventually composed of over ten members), the Swedish Post and Telecom Authority (which has seven board members), Ofcom in the United Kingdom (whose board is integrated by nine members), as well as its Competition and Markets Authority, and the Spanish National Commission on Markets and Competition (which, to date, has an eight-counsellor board), which carries out both ex ante and ex post intervention in telecommunication and other economic sectors. Nevertheless, several telecommunication and broadcasting regulators have three-member (e.g. the German Bundesnetzagentur and the Colombian Communications Regulation Commission), four-member (e.g. the Belgian Institute for Postal Services and Telecommunications) or five-member boards (e.g. the US Federal Communications Commission, the Czech Telecommunication Office and Luxembourg’s Institut luxembourgeois de régulation). Furthermore, several competition agencies in OECD jurisdictions have no more than five board members: the Belgian Collège de la concurrence and the Italian Autorità Garante della Concorrenza e del Mercato have three-member boards; Luxembourg’s Conseil de la concurrence and Ireland’s Competition and Consumer Protection Commission have four commissioners; while the Japanese Fair Trade Commission and Brazil’s CADE have five-member bodies in charge of ruling on competition cases.

7. Such is the case of the German Bundesnetzagentur, whose board is composed of three members, and is in charge of regulating energy, telecommunication, postal and rail industries. Another example is the Belgian Institute for Postal Services and Telecommunications, with a four-member board charged with regulating not only telecommunication, but also media, radio and postal services. Lastly, one may mention Luxembourg’s Institut luxembourgeois de régulation, which has a five-member board and is competent for regulating energy, natural gas, postal services, railroads and airports.

8. An odd number of members should be employed, in any case.
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IFT (Instituto Federal de Telecomunicaciones) (2017a), “Spectrum fees for telecommunication services”, unpublished material provided by the Instituto Federal de Telecomunicaciones.


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SEGOB (Secretaría de Gobernación) (2014a), “Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite los Lineamientos generales que establecen los requisitos, términos y condiciones que los actuales concesionarios de radiodifusión, telecomunicaciones y telefonia deberán cumplir para que se les autorice la prestación de servicios adicionales a los que son objeto de su concesión” [Agreement by which the plenary of the Federal Telecommunications Institute will issue the general guidelines to set the requirements, terms and conditions as the current licenses for broadcasting, telecommunication and telephony must meet in order to be allowed the provision of additional services that are the subject granted], Diario Oficial de la Federación, 28 May, Secretaría de Gobernación, www.dof.gob.mx/nota_detalle.php?codigo=5346486&fecha=28/05/2014.


State of implementation of the 2012 OECD recommendations

<table>
<thead>
<tr>
<th>Telecommunication sector</th>
<th>Implementation by 2016</th>
<th>Level of implementation</th>
<th>Legal basis</th>
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<tbody>
<tr>
<td><strong>Ensure low barriers to entry and “contestable” telecommunication markets</strong></td>
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</table>
| Eliminate all foreign investment restrictions/caps on fixed-line telecommunication operators in Mexico. | Through the constitutional reform, foreign direct investment (FDI) is now allowed in Mexico up to 100% in telecommunication. Additionally, due to the Sole Concession Scheme, concessions for telecommunication or broadcasting may only be granted to Mexican individuals or companies legally incorporated in Mexico. For global companies looking to expand operations to Mexico, a new legal Mexican entity is often created, which is subject to Mexican law, but meets the criteria to be able to request a concession to provide services in the country. | Implemented | – FDI (Mexican Constitution, Transitory Article 5)  
– Sole Concession Scheme (LFTR, Art. 66; LFTR, Art. 71) |
| Reform the existing concession system to a simpler class-licensing regime (except for resource scarcity restraints, i.e. spectrum). | The reform mandates a convergent legal system to eliminate regulatory barriers and to allow concessionaires to provide all services under a single or “sole” licensing scheme. The new concessions regime differentiates between a single concession that allows the provision of all telecommunication and broadcasting services and radio spectrum concessions that grant the right to use frequency bands of the radio spectrum for determined use (commercial, public, social use). In order to exploit a spectrum concession, the licensee must also obtain a sole concession. | Implemented | – (Mexican Constitution, Art. 27) |
| Monitor and enforce existing obligations. | The constitutional reform refers to the Federal Telecommunications Institute’s (Instituto Federal de Telecomunicaciones, IFT) role to monitor and enforce current obligations, and established that the IFT had 180 calendar days after its creation to implement this review. This was done on time. The IFT also must review the enforcement of the measures imposed upon dominant (“preponderant”) operators every two years. Such review shall be made in terms of the resolutions by which the IFT determined the economic agents as preponderant and to enforce measures necessary to keep them from affecting free competition and entry, and thus, from harming end users. | Implemented | – (Mexican Constitution, Transitory Article 8, Numerals III and V) |
### State of implementation of the 2012 OECD recommendations (continued)

