



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

**Mexican Federal Economic
Competition Commission (COFECE)**
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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]

The general applicable legal provision is Article 28 of the Mexican Constitution, which prohibits: "monopolies, anticompetitive practices, watertight and tax exemptions". Such article also establishes that the State shall have a Federal Economic Competition Commission (COFECE or Commission) which shall be an autonomous entity with its own legal personality and patrimony. COFECE's purpose is to guarantee free market access and economic competition, as well as to prevent, investigate and combat monopolies, monopolistic practices, unlawful concentrations and other restrictions to the efficient functioning of the markets.

The Mexican Constitution available in Spanish at <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

English version available at: https://www.senado.gob.mx/comisiones/puntos_constitucionales/docs/CPM_INGLES.pdf

French version available at: https://www.senado.gob.mx/comisiones/puntos_constitucionales/docs/CPM_FRANCES.pdf

Articles 1 and 2 of the Federal Economic Competition Law (LFCE) broaden the approach set out in the Constitution. Article 2 establishes that the purpose of the LFCE is to promote, protect

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

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| | <p>and guarantee free market access and economic competition, as well as to prevent, investigate, combat, prosecute effectively, severely punish and eliminate monopolies, monopolistic practices, unlawful concentrations, barriers to economic competition and free market access, as well as other restrictions to the efficient operations of the markets. Under the Mexican competition regime, cartels are known as absolute monopolistic practices and are ruled by Article 53 of the LFCE which provides that:</p> <p><i>“Absolute monopolistic practices are considered illegal, and consist of contracts, agreements, arrangements or combinations between competing Economic Agents², with any of the following as a purpose or effect:</i></p> <ol style="list-style-type: none"> <i>I. To fix, raise, arrange or manipulate the sale or purchase price of goods or services supplied or demanded in the markets;</i> <i>II. To establish the obligation not to produce, process, distribute, commercialize or acquire but only a restricted or limited amount of goods, or the provision or transaction of a limited or restricted number, volume or frequency of services;</i> <i>III. To divide, distribute, allocate or impose portions or segments of a current or potential market of goods and services, by a determined or determinable group of customers, suppliers, time spans or spaces;</i> <i>IV. To establish, arrange or coordinate bids or the abstention from tenders, contests, auctions or purchase calls; and</i> <i>V. To exchange information with any of the purposes or effects referred to in the previous subsections.</i> <p><i>Absolute monopolistic practices shall be null and void, and consequently will not produce any legal effect and the Economic Agents that engage in such practices shall be subject to the sanctions provided in this Law, regardless of any criminal or civil liability that may arise therefrom.”</i></p> <p>The LFCE is available, in Spanish, at : https://www.diputados.gob.mx/LeyesBiblio/pdf/LFCE_200521.pdf</p> <p>A courtesy translation of the Law to English is available at: https://www.cofece.mx/wp-content/uploads/2018/03/Federal_Economic_Competition_Law.pdf</p> |
| <p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>COFECE’s Regulatory Provisions of the LFCE are available (in Spanish) at: https://www.cofece.mx/wp-content/uploads/2019/08/19.08.01-Disposiciones-Regulatorias-de-la-LFCE-ultima-reforma.pdf</p> <p>Additionally, there is an Organic Statute that establishes the responsibilities of all areas that integrate the Commission, including the anti-cartel Unit (or the General Directorate of Absolute Monopolistic Practices Investigations per the Commission’s Organic Statute).</p> <p>COFECE’s Statute is available, in Spanish at: https://www.cofece.mx/wp-content/uploads/2022/03/CompendioEstatutoOrganicoCOFECE.pdf</p> <p>A courtesy translation to English is available at: https://www.cofece.mx/wp-content/uploads/2022/01/ESTATUTO-ORGANICO-ENG .pdf</p> <p>The Commission also has Regulatory Provisions that rule over the Investigation procedures (and related ones):</p> <ul style="list-style-type: none"> • <i>Emergency Regulatory Provisions Handling and Processing of Complaints for Possible Infringements to the Law for Transparency, Prevention and Fight Against Unduly Practices in Matters of Advertising Contracting.</i> Available in Spanish at: https://www.cofece.mx/wp-content/uploads/2021/08/Acuerdo-CFCE-203-2021.pdf • <i>Emergency Regulatory Provisions on the use of electronic means in certain procedures processed before the Federal Economic Competition Commission.</i> Available in English at: https://www.cofece.mx/wp-content/uploads/2020/06/RP_Electronic_Procedures_ENG.pdf • <i>Regulatory Provisions for the Qualification of the Information Derived from Legal Counsel Provided to Economic Agents.</i> Available in English at: https://www.cofece.mx/wp-content/uploads/2022/03/REGULATORY-PROVISIONS-QUALIFICATION-OF-INFORMATION-2021-ENG.pdf |

² According to Article 3 of the LFCE an Economic Agent is any natural or legal person, either for profit or non-profit, Federal, State or Municipal public administration agencies and entities, associations, business chambers and professional associations, trusts, or any other form of participation in economic activity.

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| | <ul style="list-style-type: none"> • <i>Regulatory Provisions for the Immunity and Sanction Reduction Program Foreseen in Article 103 of the Federal Economic Competition Law.</i> Available in English at: https://www.cofece.mx/wp-content/uploads/2020/08/DRsdeInmunidadTraduccion.pdf • <i>Regulatory Provisions on the Use of Electronic Means before the Federal Economic Competition Commission.</i> Available in Spanish at: https://www.cofece.mx/wp-content/uploads/2021/10/DRUMES.pdf |
| <p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>The LFCE is also complemented by a set of interpretative guidelines intended to inform economic agents, practitioners, authorities, and citizens about the different processes conducted by the Investigative Authority of COFECE, these documents provide an explanation of the concepts, methodologies, requirements and the stages of the investigation procedures for anticompetitive practices. Some guides that are applicable for cartel matters are:</p> <ul style="list-style-type: none"> • <i>Guide of the Immunity and Sanction Reduction Program</i> Available in Spanish at https://www.cofece.mx/wp-content/uploads/2021/02/Acuerdo-CFCE-312-2020.pdf • <i>Guide for the Exchange of Information between Economic Agents</i> Available in Spanish at https://www.cofece.mx/wp-content/uploads/2020/11/ACUERDO-CFCE-296-2020-GuiaIntercambio-1.pdf • <i>Guide for Processing the Investigation Procedure for Absolute Monopolistic Practices</i> Available in Spanish at https://www.cofece.mx/wp-content/uploads/2020/10/GuiaPracticasMonopolicasAbsolutas.pdf • <i>Guide for the Exemption Procedures and Reduction of the Amount of Fines</i> Available in Spanish at https://www.cofece.mx/wp-content/uploads/2017/12/guia_dispensa_161215.pdf • <i>Guide for the Initiation of Investigation for Monopolistic Practices and Unlawful Concentrations</i> Available in Spanish at https://www.cofece.mx/wp-content/uploads/2020/10/GuiaInicio.pdf |
| <p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>The Commission also publishes Technical Criteria that is also intended to provide guidance to economic agents regarding the procedures conducted before the authority. An example is the <i>Technical Criteria for the Request for the Dismissal of the Criminal Procedure in the Cases Referred to by the Federal Criminal Code.</i> Available in Spanish at: https://www.cofece.mx/wp-content/uploads/2018/01/2016_11_28_MAT_cfce2a11_C-1.doc</p> |

