

# **ITU Case Study**

## **The Creation of the Federal Institute of Telecommunications of Mexico**

**2014**



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## 1. Introduction

The objective of this case study is to review the reforms implemented in Mexico during 2013 to establish a new regulatory and competition authority for the broadcasting and telecommunications sectors, the Federal Institute of Telecommunications (IFT). These reforms are part of a broader reform program undertaken in Mexico covering significant areas of the Mexican government and economy. The program originated from the “Pact for Mexico;” a blueprint for reforms developed with broad support from the three major political parties that contains close to 95 initiatives meant to strengthen the Mexican State, promote economic and political democracy and engage citizen participation.<sup>1</sup>

More broadly, the reform process in Mexico can be seen as part of a second wave of reforms in the telecommunications and broadcasting sectors now taking place in key Latin American markets. These reforms are aimed at reviewing and updating the legislative frameworks and institutions created during the 1990s to usher in competition as markets were first being liberalized.<sup>2</sup> This second wave is instituting reforms to address market developments over the last 15 to 20 years; to target potential shortcomings identified in the initial legal and institutional frameworks; and to lay the foundation for meeting the broadband and digital inclusion goals that must be attained to ensure that citizens and consumers reap the full benefits of technological innovation in the information and communications technologies (ICT) sector.

Mexico’s approach to ICT reform, however, is different from other countries in the region in that the key policy objectives, functions, mandate as well as the creation and general governance structure of the IFT, were set forth via a reform to Mexico’s Constitution. As a result, the reform process is being carried out in two phases. The first phase is directed at implementing the specific mandates set forth in the Constitutional Reform Decree, including setting up the IFT, appointing its commissioners and implementing specific regulatory measures required in the short-term, among others. A second phase will commence once the sector legislation called for by the Constitutional Reform Decree is passed and the functions and mandate of the IFT are fully defined.

This case study examines the background to the Constitutional reform initiative as well as its implementation to date. The analysis includes a review of the institutional and market developments that prompted the need for reforms; and describes the two implementation phases, including the process to set up the IFT and the decisions adopted by IFT to date, the status of the second phase of the process and the challenges the reform process faces. The case study also examines IFT’s role in promoting broadband take up and universal digital inclusion in Mexico, as well as its role in the regulation of privacy and data protection.

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<sup>1</sup> See generally *Pact for Mexico*, available at <http://pactopormexico.org/PACTO-POR-MEXICO-25.pdf>; See also Omar Guerrero Rodríguez, et. al., *The June 2013 Landmark Constitutional Amendments to Competition and Telecom Law in Mexico*, CPI Antitrust Chronicle, at 4, Aug. 2013, available at <https://www.competitionpolicyinternational.com/file/view/6980>.

<sup>2</sup> Recent reforms have been implemented or are being discussed in several of the major Latin American markets, including Brazil, Chile and Colombia.

## 2. Background to the 2013 Constitutional Reform

### 2.1. The privatization and liberalization process in Mexico during the 1990s<sup>3</sup>

As in many Latin American markets, fixed-line telephony in Mexico was provided by the state-owned operator, Teléfonos de México (Telmex), until the early 1990s, when the government gradually divested its assets to national and foreign investors.<sup>4</sup> As part of that process, Telmex was granted a monopoly over the long distance market until 1996.<sup>5</sup> During this period, Telmex was required to comply with a series of obligations imposed by the government, including expanding and modernizing its network, establishing accounting separation between local calls and international long distance calls, and to refrain from engaging in anti-competitive practices.<sup>6</sup> In parallel, limited competition in the mobile telephony market was introduced in 1990, when the government divided the country into nine service regions and issued concessions (licenses) to two competing providers per region, including one to Telcel in every region.<sup>7</sup>

In 1995, the Mexican government passed the landmark Federal Telecommunications Law (LFT), opening all telecommunications market segments for competition and removing geographic limitations for fixed and mobile telephony networks.<sup>8</sup> The LFT also provided for certain restrictions on foreign direct investment, which differed by sector.<sup>9</sup> Once Telmex's exclusivity period had expired; the Mexican government began issuing concessions for the provision of fixed-line services in 1996. Similarly, entry into the mobile telephony market and assignment of additional spectrum to existing provider was facilitated via auctions conducted in 1998, 2005 and 2010.

### 2.2. Creation and scope of authority of the Federal Telecommunications Commission (Cofetel)

The LFT created the framework to establish the Federal Telecommunications Commission (Cofetel) as a “deconcentrated body” of the Secretariat of Communications and Transport

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<sup>3</sup> For a more detailed discussion of the development on challenges Mexican telecommunications sector, see OECD, Review of Telecommunication Policy and Regulation in Mexico, available at <http://www.oecd.org/sti/broadband/50550219.pdf> (hereinafter OECD Report).

<sup>4</sup> Jana Palacios Prieto, Telecommunications Industry in Mexico, Instituto Mexicano para Competitividad, A.C. (IMCO), May 2011, available at [http://imco.org.mx/wp-content/uploads/2011/6/telecomm\\_mexico\\_may\\_2011\\_final\\_version1.pdf](http://imco.org.mx/wp-content/uploads/2011/6/telecomm_mexico_may_2011_final_version1.pdf).

<sup>5</sup> Prieto at 6.

<sup>6</sup> Jose G. Aguilar-Barcelo, El estado actual de las telecomunicaciones en Mexico: la regulacion que no llega, MPRA Paper No. 4734, Apr. 2003, available at [http://mpra.ub.uni-muenchen.de/4734/1/MPRA\\_paper\\_4734.pdf](http://mpra.ub.uni-muenchen.de/4734/1/MPRA_paper_4734.pdf).

<sup>7</sup> Carlos Gomez, Licensing in an era of liberalization and Convergence, Case study: Mexico, International Telecommunications Union (ITU), 2004, available at [http://www.itu.int/ITU-D/treg/Case\\_Studies/Licensing/Mexico.pdf](http://www.itu.int/ITU-D/treg/Case_Studies/Licensing/Mexico.pdf)

<sup>8</sup> Ley Federal de Telecomunicaciones 1995, as amended (LFT), at art. 11, available at <http://www.ift.org.mx/iftweb/wp-content/uploads/2012/06/Ley-Federal-de-Telecomunicaciones.pdf>.

<sup>9</sup> With the exception of mobile telephony, foreign investment in a telecommunications service concessionaire could not exceed 49 percent. See, LFT, at art. 12. In the case of broadcasting service, Mexican law did not admit any foreign participation. See Ley Federal de Radio y Television, 1960, as amended (LFRT), at art. 22 available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf>.

