

2001

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### Recommended Citation

Daniel J. Slottje & Stephen D. Prowse, *Antitrust Policy in Mexico*, 7 LAW & BUS. REV. AM. 405 (2001)  
<https://scholar.smu.edu/lbra/vol7/iss3/6>

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# Antitrust Policy in Mexico

*Daniel J. Slottje and Stephen D. Prowse\**

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## I. Introduction

In this article, we analyze antitrust policy in Mexico. We discuss the economic principles of Mexican antitrust law, their legal underpinnings, and the nature and extent of enforcement activities. We compare each of these aspects of Mexican antitrust law with the United States. We find that while the economic principles and the structure of antitrust law itself are very similar between the two countries, the extent to which antitrust law is enforced is very different, primarily because of differences in the maturity of the two legal and regulatory systems and in the political and public consensus for the benefits of competition. We also discuss the evolving nature of antitrust policy in both countries and some possible directions for the development of Mexican antitrust policy in the future. Section 2 analyzes the main elements of Mexican antitrust law and compares them with the United States. Section 3 discusses the enforcement of antitrust law in the two countries. The final section discusses recent modifications and additions to U.S. antitrust law and likely future directions of antitrust law in Mexico.

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## II. Antitrust Policy in Mexico

### A. BACKGROUND

Antitrust policy in Mexico, at least on paper, has a much longer history than in the United States. While U.S. antitrust policy can be traced from the end of the nineteenth century, the Mexican Constitution of 1857 explicitly prohibited monopolies and all practices or measures by companies that affected free participation in the market. According to Van Fleet, the Mexican Constitution represented the western hemisphere's first written prohibition of monopolies.<sup>1</sup> This was primarily a politically motivated response to the practices of the previous ruling Spanish empire in Mexico that encouraged monopolies in order to favor Spanish-based companies over Mexican firms.

Mexican law has, at regular intervals since 1857, reiterated the prohibition of monopolies and restraints of trade. The 1917 Mexican Constitution, the 1934 Monopolies Law, and the 1950 Law on Economic Powers of the Federal Executive all contained such language. However, it has not been until the last ten years that the spirit of such laws has been enforced or implemented to any degree at all. Indeed, much Mexican economic policy over this period has been characterized by price controls, control over entry into industries, protection of large politically influential business groups or cartels from competition, establishment of state-owned monopolies, import protection, and strong state supervision. Ironically, the 1934 Monopolies Law was actually used by the Mexican government to fix official prices for specified products.<sup>2</sup>

By the mid-1980s, as growth in the Mexican economy slowed and the country faced a number of financial and economic crises, it became clear that traditional Mexican economic policies, including its competition policy, were no longer viable. Mexican economic policy thus changed direction and adopted an explicit new aim of replacing government control with market competition. This manifested itself in a number of specific policy changes. First, the government ended most domestic price controls and reduced constraints on new entry. The government also eliminated most compulsory import licenses, reduced tariffs, and entered into NAFTA. Second, the government also privatized many state enterprises to increase the potential for market-based discipline. Public firms in the telephone industry, commercial banking, steel, sugar, airlines, railroads, and television broadcasting were privatized in the early 1990s. Finally, a new general competition law was introduced in 1993, when Mexico adopted the Federal Law of Economic Competition (LFCE) and created the Federal Competition Commission (CFC) to enforce it. The LFCE is the current governing law on Mexican antitrust and competition policy. It replaced wholesale the existing competition law and its introduction was accompanied by a new and much more serious intent to actively enforce it than had existed previously.