2. Scope and nature of prohibition on cartels

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| <p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p> | <p>No, LFCE uses the term “absolute monopolistic practice” when referring to terms known in economic theory as “cartels” or “collusions”. See response 1. A.</p> |
| <p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore</p> | <p>No distinction is made between the different types of cartel behavior. All agreements among competitors to fix prices, restrict output, allocate markets, rig bids and exchange information with any of these</p> |

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| <p>cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas³) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p> | <p>purposes or results, are considered absolute monopolistic practices and are illegal <i>per se</i>.</p> |
| <p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p> | <p>Article 53 of the LFCE does not provide any exceptions, exclusions and defenses applicable to anticompetitive agreements.</p> |
| <p>D. Is participation in a hardcore cartel illegal <i>per se</i>⁴? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p> | <p>All agreements referred to in Article 53 of the LFCE are considered a <i>per se</i> violation. Regarding criminal liability, Article 254 bis of the Federal Criminal Code also regards such agreements as illegal <i>per se</i>. Criminal liability and sanctions are further described in section 14 of this template. For civil liability, Article 134 of the LFCE establishes that individuals that may have suffered damages or losses deriving from an anticompetitive conduct have the right to file class actions. These actions may only be filed once Commission’s resolution must be final and conclusive.</p> |
| <p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p> | <p>Sanctions applicable to absolute monopolistic practices are a combination of administrative and criminal offenses. Sanctions are further described in section 14 of this template.</p> |

3. Investigating institution(s)

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| <p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p> | <p>In accordance with article 26 of the LFCE and article 16 of the Organic Statute of COFECE, the Investigative Authority is the body of the Commission in charge of initiating, conducting, submitting, coordinating and supervising the investigations and is also a party in the trial-like procedure. The Investigative Authority is vested with technical and administrative autonomy to decide over its operations and resolutions. The Investigative Authority is divided in five units:</p> <ul style="list-style-type: none"> • The General Directorate of Market Intelligence • The General Directorate of Market Investigations • The General Directorate of Absolute Monopolistic Practices Investigations (in charge of cartel investigations) • The General Directorate of Regulated Markets • The Coordination Office |
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³ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

⁴ For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

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| <p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p> | <p>The Investigative Authority is located at the headquarters of the Commission located at Av. Revolución 725, Col. Santa María Nonoalco, Alcaldía Benito Juárez, Mexico City Phone number. 552789 6500 Email: AIComunicacion@cofece.mx</p> |
| <p>C. Information point for potential complainants:</p> | <p>Potential complainants can find more information, in Spanish, regarding the process for filing a complaint at https://www.cofece.mx/autoridad-investigadora/denuncia-o-reporta-practicas-anticompetitivas/presenta-una-denuncia-formal/</p> <p>The requirements and procedure for filing complaints are further described in section 5 of this template.</p> |
| <p>D. Contact point where complaints can be lodged:</p> | <p>Complaints can be filed through any of the following means:</p> <ul style="list-style-type: none"> • In-person at the Filing Office of the Commission located at Av. Revolución 725, Col. Santa María Nonoalco, Alcaldía Benito Juárez, Mexico City. • By electronic means: <ul style="list-style-type: none"> - At the Electronic Filing Office at: https://www.cofece.mx/sitec/ - Via email at denuncias@cofece.mx <p>The requirements and procedure for filing complaints are further described in section 5 of this template.</p> |
| <p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p> | <p>Yes, section III of article 12 of the LFCE provides that COFECE may request assistance from any other authorities, whether federal or local, to perform its activities. Furthermore, section IV of the same article enables COFECE to enter into coordination agreements with Public Authorities to prosecute and prevent of monopolies, monopolistic practices, unlawful concentrations, barriers to competition and free market access and other restrictions to the efficient functioning of the markets. In this sense, the Commission has celebrated agreements with authorities like the Federal Telecommunications Institute, the Bank of Mexico, the Ministry of Economy, the Energy Regulatory Commission, among others.</p> <p>All agreements are available at https://www.cofece.mx/publicaciones/marco-juridico-y-normativo/</p> |

4. Decision-making institution(s)⁵ [to be filled in only if this is different from the investigating agency]

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| <p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p> | <p>In accordance with article 18 of the LFCE and article 5 of the Organic Statute of COFECE. The Board of Commissioners is the supreme decision-making body of the Commission and is composed by seven Commissioners including the Chair Commissioner.</p> |
| <p>B. Contact details of the agency: [address, telephone and fax including the country code,</p> | <p>Av. Revolución 725, Col. Santa María Nonoalco, Alcaldía Benito Juárez, Ciudad de México,</p> |

⁵ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

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| <p>email, website address and languages available on the website]</p> | <p>C. P. 03700, Phone number. (+52) 552789 6500 Directory: https://www.cofece.mx/conocenos/directorio/</p> <p>The website is in Spanish and some sections are also in English</p> |
| <p>C. Contact point for questions and consultations:</p> | <p>Av. Revolución 725, First Floor, Col. Santa María Nonoalco, Alcaldía Benito Juárez, Ciudad de México, C. P. 03700 Telephone: +52 27896500</p> <p>Website: https://www.cofece.mx/autoridad-investigadora/denuncia-o-reporta-practicas-anticompetitivas/</p> |
| <p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p> | <p>According to Article 78 of the LFCE, once an investigation is concluded the Investigative Authority must present to the board a preliminary opinion proposing on of the following:</p> <ul style="list-style-type: none"> ▪ The initiation of a trial like procedure, due to the existence of objective elements that make probable the responsibility of the economic agent or agents under investigation, or ▪ The closure of the file due to the lack of elements to initiate the trial-like procedure. <p>Once the trial-like procedure is initiated, the Investigative Authority becomes a party to defend the findings of the investigation. After hearing all the arguments from the parties, the Board of Commissioners is in charge of deciding, in a collegiate manner, the resolution of the case.</p> |
| <p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p> | <p>Article 12 of the LFCE empowers the Commission to file complaints for possible criminal behavior, this includes cartel cases. Furthermore, section VII of article 28 of the LFCE and section XXVIII of article 17 of the Organic Statute of the Commission establish that the Investigative Authority is responsible for filing complaints and criminal complaints before the Office of the Attorney General regarding probable criminal behaviors that have been brought to its attention in the performance of its functions, as well as to contribute during the course of the investigations resulting from such complaints or claims.</p> |

