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Mexico's battle with monopolies: reputation-based autonomy and self-undermining effects in antitrust enforcement

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Abstract

Despite increased scholarly attention to competition law enforcement against corporate monopolies, our understanding of this topic in developing countries remains very limited. This article addresses this gap by focusing on Mexico, using enforcement statistics, expert interviews and documentary resources. I find that Mexico initially pursued surprisingly high levels of anti-monopoly enforcement, which was followed by an equally surprising decline. Departing from the previous research that emphasized the influence of expert ideas, business power and international models, this study highlights two factors shaping the enforcement of competition law on monopolies in developing country contexts: the strategies employed by newly established competition authorities to foster organizational autonomy through a positive public reputation, and the subsequent self-undermining effects of these strategies. In addition to advancing the existing literature on competition policies, these findings shed light on the factors behind local variations in globally diffused institutions and the limitations of reputation-based bureaucratic autonomy.

Key words: competition, regulation, law, developing countries, transnational diffusion

JEL classification: K Law and Economics, L4: Antitrust Issues and Policies, P16 Political Economy

1. Introduction

There has been much discussion on increasing corporate monopolization in Western advanced economies (Khan, 2016; De Loecker and Eeckhout, 2018; Philippon, 2019). Monopolies can dictate the prices and terms of sale for the products and services they offer, thus extracting rents from their consumers, employees and smaller competitors. Although

monopolies have also been persistently present in developing economies, hampering economic growth and social progress (Singh, 2002; UNCTAD, 2002), scholars have paid less attention to monopolization in these contexts. At the same time, there is a growing social science literature on changing policies on the enforcement of antitrust (or competition) laws on monopolies. Scholars have chiefly demonstrated that, since the 1980s, US antitrust law enforcement has been more forgiving of monopolistic practices, while the European Union (EU) has become more active and stricter in enforcing monopoly rules (Gifford and Kudrle, 2015; Ergen and Kohl, 2019; Foster, 2022). However, while similar competition laws have spread to developing economies since the late 1980s (Bradford and Buthe, 2015), there has been less attention to changes in competition law enforcement in these contexts. This study aims to fill these gaps by focusing on Mexico's enforcement of competition law enforcement on monopolies.

The current literature anticipates that Mexico is likely to be weak in enforcing competition laws on monopolies. Mexico is a well-known instance of a 'hierarchical market economy' (Schneider, 2009), with concentrated business interests exercising substantial political power, especially since the neoliberal transformations of the 1980s (Thacker, 1999; Haber *et al.*, 2008; Gates, 2009), and several studies suggest that *business power* impedes competition law enforcement against monopolies (Christophers, 2016; Philippon, 2019). Moreover, Mexican policymakers have traditionally relied on economists, particularly those with PhDs in the USA (Babb, 2004; Fairbrother, 2014; Van Gunten, 2015), and the *employment of economists* trained in the Chicago School of economics, it is argued, relaxes law enforcement on monopolies (Eisner, 1991; Ergen and Kohl, 2019; Berman, 2022). Lastly, Mexico adopted its competition laws under USA influence during the negotiations on the North American Free Trade Agreement (NAFTA) in 1992 (Gallardo, 1996; Aydin, 2016), and as the studies on the *global diffusion* of antitrust laws would suggest (Bradford *et al.*, 2019), Mexico should imitate the US model in enforcing its anti-monopoly rules weakly.

As I will demonstrate, however, Mexico has enforced its competition laws on monopolies surprisingly firmly, especially in the 2000s. Between 1999 and 2018, the Mexican Competition Authority (MCA) imposed more sanctions on monopolistic practices than the US antitrust authorities combined and was close to the revered record of the European Commission (EC). It even enforced the anti-monopoly rules aimed at monopolies' price-cutting strategies, which are highly controversial under the Chicago School. Mexico's anti-monopoly enforcement has declined over time, however. Although the Mexican economy remains highly monopolistic, the MCA has sanctioned only a few monopolies since 2013. This retrenchment, despite the initial success, also warrants an explanation. How, against all the odds, did the MCA initially enforce its competition laws on monopolistic practices so rigorously? And what caused it to later reduce its anti-monopoly enforcement?

To explain these enforcement patterns, I utilize the literatures on the global diffusion of public policies, the bureaucratic autonomy of regulatory agencies, and the self-undermining effects of policies. These literatures suggest that policies and laws created under exogenous (international) pressures may generate weak administrative authorities lacking the necessary domestic political or business support to legitimize their existence, which creates a threat of de facto termination after initial de jure adoption (Meyer *et al.*, 1997; Dobbin *et al.*, 2007). However, as Carpenter and colleagues argue, weak authorities can still achieve durability and autonomy by resolving specific complex problems, forming cross-cutting

alliances with public beneficiaries, and fostering a positive public reputation for competence and effectiveness (Carpenter, 2001; Carpenter and Krause, 2012). Thus, I argue, weakly institutionalized agencies can utilize bold and expansive imposition of regulatory rules, which I name 'reputation-oriented enforcement', to support their existence and autonomy. However, as historical institutionalists suggest, even when policies are successful, they do not necessarily stabilize or self-perpetuate but can rather induce self-undermining effects that create new pressures and opportunities for policy change (Streeck and Thelen, 2005; Mahoney and Thelen, 2009). As Jacobs and Weaver (2015) argue, these effects may materialize as 'unanticipated policy losses' arising from ambitious, short-term oriented and inconsistent decisions, as well as the emergence of an 'expanding menu of available policy alternatives' influenced by foreign counterparts. Consequently, I contend that reputation-oriented policies, while initially successful, can bring unforeseen setbacks and an increased array of policy options, leading to their later rearrangement.

Therefore, while the argument in this article diverges significantly from previous studies on antitrust policies, it still complements them. It suggests that the emulation of foreign antitrust models does not predetermine a country's trajectory but rather presents significant challenges regarding the preservation and autonomy of newly established competition authorities. The dominance of certain experts and their ideas within these authorities shapes the authorities' perception of the challenges and influences how they try to overcome them with reputation-oriented policies. Moreover, while powerful businesses may not succeed in obstructing such policies directly, they may contribute to their unexpected failure and the emergence of policy alternatives, which may ultimately lead to policy reversal.

Using this theory, expert interviews and documentary resources, I demonstrate that, despite its initially weak institutional and political standing, the MCA successfully enhanced its public image as a politically independent entity and a guardian of consumer interests through its reputation-focused enforcement decisions, particularly those directed at monopolies within the telecommunications industry. This positive perception, in turn, facilitated the gradual expansion of the MCA's statutory autonomy and authority. Nevertheless, despite public support for its anti-monopoly measures, the MCA was later forced to transition to alternative enforcement strategies. This shift was prompted by significant unforeseen legal setbacks in the courts, which in turn broadened the competition policy agenda to include increased emphasis on cartel enforcement and sectors beyond telecommunications.

Although these insights into the Mexican case hold intrinsic value, given Mexico's significant role in the global political economy, they are also potentially generalizable. Competition laws in developing countries frequently develop under foreign pressures and influences (see Arslan, 2022), which mirror the situation in Mexico. Thus, new competition authorities in these countries may encounter similar challenges in securing domestic political and business support, which may also drive them to adopt reputation-oriented enforcement policies. Furthermore, given the common layering of exogenously influenced laws onto pre-existing domestic laws and policies (see Teubner, 2001), it is plausible to expect comparable substantial setbacks to reputation-oriented enforcement policies in other developing countries. Finally, the inherent vulnerability of developing countries in emulating foreign legal regimes implies that any domestic setbacks can prompt them to adopt alternative enforcement strategies. This study thus offers a theoretical roadmap that can potentially contribute to a broader understanding of the implementation of globally diffusing competition laws in developing countries.

In the subsequent sections, I summarize the existing literature on competition law enforcement and analyze how Mexican enforcement data contradict predictions. I then draw on policy diffusion, bureaucratic autonomy and negative feedback effects to outline my explanatory theory, before detailing my empirical methodology and data sources in Section 4. Section 5 explores strategic enforcement decisions by the MCA for autonomy and enforcement powers, while Section 6 covers the failures of this strategy and resulting retrenchment in monopoly enforcement. The conclusion includes further discussion and a summary of findings.

2. The puzzle of anti-monopoly enforcement in Mexico

2.1 Expectations of the literature

National competition laws are designed to protect market competition through three main rules: against the restriction of trade between competitors (cartels), against mergers and acquisitions increasing market (monopoly) power (the ability to raise prices without losing customers), and against restrictive and exploitative practices of companies with market power (Foster, 2022, p. 1657). However, despite the similarities in formal design, the broad and abstract language of competition laws allows countries to implement them differently. Most comparative studies on differences in the enforcement of competition law have focused on what has been called the 'Atlantic divide' between US and EU enforcement policies (Gifford and Kudrle, 2015; Ergen and Kohl, 2019; Foster, 2022): while US enforcement has become more permissive as regards market concentration and corporate monopolization since the 1980s, the EU has stepped up its supervision of concentrated markets and taken stronger action to limit the power of monopolistic companies. Two main domestic factors have been argued to have caused these variations.

