



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

México

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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 (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 which suffer from cartel activity to get information about the possibilities of lodging a complaint 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 for its acronym in Spanish) 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, concentrations and other restrictions to the efficient functioning of the markets.

See <http://www.diputados.gob.mx/LeyesBiblio/htm/1.htm>

The Mexican Constitution is currently only available in Spanish; the English version has not been updated since 2010.

Articles 1 and 2 of the Federal Economic Competition Law ("LFCE" for its acronym in Spanish) takes over the approach set out in the Constitution.

Furthermore, Article 2 establishes that the purpose of the LFCE is to promote, protect 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 entry and to economic competition, as well as other restrictions to the efficient operations of the market.

Specifically, article 53 of the LFCE is the applicable legal provision, according to which:

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.

	<p>“Absolute monopolistic practices (cartels) are considered illegal, and these consist of contracts, agreements, arrangements or combinations amongst competing Economic Agents², which have as their purpose or effect any of the following:</p> <ol style="list-style-type: none"> I. To fix, raise, co-ordinate or manipulate the sale or purchase price of goods or services supplied or demanded in the markets; II. Establish and obligation not to produce, process, distribute, market 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; 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; IV. To establish, arrange or coordinate bids or abstentions from tenders, contests, auctions or purchase calls; and V. To exchange information with any of the purposes or effects referred to in the previous subsections. <p>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.”</p> <p>See https://www.cofece.mx/cofece/images/Documentos_Micrositios/Federal_Economic_Competition_Law.pdf</p> <p>The LFCE is available in Spanish and English.</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>The LFCE is implemented by COFECE’s Regulatory Provisions.</p> <p>See http://www.dof.gob.mx/nota_detalle.php?codigo=5367678&fecha=10/11/2014</p> <p>The Regulatory Provisions are only available in Spanish.</p> <p>It is important to note that when dealing with broadcasting and telecommunications, since 2013 COFECE is not the agency in charge of enforcing the LFCE. In this case, it will be responsibility of the Federal Institute of Telecommunications (IFETEL, for its acronym in Spanish)³ to implement the LFCE with the help of IFETEL’s Regulatory Provisions.</p> <p>For further information see IFETEL’s website: http://www.ift.org.mx/</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability]</p>	<p>The LFCE is also complemented by a set of interpretative guidelines and technical criteria regarding certain aspects of COFECE’s⁴ antitrust policy related to cartels:</p> <ul style="list-style-type: none"> • Guideline 002/2015: Guidelines on initiating an investigation regarding anticompetitive practices. • Guideline 003/2015: Guidelines on the Leniency and Fines Reduction Program.

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.

³ The Federal Institute of Telecommunications (Ifetel for its acronym in Spanish) is the antitrust authority in the telecommunications market in Mexico.

⁴ The Federal Economic Competition Commission (Cofece for its acronym in Spanish) is the antitrust authority in Mexico.

<p>(homepage address) and indication of the languages in which these materials are available]</p>	<ul style="list-style-type: none"> Guideline 006/2015: Guidelines on investigations regarding absolute monopolistic practices. Guideline 007/2015: Guidelines on Information exchange between Economic Agents. Technical Criteria for Requesting the Dismissal of criminal cases criminal action criteria. <p>All guidelines are available in Spanish in COFECE's official website: https://www.cofece.mx/cofece/index.php/normateca</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>See also COFECE's official website https://www.cofece.mx/cofece/ingles/</p> <p>Information in the website is available in Spanish, and in some cases, both in English and Spanish.</p> <p>COFECE has an Organizational Statute, which enlists the specific powers of the Investigative Authority and its Divisions, the Board of Commissioners and the Technical Secretariat, amongst other. The Statute is available in Spanish.</p> <p>https://www.cofece.mx/cofece/attachments/article/53/Estatuto_Organico_CFCE_2013.pdf</p>

2. Scope and nature of prohibition on cartels

<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”.</p> <p>As previously mentioned, absolute monopolistic practices are contracts, agreements, arrangements or combinations amongst competing Economic Agents, which have as their purpose or effect: (1) to fix, raise, co-ordinate or manipulate the sale or purchase price of goods or services supplied or demanded in the markets; (2) establish and obligation not to produce, process, distribute, market 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; (3) 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;(4) to establish, arrange or coordinate bids or abstentions from tenders, contests, auctions or purchase calls; and (5) to exchange information with any of the purposes or effects referred to in the previous subsections.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behavior (“hardcore cartels” – e.g.:</p>	<p>No distinction is made between the different types of cartel behavior. All agreements among competitors to fix prices, restrict output, allocate a market, bid rigs and exchange</p>

