

Chapter 3.

Changes to the telecommunication and broadcasting legal framework in Mexico

This chapter examines the main aspects of the constitutional and legal provisions by which the telecommunication and broadcasting reform was implemented in Mexico. It further discusses changes to the institutional framework and with respect to regulatory, governmental and judicial institutions.

The legal regime

One of the commitments President Enrique Peña Nieto delivered to the Mexican electorate after assuming office in December 2012 was to reform the telecommunication and broadcasting markets. The goal was to foster benefits for consumers and businesses by means of lower prices, increased quality and choice, including for those without service. A key aspect of the reform designed to achieve these goals was to enable regulatory institutions to apply pro-competitive frameworks in relation to dominant firms (Avelar, 2013). The Pact for Mexico, a political agreement between the three leading political parties in Mexico (the Institutional Revolutionary Party, the National Action Party and the Democratic Revolution Party) was signed in December 2012, and aimed at transforming key economic and social sectors, including information and communication technologies (ICTs), telecommunication and broadcasting services.¹

Guided by the commitments enshrined in the Pact for Mexico, in 2013 President Peña Nieto submitted a proposal to amend the Federal Constitution of the United States of Mexico, which was approved by the Mexican Congress, and enacted as a decree on 11 June 2013. The constitutional reform establishes the pillars of the telecommunication and broadcasting reform in Mexico, and represents the basis of the subsequent secondary legislation that was enforced, namely, the Federal Telecommunication and Broadcasting Law (*Ley Federal de Telecomunicaciones y Radiodifusión*, LFTR) and the Federal Economic Competition Law (*Ley Federal de Competencia Económica*, LFCE). In this regard, the LFTR – issued on 14 July 2014 – abrogated the previous legislation on this subject matter, which consisted of the Federal Telecommunications Law dating back to 1995 and the Federal Radio and Television Law dating back to 1960. The LFCE, enacted on 23 May 2014, abrogated the previous Law on Competition, which dated back to 1993.

Constitutional provisions

Telecommunication and broadcasting services as fundamental rights

According to the current constitutional provisions, access to ICTs, telecommunication and broadcasting services, including broadband and Internet, is considered a fundamental right for the Mexican population (SEGOB, 2013, Art. 6). In addition, it emphasises the Mexican people's right to access plural and timely information and it is therefore the state's mandate to guarantee the population's access to an information and knowledge-based society through the elaboration of a universal digital inclusion policy encompassing annual and sexennial objectives.

Furthermore, telecommunication and broadcasting services were considered public services of general interest by the Constitution, establishing a duty for the Mexican government to ensure that they are provided under conditions of competition, quality, plurality, universal coverage, interconnection, convergence, continuity, free access and without arbitrary interferences (SEGOB, 2013, Art. 6). The state has the obligation to ensure that they are provided under conditions of competition and quality, and that these services render the benefits of culture to the entire population, preserving the plurality and veracity of information, as well as fostering the values of national identity (SEGOB, 2013, Art. 6).

Freedom of expression and information

Article 7 ascertains that freedom of expression shall not be restricted by indirect methods or means, such as the abuse of government or private controls, newsprint, radio

broadcasting frequencies or equipment used in the dissemination of information, or by any other means or ICTs aimed at impeding the transmission and circulation of ideas and opinions.

Ensuring competitive conditions in the telecommunication and broadcasting sectors

The cornerstone of the reform, Article 28, establishes the constitutional framework aimed at ensuring adequate competitive conditions in the telecommunication and broadcasting sectors. The 2013 reform appends the pre-existing prohibition on monopolies and monopolistic practices, by determining that the law shall severely punish, and the authorities shall prosecute efficiently, any conduct restricting free market participation and competition in detriment to the general public.

In order to guarantee such effective prosecution, the Constitution creates two autonomous regulatory bodies: the Federal Economic Competition Commission (Comisión Federal de Competencia Económica, COFECE), and the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT). These entities are autonomous from the executive branch and the ministries. This, without a doubt, constitutes the main breakthrough of the reform, due to the fact that independence enables the authority with the required discretion to adopt decisions in an effective and timely manner, without the pressures resulting from day-to-day political concerns.

COFECE is an autonomous body, financially independent, with a mandate to ensure free competition and market participation, as well as investigating and combating monopolies, monopolistic practices, concentrations and other restrictions to the efficient functioning of markets. COFECE was given a wide set of powers to allow it to effectively fulfil its purpose, including the ability to issue orders directed at eliminating barriers to competition and free market participation; regulate access to essential inputs; and command the divestiture of assets, rights, partnership interests or shares of economic agents, required to eliminate anticompetitive effects.

The IFT is an autonomous and independent body which has as its mission the efficient development of telecommunication and broadcasting services. To this end, the Constitution determined that the IFT would be in charge of the regulation, promotion and supervision of the use, development and exploitation of the radio spectrum, of networks and of the provision of telecommunication and broadcasting services, as well as of the access to active and passive infrastructure and other essential inputs. Furthermore, the IFT is enshrined as the sole competition authority in the telecommunication and broadcasting sector and can impose limitations on concentration of spectrum frequencies, cross-ownership of media outlets in the same market or geographic coverage area, among other issues.

Transparency and accountability of regulators

The IFT's and COFECE's acts, according to the Constitution, shall be guided by independence in their decisions and functioning; professionalism in their performance; and impartiality in their actions, by granting financial independence, due separation between the Investigative Authority (Autoridad Investigadora, AI) and the public servants in charge of issuing final decisions, transparency and access to information, limitation on the use and effects of an indirect writ of *amparo* (legal injunction) trial. The institutions' decisions are controlled by specialised judges and courts, and there is a strict process of appointment of commissioners by proposal of the federal executive with Senate ratification, for one nine-year non-renewable period and a very clear system of rules to avoid regulatory capture. The Commissioner President is appointed by the Senate, with a vote

of two thirds of present members, who shall be in office for a four-year period, which may be renewed only once.

Convergence in communication markets

The Constitution also mandates that the Mexican Congress issue a legal system regulating in a converged manner the use, development and exploitation of the radio spectrum, telecommunication networks, and the provision of broadcasting and telecommunication services. At the same time, the Mexican Congress shall define the mechanisms aimed at harmonising the regime of permits and concessions in broadcasting, so as to ensure that there will only be a single concession regime, allowing operators to provide all types of services through their networks.

Digital switchover and must-carry must-offer obligations

The constitutional reform also determined that the transition to digital terrestrial television (DTT) should end on 31 December 2015. Therefore, licensees and permit holders were required to return, upon completion of the transition process, the frequencies that were originally awarded to them by the state, to ensure the efficient use of the radio spectrum, competition and the optimal use of the 700 MHz band. Similarly, the constitutional reform considered that broadcasting television service providers must allow pay TV service providers to retransmit their signals, free of charge and in a non-discriminatory manner, within the same geographic coverage area, in full, simultaneously and unaltered, including advertising, and with the same quality employed in the broadcast signal. By the same token, pay TV concessionaires are obliged to retransmit broadcast television signals, free of charge and under non-discriminatory conditions, within the same geographical area, in full, simultaneously and unaltered, including advertising, and with the same quality employed in the broadcast signal.

Preponderance in the telecommunication and broadcasting sectors

The constitutional reform stipulates that the IFT should determine the existence of preponderant operators in the broadcasting and telecommunication sectors, and impose the necessary measures to prevent that competition and free market participation, and thus benefits to users, are not undermined. An economic agent shall be deemed to be preponderant when, taking into account its national participation in the provision of broadcasting or telecommunication services, it has directly or indirectly a national market share of over 50%, measured either by the number of users, subscribers, audience, traffic on their networks or capacity utilisation of such networks.

The aforementioned preponderance measures were to be issued within 180 calendar days after the regulator's integration, and were to include rules relating to information, supply and quality of services; exclusive agreements; limitations on the use of terminal equipment between networks; asymmetric regulation on prices and network infrastructure, including the unbundling of its essential elements; and, where appropriate, accounting, functional or structural separation of such agents. Furthermore, during the same period, the IFT was obliged to establish measures for the effective unbundling of the local loop of the preponderant agent in the telecommunication sector, so as to grant other telecommunication operators access to the physical, technical and logical connection means between any terminal point of the public telecommunication network and the access point to the local network belonging to said agent.

Once the IFT defined the preponderant operator in each sector, it was obliged to issue, within 60 calendar days, the general guidelines, requirements, terms and conditions that current licensees in telecommunication and broadcasting services must comply with in order to receive authorisation to provide additional services or to migrate to the single concessions regime, provided they are in compliance with the obligations set forth in the law and in their concession titles. In the specific case of preponderant operators, they must also be in compliance with the obligations enshrined in the asymmetric regulations imposed on them.

Universal Digital Inclusion Strategy

The reform specified the lead for the Universal Digital Inclusion Strategy to the federal executive in order to achieve specific goals in infrastructure, accessibility, connectivity, increase of digital skills, digital government and open data, and the promotion of public and private investment in telehealth applications, telemedicine and electronic health records, among many others, including very specific goals such as having at least 70% of all households and 85% of all micro, small and medium-sized enterprises nationwide provided with access to actual data download speeds consistent with the average ones recorded in OECD countries. In addition, further specific provisions in Transitory Article 17 oblige the government to include a broadband initiative for public sites in its National Development Plan, until such universal coverage is attained.