(SCT).<sup>10</sup> From an administrative organization perspective, this broadly meant that Cofetel was subordinated to SCT, not having legal personality and operating on a budget subject to the Secretariat's priorities.<sup>11</sup>

Cofetel was initially tasked with overseeing the telecommunications sector and about ten years later the broadcasting sector, ultimately being granted authority to administer the LFT and the Federal Radio and Television Law (LFRT). Cofetel's authority was, however, shared in many key areas with the SCT and the Federal Competition Commission (CFC). The jurisdiction of these entities often overlapped and their roles intertwined, and Cofetel lacked sufficient independence and autonomy.<sup>12</sup> Box 1 highlights one example of Cofetel's lack of independence as it relates to spectrum management authority.

### Box 1: Cofetel's limited spectrum management authority

Under the LFT, multiple authorities had responsibility related to the management and assignment of spectrum. For example, the SCT had authority to grant spectrum concessions<sup>13</sup> while Cofetel had authority to submit opinions to the SCT recommending whether the concession should be granted or not.<sup>14</sup> Similarly, while Cofetel conducted spectrum auctions, the CFC was responsible for approving auction conditions, including setting spectrum aggregation limits, and the Ministry of Finance was tasked with setting reserve prices for the auction and concession renewal fees.<sup>15</sup> In addition, Cofetel was tasked to enforce compliance with concession obligations, but only played a consultative role to the SCT in proposing modification, annulment, revocation, cancellation or termination of such concessions.<sup>16</sup>

In particular, the overlap of authority between Cofetel and the SCT led to the so-called "double window" problem, whereby the non-binding nature of some of Cofetel's decisions resulted in SCT oftentimes undertaking its own review proceedings after receiving recommendations from Cofetel. This created significant delays in the decision-making process, uncertainty for interested parties and opportunistic behavior in the filing of challenges and appeals that undermined the regulatory process.<sup>17</sup>

### 2.3. Lack of effective competition as a key driver of the Constitutional Reform Decree

Following the liberalization process, competition in the various telecommunications and broadcasting markets was slow to develop in Mexico. Similarly, pro-competitive measures

<sup>10</sup> The LFT initially called for the President to issue a separate decree creating Cofetel. See LFT (1995), Transitorio Decimoprimer. The decree creating Cofetel was subsequently issued in 1996. See Decreto por el que se crea la Comisión Federal de Telecomunicaciones, Aug. 9, 1996. Subsequently, in a 2006 reform to the LFT, Cofetel was recognized in the actual text of the law. See LFT (2006), art. 9-A.

<sup>11</sup> See Organic Law of the Federal Public Administration, 1976, as amended, art. 17, available at

<http://www.diputados.gob.mx/LeyesBiblio/pdf/153.pdf>

<sup>12</sup> See, for example, OECD Report at 47 [Noting that "Cofetel's independence is insufficient and does not accord with OECD best practice."]

<sup>13</sup> LFT, art. 11.

<sup>14</sup> Cofetel, Organic Statute, at Art. 9o(III).

<sup>15</sup> OECD Report at 44.

<sup>16</sup> Cofetel, Organic Statute, at Art. 9o(VI).

<sup>17</sup> OECD Report, at 123.

were also slow to emerge, and, even when adopted, were in some cases frustrated for many years by weak regulation and a legal system dominated by excessive litigation.<sup>18</sup>

By the beginning of 2012 –the election year for a new Presidential administration in Mexico– notable growth in mobile, fixed, and broadband markets had been achieved since the liberalization of the sector, yet the Mexican telecommunications market continued to be dominated by a single company (Telmex and its subsidiaries and related entities), which held 80 percent of the fixed line market and 70 percent of the mobile phone market.<sup>19</sup> Similarly, Televisa (and its subsidiaries and related entities) dominated the broadcast and pay television markets with close to 50 percent share based on pay television subscribers,<sup>20</sup> as shown in the following table:

**Table 1: Market share in various telecommunications market (subs.), 2011**

Operator	Fixed-Line	Mobile	Pay television	Internet (fixed)
Telmex & Telcel	79.6%	70%		74%
Telefónica	2.4%	21.8%		
Televisa	2.1%		48.9%	6%
Nextel		3.8%		
Iusacell		4.4%		
DISH			16.6%	
Others	15.9%		33.6%	20.0%

*Note: Telmex and its related entities were, and continue to be, restricted from entering the pay television market in Mexico pursuant to Clause 1.9 of its Concession Contract.*

*Source: OECD Report 2012*

Even though from 2005 to 2012, Mexico’s telecommunications gross domestic product (GDP) grew four times faster than Mexico’s overall GDP (72 percent versus 17 percent), some analysts estimated that the lack of effective competition was not allowing the sector to perform at its real potential. For example, in 2012 the state of competition in Mexico was discussed at length in a report issued by the Organization for Economic Co-operation and Development (OECD), which found that the lack of effective competition in key telecommunications markets had resulted in an estimated loss of benefit to the economy of USD 129.2 billion (2005-2009) or 1.8 percent GDP per annum.<sup>21</sup> The OECD also found that the Mexican telecommunications sector was characterized by high prices, among the highest within OECD countries, and a lack of

<sup>18</sup> OECD Report, at 11 [Noting that this included, for example, the use or abuse of legal remedies called *amparos* (legal injunctions)].

<sup>19</sup> IFT found that as of June 2013 Telmex and its related entities’ share of the fixed telephony and mobile telephony markets (based on subscribers) were at 68 percent and 70 percent, respectively. See Resolución P/IFT/EXT/060314/76, Mar. 6, 2014, p. 883-884, available at [http://apps.ift.org.mx/publicdata/P\\_IFT\\_EXT\\_060314\\_76\\_Version\\_Publica\\_Hoja.pdf](http://apps.ift.org.mx/publicdata/P_IFT_EXT_060314_76_Version_Publica_Hoja.pdf).

<sup>20</sup> IFT found that as of June 2013 Televisa and its related entities’ share of the free-to-air television market (based on viewers) was at 67 percent. See Resolución P/IFT/EXT/060314/76, Mar. 6, 2014, p. 613-614, available at <http://www.ift.org.mx/iftweb/sector-de-radiodifusion/>.

