

Antitrust Team

## From Autonomy to Centralization: Implications of Mexico's Organizational Simplification Reform for the future of Economic Competition

After multiple controversies and criticisms during the six-year term of former President Andrés Manuel López Obrador, in November 2024, the Mexican Congress approved a bill that takes up the constitutional reform initiative presented by López Obrador to simplify the organizational structure of the State and eliminate certain constitutionally autonomous agencies (using the Spanish acronym, OCAs) and other regulatory bodies, reassigning their functions to agencies of the Executive Branch.<sup>1</sup>

The constitutional reform still needs to be approved by the majority of the State Legislatures. However, this is expected to occur in the coming weeks and without material changes (notwithstanding the fact that the text of the reform, including its transitional provisions, would benefit from a second objective review).

In the current Mexican legal system, OCAs are entities that are part of the Government, but have constitutional and managerial autonomy, legal personality, their own assets, budgetary independence and independent and differentiated attributions from the Executive, Legislative and Judicial Branches. These agencies were created with the intention of exercising functions with greater technical specialization, full independence and autonomy over their budget.

The initiative has sparked intense debate in the legal and political arenas. On the one hand, it is argued that the reform could optimize administrative efficiency and reduce costs. On the other hand, there are warnings that the recentralization of certain functions under the Federal Executive could compromise institutional independence, increase vulnerability to political interference and raise doubts about government transparency. Concerns are also raised regarding the protection of fundamental rights and the impact on the development of key economic sectors.

Although there is still a possibility of amendments being made to the proposed constitutional reform, the main elements proposed are discussed below:

### I. Disappearance and modification of OCAs and other regulatory bodies

- **Access to public information and protection of personal data:** The National Institute for Transparency, Access to Information and Protection of Personal Data (INAI) will be shut down, and its functions related to transparency will be assumed by the Anti-Corruption and Good Governance Ministry, control bodies of the Judiciary, comptrollers of the Congress of the Union and State comptrollers. In addition, the National Electoral Institute will assume jurisdiction over access to public information and protection of personal data of political parties. On the other hand, the regulatory body for the protection of personal data in possession of private parties will be defined in the secondary laws that are yet to be issued (with the possibility that they may be assigned to the Federal Consumer Attorney's Office).
- **Economic Competition:** The Federal Economic Competition Commission (COFECE) and the Federal Telecommunications Institute (IFT) will disappear, transferring their competition-related functions to a new decentralized agency under the influence of the Ministry of Economy.

<sup>1</sup> See the Draft Decree reforming, adding and repealing various provisions of the Political Constitution of the United Mexican States, in the matter of organic simplification: <https://gaceta.diputados.gob.mx/PDF/66/2024/nov/20241120-IV.pdf>

- **Telecommunications:** The IFT's regulatory functions over telecommunications and broadcasting (issuance of concessions, permits, supervision, etc.) will be transferred to the Ministry of Infrastructure, Communications and Transportation and to a new Agency for Digital Transformation and Telecommunications (ATDT), which apparently will become the new telecoms regulator. This measure seeks to centralize the regulation of the sector under the control of the Federal Executive.
- **Energy:** The Energy Regulatory Commission (CRE) and the National Hydrocarbons Commission (CNH) will be terminated.<sup>2</sup> Their functions will be assumed by the Ministry of Energy, also centralizing the technical and economic regulation of energy matters under the control of the Federal Executive.
- **Poverty measurement and social programs and educational evaluation:** The National Institute of Statistics and Geography (INEGI) will absorb the mandate of the National Council for the Evaluation of Social Development Policy (CONEVAL) consolidating statistical analysis related to these areas. Likewise, the functions of the National System for the Continuous Improvement of Education (MEJOREDU), will be transferred to the Ministry of Public Education.

## II. Legal Implications of the Reform

---

### 1. From Constitutional Autonomy to Administrative Decentralization

Although the reform proposal discussed does not indicate the legal nature of the institutions that will replace COFECE and IFT, on November 20, 2024, current President Claudia Sheinbaum, during one of her daily morning conferences, indicated that the functions of these agencies would be absorbed by federal government agencies, transforming them into decentralized bodies.

Decentralized bodies are administrative entities created by law or decree of Congress, or the Executive, whose purpose is to perform specific functions of public interest. Although they have technical, operational and administrative autonomy, this autonomy is limited and does not reach the level of full independence that characterizes OCAs.

From a legal point of view, the decentralized bodies are part of the Federal Public Administration, although with a degree of independence that allows them to make technical decisions in certain areas.

Regarding decision making, certain functions could be delegated to specialized committees or general directors within the new decentralized bodies. The reform does not indicate what the governing bodies of these decentralized bodies will be like, but comments by President Sheinbaum and certain legislators involved in the process seem to indicate that they will be collegiate bodies. The constitutional reform also eliminates the selection process for commissioners based on technical exams, so the appointment procedure for these commissioners is yet to be defined.

### 2. Impact on the economic competition regime

The reform proposal includes the creation of a new antitrust agency that would absorb the antitrust functions of COFECE and IFT, with legal personality and its own assets, endowed with technical and operational independence in its decisions, organization and operation, guaranteeing the current functional separation between the authority that investigates and the one that resolves the proceedings.