Wholesale infrastructure

Regarding the development of infrastructure, the constitutional reform mandates that the Federal Electricity Commission (Comisión Federal de Electricidad, CFE) transfer to Telecomunicaciones de México, a state-owned enterprise with operations in the energy and telecommunication sectors, its concession to install, operate and exploit a public telecommunication network, and that it is CFE's role to guarantee Telecomunicaciones de México's effective and shared access to such infrastructure in order to ensure its efficient use.

One of the most important and innovative provisions of the reform is Transitory Article 16, which obliges the federal executive, in co-ordination with the IFT, to deploy a wholesale wireless infrastructure (Red Compartida). Specifications include the use and exploitation of at least 90 MHz of spectrum released by the DTT transition (700 MHz band), of the fibre optic backbone network pertaining to the CFE and of any other state assets that may be used in the installation and operation of the shared network. It is further specified that the shared network will be operated by public or private investment with no telecommunication service provider having any influence on its operation of the shared network and open access to the assets required for its installation and operation. The fulfilment of its objectives and coverage, quality and non-discriminatory services' provision obligations, must be guaranteed and operate under non-discriminatory and competitive price conditions.

Satellite services

Regarding satellite services, the reform gave the Ministry of Communications and Transports (Secretaría de Comunicaciones y Transportes, SCT) the obligation to define satellite policies; to administer and monitor the use of satellite capacity, and to co-ordinate with other agencies on satellite capacity for national security use; to determine the scheme of use of the Satellite Capacity Reserved to the State; and to procure continuity in the provision of satellite services.

Concessions and spectrum management

As concerns the awarding of concessions related to the radio spectrum, the Constitution makes public tenders mandatory, so as to ensure maximum market participation, prevent market concentration and guarantee the lowest price for retail services. These principles should be guaranteed by secondary legislation that establishes a sanctioning regime that includes as a cause for revocation of the concession title, among others, non-compliance with the final resolutions ushered in cases associated with monopolistic practices.

Under the current constitutional framework, the rights to use, develop and exploit the radio spectrum by private parties or incorporated companies in abidance with Mexican laws may only be acquired through concessions, considering that the nation's domain on this scarce resource is inalienable and imprescriptible (SEGOB, 2013, Art. 27). It also falls within the IFT's mandate to set the monetary considerations that are to be paid for the granting of telecommunication and broadcasting concessions, as well as those related to the authorisation of services linked to such concessions, with a previous non-binding opinion from the public credit authority.

Finally, under the reform, the federal executive must include a National Radio Spectrum Programme in its National Development Plan and programmes, which shall include a work programme to guarantee optimal use of the 700 MHz and 2.5 GHz bands and a reorganisation of its work programme for radio spectrum and television stations.

Conclusions on the constitutional provisions

The preceding subsections show, in contrast to most constitutional texts, that the rules pertaining to the telecommunication and broadcasting sectors in the Mexican Constitution are extremely detailed and descriptive. Some have noted this approach stems from the ineffectiveness derived from the previous legal and regulatory frameworks, which, as stated in previous chapters, were, in practice, ineffectively applied, unreasonably delayed or completely thwarted, leading to market concentrations that even today remain the highest among OECD countries.

Proponents of the approach adopted in Mexico say that providing very detailed measures as part of the Constitution intended to give the reform the necessary strength to address severe inadequacies of the past and provide a pillar for long-term stability in meeting policy goals, regardless of future day-to-day political concerns. Nonetheless, the question can be raised as to whether the constitutional framework will enable Mexico to make the necessary adjustments that may be encountered over time in its actual implementation and whether this level of detail allows for enough flexibility to set the right legal and regulatory frameworks in the future.

Legal provisions

The current constitutional norms are notably detailed; that is why much of the secondary legislation derived from them reiterates the mandates established therein. The institutional framework – also regulated by the LFTR and the LFCE – will be discussed in the following section.

Federal Telecommunications and Broadcasting Law

The LFTR reaffirms that telecommunication and broadcasting services are public services of general interest. In this context, the state must ensure the efficient supply thereof, establishing, to this end, conditions for effective competition. The law expressly

prohibits all kinds of discrimination in the provision of these services. Furthermore, it outlines regulation concerning issues from concessions and scarce resources, to audiovisual content regulation and competition.

Concessions and spectrum management

The IFT is responsible for the management of the radio spectrum, and its functions range from the elaboration and approval of plans and programmes referring to its use to the awarding of concessions, controlling radio emissions and applying the sanctioning regime enshrined in the law.² Under the current regime, a single concession is required to provide all types of telecommunication and broadcasting services but, should the service provider require the use of spectrum or orbital resources, it must obtain an additional concession related to such resources.³ In sum, when the exploitation of the services comprised in the spectrum concession title demands a single concession, the latter shall be conferred within the same administrative act (LFTR, 2014, Art. 75).

According to the law, for the purpose of awarding concessions in telecommunication services, the IFT may consider, among others: the economic proposal; coverage, quality and innovation; favouring lower prices for services offered to end users; preventing concentration phenomena that undermine the public interest; and possible entry of new competitors to the market (LFTR, 2014, Art.78). As per Transitory Article 8, current concessionaires may obtain an authorisation from the IFT, aimed at supplying additional services to those contained in their concession titles, or to transit to a single license regime provided they are in compliance with their obligations. However, this rule shall not apply to preponderant agents, or to those who have explicit prohibitions to provide specific services pursuant to their concession titles, unless they demonstrate before the IFT they have abided by the LFTR and other applicable legislation, and the asymmetric regulations or measures imposed on them, and the IFT approves it (LFTR, 2014, Transitory Articles 10 and 11). Specifically, preponderants must prove that they have effectively complied with such measures, at least during 18 months, in a continuous manner (LFTR, 2014, Transitory Articles 10 and 11).

Single concessions entitling their beneficiaries to provide multiple telecommunication and broadcasting services in a converged manner shall be awarded by the IFT for a period of up to 30 years, although they may be extended for equal terms (LFTR, 2014, Art. 72). Radio spectrum concessions shall be granted for up to 20 years, with the possibility of extensions of up to an equal period (LFTR, 2014, Art. 75). Furthermore, radio spectrum concessions for public or social use are awarded for periods of up to 15 years, and may also be extended for equal terms (LFTR, 2014, Articles 83 and 114).

A notable rule enshrined in the LFTR pertains to the creation of a secondary market for licenced spectrum frequency bands. On this subject, Article 104 allows concessionaires of commercial- or private-use concessions to lease the frequency bands they have received, with prior authorisation from the IFT. This entity has the mandate to foster such a market, in accordance with the principles of competition, removal of barriers to entry and the efficient use of spectrum, avoiding concentration, hoarding or cross-ownership.

The assurance of competitive conditions in the telecommunication and broadcasting sectors

With reference to the installation and operation of public telecommunication networks, the LFTR imposes obligations on concessionaires, including interconnection obligations,

network quality of service (QoS) obligations, allowing number portability, providing non-discriminatory services to the general public, and refraining from imposing contractual barriers, or barriers of any other nature, that hinder other concessionaires' ability to install or access telecommunication infrastructures. It also mandates concessionaires with public telecommunication networks offering mobile services to freely engage in agreements pertaining to roaming services (LFTR, 2014, Art. 119), being mandatory for the preponderant agent in the telecommunication sector, as well as for agents determined to enjoy substantial market power (SMP).

Wholesale services

Pursuant to Article 124 of the LFTR, concessionaires operating public telecommunication networks must adopt open network architecture so as to ensure the interconnection and interoperability of their networks. The IFT is therefore empowered to develop, update and administer the basic technical plans on numbering, switching, signalling, transmission, measuring, synchronisation and interconnection, among others. It is relevant to note that preponderant operators, or those enjoying SMP, shall be obliged to obtain a previous authorisation from the IFT should they intend to adopt a new technology or carry out modifications in the design of their networks.

Furthermore, Article 125 of the LFTR determines that concessionaires must interconnect their networks under non-discriminatory, transparent and objective conditions, and in abidance with the abovementioned plans that must be issued by the IFT. In fact, the law expressly established that interconnection of public telecommunication networks, as well as the respective prices, terms and conditions, are of public order and social importance. Accordingly, the terms and conditions that a concessionaire offers to another concessionaire shall be made available to any other concessionaire that requests the service.

Resource issues

Regarding infrastructure sharing and rights of way, it is the IFT's responsibility to encourage the conclusion of agreements between concessionaires for purposes of co-location and infrastructure sharing (LFTR, 2014, Art. 139). These shall be entered into through free negotiation, with the possibility of the IFT intervening in the event of disputes, when such an agreement is essential and there are no substitutes for it (LFTR, 2014, Art. 139). Under such circumstances, the IFT may establish the conditions for its use, the sharing of physical space, as well as the corresponding fee, provided there is capacity for such infrastructure sharing (LFTR, 2014, Art. 139).

Furthermore, the agreements on co-location and infrastructure sharing shall be recorded in the Public Telecommunications Register. It is also relevant to note that the IFT may, at any time, verify the conditions stipulated in infrastructure-sharing arrangements, so as to guarantee that the sharing is available to any concessionaire under non-discriminatory conditions (LFTR, 2014, Art. 139). Additionally, concessionaires and authorised entities must deliver to the IFT information on their active infrastructure and transmission means, passive infrastructure and rights of way, for their registration in the National Information System on Telecommunications Infrastructure (LFTR, 2014, Articles 183 and 185).