<p>price fixing, market sharing, bid rigging or production or sales quotas⁵) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>information with any of these objects or effects, are considered absolute monopolistic practices and are illegal per se.</p> <p>Other jurisdictions may consider agreements such as boycotts as cartels. In Mexico’s case, boycotts are treated as relative monopolistic practices (abuse of dominance). Whenever dealing with a relative monopolistic practice, COFECE will analyze it using the rule of reason.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defenses 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 such agreements.</p>
<p>D. Is participation in a hardcore cartel illegal per se⁶? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Any agreements referred to in Article 53 of the LFCE will be regarded as a per se violation to competition. As these agreements have as “purpose or effect” any of those enlisted in Article 53 of the LFCE, it is not always necessary to prove the anti-competitive effects of the absolute monopolistic practice.</p> <p>As for criminal penalties, the Federal Criminal Code also regards such agreements as per se and incorporates the five conducts set forth in Article 254 of the bis of the LFCE as follows:</p> <p>“Article 254 bis. The individual who enters into, orders or implements contracts, agreements or arrangements among competing economic agents, with the purpose of any of the following, shall be punished with 5 to 10 years of imprisonment and with fines of 1,000 to 10,000 times the minimum daily wage: I. To fix, raise, concert or manipulate the purchase price or sale of goods or services supplied or demanded in the markets; II To establish an obligation to produce, process or distribute only a restricted or limited amount of goods, or to restrict or limit the number, volume, or frequency of a service; III. To divide, distribute, assign or impose portions or segments of a present or potential market of goods and services, by means of a determined or determinable group of customers, suppliers, time or spaces; IV. To establish, rig or coordinate bids or abstention of bids in tenders, auctions or biddings; V. To exchange information with the object or effect of one of the conducts set forth in Subsections I to IV of the law.”</p> <p>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 judicial actions in defense of their rights. These actions may only be filed once Commission’s resolution must be final and conclusive. However, the company or undertaking’s illegal</p>

⁵In 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.

⁶ 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.

	actions shall be proven with the final resolution issued by COFECE under the trial-like procedure, for the effects of lodging damages claims.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	<p>Sanctions applicable to absolute monopolistic practices are a combination of administrative and criminal offenses.</p> <p>Article 127 of the LFCE, establishes the applicable administrative sanctions. Pursuant to this article, the fines for engaging in absolute monopolistic practices may be of up to 10% of the economic agent's income. Moreover, those who, directly or indirectly, participate in these practices, in the name or on behalf of economic agents, may be sanctioned with a disqualification order which makes them ineligible to act as an undertaking's board member, manager, director, executive, agent, representative or legal representative for a maximum period of five years and with fines of up to 200,000 the minimum wage applicable in Mexico City.⁷</p> <p>Regarding criminal sanctions, Article 254 bis of the Federal Criminal Code establishes that those who enter into, order or execute contracts, agreements, arrangements, or combinations in order to carry out absolute monopolistic practices will be punished with imprisonment of 5 (five) to 10 (ten) years and with fines of 1,000 to 10,000 times the minimum daily wage.</p> <p>Additional from administrative and criminal sanctions, individuals may file private damages claims against cartelists. According to Article 134 of the LFCE individuals that may have suffered damages or losses deriving from a monopolistic practice have the right to file judicial actions in defense of their rights before the specialized courts, once the Commission's resolution is final and conclusive.</p>

3. Investigating institution(s)	
A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	<p>The authority responsible for investigating cartels is COFECE's Investigative Authority. The Investigative Authority is divided into various divisions or units: the Market Intelligence Directorate; Directorate on charge of Market Investigations; the Directorate in charge of Investigating Absolute Monopolistic Practices (Anti-Cartel Division); and the Regulated Markets Directorate. Particularly, the Absolute Monopolistic Practices Directorate is in charge of cartel investigations.</p> <p>The Investigative Authority is the unit responsible initiating investigations, for conducting the investigation stage and is a party to the trial-like procedure. According to Article 26 of the LFCE, in the exercise of its powers the Investigative Authority shall have technical and administrative autonomy in order to decide on its operations and resolutions.</p>
B. Contact details of the agency: [address, telephone and fax including the country code, email, website]	<p>Avenida Santa Fe 505, Colonia Cruz Manca, Delegación Cuajimalpa, C.P. 05349.</p> <p>Telephone: +5227896500</p>

⁷ Approximately \$770,000 US Dollars to October 2016.

address and languages available on the website]	Investigative Authority's extension: 6651 Anti-Cartel Division's extension: 6624 Website: https://www.cofece.mx/cofece/index.php
C. Information point for potential complainants:	14th floor, Avenida Santa Fe 505, Colonia Cruz Manca, Delegación Cuajimalpa, C.P. 05349. Telephone: +5227896500 Website: https://www.cofece.mx/cofece/index.php/contacto/puntos-de-contacto
D. Contact point where complaints can be lodged:	14th floor, Avenida Santa Fe 505, Colonia Cruz Manca, Delegación Cuajimalpa, C.P. 05349. Telephone: +5227896500 Investigative Authority's extension: 6651 Absolute Monopolistic Practices Directorate's extension: 6624 Website: https://www.cofece.mx/cofece/index.php/contacto/reports-practicas-anticompetitivas
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Yes, COFECE may request assistance from any other authorities, whether federal or local, to perform its activities. Furthermore, COFECE has celebrated several Memorandums of Understanding (MOUs) with different authorities. For example, the Mexican Tax Authority, IFETEL, the Ministry of Economy, the Consumer Protection Authority, etc. For further information on MOUs celebrated by COFECE, see https://www.cofece.mx/cofece/index.php/normateca