The first is *business power*, which is argued to negatively affect the competition authorities' ability or willingness to enforce competition laws on monopolies. First, businesses could affect decisions directly through lobbying, donations, and network-based access (so-called instrumental business power, see Hacker and Pierson, 2002). For example, Philippon (2019) argues that corporate lobbyists influence the US antitrust agencies through their connections to elected representatives, while the EC has been shielded from such undue influence by its supranational construction. Second, businesses could influence policymakers' calculations of the economic benefits of competition enforcement (so-called structural business power, see Hacker and Pierson, 2002). For example, Christophers (2016) suggests that the conviction that businesses needed to increase in size to be internationally competitive led the US antitrust authorities to ease enforcement in the 1980s. Such arguments have also been made for developing countries. For example, Aydin and Büthe (2016, p. 19) suggest that the alliances between economic and political elites and governments' protectionist policies on national businesses are likely to cause low levels of enforcement.

Based on this argument, we would expect Mexico to have low levels of enforcement against monopolistic corporations. Mexico is a well-known 'corporatist state' with a 'hierarchical market economy' (Collier and Collier, 2002; Schneider, 2009), in which business associations influence political decisions. Under the neoliberal policies of the 1980s, business power influence further increased (Gates, 2009), with large domestic corporations receiving special benefits from these policies and growing further in size (Thacker, 1999; Haber *et al.*, 2008). For example, in 1990, the state landline telephony monopoly, the

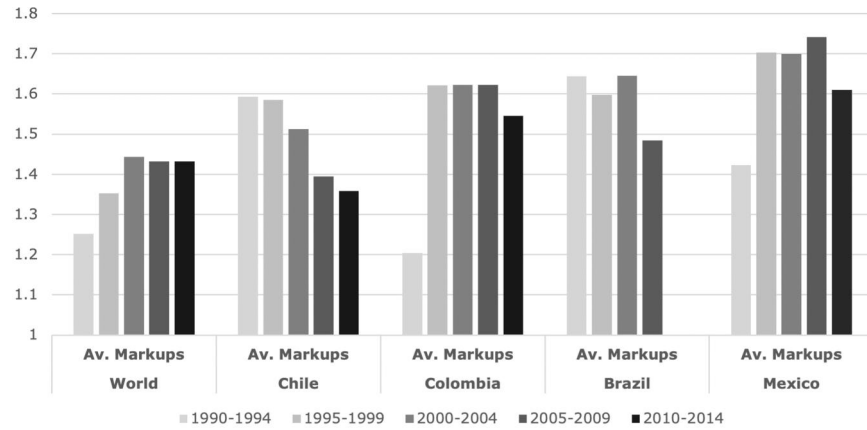

Figure 1 Comparison of average markups in Mexico with the rest of the world and selected Latin American countries.

Source: De Loecker and Eeckhout (2018).

Mexican Telephone Company (*Telmex*), was sold to a private consortium led by Carlos Slim for just 443 million USD, less than two-thirds of its estimated value (Hogenboom, 2004). Consequently, as Figure 1 shows, market monopolization in Mexico, measured by average markups, has been above the global world average and surpasses comparable economies in the region (De Loecker and Eeckhout, 2018).

The second domestic factor scholars focus on is *expert ideas*, particularly the two great schools of thought on antitrust policies, the Chicago School of Law and Economics and the German Ordoliberal School. These schools proposed different goals and means for enforcing competition laws: while the Chicago School emphasizes the protection of consumers' interests (the so-called consumer welfare principle) and the use of economic investigative methods, the Ordoliberal School prioritizes giving businesses a fair and equal chance to compete and the use of legal analyses (Ergen and Kohl, 2019; Foster, 2022). These schools are institutionalized (or become paradigmatic) mainly through the employment decisions of competition authorities. The more competition authorities rely on economists and economic analyses, the more they adopt Chicago School ideas, which leads them to weakly enforce competition laws on monopolistic practices (Eisner, 1991; Berman, 2022).

Again, this argument would suggest low levels of anti-monopoly enforcement in Mexico. Economists have historically been important policymakers within the Mexican state (Babb, 2004), particularly those advocating pro-market and Chicago School-based ideas (Fairbrother, 2014; Van Gunten, 2015). Economists were also involved in the legislation and implementation of Mexican competition laws; the laws were prepared by a special committee of economists within the Ministry of Trade (Gallardo, 1996). Furthermore, the top decision-makers within the MCA, namely its presidents and commissioners, have mainly been economists, many with PhDs from American universities (see the Supplementary Appendix), and economists have played essential roles in the MCA's investigation processes.

In addition to these domestic factors, some researchers have considered *exogenous influences and pressures* relevant to understanding policies in developing countries (Dobbin *et al.*, 2007). This literature suggests that developing countries imitate either the US or EU models of competition law and policies, depending on which of these global hegemons with large domestic markets they have closer economic ties with (Bradford *et al.*, 2019). The free trade agreements they enter into with the USA or the EU encourage them to align and coordinate their competition policies accordingly (Bradford and Buthe, 2015). Furthermore, after opening up their markets, developing countries face intense market pressures to abide by foreign regulatory standards to attract foreign investors and expand their exports (Bradford, 2015).

This literature would also predict that Mexico is likely to enforce competition laws on monopolies weakly, mimicking the US model of antitrust policies. Mexico adopted competition laws under NAFTA, which explicitly required it to 'coordinate' its competition policies with the USA (Solano and Sennekamp, 2006, p. 18). The US influence was evident in the initial design of Mexican competition laws, which has remained unchanged: Mexican laws differentiate between 'absolute' and 'relative' monopolistic practices, which imitate the 'per se' and 'rule of reason' case law categorizations developed under the Chicago School influence in the 1980s and 1990s in the USA (Van Fleet, 1995). *Absolute monopolistic practices*, such as horizontal agreements between competitors, are categorically prohibited, and *relative monopolistic practices*, which include restrictive vertical agreements and abuses of dominance (unilateral conduct), are conditionally prohibited *only* when companies have substantial market power and fail to provide efficiency reasons for their practices (Shaffer, 2004, p. 18). Thus, like the US laws, the Mexican competition laws formally take a 'cautious position' in dealing with monopolies (Gallardo, 1996, p. 23).

2.2 Mexican enforcement of competition law

Despite these strong reasons to expect that Mexico will only weakly enforce its competition laws on monopolies, it in fact enforced them surprisingly vigorously and expansively, especially in earlier years. To understand its competition law enforcement, I have collected statistics relying on the MCA's official reports and online database. Competition law enforcement statistics are useful in demonstrating differences across time and between countries (Posner, 1970; Eisner, 1991; Kovacic, 2003). For enforcement numbers in the USA and the EU, I rely on Foster (2022). By counting only sanctioned cases that resulted in an administrative fine, I aim to capture the enforcement actions that show a clear anti-monopoly policy emphasis and overcome the cross-national procedural differences in case processing. The methodology used to collect this data can be found in the Supplementary Appendix.

Figure 2 presents the differences in the enforcement of competition laws on unilateral conduct in the two decades between 1999 and 2018 in Mexico, the USA and the EU. It shows that the Mexican authority sanctioned substantially more monopolistic conduct cases (24) than the US antitrust authorities—the Department of Justice (DOJ) and the Federal Trade Commission (FTC)—combined (7), while falling slightly short of the sanctions issued by the EC (29). Although it is difficult to compare these enforcement numbers, given the significant cross-national differences in competition authorities' powers, jurisdictions and case-processing practices, they nevertheless indicate the strength of Mexico's enforcement of competition laws on monopolies and its divergence from the US model.

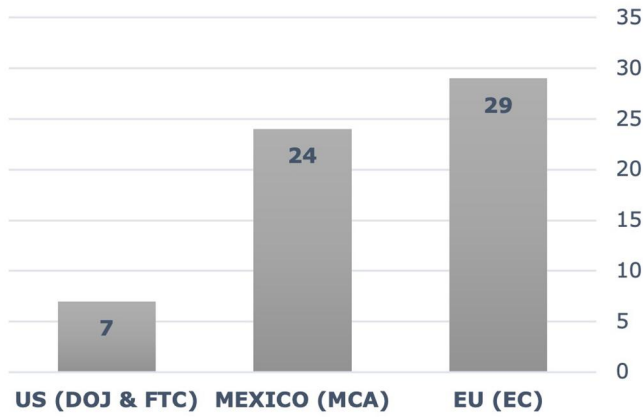

Figure 2 Comparison of Mexico's enforcement of unilateral conduct (monopolization) with the USA and the EU (1999–2018).
Source: Foster (2022), MCA statistics.

Figure 3 Breakdown of antitrust infringements in the MCA's sanctions on unilateral conduct (monopolization) cases, 1998–2018.
Source: MCA statistics.
Note: Infringement categories are translated from Spanish and are based on MCA's classification.

Second, Figure 3 breaks down the unilateral conduct sanctions in Mexico by type of infringement. In the 24 unilateral cases, the MCA found 37 competition law infringements, most of which involved predatory pricing (*depredación de precios*), that is, pricing products below cost to force competitors out of the market. The other allegations, such as rebates and price discrimination, are similar infringements that involve reduced prices for certain groups of consumers. This finding is again an indicator of Mexico's strong anti-monopoly policies and divergence from the US antitrust model. Monopolistic practices reducing consumer prices have mostly been allowed in the US model since the 1980s based on the argument that they almost universally contribute to consumer welfare (see Khan, 2016).