Pursuant to Article 147 of the LFTR, the federal executive, through the Institute of Administration and Valuation of National Assets, establishes the economic, technical, security and operative conditions allowing real estate pertaining to the federal public administration; rights of way related to the general communication pathways; infrastructure associated with broadcasting stations, energy and radio communications transmission

towers; posts in which energy distribution wiring is installed; as well as poles and ducts, among others, to be available for the use and benefit of all concessionaires on non-discriminatory terms, and under monetary considerations to be established by the competent authorities in each case. Article 149 of the LFTR emphasises that any concessionaire may install infrastructure on public assets, under a non-exclusive exploitation.

In this context, the SCT is empowered to make recommendations to state, district and municipal governments, aimed at deploying infrastructure, public works, territorial development and real estate, promoting competition and coverage in telecommunication services. The LFTR has limitations, however, in terms of federal authorities prevailing over state and municipal authorities.

Furthermore, the LFTR also establishes specific rules concerning mobile virtual network operators (MVNOs), determining that these undertakings shall be able to: access wholesale services offered by concessionaires; commercialise their own services or resell the services and capacity they have previously contracted; and have their own numbering schemes, or acquire them through other concessionaires of public telecommunication networks (LFTR, 2014, Art. 173). On the other hand, MVNOs must allow their users to port their numbers, shall be liable to their customers for the provision of their services, and must comply with obligations on users' rights (LFTR, 2014, Art. 174).

Audiovisual content

The LFTR establishes that all broadcasting concessionaires are subject to the same content rules and that concessionaires of pay TV services are mandated to retransmit free-of-charge signals of public federal institutions and to allow users to block any undesirable channel or programme (LFTR, 2014, Articles 224 and 225). Moreover, it instructs all concessionaires to promote values to protect and develop children's education and to adopt measures to inform audiences on programming classification.

The LFTR also determines that commercial concessionaires that cover at least 20% of their programming with national content be allowed to increase advertising time up to 2%, and those with at least 20% with national independent content be allowed to increase advertising time up to 5%, while establishing that the executive will be responsible for setting measures to finance national and national independent content (LFTR, 2014, Articles 247-250). Furthermore, Article 251 mandates all broadcasting concessionaires to transmit, free of charge, up to 30 minutes of official content by the state, daily and on every channel. This excludes the additional 18 minutes (television) and 35 minutes (radio) that commercial broadcasters can opt to provide for official use, in lieu of paying a tax for services of "public interest" (SEGOB, 2002). The time management of the transmission of state official content is done by the Ministry of Interior (Secretaría de Gobernación, SEGOB).

Audiences' rights

Article 259 of the LFTR determines that all broadcasting concessionaires have an ombudsman responsible for receiving, documenting, processing and following up with observations, complaints, suggestions, petitions or remarks by members of audiences. The ombudsman has 20 working days to respond to any petition and its recommended corrective action shall be publicised. The IFT is required to publish general guidelines to establish the minimum requirements of the ombudsmen for the adequate protection of the rights of audiences.

Preponderance regulation

As per Article 262 of the LFTR, the IFT shall determine the existence of preponderant operators in broadcasting and telecommunication services (over 50% sector share), and impose the necessary measures to ensure that competition and free market participation and thus, end users, are not affected.

Consequently, as declared by several public institutions, preponderance provides a means to expedite implementing asymmetric regulations without the need to engage in detailed and complex analyses that are commonly used when assessing market dominance (e.g. barriers to entry and exit, market concentration and asymmetries, countervailing buyer power). Furthermore, the preponderance status is defined on a strictly sectoral basis, which is why, in practice, there can only be one preponderant agent in the telecommunication sector and one preponderant agent in the broadcasting sector.

Among the measures that can be levied upon preponderant operators, the law explicitly mentions: information; supply and QoS; exclusive agreements; limitations on the use of terminal equipment between networks; asymmetric regulation on prices and network infrastructure, including the unbundling of its essential elements; and, where appropriate, the accounting, functional or structural separation of such agents.

The imposition of specific or asymmetric measures can be carried out in a proceeding parallel to the one concerning the attribution of preponderant status to an economic agent (LFTR, 2014, Art. 265). In this sense, in the definitive resolution, the IFT can simultaneously declare an undertaking preponderant, as well as impose the asymmetric or specific regulation it deems necessary. Additionally, such measures shall be registered within the Public Register of Telecommunications, and publicised (LFTR, 2014, Art. 267).

In addition, as a consequence of being the sole public entity in charge of exercising *ex ante* and *ex post* competition intervention, the IFT is empowered to declare that certain economic agent(s) enjoy SMP in any of the relevant markets in the telecommunication and broadcasting sectors, in accordance with the rules established in the LFCE (LFTR, 2014, Articles 264 and 279).

As per Article 267, the IFT may impose on preponderant enterprises the following non-exhaustive measures (among others):

- To submit to the IFT for its approval, on an annual basis, public reference offers concerning interconnection; roaming; passive infrastructure sharing; effective unbundling of the local public telecommunication network; accesses (including links); and wholesale resale offers concerning retail services. These offers shall be subject to public consultation (LFTR, 2014, Art. 268).
- To submit to the IFT for its authorisation, the prices it applies in relation to: 1) retail services; 2) intermediate services provided to other concessionaires (which must be equal to or inferior to those imputed to its own operation); and 3) the prices regarding its operation in an unbundled and individual basis. In this regard, the IFT must ensure that the retail rates applied by the preponderant agents can be replicated by the other concessionaires.
- To annually submit detailed information concerning the topology and elements of its networks, including their location.
- To allow the interconnection and interoperability between public telecommunication networks.

- The preponderant agent is banned from favouring its own operations by discriminating on the commercial, price or quality conditions offered to its users (on-net vs. off-net differentials), and from providing dissimilar treatment to its competitors in network traffic management. In tending to its competitors' requests, it shall abide by the "first to request, first to be served" principle.
- To comply with the minimum QoS standards determined by the IFT.
- To refrain from hindering consumers' ability to choose another provider through its contracts and from impeding number portability.
- To provide the IFT with separate accounts, segregated by service, in a detailed manner.
- To grant end users the possibility to utilise any terminal device that complies with the standards set forth by the IFT, who shall issue rules aimed at ensuring their non-exclusivity, portability and interoperability. Moreover, the preponderant operator must avoid terminal device blocking.

Consistent with Article 277 of the LFTR, preponderant agents may participate in spectrum auctions, subject to the IFT's acquiescence and to their compliance with the spectrum accumulation limits established thereby for such purposes.

Furthermore, the LFTR enables the IFT to introduce obligations on:

- Unbundling of the local telecommunication network: obligation to unbundle the local public telecommunication network (active and passive infrastructure, as well as the services, capabilities and functions of the networks, including to the local loop) at non-discriminatory, individualised rates, not exceeding those set by the IFT.⁴ Moreover, the preponderant operator must carry out, at its own expense, the creation, development and implementation of processes, systems and installations necessary to enable the efficient delivery, in competitive conditions, of the unbundled elements and services to other concessionaires (e.g. fault reporting, co-location, QoS standards, invoicing processes, devices and operational standards, and maintenance procedures) (LFTR, 2014, Art. 269).
- Access and interconnection: preponderant operators, or agents with SMP, shall be subject to additional specific obligations on access and interconnection requiring them to publish a list of the unbundled interconnection services and the corresponding public interconnection offer, to submit separate accounting and costing information on interconnection services, as defined by the IFT, to respond to interconnection requests in the same manner and timeframes applied to its own operations, to co-locate and share its infrastructure, including rights of way; and to have a physical presence in the country's Internet traffic exchange points (LFTR, 2014, Art. 138).
- Call termination rates: in one of the key provisions of the reform, the LFTR dictates that preponderant operators shall not be able to charge other concessionaires for traffic terminating in their networks (i.e. a zero termination rate). Moreover, call termination rates related to traffic ending in non-preponderant concessionaires' networks shall be subject to free negotiation among the parties involved. Nonetheless, in the event of a dispute, the IFT shall intervene by setting the prices according to the cost methodology it shall determine, and taking into account, among other factors, the natural asymmetries between the networks to be interconnected and

the market share of the respective concessionaires. The rates set by the IFT shall be transparent, reasonable, sufficiently unbundled and, where appropriate, asymmetric (LFTR, 2014, Art. 133).

- Commercialisation of services: the preponderant agent in the telecommunication sector shall grant concessionaires and commercialisers the possibility to supply their users, under the same payment terms and under competitive conditions, the mobile services that the preponderant agent provides its own users (e.g. airtime, SMS, data, roaming), allowing requesting parties to attain a reasonable and equitable margin, at least similar to those obtained by the preponderant firm. It shall also allow said entities to select the infrastructure and platform to support their business model, and facilitate their integration to its own platforms and systems. The rules on the provision of wholesale services also apply to agents with SMP (LFTR, 2014, Articles 270 and 271). The prices, conditions and terms for the commercialisation on the preponderant agent's services shall be authorised by the IFT and the preponderant operators are banned from participating, be it directly or indirectly, in any enterprise dedicated to the commercialisation of services (LFTR, 2014, Articles 173 and 174).
- Retail regulation: retail rates offered by preponderant firms and/or by firms enjoying SMP must be subject to the IFT's approval, which, in addition, must carry a register thereto, in order to provide them with publicity. Agents declared to be preponderant or to have SMP in the call and short message termination market, are banned from certain practices, aimed at preventing discrimination and market foreclosure, such as differentiating on-net and off-net pricing, quality and other commercial conditions offered to their end users, charging other concessionaires wholesale prices that are higher than those applied to its end users in the retail market, and entering into exclusive arrangements on the purchase and sale of terminal equipment, or on points of sale or distribution (LFTR, 2014, Art. 208).

