

# Changing Mexico: Multidimensional analysis of the current situation of Mexico

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# ECOMMERCE AND LOCAL COMMERCE ON SOCIAL NETWORKS IN MEXICO AND ITS REGULATIONS

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## Abstract

The Internet is a double-edged weapon whose effects depend on the intervention of the Government and its regulations. The e-commerce is not an exception and Mexico is making continuous efforts to make the Internet a safe virtual space for the Mexican consumer. The same applies to traditional commerce where trade is regulated by the Law and to exist they need their corresponding license. The Local Governments are to regulate this situation, but, as any Government, they are limited by their territorial jurisdiction. Thus, even though citizens are willing to use social networks as ad spaces for local commerce, not even the City Halls of the largest metropolis in Mexico have inspectors or tools capable of supervising local commerce through social networks, which makes the consumers vulnerable to frauds and affects the formal merchants. Due to the efforts of the Mexican government within the Telecommunications reform, the number of Internet users has increased, along with the number of social network users, thus resulting in altered Internet habits of the Mexican Society, but local and federal laws still need to evolve.

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## INTRODUCTION

Social networks have become more than just a way to communicate with friends and family. Namely, they also serve as channels that governments can use to send official messages, places where huge companies can expand their new products and as information tools in the Egyptian revolution of 2011 (Valenzuela, 2011). The reaches of these networks are well-known when we study them as example of tools where boundaries are worthless. In Mexico, the local governments - City Halls - which are responsible for the public security, drinking water, drainage, sewage, markets and supply centers, streets, parks and gardens along with many other issues, receives their funds mostly from the federal government and the money gathered from citizen contributions such as taxes or license fees to operate properly.

Since Mexico is a federal nation, this mechanism is divided into States that are further divided into Municipalities. However, City Halls can only operate within a limited geographical region, with the faculties restricted to their territorial jurisdiction. As previously mentioned, municipalities can collect revenue giving licenses or taxing, but if a local commercial practice occurs in virtual space, the local government is unable to exercise its power. Consequently, the government will not be able to gain revenue, nor verify if all of the business requirements have been approved.

Municipalities are the cornerstone of the sociopolitical transformations and the fundamental axis of Mexico's development (Vallarta Plata, 2002), which is why it is very important to ensure that their faculties are being improved along with the social evolution, where 59.8% of Mexicans are the Internet users (See Figure 1), and 90% of them have at least one social network (Menéndez & Enríquez, 2014) and 36% of the 65 million users, purchase goods or do their online billings.

This research will first review the transition from From physical to virtual commerce, secondly, the legal framework of eCommerce in Mexico will be analyzed, thirdly the institution that attends consumer's issues in Mexico will be reviewed. Finally it is concluded providing some suggestion and proposal about local commercial regulation.

## I. BACKGROUND: TRANSITION FROM THE PHYSICAL BUSINESS TO THE VIRTUAL BUSSINESS

### Three Dimensions of Commerce

There are three dimensions of commerce according to the product or service, the transaction process, and the intermediary. To better understand eCommerce, the three dimensions of commerce need to be evaluated to determine the commerce type; traditional commerce, pure eCommerce or partial eCommerce (Habib, 2001). Depending on whether these dimensions are physical, digital or a mix of both, we can determine the commerce type as shown in Table 1.

Traditional commerce is the one where the product or service, the process and the intermediary are physical. For example, when a loaf of bread (physical product) is bought paying with cash (physical process) at the local bakery (physical intermediary).

Pure eCommerce is what the product or service, the process and the intermediary are digital. For example, when a Netflix<sup>3)</sup> account (digital service) is bought paying with credit card information (digital process) on their website (digital intermediary).

In partial eCommerce, the product or service, the process, and the intermediary can be a mix of digital and physical dimensions. For example, when a book (physical product) is bought paying through PayPal (digital process) from Amazon (digital intermediary).