4. Decision-making institution(s)⁸ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	The decision-making body is the Board of Commissioners. After an investigation is conducted by the Investigative Authority, according to Article 78 of the LFCE upon its conclusion the Investigative Authority shall bring present before the Board of Commissioners an investigative opinion proposing the initiation of the trial like procedure, due to objective elements that indicate a probable responsibility of the investigated economic agents; or the closing of the case file when there are no elements to initiate the trial-like procedure. If the Investigative Authority proposes the initiation of the trial-like procedure, the Board of Commissioners shall order the procedural oversight authority to initiate the trial-like procedure by notifying the alleged offenders.
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⁸Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>After the trial-like procedure, once the file is considered complete according to Article 83 of the LFCE, such file will be assigned by the Commission's Chair to the Commissioner-Rapporteur, who is charged with the duty of preparing the resolution project for the Board of Commissioners' approval or modification.</p>
<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>Avenida Santa Fe 505, Colonia Cruz Manca, Delegación Cuajimalpa, C.P. 05349. Telephone: +52 27896500 Website: https://www.cofece.mx/cofece/index.php</p>
<p>C. Contact point for questions and consultations:</p>	<p>Avenida Santa Fe 505, Colonia Cruz Manca, Delegación Cuajimalpa, C.P. 05349. Telephone: +5227896500 Website: https://www.cofece.mx/cofece/index.php/contacto/puntos-de-contacto</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>As previously mentioned, after an investigation is conducted by the Investigative Authority, according to Article 78 of the LFCE the Investigative Authority shall bring before the Board of Commissioners an investigative opinion proposing whether the initiation of the trial like procedure, due to objective elements that indicate a probable responsibility of the investigated economic agents; or the closing of the case file when there are no elements to initiate the trial-like procedure.</p> <p>If the Investigative Authority proposes the initiation of the trial-like procedure, the Board of Commissioners shall order the procedural oversight authority to initiate the trial-like procedure by notifying the alleged offenders.</p> <p>During the trial-like procedure, the Investigative Authority becomes a party. Thus as stated in Article of the 83 LFCE, the Investigative Authority can provide its position regarding the arguments and evidence brought forth by the alleged offender and submit closing written arguments.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Regarding criminal penalties, Article 254 bis of the Federal Criminal Code incorporates the five conducts set forth in article 53 of the LFCE as follows:</p> <p>“Article 254 bis. The individual who enters into, orders or implements contracts, agreements or arrangements among competing economic agents, with the purpose of any of the following, shall be punished with 5 to 10 years of imprisonment and with fines of 1,000 to 10,000 times the minimum daily wage: I. To fix, raise, concert or manipulate the purchase price or sale of goods or services supplied or demanded in the markets; II To establish an obligation to produce, process or distribute only a restricted or limited amount of goods, or to restrict or limit the number, volume, or frequency of a service; III. To divide, distribute, assign or impose portions or segments of a present or potential market of goods and services, by means of a</p>

	<p>determined or determinable group of customers, suppliers, time or spaces; IV. To establish, rig or coordinate bids or abstention of bids in tenders, auctions or biddings; V. To exchange information with the object or effect of one of the conducts set forth in Subsections I to IV of the law.”</p> <p>Criminal responsibility lies on those individuals who have entered into, ordered or implemented an agreement among competitors. This means that the legal representatives of a company shall not be criminally liable for collusive conduct by the company they represent if there is no evidence of his/her directs engagement in the illegal conduct. The foregoing is due to a general principle set forth in the Federal Criminal Code whereby criminal responsibility may only be attributed to individuals.⁹</p> <p>Although the Office of the Attorney General is in charge of prosecuting all criminal offenses, a criminal complaint from the Investigative Authority of the Commission is a necessary prerequisite to begin a criminal prosecution. The Commission will only be able to file the criminal complaint if it has previously issued the statement of objections referred to in the LFCE as investigative opinion. The Investigative Authority has discretionary authority to file a complaint only in those cases where it considers that there are grounds for criminal responsibility, excepting for cases were economic agents applied for the leniency program. This article also allows the Commission to ask for the dismissal of a criminal case when the defendant covers the corresponding administrative sanctions, in accordance to the criteria issued by the Board of Commissioners.</p>
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5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>In order to initiate an investigation, the Commission must have what is known as an “objective cause”, which can be obtained through a formal complaint filed by any individual or undertaking, even if such individual or undertaking is not an affected party of the cartel; through a leniency applicant; or directly detected by the Commission, in which case an ex-officio procedure is carried on. Regarding the latter, it is worth noting that the Market Intelligence Unit constantly monitors market information that may indicate the possible existence of a cartel. The Commission also maintains a high level of cooperation with other government entities that might be aware or suspect the existence of a cartel (for example, if they detect certain patterns which might point to bid-rigging in their procurement processes).</p>
<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</p>	<p>A formal complaint is necessary to serve as a basis for initiating an investigation. However, informal complaints can be made by phone, in writing or through the website. These informal complaints may help the Investigative Authority initiate an ex officio investigation.</p>

⁹ Articles 10 and 11 of the Federal Criminal Code.