The unification of the supervisory powers in economic competition in a single agency could have positive effects. On the one hand, it eliminates the double window for economic agents that are investigated or that

---

<sup>2</sup> Although the CRE and the CNH have a certain level of functional and managerial autonomy, they are not autonomous constitutional agencies. They are regulatory bodies created by secondary laws (the Hydrocarbons Law and the Law of the Coordinated Regulatory Bodies in Energy Matters) which are linked to the Constitution in their regulation but do not derive directly from a constitutional mandate like OCAs.

wish to carry out concentrations in markets that involve both agencies, such as telecommunications or broadcasting (currently under the jurisdiction of the IFT) as well as other markets under COFECE's jurisdiction. This will eliminate the jurisdictional conflicts, particularly in digital markets, which were on the rise between the IFT and COFECE and which resulted in considerable procedural delays while the courts ruled which OCA was competent to hear the matter.

On the other hand, the creation of a decentralized agency under the Federal Executive could politicize regulatory decisions; the new agency could prioritize short-term political or economic objectives over the principles of free competition. Especially in strategic sectors where competition is essential, such as transportation, telecommunications, and energy, and in those in which the State participates there is a risk that the new public policies on economic competition could artificially benefit certain state-owned agents.

Another challenge will be the loss of technical expertise. While there are areas where it needs to be more efficient, such as with the timing of analyzing and approving mergers, COFECE has built a solid base of trained personnel with knowledge in economic and legal analysis, that are essential to address complex problems in globalized markets. Therefore, depending on how these reforms are implemented in the secondary legislation, the new decentralized agency could generate uncertainty as to whether the high technical standards and established procedures will be maintained or whether there will be an exodus of experts as a result of a possible excessive budget cut, putting at risk the effectiveness of competition rules in the country.

However, a concrete evaluation cannot be made until the proposed changes to the legislation materialize in a new law or in the amendment of existing statutes. Only then would it be possible to analyze whether we are facing a legal setback or just a change in institutional design.

### **3. Direct impact on regulated sectors: energy, telecommunications and broadcasting.**

To a greater or lesser extent, COFECE, the IFT, the CNH and the CRE have been significant agencies in the promotion of competitive markets, the indirect protection of consumers and the strengthening of economic activity.

The telecommunications sector is one of the most dynamic and strategic in any modern economy and many experts attribute its progress to the independent institutional design implemented in the 2013 constitutional reforms.

It is worth mentioning that centralization could generate conflicts of interest, since the federal government could become both regulator and economic agent competing in the telecommunications sector through state-owned companies such as CFE Telecom Internet para Todos and the Red Compartida Mayorista.

A telecommunications regulatory body without autonomy could lose credibility and the ability to mediate conflicts between private operators and the government itself, negatively affecting investor confidence, the expansion of digital infrastructure in the country and the potential violation of Chapters 18 and 22 of the United States of America-Mexico-Canada Agreement (USMCA).

Likewise, the proposal does not mention what will happen to the current preponderant economic agents in the telecommunications and broadcasting sectors, which were designated as such by the IFT, and which currently comply with asymmetric regulation obligations. This will only be clear after the enactment or modification of the sectorial secondary legislation.

The proposal to eliminate the CRE and the CNH and transfer their powers to the Executive Branch could have a significant impact on the energy and hydrocarbons markets. The disappearance of these entities could increase the perception of risk in the Mexican energy sector, particularly in areas such as exploration, hydrocarbon extraction, renewable energy generation and electricity distribution. Their elimination could limit the new regulator's ability to ensure a level playing field in the market, potentially favoring state-owned players such as PEMEX and CFE, affecting the dynamics of competition.

One argument in favor of centralization is that it could improve coordination between executive policy and energy sector regulation. However, this depends on the ability of the new regulator to operate efficiently, transparently and with the same technical quality as its predecessors.

## **Conclusions**

The proposed reform of certain OCAs in Mexico represents a decisive moment in the discussion on Mexico's institutional design. It will be key that the secondary legislation that is reformed or enacted is the product of careful studies and involves multiple stakeholders to avoid setbacks in the markets and the rights of individuals and companies, considering not only criteria of administrative efficiency, but also their specialized technical role as regulators and compliance with Mexico's international obligations, particularly the USMCA.

Although the arguments in favor of the reform may focus on improving efficiency, reducing costs or increasing accountability, it is essential that, despite the loss of constitutional autonomy, solid mechanisms be implemented to avoid politicization of their functions and to ensure that checks and balances exist for the new entities to continue promoting competitive and efficient markets, taking into account the dynamism of each sector, to the benefit of consumers and businesses.

At Pérez-Llorca Mexico, we continually monitor and analyze in detail the evolution of the legal and institutional landscape in Mexico. We have extensive experience in antitrust, telecommunications, energy, transparency and personal data protection. Our team of experienced professionals is uniquely positioned to provide specialized and effective advice, ensuring that our clients are well prepared to address and mitigate potential legal challenges in these areas.

## Contacts



### Patricio Martínez Osorio

Head of Antitrust Practice

[patricio.martinez@perezllorca.com](mailto:patricio.martinez@perezllorca.com)

T. +52 55 5202 7622



### Gustavo González del Castillo

Senior Associate of Antitrust Practice

[gustavo.gonzalez@perezllorca.com](mailto:gustavo.gonzalez@perezllorca.com)

T. +52 55 5202 7622

## Offices

### Europe ↗

Barcelona  
Lisbon  
Madrid

Brussels  
London

### America ↗

New York  
Mexico City  
Monterrey

### Asia-Pacific ↗

Singapore

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice.

This document was prepared on November 28th, 2024 and Pérez-Llorca does not assume any commitment to update or revise its contents.

©2024 Pérez-Llorca. All rights reserved.

[perezllorca.com](https://perezllorca.com) ↗

Pérez-Llorca