The evolution of U.S. antitrust law contrasts sharply with that of Mexico. United States antitrust law is rooted in the 1887 Interstate Commerce Act and the 1890 Sherman Act, which created federal powers and institutions to combat monopolies and monopolistic practices. Since the late nineteenth century numerous other laws relating to perceived anti-competitive activities have been passed, including the 1936 Robinson-Patman Act

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1. See Allan Van Fleet, *Competition Policy in a Developing Economy: Mexico's Federal Economic Competition Law*, GLOBAL COMPETITION REV. (Apr./May 1998).
  2. *Id.*
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(regarding price discrimination) and the 1914 Clayton Act, the 1950 Celler-Kefauver Act, and the 1976 Hart-Scott-Rodino Act (all regarding mergers). Over time, the interpretation of the content and meaning of such laws by the regulatory agencies and, ultimately, the courts has evolved as the U.S. economy and the collective understanding of the economics of competition has evolved. Current U.S. antitrust policy thus rests on a body of sometimes very old law that has a rich history—over 100 years—of evolving interpretations and enforcement. The actual application of Mexican antitrust law, in contrast, is in much more of an infant stage than U.S. law.

### III. Main Elements of Mexican Antitrust Law

The LFCE adopted many of the most advanced ideas and practices from around the world with regard to antitrust policy and was heavily influenced by substantial consultations with economists and other countries' antitrust agencies.<sup>3</sup> It was also influenced heavily by a requirement of the NAFTA agreement that mandated that Canadian, Mexican, and U.S. competition policies should "proscribe anti-competitive business conduct."<sup>4</sup> As such, it is no surprise that the economic principles underlying Mexican antitrust law and the structure of antitrust law itself in Mexico are very similar to U.S. laws.

Mexican antitrust law is actually the product of three distinct documents.<sup>5</sup> First, the Constitution, in article 28, bans monopoly and monopolistic practices. Second, the LFCE is the formal implementation of article 28 and is aimed at preventing and penalizing anti-competitive conduct and mergers. Third, regulations to implement the LFCE, published in March 1998, develop specific aspects of the law.<sup>6</sup> We now outline the main elements of Mexican antitrust law and compare them to the United States. We focus on five main elements or characteristics of antitrust law: the degree to which the focus is on the competitive process versus competitors, the treatment of different types of trade practices, enforcement mechanisms, merger law, and the nature of the exemptions and exclusions from antitrust law in both countries.

#### A. FOCUS ON THE COMPETITIVE PROCESS VERSUS COMPETITORS

A main element of Mexican antitrust law is its focus on the *competitive process*, not on the competitors themselves.<sup>7</sup> Thus, while on paper monopoly is prohibited in the Constitution, in practice the LFCE has no separate sections addressing monopolists. Rather, it focuses on assessing a company's actions as either pro- or anti-competitive.

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3. Michael O. Wise, *Review of Competition Law and Policy in Mexico*, OECD J. COMPETITION L. & POL'Y 1:4, at 43 (1999).

4. See Article 1501 of the NAFTA text cited in Caludia Grier Hernández, *Competition Policies in Mexico*, 1 MEX. & WORLD WEBJOURNAL 1 (1996), available at <http://www.isop.ucla.edu/profmex/webjournal.htm>.

5. Wise, *supra* note 3.

6. In addition, provisions of other regulatory laws often refer to the LFCE, the CFC, and their powers.

7. See Wise, *supra* note 3; see also James E. Crawford, *The Harmonization of Law and Mexican Antitrust: Cooperation or Resistance?*, 4 IND. J. GLOBAL LEGAL STUD. 407 (1997).

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The LFCE does not, in practice, penalize companies for being monopolists or even acting like monopolists by charging high prices or restricting output. Rather, what is prohibited is conduct that by excluding other competitors achieves or maintains monopoly. For example, the LFCE does not address abusive high pricing in and of itself. Violations are instead defined in terms of exclusionary practices that hurt competitors. The economic principle behind this distinction is that if a firm attempts to charge super-competitive prices, such conduct will normally invite new competitors to enter the market, and is thus self-correcting. Only if the firm tries to enhance or maintain its market power by engaging in activities that exclude competitors will the Mexican antitrust authorities step in and initiate corrective action.