<sup>21</sup> OECD Report, at 11.

competition, resulting in poor market penetration rates and low infrastructure development.<sup>22</sup> As shown in Table 2, Mexico lags other countries in the region with regard to the average penetration and numbers of subscribers in the major Latin American economies, making it among the lowest performers of this group.<sup>23</sup>

**Table 2: Service penetration in Mexico and selected Latin American countries, 2012**

	Mexico	LATAM average	Ranking
Fixed-telephone penetration	17.4	19.0	5 of 7
Mobile-cellular subscriptions	86.8	113.8	7 of 7
Percentage of households with Internet access	26.0	33.8	5 of 7
Fixed (wired) –broadband subscriptions	10.9	9.0	2/3 of 7
Active mobile-broadband subscriptions	10.2	15.5	4 of 7

*Note: penetration refers to subscriptions per 100 inhabitants. Latin American average includes Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela. For fixed broadband subscriptions, ITU figures report the same level of penetration for Mexico and Argentina.*

*Source: ITU, World Telecommunications/ICT Indicators Database 2013 (17<sup>th</sup> Edition)*

In its 2014 Action Plan, the newly created IFT echoed the OECD’s findings, noting that the poor development of telecommunication infrastructure in Mexico is due to a lack of effective competition, and the resulting high level of market concentration.<sup>24</sup> In turn, IFT noted that this had implications for consumers, leading to lower levels of consumption as a result of high prices across the range of telecommunication services.<sup>25</sup>

### **3. The Constitutional Reform of the Telecommunications and Broadcasting Sectors Implemented in 2013**

The ongoing telecommunications and broadcasting sector reform in Mexico is part of a broader plan to reform significant areas of the Mexican government and economy. The reform of the telecommunications and broadcasting sectors stems from the “Pact for Mexico,” and has been executed concurrently with political reform, education reform, energy and natural resources reform, and fiscal reform.<sup>26</sup> In the areas of telecommunications and broadcasting, the main driver for reforms was the need to improve competition in the various market segments.<sup>27</sup> Following extensive discussions in both the House of Representatives and the Senate that resulted in overwhelming support for the initiative, reforms were implemented via a Decree

<sup>22</sup> *Id.*

<sup>23</sup> The group of countries reviewed include: Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela.

<sup>24</sup> IFT, 2014 Action Plan, at 4-5 (citing OECD Report, at 17).

<sup>25</sup> *Id.*

<sup>26</sup> For example, as part of the political reform, the National Electoral Institute was created to ensure uniform practices are used in elections at federal and local levels. See Mauricio Torres, La reforma politica queda aprobada en el Congreso y pasa a los estados, Dec. 13, 2013, available at <http://mexico.cnn.com/nacional/2013/12/13/la-reforma-politica-queda-aprobada-en-el-congreso-y-pasa-a-los-estados>.

Fiscal reform, on the other hand, is aimed to increase tax revenues while the purpose of the energy reform was to stimulate private investment. See Americas Society/Council of the Americas, Explainer: Mexico’s 2013 Reforms, Dec. 17, 2013, available at <http://www.as-coa.org/articles/explainer-mexicos-2013-reforms>.

<sup>27</sup> See Pact for Mexico, at sec. 2.1 and 2.2.



issued by the President of Mexico (Constitutional Reform Decree).<sup>28</sup> The changes entered into force on June 11, 2013, and cover six key areas (Box 2).

### Box 2: Six key areas of sector reform covered under the Constitutional Reform Decree

- First, the Decree elevates citizens' access to connectivity as a fundamental right and as a key enabler to other fundamental right, including the right to disseminate opinions, information, and ideas through any media.<sup>29</sup> The reform also guarantees the right to access information, broadcasting and telecommunications services, including broadband and the Internet.<sup>30</sup> In the reform, telecommunications services were classified as general interest public services.<sup>31</sup> Because of this classification, the Government guarantees telecommunications services will be provided under conditions of competition, quality, plurality, universal coverage, interconnection, convergence, continuity, and free access, without arbitrary interference.
- Second, the Decree requires that the legal framework governing the sector be updated, calling for a single, convergent law to be passed to regulate spectrum, networks, and services under a unified licensing framework for the telecommunications and the broadcasting sectors. It also calls for asymmetric regulation of dominant (preponderant) economic agents.<sup>32</sup>
- Third, the Decree establishes a new set of institutional structures for the sector, creating the Federal Telecommunications Institute (IFT) and the Federal Commission for Economic Competition (FCEC) as constitutionally autonomous entities.<sup>33</sup> Specialized courts in the areas of telecommunications, broadcasting and competition are also created.<sup>34</sup>
- Fourth, the Decree seeks to increase competition in the sector. A key element in achieving this goal is the elimination of foreign direct investment restrictions in the telecommunications sector and the opening of broadcasting, allowing for up to 49% foreign capital –subject to reciprocal investment treatment in its country of origin.<sup>35</sup> To promote competition in the broadcasting sector, must-carry and must-offer conditions are imposed.<sup>36</sup>

<sup>28</sup> See Decreto por el que se reforman y adicionan diversas disposiciones de los artículos 6o., 7o., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de telecomunicaciones, June 11, 2013.

<sup>29</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, art. 6o(VI), 7o.

<sup>30</sup> *Id.* art. 6o.

<sup>31</sup> *Id.* art. 6o(II).

<sup>32</sup> *Id.* Transitorios, Cuarto.

<sup>33</sup> *Id.* art. 28.

<sup>34</sup> *Id.* Transitorios, Decimo Segundo.

<sup>35</sup> *Id.* Transitorios, Quinto.

<sup>36</sup> *Id.* Transitorios, Octavo, (I). Must-carry/must-offer obligations require: (i) television broadcasting licensees to allow pay TV providers carry broadcasters' signals without charge or restrictions and (ii) pay television providers to retransmit broadcast signals, without modification or charge, and in a non-discriminatory manner, within the same geographic coverage area. In the case of subscription satellite television providers a different rule applies as the signal footprint is national.

- Fifth, the Decree calls for the Executive Branch to establish a National Policy for Universal Digital Inclusion and a National Digital Agenda. These policies must cover infrastructure, accessibility, connectivity as well as digital literacy initiatives. The constitution sets targets of at least 70 percent of households and 85 percent of micro, small and mediums size entities having Internet access with international standards in both quality and price.<sup>37</sup>
- Sixth, to enforce the newly created fundamental right to access to connectivity, the Decree contains provisions to increase infrastructure coverage. To this end, the Constitution now requires that an expanded national fiber-optic backbone and a shared wireless access (wholesale) network using the 700 MHz frequency band, be deployed via a public-private partnership.<sup>38</sup>
- Seventh, to implement the overarching goals of the reform, the Decree set forth an ambitious package of regulatory measures to be implemented by IFT within 180 days of its launch date –the 180 Day Agenda. These regulatory measures included launching a tender for two national free-to-air television licenses, defining preponderant economic agents, and establishing local loop unbundling requires, among other things.<sup>39</sup>

Source: Based on IFT and Mexican Constitution

The defining feature of this process is that it was carried out through a Constitutional Reform, rather than through a new law or regulations. This differentiates the Mexican reform process from comparable initiatives that have been or are being undertaken in other countries in the Latin American region and elsewhere. Because the central elements of the reform are enshrined at the highest level of the legal framework, they will have precedence over implementing legislation and other administrative decisions implemented in the future. This gives the IFT a solid legal grounding to ensure it can act with independence and transparency within the established constitutional boundaries,<sup>40</sup> but at the same time creates a rigid framework that will be difficult to change going forward if the need arises.