The IFT is required to verify the preponderant operator's compliance with the asymmetric regulations imposed on it on a quarterly basis (LFTR, 2014, Art. 275). The obligations imposed on the preponderant operators shall cease to exist once the IFT ascertains that there are effective competition conditions in the market (LFTR, 2014, Art. 262), and when their sector participation is reduced below the 50% threshold (LFTR, 2014, Art. 276). Moreover, consistent with Article 131 of the LFTR, the IFT must previously determine whether the undertaking has substantial power in the relevant market for call termination and short messages. If it does possess such power, the IFT shall decide whether it continues to apply the zero interconnection rates.

The LFTR specifically provides that the preponderant operator may, at any time, propose before the IFT a plan comprising, as applicable, structural separation, divestment of assets, rights, partnership interests or stock, aimed at diminishing its national share in the corresponding sector (LFTR, 2014, Art. 276). However, a precondition for its approval is that effective conditions for competition are generated within the telecommunication or broadcasting sector, and that social coverage is not reduced or affected.

Substantial market power regulation

It is relevant to note that agents that have been declared preponderant may also be declared as possessing substantial power in particular relevant market(s) (LFTR, 2014, Art. 284). In accordance with Article 282, the IFT may levy upon such agents specific obligations pertaining to, among others: information, quality, pricing, commercial offers

and invoicing. It should also be noted that the IFT may impose all the measures that were analysed when covering preponderance (LFTR, 2014, Art. 283).

Cross-ownership concerning preponderant agents, and agents with substantial market power

As regards broadcasting and telecommunication concessionaires that serve one same market or geographic coverage area that restricts access to plural information within such a market or area, the IFT must indicate pay TV concessionaires which news channels or which public interest channels are to be imperatively incorporated in their service offers (LFTR, 2014, Art. 285). Further, said concessionaire must include at least three channels whose content is predominantly self-produced by independent national programmers whose funding is mostly of Mexican origin (LFTR, 2014, Art. 285).

In the event of non-compliance by the concessionaire, the IFT may impose limits on: the concentration of national or regional spectrum frequency bands; the granting of new spectrum concessions; and cross-ownership of telecommunication or broadcasting controlling several media outlets, and that tend to a same market or geographic coverage area (LFTR, 2014, Art. 286). Should neither of the aforementioned measures prove to be effective, as a last resort measure, the IFT may ordain the concessionaire to divest assets, rights or partnership interests.

Essential inputs

Article 3 of the LFTR defines essential inputs as those network elements or services provided by a single concessionaire – or a small number of them – whose duplication is not feasible from a technical, legal or economic standpoint, and that constitute indispensable inputs for the provision of telecommunication and broadcasting services. In any event, the IFT is entitled to determine the existence of essential inputs, and regulate access thereto, under the conditions defined in the LFCE (LFCE, Art. 60).⁵

Shared wholesale network: Red Compartida

According to Article 142 of the LFTR, the IFT is empowered to directly allocate 90 MHz of the 700 MHz “digital dividend” for the operation and exploitation of a shared wholesale-only network, through a commercial use concession. Transitory Article 13 also refers to this initiative, mandating the SCT to perform all the necessary actions to install such a network. In addition, it empowers the IFT to directly assign the spectrum frequency bands liberated by the DTT transition (700 MHz band) to the shared network, should it be required to expand and strengthen the network, provided that it remains under the control of a public entity or agency, or it operates under a public-private partnership.

As might be expected, concessionaires with public participation operating under commercial purposes must abide by competitive neutrality and accounting separation principles, and non-discriminatory infrastructure sharing and unbundling of their services and capabilities (LFTR, 2014, Articles 141 and 144). Additionally, as stated in the Constitution, the resale of the services supplied by the shared network shall be made available under the same conditions as they were acquired (except as concerns economic compensation) (LFTR, 2014, Art. 144). Finally, the concession titles concerning the shared network shall incorporate coverage, quality and pricing obligations, as well as those determined by the IFT (LFTR, 2014, Art. 143).

Digital inclusion strategy

Universal service is explicitly defined in the LFTR as the access of the general population to the telecommunication services determined by the SCT, under conditions of availability, affordability and accessibility (LFTR, 2014, Art. 3). By the same token, the Universal Digital Inclusion Strategy is defined as the set of programmes and strategies issued by the federal executive aimed at providing access to ICTs, including broadband Internet for the entire population with a particular emphasis on its most vulnerable sectors, in the interest of closing the digital divide between individuals, households, businesses and geographical areas of different socio-economic levels (LFTR, 2014, Art. 3).

International aspects: Foreign ownership of telecommunication and broadcasting operators

Foreign direct investment (FDI) in the telecommunication sector, including satellite-based services, is currently admitted without limitation (100%). Meanwhile, FDI in broadcasting services, also previously forbidden, is now permitted at a maximum percentage of 49%, subject to reciprocity requirements with the country in which the foreign investor is incorporated, and, as expressly determined by the LFTR, a previous favourable opinion issued by the National Commission on Foreign Investments (Comisión Nacional de Inversiones Extranjeras) (LFTR, 2014, Articles 71 and 77).

Sanctioning regime

The IFT is empowered to impose sanctions in relation to most violations of the LFTR, to administrative provisions, and to concession or authorisation titles, as well as to violations of the LFCE by regulated subjects participating in telecommunication and broadcasting markets (LFTR, 2014, Art. 297). On the other hand, transgressions of the rules pertaining to users' rights shall be sanctioned by the Federal Consumer Protection Agency (Procuraduría Federal del Consumidor, PROFECO), and in some cases the IFT. Moreover, SEGOB shall sanction the breach of the provisions concerning content, state times, national channels, bulletins, the national anthem, competitions, as well as the reservation of pay TV channels.

Article 298 of the LFTR delineates various criteria for enforcing fines related to infringements to the telecommunication and broadcasting regime, whose amounts are apparently established in accordance to the seriousness of the fault, are based on the offender's revenue, and divided into five tiers. In addition, and in case the infringer does not declare or has not determined its accumulated revenue as regards income tax, or has refrained from providing the pertinent fiscal information, statutory fines related to the unit of measurement and adjustment (UMA) defined yearly by the National Institute of Statistics and Geography (Instituto Nacional de Estadística y Geografía, INEGI), are established (LFTR, 2014, Art. 299; SEGOB, 2016).⁶

In this sense, the lowest fines that may be enforced range from 0.01% to 0.75% of the concessionaire's or authorised entity's revenue, and may apply, for instance, to the breach of the registration obligations enshrined by the law. Second-tier sanctions range from 1% to 3% of the operator's revenue, and may derive from conducts such as: exclusive arrangements for the installation of infrastructure; arbitrarily blocking users' rights to access Internet services; and non-compliance with the concession or authorisation titles' obligations.

Fines ranging from 1.1% to 4.0% of the concessionaire or authorised entity's revenue shall be imposed for infringements such as: creating barriers that impede users' terminal devices to connect to other concessionaires' networks; discriminating in the provision of advertising spaces and services; and celebrating agreements that curb possibilities to offer advertising spaces and services to third parties.

Within the category of sanctions, which range from 2.01% to 6.0% of the infringer's revenue, the law applies to the following behaviour, including by way of example: contravening obligations regarding the operation and interconnection of telecommunication networks; breaching the rules on price regulation issued by the IFT; non-compliance with the compulsory efficiency levels in spectrum usage defined by the IFT; and introducing modifications to the network without prior authorisation of the IFT that affect the functioning and interoperability of equipment and devices.

Finally, the harshest penalties are imposed for providing telecommunication or broadcasting services without a concession or authorisation, or for interrupting without just cause or absent permission by the IFT, the supply of such services in those areas where the infringing party is the sole service provider. Under these circumstances, fines may range from 6.01% to 10.0% of the offender's revenue.

In any case, if the economic agent is a recidivist, the IFT may impose a sanction equivalent to double the abovementioned amounts (LFTR, 2014, Art. 300). Moreover, the factors to be taken into account by the IFT when defining such sanctions are: the gravity of the infringement; the offender's economic capacity; recidivism; and, as applicable, spontaneous compliance with the obligations that motivated the initiation of the administrative proceedings.

Concessions and authorisations may be revoked on the basis of any of the causes stipulated in Article 303 of the LFTR, such as: refusing or obstructing interconnection with other concessionaires; violation of must-carry must-offer obligations; to benefit from the gratuity rule regarding retransmission of broadcast signals through other concessionaires, in the case of preponderant operators, or firms with SMP; transgressing the IFT's resolutions on accounting, functional or structural separation, and on local-loop unbundling and divestitures; and in general, asymmetric regulations.

Means of judicial redress

Article 312 of the LFTR emphasises that the IFT's general rules, acts or omissions may only be challenged by indirect *amparo* and shall not be suspended. Furthermore, as regards resolutions issued by the IFT during "trial-form" proceedings, recourse shall only be admitted concerning the final decision (even if the reasons invoked refer to intermediate procedural acts) (LFTR, 2014, Art. 313).

As per the federal Constitution, indirect *amparo* trials shall be substantiated by specialised judges and courts in competition, telecommunication services and broadcasting (LFTR, 2014, Art. 314). Finally, the aforementioned specialised courts are the competent authorities to substantiate disputes that arise in connection with the application of the LFTR (LFTR, 2014, Art. 315).