Such a focus is taken directly from U.S. antitrust law. In the United States, the Sherman Act does not prohibit monopoly, charging high prices, or restricting output. The focus is on prohibiting exclusionary practices, as exemplified in Justice Stevens' comments on U.S. antitrust policy in *National Society of Professional Engineers vs. United States*, where he said that "it focuses directly on the challenged restraint's impacts on competitive conditions."<sup>8</sup>

#### B. "ABSOLUTE" VERSUS "RELATIVE" EXCLUSIONARY PRACTICES

A second main element of Mexican antitrust law is the classification of exclusionary practices into two distinct categories: first, those practices that are *per se* illegal, and second, those that are illegal only if the parties have substantial power in a defined relevant market.<sup>9</sup> For example, chapter 2, article 9 of the LFCE refers to "absolute monopolistic practices," which are prohibited *per se*. Parties to these practices cannot defend them by claiming they are efficient or have no effect on the degree of competition in a market. Mexican antitrust law presumes an anti-competitive effect of such practices conclusively. Parties found guilty of such "absolute" practices are subject to administrative sanctions under the LFCE. In addition, the CFC may report associated criminal conduct to the public prosecutor. Such outlawed practices primarily include horizontal agreements between firms, including price-fixing, output restriction, market division, and bid rigging.

In contrast, "relative monopolistic practices" as defined by the LFCE (chapter 2, article 10) may be found illegal only subject to a more fact-sensitive inquiry on the part of those passing judgment. A "relative" monopolistic practice only violates Mexican antitrust law if two conditions are satisfied. First, the purpose or effect of the restraint must be to "unfairly drive other economic agents from the market, substantially impede their access to the market, or establish exclusive advantages in favor of ..." <sup>10</sup> a firm. Second, the practice must be undertaken by a firm having "substantial power in the relevant market."<sup>11</sup> In contrast to "absolute" practices, parties to "relative" practices can offer a defense on the grounds of efficiency for which the burden of proof lies on the presumed

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8. See *Nat'l Soc'y of Prof'l Eng'r v. United States*, 435 U.S. 679, 688 (1978).

9. See Wise, *supra* note 3.

10. Joshua A. Newberg, *Mexico's New Economic Competition Law: Toward the Development of a Mexican Law of Antitrust*, 31 COLUM. J. TRANSNAT'L L. 587, 592-93 (1994).

11. *Id.*

responsible parties. Sanctions for “relative” practices are also generally less severe than for “absolute” practices, and are limited to civil remedies. Relative practices include horizontal agreements not specifically identified as “absolute” violations, including collusive boycotts, and *all* forms of vertical agreements, including exclusive dealing, tied sales and resale price maintenance.

The Mexican distinction between “absolute” and “relative” restraints of trade is, of course, extremely similar to the U.S. distinction between *per se* illegal acts, and those acts that are illegal only if found to violate the “rule of reason.” In addition, the criteria used to decide whether a “relative” act is in violation of Mexican antitrust law is extremely similar to that expressed in the United States for the “rule of reason” in *Continental TV, Inc. vs. GTE Sylvania, Inc.*, where “the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.”<sup>12</sup> Thus, the weighing of the factual circumstances and the analysis of the market players’ relative power resulting from the restraint are characteristics of both countries’ antitrust law when considering trade practices classified as “relative” (in Mexico) or subject to the “rule of reason” (in the United States).

There are also similarities between the types of restraint classified as *per se* illegal versus those subject to a more fact-sensitive inquiry. Like the United States, Mexico treats most forms of horizontal agreements as *per se* illegal, including price-fixing, market division, output restriction, and bid rigging. Both countries also treat most forms of vertical agreements as subject to consideration of the costs and benefits of the act. This approach is generally consistent with economic principles. Mexico, however, has a more economically logical characterization of activities in that it classifies *all* kinds of vertical agreements as “relative” practices, whereas in the United States, some vertical agreements, such as resale price maintenance are treated in the law as *per se* violations. Certain tying agreements are also classified in U.S. law as *per se* violations. However, these are primarily differences in form as opposed to substance. Despite the *per se* label, prohibitions against resale price maintenance and certain tying arrangements are very rarely enforced by U.S. regulatory agencies.<sup>13</sup>

