



# MIXED MESSAGES FROM MEXICO

There has been rapid progress in more affordable telecoms access and wider coverage in Mexico, but the view of **ADRIAAN TEN KATE** is that reforms – aimed mainly at establishing equal access at competitive prices – may fail to address current and future convergence and technology challenges

**T**he Mexican telecoms reforms of 2013 and 2014 were inspired by a dubious perception that Mexican telecoms were lagging far behind modern developments, by an excessive confidence in what competition can bring about in markets with strong economies of scale and by unrealistic expectations about what economic regulation can achieve in such a setting. As I set out in this article, the results thus far are a crusade against the incumbents under the banner of competition, a spiral of regulatory intervention with increasing costs and diminishing returns, and a creeping erosion of the incentives that private operators are left with to invest in the expansion and upgrading of their networks. The reforms may well turn out to be counterproductive, and fail to address the real challenges facing the industry.

## THE HISTORY

When the Mexican telecoms industry was opened up to competition in 1996, expectations were high. Experience in other countries had shown that competition would lower prices, increase coverage, enhance the quality of service and encourage investment in infrastructure. So it did in Mexico, but in the view of the industry regulator at the time (Cofetel), not enough. The regulator had expected a more pronounced decline in the market share of the incumbent (Telmex) than what occurred, and has remained disappointed by the performance of the new entrants ever since.

A decade later, Telmex still enjoyed a market share in fixed telephony of 80% and its running

mate in the mobile market, Telcel, had acquired a comfortable share of 70%. As of 2010, the new entrants in fixed telephony Alestra (AT&T) and Avantel (Sprint), had bitten the dust, and competition was coming from TV cable operators entering the triple-play market. In mobile, Telcel, taking advantage of its relations with Telmex, had quickly overtaken the initial operator, Iusacell, while its main competitor Movistar (Telefónica) had never been able to get much more than 20% of the market (although Telcel is not the incumbent in the mobile market in the strict sense of the word, I refer to it as such for simplicity).

Cofetel blamed this on the anticompetitive practices of the incumbents and on the deficiencies of the regulatory framework; the incumbents were obstructing access to their networks and so favouring their own operations with end users. This conduct had given rise to a host of complaints, either with the Federal Competition Commission (Cofeco) or with Cofetel, most of them doomed to endless delays in the judiciary.

Something had to be done and, in the view of Cofetel, the only effective remedy would be to have its powers extended and to curtail possibilities to appeal its rulings. A complete overhaul of the regulatory framework would be necessary. To gain support for such an undertaking, Cofetel asked the OECD for an independent assessment of telecoms in Mexico and for recommendations. That was in late 2010, when the regulator still belonged to the Ministry of Communications and Transport (SCT). In January 2012 the OECD released its Review of

◀ Telecommunication Policy and Regulation in Mexico.<sup>1</sup> The findings were devastating, to say the least. According to the review, the industry was dysfunctional. Compared with other OECD countries, Mexican prices were excessively high and penetration ratios extremely low. As a result, the Mexican economy as a whole would have suffered a welfare loss of 1.8% of its GDP. This was due to a lack of competition caused by the anticompetitive practices of the incumbents. That is why the review recommended a series of measures, most of them aimed at strengthening the powers of the regulator.

Perhaps the most surprising part of the review was that there was hardly anything new. We had heard the story of high prices and low penetration for a long time from Cofetel and that of the lack of competition from Cofeco. And the recommendations were a rehash of what Cofetel had always recommended in its pursuit of extended powers.