5. Handling complaints and initiation of proceedings

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| <p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p> | <p>Article 71 of the LFCE establishes that in order to initiate an investigation for monopolistic practices, including cartels, the Investigative Authority must have an objective cause, which is any indictment of the existence of a monopolistic practice. Thus, an investigation can be initiated derived from a complaint, <i>ex officio</i> (including those derived from a leniency application). which to ensure confidentiality of Program applicants are opened as <i>ex officio</i> investigations.</p> <p>In the case of <i>ex officio</i> investigations, the Investigative Authority, through the General Directorate of Market Intelligence, monitors permanently the markets to the detect potential cases in priority markets. Furthermore, the Commission also maintains a high level of cooperation with other government entities that might notify of the existence of a cartel (for example, if they detect certain patterns which might point to bid-rigging in their procurement processes).</p> |
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| <p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p> | <p>Yes, formal complaints must be filed in written form either in person or electronically. These must be files in written form. Article 68 of the LFCE establishes that written complaints must include, at least:</p> <ul style="list-style-type: none"> ▪ Name, denomination or corporate name of the complainant; ▪ Name of the legal representative if it is the case, and the appropriate legal document to prove its legal capacity, address to hear and receive notifications and authorized persons, as well as telephone numbers, email addresses and other data that allow its localization; ▪ Name, denomination or corporate name and, if case of knowing it, the address of the accused; ▪ Brief description of the facts that motivate the complaint; ▪ In the case of relative monopolistic practices or unlawful concentrations, a description of the main goods or services involved; ▪ A list of the documents and means of conviction that accompany the complaint, related with the reported facts, and ▪ The other elements that de complainant deems pertinent, or if not available to it, indicate the place or file in which they are located. <p>Complaints can be filed through any of the following means:</p> <ul style="list-style-type: none"> • In-person at the Filing Office of the Commission located at Av. Revolución 725, Col. Santa María Nonoalco, Alcaldía Benito Juárez, Mexico City. • By electronic means: <ul style="list-style-type: none"> - At the Electronic Filing Office at: https://www.cofece.mx/sitec/ - Via email at denuncias@cofece.mx <p>In both cases of electronic filing of a complaint, in addition to complying with the requirements established in article 68 of the Law, the complainant must include the following information:</p> <ul style="list-style-type: none"> - Email address of the complainant, and when applicable, her/his legal and authorized representative. - The explicit manifestation of her/his intent to continue the procedure using electronic means⁶ <p>More information regarding complaints is available, in Spanish, at https://www.cofece.mx/autoridad-investigadora/denuncia-o-reporta-practicas-anticompetitivas/presenta-una-denuncia-formal/</p> <p>The Commission also has informal channels to report anticompetitive practices by phone or in writing through its website, these informal complaints may help the Investigative Authority to initiate <i>ex officio</i> investigations, but they do not constitute a sufficient cause to initiate an investigation. These reports can be made at the following website: https://www.cofece.mx/autoridad-investigadora/denuncia-o-reporta-practicas-anticompetitivas/reporta-practicas-anticompetitivas/</p> |
| <p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is</p> | <p>According to Article 67 of the LFCE any person may file complaints before the Commission. The legal requirements of those complaints</p> |

⁶ In accordance with articles 27 to 32 and 70 of the Regulatory Provisions of the Emergency Federal Economic Competition Law on the use of electronic means in certain procedures processed before the Federal Economic Competition Commission.

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| <p>legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p> | <p>are set forth in Article 68 of the LFCE. Both articles apply to cartel complaints.</p> |
| <p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p> | <p>Article 69 of the LFCE establishes that the Investigative Authority shall analyze the complaints filed before the Commission and, within a fifteen-day period, it can either:</p> <ul style="list-style-type: none"> ▪ Order the initiation of the investigation, ▪ Partially or totally dismiss the complaint for being notoriously inadmissible, or ▪ Inform the complainant, on one sole occasion, that the written complaint fails to meet the requirements established by LFCE or the Regulatory Provisions, thus granting the possibility for the complaint to be clarified or completed within a fifteen-day period. <p>Whenever a complaint fails to meet the threshold to constitute an objective cause, the Investigative Authority shall inform the complainant, thereby granting the possibility for the complaint to be clarified or completed. After the complaint is clarified or completed, the Investigative Authority shall issue the corresponding decision within the following fifteen days. If such period expires without the required clarification or completion of the complaint or without the fulfillment of the requirements, the complaint will be dismissed. The Investigative Authority shall dismiss a complaint if such complaint does not fulfill the requirements established on Article 68 of the LFCE.</p> <p>In accordance with article 70 of the LFCE, the Investigative Authority can also dismiss a complaint for its notorious inadmissibility when:</p> <ul style="list-style-type: none"> • The alleged facts do not constitute infringements to the LFCE; • It is evident that the Economic Agent or Agents included in the complaint do not have substantial power in the relevant market, in the case of complaints for relative monopolistic practices or unlawful concentrations; • The Economic Agent included in the complaint, the stated facts and conditions in the relevant market have been the subject matter of a previous resolution, except for the cases of false information or noncompliance with conditions or remedies set forth in a resolution; • There is a pending procedure at the Commission concerning the same relevant market and conduct; and • The claimed facts involve a notified concentration, pending resolution by the Board of Commissioners. |
| <p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p> | <p>Yes, the Investigative Authority must address the complainant and explain its reasons for dismissing the complaint. If no decision is issued within the stated time period, the investigation shall be considered as initiated. In this case, the Investigative Authority, per request of the complainant or ex officio, shall issue a decision formally admitting the complaint.</p> |

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| <p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p> | <p>Once the complaint is filed, within the following 15 days, the Investigative Authority shall issue a decision: ordering the initiation of the investigation; dismissing the complaint; or informing the complainant that the complaint fails to meet the requirements so that it can clarify or complete it – if the latter is the case, the timeframe is extended over periods of 15 for either the Authority or the complainant to ask for clarifications or deliver additional information, until the Authority determines it has sufficient information to issue a decision.</p> |
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| <p>6. Leniency policy⁷</p> | |
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| <p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p> | <p>The Immunity and Sanction Reduction Program (hereinafter the Program) mandated by article 103 of the LFCE. The program allows any person or company that has participated or is carrying out illegal agreements with competitors to adhere to it to receive a reduction to the corresponding amount of fines and to be released from criminal liability in exchange of providing information and elements regarding the illegal agreements and maintain full and continuous cooperation throughout the investigation.</p> <p>More information on the Program is available at the website of the Commission at https://www.cofece.mx/investigation-authority/immunity-program/?lang=en</p> <p>The Commission has also published a Guide for the Program available, in Spanish, at https://www.cofece.mx/wp-content/uploads/2021/02/Acuerdo-CFCE-312-2020.pdf as well as the Regulatory Provisions of the Program which are available in English at https://www.cofece.mx/wp-content/uploads/2020/08/DRsdeInmunidadTraduccion.pdf</p> |
| <p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p> | <p>The Program offers both a reduction in the amount of sanctions as well as the possibility of being released from criminal liability. First applicants will receive a fine reduction of almost a 100%, and subsequent applicants for as much as 50, 30 or 20 per cent of the maximum applicable fine.</p> |
| <p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p> | <p>Only the first applicant to meet the requirements will receive a fine reduction of almost 100% since it will only have to pay a fine consisting of the amount equivalent to a minimum daily wage in the Federal District.</p> <p>As mentioned before, all economic agents admitted to the Program will be free from criminal liability.</p> |
| <p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or</p> | <p>Eligibility is not dependent from the stage of the investigation or from whether the authority had knowledge, or not, of the practice.</p> |