The e-business differs essentially from the traditional one as a direct result of IT acting as conduit, enabler and facilitator for different business functions (Kersten, 1999). Technologies such as email, electronic data interchange (EDI) and electronic fund transfer (ETF) are used to track transactions and receive payments and almost any

**Table 1** Types of Commerce

	Product/Service	Process	Intermediary
Traditional commerce	Physical	Physical	Physical
Pure eCommerce	Digital	Digital	Digital
Partial eCommerce	Physical or Digital	Physical or Digital	Physical or Digital

Source: (Habib, 2001)

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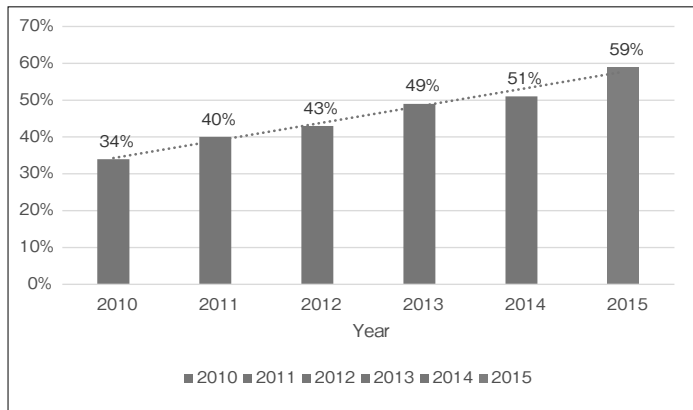
3) Netflix is a streaming service that allows customers to watch a wide variety of award-winning TV shows, movies, documentaries, and more on thousands of internet-connected devices.

product or service can be found via eCommerce.

In the last thirty years, eCommerce has completely changed the retail business, becoming a strong competitor of physical stores; it has gained perception of being highly satisfactory, which is overtaking the traditional physical concept (Rastogi, 2015). It also operates in all four of the market categories -business to business (B2B), business to consumer (B2C), consumer to consumer (C2C) and business to government (B2G)-reaching a broad electronic market.

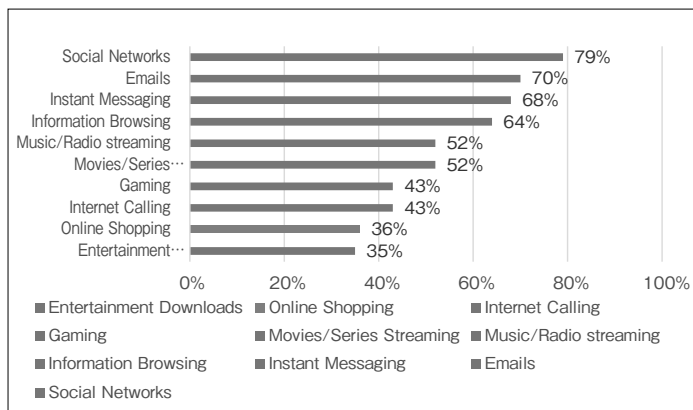
As mentioned above, the internet penetration in Mexico has reached 59.8% of the

**Figure 1** Internet penetration in Mexico  
Unit: Mexican population.



Source: (AMIPCI, 2016)

**Figure 2** Usage of internet in Mexico  
Unit: Mexican internet users in 2015: 65 million



Source: (AMIPCI, 2016).

population, which is equivalent to 65 million of Internet users, increasing rapidly each year.

The access to Social Networks remains the main online activity with 79% of internet users, while online shopping is one of the top ten activities with 36% of internet users, but not one of the most important yet (See Figure 2).

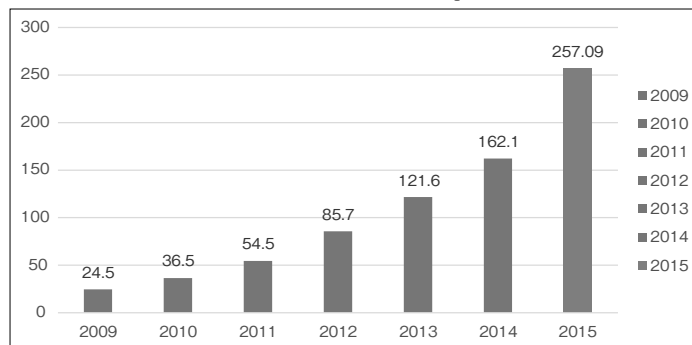
As shown in Figure 3, the eCommerce in Mexico has a market value of 257.09 thousand of millions of pesos, estimated 16.22 billion USD and its evolution is rapidly increasing each year; growing 59% compared to 2014. Between 2009 and 2015, the value of eCommerce in Mexico grew more than ten times.

Commerce has been developed for a long time, and over the years it has always had the same purpose: to exchange goods and services. The basics of business have not changed, but the speed and expectation have. ECommerce also involves the exchange of goods and services, but the exchange is conducted online.