The real state of affairs in the Mexican telecoms industry was less dramatic than believed. Since the privatisation of Telmex in 1990 and the opening up to competition in 1996, the industry had made enormous advances in almost everything: in prices, coverage, quality of service, expansion and modernisation of infrastructure, and introduction of new services. There was definitely a lag with the more advanced countries of the OECD, but a reasonable estimate of such a lag would not surpass 5 years for most cases, which compares favourably with Mexico's lag in economic development in general.<sup>2</sup>

In fact, in 2011 when the OECD did the review, Mexican prices were only higher than OECD averages in purchasing parity power (PPP) dollars. When compared at nominal exchange rates, they were even lower, and the most important price of all – that of mobile services – substantially lower. Likewise, the relatively low penetration rates could be explained by the fact that Mexico was among the least developed member countries of the OECD. Last but not least, the alarming welfare loss reported by the review was estimated with a flawed econometric exercise featuring untenable assumptions and embarrassing mistakes.<sup>3</sup>

Altogether, the findings of the OECD were vastly exaggerated and, without doubt, a more objective assessment would have arrived at a completely different picture of the state of development of the Mexican telecoms industry. However, because the purpose of the review was to gain support for an overhaul of the regulatory system, a more objective assessment would not fit the purpose.

It worked. The media were enchanted with the sensational welfare loss, which made the headlines of the main newspapers day after day. And the legislators also bought the story. Who would object to the conclusions and recommendations of an evidence-based study performed by such a prestigious organisation as the OECD? As a consequence, the review by the OECD played a key role in the approval by the Mexican Congress of constitutional reform in June 2013, and of a new

bill on telecoms one year later: the Federal Telecommunications and Broadcasting Law (LFTR).

### THE CONVENTIONAL DOCTRINE UNDER SCRUTINY

The professed goals of the telecoms reforms in Mexico are lower prices, more coverage, better services, and expansion and modernisation of infrastructure. And the way to get there is by more competition. With more competition these benefits will sprout all by themselves, was the belief. Yet, for more competition a smooth interconnection of networks is needed, which requires indiscriminate access by operators to each other's networks at competitive prices. Indiscriminate, to level the playing field in downstream markets; and at competitive prices because expensive access is like no access. That is why most of the measures enabled by the reforms are aimed at procuring equal access.

However, this is the conventional doctrine and the real world is often more complex. A first question is whether there is room for more competition in Mexican telecoms, and also whether, if so, it will really deliver the envisaged benefits. This is more than just a rhetorical question and to answer it some qualifications are in order.

In upstream markets of network services there is little room for competition. Everybody agrees on that. Economies of scale are too strong. Infrastructure should be shared, not duplicated. But whether there is room for competition in the downstream markets of services to end users is not that clear. Downstream markets are not at all free from economies of scale; many costs are fixed and become more affordable when spread over more subscribers. Such economies of scale limit room for competition, downstream.

Moreover, in markets with economies of scale, competition loses much of its magic spell. In such markets, it is no longer impartial market forces that pick the most efficient firms as winners. It is rather first-mover advantages that do not necessarily favour the most efficient market players. And even when market forces happen to pick the most efficient ones, there is still the trade-off between more competition and productive efficiency. The presence of several operators implies multiplication of fixed costs, which drives prices up. So, the hope for lower prices from more competition may be delusive.

A second question is what exactly is meant by indiscriminate access. It sounds fair, but again there is some friction between theory and practice. The problem is that in a differentiated world equal treatment may be highly discriminatory. Take telephone services, which are quite differentiated. Providing a specific service at one location with one technology is not the same as providing the same service at another location with another technology. And production costs depend on that. Even so, flat pricing of such services is common practice, although it discriminates against low-cost users and generates inefficiencies, such as "cream skimming" and freeriding. Yet, there is no doubt that regulating differential access prices according to such cost differences would be entirely

unadministrable. That is, even when all playing fields are level, some are a bit more level than others.

A third question is what is meant by competitive prices. Again the term has a connotation of fairness and efficiency, but in practice nobody knows what competitive prices are. In the regulatory jargon they are usually interpreted as cost-based prices and the favourite model to estimate them is that of long run average incremental cost (LRAIC), a term suggesting scientific rigour, but in reality the model produces outcomes hypersensitive to the assumptions made and the choice of parameter values. Doing it one way or another does not affect the outcomes by 10% or 20%; it doubles or halves them, or even worse.