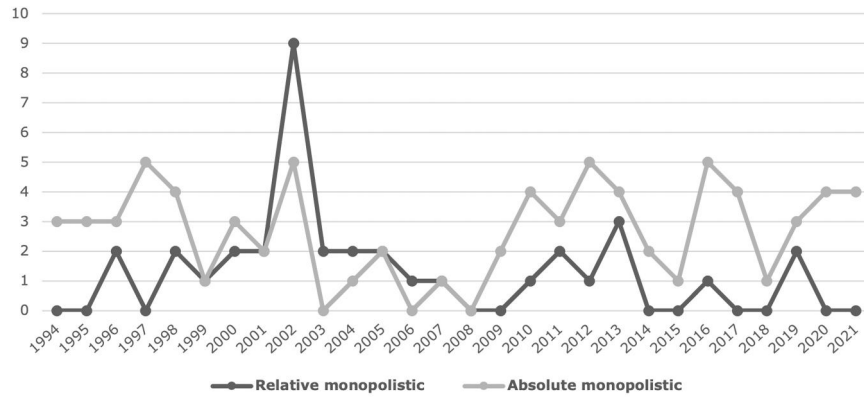

Figure 4 Temporal distribution of Mexico's competition law enforcement decisions (sanctions), 1994–2021.

Source: MCA statistics.

Finally, Figure 4 examines the temporal shifts in Mexico's competition law enforcement numbers, encompassing all available data until 2021, involving both relative and absolute monopolistic practices. The MCA's enforcement actions against relative monopolistic practices peaked in earlier years (highest in 2002, which resulted from the simultaneous resolution of several investigations initiated in different years, coupled with the imposition of interconnected yet distinct sanctions on *Telmex*) and later declined and stabilized at low numbers. Notably, after the 2013 constitutional changes, which I will describe shortly, only three sanctions have been issued on monopolistic companies. Conversely, enforcement actions related to absolute monopolistic practices increased when enforcement against relative monopolistic practices decreased. In the empirical sections of this article, I move beyond aggregate numbers by also analyzing the size of sanctions and the sanctioned companies. As an initial observation, these numbers indicate that the MCA has moderated its anti-monopoly policies over time, increasingly focusing on anti-cartel measures.

3. Reputation-oriented enforcement policies and negative feedback effects

What explains these patterns in Mexico's enforcement of competition laws: first, the early high levels of monopoly enforcement, and second, its decline over time? Existing theories modeled after the US and EU cases fall short in explaining these patterns, as they fail to account for the specific conditions created by the global diffusion of laws and the organizational motivations of newly formed authorities in developing country contexts. I therefore construct an alternative explanation based on theories of global policy diffusion, bureaucratic autonomy of regulatory agencies and negative policy feedback effects.

3.1 Policy diffusion and organizational strategies for autonomy

As the literature on the global diffusion of public policies suggests, rules diffused to developing countries often lack genuine domestic support for their implementation, which may

mean that laws remain 'symbolic adoptions' or 'window dressing' that appease international audiences but are not enforced (Meyer *et al.*, 1997; Dobbin *et al.*, 2007). Thus, the newly created regulatory agencies face the threat of de facto termination as the international pressures that originally led to their establishment weaken or disappear. These agencies may exist formally but can barely function as elected officials deprive them of necessary resources, refuse to defer to their judgments or override their decisions with their actions (Hafner-Burton and Tsutsui, 2005). Such subversion is made possible by the absence of strong domestic 'constituents' that could otherwise support these agencies' existence (Boxenbaum and Jonsson, 2017). In developing countries, the lack of public awareness and understanding of competition laws and their benefits for consumers may further weaken the social ties that could sustain the agencies (Fels and Ng, 2013).

However, newly created authorities can overcome these weaknesses and even thrive through reputation-based policies. Here, I utilize Carpenter's theory of agency autonomy, which refers to businesses and governments deferring to agency decisions contrary to their preferred decisions (Carpenter and Krause, 2012). In this theory, autonomy rests on agencies' ability to foster a positive public reputation (or legitimacy) for their unique capabilities and missions (Carpenter, 2001, p. 56). By specializing in resolving specific social problems, creating innovative policies and delivering results, they can build cross-cutting alliances with various social groups that support their existence. Therefore, in this theory, autonomy is not given but taken; agencies must *first* show their technical ability and political capacity to make independent decisions in ways beneficial to some social groups, which they then use to protect themselves against both government and business power encroachments. They can even change 'the terms of legislative delegation', inducing politicians to pass new laws expanding the agencies' statutory authority and powers (Carpenter, 2001, p. 34).

Thus, I argue that foreign legal influences do not necessarily dictate a uniform law enforcement path for developing countries but rather create significant domestic legitimacy challenges for the new competition authorities. This, in turn, can compel these authorities to embrace *reputation-oriented enforcement policies* which are characterized by *more assertive, bold or expansive interpretations and implementations of competition law rules*. As Maor suggests, agencies are more likely to make bold decisions when they 'operate in an environment in which there is a strong need to publicly justify their existence and modes of operation' (Maor, 2011, p. 561). Existing research supports the idea that reputation concerns can increase public agencies' policy output (Maor and Sulitzeanu-Kenan, 2015). Some studies have even found that competition authorities expand their enforcement activities to safeguard or enhance their powers. For example, Macmillan (2012) demonstrates that the US DOJ's Antitrust Division escalated its enforcement output when its allocated resources fell below desired levels.

In this theory, which competition law rules are more strongly enforced for reputation-building should depend on the local economic and political context, which determines the perceptions and interests of the diverse audiences and stakeholders that evaluate agencies' effectiveness from various perspectives (Carpenter and Krause, 2012). For instance, imposing sanctions on monopolies can prove especially beneficial for competition authorities in heavily monopolized (concentrated) economies, particularly in situations where consumers suffer directly under monopolization, where corporate elites are widely perceived to have connections with political elites, or where the media closely scrutinizes regulatory actions against large dominant corporations.

This structural explanation of agency policies, however, does not completely ignore the influence of individual bureaucrats. Carpenter argues that agency reputational concerns often stem from the personal status concerns of individuals in leadership positions (Carpenter, 2014, p. 67). Recent studies also suggest that these individuals' professional background, previous work experiences and social networks influence the reputation-oriented strategies agencies consider appropriate and likely to succeed (see Kolltveit *et al.*, 2019). Nevertheless, the actual effectiveness of these strategies in achieving positive public reputation and organizational autonomy is structurally constrained by external audiences. Therefore, unless there are significant shifts in these external factors, agencies are likely to persist with their established and successful reputation-oriented policies, regardless of leadership changes.

3.2 Self-undermining effects

As historical institutionalists argue, however, even successful policies can generate negative policy feedback that contributes to their failure (Streeck and Thelen, 2005; Mahoney and Thelen, 2009). In contrast to positive policy feedback, wherein policies reinforce their own bases of political support, resulting in either policy stability or an expansionary dynamic over time, negative feedback refers to when policies attract opposition from various sources, which creates new pressures and opportunities for policy change (Jacobs and Weaver, 2015, pp. 441–442).

Jacobs and Weaver theorized two specific mechanisms through which policies can produce negative feedback (they also examine a third factor, termed 'losses in mass cognition', which is not covered here). First, policies can result in 'unanticipated policy losses', which are adverse consequences not predicted or considered when policies are enacted (Jacobs and Weaver, 2015). These losses are likely to occur when policies are 'socially ambitious', designed to achieve 'short-term goals' and implemented within a 'layered' (fragmented) institutional setup, resulting in policy 'incoherence and shortsightedness' (Jacobs and Weaver, 2015, p. 445). A second mechanism involves the expansion of the 'menu of available policy alternatives', signifying the emergence of new plausible policy tools and ideas (Jacobs and Weaver, 2015). This expansion stems from the unexpected losses under the first mechanism which motivate some politicians, bureaucrats or policy experts to look for alternatives, but requires some additional conditions. These actors can succeed in broadening the menu of policy options if they can demonstrate the presence of 'credible' alternatives, backed by 'a successful adoption by other, closely related jurisdictions' (Jacobs and Weaver, 2015, p. 449).

Jacobs and Weaver's theorization suggests that reputation-oriented enforcement policies, designed to protect and perpetuate exogenously created new regulatory authorities, can generate significant self-undermining effects. Three key characteristics of these policies could lead to these effects. First, as discussed earlier, reputation-oriented policies are often socially ambitious and short-term oriented, driven by the urgent need for organizational survival through public attention and support. As Jacobs and Weaver suggest, these characteristics increase the likelihood of incoherence and shortsightedness in decisions that may lead to unforeseen policy losses. Second, as the literature on the global diffusion of laws suggests, when new laws and regulatory agencies are created in response to external pressures, they are typically 'layered' onto pre-existing local laws and authorities, since these previously established institutions are difficult to dismantle (Hacker, 2004). This

fragmentation can create frictions between the new and old institutions (Teubner, 2001; Berkowitz *et al.*, 2003), which can also lead to unintended policy consequences, as Jacobs and Weaver (2015, p. 445) argue. Lastly, laws and regulations do not globally diffuse in a single instance; rather, there are multiple 'recursive' interactions between domestic institutions and international legal norms (Halliday and Carruthers, 2007). Therefore, in policy areas influenced by external pressures, policy actors can be expected to more readily find credible alternatives to present policy decisions in foreign jurisdictions (see Chorev, 2012). This ability, according to Jacobs and Weaver, significantly contributes to the expansion of the policy menu after unexpected policy losses.

Self-undermining effects can compel authorities to revise their policies, as these effects raise the costs or diminish the benefits of maintaining the current enforcement policies while also diminishing the costs or raising the benefits of transitioning to alternative strategies. By adhering to existing reputation-oriented enforcement policies, agencies accumulate unexpected policy losses, which, in the long run, can undermine the political and social support they aim to generate. Simultaneously, the expansion of the policy menu facilitates a smoother transition to alternative policies that may even provide additional new benefits. Thus, agencies can shift to alternative enforcement strategies as the self-undermining effects of their original reputation-oriented policies become more evident.

