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Congress Toughens Anti-Monopoly Laws

by LADB Staff
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In late April, the Mexican Congress approved comprehensive reforms to the country's anti-monopoly laws (Ley Federal de Competencia Economica, LFCE), creating new tools for the government's anti-trust regulator (Comision Federal de Competencia, CFC) to control the huge conglomerates that dominate many sectors of the economy. The legislation was backed by all three major political parties and approved by huge majorities in both the Chamber of Deputies and the Senate. Proponents of the bill were concerned that Mexico's weak anti-trust laws were helping foment monopolies in telecommunications, cement, and other sectors.

The overwhelming congressional support for the anti-trust law is ironic, as legislators recently approved a bill that consolidates the control of Mexico's two largest networks over the broadcast waves (see SourceMex, 2006-04-05). Several senators who opposed the bill have taken the legislation to Mexico's highest court (Suprema Corte de Justicia de la Nacion, SCJN), which agreed to determine whether the bill violates the Mexican Constitution.

Reforms close loopholes, create stiff fines

Under the newly approved anti-trust reforms, a company found to inhibit competition could face fines of as large as 60 million pesos (US$5.5 billion) for a first violation and as much as 10% of its assets for repeated offenses. Furthermore, the law closes loopholes that in the past allowed many companies to avoid paying fines for anti-competitive practices. By some estimates, companies have paid only about 15% of the anti-trust fines imposed in the past 12 years.

The new law also establishes protection for whistle-blowers and allows the CFC to conduct searches as part of its investigations. A provision in the bill also eliminates ambiguities that companies have used to win repeated injunctions against the commission. "Mexico has been a paradise for creating and sustaining unhealthy monopoly practices," said Mexico City political scientist Ricardo Raphael de la Madrid, a researcher at the Instituto Tecnologico de Estudios Superiores de Monterrey (ITESM).

Another key provision makes the CFC's rulings binding on other regulators, such as the Comision Federal de Telecomunicaciones (COFETEL). The telecommunications regulator has come under strong criticism for allowing telephone giant TELMEX to expand its market with little or no control. TELMEX controls 95% of all local lines, blocking other potential rivals from entering the land-based telephone market.

"TELMEX is an example of a company that faces very little competition. It dominates the market, sets its own prices, leases its infrastructure to everyone else, and charges to carry signals for others," said the legislation's main proponent, Deputy Jorge Luis Hinojosa Moreno of the center-right Partido Accion Nacional (PAN). "It will now be very easy to prove that the company is improperly displacing competitors or controlling the market."

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The reforms to the LFCE could help Televisa and TV Azteca at the expense of TELMEX, allowing the giant broadcasting companies to provide telephone service. Mexico's monopolistic practices date back to the 1950s, when the government, controlled by the former governing Partido Revolucionario Institucional (PRI), promoted a policy to reduce reliance on imports by building up strong companies in key sectors of the economy. "Through the years, the PRI-controlled government kept a firm hand in the economy through state-owned companies and chummy relationships with some pro-regime entrepreneurs, who were sheltered from competition," said the Los Angeles Times in a special report on Mexico's traditional monopolies.

Long-time Televisa executive Emilio Azcarraga Milmo, who died in 1997, once publicly declared himself "a soldier of the president and at the service of the PRI." He reportedly pledged more than US$50 million at a PRI fundraiser as a token of his gratitude for Televisa's privileged status.

In addition to the telephone and broadcast industries, other sectors where one or two companies dominate the market include cement (CEMEX and Holcim Apasco), beer (Grupo Modelo and Cerveceria Cuauhtemoc Moctezuma), and tortillas and corn meal (Grupo Industrial Maseca and Grupo Minsa). The dominant companies in each of these industries have found ways to keep competitors out of their markets. For example, Modelo and Cuauhtemoc Moctezuma lobbied strongly for a new environmental tax on nonreturnable beer bottles, which prevented imported brands from gaining a foothold in the domestic beer market. Importers lack the collection network of the domestic giants and therefore can only sell their product in nonreturnable bottles.