Altogether, the kind of competition in downstream markets resulting from regulated equal access at competitive prices is not “free competition”. It is manipulated competition. It is the way the regulator interprets equal access at competitive prices that steers the process. Whatever the choices made by the regulator, they will always favour some market players over others, intentionally or unintentionally. And whatever the efforts to keep up an appearance of impartiality, the regulator will always be the one to blame. It is like refereeing a soccer game, but with the difference that in telecoms regulation the rules of the game are much less clear.

That said, let us now have a look at the main elements of the Mexican telecoms reforms of 2013 and 2014, and at the way they have been implemented so far.

## THE REFORMS

As the recommendations of the OECD review roughly coincided with what Cofotel had recommended before, most were incorporated in the reforms. However, the OECD recommendations were relatively open-ended and had to be embedded in the Mexican legal system. In doing so, those who designed the reforms went far beyond the original phrasings, and even beyond common regulatory practice in other jurisdictions. With the legislators under sufficient media pressure, the authorities did not settle for less than the whole pie. In one stroke they removed the most important obstacles they had found in their way to combat the market power of the incumbents.

**Institutional aspects** Perhaps the most important change was the creation of the Federal Telecommunications Institute (IFT) in charge of regulating the telecoms and broadcasting industries. The new institute, replacing Cofotel, was given autonomy to shield it from political interests. Apart from that, it was given the power to enforce the competition regime in the industries. To make this possible a new competition statute was enacted and Cofeco was renamed the Federal Economic Competition Commission (Cofece).

To derail the attempts by the incumbents to delay regulatory injunctions for long periods, the Mexican amparo system (an instrument to challenge the acts of authorities) was reformed to not grant suspension of the injunctions during the



**The reforms were incorporated at high levels in the Mexican legal system.**



appeal process. Although the purpose is clear, in my view it is an assault on the rule of law, leaving subjects unprotected against acts of authorities that may cause irreparable harm.

To render legal appeal even more cumbersome, the reforms were incorporated at high levels in the

Mexican legal system. What one would expect in a secondary law was put in the constitution and what would be properly expected in a decree was put in the law. As a consequence, such esoteric things as the unbundling of the local loop is now a constitutional mandate and termination fees equal to zero for the so-called “preponderant” firms are decreed in the LFTR.

The result is an extremely rigid regulatory framework in an industry championing innovation and disruptive change, which would rather require a high degree of regulatory flexibility. Moreover, the regulator is not very accountable, endowed with an unmatched mixture of investigative, adjudicative, punitive and regulatory powers, further strengthened by the non-suspension of its injunctions during the appeal process.

**Regulatory aspects** What went beyond the OECD recommendations was the concept of preponderance. It was invented by the proponents of the reforms and sidesteps the advances that competition analysis has made on the subject over the past few decades. The idea was to capture what in competition analysis is known as market power, but contrary to the traditional concept, preponderance does not require the definition of a relevant market. That makes it easier to apply, but less precise in its coverage. Thanks to the concept of preponderance, it took the IFT just half a year to declare the Carso group (with both Telmex and Telcel) preponderant in telecoms, and the Televisa group in broadcasting. What had taken many years before the reform, was now done in half a year. To my knowledge, there is nothing similar to the concept of preponderance in any other jurisdiction.

Preponderant firms are subject to asymmetric regulation, interpreted as measures imposed on preponderant firms, but not on their competitors. All the measures enacted or enabled by the LFTR have to do, either directly or indirectly, with access to the networks of the preponderant firms. Many of the measures are vague, multi-interpretatable and difficult to monitor. How about the obligation to refrain from practices that impede or limit an efficient use of infrastructure for interconnection? Or the obligation to attend to requests for interconnection as quickly as attending to one’s own requests? How to enforce such measures in practice is unclear, but what is clear is that competitors will always have enough to complain about, and that there will always be arguments to maintain that preponderant agents did not comply.

