The Mexican IT Market: Regulatory Environment and Business Opportunities[1].

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1. Contextual Remarks

The Mexican IT market regulatory environment appears to be shaped by two major forces. First, there is an "inertial" component --which can be described in terms of legal and economic-policy traditions; then, there is a "corrective" component.

Legal tradition in Mexico, as in most Latin American Countries, is Spanish in origin and French in flavor. That is to say that civil institutions, the role played by government, and even personal rights and responsibilities follow a Roman and Germanic conception (as reformed by the Napoleonic Code), as opposed to the British conception of the Common Law. In this "Napoleonic" tradition, for instance, the Government has specific responsibilities as a social regulator (of professions, services, individual practices) that are left to the individual, or groups of individuals, in the Common Law tradition. Thus, with respect to the regulation of IT markets, this legal tradition focuses on aspects that are different than the ones dealt with in, say, American legislation.

On the other hand, Mexico (again, as most Latin American countries), had been committed to an "import substitution" economic policy for over half a century. In this model, central planning is considered necessary, state monopolies are accepted and promoted, and, naturally, markets are "reserved" for local manufacturers (and even among them).

These inertial traditions are deeply ingrained in society, partly because of the length of time they have been followed, but also by the extent to which they have been successful. Their lack of success, on the other hand, allows for new "corrective" philosophies to be adopted. That is the case of the "free-market" ideology.

[1] Presented in “Informatics in the Americas” Miami, 1993. UCSD La Jolla 1993

The past administration in the Mexican Government (1982-1988), and most notably the present one, have held a strong belief on the forces of the market as efficient regulators of economic interactions. This belief, (widely shared also among the private sector and, again, in other Latin American Countries), has permeated most legal reforms in the past five years and in fact redefined most of the basic conditions of the IT market in Mexico.

2. IT Regulatory Environment in Mexico

At present, there are two quite different areas of regulation for the IT market in Mexico: one is Telecommunications, the other is the Informatics area proper. Differences have to do with previous regulatory traditions and, mostly, with Government role.

In the Telecommunications environment, the State was a monopolistic entity up until 1990. Telephone services were provided by the State-owned Teléfonos de México, Data transmission was either provided by the State-owned Telecomm, or allowed in private networks through discretionary permits. Other services, unusual and primitive (such as elementary E-Mail) were provided by companies who could obtain a permit or a "concession" through, again, a discretionary process.

By the end of 1990 a major change took place. The Secretaría de Comunicaciones y Transportes designed a comprehensive policy change and issued a new "Reglamento de Telecomunicaciones" that, among other things, privatized Telmex, opened up Cellular Telephone, stimulated private and public data transmission networks (competing with the old Telecomm), and, in general, fostered private investment and competition in well-defined market niches; and above all, turning the Government into a regulator instead of a provider of services.

In the Informatics area proper, regulatory conditions have also been significantly simplified during this administration.

The Electronics and Hardware segments had been subject to a market reserve that was intended to foster the indigenous production of components and microcomputers. This market reserve, designed in the early eighties, had established import quotas (of components and finished products) that depended on the local effort of the importer and its export success. Furthermore, all imports were subject to permits, that were discretionary, and duties, that were high and constantly varying. Finally, this market reserve policy had made a proviso to use 4.5% of the total net sales for R&D.

In April 1990, the Secretaría de Comercio y Fomento Industrial issued a "decreto" that eliminated the need of import permits for new equipment, treated IT imports under the same uniform conditions applied to all imports (stable, typified duties that never exceed 20%), and defined fiscally-attractive conditions for manufacturing and R&D investments.

The Software segment was never regulated, but lacked effective protection, mainly for

Copyright. In July 1991 a new "Ley Federal de Derechos de Autor" was issued by the Secretaría de Educación Pública, while in June, the Secretaría de Comercio issued a new "Ley de Fomento y Protección de la Propiedad Industrial". Both normative instruments were designed with NAFTA negotiations in the background, in fact they were used as bargaining issues in these negotiations and their final form was a direct consequence of NAFTA negotiations.

Also a consequence of NAFTA negotiations in Copyright, was the protection of Data Base contents selection and organization under copyright legislation, in keeping with the American practice.

Finally, government procurement of IT goods and services, that was under particularly cumbersome and restrictive regulation by INEGI, was completely deregulated in February 1990, and was granted uniform treatment with all other government purchases.

3. Market Opportunities in Mexico

These changes had as their immediate goal to define a transparent, logical, useful and (hopefully) stable regulatory environment. But they also had a posterior and more important goal as instruments of a National IT-Policy: to facilitate a better access to technology in order to derive from IT its maximum possible social benefits.

One way of assessing how successful this IT-Policy has been in general, and in particular, how effective the new regulatory environment has been to bring about the intended benefits, is to look into the evolution of the IT market.

From the demand-side of it, the evolution of the market can be conveniently explained in terms of three central issues in the Salinas Administration: Privatization, Modernization and Access to New Markets.

Because of the concentrated effort of the federal government in privatization, banks, utilities and many other government owned companies are now part of the private sector. But partly because of an accumulated lag of insufficient government investment in technology, and also because of new market environments, these newly privatized companies have been avid --and frequently able-- purchasers of Information Technology.

In a similar fashion, many companies in Mexico have in the past four years been involved in a systematic process of repositioning. In this process, new investment in IT has been considered essential for achieving world-class competitive performance, thus leap-frogging in technology and long-term technological prowess have been essential concerns of the modernization effort.

Finally, the Salinas Economic reform in general, and the NAFTA negotiations in particular (with its immediate competitive threats and promises), have facilitated a mindset shift in Mexican institutions. This shift consists in identifying business opportunities, local and global, and reacting to them. In this context, again, Information Technology has been recognized as a crucial tool.

Thus, there has been a constant increase in the demand of IT goods and services in the last four years. This increase has been quite evident in volume and value of purchased goods and services --in general, the IT market has shown an average yearly increase of over 30%, and has yet to show a decline. But the increase in quality and sophistication has been also evident --downsizing, open architecture standards, distributed computing, have become the prevalent paradigms in the market in surprisingly short time. Niches that were inexistent four years ago, such as outsourcing and system integration, or underdeveloped, such as technical training and strategic planning, have matured. And telecommunication infrastructure such as academic networks, private satellite-microwave-telephone carriers and digital telephone lines have become a sort of household facts.

It may be pretentious to think that a clever regulatory reform, or a wise IT-Policy design were responsible for this improvement in the demand side of the market, but be it as it may, there is --at least-- a more transparent, more logical, more simple and, hopefully, more useful and stable regulatory environment in Mexico. And that in itself is good.