### C. ENFORCEMENT MECHANISMS

Mexican antitrust law, as expressed in the LFCE, provides for both a centralized federal enforcement agency and for the ability of a party to bring a private action.<sup>14</sup> Centralized federal enforcement in Mexico is handled by the CFC, which is an administrative body given the task of investigating and combating monopolistic practices. The CFC has the power to investigate antitrust violations either in response to a complaint or on its own initiative, bring action, and sanction offenders. Sanctions may take the form of fines or the suspension or correction of the forbidden practice, including the dismantling of mergers. The CFC also offers (nonbinding) advisory opinions to parties

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12. Ruth Buchanan, *Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place*, 2 *IND. J. GLOBAL LEGAL STUD.* 371, 377 (1995).

13. Michael O. Wise, *Review of United States Competition Law and Policy: Role of Competition Policy in Regulatory Reform*, *OECD J. COMPETITION L. & POL'Y* 1:1, at 3 (1999), available at [http://www1.oecd.org/daf/clp/Country\\_reviews/regrefusa.pdf](http://www1.oecd.org/daf/clp/Country_reviews/regrefusa.pdf).

14. Wise, *supra* note 3.

who have queries regarding the legality of their own business practices. The CFC consists of five presidential-appointed commissioners (three economists and two lawyers) and has a staff of about 100, including thirty economists and thirty lawyers.

Private actions are also possible under Mexican antitrust law. Article 38 of the LFCE authorizes private parties to take action against antitrust violators. However, this right is very circumscribed. Rights of private action are limited to a claim for double damages, but only *after* the CFC has found a violation. Indeed, since the passing of the LFCE in 1993, private actions have almost never been used by third parties to address antitrust violations.<sup>15</sup>

Enforcement provisions written into Mexican law look quite similar to those of the United States. In the United States, enforcement is at three levels: federal enforcement, state enforcement, and private action.<sup>16</sup> Of these, federal enforcement and private action are quantifiably the most active. The Department of Justice and the Federal Trade Commission (FTC) are the two agencies in federal antitrust enforcement, which have the ability to investigate, bring action, levy sanctions, and give general guidelines. The structure of the Mexican CFC looks extremely similar to the FTC in the United States—the FTC has five presidential appointees and has a large staff of lawyers and economists.

Private actions are possible under U.S. antitrust law. The Clayton Act gives private parties the ability to bring actions against antitrust violators. It allows private parties to recover triple damages in such actions. United States law in this respect gives more rights to private parties than Mexican law. In addition, the maturity and sophistication of the U.S. legal system and the strength of the plaintiffs' bar effectively means that private actions are much more frequently used in the United States than in Mexico. The ultimate effect of the frequent use of private antitrust suits in the United States is somewhat unclear; private suits can, however, in theory, supplement government enforcement. In the United States, the litigants' priorities and motivations are not always consistent with the regulatory agencies' views on competition policy.

#### D. MERGER LAW

Merger law in the United States and Mexico is also very similar. In Mexico, mergers whose structure or effect is to reduce, distort, or hinder competition are prohibited. Pre-merger notification is required for mergers above a specified size.<sup>17</sup> The LFCE mandates that in analyzing proposed mergers the CFC should consider relevant factors such as whether the merging parties would obtain the power to fix prices, restrict competitors' access to the market, or restrict output in the relevant market, and whether actual or potential competitors likely would inhibit such power. LFCE regulations explicitly provide for an efficiency defense for mergers, assigning the burden of proof to the merging parties.