⁷ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

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| <p>insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p> | <p>The date in which an economic agent comes forward with information and applies to the Program is only relevant for the purpose of subsequent applications.</p> |
| <p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p> | <p>In accordance with article 103 of the LFCE and the Regulatory Provisions of the Program, any economic agent who has incurred or is engaging in an absolute monopolistic practice; who participates or has participated directly in absolute monopolistic practices on behalf of, or on the account and order of legal persons; and the economic agent or individual who aids, abets, induces or has aided, abetted or induced the commission of absolute monopolistic practice can apply to the Program.</p> <p>The Guide of the Program further clarifies that those who can apply to the program are:</p> <ul style="list-style-type: none"> • Legal persons (companies) that <ul style="list-style-type: none"> - Had incurred in an absolute monopolistic practice - Are incurring in an absolute monopolistic practice - Have been or are contributing, propitiating, inducing, or participating in an absolute monopolistic practice • Individuals that <ul style="list-style-type: none"> - Have participated or are participating in an absolute monopolistic practice in representation or on behalf of a legal person. - Have been or are contributing, propitiating, inducing or participating in an absolute monopolistic practice - Have incurred or are incurring in an absolute monopolistic practice. |
| <p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p> | <p>Article 103 of the LFCE provides that:</p> <ul style="list-style-type: none"> • The applicant must be the first to submit enough elements of conviction that it had to allow the Commission to initiate the investigation or presume the existence of an absolute monopolistic practice; • The applicant must cooperate fully and continuously throughout the investigation and if it is the case in the trial-like procedure, and • The applicant must conduct all the necessary actions to end its participation in the illegal practice. |
| <p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p> | <p>Subsequent applicants, depending on the chronological order in which they submit their application, may receive a fine reduction for as much as 50, 30 or 20 per cent of the maximum fine determined in the final resolution, when additional evidentiary elements to those in possession of the Investigative Authority are submitted during the course of the investigation, and the all requirements under article 103 of the LFCE, meaning: cooperate fully and continuously throughout the investigation and, if the case may be, within the trial-like procedure; and undertake all necessary actions so as to no longer engage in the unlawful practice, as well as all conditions established in the Regulatory Provisions.</p> |

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| <p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p> | <p>Article 6 of Regulatory Provisions of the Program establishes that full and continuous cooperation will be understood as:</p> <ul style="list-style-type: none"> • <u>During the investigative stage:</u> <ul style="list-style-type: none"> - Recognize the participation in the reported absolute monopolistic practice; - The termination of a participation in a reported, recognized and investigated absolute monopolistic practice. The Investigative Authority may also require the participant not to end immediately its participation in order to obtain information and documents to carry out the investigation; - Maintain confidentiality of the information that was given to the Commission in the processing of its request; - The delivery, within indicated deadlines, of all information and documents that are required in the investigation; - Allow and cooperate in the proceedings and actions performed by the Investigative Authority; - Carry out actions within its reach to ensure cooperation of natural or legal persons; - Not to destroy, falsify or hide information, and - Report all possible absolute monopolistic practices in which there has been participation or its participating. • <u>During the trial-like procedure:</u> <ul style="list-style-type: none"> - Do not deny its participation in the conduct for which the benefit was requested; - Provide as evidence the supervening information and/or documents, whose processing is useful for the trial-like procedure; - Allow the Technical Secretariat to carry out proceedings and actions; and - Not to destroy, falsify or hide information. <p>The obligations of full and continuous cooperation shall apply to both the applicant and the legal persons that are part of the economic interest group that have incurred in the absolute monopolistic practices and to the individuals who have participated directly in the absolute monopolistic practices, in their representation or at their behalf and order. The same shall apply to the economic agent or individual who aided, abetted or induced the commission of absolute monopolistic practices.</p> |
| <p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p> | <p>Those interested must submit their request by voicemail to the telephone number +52 (55) 27-89-66-32 or send an email to inmunidad@cofece.mx</p> <p>Article 3 of the Regulatory Provisions of the program further provide that the applicants must specify in their application:</p> <ul style="list-style-type: none"> • The identity of the party interested in applying to the Program. • Their express manifestation of their willingness to obtain the benefit. • Sufficient data for establishing contact with them or their representatives (at least name of natural or legal persons, telephone and/or email, address in Mexico City to hear and receive notifications). • The market or markets, including the goods and/or services subject of the application. <p>An application that is processed by means other than those specified above shall be considered as not submitted. When the information</p> |

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| | <p>provided by the applicant does not comply with the provisions of article 103 of the Law, it will be returned, and the Investigative Authority will cancel the application and the assigned code.</p> |
| <p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p> | <p>The procedure can be divided into three stages:</p> <ol style="list-style-type: none"> 1. the Application; 2. the Conditional Leniency Agreement ; and 3. the Granting of the Benefits. <p>During the first stage, applications will be processed in chronological order. First, an alphanumeric code will be assigned and notified to the applicant five days after the application was submitted. Whenever the alphanumeric code is assigned, a marker will be granted as well. The marker guarantees the applicant's position regarding the other applicants. Such position will be respected as long as the applicant provides information and evidence that allows the Commission to initiate an investigation. Afterwards, a date will be set for a meeting with the Investigative Authority where the applicant must provide information regarding the possible absolute monopolistic practice.</p> <p>During the second stage, information will be assessed by the Investigative Authority in order to verify if it allows the initiation of an investigation. Once the evaluation is concluded, the Investigative Authority will inform the applicant whether its application is cancelled because the information provided is not sufficient to initiate an investigation or presume the existence of an absolute monopolistic practice; or whether conditional immunity is granted when the information provided is sufficient. With the decision, the applicant will receive a letter from the Investigative Authority that conditionally confers the benefits of the Program.</p> <p>The letter includes the chronological order of the application, the maximum percentage to which the fine may be reduced, and the applicant's obligation to fully and permanently cooperate with COFECE which covenant to cooperate conditions finally and definitely receiving the leniency benefit. Finally, in order to obtain the benefits of the Program, applicants must cooperate fully and continuously throughout the investigation and the trial-like procedure.</p> <p>When the Board of Commissioners issues the final resolution, it also will determine if the benefits granted conditionally will become definitive. This decision is based on the conditional leniency decision and the applicant's cooperation throughout the investigation procedure and the trial-like procedure. If the Board of Commissioners decides that the applicant has cooperated fully and continuously, it will issue a final leniency decision and the applicant will receive the following benefits:</p> <ol style="list-style-type: none"> I. A total or partial reduction of the applicable fines for engaging in, participating in, or contributing to an absolute monopolistic practice. II. Immunity to individuals from receiving disqualification orders for participating in an absolute monopolistic practice III. Criminal immunity to individuals for engaged in an absolute monopolistic practice. |
| <p>K. At which time during the application process is the applicant given certainty with</p> | <p>The applicant will receive certainty when the Investigative Authority decides to grant conditional leniency. The applicant will receive a letter from the Investigative Authority that conditionally confers the benefits of the Program. The letter includes the chronological order of the application, the maximum percentage to which the fine may be</p> |