<p>specific form, please, indicate its location (website address).]</p>	<p>Formal complaints must be in writing and according to Article 68 of the LFCE should contain at least:</p> <ul style="list-style-type: none"> • Name or corporate name of the complainant; • Name of the legal representative if the case may be, and the appropriate legal document that proves legal capacity; address for receiving notices and the individuals authorized for such effects, as well as telephone numbers, e-mails or other data that could allow prompt localization; • Name or corporate name, and in case it is known, address of the defendant; • Succinct description of the facts that motivate the complaint; • In the case of relative monopolistic practices or unlawful concentrations, a description of the main services and goods involved, specifying their use in the market, and, in case these are known, the list of goods or services that are equal, similar or substantially related, pertaining to the defendant, the main Economic Agents that process, produce, distribute or market said goods or services in the country; • A list of the documents and evidence that are filed in conjunction with the complaint, along with their precise relation with the alleged facts, and <p>The other items which the complainant deems pertinent, and in case these are not available, the specification of the place or file where these may be located, in order to take the necessary actions during the investigation.</p> <p>-Informal complaints usually serve as warnings for the Investigative Authority; however, they do not constitute sufficient cause to initiate an investigation. This complaints can be made through the website or by telephone:</p> <p>https://www.cofece.mx/cofece/index.php/contacto/reporta-practicas-anticompetitivas</p> <p>+5227896500</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>According to Article 67 of the LFCE any person may bring complaints before the Investigative Authority in connection with absolute monopolistic practices (cartels). The legal requirements of those complaints are set forth in Article 68 of the LFCE.</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 through the Commission's filing office, and within the following fifteen days shall issue a decision: (1) Ordering the initiation of the investigation; (2) Dismissing the complaint, partially or totally, for being notoriously inadmissible, or (3) Informing the complainant, for a single instance, that the written motion of complaint fails to meet the requirements established by the LFCE or the Regulatory Provisions, thereby granting the possibility for the complaint to be clarified or completed within a fifteen-day period.</p> <p>Whenever a complaint fails to meet the requirements, the Investigative Authority shall inform the complainant, thereby</p>

	<p>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.</p> <p>If such period expires without the required clarification or completion of the complaint or without the fulfillment of the requirements, the complaint shall be dismissed.</p> <p>The Investigative Authority shall dismiss a complaint if such complaint does not fulfill the requirements established on Article 68 LFCE. It can also dismiss a complaint on grounds of notorious inadmissibility, according to Article 70 LFCE, when:</p> <ul style="list-style-type: none"> • The alleged facts do not constitute infringements to the LFCE; • It is evident that the Economic Agents involved do not have substantial power in the relevant market, regarding relative monopolistic practices or unlawful concentrations complaints; • The defendant Economic Agent and 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 said resolution; • There is a pending procedure before the Commission concerning the same relevant market's and conditions after the alleged offender has been notified, and • The claimed facts concern a notified concentration which is pending for resolution by the Commission.
<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, as mentioned previously the Investigative Authority must address the complainant and explain its reasons for dismissing the complaint.</p> <p>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>
<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>As previously mentioned, once the complaint is filed through the Commission's filing office, 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.</p>

6. Leniency policy¹⁰

¹⁰For 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.

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>The Leniency and Fine Reduction Program (Leniency Program).</p> <p>Information regarding COFECE's leniency policy, may be found in COFECE's Leniency and Immunity Program: Frequently Asked Questions available at: https://www.cofece.mx/cofece/attachments/article/621/LeniencyAndImmunity-FAQs.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>Our jurisdiction offers full leniency for the first applicant as well as partial reductions to subsequent applicants for as much as 50, 30 or 20 per cent of the maximum permitted administrative fine.</p> <p>Also, regardless of the chronological order, all applicants will be granted immunity from criminal sanctions.</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>Full leniency from administrative fines is available only for the first applicant. However, as mentioned before, all applicants are granted immunity from criminal sanctions.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? 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>Full leniency is available disregarding if the first application was submitted once an investigation has already started or not.</p> <p>The date in which the participants in the cartel come forward with information is relevant because subsequent applicants must provide information that represents additional evidentiary elements to those already in possession of the Investigative Authority.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Economic Agents who:</p> <ul style="list-style-type: none"> • Have been engaging in absolute monopolistic practices; • Currently are engaging in absolute monopolistic practices; • Have been or currently are contributing, facilitating, fostering or participating in the execution of an absolute monopolistic practice. <p>Individuals who:</p> <ul style="list-style-type: none"> • Have been engaging in absolute monopolistic practices in the name or on behalf of companies; • Currently are engaging in absolute monopolistic practices in the name or on behalf of companies; • Have been or currently are contributing, facilitating, fostering or participating in the execution of an absolute monopolistic practice.
<p>F. What are the conditions of availability of full leniency:</p>	<p>These requirements can be found in Article 103 of the LFCE, which states the following:</p>