| Simplify and encourage the entry of resellers to the market (including mobile virtual network operators, MVNOs). | Several measures have been implemented to encourage the entry of resellers to the market, including: a. The executive branch must guarantee the deployment of a wholesale mobile telecommunication network (Red Compartida) that will sell its capacities and services in an unbundled and non-discriminatory manner, only to infrastructure and virtual operators. b. The IFT has regulation on infrastructure sharing (e.g. national infrastructure information system), interconnection, local loop unbundling, and has issued rules for the commercialisation of mobile services by MVNOs. c. The law makes it possible to provide mobile services without being a holder of spectrum frequency nor deploying any network infrastructure. d. MVNOs may obtain their own numbers and an authorisation for a reseller, regardless of the concession. | Implemented | – Shared network (Red Compartida): (Mexican Constitution, Transitory Article 16) – Organism for the Promotion of Investment in Telecommunications (Organismo Promotor de Inversiones en Telecomunicaciones, PROMTEL) responsibilities (PROMTEL’s Decree of Creation, Art. 1) – Articles related to entry of MVNOs (LFTR, Art. 170; Art. 173, Numeral III) – IFT MVNO guidelines |
| Ensure that regulations and regulatory processes are transparent, non-discriminatory and applied effectively | The reform establishes that the general rules, acts or omissions of the IFT can only be contested through indirect writ of amparo and will not be subjected to suspension, restricting the ability of operators to block the application of regulatory measures by means of “suspensions” and “amparo actions”. Suspensions are no longer allowed, so that decisions are implemented before the final decision on the amparo action is reached. In addition, amparo actions for intra-procedural acts are prohibited. Furthermore, the constitutional reform established a specialised court for the judicial review of cases in telecommunication, broadcasting and competition. | Implemented | – Amparo contestations (Mexican Constitution, Transitory Article 9) – Specialised courts (Mexican Constitution, Transitory Article 12) |
| Separate responsibilities for policy formulation (ministry) from regulatory/marketing functions (regulator) (e.g. granting concession process) in order to eliminate the “double window”. | The IFT became responsible to grant/modify/extend concessions, revoke concessions or permits, and impose fines. The Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) makes policy (universal coverage, digital inclusion, public site coverage, etc.) and is entrusted to undertake the necessary actions and measures to guarantee the continuity of telecommunication and broadcasting services when the IFT gives notice of the existence of concession termination causes due to revocation concessions, dissolutions or bankruptcy of operators. The constitutional reform ended the “double window” between the regulatory and competition authorities, as the IFT no longer has to ask for an opinion regarding auctions, which are now processed internally by the Economic Competition Unit (Unidad de Competencia Económica, UCE) among other instances. | Implemented | – Responsibilities of the IFT (LFTR, Articles 7 and 8) – Responsibilities of the SCT (LFTR, Art. 9) |
State of implementation of the 2012 OECD recommendations (continued)

<table>
<thead>
<tr>
<th>Implementation by 2016</th>
<th>Level of implementation</th>
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<tbody>
<tr>
<td>The Federal Telecommunications Commission (Comisión Federal de Telecomunicaciones, COFETEL [now IFT]) should have greater autonomy to carry out its mandate and should have the power to enforce/revoke concessions.</td>
<td>Implemented</td>
<td>– IFT competences (Mexican Constitution, Art. 28 and LFTR, Articles 7 and 8)</td>
</tr>
<tr>
<td>COFETEL (IFT) should have the authority to declare significant market power and subject that company to appropriate remedies.</td>
<td>Implemented</td>
<td>– (Mexican Constitution, Transitory Article 8, Numeral III)</td>
</tr>
</tbody>
</table>
| The jurisdictions of COFETEL (IFT) and the Federal Competition Commission (Comisión Federal de Competencia Economica, COFECE) and the various other regulatory bodies should be clearly defined and co-operation should be formalised. | Implemented² | – COFECE’s responsibilities (Federal Economic Law, Articles 10-12) 
– IFT’s responsibilities (Federal Economic Law, Art. 5; LFTR, Articles 7 and 6) 
– IFT and COFECE co-operation (LFTR, Art. 264) 
– IFT and PROFECO responsibilities and co-operation (LFTR, Articles 191-193) |
| The regulator should have greater budgetary independence and a clearly defined and sufficient source of funding. | Implemented | – (Mexican Constitution, Transitory Article 13 and LFTR, Art. 7, Numeral VI) |
| The regulator should have the power to impose fines high enough to ensure regulatory adherence. | Implemented | – (Mexican Constitution, Art. 28 and Federal Law of Economic Competition, Articles 5 and 127; LFTR, Art. 298) |