One of the measures enabled by the LFTR is the vertical separation of the preponderant company. The original OECD recommendation was to

← authorise the regulator to “impose functional, and, if necessary, structural, separation of an operator that continues to abuse its dominant power...”, but the LFTR goes a step further by enabling the IFT to impose an accounting, functional or structural separation on a preponderant agent, without the need to show an abuse of dominance. And indeed, in March 2017, after a first revision of the state of preponderance in telecoms and broadcasting, the IFT ordered Telmex to separate functionally.<sup>4</sup> The reason for this was not an abuse of its preponderance, but a lack of effectiveness of the measures imposed so far.

**The shared network (SN)** Apparently lacking confidence that interconnection among private operators with equal access and competitive prices was ever going to work properly, the authorities brought matters back into the hands of the state with the project of the so-called shared network (Red Compartida), one of several wholesale open access networks (WOANs) mooted globally. The idea is to cover the whole country with a mobile broadband network under a public-private partnership. It was a public initiative, but private participation was necessary to finance the project. To avoid leveraging of upstream market power to downstream markets, the operator of the shared network was not allowed to provide services to end users (an exception is made for remote areas where downstream operators are not willing to provide services). And to avoid conflicts of interest, the existing vertically-integrated operators were banned from participation.

It is a strange project, at odds with common regulatory practice in other countries. It introduces competition in upstream markets where there is admittedly little or no room for competition. As such it definitely discourages investment by private operators in the expansion and modernisation of their own networks. Moreover, it brings the state back in an area where it is none too welcome. There is a handful of similar initiatives in other countries, but all of them are in an experimental stage and far less ambitious than Mexico’s project. (See next page for more details on the SN.)

## PERFORMANCE

The advances of the Mexican telecoms industry since the reforms of 2013 and 2014 have been remarkable. Prices have come down further and penetration increased. In mobile broadband subscriptions growth has even been spectacular. From 2012 to 2016 approximately 50 million people were added to the subscriber base. Moreover, the market shares of the incumbents in both fixed and mobile telephony and broadband declined. They declined probably less than expected, but they declined.

In a more recent review about telecoms in Mexico, the OECD attributes these positive developments to the reforms.<sup>5</sup> The lower prices are a result of more competition induced by the reforms, the spectacular growth in mobile broadband subscriptions is a result of the lower prices thanks to the competition induced by the reforms, and the

decline in the market shares of the incumbents shows that there is indeed more competition. In short, the OECD reports a success story.

Whether the reforms really induced more competition, whether the lower prices are really a result of enhanced competition and whether the enhanced penetration is really a result of the lower prices is questionable.<sup>6</sup> Since long before the reforms, prices have declined substantially, even at times that the Mexican industry was still dysfunctional due to a lack of competition (according to the previous OECD review) and the explosive growth of mobile broadband access was well underway long before the reforms could have had any effects. Probably, the spectacular growth in mobile broadband access was rather due to the introduction of the smartphone and its applications, and would have occurred with or without reforms.

The IFT was less enthusiastic about the achievements of the reforms than the OECD. In its first evaluation of the state of preponderance in the telecoms sector of March 2017, it found that the measures of asymmetric regulation implemented so far had not had the envisaged effect of reducing the market shares of the incumbents sufficiently and that additional measures were necessary to spur competition.

## THE FATE OF ACCESS REGULATION

Access is a complex matter. There are lots of details to be agreed on by the interconnecting parties. There are technical issues, locational issues, how to share costs, and how much time it may take to establish interconnection. And once connected, there may be disagreement among the parties on fees, traffic volumes and, thus, on how much one party has to pay to the other. All such disagreements may be real or sham. Technical problems may be exaggerated to slow down the process of interconnection, traffic volumes may be deflated or inflated to provide an excuse for not paying or for disconnecting the other party, etc. Altogether, interconnection is a paradise for opportunistic behaviour.