Digital switchover

Transitory Article 19 reaffirms that the DTT transition be implemented by 31 December 2015 and carried out through programmes by the SCT and through investments by concessionaires and broadcast television licensees. Consequently, the transmission of

analogue broadcasting signals was to be concluded across Mexico no later than 31 December 2015, once receivers or decoders delivered by the SCT capable of receiving digital signals installed in low-income households – as defined by the Ministry of Social Development (Secretaría de Desarrollo Social, SEDESOL) – allow for a penetration of 90% thereof. To this end, the IFT shall progressively terminate analogue broadcast television signals – even before the aforementioned deadline – by area of coverage.

On 18 December 2015, these provisions were updated to extend the deadline to 31 December 2016 for public and social concessionaires, including community and indigenous, as well as low-power analogue stations (under 1 kilowatt [kW] for very high frequency and 10 kW for ultra high frequency), which needed additional time to enable the transition.

Net neutrality

As per Article 145 of the LFTR, concessionaires and authorised entities providing Internet access services shall abide by the general guidelines established by the IFT, which shall consider principles such as: users' ability to freely choose among contents, applications or services; non-discrimination between contents, applications or services; the respect for users' right to privacy; transparency and information regarding the conditions of the service offerings; provision of services under the minimum quality standards; and sustained growth of telecommunication infrastructures. Although only generally defined in the law, the IFT plans to consult on the implementation of these principles in 2017.

Retail regulation

In accordance with Article 118 (V) of the LFTR, Transitory Article 20 determines that, starting on 1 January 2015, concessionaires of public telecommunication networks providing fixed or mobile services shall not charge their end users long-distance rates for any calls made to a national destination.

Notwithstanding the above, concessionaires must consolidate all existing local service areas in the country, bearing the costs originated in such consolidation. In this regard, commercial or social use concessionaires of telecommunication services shall, as a general rule, freely set their retail prices (LFTR, 2014, Art. 204). Nonetheless, it is mandatory that such concessionaires register such prices before the IFT prior to their effective implementation (LFTR, 2014, Art. 205). In this sense, it is the IFT's duty to establish an electronic registration mechanism for such rates; these shall be applicable from the date of the filing of the registration request (LFTR, 2014, Art. 205). As underscored when analysing the preponderance and SMP framework, there is an exception concerning these agents as to the freedom of defining their retail prices.

On number portability, pursuant to Transitory Article 38, the IFT is obliged to issue rules ensuring effective number portability for users, to be carried out in a period not exceeding 24 hours from the filing of the request. In order to be able to port their numbers, users shall only be required to identify themselves, and express their will to switch operators, and it shall imply no charge for end users (LFTR, 2014, Art. 209).

Consumer protection and empowerment

PROFECO is in charge of promoting, protecting, advising, defending, reconciling and representing users and consumers before telecommunication operators and consultative

standardisation committees (LFTR, 2014, Art. 191). The IFT has a mandate to regulate, monitor and oversee the quality of telecommunication services in accordance with the indicators, parameters and procedures established thereto (LFTR, 2014, Art. 191), and to collaborate in the elaboration of Mexican official standards for the effective protection of users' rights (LFTR, 2014, Art. 194). Furthermore, the IFT has a mandate to establish conditions for operators to publish transparent, comparable, adequate and up-to-date information on their services (LFTR, 2014, Art. 195).

The LFTR expressly provides for the co-operation between these two institutions, in the exchange of information pertaining to users' complaints; concessionaires' or authorised entities' commercial behaviour; compliance verification procedures in reference to said parties; as well as the sanctions imposed within their powers (which shall be recorded in the Public Concessions Register) (LFTR, 2014, Art. 191).

In this regard, Article 191 of the LFTR expressly determines that users of telecommunication services shall enjoy the rights enshrined in said law, as well as those established in the Federal Consumer Protection Law, determining, among such rights: the protection of their personal data; free of charge, expeditious number portability; to freely choose their service provider and access Internet services, under non-discriminatory terms;⁷ to contract and to be aware of the commercial conditions stipulated in the model contracts of adhesion, registered before PROFECO; to access telecommunication services conforming to QoS standards;⁸ to have their devices unlocked upon conclusion of the contract with a service provider, or when the cost thereof has already been covered; to receive a bonus or discount in relation to service failure or improper charges; to be ensured that contracts of adhesion may only be modified by bilateral agreement between the parties; and transparency measures in the invoicing of mobile services. It can also be noted that an entire chapter of the LFTR is devoted to the protection of users with disabilities (LFTR, 2014, Articles 199-203).

In addition, concessionaires and authorised entities must provide their users with a letter containing all the rights users are entitled to, consistent with the minimum rights that are of compulsory inclusion within those letters, determined by the IFT and PROFECO. Moreover, pursuant to Article 192, there are a number of clauses which, if included in the contracts subscribed between users and concessionaires or authorised entities, are to be considered null and void. Both PROFECO and the IFT are empowered to record and to publish model contracts of adhesion, in accordance with the rules enshrined in the LFTR and the Federal Consumer Protection Law (*Ley Federal de Protección al Consumidor*, LFPC) (LFTR, 2014, Articles 177 and 191).

Universal coverage

Consistent with Article 210, in order to achieve universal coverage, the SCT has the duty to prepare an annual programme on social coverage and connectivity in public places, in priority areas it has defined (LFTR, 2014, Art. 211). The programme, elaborated by the SCT in co-ordination with state and municipal governments, as well as with the IFT, shall define the telecommunication and broadcasting services to be included in it – prioritising Internet access and voice services – and shall design and promote incentives for concessionaires' involvement therein (LFTR, 2014, Art. 211).⁹

In this context, concessionaires participating in social coverage programmes are required to report to the SCT all the data to quantify the progress made in the implementation of such programmes and, where applicable, compliance with their obligations thereto (LFTR, 2014, Art. 212). In particular, the SCT is in charge of overseeing concessionaires'

abidance to their commitments, and the IFT is empowered to sanction their non-compliance with their social or universal coverage obligations (LFTR, 2014, Art. 212).

Federal Economic Competition Law

Institutional design

As noted when examining the constitutional provisions, one of the main aspects of the telecommunication and broadcasting reform relates to the fact that the IFT, a newly created autonomous constitutional entity, is empowered to carry out both *ex ante* and *ex post* competition intervention in the aforementioned sectors (LFCE, 2014, Art. 5). In addition, COFECE – an autonomous institution created by the 2013 Constitutional Reform Decree – is entitled to carry out *ex post* competition intervention in all other sectors of the economy (LFCE, 2014, Art. 5). In this context, should positive or negative conflicts of jurisdiction arise, the competent authority for resolving them shall be the circuit court specialised in economic competition, broadcasting and telecommunication services (LFCE, 2014, Art. 5).¹⁰

Among the functions and procedures the competition authorities are empowered to perform, are:

- *Ex ante* control on economic concentrations. However, non-preponderant economic agents are not obliged to request an authorisation thereof, pursuant to Transitory Article 9 of the LFTR.
- The imposition of administrative fines, related to absolute or relative monopolistic practices (LFCE, 2014, Art. 127), to impose the ineligibility to act as an undertaking's director for a period of up to five years (LFCE, 2014, Art. 127) or to order the divestiture of assets, whether as a sanction to monopolistic practices or as a remedy steered at reducing the anticompetitive effects of an essential facility, or of an agent which has been declared preponderant (LFCE, 2014, Art. 94).¹¹
- The ability to declare, through special administrative proceedings: an essential facility or input, as well as regulating access thereto aimed at producing efficiency gains (LFCE, 2014, Art. 127); the existence of barriers to competition and free market access (LFCE, 2014, Art. 94); and to declare that an undertaking enjoys SMP (LFCE, 2014, Art. 96).
- The possibility to participate *ex ante*, issuing its opinion or authorisation – as appropriate – in the awarding of licenses, concessions, permits, transfers, sale of shares or other analogous operations, pertaining to concessionaires or permit holders (LFCE, 2014, Art. 98).
- In any of the proceedings it carries out, precautionary injunctions may be requested to the governing body (the Board) by the AI, aimed at avoiding irreparable harm or ensuring the effectiveness of the proceeding's results (LFCE, 2014, Art. 135).

Notably Article 137 defines a ten-year statute of limitations on investigations related to violations of the LFCE, computed from the date of the unlawful concentration, or when the conduct ceased to exist.

Anticompetitive practices

In the prosecution of anticompetitive conduct, the LFCE distinguishes between two categories of restrictive behaviours: absolute monopolistic practices and relative monopolistic practices (LFCE, 2014, Articles 53 and 54). The former pertain to horizontal contracts, agreements, arrangements or combinations that have as their object or their effect: fixing prices; restricting output; market allocation; bid rigging; and the exchange of information carried out with either of the aforesaid purposes (LFCE, 2014, Art. 53). Such absolute practices are deemed to be null and void, hence shall not produce any legal effect (LFCE, 2014, Art. 53).

On the other hand, relative monopolistic practices allude to any act, contract, agreement, procedure or combination specifically carried out by one or several economic agents individually or jointly possessing substantial power in the relevant market, that has or may have as its object or effect to unduly displace other economic agents, substantially impeding their access, or to establish exclusive advantages in favour of one or more economic agents, in the relevant market or in related ones (LFCE, 2014, Art. 54). Although the list is extensive, among these practices one can find: exclusive distribution or commercialisation; resale price maintenance; tie-in sales; refusal to deal; group boycotts; predatory pricing; discrimination in purchasing or selling; cross-subsidisation; denial of access to an essential input, or providing access to it under discriminatory conditions; and margin squeezing (LFCE, 2014, Art. 56). In contrast, relative monopolistic practices are deemed illegal unless the defendant demonstrates they produce efficiency gains, favourably impact the competitive process and free market participation, and improve consumer welfare (LFCE, 2014, Art. 55).