In the 1920s the catalog became a trend in commerce; in the 1960s the EDI started the digital transfer of data between companies; in the 1970s the ETF was traded like a common stock on a stock exchange; in the late 1970s the teleshopping came around as a method or purchase transaction through the tele-connection to computational processing with the telephone line, making a reality of distance shopping; then in the 1990s the World Wide Web (WWW) was introduced and revolutionized everything - including commerce- which eventually gave birth to eCommerce.

ECommerce is the “sale or purchase of goods or services, whether between

**Figure 3** eCommerce evolution-market value of internet in Mexico  
Unit: Thousands of million pesos



Source: (AMIPCI, 2016).

businesses, households, individuals, governments and other public or private organizations, conducted over computer mediated networks” (Dryden, 2001). In other words, it is the transaction by electronic means, such as the internet.

### **Reasons for the Transition**

On the Internet, millions of people exchange massive amounts of information directly, quickly, and for free (Evans & Wurster, 1999). The eCommerce provides advantages for both suppliers and consumers.

The eCommerce has allowed firms to either establish or enhance a market position by providing a cheaper and more efficient distribution chain for their products or services (Investopedia, 2017), among many other advantages. It is very cost effective when compared to traditional commerce; the cost incurred on intermediaries is eliminated and a direct link is created between the business and the customer. The total overhead cost required to run e-business is comparatively less and the cost incurred on labor, maintenance, office rent can be substituted by hosting a website in an e-business method. By cutting cost and streamlining operating processes, the organization can enjoy greater profits by increasing sales. In an eCommerce environment, it is quite easy to expand the size of the market from a regional level to an international level (Bridgeline Digital, 2012). By launching a website, placing advertisements on the internet and satisfying certain legal norms such as the mentioned below, a business can penetrate the international market attracting customers from global markets at a marginal cost.

Busy schedules and lazy attitude are major reasons for eCommerce success; people are buying online because it saves time and provides convenience (Rastogi, 2015). Customers can browse through directories of catalogues, compare prices and choose a desired product anytime and anywhere in the world without any necessity to move away from their home or work place. This implies that people’s strict schedules have made them so busy that they cannot afford to spend time in offline shopping; which is why they prefer to shop online, where a product can be ordered and the transaction can be completed in few minutes through the internet.



**Problems that arise**

Mexican enterprises operate both at an international level as well as at a local level, which is why they need to adapt to different contexts to perform their transactions, being agreed with laws or arbitral conflict to regulate digital-based transactions in a better way.

The eCommerce also presents disadvantages both to sellers and buyers.

A disadvantage on the supplier side is the international taxation structure and shipping logistic. Returned goods became most of reverse flow movement of goods, which is the most expensive process in the wholesale distribution, typically costing more than standard ordering (Net Suite, 2013). Another problem is the commercial barrier; most of the Mexican small and medium enterprises don't have a webpage. This is due to the lack of entrepreneurs, the technical problems with the internet connection, the low commercial offer, and the low banking penetration.

On the other hand, since there is no personal interaction, e-business companies need to have intimate relationship with customers to gain their loyalty. ECommerce does not allow physical inspection of goods; when purchasing, customers must rely on electronic images, which can be dissatisfying when the product that the consumer receives is different from the one expected (Investopedia, 2017). Electronic payment penetration is not advanced in Mexico (Lopez, 2016). A great percentage of the population still needs to pay in convenience stores for online products or ordered services.

**Social networks and their use in commerce**

Over the last few years, Mexican internet users have developed certain habits. Currently out of 1,720 study sample, 36% of them purchase online, and 16% of the companies need the internet so that they can manage social networks for commercial purposes (Menéndez & Enríquez, 2014).

The use of the internet is increasing each year and with the national telecommunications reform entered into force since January 2015 the right of access to information and communication technologies including broadband are now more widely recognized. The reform highlights that telecommunications and broadcasting are

public services of general interest, resulting from the State guaranteeing that companies are providing their services under conditions of competition, quality, diversity, universal coverage, networking, convergence, free access and continuity. In this scenario where 80% of the internet users have a social network, a new local commerce shall emerge.

In eCommerce, it is easy to introduce a product on the website and get the immediate feedback of the customers. Based on the response, the products can be redefined and modified for a successful launch of commercial activities.

Return of investment of social media is real, when it comes to eCommerce, being social matters: 14.29% of visits made on social networks end up making purchases (529,000 out of 37 million). The main social networks driving online sales are Facebook, Twitter, Pinterest, Google +, LinkedIn, among others (Macdonald, 2014).