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| respect to its eligibility for leniency, and how is this done? | reduced, and the applicant's obligation to fully and continuously cooperate with COFECE which covenant to definitively receiving the benefits of the Program. |
| L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications? | <p>Conditional leniency is granted with the issuance of a letter by the Investigative Authority (see question 6.J) , and definitively granted by the Board of Commissioners when a final resolution is issued.</p> <p>The legal basis for the power to grant leniency are set forth in article 103 of the LFCE, 114 of the Regulatory Provisions and 17, Section XXI of the Organizational Statute.</p> |
| M. Do you have a marker⁸ system? If yes, please describe it. | <p>Yes. When an alphanumeric code is assigned in the application stage, a marker is granted as well. The marker guarantees the applicant's position regarding other applicants. Such position will be respected as long as the applicant provides information and evidence that allows COFECE to initiate an investigation (first applicant); or the subsequent applicants provide additional evidentiary elements to those already in possession of the Investigative Authority. Afterwards, a date will be set for a meeting with the Investigative Authority where the applicant must provide information regarding the possible absolute monopolistic practice.</p> <p>When issuing the resolution to the trial-like procedure, the Board of Commissioners may revoke the conditional benefit of the sanction reduction in the event of the applicant's failure to comply with obligations stipulated in article 103 of the Law. In the event that the conditional benefit of the sanction reduction is revoked from an applicant, subsequent applicants shall maintain the positions they would have obtained in accordance with the chronological order of their application, and therefore these positions shall not be moved⁹.</p> |
| N. Does the system provide for any extra credit¹⁰ for disclosing additional violations? [e.g. a hardcore cartel in another market] | No. |
| O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate. | <p>Yes, pursuant to article 103 of the LFCE, COFECE must maintain the identity of the applicant as confidential.</p> <p>Furthermore, article 12 of the Regulatory Provisions of the Program provides that in order to ensure confidentiality, the Investigative Authority, at all times, shall maintain under safekeeping the integrated file of the procedure relating to the sanction reduction benefit, which may be consulted by the applicant. The applicant may request to the Investigative Authority or the Technical Secretariat, as the case may be, to disclose its adherence to the benefit provided in article 103 of the Law. The Investigative Authority or the Technical Secretary, as applicable, may authorize that such adherence be made</p> |

⁸ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁹ Article 10, paragraph second of the Leniency and Immunity Program Regulatory Provisions

¹⁰ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

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| | public where it does not impede the exercise of the Commission's powers. |
| P. Is there a possibility of appealing an agency's decision rejecting a leniency application? | During the investigation and trial-like procedure, it's not possible to appeal. However, when the final resolution is issued, economic agents can appeal through an <i>amparo</i> trial before a specialized court. |
| Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]: | Telephones: (+52 55) 27896632 and (+5255) 5527896624, E-mail: inmunidad@cofece.mx |
| R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency? | When issuing the resolution which concludes the trial-like procedure, the Board of Commissioners may revoke the conditional benefit of the sanction reduction in the event of the applicant's failure to comply with obligations stipulated in article 103 of the Law ¹¹ and those established in the Regulatory Provisions. In case the Commission revokes the conditional benefit of the sanction reduction for failure to comply with the obligations established in article 103 of the Law, the Commission may use the information provided by the applicant in the investigation, and, if applicable, in the corresponding resolution. |
| S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants? | No, COFECE constantly advertises and promotes its Immunity and Sanction Reduction Program but affirmative leniency is not provided for in the Regulatory Provisions. |
| T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean. | Yes, as previously mentioned, all the information given to the Investigative Authority regarding Leniency applications is kept in a separate confidential file to which only certain officials of the Absolute Monopolistic Practices Directorate will be allowed access (See question 6.0). However, since the Investigative Authority includes in the investigation file the information which supports the probable responsibility of the participants in the absolute monopolistic practice, the information provided by the applicant may be used by the Investigative Authority during the investigation procedure. |

7. Settlement

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| A. Does your competition regime allow settlement? | No, the Mexican competition regime does not allow settlements in cartel cases. |
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¹¹ Article 8 of the Leniency and Immunity Program Regulatory Provisions

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| If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.). | |
| B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? | N/A |
| C. What is the reward of the settlement for the parties? | N/A |
| D. May a reduction for settling be cumulated with a leniency reward? | N/A |
| E. List the criteria (if there is any) determining the cases which are suitable for settlement. | N/A |
| F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.]. | N/A |
| F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.]. | N/A |
| G. Does a settlement necessitate that the parties acknowledge their liability for the violation? | N/A |
| H. Is there a possibility for settled parties to appeal a settlement decision at court? | N/A |

8. Commitment

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| A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.]. | Yes, but it is only available in those cases regarding abuse of dominance (relative monopolistic practices or unlawful concentrations) and it is not available in cartel cases. |
| B. Which types of restrictive agreements are eligible for | N/A |

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| <p>commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p> | |
| <p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p> | N/A |
| <p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p> | N/A |
| <p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p> | N/A |
| <p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p> | N/A |
| <p>J. Describe how your authority monitors the parties' compliance to the commitments.</p> | N/A |
| <p>K. Is there a possibility for parties to appeal a commitment decision at court?</p> | N/A |

9. Investigative powers of the enforcing institution(s)¹²

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| <p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids¹³, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p> | <ul style="list-style-type: none"> • Open Sources: this refers to non-exclusive sources for investigations, which are used by the staff of COFECE to obtain relevant data or information regarding an on-going investigation or otherwise. Amongst the most popular and effective open sources are internet-based search engines, newspapers, magazines and field research done by the Commission's personnel. • Formal requests of information and documents: Article 73 of the LFCE provides that the Investigative Authority may require any person the reports and documents that it deems necessary to conduct its investigations. Article 124 of the |
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¹² "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

¹³ "Searches/raids" means all types of search, raid or inspection measures.

LFCE provides that, during the investigation, access to the file will not be allowed except for those with a legal standing in the process. Also, the same article obliges the Commission to classify the information and documents that has obtained either as reserved, confidential or public information. The difference between reserved and classified information is that reserved information may be revealed to all the agents that are considered to have a rightful interest in the investigation (which often coincide with those agents that are accused of probably incurring into a monopolistic practice sanctioned by the LFCE), but only once the investigation has concluded, whereas confidential information may only be accessed by the agent that actually provided the information to the agency. It is important to note that according to the LFCE and due to judicial criteria, all agents that ask for their information to be classified as confidential must duly justify the reasons behind their request¹⁴.