<p>[e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<ol style="list-style-type: none"> I. The applicant must be the first to provide sufficient supporting evidence to allow the investigation procedure to be initiated or, if the case may be, to allow for the presumption of the existence of an absolute monopolistic practice; II. The applicant must cooperate fully and continuously throughout the investigation and, if the case may be, within the trial-like procedure; and III. The applicant must undertake all necessary actions so as to no longer engage in the unlawful 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 permitted fine, when additional evidentiary elements to those in possession of the Investigative Authority are submitted during the course of the investigation, and the other 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.</p>
<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>As mentioned before, the applicant must cooperate fully and continuously throughout the investigation and the trial-like procedure. As it is established in the Leniency, this obligation includes, to mention some, the following actions:</p> <ul style="list-style-type: none"> • To end its participation in the absolute monopolistic practice investigated, unless the Investigative Authority says otherwise; • To keep the confidentiality of the information given to the Commission, in regards to the application; • To timely deliver the information and documents required by the Commission; • To allow and cooperate in the conducting of diligences and proceedings of the Investigative Authority; • To ensure participation of involved individuals; • To avoid destroying, falsifying or hiding information.
<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>Applications can be made through voice mail or e-mail, this in order to give the economic agent certainty.</p> <p>Telephones: +5227896632</p> <p>E-mail: inmunidad@cofece.mx</p> <p>Regardless the form, all applications must contain the following information:</p> <ul style="list-style-type: none"> • Identity of the applicant • Express its willingness to apply to the program • Sufficient information so that the authority can contact the applicant • Industry or market objects of the application.

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)?]

The procedure can be divided into three stages: the application stage; the conditional immunity stage; and the definitive immunity stage.

During the first stage, applications will be addressed in chronological order. First, an alphanumeric code will be assigned which will be 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 Cofece 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.

During the second stage, information will be assessed by the Investigative Authority in order to verify if such information will allow the initiation of an investigation. Once the evaluation is concluded the Investigative Authority will inform the applicant whether its application is cancelled because of 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. 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 definite immunity, applicants must cooperate continuously throughout the investigation and the trial-like procedure.

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 full and continuously, it will issue a final leniency decision and the applicant will receive the following benefits:

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 engaging in an absolute monopolistic practice.

K. At which time during the application process is the applicant given certainty with respect to its eligibility for

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

<p>leniency, and how is this done?</p>	<p>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</p>
<p>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>	<p>Leniency is granted with the issuance of a letter by the Investigative Authority¹¹. 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>
<p>M. Do you have a marker system? If yes, please describe it.</p>	<p>During the application stage, applications will be addressed in chronological order. First, an alphanumeric code will be assigned which will be notified to the applicant five days after the application was submitted.</p> <p>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 COFECE to initiate an investigation (first applicant); or the subsequent applicants provide additional evidentiary elements to those already in possession of the Investigative Authority.</p> <p>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>N. Does the system provide for any extra credit¹² for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>No.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Yes, according to article 103 of the LFCE, COFECE must maintain the identity of the applicant as confidential. In order to keep the confidentiality of the identity, in all the communications regarding the application, the applicant will be referred to by an individualized alphanumeric code and the application shall be maintained in a separate and confidential file. Only the Investigative Authority, the Head of the Cartels Division, and the staff of the Investigative Authority who are assigned to the investigation will have access to the application file.</p> <p>COFECE will not share the applicant's identity or any information related to the application unless authorized by the applicant.</p>

¹¹ See answer 6.J.

¹²Also 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.

<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>During the investigation and trial-like procedure, there is not a possibility of appealing. However, when the final resolution is issued, economic agents can appeal through a writ of amparo before the specialized courts.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>Telephones: +5227896632, 24 hours a day. +525527896624 E-mail: inmunidad@cofece.mx</p>
<p>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?</p>	<p>If the applicant fails to provide full and continuous cooperation during the investigation procedure, the Investigative Authority¹³ (Commission's unit responsible for conducting the investigation stage) will revoke the benefits granted conditionally. However, before revoking the benefits, the applicant will have an opportunity to meet with the Investigative Authority.</p> <p>If the Investigative Authority decides to revoke the conditionally granted benefits, the information and documents provided by the applicant will not be returned. Moreover, such information and documents may be used to uphold the Investigative Authority's statement of probable responsibility and the final resolution issued during the trial-like procedure against the applicant whose conditional benefits were revoked.</p> <p>On the other hand, if the applicant fails to provide full and continuous cooperation during the trial-like procedure, COFECE will also revoke the benefits granted conditionally with the final resolution issued in the trial-like procedure by the Board of Commissioners.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No, COFECE's constantly advertises and promotes its Leniency Program.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</p>	<p>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 access¹⁴.</p> <p>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</p>

¹³ The authority responsible for investigating cartels is COFECE's Investigative Authority. The Investigative Authority is divided into various divisions or units: the Market Intelligence Directorate; Directorate on charge of Market Investigations; the Directorate in charge of Investigating Absolute Monopolistic Practices (Anti-Cartel Division); and the Regulated Markets Directorate. Particularly, the Absolute Monopolistic Practices Directorate is in charge of cartel investigations.