In addition, the LFCE details the criteria to be used to define the relevant market and to determine the existence of market power. To determine the relevant market, the LFCE mandates consideration of a number of factors. The most important of these

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15. *Id.*

16. Wise, *supra* note 13.

17. 12 million times the minimum general wage.

is the existence of close substitutes for the good or service being provided, including consideration of technological possibilities, what consumers consider to be substitutes, the costs of moving substitute goods to the relevant market, the costs of buyers attaining access to other markets, and the existence of barriers to alternative sources of supply or providers' access to other suppliers.<sup>18</sup> To determine the existence of market power, the LFCF mandates consideration of the Herfindahl-Hirschman index (HHI)—that is, the sum of the squared market shares of all the firms in the market. Mexican regulations set out a “safe harbor” for mergers that raise the HHI by less than seventy five points or that result in an HHI of less than 2000. The CFC also applies the Index of Domination (ID), developed by Mexican economists on the CFC. The ID is the square of each company's market share divided by the HHI, summed across all companies in the market.<sup>19</sup> These indicators are not determinative but are merely guidelines: the CFC will also examine other factors that are relevant to determining whether a prospective merger would lead to a substantial increase in market power for the merging parties, such as the existence of barriers to entry into the market, companies' access to inputs and the merging parties' recent conduct.

Even if a merger results in substantial market power, the CFC can consider efficiency gains from the merger and whether they offset the potential anticompetitive effects. If they do, the merger will not be challenged.

Remedies for mergers in Mexico with anti-competitive aspects can be either corrective or preventive. Preventive remedies consist of obligations to notify regulators about future planned mergers, the elimination of exclusivity clauses or commitment to facilitate competitors' entry. In the extreme the CFC is empowered to halt proposed mergers. Corrective remedies require the divestiture of certain assets.

In the United States, combinations of all kinds are covered by the general merger statute, the Clayton Act (1914), and subsequent modifications to it contained in the Celler-Kefauver Act (1950), and the Hart-Scott-Rodino Act (1976). There is a pre-merger notification requirement for proposed mergers above a certain size. The legal test applied is whether the transaction is likely to harm competition or tend to create monopoly. The agencies' guidelines outline a market definition protocol, specify how to identify and characterize market participants and set standards for evaluating the likely competitive effects of entry. The guidelines include market share tests, and using the HHI index to identify thresholds above which anti-competitive effects of mergers should generate heightened concern. In the United States, the regulatory agencies consider a market with an HHI below 1,000 to be unconcentrated and unlikely to be subject to any adverse competitive effects. A market with an HHI between 1,000 and 1,800 is considered to be moderately concentrated. Markets with an HHI above 1,800 are considered to be highly concentrated. Mergers that result in an increase in the HHI of less than 100 points in moderately concentrated post-merger markets are viewed as unlikely to have adverse competitive consequences. Mergers producing an increase in the HHI of greater

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18. Allan Van Fleet, *Consolidation con Salsa: Mergers and Acquisitions in Mexico*, 15 ANTITRUST 13 (2001).

19. The purpose of the ID is to give greater weight to especially high market shares of dominant firms in Mexico's concentrated private sector. The CFC will be unlikely to challenge mergers that result in the ID decreasing or resulting in an ID of less than 2500. *See id.*

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than fifty points in highly concentrated post-merger markets are viewed as potentially raising competitive concerns, depending on other factors such as entry conditions and efficiencies.<sup>20</sup>

In the United States, remedies for mergers identified as being anticompetitive include prohibiting proposed mergers or attaching specific conditions to them, such as the divestiture of certain assets.

Merger policy as it is written into law appears very similar between Mexico and the United States. As with merger analysis in the United States, the assessment of mergers in Mexico is concerned primarily with horizontal effects. Vertical mergers are generally viewed as efficiency enhancing. In addition, the Mexican approach to defining the relevant market and assessing market power is based expressly on those principles set out in the U.S. Merger Guidelines.

#### E. EXEMPTIONS AND EXCLUSIONS FROM ANTITRUST LAW

Both U.S. and Mexican antitrust law offer exceptions, exemptions, and special treatments for particular activities or sectors. Some of these exceptions are similar and some are different. In Mexico, some of the activities excluded from antitrust law are similar to those excluded in most countries (including the United States), such as legally constituted labor associations and copyright and patent holders.<sup>21</sup> In addition, certain strategic sectors are also effectively exempted to a large extent. These include the postal service, telegraph, petroleum, basic petrochemicals, nuclear energy, and electricity industries. For several of these sectors, independent regulatory agencies have been established and are responsible for ensuring firms in these sectors do not abuse their market power. Public sector agencies are not exempt from the LFCE.