4. Method and data

This research primarily draws upon 48 semi-structured in-person interviews conducted between January and March 2019 with Mexican competition law experts. Since only a limited number of professionals have substantial experience in implementing competition laws in emerging jurisdictions like Mexico, 48 experts represent a significant sample. Interviews covered participants' experiences in specific cases, institutional reforms they were involved in, and their observations on the historical evolution of Mexican competition policies. Oral history interviews have proved valuable in understanding policymaking in highly specialized policy fields like competition law, where decision-making is often obscured by technical language as well as opaque procedures and agencies (see Özgöde, 2022; van der Heide, 2022), especially in the context of developing countries, where official record-keeping can be sparse or unreliable.

Interviews played crucial roles in constructing different parts of Mexico's history with competition laws. Fifteen interviews with officers at various levels within the MCA, including the president, commissioners and entry-level case-handlers, provided valuable insider perspectives on the MCA's enforcement goals and logics after the 2013 reforms. Additionally, 18 interviews with lawyers, consultants or officers from other authorities, who previously worked at the MCA or participated in the drafting of Mexican competition laws, were indispensable for understanding the enforcement policies before the 2013 reforms. Fifteen interviews with senior lawyers selected from reputable rankings such as Who's Who Legal and Legal 500, academic consultants, a judge and an international reporter were instrumental in capturing perspectives and observations from practitioners outside the MCA. The Supplementary Appendix contains more information on the interviews.

Recognizing that personal biases or information limitations may impact the historical accounts provided by interviewees, I additionally cross-verified and supplemented the interview data with documentary evidence. I reviewed the MCA's activity reports since its

inception and gathered newspaper accounts covering significant decisions and institutional reforms mentioned in the interviews, utilizing the online archives of major Mexican newspapers (e.g. *El Universal*, *Reforma*, *La Jornada*). Furthermore, I analyzed 34 news reports from the Latin America Digital Beat (LADB) archives of the University of New Mexico Digital Repository, 42 academic articles and books written by Mexican competition lawyers and economists and 28 reports and briefs on Mexico published by the Organisation for Economic Co-operation and Development (OECD) Competition Committee.

5. The MCA's anti-monopoly enforcement policies

5.1 Original institutional weaknesses of the MCA

The MCA was founded on a strong legal mandate to interpret and enforce Mexico's new competition laws. It was the only authority that could receive and evaluate complaints from businesses and consumers on anticompetitive business practices. It had full discretion over initiating investigations based on these complaints and could also launch investigations based on its own analyses (*ex officio*). All investigations were finalized in the MCA's highest decision-making body, the Commission (*Plenum*), which was composed of five commissioners, one of whom also acted as president. In its final resolutions, the MCA could find companies guilty and then issue administrative fees and/or behavioral remedies to correct anticompetitive practices.

Despite this strong mandate, the MCA originally lacked the domestic political and economic support that could lend it political legitimacy and sustain its existence and effectiveness. As highlighted earlier, Mexican governments protected and even helped to create domestic private monopolies during the neoliberal transformation. Other economic interest groups, such as labor unions, small businesses and middle-income consumers, either supported monopolization for job creation or were suspicious of the benefits of the new competition laws. Thus, as one international reporter observed in 1998, 'the level of support for the new direction of competition policy in the wider public or business communities [was] uncertain' (p. 185).

In the absence of domestic political support, political actors and monopolistic companies could undermine the MCA's existence. Its initial legal framework facilitated this institutional vulnerability. The MCA enjoyed technical autonomy and operational autonomy from the government but remained tied to the Ministry of the Economy. The President of Mexico had full discretion over the appointment of commissioners and could therefore try to give them directions. Moreover, the MCA could be subdued by limiting its powers and resources. Initially, the MCA lacked some basic investigative powers, such as using dawn raids (unannounced visits to business premises) and leniency (partial or full amnesty for cartel participants), and was unable to offer competitive salaries or expand its core investigative staff (Ugarte, 2003). Finally, the statutory fines were very low, especially measured against the average size of corporations in Mexico. As one interviewee explained, companies could say to their attorneys, 'If push comes to shove, we're only going to pay a small fine, so don't worry' (Interview 32).

The former commissioners, presidents and senior officers I interviewed acknowledged these weaknesses in the MCA's original design but saw them as obstacles that could be overcome by the agency's own determination and actions:

> We have always *fought for* our independence. We have had cases in which the President of Mexico picked up the phone and called [the MCA] and said, 'you have this investigation, stop it', 'you are analyzing this merger, approve it' and what we always did was what the law laid down. We didn't succumb to that type of pressure … They [politicians] don't like us … they don't like what they cannot control (Interview 4).

As one interviewee explained, the inaugural team of commissioners assigned to the MCA shortly after NAFTA were proponents of free markets and perceived the MCA as having a mission to reshape the hierarchically coordinated Mexican economy into a competitive market economy (Interview 31). Additionally, armed with robust academic credentials and connections within the bureaucracy, these high-ranking officials had the potential to pursue distinguished careers in civil service and even politics beyond their terms at the MCA. These leaders' ideological orientation and personal professional aspirations thus motivated them to improve the MCA's standing as an influential and autonomous public authority.

5.2 Reputation-oriented enforcement policies

To overcome the MCA's originally weak position, senior policymakers began in the late 1990s to pursue a reputation-based enforcement policy by investigating, sanctioning and blocking the actions of monopolistic companies. Some of these early decisions on monopolistic practices involved well-known American consumer brands, such as Adams (gums and mints) and Coca Cola. However, most MCA decisions in this period focused on the Mexican telecommunication companies. Figure 5 presents the distribution of sanctioned unilateral conduct decisions between 1999 and 2018 among different sectors. It shows that 44% of sanctioned cases covering 89% of fines were issued to telecom monopolies.

It is important to note that this enforcement focus on telecom monopolies remained constant despite the changes in MCA presidents and commissioners. Under President Ugarte, the MCA launched dozens of investigations on telecom monopolies and sanctioned them in ten instances between 2000 and 2004. In 2000, the MCA took the drastic measure of blocking *Televisa*'s acquisition of radio stations based on the argument that it would consolidate its market power over advertisements. The same year, the MCA sanctioned *Telmex* for refusing to provide 800 toll-free numbers to its competitors, and a few years later *Telcel* for discriminatory pricing. Later, investigation numbers decreased but the focus on telecom monopolies continued and the size of fines increased substantially under President Motta (2005–2013). In this period, the MCA sanctioned telecom monopolies four more times, most significantly imposing a 3.7 million USD fine on *Televisa* for refusing to provide services to competitors in 2009 and later, in 2011, a huge 1 billion USD fine on *Telcel* for discriminatory pricing.

How do we know that these decisions were based on the MCA's own wishes and not under political orders? To answer this, as Carpenter suggests, we must look at whether the decisions could be reduced to the preferences or interests of the dominant political and economic groups. Telecom monopolies have strong political ties to governing political parties. For example, Slim reportedly won the *Telmex* privatization through his strong connections in the Institutional Revolutionary Party (*PRI*), which had controlled the government since the 1920s. He also received special benefits under National Action Party (*PAN*) governments (2000–2012), which he supported financially during election campaigns (Osorno, 2019). During most of this period, the President of Mexico was Vicente Fox, a former CEO

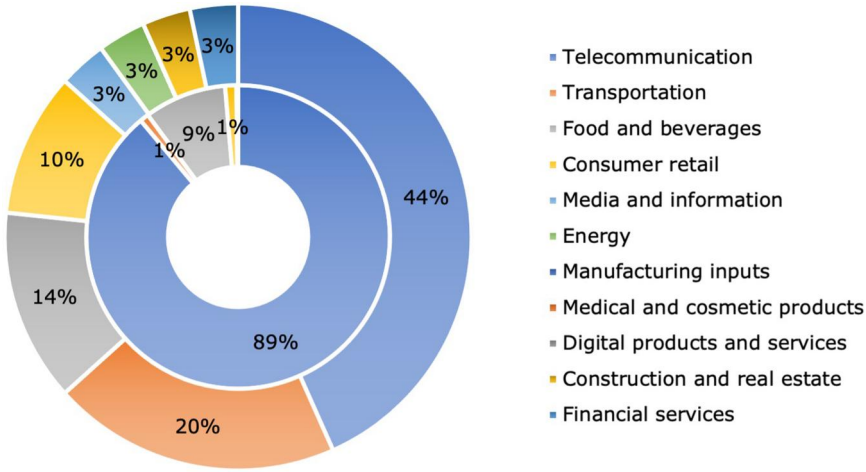

Figure 5 Sectoral distribution of unilateral conduct (monopoly) sanctions, 1999–2018.

Source: MCA statistics.