Finally, the LFCE establishes an *ex ante* control of economic concentrations that may have significant effects in the relevant market, as in related markets, pursuant to specific thresholds established in the LFCE (LFCE, 2014, Art. 86). Further, it considers illegal those mergers that have as their object or effect to obstruct, diminish, harm or impede free market participation or economic competition (LFCE, 2014, Articles 61 and 62).

Sanctioning regime

With respect to absolute monopolistic practices, the administrative fine may be of up to 10% of the infringer's revenue, without prejudice to additional civil and criminal liabilities (LFCE, 2014, Art. 127). On the other hand, relative monopolistic practices and unlawful economic concentrations shall be subject to fines of up to 8% of the transgressor's revenue, regardless of additional civil liability (LFCE, 2014, Art. 127). With respect to the innovative essential facilities regulation, the competition authority may impose fines equivalent of up to 10% of the revenue of the economic agent in control of such a facility, in the event of non-compliance with the regulations issued thereto (LFCE, 2014, Art. 127).

Any of the abovementioned fines may be doubled in cases of recidivism (LFCE, 2014, Art. 127).¹² However, Article 131 of the LFCE explicitly determines that, when the transgression is carried out by agents who have been previously penalised for deploying monopolistic practices or illicit concentrations, the competition authority may impose – as an alternative to administrative fines – the divestiture or sale of assets, rights, partnership interests or shares pertaining to the infringer. In any case, it should be noted that fines may eventually correspond to statutory amounts linked to the UMA, when the infringer does not declare income tax or has not had its cumulative revenues defined for purposes related to said contribution (LFCE, 2014, Art. 128).

To conclude, the fines established by the competition authority must necessarily consider numerous elements related to the gravity of the infringement, to wit: the damage caused; indications of intentionality; the offender's share in the affected market(s); the size of the market(s) concerned; the duration of the anticompetitive practice or concentration; the transgressor's economic capacity; and, where relevant, how the execution of the competition agency's attributions have been affected (LFCE, Art. 130).

Substantial market power regulation

The declaration related to SMP necessarily entails pondering the criteria that have been traditionally examined when assessing market dominance. Hence, the factors to be considered are (among others) (LFCE, 2014, Art. 59): the undertaking's market share and its ability to act independently of other market participants; barriers to entry; competitors' market power; availability of access to input sources; and the recent behaviour of economic agents participating in the market.

Essential facilities and the declaration of barriers to competition

Pursuant to Article 60 of the LFCE, the competition agency must consider, when determining the existence of an essential input (among other aspects) (LFCE, 2014, Art. 60): if the input is controlled by preponderant agents, or agents that have been declared to have SMP; if its duplication is not technically, legally or economically feasible; if it is indispensable for the provision of goods and services in one or more relevant markets, and it possesses no close substitutes; and the circumstances by which the economic agent came to control it.

To sum up, the final determination ushered by the governing Board, may establish the following measures, provided that they increase efficiency in the market: recommendations to public authorities; orders to the specific undertaking; the issuance of guidelines for the regulation of access modalities, prices, and technical and quality conditions; the divestment of assets.

Other legal instruments related to broadcasting

Public Broadcasting System Law

Published in July 2014 and based on the provisions contained in Article 6 of the Constitution, the Public Broadcasting System Law (*Ley del Sistema Público de Radiodifusión del Estado Mexicano*), creates the decentralised Public Broadcasting System (*Sistema Público de Radiodifusión, SPR*) to co-ordinate the public broadcasters and to promote the preservation, production and diffusion of not-for-profit audiovisual content. The SPR is mandated to devote 30% of its programming to independent productions that contribute to promoting the rights of women and the pluralistic and diverse expression of ideas. The President of the SPR is appointed by the federal government and must present annual reports of activities to the executive and legislative powers. The SPR's budget is defined by the Congress and a Citizens Counsel voted by the Senate shall be composed to propose projects and ensure the editorial and political independence of the SPR. SEGOB is responsible for overseeing the SPR's implementation of its attributions.

General Law for Access by Women to a Life Free of Violence

Published in February 2007 and reformed in December 2015, the General Law for Access by Women to a Life Free of Violence (*Ley General de Acceso de las Mujeres a*

una Vida Libre de Violencia, LGAMVLV), establishes among several other mechanisms of women’s protection, that SEGOB is responsible for sanctioning media that do not have a conduct towards eradicating all types of violence against women.

General Law to the Protection of Rights of Children and Teenagers

Published in 2014, the General Law to the Protection of Rights of Children and Teenagers (*Ley General para la Protección de los Derechos de Niñas, Niños y Adolescentes*), establishes several initiatives to promote a transversal protection of children and teenagers. In its Article 43 it mandates the competent federal authorities to oversee if harmful content for children is being broadcast during time periods classified as suitable for children. That general responsibility, which excludes the monitoring of publicity suitable for children, falls under the realm of SEGOB.

Institutional framework

Regulatory institutions

Federal Institute of Telecommunications

The IFT’s mandate is to regulate and promote competition and the efficient development of telecommunication and broadcasting services, thus being charged with regulating, promoting and overseeing: the use, development and exploitation of the radio spectrum; orbital resources; satellite services; public telecommunication networks and the provision of broadcasting and telecommunication services; as well as access to active and passive infrastructure, and other essential inputs (LFTR, 2014, Art. 7). In addition, the IFT is the sole competition authority and the only entity in charge of issuing sector-specific *ex ante* regulation in the telecommunication and broadcasting sectors (LFTR, 2014, Art. 7).

Although its attributions are vast, it is relevant to refer to the following (LFTR, 2014, Art. 15):

- To issue general administrative provisions; fundamental technical plans; guidelines; cost models; conformity assessment procedures; and accreditation and certification procedures in telecommunication services and broadcasting.
- To grant concessions and decide on their extension, amendment or termination, as well as to authorise transfers or changes in shareholder control, ownership or operation of concessionaires.
- To publish the frequency band programmes concerning the radio spectrum, derived from the National Radio Spectrum Programme issued by the SCT and to carry out public tenders for the allocation of spectrum frequency bands.
- To set the amount of the monetary consideration for the awarding of concessions and authorisations to provide additional services within the former, subject to a previous non-binding opinion sent forth by the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público, SHCP).
- To solve and establish the terms and conditions under which interconnection is to be developed, in the event of a dispute between concessionaires.
- To exercise competition-related powers in telecommunication services and broadcasting, including the declaration of preponderant agents and undertakings with SMP;

issuing asymmetric regulations thereto; and imposing limits to the concentration of frequencies.

- To approve, register and publish the prices for telecommunication and broadcasting services, in the cases established by the LFTR.
- To formulate information requests.
- To impose sanctions motivated on infringements to the laws, regulations, administrative provisions or concession titles, as well as to adopt precautionary measures and to declare, where appropriate, the loss of assets, installations and equipment to the nation's benefit.
- To carry out non-binding public consultation procedures in matters related to its attributions, should it ponder it necessary for the execution of its functions.
- To carry and keep up-to-date the Public Telecommunication Register.
- To impose on concessionaires, geographic, demographic or social coverage obligations; obligations concerning connectivity in public sites; and those related to their contribution to universal coverage objectives, taking into account the SCT's proposals.
- To issue guidelines on infrastructure deployment in the telecommunication and broadcasting sector, and to develop, issue and keep up-to-date a national geo-referenced database pertaining to the existing telecommunication and broadcasting infrastructure.
- To define service quality indicators and to publish the results obtained while monitoring compliance thereof.
- To publish statistical information and metrics referring to the telecommunication and broadcasting sectors on a quarterly basis.
- To resolve any disputes relating to content retransmission, excepting electoral content.
- To monitor and sanction the obligations regarding the protection of audiences.

Considering the ample tasks assigned to the IFT, it has a complex structure comprised of numerous departments, each of them in charge of performing different functions. Apart from the Board of Commissioners, which is its governing body, the IFT has a Commissioner President, the Board's Technical Secretariat and an Executive Co-ordination. The IFT has the following directorates (*unidades administrativas*): Regulatory Policy, Radio Spectrum, Concessions and Services, Audiovisual Media and Content, Compliance (a sub-unit within the Compliance Directorate has recently been created to deal with the specifics on asymmetric regulation), Economic Competition, Legal Affairs, and Management. Also, the IFT has an Investigative Authority and a Study Center. In addition, the IFT has the following bureaus (*coordinaciones generales*): Interinstitutional Affairs, User Policy, Strategic Planning; Regulatory Improvement, International Affairs, and Social Communication.

The Economic Competition Unit (Unidad de Competencia Económica, UCE) and the AI are responsible for undertaking the functions enshrined in the LFCE (LFTR, 2014, Art. 26). The AI is autonomous and independent from the UCE and with respect to the Board (Constitution, Art. 28, paragraph 20, Section V). Pertaining to the formal initiation of proceedings (such as trial-form proceedings linked to violations of legal statute, the

declaration of essential facilities and/or barriers to competition, and the determination of market conditions), the AI is in charge of substantiating the investigative phase of such proceedings, and the UCE is responsible for the trial-form stage, while the resolution is issued by the Board. The UCE is also responsible for exercising *ex ante* controls on economic concentrations, and for the economic evaluation of the parties interested in participating in public tender procedures.