It is usually the regulators that are invoked to resolve such conflicts, but traditionally access regulation has a built-in bias against the incumbents. By default, the incumbents are the foes, and the competitors are the victims. Mexico is no exception. The result so far has been a war of attrition between the incumbents, on one side, and the competitors, knowing they are backed by the regulator, on the other. Perhaps a more important ingredient for smooth interconnection would be a cooperative spirit between the interconnecting parties, but after a long history of stigmatisation of the incumbents little is left of such cooperative spirit.

In the declaration of preponderance of March 2014, the IFT imposed a host of asymmetric measures on the preponderant agent, but in the first review of the state of preponderance of March 2017 it was found that the measures had failed to produce the envisaged effect of reducing the market power of the preponderant agent sufficiently.

Whether that was due to the anticompetitive practices of the incumbents, to the inadequacy of the measures themselves or to the way they were implemented, was not at issue. The failure itself was sufficient reason to impose a functional separation on the incumbent company in fixed telephony, Telmex.

### VERTICAL SEPARATION

Vertical integration in telecoms is standard. Networks are built for own use, not for selling network services to other operators. Integrated operators do sell network services, but as a by-product, mostly due to compulsory interconnection, not to make money. It is not attractive from a business point of view, and less so when access fees are regulated at low levels. I do not know of any private initiative to develop networks for wholesale only. Existing upstream-only operators are either spin-offs of vertically integrated operators as a result of regulatory intervention, or public initiatives.

There are strong reasons for vertical integration in the industry. The main choices to be made during network development – where and what technology – crucially depend on the characteristics of demand by end users. In particular, the density of users and their degree of sophistication are essential. Integrated firms have a far superior knowledge of such demand characteristics, and the way they change over time, than firms only active upstream. It is mainly coordination between up- and downstream that motivates vertical integration and such coordination is mostly needed at network development, less so when the network is already there. Once it is there, it is just a matter of operating the network in the most efficient way and mistakes made during development are there to live with.

Whether vertical separation is attractive from a policy point of view is a different issue. It depends on the benefits derived from enhanced competition downstream and the costs from the loss of coordination. Both benefits and costs are difficult to estimate, but benefits are in the short term while costs are of a long-term nature, so ordering vertical separation runs the risk of compromising the future. When, on top of that, upstream prices are regulated at low levels, so as to spur competition downstream, network expansion and modernisation may be severely discouraged. That is the trade-off.

In the first biannual review of the state of preponderance of March 2017, the IFT imposed a functional separation on Telmex between its infrastructure and its services to end users. After affirming that the asymmetric measures implemented so far had not had the desired effects, it added new measures to those already in force and ordered functional separation hoping that would do the job. The IFT said it had considered international experience without mentioning details, but I understand that it considered that experience successful.

Whether the international experience with vertical separation of fixed telephony operators is indeed successful is controversial. For a few

## THE SHARED NETWORK

The purpose of the project is to build a last-generation (4G) mobile broadband network to spread the benefits of modern telecoms, particularly access to internet, all over the country. The operator of the network will not serve end users; it will provide network services to operators downstream. That is to say, in the case of the Shared Network (SN), the vertical separation is not imposed on a previously integrated operator; it is there from the outset.

The SN is a public initiative, but it is carried out under a public-private partnership in which the private parties are supposed to come up with the \$7bn necessary to build the network, and in which the state contributes 90 MHz in the 700 MHz band plus a couple of fibre backbones from the Federal Electricity Commission (CFE) to connect the base stations. To ensure genuine vertical separation of the network, vertically integrated operators are not allowed to participate in the partnership.

There is no clear division of labour between the SN and the networks of the integrated operators. There is an implicit division because the SN uses the 700 MHz band, which has advantages for long range, but the mandate of the SN is to cover the whole country, not only remote areas. Moreover, the SN is not impeded from acquiring spectrum at higher frequencies and the private operators are not excluded from the 700 MHz band. So, the SN is going to compete upstream with integrated operators.