Notes: Outer doughnut: enforcement numbers; inner doughnut: enforcement fines. The sectoral categorization is loosely based on the classification used in the European Community (commonly known as 'NACE').

of Coca Cola, and many former *Telmex* employees were in key government departments (Osorno, 2019, p. 200). Furthermore, Mexican governments did not take any significant decisions to curtail the telecom monopolies. The Federal Commission of Telecommunications, created by the 1995 telecom regulations, had limited powers and lacked political autonomy (Atiyas *et al.* 2017, p. 13). In the subsequent years, it failed to impose asymmetric regulations on telecom monopolies and even passed regulations that helped them increase their market power (OECD, 2012). A new telecommunications law, which was supported by the MCA, was tabled but dropped in Congress in 2002 (LADB, 2002). Conversely, Congress passed a broadcasting law in 2006 that enabled telecom monopolies to expand their powers by acquiring exclusive digital broadcasting rights. The MCA objected to this legislation and, together with some congressmen, brought it to the Mexican Supreme Court (LADB, 2007). Therefore, throughout this period the MCA's sanctions on monopolistic companies contradicted the revealed government interests and policy preferences.

Nevertheless, MCA sanctions were still 'political' in the sense that they strategically targeted the monopolies that would bring them the most political credibility and legitimacy (Interviews 34, 38). In this period, monopolization in telecoms was hurting consumers and small businesses badly. An OECD report in 2012 estimated that Mexican telecommunications monopolies cost 129.2 billion USD in consumer welfare losses between 2005 and 2009 (OECD, 2012, p. 17). *Telmex*, with its 80% market share of landlines, levied the highest telecommunications prices among OECD countries (p. 30). The report also warned that 'given the very skewed distribution of income in Mexico, the burden of this loss in consumer surplus weighs significantly on a large segment of Mexico's population' (p. 17).

Rural populations and small businesses, which relied more on fixed lines for communication, bore the brunt of the costs of monopolization (pp. 17, 30).

By targeting these monopolies, the MCA substantially increased its visibility in the Mexican media and created a positive public image for itself. Between January 2001 and July 2005, it was mentioned 994 times in one of the most read newspapers in the country (*Reforma*), mainly in connection with the sanctions on these giant companies: 96 times in connection with *Telmex* and 69 times with Coca Cola (Labarthe, 2006, p. 497). Most of these newspapers' commentators regarded the decisions as 'signals' of the MCA's power and political independence (Labarthe, 2006, p. 497). They also celebrated them as protection of small businesses and consumers against powerful companies. For example, the 68 million USD fine on Coca Cola in 2005 was portrayed as a 'David vs. Goliath' case and narrated from the perspective of a small mom-and-pop store owner whose complaint eventually led to the fine (El Universal, 2008). At the same time, the MCA could signal its autonomy by going against companies with clear political connections. For example, interviewees argued that the sanction levied on *Televisa* in 2010 'sent a strong signal of a strong authority, because it is very difficult to hit a television company, especially *Televisa*' (Interview 38). Similarly, the billion-dollar fine on *Telcel* in 2011 caused 'every company to think this is for real' (Interview 12). As a former MCA commissioner explained, these reputational consequences of decisions were not accidental but intentional:

> At that time the Commission was trying to get cases in the newspapers, in the media … They are a legal body, but they do need to sell what they are doing. Especially the presidents of the Commission have this tendency, first to be quiet and be very low profile, but once they start getting cases, they become aware that it's good for them. They get a lot of media attention … so they become eager to get cases that will get on the news (Interview 35).

These decisions also capitalized on other emergent political opportunities for the MCA in the early 2000s. As demonstrated by the OECD report, the MCA gained important foreign allies in this period who also criticized the Mexican telecom monopolies. The US government even brought a formal complaint to the World Trade Organization in 2000 (Solano *et al.*, 2005). Moreover, by the mid-2000s, technological developments had increased economic rivalry in the telecom sector. In particular, Slim's *Telmex* and *Telcel* came into increasing competition with the broadcasting monopolies, *Televisa* and *TV Azteca* (which together controlled 94% of TV services), over control of internet and digital services (Álvarez, 2015, p. 53). This competition divided the corporate elite and reduced its ability to counteract the MCA's decisions collectively.

5.3 Increasing autonomy and powers of the MCA

By the mid-2000s, the MCA had begun to use its growing positive reputation to demand changes to Mexican competition laws to strengthen its autonomy and expand its powers. First, it created a new internal unit to coordinate its lobbying efforts in Congress. A former staffer in this unit explained that the lobbying strategy involved convincing the 'legislative middle class' by emphasizing the social and economic benefits of MCA decisions, such as by telling congressmen 'your telephone bill could be a couple of dollars less expensive a month, you know' (Interview 22)? As another former officer explained, 'obviously the more they [MCA] sanction, the more it's public news, then they get more budget and then they can demonstrate that they're actually doing these things well' (Interview 28). The best example

of how the MCA utilized its enforcement-based reputation to increase its statutory powers is the billion-dollar *Telcel* fine in 2011. The fine was issued immediately before a new revision to the competition laws was scheduled for a vote in Congress. A former MCA official familiar with the process explained:

> I remember thinking 'this is the end, this is where the bill dies', but it had the opposite effect! [Politicians said] 'So, you are willing to make that kind of splash!' … [The law] came out in less than a month, with 3 weeks of discussion in Senate … . We used it [the case] as evidence that we are willing to use these tools and handle big interests (Interview 22).

These lobbying efforts culminated in three major revisions to Mexican competition laws. The first, in 2006, substantially increased the level of statutory fines and gave the MCA the authority to use leniency and dawn raids. Additionally, the MCA could now issue binding opinions on the regulated sectors of the economy, which the sectoral regulators would have to follow. The second revision, in 2011, further increased the fine levels and removed some of the restrictions on the MCA's ability to use leniency and dawn raids. In the third and last revision, with the 2013 constitutional amendments and the 2014 revisions to competition laws, the MCA attained full constitutionally protected autonomy from all branches of government and substantially increased its resources and size (see Aydin 2016 for more on these reforms).

As Aydin (2016) finds, these legal changes to the MCA's jurisdiction and powers were supported by the Mexican consumer associations and small business representatives in Congress. As I have shown, this societal support did not emerge on its own but was generated through the MCA's own reputation-based enforcement policies, that is, its active enforcement against monopolies, particularly in telecoms. This took place independently of the government and succeeded in enhancing the authority's visibility, legitimacy and positive public reputation. However, there were also significant drawbacks to these enforcement policies, which I evaluate in the next section.

6. Self-undermining effects of anti-monopoly policies

6.1 Unexpected losses in the courts

The more the MCA-sanctioned monopolies, the more it lost cases in the courts. As one interviewee explained, 'From the mid-1990s to 2004 [the MCA] had a deluge of litigation. It lost pretty much two-thirds or three-quarters of all the cases brought to courts' (Interview 22). In the first 10 years of enforcement, the MCA recorded over 600 appeals against its decisions (CFC, 2004a, p. 319). A large majority of these appeals were filed even before the MCA could finalize its investigations (Shaffer, 2004, p. 45). The court decisions often overturned and impeded the effective realization of MCA sanctions on monopolies. For example, by 2004, none of the sanctions imposed on *Telmex* had been upheld in the courts (del Villar and Alvarez, 2004) and the MCA was able to collect only a small portion (19%) of the fines it levied (CFC, 2005, p.102). The problems continued after the 2006 and 2011 legal reforms, with the courts approving only one of the four monopoly sanctions issued by the MCA between 2006 and 2012 and overturning the record-high fines on *Televisa* (2010), *Telmex* (2011) and *Telcel* (2011).

These losses can be partially attributed to the institutional layering of the new Mexican competition laws over the existing *amparo* systems in Mexico. Created in 1847 as the Mexican version of a habeas corpus writ, amparo—specifically, *amparo administrativo*—is a judicial review procedure that aims to protect legal persons, including corporations, from governments' arbitrary decisions. Complainants can ask any federal court for amparo protections, namely the reparation, suspension or annulment of an act by a government authority, based on their constitutional right to due process (Solano *et al.*, 2005). Above all, the amparo review demands strict adherence by government to the letter of the law, obligating administrative authorities to justify decisions explicitly on legal provisions (Interviews 19, 25 and 32). However, this expectation presents significant challenges for the MCA, as competition laws, both in Mexico and globally, are broadly formulated and incorporate abstract economic concepts open to interpretation, giving competition authorities like the MCA considerable discretion over rule interpretation. This is particularly true for the enforcement of the rules on monopolization, which necessitate authorities to conduct complex economic analyses to assess businesses' market dominance and quantify their adverse economic effects. Moreover, amparo, as a broad constitutional right, gives corporations extensive access to federal courts. Corporations can file amparo requests in courts that lack expertise in competition law, leading to reviews focused purely on procedural grounds (Interviews 20, 27 and 42). These further disadvantage the MCA, as its complex economic analyses may bolster claims of due process violations by corporate lawyers (Interviews 19 and 44).

Therefore, as anticipated by Jacobs and Weaver, the layering of the foreign-inspired competition laws upon the pre-existing amparo system created strong potential for institutional frictions, which powerful businesses could exploit, costing the MCA important losses in the courts. As one interviewee explained, these adverse effects of institutional layering were not clear to the policymakers before they emerged: 'The idea, at the time, was that whatever the Commission [MCA] would decide would hold and that it would be easy to implement' (Interview 36). This is evident in the reversal of several critical MCA decisions on monopolies. For instance, two large sanctions on Coca Cola were overturned as the courts narrowly defined the concept of 'economic agent' to apply solely to each incorporated entity and rejected the MCA's attempt to interpret it broadly to encompass the dozens of Coca Cola subsidiaries in Mexico, which was crucial to establishing this company's dominance over its market (Interviews 24 and 42). In another case, upon reviewing an amparo decision of lower federal courts, the Mexican Supreme Court found Article 10 of the 1992 competition laws pertaining to monopolistic practices unconstitutional for being too broadly and abstractly written and giving the MCA excessive discretion. This annulment significantly curtailed the MCA's ability to interpret the anti-monopoly rules broadly.