The reform process that is being carried out in Mexico can be characterized as following a two-phased approach:

- The first phase, which is ongoing, is directed at implementing the guidelines and specific mandates set forth in the Constitutional Reform Decree. It covers the selection process for IFT commissioners, the launch and definition of the internal organization of the IFT, the transfer of human and material resources from the legacy regulator to the IFT and the implementation of the ambitious 180 Day Agenda mandated under the Constitutional Reform Decree.

<sup>37</sup> *Id.* Transitorios, Decimo Cuarto.

<sup>38</sup> *Id.* Transitorios, Decimo Sexto.

<sup>39</sup> See section 3.1.6 below for further details on the implementation of the 180 Day Agenda by IFT.

<sup>40</sup> For example, this authority was tested in a February, 2014 ruling issued by Mexico's Supreme Court suspending a lower court decision that rejected IFT's authority to impose must-carry guidelines (required under the Constitutional Reform Decree), stating that the lower court's position was contrary to Article 6 of the Federal Constitution. See Suprema Corte de Justicia de la Nación, Controversia Constitucional 18/2014, available at [https://www.scjn.gob.mx/PLENO/LASTCC\\_acciones\\_inconstitucional/Acciones%20Inconstitucional/2014/FEBRERO/20140217/MP\\_ContConst-18-2014.pdf](https://www.scjn.gob.mx/PLENO/LASTCC_acciones_inconstitucional/Acciones%20Inconstitucional/2014/FEBRERO/20140217/MP_ContConst-18-2014.pdf).

- The second phase will commence once the implementing legislation, including the new Telecommunications and Broadcasting Act and the new Federal Economic Competition Act, called for by the Constitutional Reform Decree is passed. At such time, the functions of IFT will be fully defined and its organizational structure will be modified accordingly.

As of this writing, a series of delays have resulted in the Congress not having passed the secondary legislation within the deadline set forth by the Constitutional Reform Decree. The draft Telecommunications and Broadcasting Bill is currently in the Senate and may be voted in mid June, 2014. However, the new Federal Economic Competition Act was passed by both houses of Congress and was published in the Federal Official Gazette on May 23, 2014. As noted above, this is the other major piece of legislation that IFT shall implement and enforce as the competition authority.

Institutional structure reform, including the creation of the IFT, is a key vehicle to implement the broader sector reforms established in the Constitutional Reform Decree. The following sections address in more detail the transition process in setting up the IFT, the scope of its mandate and functions, and the structure and organization of the IFT.

### 3.1. First phase: the Constitutional Reform Decree and the creation of IFT

#### 3.1.1. The creation and powers of the IFT

The IFT was established by the Constitutional Reform Decree to be the telecommunications and broadcasting regulator as well as to be the authority responsible for enforcing competition law in these markets.<sup>41</sup> IFT is granted a significant degree of autonomy and independence; it has legal personality and may own assets (movable and real property).<sup>42</sup> The IFT is responsible for ensuring the rights recognized under the Constitutional Reform Decree, as well as to regulate spectrum, the provision of telecommunications and broadcasting networks and services.<sup>43</sup> The following table summarizes the key institutional changes and powers granted to IFT under the Constitutional Reform Decree, highlighting the contrasts with the authority previously exercised by Cofetel.

**Table 3: Powers granted to IFT under the Constitutional Reform Decree**

	IFT	Cofetel	Rationale
Legal Personality	Yes	No	Legal personality gives IFT full authority to accomplish the goals for which it was created, i.e. to enable the “efficient development of broadcasting and telecommunications”.
Sufficient Budget Allocation	Yes	No	An increased budget gives the IFT the ability to implement studies and/or programs to enable the efficient development of the telecommunications market.
Spectrum Management	Yes	No	Optimize spectrum allocation in order to encourage the deployment of new broadband technologies in Mexico, as well as

<sup>41</sup> *Id.* art 6o, 7o, 28; IFT, Organic Statute, art. 1.

<sup>42</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, art. 28.

<sup>43</sup> *Id.*

			promote international harmonization in the allocation of frequencies to generate economies of scale.
Competition Authority	Yes	No	Impose asymmetric regulation in order to remove barriers to competition; provide for cross ownership and spectrum caps; divestitures; structural separation, and effectively deter and punish, where warranted, anticompetitive behavior in the sector through <i>ex post</i> procedures.
Licensing Authority	Yes	No	The granting of licenses is now responsibility of IFT, only requiring a non-binding opinion from the Ministries of Communications and Treasury.
Enforcement and sanctions	Yes	No	IFT has powers to impose sanctions for any infringement to applicable rules, laws or license conditions.

Source: based on IFT

In addition, the Constitutional Reform Decree provides a series of safeguards to ensure IFT’s independence (Box 3).<sup>44</sup> As noted above, this broad set of principles, together with other transitory provisions set forth in the Constitutional Reform Decree, set a hard floor that limits the Legislature’s and the Executives’ ability to restrict IFT functions and autonomy.

**Box 3: Key constitutional provisions to ensure IFT’s independence**

- Budgetary independence: IFT is allowed to execute its budget autonomously and the Decree mandates that the Chamber of Deputies allocate sufficient funding for it to execute its mandate.
- Organizational independence: IFT is allowed to determine its internal structure and organization.
- Rulemaking authority: IFT is established as an independent rulemaking authority to execute its regulatory functions.
- Governance structure: leadership must ensure transparency and access to information and must deliberate and adopt decisions by a majority of votes.
- Judicial review: IFT decisions, including those of general application, and omissions (inaction) may only be challenged via an *indirect amparo* (injunction) by a federal court and may not be suspended. When a decision stems from adjudicatory proceedings, only the final decision may be challenged. *Amparos* will be heard by specialized courts.
- Transparency and accountability: the head of IFT must present a yearly work plan and quarterly progress reports to the Executive and Legislative branches and present testimony before the Senate and Deputies Chambers when so required. IFT must also adhere to digital government and open data principles and have an Internal Comptroller.
- Appointment and removal process: IFT Commissioners are to be proposed by the President and confirmed with the vote of two thirds of the Senate, under an open and transparent

<sup>44</sup> *Id.* art. 28, I-XII.

competitive process set forth in the Constitution. They may only be removed for cause and with the vote of two thirds of the members of the Senate.