In the United States, the list of exempt sectors is somewhat smaller. In addition, for sectors where antitrust policy is diluted, competition policy is implemented through special rules or enforcement structures. Such sectors include energy, trucking, and the sports industry. One major difference with Mexican law is that in the United States, public sector firms are exempt from antitrust law.<sup>22</sup>

### IV. Enforcement Activities in Mexico and the United States

While the economic and legal principles that lie behind antitrust law in Mexico and the United States are very similar, there appear to be greater differences between the two countries in terms of the degree to which the written law is actually enforced. Here, the United States appears to be the more active and consistent enforcer.

In particular, a number of commentators on Mexican economic policy have criticized the CFC for being ineffective. Some have gone so far as to claim that the CFC

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20. See U.S. Department of Justice and Federal Trade Commission, U.S. Horizontal Merger Guidelines (Apr. 2, 1992, revised Apr. 8, 1997), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,104, available at <http://www.ftc.gov/bc/docs/horizmer.htm>.

21. Wise, *supra* note 3.

22. Wise, *supra* note 13.

has served, in most instances, to legalize monopoly and monopolistic practices.<sup>23</sup> This has been the result it is argued, of political pressures on the CFC from powerful interest groups who benefited from the cartelization of the Mexican economy prior to 1993. Critics of the CFC have focused on a number of high profile mergers that the CFC approved that appeared to raise some antitrust issues—the acquisition of Cablevision, a large television company, by Telmex (the Mexican telephone monopoly) was one such merger; the merger of two large radio transmitters (Radio Red and Radio Center) was another.<sup>24</sup>

Impressions of more active enforcement in the United States are borne out by comparing the number of antitrust actions taken by the regulatory bodies in both countries. In 1999, for example, according to filings with the OECD, the CFC decided on 245 proposed mergers. The CFC took action in nine of these cases (3.6 percent), imposing conditions on six proposed mergers, and blocking three. In the United States, the FTC and the DOJ together investigated 520 proposed mergers, and took action in seventy-six of these cases (14.6 percent), either resulting in changes to the proposed merger to meet regulators' objections, or to the abandonment of the proposed merger entirely. Nonmerger enforcement activity tells a similar story. In Mexico, the CFC investigated forty two cases of alleged monopolistic practices in 1999. Of these, the CFC imposed penalties in nine cases (21 percent). In the United States, the DOJ alone opened 293 investigations into anticompetitive activity, and filed antitrust actions or civil complaints against companies in ninety-three of them (31 percent). (This does not consider state regulatory actions or private actions in response to alleged anticompetitive practices.)

There are many reasons to believe that Mexican antitrust law is not enforced as actively or consistently as U.S. law. First, the Mexican regulatory authorities have much fewer resources to call on than do U.S. regulators: the CFC has a staff of roughly 160 employees, whereas the FTC and DOJ combined have a staff of over 1800. This excludes those resources in the United States at the state level used to enforce state antitrust law and the wealth of resources at the plaintiffs' bar that can be used to bring private actions in the United States. This disparity in resources is arguably in direct contrast to the relative need for antitrust enforcement in the two countries. The U.S. economy, after all, has operated in a fairly effectively enforced antitrust environment for decades. In contrast, the Mexican economy until 1993 operated in an environment where cartels were actively encouraged. Thus, the existing level of corporate concentration in Mexico is much higher than in the United States. In 1992, for example, the twenty-five largest Mexican companies accounted for almost half of Mexico's GDP. Cemex, the large Mexican cement company, accounted for over 60 percent of the domestic Mexican cement market, and the three largest Mexican banks accounted for almost 75 percent of total funds in the Mexican banking system.<sup>25</sup> These are much higher concentration levels than exist in the United States. This level of concentration in so many industries suggests that there may be a greater need for antitrust enforcement in Mexico than the United States, although concentration is, of course, only one indication of potential antitrust issues.