The Investigative Authority is the unit responsible initiating investigations, for conducting the investigation stage and is a party to the trial-like procedure. According to Article 26 of the LFCE, in the exercise of its powers the Investigative Authority shall have technical and administrative autonomy in order to decide on its operations and resolutions.

¹⁴ See answer 6.O

	used by the Investigative Authority during the investigation procedure.
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7. Settlement	
<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	No, our regime does not allow settlements in cartel cases.
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	N/A
<p>C. What is the reward of the settlement for the parties?</p>	N/A
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	N/A
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	N/A
<p>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.].</p>	N/A
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	N/A
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	N/A
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	N/A

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Yes, though it is only available in those cases regarding abuse of dominance (relative monopolistic practices or unlawful concentrations), but it is not available in cartel cases.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	<p>N/A</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>N/A</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>N/A</p>
<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>	<p>N/A</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>N/A</p>
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	<p>N/A</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	<p>N/A</p>

9. Investigative powers of the enforcing institution(s)¹⁵

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids¹⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.

- **Open Sources.** The most traditional means for obtaining information, this refers to non-exclusive sources of investigation which are used by COFECE's personnel in order 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.** Under article 73 of the LFCE, once an investigation has commenced, the agency has the power to request an economic agent to present all the documents and information that it deems convenient in order to conduct its investigation. Generally, all of the information concerning an on-going investigation cannot be revealed to anyone. However, COFECE is obligated to sort out all information received into one of the three following classifications for future steps within the proceedings: (i) reserved information; (ii) confidential information, or (iii) public information¹⁷. 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 FECL and due to judicial criteria, all agents that ask for their information to be classified as confidential must duly justify the reasons behind their request¹⁸. Otherwise, their information will only be considered as reserved.
- **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. In general, 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.
- **Leniency and fine reduction program.-**The leniency program is a tool that adheres to the best international standards, which purpose is to offer an incentive for cartel

¹⁵"Enforcing institutions" may mean either the investigating or the decision-making institution or both.

¹⁶"Searches/raids" means all types of search, raid or inspection measures.

¹⁷ Article 3, X, XI, XII LFCE.

¹⁸ Judicial criteria that was issued as a result of the resolution of the *Amparo en revision 30/2008*.

	<p>participants to cease their participation within it and denounce 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. This tool was created in 2006 and enhanced during the 2014 legal amendment.</p> <ul style="list-style-type: none"> • Unannounced on-site inspections.- Article 75 of the LFCE as amended in 2011 established the power of the agency to order and execute inspections in order to obtain on its own the necessary documents and information regarding any particular investigation. Before the 2011 reform, inspections were permitted but had several procedural locks that made them somewhat inoperative. First, during the searches, the Commission could only obtain information and documents that it had previously requested. Second, the agency was obliged to duly notice and prevent the agents before the inspection, which allowed them to hide or destroy the evidence. Due to the aforementioned formalities, inspections within the previous law were not frequently used as a tool for investigations. <p>Currently, COFECE is empowered to perform unannounced searches at any premises or domicile it deems convenient, without any prior authorization from a judicial organ, neither by the Board of Commissioners. The order is issued by the Head of the Investigative Authority. It is important to mention that COFECE may request assistance from any other authorities, whether federal or local, to perform its searches. For instance, these authorities might provide experts or police back-up. During searches, COFECE's officials 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 search COFECE's officials may request explanations regarding the facts, information or documents related to the purpose and objective of the on-site inspection.</p> <p>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 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 authorization by a court?</p>	<p>As previously mentioned, Article 75 of the LFCE establishes the power of the agency to order and execute inspections in order to obtain on its own the necessary documents and information regarding any particular investigation. Currently, COFECE is empowered to perform unannounced searches at any premises or domicile it deems convenient, without any prior authorization from a judicial organ, neither by the Board of Commissioners. The order is issued by the Head of the Investigative Authority. It is important to mention that COFECE may request assistance from any other authorities, whether federal or local, to perform its searches. For instance, these authorities might provide experts or police back-up.</p>