Source: based on the Constitutional Reform Decree

### 3.1.2. Selection of IFT Commissioners

The Constitutional Reform Decree provides for a rigorous selection process for the IFT Commission. Candidates considered for appointment must possess the requisite academic and professional qualifications, (including prominent experience in professional, public or academic fields substantially related matters related to economic competition, broadcasting or telecommunications), while also passing an evaluation to demonstrate their knowledge in the areas of IFT's competency, as well as the skills required for the performance of their duties as Commissioners.<sup>45</sup> An Evaluation Committee must recommend between three and five applicants to the President for consideration, who then submits his or her selections to the Senate for ratification.<sup>46</sup> Commissioners are confirmed by the Senate to nine year terms.<sup>47</sup>

Following the examination process for the current group of Commissioners, held between June and August 2013, the Evaluation Committee selected 35 finalists.<sup>48</sup> Two women and five men were chosen as IFT Commissioners: three have a legal background; two are engineers; and two are economists.<sup>49</sup> The diverse background of the Commissioners demonstrates the expanded scope of IFT authority, especially in its new role as a competition authority. The current seven Commissioners will serve terms that are staggered such that one Commissioner's term will expire each year starting in 2016.

### 3.1.3. Transition process: from Cofetel to the IFT

The Constitutional Reform Decree provided certain broad guidelines for the transition from Cofetel to the IFT. First, Cofetel would continue discharging its duties under the existing legal framework until such time as the IFT began formally operating.<sup>50</sup> Second, once Cofetel was wound down, it's human, financial and other resources would be transferred to the IFT.<sup>51</sup>

Because Cofetel was subordinate to the SCT, a working group was established to administer the winding down of Cofetel and to transfer its resources to the IFT, including financial resources, human resources, and material resources. The group also was in charge of determining staffing, real property, and budgetary resources to be available to the IFT.<sup>52</sup>

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<sup>45</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, art. 28(VIII) and Transitorios, Septimo.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, art. 28 and Transitorios, Tercero(XIII).

<sup>48</sup> See Comité Evaluador a que se refiere el artículo 28 de la Constitución Política de los Estados Unidos Mexicanos, Informe final del proceso para la selección de los aspirantes a comisionados del IFT y de la CFCE, Aug. 9, 2013, At <http://www.banxico.org.mx/informacion-para-la-prensa/comunicados/miscelaneos/boletines/%7B5ABC0B67-0567-D263-4901-B476FAF806B1%7D.pdf>

<sup>49</sup> IFT, Members of the Board, available at <http://www.ift.org.mx/iftweb/informacion-general/pleno/>.

<sup>50</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, at Transitorios, Sexto.

<sup>51</sup> *Id.*

<sup>52</sup> A list of the assets transferred to IFT can be found in the IFT's Financial statement for the period 1 October to 31 December 2013, available at: [http://www.ift.org.mx/iftweb/wp-content/uploads/2013/10/Notas\\_a\\_los\\_Estados\\_Financieros.pdf](http://www.ift.org.mx/iftweb/wp-content/uploads/2013/10/Notas_a_los_Estados_Financieros.pdf)

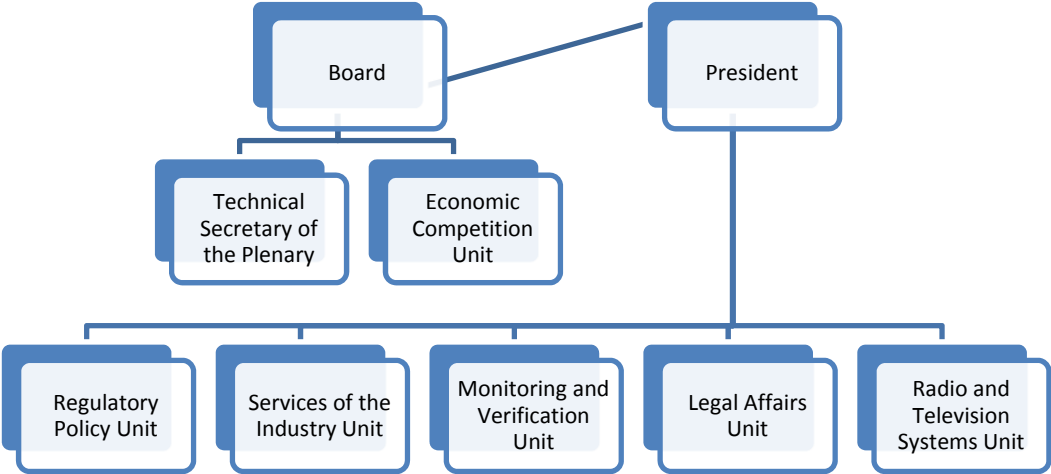
This group reviewed the accounting balance, personnel, and budgetary resources and conducted an inventory of goods assigned to, and used by Cofetel, which were to be transferred to IFT. Such work is a key step in public sector mergers involving the transfer of responsibilities and assets of legacy regulatory authorities to newly created ones, and helps to guarantee the transparency and accountability of the transition process.

The Cofetel/IFT transition process was presided over by the Ministry of Finance and Public Credit to provide the IFT with enough resources to establish itself and operate. A proposal was then voted on by the House of Deputies, setting the IFT’s budget for 2014. Consequently, on the October 31, 2013 the Divestiture Agreement of Cofetel was signed by the Chief Clerk of the SCT and the President of IFT. This agreement formalized the legal, administrative and accounting transfer of resources from one authority to the other.

**3.1.4. Initial organizational structure of the IFT**

On September 23, 2013 IFT issued an Organic Statute, which establishes its internal organization and functions for the first phase of the of the institutional reform process. The immediate goal was to set up an organizational structure to carry out the new functions and responsibilities granted directly to the IFT under the Constitutional Reform Decree, and to comply with the 180 Day Agenda imposed on the IFT.<sup>53</sup> For example, this involved creating the Economic Competition Unit, charged with enforcement against anticompetitive conduct in the sector, among other matters. Once the required implementing legislation is signed into law, and the full scope of authority and functions of the IFT are defined, it is expected that the current organizational structure and Organic Statute will be amended. Figure 1 illustrates the current organizational structure of the IFT.

**Figure 1: Organizational structure of IFT**



Source: based on IFT Organic Statute

<sup>53</sup> Section 3.1.6 discusses the actions and regulatory measures adopted under the 180 Day Agenda.

The Board is the IFT's governing body, and consists of all of seven Commissioners.<sup>54</sup> The President legally represents the IFT, presides over the Board, executes the resolutions passed by the Board and oversees the various organizational units,<sup>55</sup> with the exception of the Economic Competition Unit which reports directly to the Board, since economic competition processes and functions are different in nature from those related to *ex ante* regulation -as explained below.