The reform established the IFT as an autonomous body responsible for regulating spectrum, networks, services and competition in the telecommunication and broadcasting sectors. The IFT became responsible to grant/modify/extend concessions, revoke concessions or permits and impose fines. In this regard, by constitutional controversy 117/2014, the Supreme Court established that Article 28 of the Constitution gives broad regulatory powers on matters within its competence, while not exceeding the limits set by the Constitution and statutory law.

The IFT has the mandate to determine the existence of dominant operators in broadcasting and telecommunication, and to enforce the necessary measures to keep those operators from affecting free competition and entry, and thus, from harming end users. The measures imposed upon dominant operators should be reviewed every two years.

The IFT is the competent authority for economic competition matters in the telecommunication and broadcasting sectors, whereas COFECE is the competition authority in other sectors of the market. Under the IFT’s mandate to declare preponderant market agents or agents who hold significant power in any of the relevant markets in the telecommunication and broadcasting sectors, the IFT will inform COFECE of its rulings so that it can proceed in accordance with the law in that matter. In the case of a jurisdictional dispute between the two regulatory bodies, a designated tribunal will decide who the relevant competent authority is. There have been two such disputes: one in 2015 in which the IFT was determined to have jurisdiction and one recently which allowed both authorities to work jointly on the case.

The IFT’s co-operation with the Federal Consumer Protection Agency (Procuraduría Federal del Consumidor, PROFECO), is detailed below.

The IFT’s Board shall annually approve the pre-proposal of the institute’s budget submitted by the President Commissioner. Once approved, it shall be sent to the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público, SHCP) in order for it to be included in the proposed expenditure budget of the federation to be sent to Congress. Additionally, the reform asserted that the Chamber of Deputies in the federal budget of expenditures will make necessary funds available to ensure the proper functioning of regulatory bodies, including the IFT. The IFT’s budget has been around MXN 2 000 million since the institute was created; for 2017 the IFT has requested a budget of MXN 1 980 million.

The IFT was granted the power to issue sanctions against concessionaires that have undermined legal or administrative provisions or failed to comply with the obligations established in their respective concessions titles. For not meeting quality of service (QoS) standards, the IFT can fine 1% to 3% of total revenue. Firms guilty of collusion/abuse of dominance in the broadcasting sector can be fined up to 10% of their annual revenue, or twice that amount for repeat offenders. In the case of a repeat offender, the IFT may implement the divestiture of assets it deems necessary to eliminate anticompetitive effects.
State of implementation of the 2012 OECD recommendations (continued)

| QoS indicators should be published regularly. | There are quality guidelines for fixed and mobile services in place but which are currently being revised; guidelines for fixed broadband digital terrestrial television (DTT) broadcasting and pay TV are also being developed. Some specific entities (e.g. preponderant agents) are subject to stricter quality indices and information reporting obligations (higher than the rest). For mobile operators, the IFT measures the quality of telephony, SMS and Internet access. The Fundamental Technical Plan for Quality of Local Mobile Services of 2011 is operational and all data collected during the measurements performed by the IFT are published on the institute’s website on a quarterly basis. | Implemented | (LFTR, Art. 15, Numerals XLVII and L) |
| Wholesale indicators from dominant firms should be available to new entrants (e.g. access to leased lines, etc.). | Dominant firms’ reference offers for the provision of these wholesale services include QoS parameters as well as service level agreements, which may be updated during each annual review. At present, there are two reference offers under analysis (i.e. Oferta de Referencia para la Desagregación del Bucle Local, OREDA, and Oferta Pública de Infraestructura, OPI) by the IFT. OREDA relates to local-loop unbundling and OPI is concerned with passive infrastructure in the broadcasting sector. | Implemented | (Preponderance measures for the telecommunication and broadcasting sectors) |
| Establish formal public consultations and transparency procedures for COFETEL (IFT) to follow to ensure increased accountability and transparency. | All regulatory provisions of general scope of applicability must go through a public consultation process. In any spectrum auction, a formal public consultation is held in which all the procedures and rules are displayed, so all interested parties can give an opinion and make suggestions that could improve the rules and scheme of the tender process. The IFT publishes a time frame to receive all formal opinions and a document that states which comments were taken into account and which were not, as well as the reasons behind the decision. | Implemented | (LFTR, Art. 51) |

