

Annex B

Ofcom vs. Cofetel: Competencies in telecommunications and spectrum policy

Powers	Ofcom	Cofetel
1. Radio spectrum management and the promotion of its efficient use.	✓	✗ This is a function under Article 9-A fraction VIII of the Federal Telecommunication Law, but is actually not undertaken
2. The Secretary of State may grant the regulator specific instructions on performing their functions in managing the radio spectrum.	✓	✗
3. To co-ordinate the auction processes of radio spectrum.	✓	✓
4. To publish the Plan for Frequency Authorisation as often as deemed necessary, setting out the purposes for which the different frequencies have been assigned.	✓	✗ This is not published periodically.
5. To consult with the Secretary of State on the designation, modification or termination of a concession.	✓	✗ It provides an opinion to the SCT. It does not consult.
6. To impose fines for violations of the laws, regulations and administrative provisions.	✓	✗ It proposes the fines to the Secretary of State.
7. To ensure the efficiency of service providers, sustainable competition between them, and the best benefits for consumers through the provision of network access and interoperability, including that with foreign networks.	✓	✗ The Technical Plan for Interconnection and Interoperability was suspended for certain operators (through <i>amparos</i>).
8. To determine conditions, which have not been agreed between service providers, regarding provision of access to their networks.	✓	✓
9. To determine conditions, which have not been agreed between service providers and facilities providers, regarding provision of access to the network.	✓	✗ The concept of a facilities provider is not present in the Federal Telecommunications Law.

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10.	To establish specific conditions related to prices of concessionaires with significant market power.	✓	✗ This needs judicial review. So far unsuccessful.
11.	To establish obligations to the network or service providers in the provision of their services.	✓	✗ Not implemented, stopped in the courts by operators declared dominant by COFECO
12.	To require of service providers the necessary information to enable knowledge of the operation and exploitation of telecommunications services.	✓	✗ This is required; however, operators do not provide it, or provide incomplete information.
13.	To require of facilities and equipment providers the necessary information to enable knowledge of the operation and exploitation of telecommunications services.	✓	✗ The concept of a facilities provider is not present in the Federal Telecommunications Law. Cofetel has no powers concerning equipment providers.
14.	To establish and impose fines or service suspension to service providers for non-compliance with requests for information.	✓	✗ Cofetel proposes the fine, but the Secretary imposes it.
15.	To establish and impose fines or service suspension to facilities or equipment providers for non-compliance with requests for information.	✓	✗ The concept of a facilities provider is not present in the Federal Telecommunications Law. Cofetel has no powers concerning equipment providers.
16.	To establish and carry out the legal procedures related to their functions as regulatory bodies.	✓	✗ Partially, together with the Secretary of State.
17.	To facilitate the implementation of proposals, or ensure proposal modifications concerning telecommunication regulation matters.	✓	✗ Partially, together with the Secretary of State.
18.	To conduct studies and investigations relating to the matters with which they have functions.	✓	✓
19.	To commission such studies and research to third parties about issues related to their functions.	✓	✓
20.	To issue official standards in telecommunications.	✓	✗ In the last ten years, no official standards have been issued in telecommunications.

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21.	To publish the National Telephony Numbering Plan.	✓	✗ The current numbering plan is obsolete.
22.	To establish and maintain procedures, standards and policies to ensure effective protection of telecommunication services consumers.	✓	✗ Neither the Federal Telecommunications Law nor the Internal Rules of Cofetel specify powers about protection of telecommunication service consumers.
23.	To provide representation on behalf of its government on international issues in the field of competence.	✓	✗ Cofetel should have an efficient international agenda. Cofetel's participation should be active, not passive.
24.	To register the grant of concessions, the withdrawals of such appointments, and the notifications done by service providers.	✓	✗ Only a registry for telecommunication services tariffs exists.
25.	To determine the operator with significant market power in a specific market of electronic communication devices.	✓	
26.	To determine the operator with significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities.	✓	
27.	To identify harmful interference and other disruptions to telecommunications systems and services, in order to ensure the best performance of services and efficient spectrum use.	✓	✗ Cofetel has not been able to ensure the best performance of services.
28.	To designate the service providers to whom the universal service conditions must apply.	✓	✗ This is a power of the Secretary of State.
29.	To review universal service rates and monitor their changes.	✓	✗ This is a power of the Secretary of State.
30.	To regulate the provision of broadcasting services.	✓	✓
31.	The powers that the Law of Radio and Television, the treaties and the international agreements confer to the regulator in matters of broadcasting services.	✓	✓
32.	To receive payments that proceed from telecommunication matters. The payments received due to duties and fines must be sent to the government's Consolidated Fund.	✓	✗ Some concessionaires do not pay for their duties.
33.	To fix charges for duties to particular cases and to exclude certain service providers from this payment obligation.	✓	

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34.	To notify service providers in case of non-payment of their corresponding duties, as well as to impose fines or suspension of service for non-payment of fees.	✓	
35.	To request the annual budget from the Secretary of State.	✓	✓
36.	To prepare annual reports of the amounts received for payment of concession rights and fines implemented, as well as the costs incurred in carrying out functions that generated these amounts	✓	
37.	To withhold duties payments received by auctions, or from the use of radio spectrum, for use by the regulatory body, instead of sending these to the government's Consolidated Fund.	✓	

Source: FTL, Office of Communications Act 2002 (2002 Chapter 11).



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