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Comisión
Federal de
Competencia
Económica

FEDERAL ECONOMIC COMPETITION LAW

2015

FEDERAL ECONOMIC COMPETITION LAW ^{1, 2}

BOOK ONE ORGANIZATION AND OPERATION

TITLE I GENERAL PROVISIONS

Article 1. This Law implements article 28 of the Political Constitution of the United Mexican States pertaining to free market access, economic competition, monopolies, monopolistic practices and concentrations. Further, this Law pursues public objectives and serves society's interests, and is applicable to all areas of economic activity and its observance is obligatory in the Mexican Republic.

Article 2. The purpose of this Law 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 operation of markets.

Article 3. For the purposes of this Law, the following definitions shall apply:

- I. Economic Agent: 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;
- II. Investigative Authority: That which is referred to in article 26 of this Law;
- III. Public Authority: Any authority belonging to the Federation, the States, the Federal District or the Municipalities, their entities and agencies, as well as their State and Municipal para-administrations, public trusts, autonomous institutions and entities, and any other public entity;

1. This is a courtesy translation produced by the Federal Economic Competition Commission, which benefitted from the review and comments by the Mexican Bar Association and Mexico's International Chamber of Commerce, in particular by Messrs. Luis Monterrubio Alcántara, Miguel Flores Bernés, Francisco González de Cossío, Omar Guerrero Rodríguez and David Hurtado Badiola.

2. This document is merely an advocacy instrument directed to the English-speaking public with the objective of fostering a better understanding of the Mexican competition legal framework. It does not have any legal effect whatsoever nor may it be used to interpret or apply in any manner the official Federal Economic Competition Law (Ley Federal de Competencia Económica) as published in the Federal Official Gazette on May 23, 2014, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5345958&fecha=23/05/2014.

- IV.** Barriers to Competition and Free Market Access: Any structural market characteristic, act or deed performed by Economic Agents with the purpose or effect of impeding access to competitors or limit their ability to compete in the markets; which impedes or distorts the process of competition and free market access, as well as any legal provision issued by any level of government that unduly impedes or distorts the process of competition and free market access;
- V.** Commission: The Federal Economic Competition Commission;
- VI.** Commissioner: Each of the seven members of the Commission's Board of Commissioners;
- VII.** Internal Comptroller: The Commission's Internal Comptroller;
- VIII.** Regulatory Provisions: The general administrative provisions that the Commission may issue to fulfill its regulatory functions in accordance with subsection IV of paragraph twenty of article 28 of the Political Constitution of the United Mexican States;
- IX.** Confidential Information: That which in case of disclosure may potentially damage the competitive position of the Economic Agent who provided it, which contains personal data the disclosure of which requires the Economic Agent's consent, may endanger its security or when its disclosure is legally prohibited;
- X.** Public Information: That which has been disclosed by any means of public dissemination or is found in public registries or sources of public access;
- XI.** Reserved Information: That which may only be accessed by the Economic Agents with legal standing in a particular procedure;
- XII.** Procedural Oversight Authority: The Commission's unit responsible for overseeing the procedures referred to in this Law, pursuant to the specific terms provided for in the Organizational Statute;
- XIII.** Board of Commissioners: The Commission's governing body composed by seven Commissioners including the Chair;
- XIV.** Consumer Attorney: The Federal Attorney's Office of Consumers;
- XV.** Ministry: The Ministry of Economy.

Article 4. All Economic Agents are subject to this Law. There shall be joint liability for the Economic Agents that have taken or adopted the decision to carry out a conduct prohibited by this Law, those who have instructed or exerted their decisive influence in the decision, and those who have been directly involved in its execution.

Article 5. The Federal Telecommunications Institute is the competent authority for economic competition matters in the radiobroadcasting and telecommunications sectors, therefore it shall exclusively exercise the powers otherwise established for the Commission in article 28 of the Political Constitution of the United Mexican States and other laws, pursuant to its Organizational Statute.

When one of the entities mentioned in the previous paragraph has information that its counterpart is processing a matter under its jurisdiction, it shall require the submission of the corresponding file. If the requested entity acknowledges its own lack of jurisdiction to resolve in a given case, it shall submit the file, within the following five days after receiving the request. In case the entity considers that it has jurisdiction in a given case, it shall notify the requesting entity of its resolution in the same period, suspending the procedure and submitting the file to the specialized Federal Collegiate Circuit Court in Economic Competition, Broadcasting and Telecommunications, which shall resolve on the jurisdictional issue within a period of ten days.

In case one of the entities mentioned in paragraph one of this article is processing a matter and considers it lacks the jurisdiction to resolve it, said entity shall submit the corresponding file to the other entity within the following five days. If the latter accepts it has jurisdiction, it shall further undertake the procedure of the case, on the contrary, within the following five days, it shall notify the entity that it has declined jurisdiction of the case and submit the file to the specialized Federal Collegiate Circuit Court in Economic Competition, Broadcasting and Telecommunications, which shall resolve on the jurisdiction issue in a period of ten days.

The legal timeframes provided for by this Law shall be suspended upon commencement of any procedure set forth in this article and until its resolution.

Article 6. The functions performed exclusively by the State in the strategic areas determined by the Political Constitution of the United Mexican States, do not constitute monopolies.

However, the Economic Agents responsible for the functions described in the preceding paragraph shall be subject to this Law regarding the acts not specifically covered in such cases.

Article 7. Worker associations incorporated to protect their interests pursuant to the relevant legislation, do not constitute monopolies.

Furthermore, the privileges granted for a certain period of time to authors and artists regarding the production of their works and those granted to inventors and individuals perfecting an invention for the exclusive use of their inventions or improvements, do not constitute monopolies.

The Economic Agents referred to in the preceding two paragraphs shall be subject to the provisions of this Law with respect to acts that are not explicitly included in the protection defined in article 28 of the Political Constitution of the United Mexican States.

Article 8. The associations or productive cooperative undertakings which, in defense of their interests or the general interest, sell their domestic or industrial products directly in foreign markets, do not constitute monopolies, provided that:

- I. Said domestic or industrial products are the main source of wealth for the region in which these are produced, or are not articles of prime necessity;
- II. They are not sold or distributed within the national territory;
- III. These associations or productive cooperative undertakings are under surveillance or protection from the Federal government or the States, and their incorporation is preauthorized by the legislature corresponding to their legal address;
- IV. Membership to these associations or productive cooperative undertakings is voluntary and members are permitted to join or withdraw freely, and
- V. They do not grant or distribute permits or authorizations which should be issued by agencies or entities of the federal public administration.

The Economic Agents referred to in this article shall be subject to this Law with respect to the acts not explicitly included in the protection foreseen under article 28 of the Political Constitution of the United Mexican States.

Article 9. In order to impose maximum prices, in terms of article 28 of the Political Constitution of the United Mexican States, on the products and services deemed essential for the domestic economy or for basic consumption, the following shall apply:

- I. The Federal Executive Branch is vested with the power to exclusively determine, by executive order, the goods and services which may be subjected to maximum prices, provided there are no effective competition conditions in the given relevant market. The Commission shall determine, by means of a resolution on competition conditions, the inexistence of effective competition conditions.
- II. The Ministry, notwithstanding other agencies and entities' powers, and prior the Commission's opinion, shall set the corresponding prices of goods and services pursuant to the preceding subsection, and in accordance with criteria that would prevent supply restrictions.