Reform regulations to stimulate competition and eliminate regulations, except where clear evidence demonstrates that they are the best way to serve the broad public interest

| COFETEL (IFT) should be authorised to regulate interconnection tariffs ex ante to foster competition among operators. | In addition, according to Article 125 of the Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR), the IFT issued a cost methodology whose main characteristic is the use of pure long-run incremental cost (LRIC). In 2014, a cost model based on pure costs was elaborated, which allowed for determining interconnection rates for 2015-17. The cost model, which will be subject to public consultation, will determine interconnection rates for 2018-20, whose main characteristic is the use of 4G technologies. Tariffs offered by one concessionaire to another one must be granted to a third concessionaire in a non-discriminatory and transparent way. Preponderant agents have an asymmetric rate, which is zero for calls terminated in its network and cost-based for termination in any other network. This asymmetric regime will continue as long as there is a preponderant agent or an agent with more than 50% of the telecommunication sector, and it may continue as long as the agent has substantial market power (SMP) in the termination of calls. Under the new regulatory framework, interconnection rates are first negotiated by the operators and, in case of disagreement on specific conditions, the IFT may decide on those conditions based on a costing model. However, the interconnection rate to be applied each year is updated and made public by the IFT. The IFT has established the minimum technical conditions of interconnection, a set of interconnection sites and unbundling obligations. | Implemented | Interconnection regulation (LFTR, Art. 125 and 126) |
| | | | Interconnection with preponderant agents (LFTR, Articles 131 and 269) |
### State of implementation of the 2012 OECD recommendations (continued)