	<p>During searches, COFECE's officials 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 search COFECE's officials may request explanations regarding the facts, information or documents related to the purpose and objective of the on-site inspection.</p>
<p>C. May evidence not falling under the scope of the authorization 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>Generally, evidence collected during an investigation will only be used for that investigation. However, if during an investigation, the authority discovers evidence that falls within the on-site search's scope and it is relevant to another investigation, such evidence can be used in grounds that it has become a relevant fact¹⁹ for the authority.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>Yes, though the Specialized Courts are yet to solve these challenges.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defense 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.</p> <p>In that regard, Article 14 provides that no person shall be deprived of their liberty, property or rights without a lawful trial.</p> <p>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.</p> <p>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.</p> <p>According to the FECL, 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</p>
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¹⁹ Judicial criteria P./J.74/2006 has defined a relevant fact as any event of public domain known by everyone or almost everyone in a social sphere at the time of the judicial resolution, in respect of which there was no doubt or discussion, then, by being notorious is not necessary to prove it.

	the alleged offenders have a right to respond and provide evidence against the Statement of Objections.
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.	Business secrets are considered classified information, since the economic agent's competitive position can be 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 request ²⁰ . Otherwise, their information will only be considered as reserved.

11. Limitation periods and deadlines

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?	According to Article 137 of the LFCE, the Commission's powers 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.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?	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 period may be extended on four occasions, for periods consisting of one hundred and twenty business days, whenever the Investigative Authority considers that there are duly justified causes for such extensions.
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)	Now the Commission's decisions and sanctions can only be challenged through a writ of amparo, 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.

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under	According to Article 85 of the LFCE the final resolution shall contain at least the following:
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²⁰ Judicial criteria that was issued as a result of the resolution of the *Amparo en revision 30/2008*.

<p>Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<ul style="list-style-type: none"> • The assessment of evidence that was conducive in finding an infringement; • The determination ordering the end of the infringement, and • The determination imposing sanctions, such as fines, director disqualifications. <p>These resolutions can be challenged through writ of amparo according to Article 28 of the Mexican Constitution.</p>
<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 on the merits.</p>
<p>C. Can interim measures²¹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both²².) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</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> <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.

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<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,</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"> • Warning; • Maximum fine equivalent to three thousand times the current daily general minimum wage in the Federal District
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²¹In 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].

²² Only for agencies which answered "yes" to question 2.B. above

<p>challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>(SMGVDF, for its acronym in Spanish)²³, which may be applied for each day of non-compliance with an order;</p> <ul style="list-style-type: none"> • The assistance of the police force or other Public Authorities, and • Arrest for as much as 36 hours.
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>COFECE may only impose administrative sanctions for non-compliance. These sanctions are established in Article 126 LFCE which establishes that the Commission may impose, when performing its responsibilities under the LFCE, the following enforcement measures:</p> <ul style="list-style-type: none"> • Warning; • A periodic penalty payment of a maximum fine equivalent to three thousand times the SMGVDF²⁴, which may be applied for each day of non-compliance with an order; • The assistance of the police force or other Public Authorities, and • Arrest for as much as 36 hours. <p>Additionally, those that rendered false statements or submitted false information before the Commission shall be sanctioned with a maximum fine equivalent to one hundred seventy five thousand times the SMGVDF²⁵.</p> <p>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 and a twenty two thousand pesos fine. Criminal sanctions are established in the Federal Criminal Code: • 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.
<p>C. On whom can procedural sanctions be imposed?</p>	<p>On any individual or undertaking who does not comply with an order issued during the investigation.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>COFECE's internal criteria consider the precedents of the SCJN. The SCJN has established that in order to determine the amount of fines amount, the Commission, shall set out the legal basis and justification for the methodology used. The</p>

²³ Approximately \$11,000 US dollars to October 2016.

²⁴ Approximately \$11,000 US dollars to October 2016.

²⁵ Approximately \$672,000 US dollars to October 2016.

	<p>Commission must also consider the following factors: a. harm; b. recidivism; c. economic capacity; if applicable, any other items deemed necessary to justify the severity of the non-compliance conduct, and; d. the market share of the economic agent.</p> <p>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.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes,</p> <ul style="list-style-type: none"> • A periodic penalty payment of a maximum fine equivalent to three thousand times SMGVDF²⁶, which may be applied for each day of non-compliance with an order; • Arrest for as maximum of 36 hours. • For rendering false statements or submitted false information before the Commission, a maximum fine equivalent to one hundred seventy five thousand times the SMGVDF²⁷.

14. Sanctions on the merits of the case

<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>There are various types and natures of sanctions against cartels.</p> <p>Administrative Sanctions</p> <p>Pursuant to the law, sanctions can be applied to the cartel members, to those that contributed to the infringement and to those who directly or indirectly has participated in cartel conduct on behalf or by account and order of economic agents.</p> <p>For cartel conduct cases, the Commission may impose a maximum fine up to ten per cent (10%) of the corresponding economic agents' net income accrued during the immediately preceding fiscal year -the highest fine set forth in the LFCE-²⁸, and twice such amount in case of recidivism²⁹. In recidivism cases, the Commission can impose the double amount of fines</p>
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²⁶ Approximately \$11,000 US dollars to October 2016.

²⁷ Approximately \$672,000 US dollars to October 2016.

²⁸ Art. 127, fr. IV of the LFCE.

²⁹ Art. 127, subsection XV of the LFCE.

	<p>and it may order the divestiture of the involved economic agents' assets.</p> <p>Additionally, there are sanctions for individuals who have assisted, induced or participated in an illegal conduct. For those individuals, the Commission may impose a maximum fine equivalent to one hundred eighty thousand times the SMGVDF.³⁰</p> <p>Finally, administrative fines may be imposed on any individual who deceitfully declares or makes a false statement before the competition authority in the course of an ongoing investigation or administrative process. All this, not to mention the novel sanction of disqualification of up to 5 years for the economic agents' senior officials.</p> <p>Criminal Sanctions</p> <p>Regarding criminal sanctions, the Federal Criminal Code incorporates the five cartel conducts set forth in article 254 bis of the LFCE as follows:</p> <p>“Article 254 bis. The individual who enters into, orders or implements contracts, agreements or arrangements among competing economic agents, with the purpose of any of the following, shall be punished with 5 to 10 years of imprisonment and with fines of 1,000 to 10,000 times the minimum daily wage: I. To fix, raise, concert or manipulate the purchase price or sale of goods or services supplied or demanded in the markets; II To establish an obligation to produce, process or distribute only a restricted or limited amount of goods, or to restrict or limit the number, volume, or frequency of a service; III. To divide, distribute, assign or impose portions or segments of a present or potential market of goods and services, by means of a determined or determinable group of customers, suppliers, time or spaces; IV. To establish, rig or coordinate bids or abstention of bids in tenders, auctions or biddings; V. To exchange information with the object or effect of one of the conducts set forth in Subsections I to IV of the law.”</p> <p>Criminal liability lies on those individuals who have entered into, ordered or implemented an agreement among competitors. This means that the legal representatives of a company shall not be criminally liable for collusive conduct by the company they represent if there is no evidence of his/her directs engagement in the illegal conduct. The foregoing is due to a general principle set forth in the Federal Criminal Code whereby criminal liability may only be attributed to individuals³¹.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>According to Article 130 of the LFCE when imposing sanctions, the elements to be considered are: caused damage, intention indicia, market shares, size of the affected market, duration of the practice, economical capacity of the agents.</p> <p>Also, Article of the 182 of the Regulatory Provisions establishes that when determining the intentionality, the</p>

³⁰ Article 127, XI of the LFCE.

³¹ Articles 10 and 11 of the Federal Criminal Code.

	<p>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 committed to keep hidden such conduct; • The acknowledgement that such practice was committed because of the instigation of another agent. <p>Currently there are no public guidelines to quantify and determine fines. However, COFECE has developed internal and technical criteria for the calculation of such fines. In this sense, under the Mexican legal system, COFECE has limited discretion to determine the amount of fines deemed as enforcement measures, provided COFECE articulates the legal basis and justification of the methodology taken.</p> <p>For this purpose, and according to the internal criteria, the Commission has used a formula to determine the fine as enforcement measure. This formula considers the following factors:</p> <ol style="list-style-type: none"> i. Economic capacity ii. Recidivism iii. Harm iv. Market share of the economic agent.
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes, regarding administrative sanctions:</p> <ul style="list-style-type: none"> • Fines up to 10 per cent of the corresponding economic agents' net income accrued during the immediately preceding fiscal year -the highest fine set forth in the LFCE-, and twice such amount in case of recidivism.³² • For individuals found to have assisted, induced or participated in an illegal conduct shall be penalized with a fine equivalent to one hundred eighty thousand times the SMGVDF.³³ • Disqualification of up to 5 years for the economic agents' senior officials <p>Regarding Criminal Sanctions</p> <ul style="list-style-type: none"> • The individual, who has engaged in absolute monopolistic practices (also known as cartels), shall be punished with 5 to 10 years of imprisonment and with fines up to ten thousand times the SMGVDF³⁴.
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in</p>	<p>There are no available guidelines.</p>

³² Art. 127, fr. IV of the LFCE.

³³ Article 127, XI of the LFCE.

³⁴ Approximately \$39,000 US dollars to October 2016.

<p>which these materials are available]</p>	
<p>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?</p>	<p>No, the suspensory effect is not automatic. Once it has been requested to the judge, he must examine the petition and determine the quantity of the guarantee.</p> <p>Generally, acts performed by COFECE cannot be subject of suspension only those regarding fines or divestiture of assets, rights, partnership interest or stocks.</p>

15. Possibilities of appeal

<p>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?</p>	<p>Yes, now the Commission's decisions and sanctions can only be challenged through a writ of amparo, 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 from economic agents.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>It is remarkable that amparo procedures are now resolved by the recently created Specialized Courts in matters of Telecom, Broadcasting and Economic Competition, which started functioning on August 10th, 2014.</p>