Such competition is going to take place on an unlevel playing field – tilted to one side because the SN has an endowment of spectrum that private operators would have to pay for; tilted to the other side because the operator of the SN has strong universal service obligations and, on top of that, the constraint of vertical separation. The exact balance is difficult to determine but, in my view, the SN is facing a complicated future. The great unknown is whether it will find sufficient demand for its services at the prices it will have to charge to make a reasonable return on investments.

Altogether, it is unlikely that the vertically integrated operators would be very concerned about competition from the SN in the upstream markets. Their business is in retail services, not in wholesale. They would rather be concerned about competition downstream where the SN is not allowed to operate. They will just see where they can save the effort of building and upgrading their own networks by using the SN. This will have a negative impact on their incentives to invest.

Private participation in the project was achieved by intensive lobbying followed by a sham bidding process set up by the SCT. The result was a tender with a single participant that won. The other candidate was disqualified for not presenting a guarantee in time. The winner was a consortium (Altán) set up for the purpose of the tender and composed of equipment providers – including Nokia and Huawei – and financing firms that are development banks backed by public funds, and not firms risking their own capital.

The network was given the go-ahead in March 2018 with a coverage of 32% of the population, just above the target of 30%. The bid winning the tender had been 92%, but this target is to be met in 2024. Evidently, these figures refer to potential, not actual coverage, which depends on demand by downstream operators, and when actual coverage falls short of potential coverage, this cannot be blamed on the operator of the SN. To my knowledge, the SN has no clients yet. The major operators have declared no interest yet. But it is too early to draw conclusions.

With SN, the future of the Mexican telecoms industry is falling between two stools. On the one hand, we have a set of interconnected networks of private vertically integrated operators trying to make money and, on the other, a public vertically separated network with a private twist, also trying to make some money, but committed to a goal of universal coverage. There is no clear division between one and the other, so they have to compete, but subject to entirely different rules. It is Lionel Messi playing tennis against Muhammad Ali. The best one can hope for is a funny, though confusing contest.

European countries, and for Australia and New Zealand, research has been done on the effects on prices and penetration, some with positive results, but the only study I know of that has investigated the long run effects on investment in infrastructure is on the functional separation of the UK's Openreach wholesale arm from British Telecom in 2005. That study finds that the separation has had negative effects on investment.<sup>7</sup>

By now, it is not clear what exactly the functional separation of Telmex will entail, but there is no doubt that it will be a costly and painful undertaking. Unscrambling eggs is never easy. Problems abound: those of corporate governance of the separated entities, trade unions defending the rights of their members, for example. One question is how the upstream entity is going to break even, given the interconnection fees regulated by the IFT. A simple accounting exercise has already shown that, given actual traffic volumes and access fees, it would have made losses over the last few years.<sup>8</sup> So, it may be necessary to raise fees to have the upstream entity break even, a hardly expected consequence.

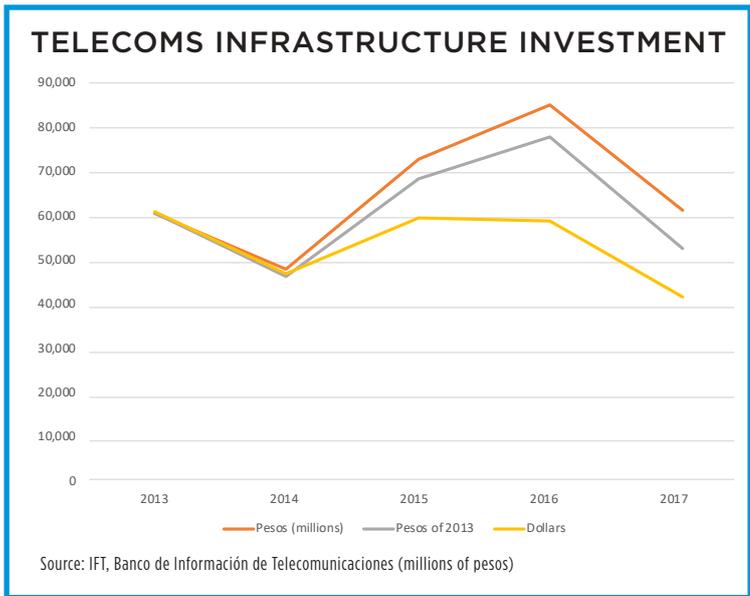
What will come out of the vertical separation of Telmex is up in the air. Whether it will bring more competition in downstream markets is also up in the air. There will always be sufficient ways to defend that it will have done. But that it will be costly is not up in the air. There is no doubt about that. And an adequate evaluation of the costs and the benefits will not be possible for a long time to come, if at all.