<table>
<thead>
<tr>
<th>Implementation by 2016</th>
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<tbody>
<tr>
<td><strong>Telmex (fixed-line incumbent) should be required to consolidate local dialling areas as determined by COFETEL (IFT).</strong></td>
<td>Implemented</td>
<td>– National long-distance charges (LFTR, Art. 118) – Preponderant economic agent (PEA) interconnection points (PEA Interconnection Points Agreement, Art. 6)</td>
</tr>
<tr>
<td>The elimination of national long-distance charges was implemented on 1 January 2015. Therefore, consolidation of local dialling areas became irrelevant for consumers. Additionally, the IFT determined that the preponderant agent’s interconnection points were national, which means that they can deliver any destination traffic, independent of where the traffic is received.</td>
<td>Implemented</td>
<td>– IFT authorisation to declare essential facilities (Mexican Constitution, Art. 28; LFTR, Art. 139; Federal Economic Competition Law, Art. 60) – Unbundling measures imposed on PEAs of the telecommunication sector (Preponderant Measures for the Telecommunication Sector, Annex 3; LFTR, Art. 269) – Local-loop unbundling reference offers (OREDA, Telnor and Telnor) – Requirement to issue reference offers to the IFT (LFTR, Art. 267, Numeral I) – Passive infrastructure access reference offers (example) (Telnor, Telnex, Telsite) – IFT dispute mediation/cost methodology (LFTR, Articles 129 and 137)</td>
</tr>
<tr>
<td><strong>COFETEL (IFT) should be authorised to declare bottlenecks and essential facilities and to establish non-discriminatory conditions to access these facilities.</strong></td>
<td>Implemented</td>
<td>– IFT authorisation to declare essential facilities (Mexican Constitution, Art. 28; LFTR, Art. 139; Federal Economic Competition Law, Art. 60) – Unbundling measures imposed on PEAs of the telecommunication sector (Preponderant Measures for the Telecommunication Sector, Annex 3; LFTR, Art. 269) – Local-loop unbundling reference offers (OREDA, Telnor and Telnor) – Requirement to issue reference offers to the IFT (LFTR, Art. 267, Numeral I) – Passive infrastructure access reference offers (example) (Telnor, Telnex, Telsite) – IFT dispute mediation/cost methodology (LFTR, Articles 129 and 137)</td>
</tr>
<tr>
<td>The IFT is the authority to determine essential facilities and can therefore require any concessionaire to share infrastructure when it is essential to provide services, there are no substitutes and there is available capacity. In the event that no agreement can be reached among the interested parties, the IFT can also solve any dispute based on an LRIC methodology. In the case that a PEA is one of the parties in the dispute, it must offer any condition agreed with a third party or issued by the IFT to other concessionaires under the non-discriminatory principle. The IFT determines the cost models to apply tariffs in unbundling and the access and share usage of passive infrastructure for the dominant telecommunication player. PEAs must submit their terms/conditions for unbundled services, which must be approved by the IFT. One of the main elements of the asymmetric regulation imposed on Telmex-Telnor as the PEA is the unbundling measures, which state that concessionaires would require some technical and operative conditions that Telmex-Telnor would have to consider in their first local-loop unbundling reference offer (OREDA). The IFT accepted this offer on 9 December 2015. OREDA includes guidelines and obligations for the PEA to grant its competitors non-discriminatory access to its essential facilities through different services: wholesale line rental (voice and Internet) and bitstream access services (at a local, regional and national level), as well as full and shared local-loop unbundling and collocation services. Rates were determined by the IFT through cost models. The Reference Offers for Passive Infrastructure Access, Fixed and Mobile were approved by the IFT in November 2015 and will be in force from 2016-17. These reference offers include terms and conditions that Telmex, Telnor, Telcel and Telesites have to observe to provide concessionaires access to their infrastructure.</td>
<td>Implemented</td>
<td>– IFT authorisation to declare essential facilities (Mexican Constitution, Art. 28; LFTR, Art. 139; Federal Economic Competition Law, Art. 60) – Unbundling measures imposed on PEAs of the telecommunication sector (Preponderant Measures for the Telecommunication Sector, Annex 3; LFTR, Art. 269) – Local-loop unbundling reference offers (OREDA, Telnor and Telnor) – Requirement to issue reference offers to the IFT (LFTR, Art. 267, Numeral I) – Passive infrastructure access reference offers (example) (Telnor, Telnex, Telcel) – IFT dispute mediation/cost methodology (LFTR, Articles 129 and 137)</td>
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### State of implementation of the 2012 OECD recommendations (continued)