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23. See G. Aguilar, *El Deficil Art de Legitimar Monopolios*, EL FINANCIERO 35 (1995); Hernández, *supra* note 4.

24. See Hernández, *supra* note 4.

25. See Newberg, *supra* note 10, at 603.

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Second, and probably most important, is the weaker public acceptance and political will in Mexico behind the idea that there are large social benefits from competition. In the United States, there is a longstanding and widely held belief in the benefits of competition, consistent with the deeply rooted emphasis on individualism and entrepreneurial initiative. In contrast, the Mexican commitment to competition is only a recent phenomenon. The political will and public acceptance of the social benefits of such a commitment are not nearly as strong as in the United States, and the regulatory bodies charged with enforcing antitrust policy must act within the political and social constraints that this imposes on them. Thus, while the powers given the CFC look adequate enough on paper to enforce antitrust law effectively, it is too early to tell whether the political consensus behind competition will be strong enough to allow the written law to be enforced appropriately.

## V. The Dynamic Nature of Antitrust Policy and Directions for the Future

As stated earlier, antitrust policy in the United States has evolved as the interpretation of the meaning and content of the various antitrust acts has changed in response to the changing nature of the U.S. economy, the increasing influence of economics on antitrust policy, and the changing understanding of the economics of competition. The increasing influence of economics on antitrust policy can be dated from the FTC Act of 1914, which established the FTC and had the aim of bringing economic expertise to the application of general competition and antitrust law. Since then, the influence of economists on antitrust policy in the United States has continued to grow, with economists holding high positions both at the FTC and the Antitrust Department of the Department of Justice, and both agencies' staffs consisting of a large number of economists.

The influence of economics on antitrust law in the United States is important because as different economic principles have gained ascendancy, the way in which antitrust law has been applied has generally followed. For example, in the middle of the twentieth century, when economic theory considered the degree of concentration in a market to be very significant and often even determinative of market power (regardless of entry conditions or other factors), so did antitrust policy. As that view has changed, so has the interpretation and application of antitrust policy by the regulatory authorities.<sup>26</sup>

That evolution continues today, primarily sparked by large-scale changes in the U.S. economy. The increasing globalization of markets, rapid technological progress, and other changes in the U.S. economy, have also resulted in new or changing interpretations of U.S. antitrust policy. For example, in 1995, new antitrust guidelines for companies' international operations were issued by the FTC and Department of Justice in response to the increasing number of firms involved in international business.<sup>27</sup>

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26. Wise, *supra* note 13.

27. See U.S. Department of Justice and Federal Trade Commission, Antitrust Enforcement Guidelines for International Operations (Apr. 5, 1995), available at <http://www.usdoj.gov/atr/public/guidelines/internat.htm>.

In addition, new guidelines have also been issued regarding the licensing of Intellectual Property in response to the growing importance of patents, copyrights, and trade secrets as corporate assets.<sup>28</sup> Finally, new guidelines have recently been issued to address the increasing number and sophistication of affiliations between firms (joint ventures, strategic alliances, etc.) that have become an important new way for companies to take advantage of research and development of new products.<sup>29</sup>

This recent evolution of U.S. antitrust policy provides some clues as to the issues Mexican antitrust policy will have to address as Mexico's economy continues to develop and its antitrust authority becomes more sophisticated and mature. Issues such as intellectual property, the increasing complexity of affiliations between firms, and the increasing importance of firm's international operations will all be issues that the CFC will have to address in terms of how it enforces Mexican antitrust law.

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28. See U.S. Department of Justice and Federal Trade Commission, Antitrust Guidelines for the Licensing of Intellectual Property (Apr. 6, 1995), available at <http://www.usdoj.gov/atr/public/guidelines/ipguide.htm>.

29. See U.S. Department of Justice and Federal Trade Commission, Antitrust Guidelines for Collaborations Among Competitors (Apr. 7, 2000), available at <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>.

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