The Board of IFT has significant authority and an overarching leadership role within the IFT. As the IFT's governing body, the Commissioners are responsible to plan, develop, and conduct policies and programs as well as regulate the development of telecommunications and broadcasting according to the new authority granted to the IFT under the Constitutional Reform Decree and existing laws.<sup>56</sup> The Board of the IFT was granted the responsibility to oversee and implement the Constitutional Reform Decree.<sup>57</sup> The Board of the IFT has seven Commissioners compared to Cofetel's five.<sup>58</sup>

Due to its expanded mandate, the IFT's structure has added or restructured two additional units (i) Legal Affairs and (ii) Economic Competition:<sup>59</sup>

- The Legal Affairs Unit is comprised of two Departments, the General Legal Consultation Department and the Legal Defense Department. The General Legal Consultation Department mainly has an advisory role. It coordinates with the other administrative units of the IFT to develop and review proposed draft laws and regulations, agreements and other general administrative enforcement provisions, on the advice of the Board and the President.<sup>60</sup> It also has an advisory role in international negotiations, the development of spectrum tenders, and licensing (i.e. granting, termination, revocation, expiration, transfer, exchange, redemption, and requisition of licenses).<sup>61</sup> The Legal Defense Department advises the administrative units of the IFT in court proceedings.<sup>62</sup> It has authority to litigate trials and appeals before the judiciary.<sup>63</sup>
- The Economic Competition Unit is comprised of the General Directorate of Mergers and Competition, the General Directorate of Investigation of Monopolistic Practices, and the General Directorate of Competition Proceedings.<sup>64</sup> The Unit works on *ex post* competition issues that may arise; executes resolutions delegated by the President; and imposes sanctions for violations of competition law.<sup>65</sup> The General Directorate of Mergers and Competition investigates the level of competition in the broadcasting and

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<sup>54</sup> IFT, Organic Statute, at art. 9.

<sup>55</sup> *Id.* at art. 14(I)-(III); Constitución Política de los Estados Unidos Mexicanos, at art. 28.

<sup>56</sup> *Id.* at art. 9(I).

<sup>57</sup> *Id.* at art. 9.

<sup>58</sup> IFT, Organic Statute, at art. 8; Cofetel, Organic Statute, at Art. 8o.

<sup>59</sup> IFT, Organic Statute, at art. 4.

<sup>60</sup> *Id.* art. Art. 28(A)(I)-(II).

<sup>61</sup> *Id.* art. Art. 28(A)(XIII)-(XIV).

<sup>62</sup> *Id.* art. 28(B)(I).

<sup>63</sup> *Id.* art. 28(B)(II).

<sup>64</sup> *Id.* art. 29.

<sup>65</sup> *Id.* art. 29(I)-(II), (VIII).

telecommunications markets and proposes conditions under which mergers should be authorized to the Board.<sup>66</sup> The General Directorate of Investigation of Monopolistic Practices investigates potentially anticompetitive mergers and monopolistic practices and reports them to the head of the Economic Competition Unit, who reports to the Board.<sup>67</sup> The General Directorate of Competition Proceedings analyzes the divestiture of assets or rights necessary to ensure compliance with mandated levels of market concentration (at the national and regional level) as well as the licensing of cross-ownership of broadcasting and/or telecommunications providers in the same market or geographic area.<sup>68</sup> The separation of the General Directorate of Competition Proceedings and the Directorate of Investigation of Monopolistic Practices is directed at ensuring that there will be a separation between those responsible for the investigation of operators and those making rulings in such proceedings.

### 3.1.5. Budget and staffing

Adequacy and predictability of budget allocations and funding is a key factor to ensure effective implementation of any institutional reform initiative, and to ensure the independence of the regulatory authority.<sup>69</sup> Accordingly, the budget and staffing of the IFT were significantly increased vis-à-vis Cofetel to accommodate IFT's new mandate and responsibilities.

Specifically, IFT's budget was increased by 200 percent, to MXN 2 billion for 2014 (USD 155.4 million), compared to that assigned to Cofetel.<sup>70</sup> From a staffing perspective, the IFT is budgeted for 1064 positions in 2014, compared to the 678 budgeted for Cofetel in 2013.

The increase in budget and staff was principally justified based on the need to strengthen various work streams and to provide the human and financial resources needed to adequately discharge the IFT's expanded mandate and duties. For example, after the transition process IFT's workload increased considerably as compared to Cofetel's, having received over 2,200 open proceedings relating to sanctions, concession renewals, transfers, changes of control and concession applications from the SCT. Similarly, IFT received about 30 percent of all the cases being investigated by the Federal Economic Competition Commission, which dealt with the telecommunications and broadcasting sectors.

It is expected that during 2014, the IFT will design and implement a model of personnel management and human capital development, including aspects of recruitment, selection, training, performance evaluation, rights/duties of staff, a code of conduct, and human and organizational development.

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<sup>66</sup> *Id.* art. 29(II).

<sup>67</sup> *Id.* art. 29(C)(I).

<sup>68</sup> *Id.* art. 29(D)(III).

<sup>69</sup> See ITU-*infoDev*, ICT Regulation Toolkit, Elements for an Effective Regulator, Financial Independence, available at <http://www.ictregulationtoolkit.org/6.5>.

<sup>70</sup> Cofetel's budget was MXN 658.9 million (USD 51.2 million).



### 3.1.6. Milestones for the first 180 days

The Constitutional Reform Decree set forth an ambitious series of milestones to be reached under the 180 Day Agenda. Table 4 lists the specific goals that IFT was required to complete by March 9, 2014.

**Table 4: Specific milestones imposed in the 180 Day Agenda**

Article	Milestone	Description
TP* 8, Section II	Tender rules for two new television free-to-air channels with national coverage	Ensure that broadcasting services are provided under competitive conditions, make cultural content available to the entire population, preserve the plurality and accuracy of information and promote the values of the Mexican national identity.
TP 8, Section III	Determine whether there are “preponderant economic agents” in the telecommunications and broadcasting sectors	Identify service providers in specific telecommunications and broadcasting markets that have over 50 percent market share based on users, subscribers, audience, and traffic or network capacity, according to data made available to the IFT.
TP 8, Section IV	Unbundle the local loop of the “preponderant economic agents”	Establish measures to unbundle the local loops of the preponderant economic agents so that other concessionaires may access the physical, technical, and logical connections between termination points on the public telecommunications network and the local network access point.
TP 8, Section V	Review existing concessions to verify compliance with their terms, conditions and procedures	This process involves the review of compliance with the obligations set out in the licenses of each operator, taking into account filings from each operator over the previous five years.
TP 8, Section VI	Establish a Public Register of Concessions	The public register of licenses is a centralized database containing information related to telecommunications and broadcasting service concessionaires, e.g., terms of the concessions, rates for services offered, interconnection agreements between operators, service contracts authorized by the IFT, sector statistics, regulations adopted by the Board and other information useful to consumers.

\* Note: TP means Transitory Provision of the Constitutional Reform Decree

Source: IFT

Due to the tight timeframe, starting in September 2013 IFT began working to meet the deadlines, including work on designating preponderant economic agents and imposing asymmetric regulation, designing a tender process of additional television channels and reviewing existing broadcasting and telecommunications licenses.<sup>71</sup> As shown in Table 5, IFT was able to meet its various constitutional milestones by the deadline. Pending secondary legislation notwithstanding, it now falls on the IFT to effectively implement and enforce its decisions to ensure that the intended pro-competitive effects are achieved.