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<th>Implementation by 2016</th>
<th>Level of implementation</th>
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<tbody>
<tr>
<td>COFETEL (IFT) should be able to undertake market reviews, declare market powers and apply remedies as appropriate, and impose regulations to protect consumers.</td>
<td>Implemented</td>
<td>– Declare preponderance (Mexican Constitution, Transitory Article 8, Numeral III and Federal Economic Competition Law, Art. 59) – Establish sanctions (Federal Economic Competition Law, Art. 127) – PROFECO’s and the IFT’s jurisdiction (LFTR, Art. 297)</td>
</tr>
<tr>
<td>COFETEL (IFT) should have the authority to impose a functional and structural separation of an operator that abuses its dominate power.</td>
<td>Implemented</td>
<td>– Establish sanctions (Federal Economic Competition Law, Art. 127) – Function or structural separation (Mexican Constitution, Transitory Article 8, Numeral III and LFTR, Art. 262)</td>
</tr>
<tr>
<td>COFETEL (IFT) should set the “X factor” and administer price caps to regulate Telmex’s end-user prices, including the use of “sub-caps”.</td>
<td>Implemented</td>
<td>– Price cap (Preponderant Resolution Telmex, Annex 2, Art. 40)</td>
</tr>
<tr>
<td>Only operators with significant market power should have to register their wholesale prices.</td>
<td>Implemented</td>
<td>– (Preponderant Resolution, Annexes 1, 2 and 3)</td>
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<td>State of implementation of the 2012 OECD recommendations (continued)</td>
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<tr>
<td><strong>Implementation by 2016</strong></td>
<td><strong>Level of implementation</strong></td>
<td><strong>Legal basis</strong></td>
</tr>
<tr>
<td><strong>Sufficient spectrum should be released to meet the growing demand for mobile broadband data service, including releasing some of the Federal Electricity Commission’s (Comisión Federal de Electricidad, CFE) dark fibre. Incentives also should be put in place to promote infrastructure sharing.</strong></td>
<td>Implemented</td>
<td>– Red Compartida and Red Troncal (Mexican Constitution, Transitory Article 16)</td>
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<tr>
<td>Since 2013, available spectrum has increased more than 40%:</td>
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<td>– National Radio Spectrum Programme (Mexican Constitution, Transitory Article 17, Numeral V)</td>
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<tr>
<td>– 222 MHz (allocated for International Mobile Telecommunications [IMT] bands, before the reform)</td>
<td></td>
<td>– IFT authorisation to declare essential facilities (Mexican Constitution, Art. 28; LFTR, Art. 139; Federal Economic Competition Law, Art. 60)</td>
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<tr>
<td>– 90 MHz will be made available in the 700 MHz band (Red Compartida)</td>
<td></td>
<td>– SCT responsibilities, infrastructure deployment policy (LFTR, Art. 9)</td>
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<tr>
<td>– 190 MHz (in 2.5 gigahertz [GHz]: 130 MHz auctioned and up to 60 MHz from MVS Comunicaciones). By mid-2018 Mexico will reach almost 600 MHz for international mobile telecommunication services, more than double the spectrum in 2013. The deployment of Red Compartida has allocated 90 MHz of premium unencumbered contiguous spectrum on the 700 MHz band, which is available due to freed spectrum following the transition to DTT. The National Radio Spectrum Programme was established to promote the efficient use of the 700 MHz and 2.5 GHz bands. The Red Troncal project also released the CFE’s “dark” or unused fibre in order for the resource to be better used. The IFT planned to auction 80 MHz of spectrum in the AWS (1.7/2.1 GHz) and allocated 70 MHz in the 2016 auction. (In addition, a block of 10 MHz was made available from previously allocated regional blocks in the AWS band). The IFT is currently auctioning 257 frequencies for AM/FM radio and is planning to auction 148 DTT channels and 190 MHz of the 2.5 GHz band.</td>
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<tr>
<td><strong>Modify the legal framework to promote infrastructure sharing and to remove barriers to obtain rights of way, by making governmental facilities available for mobile operators to deploy their networks and accelerating procedures to grant permits for rights of way.</strong></td>
<td>Partial/in progress</td>
<td></td>
</tr>
<tr>
<td>Under the passive infrastructure project and the National Infrastructure Information System (Sistema Nacional de Información de Infraestructura, SNIII), the government will make available to all operators, under equal-access conditions, federal real estate and rights of way that can be used for the deployment of telecommunication networks and equipment. The projects include recommendations to states/municipalities to standardise and simplify requirements, lease of government real estate for telecom infrastructure, and authorisations needed to expedite the deployment of infrastructure. The IFT has the power to declare bottlenecks and essential facilities and to mandate the sharing of that infrastructure or access regulation as necessary. Under the asymmetric regulation framework, the IFT has established measures for the preponderant agents in telecommunication and broadcasting regarding unbundling, infrastructure sharing, as well as resale and access, respect to the local loop, transport infrastructure, dedicated links, transmission towers, passive infrastructure, among others. The dominant carrier also must share its rights of way and no restrictions may be placed on other concessionaires to install/access telecommunication infrastructure in any shared-use real estate, though there is no regulation on inside wiring. The SCT has an important role to determine the infrastructure deployment policy and establish guidelines to access public infrastructure, jointly with other government agencies. For example, access to public buildings is determined in co-ordination with the Institute for Administration and Appraisal of National Property (Instituto de Administración y Avalúos de Bienes Nacionales, INDAABIN). However, the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE) has the legal authority to determine terms and conditions, including rates, to access the CFE’s infrastructure. The SCT can also issue recommendations to state and local governments in order to reduce bottlenecks for infrastructure deployment, such as unnecessary procedures, fair access to rights of ways, unjustified charges, etc.</td>
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### State of implementation of the 2012 OECD recommendations (continued)