The unexpected losses in the courts can also be traced to the MCA's ambitious yet short-sighted reputation-oriented enforcement policies. According to several interviewees, in its pursuit of enhancing its reputation through hefty sanctions on monopolies, the MCA neglected to prioritize adherence to legal procedures, making its decisions more vulnerable to amparo protections (Interviews 20, 21, 24, 25, 31, 32 and 35). This oversight was linked to the strong incentives for senior decision-makers to impose dramatic sanctions on monopolies to gain immediate media attention. For instance, one interviewee explained, 'If they [MCA commissioners] have to choose between gratification today, and worrying about a

setback under *amparo* tomorrow, they will probably choose taking the gratification today' (Interview 42). This was supported by an anecdote from a former MCA commissioner:

> At the time, there was an administrative internal record [requested by the lawyers of the defense], and this was denied by the president of the commission … We told him, 'Look, you cannot do this. Let them use these internal records, because if you don't, they will go to the *amparo*, they will win.' … The president, the lawyers and the economists that worked with him said, 'Look, no, no, we don't want to waste time. We want to declare this company a monopoly right now.' … We lost that case in *amparo* four years later … This was a very big case, and the authority would get a lot of attention (Interview 35).

The billion-dollar *Telcel* decision of 2011 is another example of how reputation-seeking hindered the MCA's success in the courts. A lawyer who was involved in the case explained that, while the billion-dollar fine made the MCA more reputable, it also made the decision more vulnerable in amparo review: 'Obviously if you issue a billion [dollar] fine, the judge will be looking for grounds for not sustaining it' (Interview 38). Indeed, *Telcel*'s lawyers contended that the MCA committed a crucial error in calculating the record fine: it had invoked the rule on recidivism (repeat offense) to increase the fine, yet *Telcel*'s second offense was rooted in actions predating the first offense. This flawed application of recidivism ultimately prompted the courts to overturn the MCA's record sanction. Furthermore, the MCA president's rushed efforts to publicize the decision in the media also had adverse consequences. After numerous interviews expressing unwavering commitment to enforcing the fine, he was subsequently compelled to abstain when the decision went to another round of voting in the MCA Commission after the courts overturned the initial decision (Interviews 32 and 38). As a result, in 2012, the MCA was compelled to retract the fine and instead accept certain behavioral commitments from *Telcel*.

6.2 Expanding policy menu

The attempts to address these challenges in the courts without changing the MCA's enforcement policies had limited success. In the late 2000s the MCA provided training to Mexican federal court judges on the legal and economic principles underlying competition laws (Interview 20). However, any progress in the judiciary's acceptance of the MCA's decisions achieved through this training was offset by changes in the judiciary as a result of reappointments (Interviews 12 and 35). Furthermore, with the 2013 constitutional reforms, Congress established specialized courts to review MCA decisions. While these courts increased consideration of the substance and intent of competition laws, they still applied stringent formalistic amparo standards to MCA decisions (Interviews 8, 24 and 32).

With the limited success of these changes to courts, in the late 2000s, some high-ranking officials at the MCA began exploring alternative enforcement policies to better withstand amparo review (Interviews 21 and 44). One proposed solution was to shift the MCA's investigative focus to cartels and collusive practices. These anticompetitive behaviors often yield concrete evidence, such as cartel meeting records, and have easily quantifiable negative economic impacts, such as reduced output. Such evidence could undergo formalistic amparo reviews more smoothly, potentially enhancing the MCA's track record in the courts. Moreover, sanctioning large cartels, which unquestionably harm consumers by driving up prices, could help maintain the MCA's positive public reputation as the defender of consumer interests. However, as previously discussed, the MCA initially lacked the dawn

raid and leniency powers crucial for uncovering concrete cartel evidence and sanctioning large-scale cartels. Consequently, the expansion of MCA enforcement in this area had to wait until these powers were granted during the 2006 and 2011 legal reforms.

In line with Jacobs and Weaver's expectations on policy menu expansion, MCA representatives requesting these powers from Congress in 2006 and 2011 explicitly cited their availability in other competition law jurisdictions. As one interviewee explained, the MCA lobbyists 'did not invent stuff' but rather argued, 'we need this because our peers have this' (Interview 22). Notably, they referenced the 2004 OECD peer-review report on Mexican competition law enforcement, which explicitly recommended the establishment of a leniency program for the MCA (Shaffer, 2004, p. 9). They also highlighted the success of dawn raids in detecting large-scale cartels in American and British jurisdictions (Interview 44).

Meanwhile, Congress was also exploring policy alternatives to the MCA's enforcement of competition laws on the monopolistic telecom companies. By the 2010s, politicians had become increasingly concerned about the economic and political costs associated with telecom monopolies, largely thanks to the public attention drawn to these monopolies by MCA sanctions. Telecom monopolies were central to the policy debates during the 2012 presidential elections and played a crucial role in the formation of the 'Pact for Mexico' between political parties in 2013. This pact committed to reforming the telecom sector by establishing a new autonomous telecom regulator equipped with extensive powers. Importantly for the MCA, this involved transferring the authority for enforcing competition law rules in the telecom sector to the new regulator, thus merging competition law enforcement with sectoral regulations. This, they argued, would allow the MCA to turn its attention to other monopolistic sectors of the Mexican economy (Interview 31).

Similar to the MCA lobbyists, in justifying the transfer of competition law enforcement authority to a sectoral regulator, the Mexican Congress explicitly drew inspiration from practices in other jurisdictions. Specifically, congressmen referenced the British Office of Communications (Ofcom), which has integrated sectoral regulations and competition law enforcement in this sector since 2003. Additionally, they pointed to the newly created Spanish National Markets and Competition Commission, which had recently consolidated six sectoral regulators, including the telecom regulator, and the antitrust agency into a single authority in 2012 (Delgado and Mariscal, 2014).

In other words, the MCA's inability to effectively enforce sanctions on telecom monopolies prompted the expansion of the competition law enforcement menu for the MCA. This occurred as a result of the MCA gaining more cartel enforcement powers and the Mexican Congress removing antitrust enforcement authority over the telecom industry from the MCA to allow it to dedicate more resources to other enforcement goals. In both cases, the presence of foreign policy models helped policymakers advocate for these alternatives.

6.3 Recalibration of MCA enforcement policies

Utilizing its new expansive cartel enforcement powers, the MCA has issued numerous, record-high sanctions to large-scale cartels since 2013. Before then, the MCA had never imposed significant fines on cartels, and the few sanctions it did impose were on small-scale vendors such as tortilla vendors, dry cleaners and bus drivers engaged in local market price-fixing (Gallardo, 2010). A turning point came in 2010, when the MCA imposed its largest-ever fine on a cartel of major national and international pharmaceutical companies

that supplied drugs to the Mexican Social Security Institute. As one senior official at the time explained, the health sector was 'a market close to people, [and] had issues that people could relate to' (Interview 21). The crackdown on cartels intensified after the 2011 and 2013 legal reforms. Alongside four additional sanctions on cartels in the health sector between 2016 and 2019, the MCA penalized four large national banks for colluding on workers' pension funds (*Afores*) in 2017. More recently, the MCA imposed cartel sanctions on the producers of baby diapers and feminine hygiene products, widely used by millions of Mexicans daily, as well as the companies selling liquefied petroleum gas, consumed by 76% of Mexican households (Palacios, 2021). These cartel sanctions have received intense media attention and have been pivotal in shaping the MCA's positive public image since 2013 (Interviews 7, 8, 21 and 36). Moreover, almost all of these decisions have been sustained in the courts.

Conversely, the expectation that the MCA, once freed from its responsibility to oversee and regulate telecom monopolies under the 2013 legal changes, would intensify its anti-monopoly enforcement efforts across other monopolistic sectors did not materialize. The MCA has only sanctioned monopolistic practices in three instances. Two of these sanctions were imposed on private companies operating the Mexico City (2016) and Cancun Quintana Roo (2019) airports, which were linked to the cartel investigations into airport taxi companies during the same period. The third sanction was imposed on the dominant credit information company, Dun & Bradstreet, for refusing to provide data to a competitor. None of these rulings appeared to have a significant impact on a wide range of consumers, and they did not garner the same level of media attention as the cartel sanctions.

Therefore, faced with the negative effects of its previous enforcement policies and with expansion of its enforcement policy options, the MCA appears to have adjusted its policies since 2013. Particularly, it has focused on sanctioning cartels affecting millions of Mexicans. Thus, while maintaining a positive public reputation remains important to the MCA, the authority now has options to pursue this goal without the adverse effects it encountered previously. This explains why the initial strong emphasis on monopoly enforcement, despite its effectiveness in garnering public support for the authority, diminished over time.

7. Discussion and conclusion

Corporate monopolization poses a significant challenge to the core tenets of liberal market policies around the world. Since the 1990s, emerging markets in non-Western developing economies have taken cues from the United States and European jurisdictions, embracing new competition laws to address this challenge. Nevertheless, so far there has been little scholarly attention to these new jurisdictions. This study on Mexico highlights that understanding competition law enforcement in such contexts requires evaluation beyond the theories put forward to explain the US and EU cases, namely, the influence of business power, expert ideas and foreign models. As the Mexican case highlights, developing countries can still pursue robust anti-monopoly enforcement policies, despite the presence of the debilitating factors analyzed in that literature. Instead, three literatures are key to understanding such cases: the global diffusion of policies, reputation-based bureaucratic autonomy and negative feedback effects.