- **Obligatory subpoenas:** The agency is also authorized to issue summons to persons, who will have to testify under oath before the Commission's officials in connection with the matters at issue, according to Article 28 of the LFCE, whenever they are related to the investigated issues. The witness or summoned party may bring its counsel in order to contest the legality of the questions asked by the agency's officials. Generally, the agency has benefited from the usage of summons and subpoenas in order to obtain first-hand information from former employees or contractors regarding the execution of monopolistic practices, particularly in obtaining evidence for proving the existence of hard-core cartels.
- **Immunity and Sanction Reduction Program:** this tool is in line with the best international standards and offers an incentive for cartelists to cease their participation in the conduct and report its existence. In exchange, and if certain requirements are met, the cartel participant will be granted full leniency regarding the sanctions, both administrative and criminal, that stem from its participation within the cartel.
- **Dawn raids/on-site inspections:** Article 75 of the LFCE allows the Investigative Authority to conduct on-site inspections in order to obtain on its own the necessary documents and information regarding any particular investigation. These inspections can be conducted unannounced and without any prior authorization from a judicial organ or the Board of Commissioners. The order to conduct them is issued by the Head of the Investigative Authority and to conduct them the LFCE allows the Commission to request assistance from any other authorities, whether federal or local. During the on-site inspections, case handlers may access any office, site, electronic device, etc. that could contain evidence regarding the acts pertaining to the search and produce copies or extracts of documents, papers, files or information. However, COFECE's officials may not seize any information. In addition, during the dawn raid officials may request explanations regarding the facts, information or documents related to the purpose and objective of the on-site inspection. The IT Forensics team has a leading role during dawn raids, as it assists on the analysis and reproduction of information or documents contained in

¹⁴ Judicial criteria that was issued as a result of the resolution of the Amparo en revision 30/2008.

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| | <p>the agents' electronic devices, such as computers, smartphones, memory drives, etc.</p> |
| <p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p> | <p>Article 75 of the LFCE empowers the Commission, through its Investigative Authority, to order and execute on-site inspections. (See question 9.A)</p> |
| <p>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</p> | <p>Yes, information can be downloaded from a Cloud and copied in hard drives, as it happens with all other digital data that is within the raided location.</p> |
| <p>D. May evidence not falling under the scope of the authorisation allowing the inspection be seized/used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p> | <p>Only information and documents related to the investigated market written in the order to conduct an inspection visit may be included in the case file for which the proceeding was ordered.</p> |
| <p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p> | <p>There have been two relevant judicial precedents that had an impact in the investigative tools of the Commission for cartel cases. The first one involved the determination that if a leniency applicant states in the trial-like procedure that the conduct committed does not constitute an absolute monopolistic practice, that would not be considered lack of full and continuous cooperation. And the second one established the prohibition for the public officials of the Commission to access to privileged information during on-site inspections.</p> <p>These two cases resulted in the Commission self-regulating and issuing binding regulatory provisions in relation to these matters. Thus, the Commission issued the:</p> <ul style="list-style-type: none"> • <i>Regulatory Provisions for the Qualification of Information Derived from Legal Counsel Provided to Economic Agents</i> which establish measures for how information resulting from legal counsel between a lawyer and a client is handled as this type of communications must be protected and lack evidentiary value. These Provisions are available in English at https://www.cofece.mx/wp-content/uploads/2022/03/REGULATORY-PROVISIONS-QUALIFICATION-OF-INFORMATION-2021-ENG.pdf • <i>The Regulatory Provisions for the Immunity and Sanction Reduction Program Foreseen in Article 103 of the Federal Economic Competition Law</i> which clarify that all individuals subject to an application will hold the same obligations as the applicant and that when an individual within an application is not cooperating, only that individual will be denied from receiving the benefits. These Provisions are available at https://www.cofece.mx/wp-content/uploads/2020/08/DRsdeInmunidadTraduccion.pdf |

10. Procedural rights of businesses / individuals

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| <p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p> | <p>The Mexican Constitution establishes several rights of defense applicable for all procedures. In that regard, Article 14 provides that no person shall be deprived of their liberty, property or rights of defense. Article 16 establishes that no one shall be disturbed in their person, family, home, papers or possessions except under a legally issued written warrant from a competent authority and on grounds already established in the law. On the other hand, Article 17 foresees that every person has the right to be administered justice by courts that will do so promptly and within the time limits and in the terms set by the laws, producing its determinations in a prompt, complete and impartial manner. According to article 124 of the LFCE, during the investigation stage, no party may have access to the investigation files. However, during the trial like procedure, alleged offenders will have access to documents in the possession of the enforcing authority. Also, once an investigation is concluded, if the Investigative Authority considers that there is sufficient ground to uphold an accusation, it will issue the Statement of Objections to which the alleged offenders have a right to respond and provide evidence against the Statement of Objections.</p> |
| <p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p> | <p>Business secrets are considered classified information, since the economic agent's competitive position can be put at risk. Confidential information may only be accessed by the agent that actually provided the information to the agency. It is important to note that due to judicial criteria, all agents that ask for their information to be classified as confidential must duly justify the reasons behind their request¹⁵.</p> |

11. Limitation periods and deadlines

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| <p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p> | <p>According to Article 137 of the LFCE, the powers of the Commission to initiate investigations expire within a 10 year period from the date on which the unlawful concentration is executed, or from the moment of the cessation of the unlawful conduct prohibited by the LFCE. However, if it is a continuous conduct that extends longer than those 10 years, the whole duration of the agreement will be considered for the purposes of the investigation.</p> |
| <p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the</p> | <p>According to Article 71 of the LFCE, the investigation period shall begin when the initiation decision is issued and may not be less than thirty nor exceed one hundred and twenty days. This timeframe may be extended on four occasions, for periods consisting of one hundred</p> |

¹⁵ Judicial criteria that was issued as a result of the resolution of the Amparo en revision 30/2008.