Social networks are increasingly looking at commerce, giving consumers the opportunity to buy directly from brand companies, converting today's internet surfers into future buyers. Facebook is the leading network, dominating as a source of social traffic and sales. These social media platforms are becoming the new online marketplaces, continuing to enable direct purchasing and the opportunities for brand companies to sell direct via these channels that are opening up.

In Mexico, the categories that are frequently bought online are as follows (AMIPCI, 2016): fashion such as clothes, shoes and accessories; beauty such as perfumes, makeup and cosmetics; home product such as décor and home appliances; culture such as books, magazines and videogames; grocery shopping; sports such as sportswear and material; medication; electronics such as cellphone, camera, accessory, etc. Regarding services; trips such as tickets, hotels, car rentals; events such as show, movie and concert tickets; insurance such as life, home and car insurance; banking such as accounts, card transaction; telecommunications such as phone and internet contracting.

An average of 85% of all orders from social media belongs to Facebook dominating industries like photography, sports & recreation and pet supplies (DeMers, 2015).

Social networks alone do not directly influence sales, voting or financial support of people; it requires the combination of websites, blogs and other media. What social

networks offer is a great force in the transmission of information and advertising.

## **II. LEGAL SCHEME OF ECOMMERCE IN MEXICO**

Once the concept of eCommerce has been defined and its history has been mentioned, it is important to define which laws or regulations govern the relationships that arise from the acts of eCommerce.

In general, there are the following federal regulation laws in Mexico: 1) The Federal Law of Telecommunications, 2) the Federal Consumer Protection Law, 3) the Federal Civil Code, 4) the Code of Commerce, 5) the Federal Fiscal Code, 6) the Federal Copyright Law and 7) the Law of Industrial Property Right.

The regulatory authorities are 1) The Federal Attorney's Office of Consumers (PROFECO), 2) the Mexican Institute of Industrial Property and 3) the Ministry of Economy.

One of the most important achievements for Mexico in 2000 was a set of legal reforms related to eCommerce. Such reform modified four Federal Statutes (OECD, 2000).

The Federal Civil Code recognizes the validity of the expressed consent by electronic and optical means or by any other recent technology, as well as the validity of purchase contracts celebrated by those means. The Federal Civil Code also allows the expression of the offer and its acceptance in an immediate way, without a previous agreement of the parties (Federal Civil Code, Article 1803).

The Federal Civil Procedure Code recognizes as evidence the information generated and communicated through electronic and optic means or by any other technology, and its value will be determined by the security or trustiness of the method employed to transfer such information (Federal Code of Civil Procedures, Article 210-A).

The Code of Commerce, which provides that contracts and agreements entered by those electronic or optic means shall become binding since the moment when the acceptance of a public offer is received. It is therefore expressly stated that electronic means may now be utilized in all acts of commerce and every information generated, sent, received, filed or communicated through such electronic or optic means shall be

generically denominated data message (Code of Commerce, Article 30-bis-1).

The Federal Consumer Protection Law establishes that all electronic operations between consumers and suppliers comply with the basic principles of the Federal Consumer Protection Law (Federal Consumer Protection Law, Article 1). Besides, a new chapter was introduced in this Law to set out consumer's rights in the field of eCommerce transactions. (OECD, 2000)

### **Validity of the contract in Mexico**

The widespread use of the internet as a form of communication has altered the structure of the market, offering another form of contract to people.

The Federal Civil Code is the main legislation ruling civil and private sale of goods contracts. The Federal Civil Code sets out the basic requirements and rules applicable to contracts of a civil nature, including capacity requirements, general liabilities and general formalities.

Articles 371 to 387 of the Code of Commerce are the main provisions applicable to commercial contracts, as opposed to civil or private sale of goods contracts in Mexico. These provisions set out the default rules that apply where a contract does not include provisions to the contrary.

Commercial agreements can be entered into online or through any electronic media or technology, provided that they comply with the provisions of the Code of Commerce on eCommerce and electronic data messages. Under the Code of Commerce, information contained in electronic data messages is valid so that has legal effect and is fully enforceable if the message (Code of Commerce, Article 1834-bis):

- Maintains its integrity.
- Is accessible for consultation.
- Is attributable to a party.