**Table 5: Actions taken to comply with the 180 Day Agenda**

Milestone	Outcome
Tender rules for two new television free-to-air channels	On March 7 and 8, 2013, the IFT published a call for bids <sup>72</sup> and tender documents for two new television free-to-air channels. <sup>73</sup> The tender is expected to be concluded by March 2015.
Determination of “preponderant economic agent”	<p><u>Telecommunications Sector</u>: IFT declared Telcel and Telmex (and related entities) as preponderant economic agents for the telecommunications sector, and imposed a series of asymmetric obligations that include:<sup>74</sup></p> <ul style="list-style-type: none"> <li>• Fixed and mobile interconnection requirements</li> <li>• Wholesale access to national roaming</li> <li>• Wholesale access to Mobile Virtual Network Operators (MVNO) and resellers</li> <li>• Wholesale leased line access</li> <li>• Passive infrastructure sharing</li> <li>• Accounting separation</li> <li>• Transparency , including presenting a Reference Interconnection Offer (RIO), Reference National Roaming Offer, Reference MVNO and Reseller Offer</li> <li>• Non-discrimination</li> </ul> <p><u>Broadcasting Sector</u>: IFT declared Grupo Televisa (and related entities) as preponderant economic agent for the broadcasting sector and imposed a series of asymmetric obligations that included<sup>75</sup></p>

<sup>71</sup> IFT, Quarterly Report: September – December 2013, at 7, 8-9.

<sup>72</sup> Diario Oficial de la Federación, Mar. 7, 2014,

[http://www.dof.gob.mx/DOFmobile/nota\\_detalle.php?codigo=5335259&fecha=07/03/2014](http://www.dof.gob.mx/DOFmobile/nota_detalle.php?codigo=5335259&fecha=07/03/2014).

<sup>73</sup> See <http://www.ift.org.mx/iftweb/industria-intermedia/unidad-de-sistemas-de-radio-y-television/licitaciones-en-curso-radio-y-television/licitacion-ift-1/>

<sup>74</sup> IFT found that, at June 30, 2013, Telcel and Telmex (and related entities) controlled 61.5 percent market share in the telecommunications based on aggregate subscribers of the main types of telecommunications services. This included fixed telephony, fixed data services, mobile telephony, mobile data services, subscription television, radio localization and specialized mobile radio service (trunking). See Resolucion P/IFT/EXT/060314/76, Mar. 6, 2014, p. 883-884, available at [http://apps.ift.org.mx/publicdata/P\\_IFT\\_EXT\\_060314\\_76\\_Version\\_Publica\\_Hoja.pdf](http://apps.ift.org.mx/publicdata/P_IFT_EXT_060314_76_Version_Publica_Hoja.pdf).

	<ul style="list-style-type: none"> <li>• Restrictions on acquiring exclusive transmission right on certain relevant content as defined by IFT</li> <li>• Passive infrastructure sharing</li> <li>• Transparency regarding the advertising services offered</li> <li>• Non-discrimination with regard to advertising services offered in various technological platforms</li> <li>• Cross-ownership restrictions limiting participation in telecommunications concessionaires</li> </ul>
Unbundle the local loop of the “preponderant economic agents”	Together with the finding of Telcel and Telmex as preponderant economic agents in the telecommunications sector, IFT mandated that Telmex must provide access to its local loops. <sup>76</sup>
Review existing concessions	IFT reviewed a total of 3,323 concessions to verify that the concessionaire was in compliance with their terms, conditions and procedures.
Public Register of Concessions	IFT reviewed a total of 3,852 docket with the aim of updating and systematizing all relevant information relating to existing telecommunications and broadcasting concessions.  The Public Registry of Concession was set up and is available at <a href="http://rpc.ift.org.mx/rpc/">http://rpc.ift.org.mx/rpc/</a>

Source: based on IFT, Quarterly Report, 1Q 2014.

### 3.2. Second phase: Adoption of the Secondary Legislation

As of mid-May 2014, the Mexican Congress had not passed the required secondary legislation within the timeframe mandated by the Constitutional Reform Decree –by December 2, 2013. Eighteen separate legislative initiatives relating to the secondary legislation<sup>77</sup> were being considered by the Senate at that time, including a comprehensive Bill introduced by the President for discussion on March 24, 2014 –the Federal Telecommunications and Broadcasting Act.<sup>78</sup> Broadly, the secondary legislation develops IFT’s mandate and authority and sets forth

<sup>75</sup> IFT found that, at June 30, 2013, Grupo Televisa (and related entities) held 67 percent market share based on viewers of free-to-air television (concession holders), 65 percent share of the overall free-to-air television market (including concession and permit holders) and 54 percent of the spectrum per population (MHz/pop) assigned to free-to-air broadcasting in Mexico. See Resolución P/IFT/EXT/060314/76, Mar. 6, 2014, p. 613-614, available at <http://www.ift.org.mx/iftweb/sector-de-radiodifusion/>.

<sup>76</sup> See Resolución P/IFT/EXT/060314/76, Annex 3.

<sup>77</sup> See Dictamen de las comisiones unidas de comunicaciones y transportes, radio, televisión y cinematografía, y de estudios legislativos, con proyecto de Decreto por que se Expiden la Ley Federal de Telecomunicaciones y Radiodifusión, y la Ley del Sistema Público de Radiodifusión de México; y se Reforman, Adicionan y Derogan Diversas Disposiciones en Materia de Telecomunicaciones y Radiodifusión, Apr. 22, 2014, available at <http://www.eluniversal.com.mx/graficos/pdf14/AnteproyectoDictamen.pdf>

<sup>78</sup> See Decreto por el cual se Expiden la Ley Federal de Telecomunicaciones y Radiodifusión, y la Ley del Sistema Público de Radiodifusión de México; y se Reforman, Adicionan y Derogan Diversas Disposiciones en Materia de Telecomunicaciones y Radiodifusión, available at <http://www.presidencia.gob.mx/wp-content/uploads/2014/03/INICIATIVA-LEY-CONVERGENTE.pdf>

additional policy objectives. However, certain provisions of this Bill have proven controversial, such as the provisions allowing potential blocking of content and communications based on specific government orders –under public and national security considerations. The legislative debate is ongoing and major changes to the original Bill are expected.

Once the secondary legislation is adopted, it is expected that IFT will revise its current organization and structure to better reflect to full scope of its duties. Box 4 highlights some of the risks associated with the two-phase structure of the reform process.