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| <p>merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p> | <p>and twenty business days, whenever the Investigative Authority considers that there are duly justified causes for such extensions.</p> <p>Since the creation of COFECE in 2013, these timeframes have only been suspended during the Covid-19 pandemic (on average 70 days between 2020 and 2021).</p> |
| <p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p> | <p>The Commission's decisions and sanctions can only be challenged through an <i>amparo</i> trial, according to Article 28 of the Mexican Constitution, which can only be filed against final resolutions and it does not include an injunction order, except for fines and divestiture cases.</p> <p>Economic agents have 15 working days to use this legal resource, for both final resolutions and administrative legal measures.</p> |

| <p>12. Types of decisions</p> | |
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| <p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p> | <p>According to Article 85 of the LFCE, the final resolution of the Board of Commissioners must include at least:</p> <ul style="list-style-type: none"> • The assessment of evidence that was conducive to prove, or not, the conduction of the monopolistic practice; • In the case of a relative monopolistic practice, the determination that the responsible Economic Agents have substantial market power; • The determination of whether to order the definitive elimination of the monopolistic practice or unlawful concentration or its effected or the determination to conduct acts or actions whose omission has caused the monopolistic practice or unlawful concentration, as well as the means and terms to prove compliance with such determination before the Commission; • The determination regarding the imposition of sanctions. |
| <p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p> | <p>There are no other decisions that can be appealed on merits.</p> |
| <p>C. Can interim measures¹⁶ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹⁷.) Which institution (the investigatory / the decision-making one) is authorised to take such</p> | <p>Yes, according to Article 135 of the LFCE, the Investigative Authority may, at any moment, request the Board of Commissioners to issue injunctive measures concerning the subject matter of a complaint or investigation that it considers necessary to avoid damages that are difficult to redress or to assure efficiency in the investigation's results and procedure's resolution. Said power included, but are not limited to:</p> |

¹⁶ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹⁷ Only for agencies which answered "yes" to question 2.B. above

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| <p>decisions? What are the conditions for taking such a decision?</p> | <ul style="list-style-type: none"> • Issuing orders to cease and desist from engaging in actions which entail the probable conduct prohibited under this Law; • Orders to perform or refrain from engaging in any conduct related to the subject matter of the complaint or investigation; • Ensuring the safekeeping of the information and documents, and • Other actions deemed necessary or convenient. |
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| <p>13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations</p> | |
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| <p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p> | <p>Fines as a enforcement measures, established in Article 126, section II of the LFCE, are imposed to enforce or force compliance with the diligences performed by COFECE when exercising of its functions.</p> |
| <p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p> | <p>Article 126 of the LFCE establishes that the Commission may impose, when performing its responsibilities under the LFCE, the following enforcement measures:</p> <ul style="list-style-type: none"> • A warning; • A fine of up to the amount equivalent to three thousand Units of Measure and Update (UMA, per its acronym in Spanish)¹⁸, which may be applied for each day of non-compliance with an order; • The assistance from the public force or other Public Authorities, and • Arrest for up to 36 hours. <p>Additionally, those that rendered false statements or submitted false information before the Commission can be sanctioned with a maximum fine equivalent to one hundred seventy five thousand UMAs. There are also criminal sanctions for non-compliance established in the Federal Criminal Code:</p> <ul style="list-style-type: none"> • Article 178 establishes that those who refuse to cooperate with the authority or those that disobey an authority's mandate shall be sanctioned with community service ranging from 120 to 1,600 hours. • Article 180 foresees that those that oppose with physical force or threats to the fulfilment of an authority's tasks shall be sanctioned with 1 to 2 years of prison and a one thousand pesos fine. • Article 247 establishes that those who render false statements shall be sanctioned with 4 to 8 years of prison |

¹⁸ Units of Measure and Update, which are yearly modified and can be consulted in the National Institute of Statistics and Geography here: <https://www.inegi.org.mx/temas/uma/>

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| | <p>and a twenty two thousand pesos fine. Criminal sanctions are established in the Federal Criminal Code:</p> <ul style="list-style-type: none"> • Article 254 bis 1 foresees that those who tamper with evidence or destroy it, during an on-site inspection shall be sanctioned with 1 to 3 years of prison and a three hundred seventy five thousand pesos fine. |
| C. On whom can procedural sanctions be imposed? | On any individual or undertaking who does not comply with an order issued during the investigation. For example, failure to provide information or documents requested in a Request for Information, failure to appear to compulsory interviews, the active barring of diligences, among others. |
| D. Criteria for determining the sanction / fine: | There is no official guideline/criteria to determining the sanction of fine that can be imposed. However, when considering which enforcement measure to use, the Commission will select that which is more suitable to ensure the diligence is effectively performed or the breach is solved. |
| E. Are there maximum and / or minimum sanctions / fines? | The Law does not establish maximum and minimum fines. Rather, it offers a range of enforcing measures, which will be imposed considering the breach and most effective measure to alleviate it. |

14. Sanctions on the merits of the case

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| <p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p> | <p>Under the Mexican competition regime, cartels are subject to administrative sanctions but are also the only anticompetitive practice that can be subject criminal and civil sanctions.</p> <p>a) Administrative Sanctions</p> <p>Article 127 of the LFCE provides that sanctions for cartels include:</p> <ul style="list-style-type: none"> • An order to suspend or eliminate the conduct. • A fine of 175 thousand UMAs for submitting false information, regardless of the criminal liability to which the offender may be subject. • A fine of up to 10% of the annual income of the economic agent regardless of the corresponding civil or criminal liability. • Disqualification to hold executive positions at a company for up to 5 years. • A fine of up to 200 thousand UMAs for individuals who directly or indirectly participated in the cartel. • A fine of up to 180 thousand UMAs for individuals or undertakings who contributed, induced or directly participated in the cartel. • A fine of up to 8% of the annual income of the economic agent that failed to comply with a resolution of the Commission, regardless of the corresponding criminal liability, for which the Commission shall file a complaint before the Office of the Attorney General. • A fine of up to 10% of the income of the economic agent when failing to comply with an injunctive order. • In case of recidivism, fines imposed by the Commission can be doubled. |
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| | <p>b) Criminal Sanctions (Article 254 bis of the Federal Criminal Code)</p> <p>Criminal sanctions apply to all types of cartels established in article 53 of the LFCE and are only applicable to individuals. These sanctions were introduced in 2011 when amendments to the Federal Criminal Code that introduced a sanction ranging from three to ten years of imprisonment for those individuals involved in cartels. However, in 2013 a constitutional reform was enacted which increased criminal liability, thus increasing the years of imprisonment from five to ten years and adding fines equivalent from one to ten thousand times the daily minimum wage.</p> <p>The Federal Criminal Code also provides that those that, either directly or indirectly, totally or partially, alter or destroy documents or electronic information with the purpose of hindering or interfering with the investigation of the Commission can be subject to criminal sanctions that range from one to three years of prison.</p> <p>c) Civil Sanctions</p> <p>Article 134 of the LFCE provides that, when a cartel conduct is proven, those affected by it may claim civil damages through an individual or collective lawsuit before a specialized court.</p> |
| <p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p> | <p>Article 130 of the LFCE provides that for the imposition of fines, the Commission must consider the following elements to determine the seriousness of the infringement: the damage caused, the indications of intentionality, the participation of the offender in the markets, the size of the affected market, the duration of the practice, the economic capacity of the offenders and if it is the case the affectation to the exercise of attributions of the Commission.</p> <p>Also, Article of the 182 of the <i>Regulatory Provisions of the Federal Economic Competition Law</i> establishes that when determining the intentionality, the following circumstances shall be taken into account in order to determine the sanction:</p> <ul style="list-style-type: none"> • The time of cessation of the practice; • The acknowledgement that such practice was committed because of the instigation of other authorities; • Acts conducted to keep hidden such conduct; • The acknowledgement that such practice was committed because of the instigation of another agent. <p>In accordance with the LFCE, the estimation of damage is not a necessary requirement, nor when issuing a DPR, as it is not a constitutive element of a probable infringement. However, it is an element of individualization of the sanction that corresponds to the Board of Commissioners to evaluate when quantifying the fines attributable to each economic agent, depending on the degree of the legal injury and the circumstances of the case. In this sense, the individualization of the fines in economic competition, and in many other areas of Administrative Sanctioning Law, must be carried out once the elements of conviction related to the conduct have been assessed, including duration, participation modalities, size and participation in the affected market and, if applicable, the possible damage caused. All this, taking into consideration the evidence provided in the investigation stage, as well as in trial-like procedure. Thus, COFECE's internal criteria considers precedents of the SCJN. The SCJN has established that in order to determine the amount of fines, the Commission shall set out the legal basis and justification for the methodology used.</p> <p>The Commission must also consider the following factors: a. harm; b. recidivism; c. economic capacity; if applicable, any other items</p> |