To be equivalent to a written document, an electronic data message must contain an electronic signature that complies with certain legal requirements. Electronic signatures are equivalent to handwritten signatures as to their legal effects, and are admissible as evidence in litigation. Electronic signatures must relate exclusively to the signatory and must be under the exclusive control of the signatory at the time of signing

(Code of Commerce, Article 1834).

As shown above, the Code of Commerce is dedicated to elaborate regulations that establish the validity of electronic commerce, so that the Code of Commerce itself does not regulate what eCommerce is. To protect consumers from this eCommerce, there is another institution that is PROFECO.

### **III. A NATIONAL PROTECTION SYSTEM OF MEXICAN CONSUMERS**

On February 5th 1976, the Federal Consumer Protection Law enriched the social rights of the Mexican people establishing for the very first time the rights for consumers, and also specialized competent agencies: National Institute for Consumers and the PROFECO were established as a decentralized organism of social service with juridical personality, own patrimony and administrative functions entrusted to promote and protect the consuming public interests. Mexico is the second Latin-American country with the Federal Consumer Protection Law and the first one that has established the PROFECO

PROFECO is authorized to intervene in disputes arising from the commercial relationship between consumers and suppliers.

PROFECO's objectives are to protect and defend the consumer's rights; promote consumer's rights; foment an intelligent consumption culture; promote equity in trade relationships; ensure legal certainty in trade relationships; improve institutional performance among others. Despite of helpfulness as it might be, PROFECO does not have faculty to issue permission, licenses for local commerce, but it can impose fines, or in case of serious misconduct, the PROFECO can shut down such establishments.

The PROFECO has also monitoring faculty of virtual stores<sup>4)</sup>. For instance, in

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4) As an example in November of 2016, Dell sold Alienware computers for 679 Mexican pesos, which was worth more than 40,000 Mexican pesos, due to an error on its website at the time of the update, and PROFECO indicated that Dell had to respect that price to all the people who had made the purchase with that price published in the website. (BBC Mundo, 2016) Here we can observe a case where PROFECO applies a misleading publicity criteria, protecting consumers over suppliers (PROFECO insists on the supplier be prudent of its offer, and if there is a mistake, it is the supplier's

January 2015, PROFECO supervised whether these virtual shops had proper privacy policies, personal security and financial data, physical address, landline number, detailed description of goods or services, total costs and taxes, payment method reports, terms of delivery or shipping, conditions in case of cancellation, refunds or exchanges, and if the store is committing any kind of legal infraction.

There are recommendations as precautionary measures on behalf of the PROFECO for online commercial operations:

- The provider must clearly state its identity, legal name and physical location data, so that the consumer can make a claim in case of a problem.
- The internet provider is obliged to provide a truthful description of the characteristics of the products, so that the consumer can make a well-informed purchase decision.
- In the case of Mexican online suppliers, prices must be expressed in national currency and, if there are additional charges for shipping the products, they must be clearly marked along with the terms and forms of payment.
- The portal must state its privacy policies. This is important because it is likely that the consumer will be required to disclose private data, such as the credit card number

The Federal Consumer Protection Law was last updated 17 years ago regarding all eCommerce topics, therefore Mexicans do not have advanced protection mechanisms when they buy products over the internet. Federal Consumer Protection Law only emphasizes in a few fundamental aspects of electronic transactions, such as privacy and the right not to receive misleading advertising. One of the key issues is the cross-border flow of Mexican eCommerce; there is not a regulation between countries. Mexico has a very old-fashioned regulatory frame regarding the supplier-consumer relationship (Gonzalez, 2017). It is clear that laws have to evolve as soon as possible to offer protection according to current situations.

A law is necessary for protecting the interest of digital customers; whom need to

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liability, not consumer).

feel satisfied with all security issues (Rastogi, 2015). The security topic is a huge setback for Mexican online consumers, because people fear to give credit card information. Many cyber frauds take place in eCommerce transactions because of the lack of physical presence in markets and the unclear legal issues.

#### **IV. LOCAL BUSINESS REGULATION**

Mexican municipalities are responsible for public service delivery and promotion of the organic growth of the cities. They must achieve the purposes specified by the Constitution, so that it is normal to observe that all the Municipalities have the same rules or laws practically. Regarding commercial issues, the City Halls have to regulate the area of municipal jurisdiction, commercial and industrial performances, both private and public agro-industrial and services activities.