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<th>Implementation by 2016</th>
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<tbody>
<tr>
<td>The government should clarify the policy of universal service and define plans on how to effectively implement it.</td>
<td>Partial/in progress</td>
<td>– Red Compartida and Red Troncal (Mexican Constitution, Transitory Article 16)</td>
</tr>
<tr>
<td>The government has put in place several projects in order to meet the objective of universal coverage with quality at an affordable price:</td>
<td></td>
<td>– SCT plan (National Development Plan 2013-2018, Section 1.2)</td>
</tr>
<tr>
<td>– Red Compartida, a shared wholesale wireless network with Long-term Evolution (LTE) mobile telecommunication technology (also known as “4G” fourth-generation), to promote the efficient use of infrastructure through sharing. The winner, Altán Redes, won with a bid to reach 92.2% national coverage.</td>
<td></td>
<td>– IFT’s support for the federal government’s digital strategy (LFTR, Art. 15, Numeral XXXI)</td>
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<tr>
<td>– The passive infrastructure project (with its four components).</td>
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<td>– Red Troncal (backbone network).</td>
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<td>– México Conectado, a project to connect rural and remote public sites to provide Internet connectivity via Wi-Fi hotspots (in schools, public buildings).³</td>
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<tr>
<td>The SCT’s National Development Plan (2013-2018) outlines steps to reach universal coverage in radio, television, and telephony and data services. Additionally, the SCT must publish the social coverage programme every two to four years to detail how to increase coverage and penetration of telecommunication services. This must be validated by the IFT. The Institute works to implement the universal coverage goals established by the federal government, including the National Digital Strategy.</td>
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<tr>
<td>PROFECO and COFETEL (IFT) should clarify their roles and take action to facilitate consumers to switch service providers.</td>
<td>Implemented</td>
<td>– PROFECO and IFT responsibilities and co-operation (LFTR, Articles 191-193)</td>
</tr>
<tr>
<td>PROFECO is the agency mandated by law to protect the rights of consumers against concessionaires, which include verifying that operators charge reasonable and proportionate penalties to customers for contractual obligations (early suspension of contract, unpaid balance or equipment). Concessionaires must register the standard customer contracts of adhesion with PROFECO. The IFT is mandated with the regulation, monitoring and oversight of the quality of telecommunication public services. It establishes the conditions under which the concessionaires have to publish transparent, comparable and updated information on prices and applicable rates, any charges related to the termination of the contract, and information on access and use of services provided to users. Adherence contracts must also be registered in the Public Registry of Concessions administered by the IFT. The IFT established number portability rules in 2014 which state that the operator must unlock a phone immediately without charge in the case of pre-paid, and should unlock in post-pay subscriptions:</td>
<td></td>
<td>– IFT and Ministry of Economy (Secretaría de Economía, SE) co-operation (LFTR, Art. 194)</td>
</tr>
<tr>
<td>– once the term of the contract has expired</td>
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<td>– once the penalty charge has been paid in the case of anticipated termination</td>
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<tr>
<td>– at the moment of the purchase of the equipment if it has been paid in full.</td>
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<tr>
<td>The IFT and PROFECO shall exchange information related to user complaints and systematic users’ rights violations by concessionaires and authorised entities. On 6 July 2015, the IFT and PROFECO jointly issued the Charter of Minimum Rights of Telecommunications Public Services Users.</td>
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### State of implementation of the 2012 OECD recommendations (continued)

