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# Anti-monopoly Agency Rejects New Effort by Two Major Railroads to Merge

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Two of Mexico's largest railroad companies, Ferrocarril Mexicano (FERROMEX) and Ferrocarril del Sur (FERROSUR), failed in yet another attempt to merge their operations into a single entity. In a ruling announced Nov. 15, the federal anti-monopoly agency (Comision Federal de Competencia, CFC) reaffirmed an earlier decision to turn down the proposal by the two railroads to create a single operating unit in partnership with financial-services company Grupo Inbursa. T

he proposed company would have been called Infraestructura y Transportes Mexico (ITM). The CFC, also known as COFECO, voted against a similar effort by the two companies to merge in 2002 (see SourceMex, 2002-05-22). FERROSUR is a subsidiary of mining company Grupo Mexico and FERROMEX is a unit of business conglomerate Grupo Carso, controlled by Mexican billionaire Carlos Slim Helu.

Under the latest plan, ITM would have been traded on the Mexican stock exchange (Bolsa Mexicana de Valores, BMV). According to a plan presented to the BMV, Grupo Mexico would have controlled about 75% of the new company, while Carso would have held about 16.75% and Inbursa about 8.25%. The CFC had already voted 3-2 in June of this year to turn down the plan, but the process allowed for an appeal.

Slim and FERROMEX director German Larrea had been confident that they could sway the CFC because two members of the commission, Miguel Flores and Agustin Navarro, had initially voted in their favor. FERROMEX and FERROSUR offered certain concessions to the government to make the merger more palatable, including reduced control over the Valle de Mexico cargo terminal near Mexico City and increased access to the regional Chiapas-Mayab railroad in the port of Veracruz. "With this window of opportunity, [Slim and Larrea] worked to make the proposal more appealing," said Dario Celis Estrada, a columnist for the Mexico City daily business newspaper El Economista.

After reviewing the appeal for several weeks, however, the commission voted 4-0 against the merger, with Navarro absent from the proceedings. In issuing its unanimous decision in November, the CFC hinted that the concessions offered by the two railroads were insufficient to foster competition. "Had we allowed this concentration in the rail-transport market, the two companies would have gained the power to divert traffic, displace competitors, and impose conditions on users," said CFC president Eduardo Perez Motta.

## *Competitor lobbied hard against merger*

A third major railroad company, Kansas City Southern Mexico (KCSM), had lobbied hard against the merger. KCSM was formed in 2004, when US railroad Kansas City Southern gained majority control of Transportacion Ferroviaria Mexicana (TFM) (see SourceMex, 2003-08-07 and 2005-01-05).

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In opposing the merger, KSCM argued that the merger would have given FERROSUR an unfair advantage at shipping points in Puebla and Veracruz. "This merger is going to create monopolistic practices that would affect the ability of our company to operate," said KCSM president Jose Zozaya.

KCSM went so far as to threaten legal action if the merger were approved, including a request that the government return some of the capital invested when the TFM rail concession was approved in the mid-1990s. "The concession was the result of the government's decision to create three major competing lines, and any changes would imply a major modification of the original plan," said Zozaya.

The CFC agreed with this position, which was a major reason why the merger proposal was turned down. "The railroad companies contend that the rail market can operate more efficiently if companies merge operations. If this were true, we would have privatized [Ferrocarriles Nacionales, FERRONALES] as a single company," said Perez Motta, in reference to the government's decision to sell off the national railroad in the 1990s (see SourceMex, 1995-05-03 and 1999-09-15).

KSCM officials said they are also pushing for the CFC to levy a fine equivalent to US$60 million against FERROMEX and FERROSUR for monopolistic practices taken in preparation for a possible merger, particularly Grupo Mexico's purchase of the shares that Grupo Carso and Inbursa held in FERROSUR. The transaction was said to be valued at 3.26 billion pesos (US$296 million). "We will not be satisfied with a simple rejection of the merger," said KCSM legal adviser Vicente Corta. "We will also demand that the two companies receive sanctions and that the transaction that took place at the end of last year be reversed."

FERROMEX and its parent company Grupo Mexico are seeking to reverse the CFC's decision, possibly bringing the matter to the courts. Among other things, FERROMEX questioned the CFC's decision to proceed with the vote on a day that Navarro was not present. The CFC commissioner traveled to the US to accompany his father, who was to receive an award. "He was one of those who supported the merger, and we find it strange that the decision was taken without him," said FERROMEX president Alfredo Casar. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Nov. 29, reported at 11.0 pesos per US$1.00] (Sources: La Cronica de Hoy, 08/02/06; Excelsior, 11/09/06; El Financiero, 10/16/06, 10/27/06, 11/10/06; Notimex, 07/31/06, 08/01/06, 11/15/06; El Economista, 06/02/06, 08/02/06, 11/09/06, 11/10/06, 11/16/06; Reforma, 08/02/06, 11/09/06, 11/10/06, 11/16/06; La Jornada, 11/16/06; El Universal, 11/09/06, 11/16/06, 11/17/06; Milenio Diario, 08/02/06, 11/16/06, 11/17/06)

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