The Ministry may concert or coordinate with producers or distributors the necessary actions or methods that are necessary in this matter, attempting to minimize the effects on competition and free market access.

The Consumer Attorney, under the Ministry's coordination, shall be responsible for the inspection, surveillance and sanctioning, regarding the prices determined under this article, in accordance with the Federal Consumer Protection Law.

TITLE II
THE FEDERAL ECONOMIC COMPETITION COMMISSION

Chapter I
The Commission

Section I
Its Legal Status, Purpose, and Legal Address

Article 10. The Commission is an autonomous entity with its own legal personality and patrimony, independent in its decisions and operation, professional in its performance, impartial in its actions, and shall exercise its budget autonomously, its 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.

Article 11. The Commission's legal address shall be in Mexico City and, subject to budgetary availability, it may establish regional offices outside Mexico City.

Section II
The Commission's Powers

Article 12. The Commission shall have the following powers:

- I. Guarantee free market access and economic competition; prevent, investigate and combat monopolies, monopolistic practices, concentrations and other restrictions to the efficient functioning of the markets, and impose the corresponding sanctions for said conduct in terms of this Law;
- II. Order actions to eliminate barriers to competition and free market access; determine the existence of and regulate access to essential facilities, as well as to order the divestiture of assets, rights, partnership interest or stock pertaining to Economic Agents, in the necessary proportions to eliminate anticompetitive effects;
- III. Perform on-site inspections in terms of this Law, summon any person related to the subject matter of the investigation to provide statements and require the submission of papers, ledgers, documents, files or any other information produced by electronic, optical or any other technology, in order to verify compliance with this Law, as well as request support from public force entities or any Public Authority for the effective performance of the powers contained in this Law;

- IV.** Enter into cooperation agreements and arrangements with Public Authorities to combat and prevent monopolies, monopolistic practices, unlawful concentrations, barriers to free market access and economic competition and other restrictions to the efficient functioning of the markets;
- V.** Upon knowledge of probable criminal conduct in matters of free market access and economic competition, bring complaints before the Public Prosecutor;
- VI.** When acting as complainant or plaintiff, the Commission may bring requests for the dismissal of procedures regarding probable criminal conduct against consumption and national wealth established in the Federal Criminal Code;
- VII.** Exercise the budget autonomously;
- VIII.** Create the entities and administrative units necessary for the professional, efficient and effective operation of the Commission, in accordance with its approved budget;
- IX.** Order the suspension of acts or deeds that constitute a probable illegal conduct under this Law and impose other injunctive measures, as well as determine surety for the lifting of such measures;
- X.** Resolve on matters of its mandate and impose administrative sanctions for infringements to this Law;
- XI.** Resolve on competition conditions, effective competition, existence of substantial market power in the relevant market or other elements related to free market access and economic competition that are referred to in this Law, or other laws and regulations;
- XII.** Issue an opinion when considered pertinent, or upon request from the Federal Executive Branch, directly or through the Ministry, or upon request by any interested party, regarding adjustments to programs or policies implemented by Public Authorities, when these programs or policies could have adverse effects on free market access and economic competition in accordance with the applicable legal provisions, without these opinions having binding legal effects. The aforementioned opinions shall be published;
- XIII.** Issue an opinion when considered pertinent, or upon request from the Federal Executive Branch, directly or through the Ministry, or upon request from any interested party, regarding proposed provisions, rules, agreements, circulars and other general administrative acts that are intended to be issued by Public Authorities, when these drafts could have adverse effects on free market access and economic competition in accordance with the applicable legal provisions, without these opinions having binding legal effects. The aforementioned opinions shall be published;

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- XIV.** Issue an opinion when considered pertinent, or upon request from the Federal Executive Branch, directly or through the Ministry, or from any of the Chambers of Federal Congress or upon request from any interested party, regarding legislative bills and regulatory proposals and executive orders in aspects related to free market access and economic competition, without these opinions having binding legal effects. The aforementioned opinions shall be published;
- XV.** Issue an opinion when considered pertinent, or upon request from the Federal Executive Branch, directly or through the Ministry, or from any of the Chambers of Federal Congress, regarding laws, regulations, agreements, circulars and administrative acts of general applicability in subjects related to free market access and economic competition, without these opinions having binding effects. The aforementioned opinions shall be published;
- XVI.** Resolve on requests for formal opinions, and provide general orientation in matters related to free market access and economic competition brought in accordance with articles 104 to 110 of this Law;
- XVII.** Issue Regulatory Provisions exclusively for exercising its powers, as well as its Organizational Statute, which must be published in the Federal Official Gazette;
- XVIII.** Issue an opinion when considered pertinent, or upon request from the Federal Executive Branch, directly or through the Ministry, or from the Senate, on matters related to free market access and economic competition when entering into international treaties, pursuant to the relevant law(s);
- XIX.** Issue an opinion on the inclusion of protective and promotional measures regarding free market access and economic competition in divestiture processes for public entities and assets, as well as in regard to tender procedures, allotments, concessions, permits, licenses or analogous actions performed by the Public Authorities, when provided for by other laws or the Federal Executive Branch through resolutions or executive orders;
- XX.** Promote, in coordination with Public Authorities, the observance of free market access and economic competition principles in their administrative acts;
- XXI.** Promote the study, dissemination and application of free market access and economic competition principles, as well as participate in national and international fora and other international organizations with such objectives;
- XXII.** Publish the Regulatory Provisions necessary to exercise its powers, which shall encompass the following subjects:
- a.** Imposition of sanctions;
 - b.** Monopolistic practices;
 - c.** Determination of substantial market power for one or several Economic Agents;

- d.** Determination of relevant markets;
- e.** Barriers to competition and free market access;
- f.** Essential facilities, and
- g.** Divestiture of assets, rights, partnership interests or stock of Economic Agents.

A public consultation shall be conducted in order to issue the Regulatory Provisions, except in those cases where the Commission considers that their intended effects would be compromised or in case of emergency situations.

Regardless of the Regulatory Provisions' publication referred to in this Law, the Commission shall issue directives, guides, guidelines and technical criteria, prior public consultation, pursuant to article 138 of this Law, regarding the following:

- a.** Imposition of sanctions;
- b.** Concentrations;
- c.** Investigations;
- d.** Exemption and fine reduction benefit;
- e.** Suspension of acts constituting probable monopolistic practices or probable unlawful concentrations;
- f.** Determination and granting of sureties to suspend the application of injunctive measures;
- g.** Request of dismissal of the criminal process in the cases referred to in the Federal Criminal Code, and
- h.** Those necessary for the effective compliance of this Law.

XXIII. Perform or order studies, research projects and general reports in subjects related to free market access and economic competition, when appropriate, including proposals for liberalization, deregulation and regulatory amendment, in cases where risks to free market access and economic competition process are detected, a competition problem is identified or when requested by another Public Authority;

XXIV. Approve the Board of Commissioners' operation guidelines;

XXV. Prepare the annual work program and the quarterly activities report which shall be presented to the Federal Executive and Legislative Branches by the Commission's Chair;

XXVI. Request or require the information deemed necessary for the exercise of its powers;

XXVII. Establish coordination mechanisms with Public Authorities in matters of free market access and economic competition policies, and for the compliance of other provisions of this Law or other applicable provisions;

XXVIII. Initiate class actions pursuant to the Fifth Book of the Federal Code of Civil Procedures;

XXIX. Request studies that assess the exercise of the powers granted to the Commission, which shall be independently produced by academics and experts on the subject, and

XXX. Other powers granted by this or other Laws.

Chapter II

The Board of Commissioners' Composition and Powers

Section I

Commissioner Selection Process by the Evaluation Committee

Article 13. The Evaluation Committee for the selection and appointment of Commissioners referred to in article 28 of the Political Constitution of the United Mexican States, shall not have its own administrative structure or budget, therefore, when exercising its powers it shall be assisted by staff from the institutions presided by its members, and may use the financial and material resources of said institutions pursuant to the terms agreed upon by the members of the Evaluation Committee.

The legal acts agreed upon by the Evaluation Committee shall be formalized through the public officials working for the institutions presided by its members appointed by the Committee to that effect.

Article 14. To fulfill the functions prescribed in article 28 of the Political Constitution of the United Mexican States, the Evaluation Committee shall have powers to:

- I.** Issue the respective public calls to occupy Commissioner vacancies;
- II.** Select and refer to the Federal Executive Branch the lists of candidates to occupy the vacancies referred to in the preceding subsection;
- III.** Select, at least, two higher education institutions that shall issue their opinion regarding the design of the knowledge based exam that will be applied to the candidates, and refrain from revealing the names of such institutions to the public until the lists referred to in subsection II of this article are delivered to the Federal Executive Branch;
- IV.** Based on the received opinion and best practices, apply the respective knowledge based exams to the applicants for Commissioner, once it has verified the fulfillment of the requirements under article 28 of the Political Constitution of the United Mexican States, as well as produce the questions that will be included in the exams;
- V.** Agree on the registration mechanism for applicants, and determine the documents and information necessary to verify compliance with the requirements referred to in the previous subsection;

- VI.** Issue the guidelines for its operation and establish the procedures it will follow for the selection of applicants, compile the lists that will be sent to the Federal Executive Branch, as well as issuing the rules of conduct that the members of the Evaluation Committee shall observe during the selection procedures;
- VII.** In compliance with the constitutional principles on transparency, the Committee shall classify the information that is received and generated as part of its operation, resolve on the information that shall be classified as reserved or confidential, as well as the mechanism by which it shall ensure, for all cases, the protection of the candidates' personal data;
- VIII.** Select the applicants with the highest results in the corresponding exam in order to produce the lists mentioned in subsection II of this article;
- IX.** Appoint the Secretary, Assistant Secretary, and two advisors of the Evaluation Committee, who shall be public officials from the institutions represented by the members of the Evaluation Committee;
- X.** Agree on the manner in which expenses required for the fulfillment of the Evaluation Committee's duties and the development of the evaluation procedures are to be covered;
- XI.** Agree and execute all other appropriate actions required to conduct the procedure for the composition of the lists of applicants to Commissioners, and
- XII.** Agree and execute other acts necessary for the performance of its mandate.

All of the Evaluation Committee's actions are incontestable; consequently no appeals either ordinary or extraordinary, shall proceed against it, including amparo proceedings, nor may any authority modify or override the Committee's decisions.

Article 15. The Evaluation Committee shall have the broadest powers to analyze and resolve regarding the documentation and information that the applicants to Commissioner Vacancies submit to its consideration, as well as any additional information required by the Committee.

Article 16. For compliance with its mandate, the Evaluation Committee may be assisted by any Federal, State or Municipal authority, as well as autonomous Federal or State entities, which are compelled to provide, within their powers, the support necessary for the exercise of the Evaluation Committee's powers.

The aforementioned authorities as well as the individuals from which information is required, shall provide such to the Evaluation Committee, within the term provided for that effect in the guidelines referred to in subsection VI of article 14 of this Law, with the purpose of verifying and crosschecking the information provided by the applicants, as well as any other information that the Committee deems necessary for the fulfillment of its duties.

The stated authorities and individuals cannot invoke secrecy or reservation privileges to avoid compliance with these requirements.

Article 17. The Evaluation Committee's acts which are agreed to be made public shall be published in the Federal Official Gazette, when decided so by the Committee itself, as well as through any others means selected to that effect.

The information and documents related to the exams and questions referred to in article 14, subsection IV, of this Law, as well as the grading methodology of these exams, and any other information about the results obtained by the respective aspiring Commissioners shall be confidential, hence, the members of the Evaluation Committee and other public officials that intervene in the processing of such information and documentation cannot reveal such information to any person under any circumstance, except to the competent authorities in matters related to inquiries or investigations and, the score of each test can only be communicated to the applicant who obtained it, notwithstanding that, once the selection process has concluded, the Evaluation Committee may publish the scores obtained by the examinees identified only by folio or registration code. The secrecy obligation contained in this paragraph shall be applicable to the private individuals that, in some way, intervene in the production of questions and exams described herein.

The lists of candidates to occupy the Commissioners' vacancies at the Commission and the Federal Telecommunications Institute that the Evaluation Committee compiles and refers to the Federal Executive Branch shall include the documents that were provided by the candidate to verify the requirements established in article 28 of the Political Constitution of the United Mexican States, as well as the result obtained in his/her evaluation.

Section II The Board of Commissioners' Powers

Article 18. The Board of Commissioners shall deliberate in a collegiate manner, requiring a voting majority to decide cases, except in decisions that require a qualified majority in terms of this Law.

The Board of Commissioners' deliberations shall include the votes of all of the Commissioners. Commissioners may not abstain from voting. Commissioners that are absent during the Board of Commissioners' sessions shall submit their vote in writing before the session or within five days after the corresponding session.

In cases where Commissioners are unable to cast their vote for duly justified causes or are impeded to do so, and the voting results are tied, the Commission's Chair shall have the casting vote to decide these cases.

The Board of Commissioners' sessions shall be public, except such portions where Confidential Information is discussed. Confidential Information shall only be considered as such when declared as such pursuant to this Law and other applicable provisions. The Board of Commissioners shall indicate the legal basis and justify any resolution determining that a session shall not be public.

The Commission shall publish the stenographic version of its sessions.

The decisions and resolutions issued by the Board of Commissioners shall also be public and the parts that contain Confidential or Reserved information shall be classified, in the terms established in this Law and other applicable provisions.

The Board of Commissioners shall exercise the powers set forth in subsections II, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVII, XVIII, XIX, XX, XXII, XXIII, XXIV and XXV of article 12 of this Law, as well as any other powers explicitly granted to the Board of Commissioners by this Law. The powers set forth in article 12, subsection II, in connection with the procedure provided for in article 94 of this Law, and those established under subsections XVII and XXII, may only be exercised by the Board of Commissioners when they are resolved with the affirmative vote of at least five Commissioners.

In the Organizational Statute, the Board of Commissioners shall determine whether those powers contained in article 12 of this Law that are not mentioned in the preceding paragraph shall be exercised directly or by delegation.

The powers corresponding to the Commissions' administrative units shall be established in the Organizational Statute, and said units shall be under the command and supervision of the Board of Commissioners or the Commission's Chair, as may be the case.

Article 19. The Commission's Chair shall preside over the Board of Commissioners and the Commission. In case of absence, the Commissioner with the longest period in office shall act as substitute and, in equal conditions, the eldest person shall act as substitute.

Article 20. The Commission's Chair has the following powers and responsibilities:

- I. Act as the Commission's legal representative with general and special powers for acts of administration, ownership as well as lawsuits and collections, including those which require special clauses according to the Law;

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- II.** To grant powers of attorney on behalf of the Commission for acts of ownership, administration as well as lawsuits and collections, and for the Commission to be represented before any administrative or judicial authority, labor courts or individuals; as well as to delegate powers pursuant to the Organizational Statute. In cases of ownership acts concerning real estate properties intended for the Commission's use or the granting of powers of attorney for such effects, the prior authorization from the Board of Commissioners is required. The Commission's Chair has the power to lodge constitutional controversies pursuant to subparagraph I), of subsection I of article 105 of the Political Constitution of the United Mexican States; prior approval from the Board of Commissioners.
 - III.** Direct and manage the Commission's human, financial and material resources and inform the Board of Commissioners on the administrative state of affairs in the terms specified by the Organizational Statute;
 - IV.** Participate as the Commission's representative in fora, meetings, events, conventions and congresses that are conducted with national organizations in matters related to the scope and jurisdiction of the Commission, in accordance with the provisions of this Law or appoint representatives for such effects, informing the Board of Commissioners on such activities;
 - V.** Convene and conduct the Board of Commissioners' sessions;
 - VI.** Implement the decisions and resolutions adopted by the Board of Commissioners;
 - VII.** Inform the Evaluation Committee referred to in article 28 of the Political Constitution of the United Mexican States and the Chamber of Deputies regarding the vacancies on the Board of Commissioners or the Internal Comptroller, as the case may be, for the purposes of their appointment;
 - VIII.** Propose, on an annual basis, the budgetary project for the Commission to the Board of Commissioners for approval and subsequent submission to the Ministry of Finance for its inclusion in the decree project for the federation's expense budget;
 - IX.** Submit for approval by the Board of Commissioners, within the month of January of each year, the project of the Commission's annual work program and, on a quarterly basis, the activities' report projects;
 - X.** Receive from the Internal Comptroller reports on the conducted revisions and audits to verify the adequate and legal allotment of the Commission's resources and assets and inform the Board of Commissioners thereof;
 - XI.** Submit any matter under the jurisdiction of the Commission for consideration of the Board of Commissioners, and

XII. Other powers conferred by this Law, the Organizational Statute, the Board of Commissioners and other applicable provisions.

Article 21. Upon conclusion of their term, Commissioners are impeded to participate as board members, administrators, directors, managers, executives, agents, representatives or attorneys in fact for an Economic Agent that was subject to one of the procedures defined in this Law during their time in office, for a period equivalent to one third of the total time the position was held.

Section III
Causes for Removal

Article 22. Commissioners shall be subject to impeachment in terms of Title IV of the Political Constitution of the United Mexican States and Title II of the Federal Public Officer's Administrative Responsibilities Law.

Article 23. The Senate may remove Commissioners from office for the following severe causes:

- I.** Undertaking employment, position or responsibilities other than those pertaining to their office as Commissioner, with the exception of lecturing positions;
- II.** Discussing matters of their responsibility with persons that represent the interests of Economic Agents outside the parameters set by this Law;
- III.** Participating in campaign acts of political parties as a representative of the Commission;
- IV.** Failing to comply with the Board of Commissioners' definitive decisions;
- V.** Using, for personal benefit or that of third parties, the Confidential or Reserved Information at their disposal by means of their office, as well as disclosing said information in infringement of the Law;
- VI.** Abstaining to resolve without a justified cause and in a recurrent manner, the matters under their jurisdiction in the periods provided for in this Law;
- VII.** Knowingly submitting altered or falsified information to the Board of Commissioners with the purpose of influencing a decision, and
- VIII.** Failing to excuse themselves from participating and voting in cases where they have any direct or indirect interests.

When the Internal Comptroller becomes aware of circumstances which would prompt the causes of removal and considers that there are evidentiary elements, it shall immediately and without delay notify them to the Senate.

In these cases, the Senate shall decide on the removal, in accordance with the following procedure:

- a. The Senate shall create a Special Commission to serve as procedural authority in the proceedings;
- b. The Special Commission shall summon the Commissioner subject to the removal procedure for a hearing, notifying that a personal appearance is mandatory to declare on the alleged facts, which could result in liability in terms of this Law and other applicable provisions. The notice must contain the place, date and time of the hearing, in addition to the acts or omissions which are claimed, and the right to testify assisted by counsel. This notice shall be conducted personally. Between the summoning and hearing dates a period of no less than five and no more than fifteen days is required;
- c. Upon conclusion of the hearing, the Commissioner subject to the removal procedure shall be granted a period of ten days to offer any pertinent evidence related to the attributed facts, and
- d. Once the admitted evidence has been introduced, the Special Commission shall submit the proposed resolution to the Senate's plenary body, within the following forty-five days.

Removal shall require a two-thirds majority vote from the members present at the session. The Senate's Executive Board shall notify the corresponding resolution and execute the removal, notwithstanding any other sanction that may be applicable in accordance with the Federal Public Officers' Administrative Responsibilities Law.

Section IV Prohibitions

Article 24. Commissioners are impeded and shall immediately excuse themselves from hearing cases in which there are one or several situations that reasonably affect their independence, professionalism and impartiality. Hence, Commissioners are impeded to hear cases where they have direct or indirect interests.

A Commissioner shall be considered to have a direct or indirect interest when:

- I. He/she has a vertical family relationship without limitation of degree, a collateral relationship by consanguinity to the fourth degree and in the collateral familiar relationship by affinity to the second degree, with any interested party or their representatives;
- II. He/she has personal, family related or business interests in the matter, including those that might result in a benefit for him/herself, his/her spouse or relatives in the degrees established in subsection I of this article;

- III. Him or her, his/her spouse or any relatives in the vertical family relationship without limitation of degree, is an inheritor, legatee, beneficiary, or guarantor of any of the interested parties or their representatives, if the inheritance, legate or donation has been previously accepted;
- IV. He/she has been an expert, witness, attorney, employer or counsel in the corresponding matter, or has previously acted in the matter either for or against one of the interested parties, and
- V. He/she has publicly and unmistakably expressed the sense of his/her vote before the Board of Commissioners decides on the matter.

The only grounds which may be invoked as impediments to hear cases processed by the Commission are the ones established in this article. Under no circumstances shall a Commissioner's recusal be decreed because of the expression of a technical opinion, the public explanation of the legal grounds and reasoning of the Commission's resolution or for having issued a dissenting vote.

Commissioners shall excuse themselves from hearing cases when the foregoing impediments are present and must do so promptly after the circumstance is present, concretely explaining the cause of the impediment, in which case the Board of Commissioners shall assess the excuse, without the need for intervention from the Economic Agents with interest in the matter.

Article 25. Beside the procedural hearings established in this Law, Commissioners may only discuss matters of their responsibility with the individuals that represent the interests of Economic Agents through an interview.

For this purpose, all Commissioners shall be convened, however, the interview may be held with the presence of only one.

Each interview shall be registered and include at least the place, date, starting and ending time of the interview; the complete names of all the attendees and the topics discussed.

This information shall be published on the Commission's website.

The interviews shall be recorded and stored in electronic, optical or any other technological media, they will be stored as reserved information, except regarding the other parties to the trial-like procedure, the other Commissioners, the Internal Comptroller and the Senate when substantiating a removal procedure for a Commissioner. The recording of each interview shall be available to all Commissioners.

Commissioners may not be recused due to the statements made during the interviews, unless the impartiality principle has been notably breached. In this case, the recusal must be assessed by the Board of Commissioners.

This article shall not be detrimental to the Commissioners' ability to participate in public fora and events.

The Board of Commissioners shall issue the rules of contact applicable to the Investigative Authority through the Organizational Statute.

TITLE III
THE INVESTIGATIVE AUTHORITY

Chapter I
Its Composition and Operation

Article 26. The Investigative Authority is the Commission's unit responsible for conducting the investigation stage and is a party to the trial-like procedure. In the exercise of its powers, the Investigative Authority shall have technical and administrative autonomy in order to decide on its operation and resolutions.

Article 27. The Investigative Authority shall have a head, who will represent it, and shall have the organizational structure, staff and resources necessary for the fulfillment of its purpose, which shall be subject to the Commission's Organizational Statute.

Chapter II
The Investigative Authority's Powers

Article 28. The Investigative Authority shall have the following powers:

- I. Receive, and if necessary, initiate or dismiss complaints brought before the Commission for probable infringements to this Law due to their notorious inadmissibility;
- II. Conduct investigations on probable violations to this Law, for which it may compel the necessary information and documents, summon to declare those who are related to the issues and, if such is the case, perform on-site inspections;
- III. Request any Public Authority or foreign authority the information and documentation required to investigate possible infringements to this Law;
- IV. Issue certified copies or perform collations of documents or information to incorporate to the files;
- V. Provide the information compelled by any judicial or administrative authority, as well as by the Board of Commissioners, except, in the latter case, if such information pertains to ongoing investigations;

- VI.** Issue the statement of probable responsibility and perform the actions and information processing which correspond to the different stages of the procedure;
- VII.** Lodge complaints or claims before the Office of the Attorney-General regarding probable criminal conduct in matters of free market access and economic competition and, if the case may be, act as contributor during the course of the investigations resulting from such complaints or claims;
- VIII.** Ensure the application and compliance of this Law, its Regulatory Provisions and the Commission's Organizational Statute;
- IX.** Gather witnesses or Economic Agents' statements, and other necessary means of conviction, for which it may request the assistance of Public Authorities;
- X.** Contribute with the Board of Commissioners in drafting the Regulatory Provisions, as well as the directives, guides, guidelines and technical criteria referred to in subsection XXII of article 12 of this Law, and
- XI.** Exercise the other powers established in this Law, the Regulatory Provisions and the Commission's Organizational Statute.

Article 29. For the performance of its functions, the Investigative Authority may apply the enforcement measures established in this Law.

Chapter III Appointment and Removal

Article 30. The head of the Investigative Authority shall be appointed and removed by the Board of Commissioners by a qualified majority of five Commissioners.

Article 31. The head of the Investigative Authority shall hold office for a four-year period and may be reappointed only once, upon objective evaluation of his/her performance.

To be the head of the Investigative Authority the following requirements shall be fulfilled:

- I.** Being a Mexican citizen in full exercise of civil and political rights;
- II.** Being at least thirty five years of age at the time of appointment;
- III.** Holding a professional degree issued at least ten years prior to the date of appointment by a legally recognized institution or authority;
- IV.** Having a good reputation and not having been convicted for an intentional crime that is punishable by prison for more than one year;

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- V.** Having at least three years of experience in public service;
 - VI.** Certifying, in terms of article 30 of this Law, the technical knowledge required for the position;
 - VII.** Not having held any employment, position, or managerial function or represented, in any manner, the interests of an Economic Agent that has been subject to any of the procedures established in this Law during the three years prior to appointment.

Upon leaving office, the head of the Investigative Authority is impeded from participating as board member, administrator, director, manager, executive, agent, representative or attorney in fact of an Economic Agent that was subject to one of the procedures under its responsibility while performing its duties for a term equal to one third the time in office.

Failure to comply with this provision shall be punished in terms of article 8 of the Federal Public Officers' Administrative Responsibilities Law.

Article 32. The head of the Investigative Authority may be removed from office by the Board of Commissioners by a qualified majority of five votes, pursuant to the following causes:

- I.** Noncompliance with the Board of Commissioners' definitive resolutions;
- II.** Abstaining from deciding, without justified cause, on matters within its powers pursuant to the legal timeframes set forth in this Law;
- III.** Knowingly submitting false or altered information to the Board of Commissioners, and
- IV.** A severe or reiterated failure to comply with his/her responsibilities.

For the purposes of this article, the systematic failure to comply with this Law or attempting to obtain wrongful personal or third party benefits shall be considered a serious cause for removal.

The foregoing, notwithstanding the responsibilities referred to in Title IV of the Political Constitution of the United Mexican States and the Federal Public Officers' Administrative Responsibilities Law.

Article 33. In the performance of his/her functions, the head of the Investigative Authority shall be independent in his/her decisions and operation, professional and impartial in his/her actions, abiding to the principles of legality, objectivity, certainty, honesty, exhaustiveness and transparency, as well as to the rules of contact to be provided for in the Organizational Statute.

Chapter IV

The Head of the Investigative Authority's Responsibility

Article 34. When complaints or claims are brought against the head of the Investigative Authority, the Internal Comptroller shall resolve on the matter only when the complaints or claims have been substantiated.

Article 35. For the purposes of this Law, in addition to the responsibilities established in the Federal Public Officers' Administrative Responsibilities Law, the head of the Investigative Authority may be removed for the following causes of administrative responsibility:

- I. Participating in campaign acts of political parties as a representative of the Commission;
- II. Using, for personal benefit or for that of third parties, the Confidential Information at his/her disposal;
- III. Knowingly submitting false or altered information to the Board of Commissioners, and
- IV. Intentionally disregarding the Board of Commissioners' regulations regarding rules of contact.

Chapter V

Prohibitions

Article 36. The head of the Investigative Authority shall refrain from undertaking any public or private employment, position or, responsibilities, with the exception of lecturing positions. Likewise, the head of the Investigative Authority is impeded and shall immediately refrain from participating in cases in which there are one or several situations that reasonably impair him/her from resolving on a matter under his/her jurisdiction with full independence, professionalism and impartiality.

For purposes of the foregoing, the head of the Investigative Authority shall be impeded from participating in a given matter when any of the impediments provided for by this Law for Commissioners are present.

In case of impediment from participating in a given case, the head of the Investigative Authority shall be substituted pursuant to the Commission's Organizational Statute.

TITLE IV

THE FEDERAL ECONOMIC COMPETITION COMMISSION'S INTERNAL COMPTROLLER

Chapter I

Its Composition and Operation

Article 37. The Internal Comptroller is a body with technical and administrative autonomy to decide upon its own operation and resolutions. It shall be entrusted with supervising the Commission's income and expenditures, as well as overseeing the public officers' responsibilities framework.

The Internal Comptroller, its head and his/her staff, shall be impeded from intervening or interfering in any manner related to the Commission's exercise of powers on matters of free market access and economic competition that this Law and other applicable provisions entrust to the Commission's public officers.

Article 38. The Internal Comptroller shall have a head that will represent it and have the administrative structure, staff, and resources necessary for the fulfillment of its responsibilities, which shall be defined by the Commission's Organizational Statute.

Chapter II

The Internal Comptroller's Powers

Article 39. The Internal Comptroller shall have the following powers:

- I.** Setting the procedures, methods and systems necessary for the revision and oversight of the resources of each of the Commission's units and bodies;
- II.** Verifying that the Commission's expenditures are conducted in accordance with the applicable regulations, approved programs and authorized amounts;
- III.** Formulating administrative observations, and directly determining indemnity payments and sanctions to those liable, prior responsibility procedure pursuant to the Law;
- IV.** Submitting to the Board of Commissioners the revision and audit reports that are conducted to verify the legal and proper allotment of the Commission's resources and assets;
- V.** Revising that the budgetary operations conducted by the Commission are performed abiding to the applicable legal and administrative provisions and, where applicable, determining deviation thereof and its causes;

- VI.** Filing before the corresponding authorities, the administrative and legal actions resulting from the audits;
- VII.** Investigating, within its jurisdiction, the acts or omissions that imply any irregularity or unlawful conduct in the income, expenditure, administration, custody, and allotment of the Commission's funds and resources;
- VIII.** Evaluating financial management reports related to the authorized programs and those relative to concluded processes, applying the methodology it so determines for such effect;
- IX.** Evaluating the fulfillment of the objectives and goals established in the administrative programs contained in the Commission's expenditure budget employing the methodology it so determines for such effect;
- X.** Receiving complaints and claims directly related to the public officers' use and disposal of the Commission's income and resources and carrying out the corresponding procedures;
- XI.** Conducting, processing and resolving the administrative procedures in terms of the Federal Public Officers' Administrative Responsibilities Law concerning the complaints brought against the Commission's public officers;
- XII.** Ordering preemptive measures for the correction of possible administrative irregularities detected during the processing of complaints and claims and, if applicable, order the measures for their immediate correction or remedy when the existence of the infraction that prompted the complaint or claim is demonstrated;
- XIII.** Requesting information and conducting on site visits to the Commission's units and bodies as required to fulfill its mandate;
- XIV.** Receiving, processing and resolving objections, procedures and administrative actions brought in terms of the Public Sector's Acquisitions, Leases and Services Law, and the Public Works and Related Services Law, and their regulations;
- XV.** Compiling and updating the records of the Commission's public officers who have been sanctioned by the Internal Comptroller;
- XVI.** Intervening in handover acts performed by the Commission's middle and superior management public officers, in the terms of the applicable regulations;
- XVII.** Participating, pursuant to the legal provisions in force, in the committees and subcommittees in which the Internal Comptroller takes part, and intervening in any act arising thereof;

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- XVIII.** Keeping record, monitoring and evaluating the Commission's public officers' financial circumstances; as well as issuing the procedures, formats and electronic or magnetic media, through which the assets declarations shall be submitted, in terms of the Federal Public Officers' Administrative Responsibilities Law;
 - XIX.** Compiling and managing the records referred to in article 45 of the Federal Public Officers' Administrative Responsibilities Law;
 - XX.** Processing and resolving the appeals that may be brought against the resolutions issued in exercise of its functions, in the terms established in the applicable laws and regulations;
 - XXI.** Conducting the legal defense in the actions that are brought against its resolutions, in the terms established in the applicable laws;
 - XXII.** Processing requests brought by the Commission's different bodies on matters of its jurisdiction;
 - XXIII.** Proposing the modification or updating projects concerning its organizational structure, staff and/or resources;
 - XXIV.** Producing the preliminary draft of its budget;
 - XXV.** Submitting to the Board of Commissioners the preliminary and yearly reports of its mandate results, as well as appearing before it when required by the Commission's Chair;
 - XXVI.** Submitting to the Board of Commissioners the reports on the files related to administrative offenses and, if the case may be, on the imposition of sanctions to the Commission's public officers, and
 - XXVII.** Any other function conferred by other norms or provisions.

Chapter III *Appointment*

Article 40. The head of the Internal Comptroller shall be appointed by the Chamber of Deputies with a two-thirds majority vote from the members present.

Article 41. The head of the Internal Comptroller shall meet the following requirements:

- I.** Being a Mexican citizen in full exercise of civil and political rights;

- II. Having a good reputation and not having been convicted of an intentional crime that is punishable by prison for more than one year;
- III. Having, at the moment of appointment, at least five years professional experience in the control or supervision of resources;
- IV. Having a recognized moral standing;
- V. Holding, at the moment of appointment and from at least five years prior, a bachelor's degree in law, public accounting or other discipline directly related to supervision activities, issued by a competent authority or institution;
- VI. Not belonging or having belonged to, in the four years prior to appointment, to any consultancy or audit firm which provided services to the Commission, and not having independently served as external consultant or auditor for the Commission during the aforementioned period, and
- VII. Not having held employment or served as legal representative of Economic Agents that have been subject to any of the procedures established in this Law, in the four years prior to appointment.

Article 42. The head of the Internal Comptroller shall hold office for a four-year period and may be reappointed only once. The position shall have the same hierarchical level as the head of the Investigative Authority and shall maintain the necessary technical coordination with the Federation's Superior Fiscal Investigation Entity referred to in article 79 of the Political Constitution of the United Mexican States.

Upon conclusion of his/her mandate, and for a period equivalent to one third of the total time in office, the head of the Internal Comptroller is impeded from participating as a board member, administrator, director, manager, executive, agent, representative or attorney in fact of an Economic Agent that was subject to one of the sanctioning procedures provided for by this Law while performing its duties.

Article 43. In the performance of his/her functions, the head of the Internal Comptroller shall abide by the principles of impartiality, legality, objectivity, certainty, honesty, exhaustiveness and transparency.

Chapter IV

The Head of the Internal Comptroller's Responsibility

Article 44. When complaints or claims are brought against the head of the Internal Comptroller, the Chamber of Deputies shall resolve on the corresponding imposition of sanctions, including removal, pursuant to the Federal Public Officers' Administrative Responsibilities Law, through the following procedure:

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- I. The Chamber of Deputies of the Federal Congress shall create a Special Commission in terms of the Congresses' Organizational Law, to serve as the authority in the proceedings;
 - II. The Special Commission shall summon the head of the Internal Comptroller to a hearing, notifying that a personal appearance is mandatory in order to provide a statement regarding the accusation that could lead to liability in terms of this Law and other applicable provisions. The notice must contain the place, date and time of the hearing, the acts or omissions that are claimed in the accusation and the right to be assisted by legal counsel. This notice shall be served personally. Between the summoning and hearing date a period of no less than five and no more than fifteen days shall elapse;
 - III. Upon conclusion of the hearing, the head of the Internal Comptroller shall be granted a period of five days to offer any pertinent evidence related to the alleged facts, and
 - IV. Once evidence has been produced, the Special Commission shall, within forty-five days, submit the proposed resolution to the Plenary of the Chamber of Deputies.

Removal shall require a two-thirds majority vote from the members present at the session. The Chamber of Deputies' Executive Board shall notify the corresponding resolution and execute the removal.

Article 45. The head of the Internal Comptroller may be removed due to any of the following severe causes of administrative responsibility:

- I. Using for personal benefit or that of third parties, documentation and Confidential Information in terms of this Law and legislation on the matter;
- II. Refraining, without justified cause, from establishing responsibilities or applying financial penalties within its jurisdiction, when said responsibility has been duly proven and the responsible party has been identified as a consequence of revisions and investigations conducted in the exercise of his/her functions;
- III. Removing, destroying, concealing or misusing documentation and information under his/her custody or available for the Internal Comptroller through the exercise of his/her powers;
- IV. Acting with partiality in the supervision and sanction imposition procedures, and
- V. Knowingly reporting false or altered information to the Senate regarding causes for a Commissioner's dismissal.

Chapter V Prohibitions

Article 46. The head of the Internal Comptroller shall refrain from undertaking any other public or private employment, position or, responsibilities, with the exception of lecturing positions. Likewise, the head of the Internal Comptroller is impeded and shall immediately refrain from participating in matters in which there are one or several situations that reasonably prevent him/her from resolving on a matter under his/her jurisdiction with full independence, professionalism and impartiality.

For purposes of the foregoing, the head of the Internal Comptroller shall be impeded to participate in a given matter when any of the impediments provided by this Law for Commissioners are present.

In case of impediment from participating in a given matter the head of the Internal Comptroller shall be substituted by the public officer who is second in command of the Internal Comptroller pursuant to the Commission's Organizational Statute.

TITLE V MANAGEMENT OF THE FEDERAL ECONOMIC COMPETITION COMMISSION

Chapter I The Budget

Article 47. Pursuant to article 5 of the Federal Budget and Fiscal Responsibility Law, the Commission shall be bound for budgetary purposes to the following:

- I.** It shall approve its budgetary project and submit it to the Ministry of Finance for its inclusion in the draft for the federation's expense budget, observing the general criteria of economic policy;
- II.** It shall exercise its budget in observance of the Federal Budget and Fiscal Responsibility Law, without being bound to the general provisions issued by the Ministry of Finance and the Ministry of Public Administration. Said exercise must be performed based on the principles of efficiency, effectiveness and transparency, and shall be subject to the evaluation and control of the corresponding entities;
- III.** It shall authorize the adjustments to its budget without requiring approval from the Ministry of Finance, insofar as these adjustments don't exceed its approved budgetary limit;
- IV.** It shall conduct its own payments;

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- V. It shall determine the corresponding budgetary adjustments in case of income reduction, observing article 21 of the Federal Budget and Fiscal Responsibility Law where applicable, and
 - VI. It shall manage the Commission's accounting and produce its reports in accordance with the Federal Budget and Fiscal Responsibility Law, which shall be sent to the Ministry of Finance for their inclusion in the quarterly reports and the Public Account.

The Chamber of Deputies shall guarantee the budgetary sufficiency to allow the Commission an effective and adequate performance of its powers.

Chapter II The Assets

Article 48. The Commission's assets are comprised by:

- I. The property and real estate acquired for the fulfillment of its purpose, including those which the Federation has allocated for such end or for its exclusive use;
- II. The resources annually approved for the Commission by the Chamber of Deputies of the Federal Congress, in the Mexican Federation's expense budget;
- III. The donations received for the fulfillment of its mandate, and
- IV. The income received under any other concept.

The Commission may not have more real estate than that which is strictly necessary to fulfill its mandate.

Chapter III Transparency and Accountability

Article 49. The Commission shall publish the stenographic version of its sessions, and the Board of Commissioner's decisions and resolutions on its website and the Federal Official Gazette when so provided by this Law, safeguarding at all moments, the secrecy of the investigations and procedures, Confidential Information and Reserved Information.

The Commission's Chair shall appear on an annual basis before the Senate, pursuant to article 93 of the Political Constitution of the United Mexican States. Likewise, the Chair must submit, before the Federal Executive and Legislative Branches, the Commission's annual work program and its quarterly activities report within thirty natural days after the conclusion of the corresponding quarter. The annual work program and the quarterly activities report shall refer, at least, to the following elements:

- I. An analysis of the Commission's management, referring to its vision, mission and objectives, considering aspects of its performance and efficiency of its actions, the Commission's challenges, its general financial situation, the implementation of controls and internal measures and compliance with the Regulatory Provisions and its Organizational Statute;
- II. The Commission's performance in relation to its objectives and strategic goals, including an explanation of the manner in which the data presented is verified and validated, as well as the independent studies that assess the Commission's performance, and the advances in fulfilling its annual work program;
- III. A summary of the opinions issued by the Commission and of any inquiries submitted to its consideration;
- IV. A report of the expenses corresponding to the previous period, including, if any, the relevant observations that were brought forth by the Internal Comptroller, and
- V. A report, summary, justification and effects of the procedures and resolutions issued in accordance with article 94 of this Law.

The annual work program referred to in this article shall be presented on January 31st of each year, at the latest.

The Commission shall make public its annual work program and the quarterly reports on the progress of its activities in accordance with the Regulatory Provisions.

This article applies without prejudice of the Commission's obligation to submit such information and reports required in terms of the Federal Budget and Fiscal Responsibility Law, the Federation's Superior Supervision Law and other applicable provisions.

Chapter IV *Labor Framework*

Article 50. The personnel providing their services for the Commission shall be governed by section B of article 123 of the Political Constitution of the United Mexican States and the Federal Workers in Service of the State Law. Said personnel shall be incorporated into the registry of the Institute for Security and Social Services for the State Workers.

All of the public officers which are part of the Commission's workforce shall be considered as workers in positions of trust due to the kind of tasks performed.

Chapter V
Responsibilities Framework

Article 51. Any individual holding a position, employment or responsibility of any kind in the Commission shall be subject to the responsibility regime established in Title IV of the Political Constitution of the United Mexican States, as well as to the possible sanctions established under the Federal Public Officer's Administrative Responsibilities Law.

The Commission's public officers shall be subject to the contact rules determined by the Commission in its Organizational Statute.

BOOK TWO
ANTICOMPETITIVE CONDUCT

SOLE TITLE
ANTICOMPETITIVE CONDUCT

Chapter I
Prohibition of Anticompetitive Conduct

Article 52. Monopolies, monopolistic practices, unlawful concentrations, and the barriers which, in terms of this Law, hinder, harm, impede or condition any form of free market access or economic competition concerning the production, processing, distribution or marketing of goods or services are hereby prohibited.

Chapter II
Absolute Monopolistic Practices (Cartels)

Article 53. Absolute monopolistic practices are considered illegal, and these consist of contracts, agreements, arrangements or combinations amongst competing Economic Agents, which have as their purpose or effect any of the following:

- 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 an 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.

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.

Chapter III *Relative Monopolistic Practices (Abuse of Dominance)*

Article 54. Relative monopolistic practices consist of any act, contract, agreement, procedure or combination, which:

- I. Correspond to any of the criteria referred to in article 56 of this Law;
- II. Are carried out by one or more Economic Agents that individually or jointly exert substantial market power in the same relevant market in which the practice is executed, and
- III. Has or may have as its purpose or effect, in the relevant market or a related market thereof, that of unduly displacing other Economic Agents, substantially impeding their access or establishing exclusive advantages in favor of one or several Economic Agents.