The Board is integrated by seven commissioners, including the Commissioner President, who is designated in a phased manner, after a qualification procedure carried out by an Evaluating Committee, based on the federal executive's proposal, with the Senate's subsequent ratification (SEGOB, 2013, Art. 27). The commissioners are in office for a non-renewable nine-year term (SEGOB, 2013, Art. 27). The Board is entitled to carry out many of the abovementioned functions, as well as to designate the head of the AI (LFTR, 2014, Art. 17) and the 15 honorary members of its Advisory Council (LFTR, 2014, Art. 34). The Commissioner President is the head and the legal representative of the institute, and as such, presides over the Board (LFTR, 2014, Articles 19 and 20). He or she is also responsible for the annual work programmes and for the quarterly activity reports of the institute, as well as for sending both documents, with the prior approval of the Board, to the executive and legislative (LFTR, 2014, Art. 20, Section XI). The appointment of the Commissioner President is ratified by the Senate, with a vote representing two thirds of the members present (SEGOB, 2013, Art. 28). The Commissioner President serves a four-year term, which may be subject to renewal for one time only (SEGOB, 2013, Art. 28).

The LFTR established a wide range of responsibilities for the Board, which are exclusive to it alone and cannot be delegated, leading to a cumbersome schedule. In 2016, the plenary held 47 ordinary and 21 extraordinary sessions, in which it resolved a total of 1 517 cases. This means that some cases that could be more efficiently undertaken by the IFT's administrative units take up the time of the Board, rather than allowing it to focus on the relevant attributions that require its collegial consideration and resolution.

Finally, the LFTR provides that outside hearings, the commissioners may discuss matters within their competence with persons representing the interests of the agents regulated by the IFT only through interviews, which are recorded and stored in electronic, optical or any other technological format. The recording and storage of interviews may, however, represent a mechanism that inhibits representatives of regulated agents from revealing sensitive and relevant information to IFT commissioners.

With respect to transparency, resolutions and agreements of a general scope issued by the Board shall be published in the Official Gazette of the Federation. Furthermore, its sessions and decisions shall be public, unless they refer to confidential information (LFTR, 2014, Art. 47). Thirdly, the sense of each commissioner's vote in the Board shall be public, even as pertains to private sessions carried out by this governing body (LFTR, 2014, Art. 49).

Public consultation procedures are mandatory when issuing and amending general rules, guidelines or administrative provisions, unless such disclosure may compromise the effects that the IFT intends to resolve through such decisions, or in emergency situations (LFTR, 2014, Art. 51). In addition, prior to the issuance of rules of a general scope, the IFT must carry out a regulatory impact analysis, or request the Federal Regulatory Improvement Commission's (Comisión Federal de Mejora Regulatoria, COFEMER) support (LFTR, 2014, Art. 51).

As concerns accountability, the chairman of the IFT is obliged to submit the entity's annual work plan and quarterly activity reports to the Senate and the executive branch (LFTR, 2014, Art. 20). Moreover, the chairman may be summoned by the executive branch or the federal Congress. Finally, the IFT has an autonomous internal comptroller appointed by the Chamber of Deputies (LFTR, 2014, Articles 35 and 37).

To conclude, with respect to the IFT's expert witness support in particular, the guidelines issued by the IFT in April 2017 determine that accreditation as an expert witness before the IFT demands undertaking a knowledge test in which the candidate must obtain a minimum score of 75 out of 100, as well as paying a sum of roughly USD 300. Moreover, revalidation as an expert witness will entail the payment of approximately USD 100, as shall any additional accreditations in other specialties. Such fees may ultimately discourage competent and knowledgeable professionals from acting as experts in regulatory procedures (the norm is that regulators ought to pay expert witnesses should they require their assessment, and not the other way round). The examination requirements are not per se questionable; however, if the experts' relevant prior experience is demonstrated through their *curriculum vitae*, and there are peers and clients that can certify thereto, it may actually generate a waste of administrative resources that could be best employed for other purposes.

With respect to the budget, the IFT's assets are, essentially, comprised of items allocated to it in the expenditure budget of the federation for the corresponding year. The rights for the use or exploitation of the radio spectrum and the monetary considerations thereto, are not assets pertaining to the IFT, notwithstanding the provision enshrined in Article 253-A of the Federal Rights Law (Ley Federal de Derechos, LFD), which determines that 3.5% of the resources obtained from the awarding of concessions and permits for spectrum or orbital resources use shall be destined to the IFT.

Federal Economic Competition Commission

COFECE has as its objective to ensure free market access and economic competition and prevent, investigate and combat monopolies, monopolistic practices, concentrations and other restrictions on the efficient functioning of markets (LFCE, 2014, Art. 10). To this end, COFECE has the following powers (among others) (LFCE, 2014, Art. 12):

- To order measures aimed at eliminating barriers to competition and free market access, to determine the existence and regulate access to essential facilities, as well as to order the divestiture of assets.
- To practice “dawn raids”, to subpoena persons and to demand the exhibition of information, as well as to request aid by the public forces, for the effective performance of its tasks.
- To command the suspension of the conducts and order preliminary injunctions.
- To impose administrative sanctions related to any violations to the LFCE.
- To resolve matters related to competition conditions, effective competition, the existence of SMP, and any other topic related to the competitive process.
- To perform competition advocacy functions, *ex officio* or per request, through the issuance of non-binding opinions.

COFECE's supreme governing and decision-making body is the Board, which is composed of seven commissioners, including a Commissioner President. They shall be

appointed in a phased manner –after a qualification procedure carried out by an Evaluating Committee – upon the federal executive’s proposal, with the Senate’s ratification (SEGOB, 2013, Art. 28). The commissioners shall be in office for a non-renewable nine-year term (SEGOB, 2013, Art. 28). The Board is entitled to carry out many of the abovementioned functions, as well as to designate the head of the AI (LFCE, 2014, Art. 30). The appointment of the Commissioner President is made by the Senate; with a vote representing two thirds of the members present (SEGOB, 2013, Art. 28). The Commissioner President serves a four-year term, subject to renewal only once (SEGOB, 2013, Art. 28).¹³

Furthermore, COFECE has an investigative authority charged with carrying out all the procedures related to the administrative investigations it performs, concerning possible transgressions of the LFCE (LFCE, 2014, Art. 28). Its governing body (the Board) is responsible for the trial-form phase of such proceedings (LFCE, 2014, Art. 18). The sessions of the Board shall be public, except as regards those fractions in which confidential information is covered (LFCE, 2014, Art. 18). The same treatment is provided with reference to the Board’s agreements and resolutions (LFCE, 2014, Art. 18).

Moreover, the Commissioner President – as chairman of the Commission – is obliged to annually appear before the Senate, and to submit to the federal executive and legislative branches its annual work programme and quarterly activity reports, documents which must also be public (LFCE, 2014, Art. 49). Additionally, COFECE has an autonomous internal comptroller appointed by the Chamber of Deputies (LFCE, 2014, Articles 37 and 40). Analogously to the provisions regarding the IFT, COFECE’s assets shall be constituted, essentially, by those assigned in the annual general budget of the federation (LFCE, 2014, Art. 48).

Federal Consumer Protection Agency

Pursuant to Article 20 of the LFPC, PROFECO is a decentralised social service body with its own legal personality and assets, although dependent on the Ministry of Economy (Secretaría de Economía, SE). It deploys administrative functions and has as its mandate to promote and protect the rights and interests of consumers, as well as to ensure fairness and legal certainty in the relationships between the latter and suppliers. For such purposes, it has the following attributions (among others) (LFPC, 1992, Art. 24):

- To represent consumers, individually or collectively, before judicial and administrative authorities, and before suppliers.
- To gather, develop, process and disseminate objective information so as to enable consumers to acquire better information regarding the products that are offered in the market.
- In telecommunication services, PROFECO must register the model contracts of adhesion submitted by service providers and publish them in a public register (LFTR, 2014, Art. 191). Further, it must verify that model contracts establish reasonable penalties in the event of anticipated termination, and of temporary service suspension for non-payment (LFTR, 2014, Art. 191).
- To determine, in conjunction with the IFT, the minimum rights of compulsory inclusion in the letter of rights that service providers must deliver to their users (LFTR, 2014, Art. 191).
- To sanction any infringements incurred by service providers to telecommunication users’ rights, as determined by the LFTR (LFTR, 2014, Art. 297).

- To inform the IFT – and vice versa – of systematic or recurrent violations of the LFTR or of the LFPC by service providers, so they may take actions within their mandates (LFTR, 2014, Art. 191).
- To oversee and verify compliance with the provisions related to prices and rates.
- To implement educational strategies pertaining to consumer protection.

PROFECO is directed by the Federal Consumer Attorney General (LFPC, 1992, Art. 27), who is designated by the Mexican President (LFPC, 1992, Art. 28). In addition, there are several specialised units (*subprocuradurías*) on the following subjects: Verification; Legal Affairs; Telecommunication;¹⁴ and Services (PROFECO, n.d.). Furthermore, PROFECO has the following departments: General Administrative Co-ordination; General Direction on Social Communication; General Direction on Delegations; Co-ordination on Education and Dissemination; and a General Direction on Planning and Evaluation (PROFECO, n.d.). Finally, it can be noted that PROFECO possesses delegations and sub-delegations across the entire country (LFPC, 1992, Articles 21 and 22). According to Article 23 of the LFPC, PROFECO's assets are composed by assets directly assigned to it in the general budget of the federation, and other resources provided by other public agencies and governments.