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| | deemed necessary to justify the severity of the noncompliance conduct, and; d. the market share of the economic agent. Consequently, the Commission in each decision, should explain how the methodology is configured, how it operates, and the reasons and arguments to justify the value of each one of the elements aforementioned, considering the particular circumstances of the case. |
| C. Are there maximum and / or minimum sanctions / fines? | Yes, see question 14. A |
| D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available] | There are no available guidelines. |
| E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria? | No, the suspensory effect is not automatic. Once it has been requested to the judge, he or she must examine the petition and determine the quantity of the guarantee. Generally, acts performed by COFECE cannot be subject of suspension only those regarding fines or divestiture of assets, rights, partnership interest or stocks. |

15. Possibilities of appeal

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| A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements? | Yes, the decisions of the Commission and sanctions can only be challenged through an <i>amparo</i> , which can only be filed against final resolutions, and it does not include an injunction order, except for fines and divestiture cases. This, in order to avoid abusive litigation throughout the Commission's procedures. |
| B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative] | <i>Amparo</i> procedures are resolved by the Specialized Courts in matters of Telecommunications, Broadcasting and Economic Competition. |

16. Private enforcement

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| A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is | With respect to damages litigation, article 134 of the LFCE provides the possibility that, if a cartel is proven, those affected by the conduct may claim the payment for damages through an individual or a collective suit. Eligibility to claim damages foresees two minimum requirements: (1) the existence of a resolution from COFECE that determines the existence of a cartel conduct, and (2) a proof of the causal relationship between the said conduct and the damages claimed. |
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| <p>no legal provision for private enforcement and damage claims, what are the reasons for it?</p> | <p>With respect to class actions, section XXVIII of article 12 of the LFCE empowers the Commission with the possibility of submitting class actions, serving as intermediary for those who suffered damages; the statute of limitations to promote these claims is of three years and six months from the time the unlawful conduct occurred.</p> |
| <p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p> | <p>Article 134 of the Federal Law on Economic Competition contemplates the possibility for a person who has suffered damages or harm as a result of a monopolistic practice or illicit concentration to file legal actions in defence of their rights before the Specialized Courts in matters of Telecommunications, Broadcasting and Economic Competition</p> <p>Article 12 of the LFCE contemplates within the powers of the Commission the possibility of exercising collective actions in accordance with the provisions of the Fifth Book of the Federal Code of Civil Procedures.</p> <p>Article 585 of the Federal Code of Civil Procedures recognizes this characteristic as active legitimation, which in general terms means that it can have the role of actor in collective actions. Thus, the Commission has the authority to act as an intermediary between those affected by a monopolistic practice and the judiciary, specifically, before the Specialized Courts in matters of Telecommunications, Broadcasting and Economic Competition.</p> <p>See FECL in Spanish: https://www.diputados.gob.mx/LeyesBiblio/pdf/LFCE_200521.pdf Law in English: https://www.cofece.mx/wp-content/uploads/2018/03/Federal_Economic_Competition_Law.pdf</p> <p>The Federal Code of Civil Procedures can be found in Spanish: https://www.diputados.gob.mx/LeyesBiblio/pdf/CFPC.pdf</p> |
| <p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>We do not have implementing regulations on private enforcement.</p> |
| <p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p> | <p>If a violation to the FECL is proven, those affected by the conduct may claim the payment for damages through an individual or a collective suit. Eligibility to claim damages foresees two minimum requirements: (1) the existence of a resolution from COFECE that determines the existence of a illicit merger or anticompetitive conduct (be abuse of dominance or cartel), and (2) a proof of the causal relationship between the said conduct and the damages claimed.</p> |
| <p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of | <p>for those affected to be able to claim damages, two minimum requirements must be met: i) The existence of a firm resolution of the Plenary of the Commission that determines the existence of a monopolistic practice or illicit merger, and 11) To prove a causal relationship between said practice and the damages claimed.</p> <p>Thus, no stand-alone claims for antitrust cases may be submitted, according to the Mexican Regulatory Framework and once the final resolution is issued by the Commission, the follow-on claims may be filed.</p> |

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| <p>infringement by a competition agency on national courts/tribunals?</p> <ul style="list-style-type: none"> if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? | |
| <p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p> | <p>Yes, criminal sanctions are separate from possible private actions, and these are not mutually exclusive.</p> |
| <p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p> | <p>No. The Immunity and Sanction Reduction Program offers immunity from criminal sanctions and disqualification from serving in managerial positions only.</p> |
| <p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p> | <p>If the private enforcement claim is related to a resolution issued by COFECE, the private claim must be submitted before the Specialized Courts in matters of Telecommunications, Broadcasting and Economic Competition.</p> |
| <p>I. Information about class action opportunities</p> | <p>There has only been one case claiming damages. It derived from a resolution issued by the Commission in 2015 to sanction pharmaceutical companies for rigging bids in the procurement process of insulin carried out by the Mexican Institute of Public Health. The Institute filed two claims for damages equivalent to approximately 32 million US Dollars. The resolution of these claims is still pending. There are no other pending or current cases.</p> |
| <p>J. Role of your competition agency in private enforcement actions (if at all)</p> | <p>The Commission has the power to act as an intermediary between those affected by a monopolistic practice or illicit concentration and the judiciary, specifically, before the Specialized Courts in matters of Telecommunications, Broadcasting and Economic Competition. Being that it was the Commission who carried out the investigation and the trial-like procedure, it has sufficient information to identify and contact those who were affected by the accredited conduct.</p> |
| <p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> Role of your competition agency in the damage calculation (if at all) | <p>Regulation or jurisprudence on the matter is yet to be created</p> |

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| <p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court | <p>According to Article 598, last paragraph, of the Federal Code of Civil Procedures, the judge in charge of the claim may require COFECE in private action procedures, the preparation of studies or presentation of the necessary evidence to substantiate the suit.</p> <p>Available in Spanish in: https://www.diputados.gob.mx/LeyesBiblio/pdf/CFPC.pdf</p> |
| <p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? | <p>There is no applicable regulation in relation to passing-on issues in relation to economic competition policy</p> |