**INVESTMENT IN INFRASTRUCTURE**

Compulsory interconnection has always discouraged investment in infrastructure. As the benefits from such investment are to be shared with competitors downstream, everybody prefers to wait for the others to stick out their neck. When, on top of that, access regulation is tough and interconnection fees are kept low, the incentives to invest are eroded further. That is to say, there is a trade-off between access regulation to spur competition downstream, and investment in infrastructure upstream. The tougher the access regulation, the lower the incentives to invest.

In the early 2000s, awareness of the existence of such a trade-off was low. Tough access regulation was fashionable, particularly in Europe; interconnection fees were regulated at bargain levels, local loops were unbundled and in some countries incumbents were vertically separated, functionally or structurally. After 2010, authorities became increasingly aware of the trade-off. Comments that integrated operators should be allowed at least a reasonable return on their investments, and that access regulation should be tempered accordingly, became more frequent.

The Mexican reforms were late in this respect. They were designed in the spirit of what in other jurisdictions was common practice 10 years earlier, and with little awareness of the existence of the trade-off between access regulation and incentives to invest. This lack of awareness does not spell a great future for network development in Mexico, but what



is actually happening with investments and what will happen in the future is what matters.

The graph presents the evolution of aggregate investment in telecoms infrastructure from 2013 to 2017 in current pesos, in pesos of 2013 and in US dollars (my calculations). The figures should be interpreted with care. As a general rule, investments cannot be expected to show regular behaviour and responses to changes in incentives are not immediate. Investment projects are often planned long in advance; it may take time to start them up and, once underway, they are not interrupted by the first sign of adversity.

At the beginning of the administration of President Peña Nieto, investment in infrastructure was depressed. This was attributed to the uncertainty derived from the pending reforms announced in the "Pacto por México" of 2012. Once the reforms had taken shape, investments would rebound, was the general belief. The graph shows a different picture. Even if the rebound of 2015 and 2016 were due to increased certainty, it was shortlived. In 2017, investment in current pesos was back to the level of 2013, in constant pesos it was 13% lower and in dollars even lower (31%). Measured in dollars, investment in infrastructure has never been back to the supposedly suppressed level of 2013.

What will happen in the coming years is difficult to predict, but the collapse in investment in telecoms infrastructure in Mexico by 2017 which is apparent from the graph is an ominous development. Such figures tell more about what is happening in the industry than, for example, price movements, increases in coverage and declines in market shares of the incumbents. The best we can hope for is a quick recovery in 2018.

**CONVERGENCE**

Convergence in telecoms and broadcasting has been embraced worldwide as a development benefiting consumers. Mexico is no exception. At the end of 2006 Mexico celebrated its Convergence Agreement,<sup>9</sup> recognising the importance of convergence and

setting out some rules to promote it. However, the way those rules were implemented rather suggests that everything was done to impede convergence. Already before the agreement, what I call the “big ban” was an issue with a heavy political load. The “big ban” is the provision that the incumbent in fixed telephony, Telmex, is not allowed to provide television services. The restriction stems from times when convergence was hardly an issue. It was an arrangement in the modification of Telmex’s concession title when the company was privatised. In my view, it is an obsolete provision that ignores what has happened in the industry over the past few decades. To my knowledge, there is nothing similar to such a restriction imposed on telecoms operators in other jurisdictions.