Governmental institutions

Ministry of Communications and Transports (Secretaría de Comunicaciones y Transportes)

The SCT is an entity of the federal government, who has as its mission to foster transport and communication systems that are safe, efficient and competitive, through the strengthening of the legal framework, the delimitation of public policies and the designing of strategies that contribute to sustained economic growth and balanced social development; expanding coverage and accessibility of services, achieving integration of the Mexican people and respecting the environment (SCT, n.d.).

Among its functions, the following can be highlighted (LFTR, 2014, Art. 9):

- To issue a technical non-binding opinion to the IFT on the awarding of concessions, and on the authorisation of changes of control of telecommunication and broadcasting concessionaires.
- To plan, establish, implement and conduct the policies and programmes referring to universal and social coverage.
- To formulate the federal government's policies regarding telecommunication and broadcasting.
- To perform all the actions required to guarantee access to broadband Internet in buildings and facilities belonging to the federal public administration, and to co-operate with federal and local governments to attain this objective.
- To establish programmes pertaining to broadband access in public sites, establishing an implementation schedule thereto.
- To acquire, establish and operate – directly or with third-party participation – infrastructure, telecommunication networks and satellite systems for the supply of telecommunication and broadcasting services.

- To send to the IFT its non-binding opinion on the IFT’s annual work programme and quarterly reports.
- To develop, integrate and implement the programmes on: the expansion of the Red Troncal; making available to broadcasting and telecommunication operators, public sites, ducts, posts and rights of way so as to expedite infrastructure deployment; the DTT transition; and the National Radio Spectrum Programme geared at ensuring its optimal and efficient use.

Ministry of the Interior (Secretaría de Gobernación)

The SEGOB’s Radio, Television and Cinematography Directorate (Dirección General de Radio, Televisión y Cinematografía, RTC), is responsible for regulating and monitoring the classification of content in radio, television and cinema. While the IFT is responsible for monitoring the conduct of providers regarding children’s content, SEGOB sanctions providers that are found in fault in this regard and supervises conduct on all other values expressed in the Constitution and other specific laws, such as the LGAMVLV. SEGOB, through the RTC, also manages the programming time made available for use by the government.

Digital economy institutions’ responsibilities

As the digital economy grows in importance, ensuring clear delineation of responsibilities is a challenge faced by all OECD countries. In Mexico, the allocation of responsibilities for this sector are divided among several federal government agencies, which has resulted in drawbacks in formulating public policy and inefficiencies in implementing resources, as well as challenges in measuring results. While in some cases arrangements involving two or more government bodies in the same area is clearly justified, there are some scattered allocation of responsibilities that could be regrouped under the supervision of a single government body in order to co-ordinate efforts to meet policy objectives.

Aside from the institutions and their responsibilities described above (the SCT and SEGOB) a number of other bodies have responsibilities in the areas involving the SCT, such as public policy, e-government and digital inclusion/the digital economy. Taking these areas in turn:

- **Public policy:** Attributions include 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 digitalisation of the economy. At this stage, the National Digital Strategy Co-ordination (Coordinación de Estrategia Digital Nacional, CEDN), located at the office of the Presidency, 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.
- **Digital inclusion/digital economy:** The promotion of the use and advancement of ICT is a key objective of the Mexican government. To meet this goal, efforts are needed to increase penetration in households and individuals as well as in firms. The CEDN is the entity that is currently in charge of promoting the adoption of ICT. The SCT, through the Co-ordination of the Information Society and Knowledge, also has responsibility to increase the use of new technologies. Meanwhile, the SE has responsibilities for the promotion of new technologies relevant to economic development and the creation of centres specialised in technological development.

Judicial institutions

One of the main innovations established by the Constitutional Reform Decree of 2013 was the creation of specialised judicial authorities, with jurisdiction to decide on matters pertaining to competition, telecommunication services and broadcasting. In 2013, the Superior Council of the Judiciary issued an agreement by which it created two specialised district judges, and two specialised circuit courts, all of which enjoy national jurisdiction (Consejo de la Judicatura Federal, 2013). It should be noted that these judicial institutions resulted from the transformation of pre-existing district judges and circuit courts. Finally, the agreement in question dictates that the Institute of the Federal Judiciary must provide specialised courses to these bodies' public servants to consolidate their academic and professional knowledge on the matters of competition, telecommunication services and broadcasting.

These institutions – and in particular the courts – are responsible for resolving any disputes that may arise in relation to the implementation of the rules established in the LFTR, the LFCE and the secondary regulations and/or acts (LFTR, 2014, Art. 315). This includes the following functions:

- To substantiate indirect *amparo* trials directed at the general provisions, acts and omissions carried out by the IFT or COFECE (SEGOB, 2013, Art. 28). This function shall be performed by district judges or circuit courts.
- To resolve any disagreements arising between concessionaires and the federation, federal entities and municipalities, referring to the general ways of communication, civil works and rights of way associated with public telecommunication networks, as well as satellite communication services (LFTR, 2014, Art. 5). This function is specifically assigned to the circuit courts.
- To decide on positive or negative conflicts of jurisdiction arising between the IFT and COFECE, as regards their powers as competition authorities (LFCE, 2014, Art. 5). This function is specifically assigned to the circuit courts.
- To decide on lawsuits claiming damages derived from monopolistic practices or unlawful economic concentrations, once the competition agency's resolution becomes non-appealable (LFCE, 2014, Art. 134). This function is specifically assigned to the circuit courts.

Notes

1. The Pact for Mexico emphasises the need to intensify economic competition in strategic sectors of the economy, expressly mentioning: telecommunication, transport, financial services and energy. The five core propositions established in the Pact for Mexico are defined under the following topics: society of rights and liberties; economic growth, employment and competitiveness; security and justice; transparency, accountability and the fight against corruption; and democratic governability (<http://pactopormexico.org>).
2. This can also be observed in Article 63 of the LFTR.
3. This is provided for in Article 74 of the LFTR.
4. The LFTR contains several definitions that are relevant to the provision of wholesale services by telecommunication and broadcasting operators. Unbundling is construed as the separation of physical elements, including fibre optics, technical and logical elements, functions or services of the preponderant telecommunication operator's local public telecommunication network, aimed at ensuring that other concessionaires can effectively gain access to such network. In addition, unbundling entails the separation of such elements, functions or services when the local public telecommunication network pertains to an economic agent that enjoys substantial power in the national relevant market for retail services.
5. This provision includes, among the factors that must be pondered when asserting the existence of an essential input: if the input is controlled by a dominant or preponderant undertaking; if its duplication is not feasible from a technical, legal or economic perspective; if the input is indispensable for the provision of goods and services in one or more relevant markets, and it has no close substitutes; and if the circumstances by which the undertaking came to control it.
6. In particular, "Tier 1" sanctions shall be up to 8 million times the UMA; "Tier 2" fines, of up to 41 million times such unit; "Tier 3" penalties, of up to 66 times the UMA; and lastly, "Tier 4" and "Tier 5" sanctions shall be up to 82 times the UMA.
7. On this topic, Article 197 of the LFTR determines that concessionaires or authorised entities must block contents, applications or services upon explicit request by their users, provided that such blocking is not arbitrarily extended to other contents, applications and services not comprised within users' requests. However, in no case shall this procedure arbitrarily affect agents providing services or applications over the Internet.
8. Article 196 of the LFTR appends this provision by stating that concessionaires and authorised entities are obliged to supply their users or subscribers with the service in accordance with the terms and conditions explicitly or implicitly published in their advertising, unless provided otherwise, through express agreements with the user/subscriber.
9. It should be added that, pursuant to Article 214 of the LFTR, departments and entities of the federal public administration must support the development of programmes

pertaining to social coverage and connectivity in public sites. Furthermore, they must back the federal executive's digital strategy.

10. It should be noted that Article 5 establishes a specific procedure in order to settle such conflicts, and the deadlines that shall be observed by the institutions and the courts. In particular, it determines that once the IFT or the COFECE is aware that the other entity is substantiating a subject matter corresponding to their jurisdiction, it shall request the file be sent to it. If the requested entity considers it does not have the powers to substantiate the proceeding, it shall remit it to the requesting entity within five days following the petition. However, should the requested entity ponder it is competent, it shall inform the requesting institution of its decision within the same timeframe, and shall suspend the proceedings and send the file to the specialised circuit court, who shall resolve in a period of ten days. It should be stated that the aforementioned procedure and terms shall also be applicable, *mutatis mutandis*, to negative conflicts of jurisdiction.
11. Article 94 of the LFCE only refers to the attribution of the authority to mandate divestiture of assets of an economic agent when it poses a barrier to competition or an essential facility is determined. The attribution to mandate the divestiture of a predominant agent or an agent with SMP is not within the scope of the competition authority (i.e. the AI) but of the IFT as a regulator (and so it is up to the Regulatory Policy Unit).
12. It should be clarified that recidivism does not refer exclusively to an economic agent incurring the same conduct by which it has been previously sanctioned (thus, it may entail any violation to the LFCE). Furthermore, the law requires that no more than ten years to have passed from the moment in which the prior resolution has become non-appealable.
13. This is reiterated in Article 31 of the LFCE.
14. The Telecommunication Unit was created in compliance with Transitory Article 21 of the LFTR, which mandates that PROFECO create a specialised area – not inferior to a *subprocuraduría* – aimed at tending to, promoting and monitoring users' rights as enshrined in the LFTR.

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