I demonstrate that the MCA's concerns about legitimacy and autonomy, particularly in the early 2000s, prompted it to extensively enforce anti-monopoly rules on domestic

telecom monopolies. This enforcement strategy proved highly successful, earning the MCA a positive public reputation and cross-cutting alliances with consumers, which in turn helped it to safeguard its political autonomy and even expand its administrative powers over time. However, these enforcement policies encountered unforeseen setbacks in the Mexican courts. The MCA faced a growing number of amparo losses, partly stemming from gaps and tensions between Mexico's externally influenced competition laws and the well-established domestic amparo review system. Furthermore, the MCA's rushed decision-making led to notable procedural errors, exacerbating the setbacks. These substantial losses prompted certain policy actors to explore alternatives in foreign models. As a result, the MCA revised its enforcement policies, redirecting its efforts toward cartel enforcement by leveraging new powers such as leniency and dawn raids. Additionally, it expanded its sectoral focus beyond telecommunications, a change necessitated by the transfer of competition law enforcement duties from the MCA to the new telecom regulator.

In Mexico's case, the factors previously examined in the literature, namely, business power, expert theories and international influences, still wielded some influence over antitrust policies but not in the ways emphasized by the literature. First, businesses did not directly impede the decisions of the MCA; instead, as other scholars argue, they thrived within the quiet politics of the courts (Rahman and Thelen, 2021, p. 77). The MCA's ambitious and shortsighted decisions facilitated this pathway for business influence. Second, experts and their theories could adapt to the authorities' reputation-building needs and strategies. Economists playing key roles within the MCA initially conceived monopoly sanctions as a significant part of the MCA's mission and then adjusted their theoretical frameworks to facilitate the shift to cartel enforcement in later years. Lastly, the influence of the US antitrust regime did not dictate a similar path for Mexico's competition authority. Instead, it raised significant domestic legitimacy issues, prompting the MCA to pursue reputation-oriented enforcement policies and initially even diverging from the US model.

Thus, this article illuminates less-explored dimensions of competition law enforcement policies and reveals a form of policy characterized by assertive, bold or expansive interpretations and implementations of competition law rules—referred to here as reputation-oriented enforcement policies—designed to bolster competition authorities' public reputation. It also underscores, however, the limitations of these policies. I show that unexpected policy losses, coupled with the expanding policy menu influenced by international policy models, may compel authorities to reassess their initial reputation-oriented enforcement targets.

These insights provide a valuable theoretical framework for future research on competition law enforcement in developing countries beyond Mexico. Given that numerous developing countries have, like Mexico, adopted competition laws under external pressures, it is likely that other instances can be identified in which a nascent domestic competition authority initially encounters challenges in securing its domestic legitimacy and political autonomy. Moreover, considering the MCA's remarkable success in expanding its statutory autonomy and powers through bold enforcement decisions, it is plausible that other competition authorities in developing countries may follow a similar strategy. However, unexpected policy setbacks can also occur in these contexts. Competition laws in other developing countries might similarly have been layered on potentially incompatible domestic administrative laws and review systems. For instance, similar legal conflicts may arise in other Latin American countries with the amparo system. Additionally, due to the vulnerable

position of developing countries within the international system, their competition laws and policies, akin to those in Mexico, could be susceptible to policy menu expansion as a result of ongoing exogenous influences. Hence, the insights derived from the study of Mexico can assist future research in delving deeper into variations, challenges and potential successes in competition law enforcement across diverse developing country contexts.

Some insights from this article also have practical implications for competition authorities in developing countries. As Kovacic recommends, such authorities may initially concentrate on 'simpler enforcement tasks' and gradually progress to 'more conceptually complex and resource-intensive commands over time' in order to save time and resources (Kovacic, 2001, p. 285), which typically involves prioritizing cartel enforcement over detecting and sanctioning monopolies. However, this recommendation disregards the significance of public reputation and support for newly established competition authorities and fails to account for the variations in their statutory powers. Some authorities might, like the MCA, initially lack the essential investigative tools, notably dawn raids and leniency programs, vital for uncovering major cartels and the substantial positive publicity that can attract. Without these tools, authorities are likely to identify and penalize only small and local cartels, potentially impeding their success in gaining the positive public reputation that they could use to expand their autonomy and powers. Thus, by prioritizing resource efficiency and neglecting the importance of public reputation in early enforcement policy design, new competition authorities may get locked in a weak institutional position, hindering their ability to make bolder decisions later on. In contrast, as the Mexican case demonstrates, if new competition authorities begin enforcement with a focus on major monopolies, they can improve their institutional position over time.

Different initial enforcement strategies are also possible, however. If authorities possess broad statutory powers to employ tools such as leniency and dawn raids from the beginning, they can still implement cartel-focused yet reputation-oriented enforcement strategies, as Mexico could only do in later years. In other words, this case study does not explore all the enforcement pathways that are viable in various developing economy contexts.

Moreover, further research is necessary to gain a deeper understanding of the factors influencing reputation-oriented competition law enforcement policies. For example, while it is reasonable to expect reputation-oriented policies to center on specific concentrated industries, emulating Mexico's focus on telecom monopolies or health sector cartels, the criteria guiding this sectoral focus remain unclear. Several factors may play a role. Reputation-oriented authorities may concentrate on sectors that have direct contact with consumers, where issues are more visible and directly impactful, as this can attract more popular support. Alternatively, competition authorities may choose sectors with weak or nonexistent regulations, creating a regulatory gap that they can leverage to demonstrate their unique capabilities. Additionally, they may target sectors where concentrated business interests are more vulnerable, either due to economic and political rivalry over new technologies or criticism from foreign governments. Comparative research incorporating other upper-middle income countries like Mexico could test these and other potential explanations.

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Supplementary material

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References

Álvarez, C. L. (2015) 'Mexican Telecom Reform: Private Interest First?', *Mexican Law Review*, **8**, 47–74.

Arslan, M. (2022) 'Legal Diffusion as Protectionism: The Case of the U.S. Promotion of Antitrust Laws', *Review of International Political Economy*, **30**, 2285–2308.

Atiyas, I., Levy, B. D. and Walton, M. (2017) *World Development Report 2017: Rent Creation and Rent Containment—the Political Economy of Telecommunications in Mexico, South Africa, and Turkey (English)*, World Development Report. Washington, DC, World Bank Group.

Aydin, U. (2016) 'Competition Law and Policy in Mexico: Successes and Challenges', *Law & Contemporary Problems*, **79**, 155.

Aydin, U. and Buthe, T. (2016) 'Competition Law & Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits', *Law and Contemporary Problems*, **79**, 1.

Babb, S. (2004) *Managing Mexico: Economists from Nationalism to Neoliberalism*, Princeton, NJ, Princeton University Press.

Berkowitz, D., Pistor, K. and Richard, J. F. (2003) 'Economic Development, Legality, and the Transplant Effect', *European Economic Review*, **47**, 165–195.

Berman, E. P. (2022) *Thinking like an Economist: How Efficiency Replaced Equality in U.S. Public Policy*, Princeton, NJ, Princeton University Press.

Boxenbaum, E. and Jonsson S. (2017) 'Isomorphism, diffusion and decoupling: Concept evolution and theoretical challenges'. In Greenwood R., Oliver C., Lawrence T. B. and Meyer R. E. (eds) *The Sage Handbook of Organizational Institutionalism,* London, Sage, pp. 79–104.

Bradford, A. (2015) 'Exporting Standards: The Externalization of the EU's Regulatory Power via Markets', *International Review of Law and Economics*, **42**, 158–173.

Bradford, A. and Buthe, T. (2015) 'Competition Policy and Free Trade: Antitrust Provisions in PTAs'. In Andreas D. and Elsig M. (eds) *Trade Cooperation,* Cambridge, Cambridge University Press, pp. 246–274.

Bradford, A. , Chilton, A., Linos, K. and Weaver, A. (2019) 'The global dominance of European competition law over American antitrust law', *Journal of Empirical Legal Studies*, **16,** pp. 731–766.