<table>
<thead>
<tr>
<th>Broadcasting sector</th>
<th>Implementation by 2016</th>
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<th>Legal basis</th>
</tr>
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<tbody>
<tr>
<td><strong>Telmex should only be allowed to provide television services when it is subject to asymmetric regulations and is in compliance with such regulations.</strong></td>
<td>Telmex was determined to be a preponderant economic agent in telecommunication by the IFT, and as such is subject to asymmetric regulation. Telmex’s concession contains a provision which prohibits the company from offering pay TV on its network; however, it may be able to transition to a sole concession under the new concessionary scheme. In this case, Telmex would be able to offer TV services, but would be subject to meeting certain conditions, such as being in compliance with its asymmetric regulation for 18 months and having no risk of adverse effects on competition should Telmex begin offering TV services.</td>
<td>Implemented</td>
<td>– Conditions for the PEA to request a sole concession (General Guidelines to Provide Additional Services, Art. 6) – Sole concessioninaire scheme (LFTR, Articles 66-74)</td>
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<tr>
<td><strong>Government should award a third and fourth free-to-air (FTA) national TV license in a fair, non-discriminatory and neutral process.</strong></td>
<td>In 2014, Imagen TV (Channel 3) was granted a concession to establish a new national network with 35 stations and 123 television broadcast coverage areas that can reach up to 106,000,186 people in the country. It started FTA transmission on 17 October 2016 and has three years after receiving the concession to deploy the minimum number of stations to comply with the concept of “national coverage” (30% of the population of each federal entity). In addition to its own network, it currently uses infrastructure from the Public Broadcasting System (Sistema Público de Radiodifusión, SPR). Another concession was scheduled to be awarded in 2014, but was not granted due to a failure to honour the price offered during the auction on the part of the winning company. The IFT is planning to award 148 DTT stations during 2017, including the stations that were not awarded in 2014. The IFT is also granting local concessions for broadcast radio and television services to non-commercial agents (for public and social use). With these actions, the IFT is increasing media plurality; however no active policy, guideline or regulation has been established to increase media plurality.</td>
<td>Implemented</td>
<td>– FTA national TV licenses (Mexican Constitution, Transitory Article 8, Numeral II) – Concessions to non-commercial agents (LFTR, Art. 67, Numeral IV)</td>
</tr>
<tr>
<td><strong>Must-carry obligations should apply to all pay TV providers, which should be obliged to carry all terrestrial broadcasting signals. Must-offer obligations should also apply to FTA broadcasters and the conditions (e.g. price, channel bundling) should be reassessed periodically.</strong></td>
<td>The constitutional reform establishes that FTA TV operators must allow pay TV providers to rebroadcast their signals free of charge and without discrimination, with the same quality as it is broadcasted (“must-offer”). Similarly, pay TV providers must carry FTA TV stations free of charge and without discrimination with the same quality as the broadcasted signal (“must carry”). Preponderant or dominant players do not have the right to a zero tariff for must-carry or must-offer. In both cases the preponderant must negotiate rates with the other operator. Satellite operators must only carry signals with more than 50% of coverage nationwide. The rules established impose that FTA operators (even non-preponderant ones) offer their content without any fair and reasonable price compensation. Price and conditions and the situation should be reviewed periodically. The IFT is planning a forthcoming assessment of the guidelines and outcomes of the MCMO obligations. This review should take into account the effects on MCMO of the declaration of a SMP agent in the pay TV market.</td>
<td>Implemented</td>
<td>– Must-carry must-offer requirements (Decree, 2013, Transitory Art. 8; LFTR, 2014, Articles 164-169)</td>
</tr>
<tr>
<td><strong>Ensure the transition to DTT progresses to meet the completion date of 2016.</strong></td>
<td>The DTT and analogue switch-off was accomplished to meet the 2016 deadline, with the original deadline established in the LFTR and in the constitutional reform being 31 December 2016. After the switch was complete, only a little over 1% of the population (approximately 1,185,434 inhabitants), was left without DTT coverage.</td>
<td>Implemented</td>
<td>– Transition to DTT (Mexican Constitution, Transitory Art.5; LFTR, Transitory Article 9)</td>
</tr>
</tbody>
</table>
### State of implementation of the 2012 OECD recommendations (continued)

<table>
<thead>
<tr>
<th>Implementation by 2016</th>
<th>Level of implementation</th>
<th>Legal basis</th>
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<tbody>
<tr>
<td>Foreign ownership restrictions on Mexican TV broadcasters should be lifted.</td>
<td>Partial</td>
<td>– FDI (Mexican Constitution, Transitory Article 5) – Sole Concession Scheme (LFTR, Articles 66 and 71)</td>
</tr>
<tr>
<td>Cable operators should be able to obtain one national license for the whole country, instead of multiple regional ones.</td>
<td>Implemented</td>
<td>– Sole Concession Scheme (LFTR, Articles 66-71)</td>
</tr>
</tbody>
</table>

1. The reform of the Constitution with reference to the telecommunication and broadcasting sectors relate to Articles 6o, 7o, 27, 28, 73, 78, 94 and 105 of the Political Constitution of the United States of Mexico. These articles related to the reform of these sectors are also referenced as the Telecommunication Constitutional Reform Decree.

2. The recent judiciary decision to allow both regulatory bodies to work jointly on the same case may undermine the progress made to close the “double window” between the IFT and the SCT by opening one between the IFT and COFECE.

3. For more information, please see [www.pmc.gob.mx](http://www.pmc.gob.mx).

### Sources: