Distinguished Speaker Lecture Series
Inaugural Lecture

"The Challenge of Starting a Competition Policy in a Market Economy: the Experience of Mexico and the International Competition Network"

by

Mr. Eduardo Pérez Motta

Former Chairman of the Mexican Federal Competition Commission and
Former Chair of the International Competition Network

Lack of competition has long been a major obstacle to economic growth in Mexico …

BANCO DE MEXICO	"Lack of competition, particularly in the provision of basic inputs for production … propitiates the deficient performance of other factors. Elimination of existing barriers to entry is urgent."
IMCO	"To stimulate firms' productivity and improve their competitiveness more competition in markets is required."
The World Bank	"Mexico's competition environment, regulatory framework and investment climate are major priority areas to increase Mexico's competitiveness."
OECD	"Mexico needs stronger competition and better regulation to boost productivity and growth."
International Monetary Fund	"Strengthening competition (…) should also have high priority, and –as international experience has shown- may also facilitate reform in other areas as well as helping equity."
World Economic Forum	"Mexico's goods markets suffer from inadequate (foreign and domestic) competition conditions, with overregulated and rather closed key economic sectors. Only by addressing these challenges can Mexico begin to fully leverage its important competitive advantages."

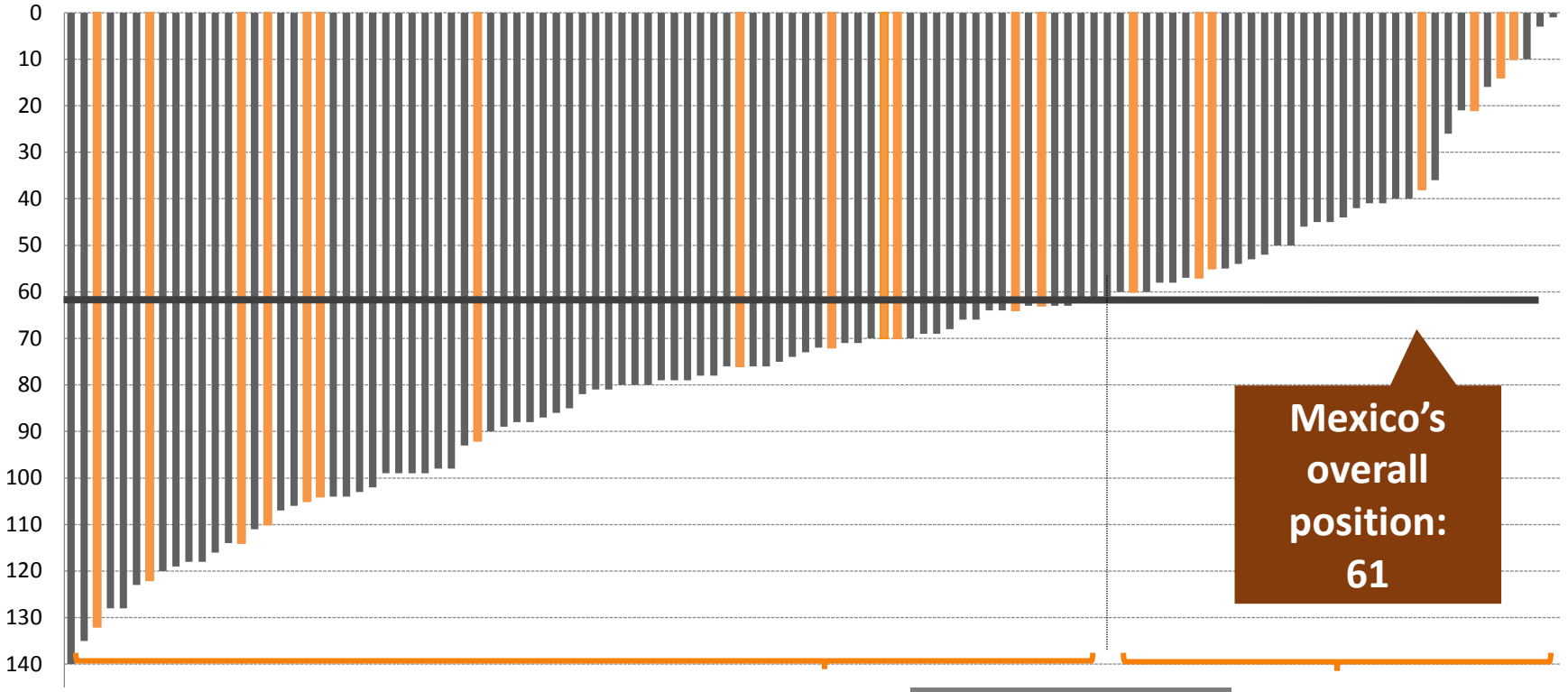
Source: Banxico, Presentation by Governor Guillermo Ortiz to the British Chamber of Commerce, December 6, 2007
IMCO, *Punto de inflexión: Situación de la competitividad de México 2006*
World Bank, *Mexico 2006-2012: creating the foundations for equitable growth*, June 2007
OECD, *Economic survey of Mexico*, 2007.
IMF, *Mexico: Staff report for the 2007 Article IV consultation*
WEF, *The Global Competitiveness Report 2007-2008*.

… holding back overall competitiveness …

WEF Global Competitiveness Index by variable

Sorted from worst to best position for Mexico, 2013-2014

Competition-related variables



Total variables
Competition-related variables

79
13

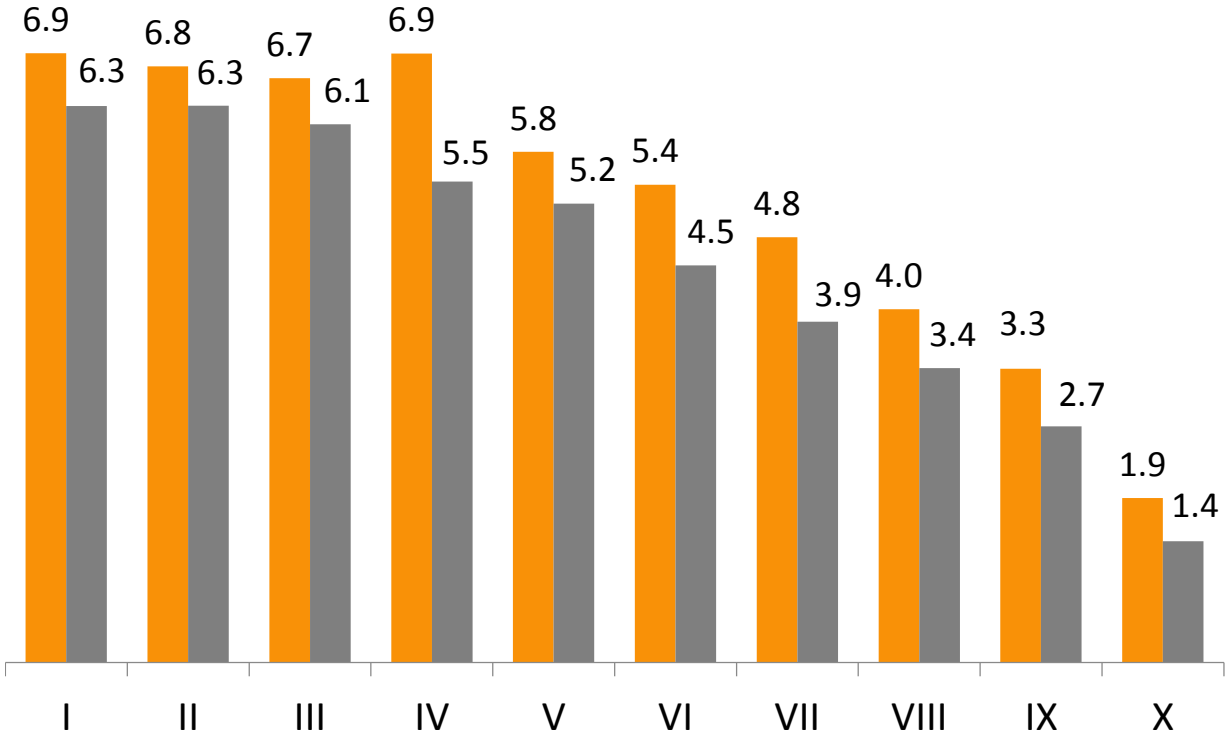
Competition variables push down overall position

35
7

Source: World Economic Forum, *The Global Competitiveness Report 2013-2014*; own analysis.

… and reducing real income, especially for the poorest population

Consumer welfare loss due to competition problems in seven goods markets*
% of total expenditure by decile of households

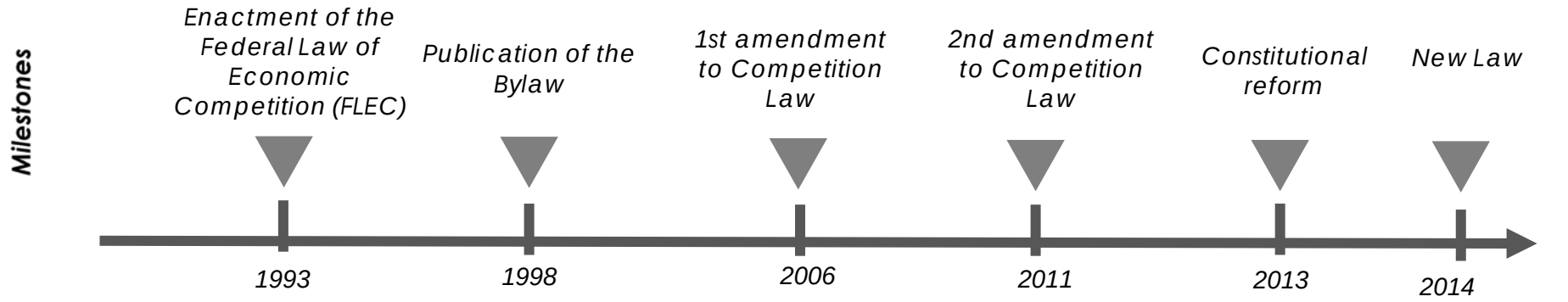


Potential income increase for promoting competition in these markets

* Maize tortillas; soft drinks, juices and water; beer; pharmaceuticals; milk; processed meat; and poultry.

Source: Own analysis based on Carlos M. Urzúa (2008). "Evaluación de los efectos distributivos y espaciales de las empresas con poder de mercado en México", ITESM-CCM and INEGI, *Encuesta Nacional de Ingresos y Gastos de los Hogares 2006.*

Competition policy in Mexico has just begun to emerge as a force …



Main issues

- Anti-competitive conduct legal
- Artificial barriers to entry as policy

- Lack of competition culture
- Lack of specialization
- No legal precedents

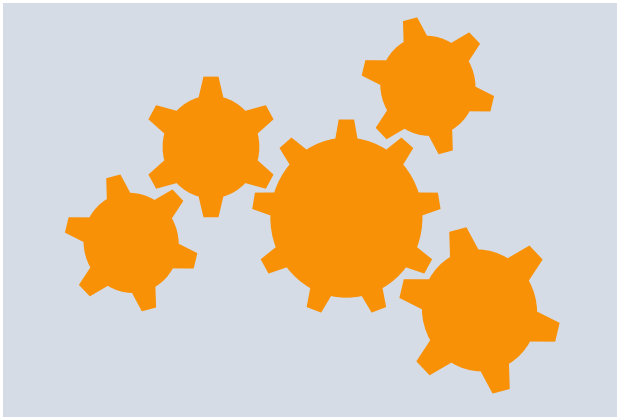
- Emerging internal procedures
- First steps towards judicial understanding
- Expansion of the Commission

- Best International practices
- Increased engagement with other regulators
- Structural problems in the markets

- Higher sanctions
- Increased success in judicial review
- Effective leniency program

- Autonomy and new powers
- Regulatory provisions
- Separation of investigation from decision-making

… with the benefit of building on a solid analytical and institutional platform



Analytical framework

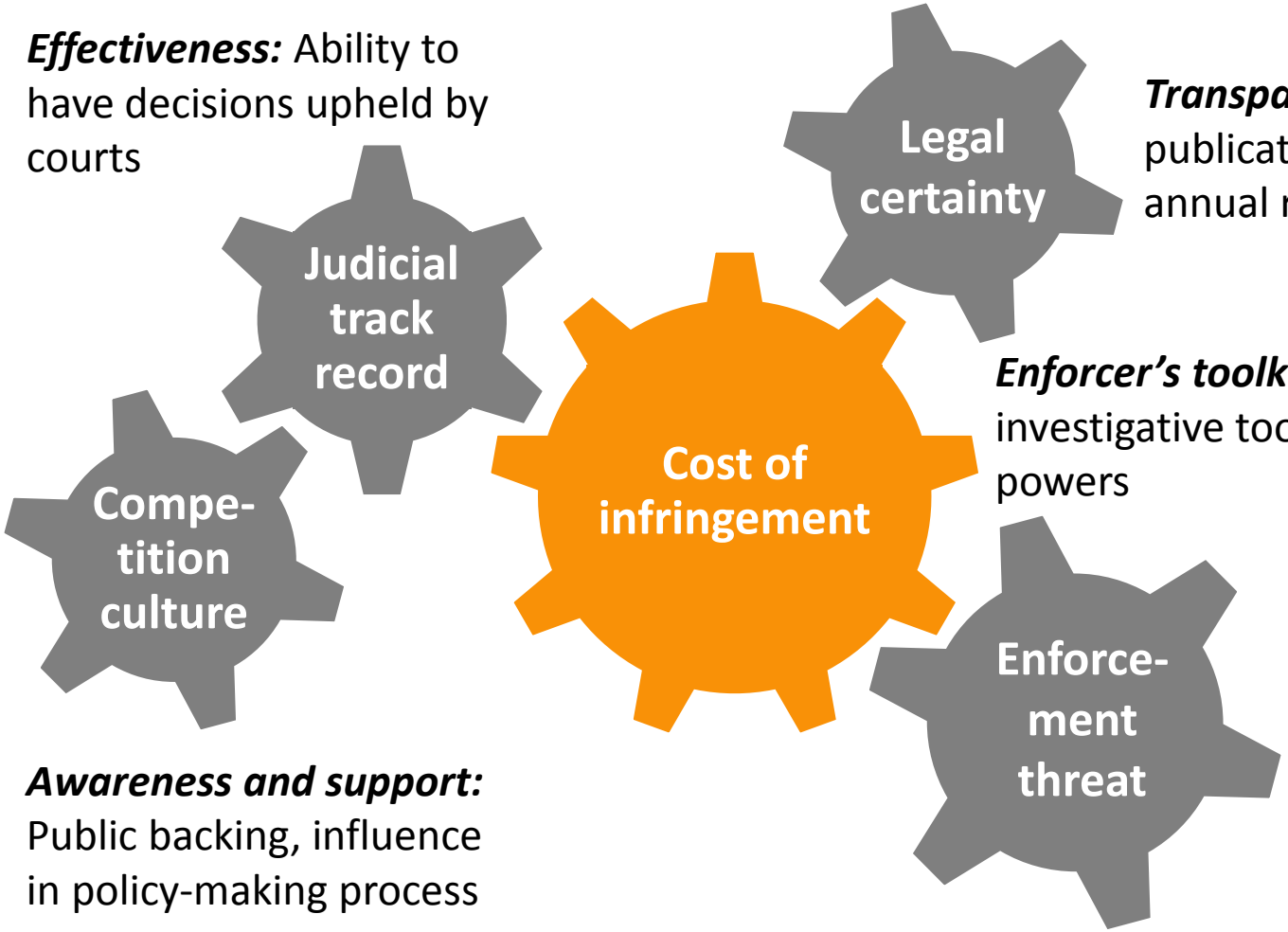
- Economic efficiency sole **objective** of law
- Best-practice **analytical standards**:
  - ✓ *Per se prohibition of hard-core cartels*
  - ✓ *Unilateral conduct subject to rule of reason*
  - ✓ *Previous authorization for mergers*

Institutional setting

- **Constitutional autonomous body** (2013), independent in its resolutions and operation
- **Collegiate decisions** taken by 7-person Plenum
- Internal **checks and balances**
- Creation of an **Investigation Authority**

Effectiveness of competition policy relies on its ability to successfully dissuade anticompetitive conduct

Effectiveness: Ability to have decisions upheld by courts



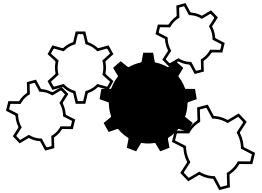
Transparency: Guidelines, publication of decisions, annual reports

Enforcer's toolkit: Sanctions, investigative tools, suspension powers

Track record: Proven willingness to apply law

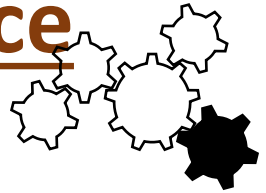
Awareness and support: Public backing, influence in policy-making process

Over its 20 years of existence, the Commission acquired an enhanced enforcement toolkit …



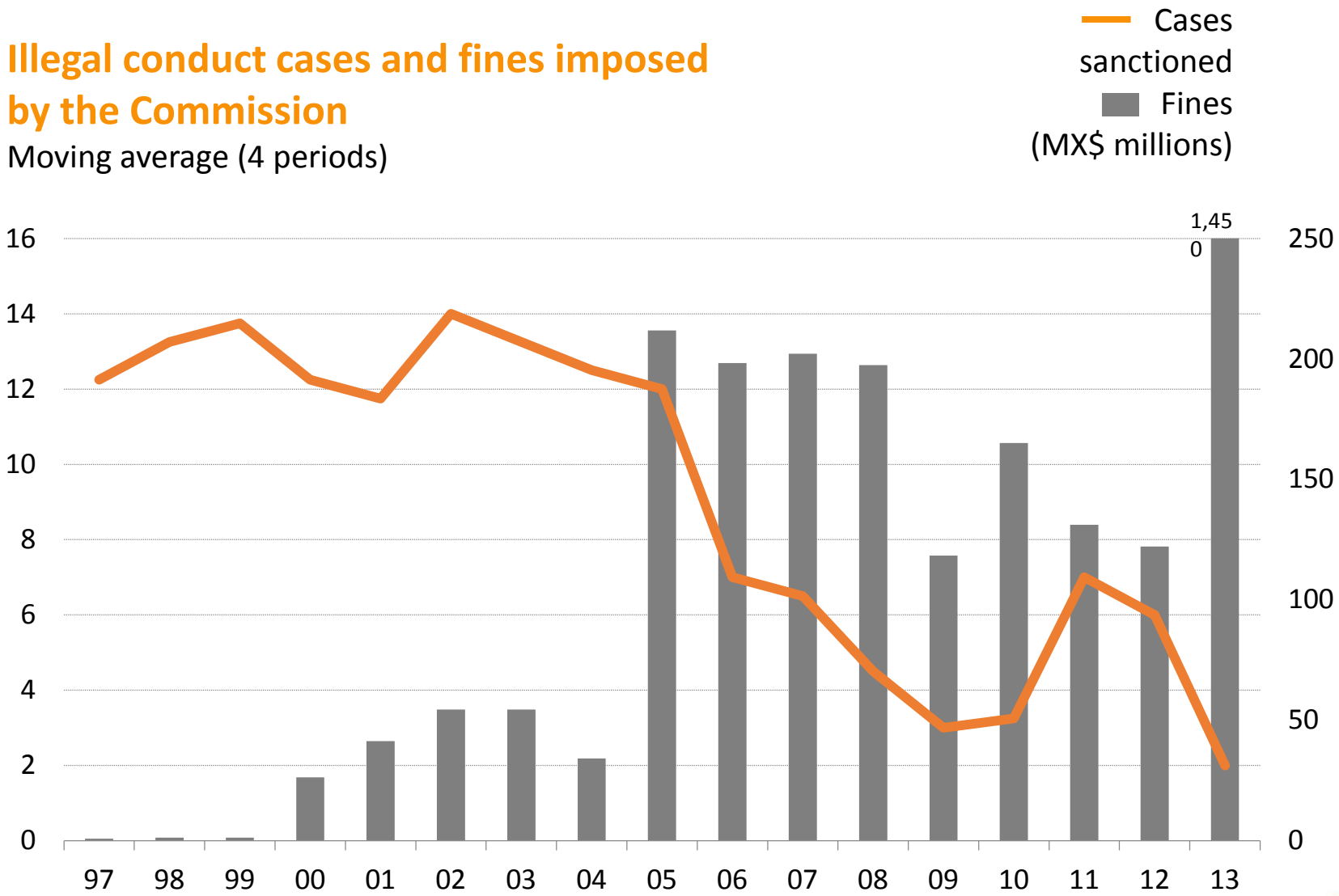
	2006	2011	2013
Maximum fines	US$7 million	10% of turnover	10% of turnover
Criminal sanctions	None	3-10 years (cartels)	5-10 years (cartels)
On-premises searches	Pre-announced	Surprise	Requirement to publish a new investigation is eliminated
Cautionary measures	None	Suspension if risk of irreparable harm to competition	Investigative Authority may request cautionary measures
Settlements	Uncertain, hard to apply	Clearer powers, easier to apply	More robust setup for unilateral conduct cases

…and demonstrated willingness to enforce the law aggressively …

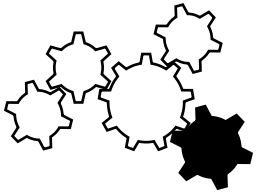


Illegal conduct cases and fines imposed by the Commission

Moving average (4 periods)



…focusing on high-visibility cases, given the dilemma on how to allocate scarce resources…



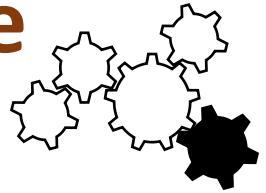
2011

US$1 billion fine to Mexico's biggest mobile phone operator for abuse of dominance related to interconnection fees

Instrumental in getting across the message that the Commission is serious about law enforcement

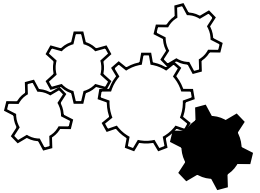
- Telcel proposed to settle through commitments
- Settlement that secured 62% drop in mobile termination rates
- US$6 billion in annual benefits for consumers (OECD)

… bringing successful cases against abuse of dominance…



Telecommunications: Telmex	**Carbonated beverages:** Coca-Cola	**Beer market:** Modelo & Cuauhtemoc Moctezuma
2013: Fined US$52 million for denying rival Axtel network access • *Dedicated links – necessary to provide service to end users* • *Denial of service to Axtel in 32 cities and 6 inter-urban routes*	2005: Fined US$1 million for exclusive dealing • *72% market share* • *Prohibited retailers selling and advertising competitors' products* • *Bottlers paid for exclusivity rights, granted discounts, paid for electricity, provided vending machines to display Coca-Cola products*	2013: Biggest brewers agreed to conditions that include limiting exclusivity deals in convenience stores and restaurants • *Artisanal beer brewed by small-scale beer makers will have open and unrestricted access*

… fighting bid rigging and cartels…



Pharmaceuticals:
Mexican Institute of Social Security (IMSS)

2010: Six pharmaceutical companies fined US$12.6 million *(maximum amount allowed at that time in Mexico)*

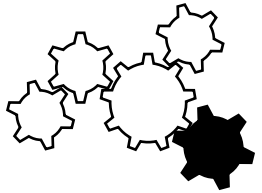
- *Mexican 3rd largest public purchaser & Latin American largest single purchaser*
- *Identification of patterns displaying similar positions and prices – indicating collusive behavior*

Basic consumer goods:
Tortilla producers

2012: Fine US$12 thousand for price fixing and market allocation

- *Maize tortillas: integral part of food consumption in Mexico*
- *9% of poorest households' food expenditure*

… and reviewing mergers that could lessen or prevent competition



Paint market: Comex-Sherwin Williams	**Air transport:** Mexicana-Aeromexico	**Infant milk formulas:** Nestle-Pfizer
2013: US$ 2.3 billion transaction between Comex and Sherwin Williams blocked • *Comex: the largest paint maker in Mexico* • *Combined market share of 48% to 58%* • *Able to set artificially high prices and commit anticompetitive practices*	2007: main flag carriers' merger blocked: Mexicana and Aeromexico • *Routes represented 50.5% of domestic market* • *Proposed remedies didn't addressed anticompetitive issues*	2012: Acquisition of Pfizer Nutrition by Nestlé blocked • *Combined market share 70% of sales volume (formula stage 1)* • *High consumers loyalty* • *Prices increases in 2.9% to 11% in milk formulas* • *Remedies: assets divestment*

Commission also improved its track record in judicial review of its decisions…

Strategy

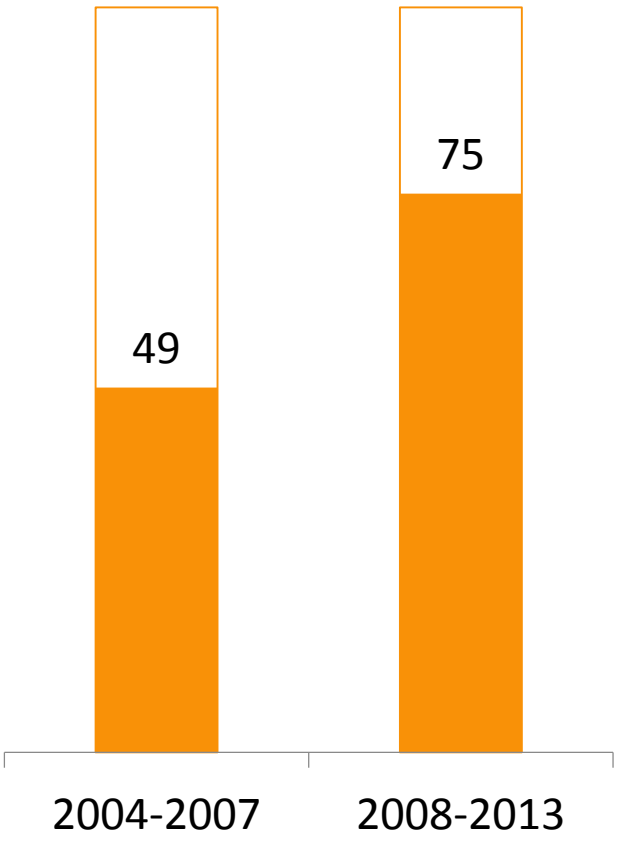
1. ***Bolstering reasoning in CFC decisions***
   - Reallocation of resources to technical units
   - Deepening of multidisciplinary approach

2. ***Improving communication of reasoning***
   - More attention to drafting of decisions
   - Added emphasis on oral statements

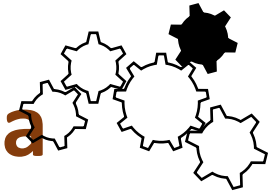
3. ***Mutual technical training***
   - Judges: Workshops with international peers
     ⇒ better understanding of technical aspects
   - Commission: Conferences imparted by judges
     ⇒ Internalization of judicial criteria

4. ***Added certainty due to reforms***
   - Procedures and standards modified to conform to judicial rulings

% of Commission's decisions upheld by courts



… and provided added legal certainty about enforcement standards and criteria



		Actions
1	***Guidelines and criteria***	7 Documents published (ex. market definition & power, leniency, fining)
2	***Access to Commission's documents***	Search engine (complete history of CFC decisions)
3	***Status of ongoing procedures***	Status (phase, period) displayed in search engine
4	***Plenum's decision-making process***	Sense of vote by each Commissioner published
5	***Oral hearings***	Included in 2011 reforms, procedure at design stage
6	***Access to case files***	Impossible for confidentiality reasons

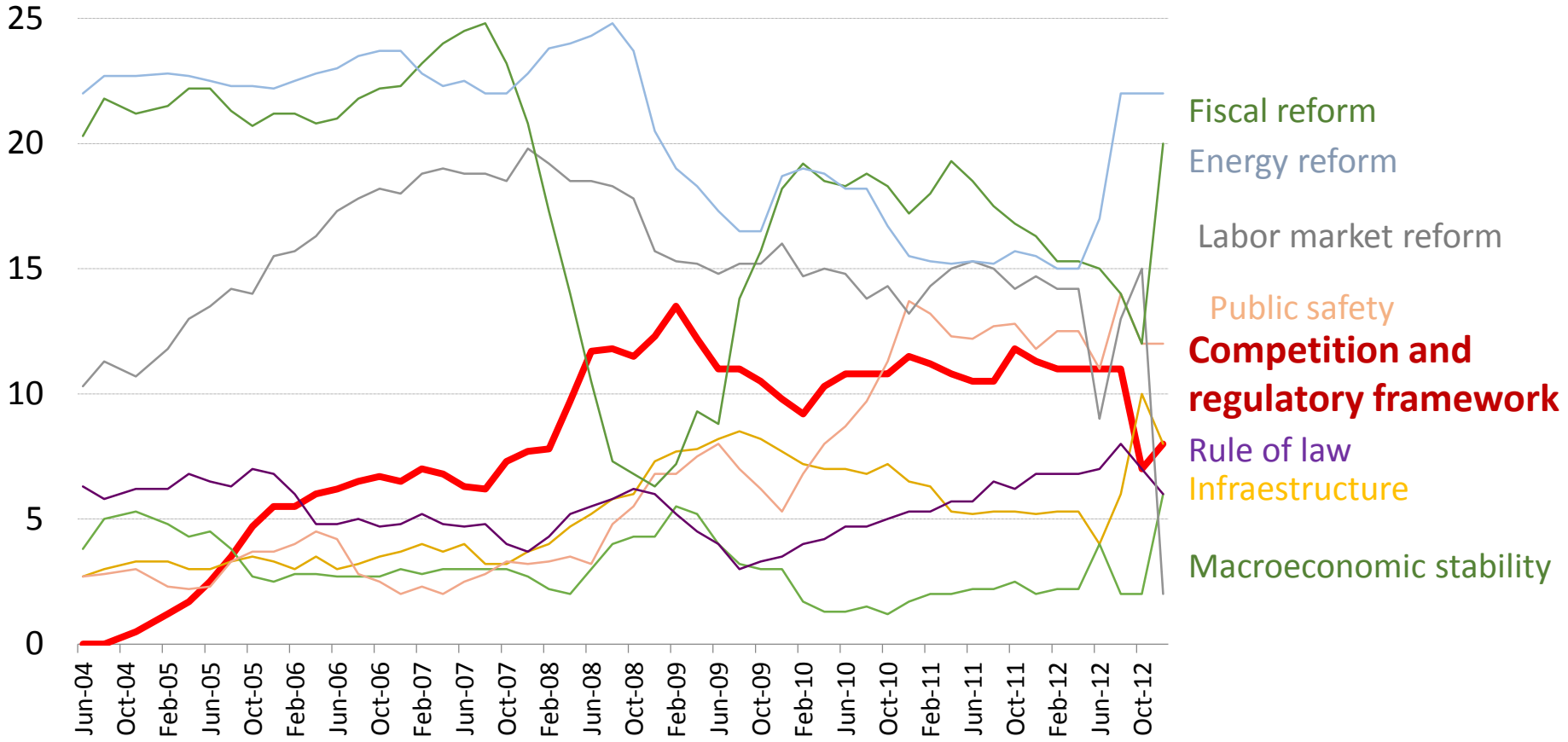
2011 Winner, Innovation in Govt. Transparency Award
(awarded by IFAI, WB)

The Commission has also worked to foster competition culture in Mexico …

Main policies to foster higher levels of investment in Mexico

Survey of private sector economists

% of responses, moving average (six periods)



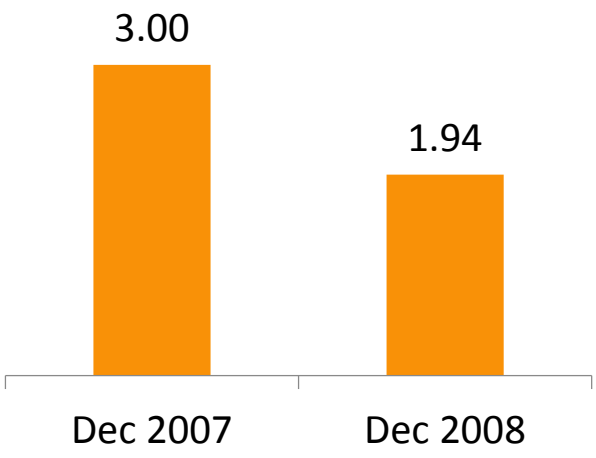
Source: Banco de México, *Encuestas sobre las expectativas de los especialistas en economía del sector privado* 2003-2012

… and to promote pro-competitive regulation

Individual pensions

Elimination of fees on inflows

Average fee
% of assets annually



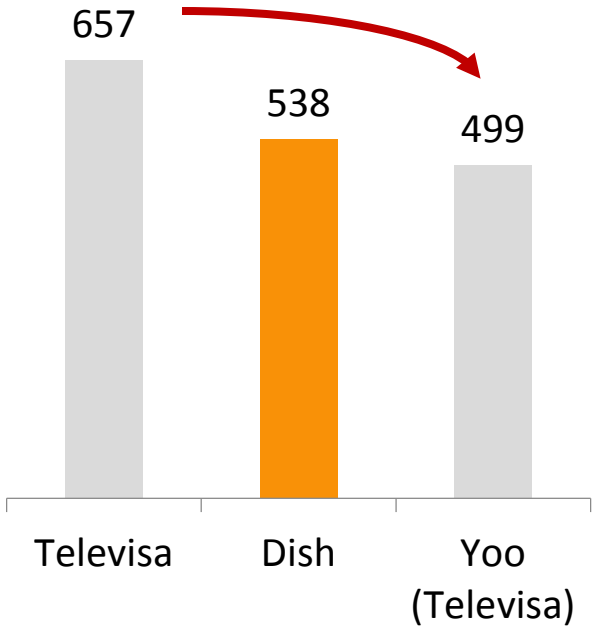
688.7 millon pesos in savings for workers

Source: CONSAR, *Situación del Sistema de Ahorro para el Retiro*, April 2009

Telecommunications

Harnessing convergence for competition

Price, triple-play package
Pesos/month

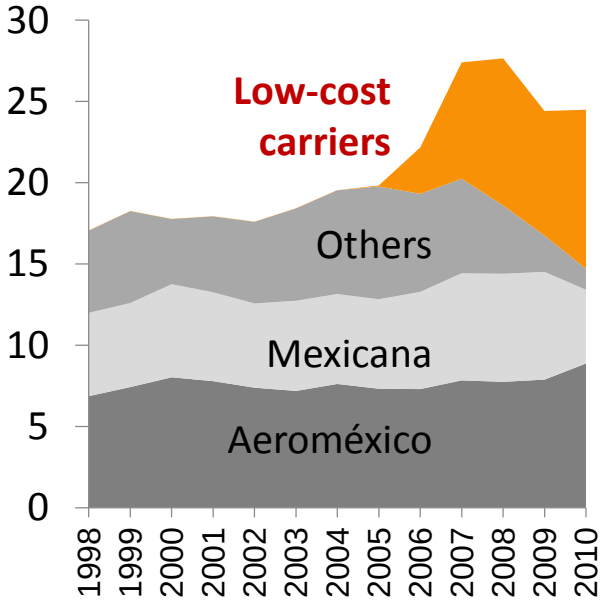


Source: El Semanario, *Audiencia, vienen buenas noticias*, 21/5/2009, p.7

Airlines

Authorization of entry for low-cost carriers

Domestic flight passengers
Millions



Source: Own calculations with data from SCT-DGAC, 1998 - 2010

Opinions have been successful in influencing the regulatory framework and for including competition principles in public policies

NON EXHAUSTIVE

Mexican experience

Issue	Recommendations	Results
Foreign trade	• Simplify & improve transparency of custom's procedures • Reduce & simplify tariff structure	✓ Decree to simplify custom 's framework and lower customs duty
Airports	• Promote pro-competitive criteria in slots allocation, fuel supply and establish efficient airport tariffs	✓ Prevention of anticompetitive allocation of slots
Public procurement	• Implementation of the Guidelines to Fight Bid Rigging in Public Procurement (OECD)	✓ Mexican Institute for Social Security saved aprox. USD 4,460 million (2006-2011)
Banking	• Guaranteeing competitive access to essential banking network infrastructure; facilitate transfers and accounts switching and lower barriers	✓ Amendments to the Credit Institutions Law
Competition Law	• Grant the authority with effective tools to investigate and sanction violations to law	✓ Amendments to the Competition Law

There are some lessons Mexico learned from its advocacy work

1	***First build public awareness on the need for reform***	→	Get allies (however loose) before embarking on reform
2	***Make sure discussion is public***	→	The most persuasive arguments against reform can't be made in public
3	***Keep the language as plain as possible***	→	It has to be black vs white. Grey means no reform
4	***Understand how the media works***	→	Use media to ensure that competition issues are kept on the public agenda
5	***Invoke international practice and let foreign experts make your point***	→	It's not you who is crazy – and there is another opinion to attest to it
6	***Do the homework and the legwork***	→	Nobody wants this as much as you do - act accordingly
7	***Quantify benefits/costs of recommendations***	→	Cost/benefit figures are easier to understand that economic/legal explanations
8	***Pick your battles***	→	Do your homework before choosing your fights!

In spite of significant progress over the past years, competition policy in Mexico still faces daunting challenges

- **Economic agents** still need to understand the importance of competition – and the costs of illegal conduct
- **The agency** has to keep building a track record that allows it to successfully dissuade anticompetitive conduct, especially in a context of extremely scarce resources
- **The agency** needs to enhance guidance on its methods and standards, to help agents draw the line between legal and illegal conduct;
- **Judicial review** has to become much more streamlined while fully guaranteeing individuals' rights;
- **Government** as a whole (and at all levels) needs to internalize competition principles to ensure that regulation supports competition instead of hampering it