Carpenter, D. (2001) *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928*, Princeton, NJ, Princeton University Press, p. 78.
Carpenter, D. (2014) *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA*, Princeton, NJ, Princeton University Press.
Carpenter, D. P. and Krause, G. A. (2012) 'Reputation and Public Administration', *Public Administration Review*, **72**, 26–32.
CFC. (2004a) *La Primera Década de La Comisión Federal de Competencia (1993–2002)*, Juárez, Ciudad de México, Comisión Federal de Competencia.
CFC. (2004b) *Informe de Competencia Económica 2003*, Juárez, Ciudad de México, D.F. Comisión Federal de Competencia México.
CFC. (2005) *Informe de Competencia Económica 2004*, Juárez, Ciudad de México, Comisión Federal de Competencia México.
Chorev, N. (2012) 'Changing Global Norms through Reactive Diffusion: The Case of Intellectual Property Protection of AIDS Drugs', *American Sociological Review*, **77**, 831–853.
Christophers, B. (2016) *The Great Leveler*, Cambridge, MA, Harvard University Press.
Collier, R. B. and Collier, D. (2002) *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*, Notre Dame, Indiana, University of Notre Dame Press.
De Loecker, J. and Eeckhout, J. (2018) *Global Market Power*, Cambridge, MA, National Bureau of Economic Research.
del Villar, R. and Soto Alvarez, J. (2005) 'Achievements and Difficulties of Economic Competition Policy in Mexico', *Informacion Comercial Espanola (ICE)*, accessed at https://ssrn.com/abstract=726559 on January 10, 2024.
Delgado, J. and Mariscal, E. V. (2014) 'Integrating Regulatory and Antitrust Powers: Does It Work? Case Studies from Spain and Mexico', *Competition Policy International* **10**, 135–159.
Dobbin, F., Simmons, B. and Garrett, G. (2007) 'The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?', *Annual Review of Sociology*, **33**, 449–472.
Eisner, M. A. (1991) *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change*, Chapel Hill, NC, UNC Press Books.
El Universal. (2008) 'Una comerciante mexicana ganajuicio a Coca-Cola', *El Universal* (8 September 2008), https://archivo.eluniversal.com.mx/notas/536478.html.
Ergen, T. and Kohl, S. (2019) 'Varieties of Economization in Competition Policy: Institutional Change in German and American Antitrust, 1960–2000', *Review of International Political Economy*, **26**, 256–286.
Fairbrother, M. (2014) 'Economists, Capitalists, and the Making of Globalization: North American Free Trade in Comparative-Historical Perspective', *American Journal of Sociology*, **119**, 1324–1379.
Fels, A. and Ng, W. (2013) 'Rethinking Competition Advocacy in Developing Countries'. In Sokol D., Cheng T. K. and Lianos I. (eds), *Competition Law and Development*, Redwood City, CA, Stanford University Press, pp.182–198
Foster, C. (2022) 'Varieties of Neoliberalism: Courts, Competition Paradigms and the Atlantic Divide in anti-Trust', *Socio-Economic Review*, **20**, 1653–1678.
Gallardo, G. C. (1996) 'Antitrust Enforcement in Mexico 1993–1995 and Its Prospects', *US-Mex. LJ*, **4**, 19.
Gallardo, G. C. (2010) 'Mexico's Competition Regime: Walking the Walk, Slowly', *Competition L. Int'l*, **6**, 37.
Gates, L. C. (2009) 'Theorizing Business Power in the Semiperiphery: Mexico 1970-2000', *Theory and Society*, **38**, 57–95.

Gifford, D. J. and Kudrle, R. T. (2015) *The Atlantic Divide in Antitrust: An Examination of US and EU Competition Policy*, Chicago, University of Chicago Press.
Haber, S. H. Klein, H. S., Maurer, N. and Middlebrook, K. J. (2008). *Mexico since 1980*. Cambridge, Cambridge University Press.
Hacker, J. S. (2004) 'Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States', *American Political Science Review*, **98**, 243–260.
Hacker, J. S. and Pierson, P. (2002) 'Business Power and Social Policy: Employers and the Formation of the American Welfare State', *Politics & Society*, **30**, 277–325.
Hafner-Burton, E. M. and Tsutsui, K. (2005) 'Human Rights in a Globalizing World: The Paradox of Empty Promises', *American Journal of Sociology*, **110**, 1373–1411.
Halliday, T. C. and Carruthers, B. G. (2007) 'The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes1', *American Journal of Sociology*, **112**, 1135–1202.
van der Heide, A. (2022) 'Talk the Talk and Walk the Walk? European Insurance Capital Regulation and the Financial Vocabulary of Motive', *Socio-Economic Review*, **21**, 1579–1599.
Hogenboom, B. (2004) 'Economic Concentration and Conglomerates in Mexico', *Journal of Developing Societies*, **20**, 207–225.
Jacobs, A. M. and Weaver, R. K. (2015) 'When Policies Undo Themselves: Self-Undermining Feedback as a Source of Policy Change', *Governance*, **28**, 441–457.
Khan, L. M. (2016) 'Amazon's Antitrust Paradox', *Yale LJ*, **126**, 710.
Kolltveit, K., Karlsen, R. and Askim, J. (2019) 'Understanding Reputational Concerns within Government Agencies', *Policy & Politics*, **47**, 473–493.
Kovacic, W. E. (2001) 'Instututional Foundations for Economic Legal Reform in Transition Economies: The Case of Competition Policy and Antitrust Enforcement Symposium: Theory Informs Business Practice', *Chicago-Kent Law Review*, **77**, 265–318.
Kovacic, W. E. (2003) 'The Modern Evolution of US Competition Policy Enforcement Norms', *Antitrust LJ*, **71**, 377.
Labarthe, C. M. (2006) 'The Creative Regulation Process of the Mexican Competition Commission', *World Competition*, **29**, 481–502.
LADB. (2002) 'Mexican Legislators Unable to Agree on Telecommunications Reforms', *Latin American Digital Beat* (3 July 2002), The University of New Mexico Digital Repository, https://digitalrepository.unm.edu/sourcemex/4534.
LADB. (2007) 'Supreme Court Declares Key Provisions of Broadcast Law Unconstitutional', *Latin American Digital Beat* (20 June 2007), The University of New Mexico Digital Repository, https://digitalrepository.unm.edu/sourcemex/5117.
Macmillan, W. D. (2012) *Agencies and Appropriations*. Doctoral dissertation, University of Michigan, The University of Michigan Library, https://hdl.handle.net/2027.42/96064.
Mahoney, J. and Thelen, K. (2009) *Explaining Institutional Change: Ambiguity, Agency, and Power*, Cambridge, Cambridge University Press.
Maor, M. (2011) 'Organizational Reputations and the Observability of Public Warnings in 10 Pharmaceutical Markets', *Governance*, **24**, 557–582.
Maor, M. and Sulitzeanu-Kenan, R. (2015) 'Responsive Change: Agency Output Response to Reputational Threats', *Journal of Public Administration Research and Theory*, **26**, muv001.
Meyer, J. W. , Boli, J., Thomas, G. M. and Ramirez, F. O. (1997) 'World society and the nation-state' *American Journal of Sociology*, **103**, pp.144–181.
OECD. (2012) *OECD Review of Telecommunication Policy and Regulation in Mexico*, Paris, France, OECD Publishing.

Osorno, D. (2019) *Carlos Slim: The Power, Money, and Morality of One of the World's Richest Men*, New York, NY, Verso Books.
Özgöde, O. (2022) 'The Emergence of Systemic Risk: The Federal Reserve, Bailouts, and Monetary Government at the Limits', *Socio-Economic Review*, **20**, 2041–2071.
Palacios, A. (2021) 'Mexico: Federal Economic Competition Commission', *Global Competition Review*, (12 October 2021), https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2022/article/mexico-federal-economic-competition-commission.
Philippon, T. (2019) *The Great Reversal: How America Gave up on Free Markets*, Cambridge, MA, Harvard University Press.
Posner, R. A. (1970) 'A Statistical Study of Antitrust Enforcement', *The Journal of Law and Economics*, **13**, 365–419.
Rahman, K. S. and Thelen, K. (2021) 'The Role of the Law in the American Political Economy', In Hacker, J. S., Hertel-Fernandez, A., Pierson, P. and Thelen, K. (eds) (2021) *The American political economy: politics, markets, and power*, Cambridge, Cambridge University Press, 76-106.
Schneider, B. R. (2009) 'Hierarchical Market Economies and Varieties of Capitalism in Latin America', *Journal of Latin American Studies*, **41**, 553–575.
Shaffer, J. C. (2004) *Competition Law and Policy in Mexico: An OECD Peer Review*, Washington, DC, Inter-American Development Bank.
Singh, A. (2002) 'Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions', *Growth and Economic Development*, G-24 Discussion Paper Series, UNCTAD. https://media.law.wisc.edu/s/c_360/zgm4n/domestic_finance_recommended5.pdf.
Solano, O. and Sennekamp, A. (2006) 'Competition Provisions in Regional Trade Agreements', *OECD Trade Policy Papers*, No. 31, OECD Publishing, Paris, https://doi.org/10.1787/344843480185.
Solano, O., del Villar, R. and Garcia-Verdu, R. (2005) 'Challenges to the Effective Implementation of Competition Policy in Regulated Sectors: The Case of Telecommunications in Mexico', *Northwestern Journal of International Law and Business*, **26**, 527.
Streeck, W. and Thelen, K. (2005) *Beyond Continuity: Institutional Change in Advanced Political Economies*, Oxford, Oxford University Press.
Teubner, G. (2001) 'Legal Irritants: How Unifying Law Ends up in New Divergences', In Hall, P. A. and Soskice, D.W. (eds), *Varieties of capitalism: the institutional foundations of comparative advantage*, Oxford, Oxford University Press, 417–441.
Thacker, S. C. (1999) 'NAFTA Coalitions and the Political Viability of Neoliberalism in Mexico', *Journal of Inter-American Studies and World Affairs*, **41**, 57–89.
Ugarte, F. S. (2003) 'Diez Años de Política de Competencia', *La Primera Década De La Comisión Federal De Competencia*, **25**, 167–208.
UNCTAD. (2002) *The Relationship between Competition, Competitiveness and Development, Geneva*, Geneva, Switzerland, UNCTAD.
Van Fleet, A. (1995) 'Mexico's Federal Economic Competition Law: The Dawn of a New Antitrust Era', *Antitrust Law Journal*, **64**, 183.
Van Gunten, T. S. (2015) 'Cohesion, Consensus, and Conflict: Technocratic Elites and Financial Crisis in Mexico and Argentina', *International Journal of Comparative Sociology*, **56**, 366–390.
Wise, M. (1999) 'Review of Competition Law and Policy in Mexico', *Journal of Competition Law and Policy*, Paris, OECD. 43–89.

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