Thus, when citizen wants to open a new store, they must satisfy some prerequisites. The first step is to obtain a municipal license. For instance, in the Municipality of Zapopan, one should deliver the following documentation in order to get a license for a beauty shop (Portal Zapopan, 2017):

- ◆ Physical location for business.
- ◆ Copy and original documents of a person whose property is being accredited.
- ◆ Current photographs of business premises and / or the property or area.
- ◆ Original and a copy of the owner's identification.
- ◆ Original and a copy of the notice of operation to the Secretary of Health.

Once the municipal license is obtained, it is required to secure parking spaces. The same process is applicable to all municipalities, with slight variations.

The Ministry of Economy and PROFECO, as well as other Federal Government agencies and entities, carry out several actions in order to strengthen the protection and defense of consumers' rights, to foster a new culture in consumer relationships, according to the recent changes in the marketplace. Besides, new policies had been implemented already related to eCommerce trends. The most relevant actions and achievements reached were focused on five basic topics: Standardization of goods and services; Information and guidance to consumers; Protection of consumers and

**Table 2** Type of regulation of the principal municipalities of Mexico

CITY HALL	LOCAL BUSINESS REGULATION	REGULATION OF PHYSICAL ADS	LOCAL BUSINESS REGULATIONS ON SOCIAL NETWORKS	REGULATIONS OF ADS ON SOCIAL NETWORKS
Zapopan	Regulation of Trade and Services for the Municipality of Zapopan.	Advertising Regulation for the Municipality of Zapopan.	Does not exist.	Does not exist.
Guadalajara	Regulation for the Operation of Commercial and Industrial lines and provisions of services in the Municipality of Guadalajara.	Regulation of Advertisements for the Municipality of Guadalajara.	Does not exist.	Does not exist.
Monterrey	Rules for the Use of the Public Street in the exercise of business in Monterrey, Nuevo Leon.	Advertisement Rules of the City of Monterrey.	Does not exist.	Does not exist.
Mexico City	Commercial Establishment Law of the Federal District. Commercial Establishment Rules of the Federal District regarding capacity and security establishments with an area of impact.	Outdoor Advertising Law of the Federal District. Regulations of the Law of Federal District Outdoor Advertising.	Does not exist.	Does not exist.
Queretaro	Regulations for the Development in Commercial Activities on the streets in the Municipality of Queretaro.	Regulation of Urban Image for the Municipality of Queretaro.	Does not exist.	Does not exist.

Source: Compilation by author with data from different state and municipal regulations

economic interest; Verification and supervision; and Procedures for complaints and repairs. (OECD, 2000).

As shown in Table 2 the main cities in Mexico have authority to regulate traditional local commerce and advertising, but the commerce and advertising through social networks is still poorly regulated.

The municipalities do not have the power to regulate transactions on the internet, but an agency such as PROFECO could control this type of transactions and give a solution with a similar criterion to all cases that arise. The disadvantage is that there is no specific regulation for eCommerce; rather some criteria are used to standardize institutions or codes, while other transactions go unpunished.

## CONCLUSION

Mexico still has challenges to face in the next few years regarding eCommerce.



Consumers in Mexico are protected by PROFECO, regardless of the purchasing method (either online or in any other traditional way). Municipalities are in charge of regulating the local commerce, but they do not have the necessary tools or rules for mediating virtual space commerce like the social networks.

Since 79% of 65 million of users have some social network, and diverse local companies have tried to use the same tool for sales and consumer attraction, because 14.29% of the users end up purchasing online. However, City Halls failed to notice these figures.

The Telecommunications Reform that has been released since 2013 increased the number of internet users, along with the growing number of social network users.

On the other hand, having a local shop outdoors can be very difficult because of the excessive bureaucracy of the municipalities, making it more attractive for merchants to establish commerce through social networks, and avoid all the administrative procedures required by municipalities.

In this century, the Mexican society is changing all of its habits, becoming a fundamental part of their lives. For this reason, the government has been making efforts to improve the right of access to information and communication technologies, which requires further improvement of laws and regulations. In this regard, the following proposals can be made:

1. Creating an online platform for the exchange of goods and services implemented by the government being PROFECO as intermediary.
2. Creating a collaboration agreement with the Federal Government through PROFECO, so that Municipalities can be aware of the business that might be taking place in their own jurisdiction.
3. Easing of bureaucracy, since there are too many requirements prior to obtaining a municipal license to start business.
4. Create within PROFECO a section exclusively dedicated to virtual transactions where municipalities can create an instance that receives complaints from consumers of virtual services. Including an information exchange platform between PROFECO and the municipalities.

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