CEMEX also used its close relationship with the government to block foreign competition. In 2005, at the behest of CEMEX, Mexican authorities turned away a cargo ship loaded with 26,000 tons of Russian cement. Corporate interests fail to derail initiative The anti-trust legislation was approved despite heavy lobbying from the executives of the affected companies. The effort was led by Carlos Slim Helu, whose holdings include TELMEX and retail-financial conglomerate Grupo Carso. Slim has amassed a fortune of about US$30 billion, partly because of profits obtained through TELMEX operations in Mexico and other countries. He ranked third this year on Forbes magazine's annual list of the world's wealthiest individuals (see SourceMex, 2006-03-29).

TELMEX executive Jaime Chico Pardo and Grupo Carso director Arturo Elias Ayub were among those who met with key legislators in an attempt to change some provisions in the bill. One argument they presented was that charging a penalty of 10% of a company's assets for repeated violations was too severe and could force some entities into bankruptcy. "This would put any company at financial risk," Grupo Carso said in a statement. Opponents also raised concerns that the new legislation failed to guarantee that companies would get a fair hearing on the charges against them. "It is important that this law be more precise to avoid discretionality," said Carso.

The CFC, which promoted the initiative, responded that the new law was not created to damage any company but to prevent monopolistic practices. "If these entities do not want to face these sanctions, they should avoid any practices that inhibit competition," said CFC president Eduardo Perez Motta. Perez Motta has in the past criticized efforts by the large conglomerates to block the anti-trust legislation. "It's incredible that these [business owners] are fighting to maintain their

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privileges," Motta said at a news conference a few weeks before the Chamber of Deputies passed the bill. "They don't have the public justification to do it, but that's what they are doing...[using] all manner of sophistry, legal and otherwise."

The CFC president commended legislators from both houses for not succumbing to pressure from the large companies to water down the legislation. He acknowledged, however, that the upcoming presidential and congressional elections might have been a factor in the lawmakers' decision to pass a tough anti-trust bill. Perez Motta said the law also allows his agency to monitor government-sanctioned monopolies like PEMEX and the Comision Federal de Electricidad (CFE) for anti-competitive practices. "They may be authorized monopolies, but they won't be able to engage in anti-competitive practices," said the CFC president.

Supreme Court agrees to review broadcast law

It is not clear what impact the new anti-trust law will have on the recently approved reforms to the Ley Federal de Radio y Television (LEFERYT), which gives the major television and radio networks the rights to control new digital technology (see SourceMex, 2006-04-05). The measure was approved by a wide margin in the Chamber of Deputies in December.

The margin of support was smaller in the Senate, but still large enough to ensure easy approval. Several senators from the three major parties opposed the bill from the beginning, vowing to fight the measure even after its approval. The senators, led by Javier Corral Jurado of the PAN and Manuel Bartlett Diaz of the PRI, contend that the legislation is unconstitutional because it blocks access to the new technology to a wider segment of society.

The two senators managed to convince 45 other colleagues to sign a legal complaint brought before the SCJN. After reviewing the complaint, the court agreed to take up the issue, assigning the case to Justice Sergio Salvador Aguirre Anguiano. Justice Genaro Gongora Pimentel, who announced the decision, gave the Fox administration and the two legislative chambers 15 days to present arguments relevant to the case.

Bartlett said he was certain that Televisa and TV Azteca executives would try to pressure the court in the same way that they did the Chamber of Deputies and the Senate. "What they will find is a Supreme Court that does not have to worry about elections, is not looking for TV spots, and does not have political interests," said the PRI senator. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on May 10, reported at 10.85 pesos per US$1.00] (Sources: Los Angeles Times, 04/16/06; El Economista, 04/21/06, 04/25/06, 05/10/06; El Financiero, 04/21/06, 04/25/06, 04/26/06, 05/02/06, 05/10/06; La Crisis, 04/25/06, 05/02/06; La Jornada, 04/25/06, 04/26/06, 04/28/06, 05/03/06, 05/10/06; Milenio Diario, 04/25-27/06, 05/10/06; Reforma, 04/25-28/06, 05/02/06, 05/10/06; Excelsior, 04/26/06, 04/28/06, 05/04/06, 05/10/06; The New York Times, 04/28/06; Bloomberg news service, 04/28/06, 05/04/06; El Universal, 04/26/06, 04/27/06, 05/01/06, 05/10/06; Agencia de noticias Proceso, 05/09/06; La Cronica de Hoy, 05/10/06)

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