#### **Box 4: Potential risks of the two-phased reform process**

- First, until such time as the secondary legislation is passed, IFT must enforce the provisions of the existing LFT and LFRT and, in the field of economic competition (*ex post* regulation), the provision of the new Federal Law of Economic Competition –which will enter into force on July 7, 2014. However, there are certain powers provided for in the Constitutional Reform Decree, such as granting of unified concessions or implementing national broadband goals, which require amendments to the LFT and LFRT to be passed. Accordingly, IFT will not be able to fully implement the Constitutional Reform Decree until such time as the secondary legislation is passed, or make the decision to act enforcing and interpreting constitutional provisions directly.
- Second, since IFT has adopted a series of regulatory decisions under its constitutional authority to implement the 180 Day Agenda discussed above, as well as other measures, such as must-carry/must-offer rules,<sup>79</sup> it is critical for the validity of such decisions that the secondary legislation not establish incompatible or contradictory standards or procedures in those areas. Otherwise, inconsistencies between the secondary legislation and IFT decisions could result in potential challenges to the latter, leading to delays and uncertainty in the implementation of the goals of the Constitutional Reform Decree.
- Third, the secondary legislation must not overstep the constitutional boundaries set forth to ensure IFT's independence, transparency, effectiveness and accountability. Adequately defining the scope of the mandate and coordination of IFT actions with other government institutions and other sector stakeholder will be critical to its ability to effectively regulate the sector going forward.

*Source: author*

#### **4. Role of IFT in stimulating broadband uptake and fostering innovation**

Prior to the Constitutional Reform Decree, Cofetel's responsibilities with regard to stimulating broadband deployment and take up were implicit in the broadband plan adopted by SCT in

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<sup>79</sup> In February 2014, the IFT issued must carry guidelines following a public consultation. See IFT, Must Carry Guidelines, at 10, available at [http://www.ift.org.mx/iftweb/wp-content/uploads/2014/02/DOF\\_P\\_IFT\\_EXT\\_210214\\_71.pdf](http://www.ift.org.mx/iftweb/wp-content/uploads/2014/02/DOF_P_IFT_EXT_210214_71.pdf); Constitución Política de los Estados Unidos Mexicanos, at Transitorios (Octavo)(I).

2011.<sup>80</sup> This included spectrum-related functions, including freeing up and identifying additional spectrum bands for broadband deployment; tendering the digital dividend band (700 MHz); and designating licenses exempt bands, among other.

As noted above, the Constitutional Reform Decree calls for the Executive Branch to establish a National Policy for Universal Digital Inclusion and a National Digital Agenda. These policies must cover infrastructure, accessibility, connectivity as well as digital literacy initiatives. The Constitution sets targets of at least 70 percent of households and 85 percent of micro, small and medium size entities having Internet access in line with international norms covering both quality and price.<sup>81</sup> While these policies are to be defined by the SCT and the President's Office, the IFT is tasked with implementing them in order to ensure universal digital inclusion.<sup>82</sup> As noted above, the scope of IFT's responsibilities in this area and its coordination with SCT still need to be defined by the secondary legislation.

In addition, the Constitutional Reform Decree tasks the Executive Branch and the IFT with promoting the deployment of a wholesale, open access broadband network using at least 90 MHz of spectrum freed by the transition to digital television in the 700 MHz band and the fiber optic backbone operating by the Federal Electricity Commission.<sup>83</sup> The deployment of the network is to begin in 2014 and be operational before the conclusion of 2018.<sup>84</sup> Investment in the network may be public or private, but no current telecommunications service provider may control the operation of the network.<sup>85</sup> This combined network is expected to have a significant impact on broadband deployment in Mexico, attracting new investment and facilitating entry and access to essential inputs needed to provide broadband connectivity in a manner consistent with the universal digital inclusion goals established in the Constitution. Again, the specific coordination between the Executive Branch and the IFT in this area must be defined by the secondary legislation.

## 5. Privacy and Data Protection Regulation in Mexico

Privacy and data protection in Mexico has been under the purview of the Federal Institute for Access to Information and Data Protection (IFAI). Since its creation in 2002, IFAI's mandate covered only data under the control of government entities,<sup>86</sup> but after 2010, its jurisdiction was expanded to also cover data controlled by private entities.<sup>87</sup> As part of the "Pact for Mexico" initiatives, a Constitutional Reform in the area of transparency was adopted on February 7, 2014 that called for the creation a new autonomous body, much like the IFT, to

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<sup>80</sup> See SCT, Acciones para el Fortalecimiento de la Banda Ancha y las Tecnologías de la Información y Comunicación, 2011, available at <http://www.sct.gob.mx/uploads/media/AFBAyTICs.pdf>.

<sup>81</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, Transitorios, Decimo Cuarto.

<sup>82</sup> *Id.*

<sup>83</sup> Constitución Política de los Estados Unidos Mexicanos, as amended, at Transitorios (Décimo Sexto)(II).

<sup>84</sup> *Id.* at Transitorios (Décimo Sexto)(I).

<sup>85</sup> *Id.* at Transitorios (Décimo Sexto)(III)-(IV).

<sup>86</sup> Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, as amended, 2002, at art. 33, available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf>.

<sup>87</sup> Ley Federal de Protección de Datos Personales en Posesión de los Particulares, 2010, at art. 38, available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf>.

supersede the IFAI.<sup>88</sup> As such, the IFT does not and will not have authority over privacy and data protection matters. However, considering the relevance of this area to the development of the sector, it is expected that, once the new data protection authority is constituted, coordination mechanisms will be established between the IFT and the newly created data protection authority.

## 6. Conclusions

The telecommunications and broadcasting reform launched in Mexico during 2013 established a comprehensive agenda to ensure the exercise of fundamental rights, promote effective competition, and achieve universal digital inclusion. The main vehicle for the implementation of these reforms was the creation of a new regulatory authority, IFT, with a greater degree of independence, a broader mandate and greater financial, human and material resources than its predecessor, Cofetel. To date, IFT has delivered the series of regulatory measures required under its 180 Day Agenda, which aimed at creating an environment conducive to effective competition in various telecommunications and broadcasting markets. While it is too early to say whether these measures will be adequately implemented or effective in achieving the goals set forth in the Constitutional Reform Decree, it is nevertheless a good sign that the IFT has complied with its constitutional deadlines.

Unfortunately, the reform process remains incomplete as the passing of the necessary secondary legislation by the Congress is still pending. This step is a major milestone that will be essential for the definition of the full mandate and functions of the IFT, the final structure and organization of the IFT, and the mechanisms for coordination with other government entities needed to implement critical policy objectives, such as broadband development and universal digital inclusion. Continued support from the major political parties, which played a key role in the success of the approval of the constitutional reform initiative, will be required to conclude the reform process.

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<sup>88</sup> See Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia, art. 6.A.VIII, *available at* [http://dof.gob.mx/nota\\_detalle.php?codigo=5332003&fecha=07/02/2014](http://dof.gob.mx/nota_detalle.php?codigo=5332003&fecha=07/02/2014).