Since convergence became an issue, Telmex has applied for a modification of its concession title so as to be allowed to offer TV, but it has never been given a chance. Opposition from the free-to-air duopoly (Televisa and TV Azteca) and cable and satellite operators has always been strong. The cable operators, especially, see their business threatened by Telmex with its vast fibre-optic network that is well-suited to TV services.

At the time of the Convergence Agreement, the idea was to open the door to Telmex, but to give the cable operators that were just entering triple-play a head start of a couple of years. The condition was that Telmex would comply with its obligations of its concession title, particularly the obligations of universal service. It never did, at least not in the perception of the regulator.

That is how lifting the “big ban” became a bait to tame Telmex in matters that had little to do with convergence. First it was compliance with the universal service obligations. With the reforms it became compliance with the asymmetric regulation resulting from its preponderance. However, as both universal service obligations and asymmetric regulatory measures are so detailed and open-ended that their compliance will always be disputable, the ban is still in force and can best be understood as a punishment for Telmex’s alleged disobedience.

Moreover, the bait is not convincing any more. After many years of raising expectations, the regulator is unlikely to grant the necessary modification of the concession title. Telmex could bow and scrape for many more years to learn afterwards that it was not enough. Thus far, the regulator has not demonstrated that it is prepared to stand up against the vested interests opposing the removal of the “big ban”.

What is behind all this is the fear that Telmex, once given the chance to enter TV, would quickly displace the existing cable and satellite operators, and acquire a dominant position in the new market, where it would likely repeat all the anticompetitive practices it is so familiar with in the telecoms markets. That should be avoided at any cost, in the view of the regulator.

Whether Telmex would quickly displace the existing operators is not certain, but not unlikely either. But that this should be avoided at any cost is a step further, given that the costs – or rather the

lost benefits – are high. It is a typical example of what is known in competition policy as the fallacy of the efficiency offence: if Telmex were to really displace the existing operators in a short time, it would be for some reason; for example because customers prefer its services over those of other operators. So, impeding Telmex from providing those services is equivalent to withholding from customers what they like more.

The result is that in 2016 Mexico had a penetration ratio of barely 15% for triple-play, at a time when streaming is already replacing free-to-air and pay TV services. As a consequence, more than a decade has passed without taking advantage of a fibre network that could have brought better and cheaper pay TV to more households. All this, to safeguard competition in a market in which the dominant player, Televisa, has been allowed to consolidate freely.

### A SCENARIO FOR THE 2020s

It is difficult to predict what Mexican telecoms will look like in the medium run, but if things go on as now, a not unlikely scenario for the 2020s is the following:

- The IFT will industriously be procuring indiscriminate access at competitive prices to the networks of the preponderant incumbents
- The IFT will do so by piling up one asymmetric measure on another, giving rise to a host of complaints and endless litigation
- The IFT will be estimating LRAICs for all the separate components of the unbundled local loop with quite sophisticated cost models whose outcomes can be manipulated at will
- Sooner or later, the IFT will break up Telmex structurally after realising that the additional measures did not have the effect of reducing the market shares of the incumbent sufficiently
- Convergence in the industry will remain on hold because the IFT, under pressure from vested interests, will not allow Telmex to offer TV
- In spite of disguised subsidies from the state, Altán will be struggling to break even because of not finding sufficient demand for its network services at the competitive prices controlled by the IFT
- Investment in infrastructure by private operators, at least in backbone infrastructure, will remain suppressed and will only pick up to the extent the SN is not in a position to fill the gap.

Meanwhile the real challenges facing the industry will be different:

- Mobile generations will go beyond 4G to 5G, 6G or more
- Convergence will not be triple-play, but sextuple-play
- A good deal of traditional free-to-air and pay TV services will be replaced by streaming
- Vertical integration will not be between up- and downstream telecoms services, but between media companies, content providers and telecoms operators
- Most operators will be multisided platforms obtaining an increasing part of their income not from subscriptions, but from targeted publicity and advertisements.

Whether regulation has a role to play is not at issue, but in my view the kind of regulation enabled by the current Mexican telecoms reforms is not prepared for such challenges.

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