Article 55. These practices are illegal and shall be punished if the foregoing elements are demonstrated, unless the Economic Agent proves that these practices produce gains in efficiency and favorably impact upon the process of economic competition and free market access, thus overcoming their possible anticompetitive effects, and consequently result in an improvement of consumer welfare. Among the gains in efficiency the following may be considered:

- a. The introduction of new goods or services;
- b. The utilization of residual lots, defective or perishable products;
- c. The reduction of costs resulting from creating new techniques and production processes, asset integration, increases in the production scale and the production of different goods or services using the same production factors;
- d. The introduction of technological advances that produce new or improved goods or services;
- e. The combination of productive assets or investments and their returns, which improve the quality or increase the attributes of the goods or services

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- f. The improvements in quality, investments and returns, timeliness and service which favorably impact upon the distribution channel, and
 - g. Other gains, which are proven to render net contributions to consumer welfare deriving from such practices which overcome their anticompetitive effects.

Article 56. The criteria referred to in subsection I of article 54 of this Law, consist of any of the following:

- I. When Economic Agents that are not competitors incur in fixing, imposing or establishing the exclusive marketing or distribution of goods or services, defined by individuals or undertakings, geographic locations or specific time periods, including the division, distribution or allocation of clients or suppliers; as well as imposing the obligation not to manufacture or distribute goods or provide services for a determined or determinable period of time;
- II. Imposing prices or other conditions that a distributor or supplier must observe in supplying, marketing or distributing goods and services;
- III. Conditioning a sale or transaction to the purchase, acquisition, sale or provision of another good or service, normally different or distinguishable or under a reciprocity basis;
- IV. Conditioning a sale, purchase or transaction to not using, acquiring, selling, marketing or providing goods or services produced, processed, distributed or marketed by a third party;
- V. Unilaterally refusing to sell, market or supply certain individuals or undertakings, available goods or services which are ordinarily offered to third parties;
- VI. Concerting among several Economic Agents or inviting them to exert pressure against a certain Economic Agent or to refuse to sell, market or acquire goods or services from said Economic Agent, with the purpose of dissuading it from a certain conduct, exert reprisals or compel its actions in a specific direction;
- VII. Selling below the average variable cost or below the average total cost but over its average variable cost, if there are elements to presume that the Economic Agent could recoup its losses through future price increases, in terms of the Regulatory Provisions;
- VIII. Granting discounts, incentives, or benefits by producers or suppliers to purchasers under the condition not to use, acquire, sell, market or provide the goods or services produced, processed, distributed or marketed by a third party, or the acquisition or transaction subject to the condition of not selling, marketing or providing said goods or services to a third party;

- IX.** Using profits attained from the sale, marketing or provision of a good or service to finance the losses that result from the sale, marketing or provision of another good or service;
- X.** Establishing different prices or conditions for selling to or purchasing from different purchasers or sellers who are in like circumstances;
- XI.** The action of one or several Economic Agents with the purpose or effect, either directly or indirectly, of increasing the costs or altering the production process or reducing the demand faced by other Economic Agents;
- XII.** The refusal, restriction to access, or access under discriminatory terms and conditions, to an essential facility by one or several Economic Agents, and
- XIII.** The margin squeeze, consisting in reducing the existing margin between the price of accessing an essential facility provided by one or several Economic Agents and the price of the good or service offered to the final consumer by said Economic Agents, which employs said input or facility for its production.

For the purposes of investigating and, when applicable, punishing the practices referred to in subsections XII and XIII of this article, the Commission may determine the existence of essential facilities without performing the procedure established in article 94 of this Law.

Chapter IV

Prohibition of Barriers to Free Market Access and Economic Competition

Article 57. The Commission shall perform the required actions to prevent and eliminate barriers to free market access and economic competition, to the extent needed to eliminate anticompetitive effects, through the procedures established in this Law.

Chapter V

Determining the Relevant Market, Substantial Market Power and Essential Facilities

Section I

Determining the Relevant Market

Article 58. For determining the relevant market, the following criteria must be considered:

- I.** The possibilities of substituting the good or service in question for others, whether of domestic or foreign origin, considering the technological possibilities, the availability of substitutes for consumers and the time required for such substitution;

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- II. The good's distribution costs; its relevant inputs; its complementary goods and substitutes from other regions or abroad, taking into account freights, insurance, tariffs and non-tariff restrictions, the restrictions imposed by Economic Agents or their associations and the time required to supply the market from these regions;
 - III. The costs and probabilities that users or consumers have to access other markets;
 - IV. The federal, local or international regulatory restrictions that limit the users' or consumers' access to alternative supply sources, or the access of suppliers to alternative clients;
 - V. Other factors provided by the Regulatory Provisions, and the technical criteria issued by the Commission to that effect.

Section II
Determining Substantial Market Power

Article 59. To determine whether one or several Economic Agents have substantial power in the relevant market, or to resolve on competition conditions, effective competition, existence of substantial power in the relevant market or other matters related to the process of competition or free market access referred to in this or other Laws, regulations or administrative provisions, the following elements must be considered:

- I. Their market share and ability to unilaterally fix prices or restrict supply in the relevant market, without competitors being actually or potentially able to counter balance such power.

To determine market share, the Commission may consider sales indicators, number of clients, production capacity, as well as any other factor deemed appropriate;

- II. The existence of barriers to entry and the factors which could foreseeably alter either said barriers or the supply of other competitors;
- III. Competitors' existence and power;
- IV. The Economic Agent(s)' and their competitors' possibilities to access input sources;
- V. The recent behavior of the Economic Agent(s) that participate in said market, and
- VI. Any other factors provided by the Regulatory Provisions, and the technical criteria issued by the Commission to that effect.

Section III
Determining an Essential Facility

Article 60. To determine the existence of an essential facility, the Commission shall consider:

- I. If the facility is controlled by one, or several Economic Agents with substantial market power or that have been found to be preponderant by the Federal Telecommunications Institute;
- II. If the facility cannot feasibly be replicated by another Economic Agent due to technical, legal or economic conditions;
- III. If the facility is indispensable for the provision of goods or services in one or more markets, and has no close substitutes;
- IV. The circumstances under which the Economic Agent came to control the facility, and
- V. Other criteria which, if the case may be, are provided for in the Regulatory Provisions.

Chapter VI
Concentrations

Section I
Definition of a Concentration

Article 61. For the purposes of this Law, a concentration shall be understood as a merger, acquisition of control, or any other act by means of which companies, associations, stock, partnership interest, trusts or assets in general are consolidated, and which is carried out among competitors, suppliers, customers or any other Economic Agent. The Commission shall not authorize or, if the case may be, shall investigate and punish those concentrations whose purpose or effect is to hinder, harm or impede competition and free market access regarding equal, similar or substantially related goods or services.

Section II
Unlawful Concentrations

Article 62. Concentrations which have as their purpose or effect to obstruct, diminish, harm or impede free market access and economic competition are considered unlawful.

Section III
Concentration Review

Article 63. To assess whether a concentration should not be authorized or should be punished in terms of this Law, the following factors shall be considered:

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- I. The relevant market, in the terms established in this Law;
 - II. The identification of the main Economic Agents that supply the market in question, an analysis of their power in the relevant market according to this Law, and the degree of concentration in said market;
 - III. The effects of the concentration in the relevant market concerning other competitors or consumers of the good or service, as well as regarding other related markets and Economic Agents;
 - IV. The equity participation of the involved parties in other Economic Agents, and the equity participation of other Economic Agents in the parties involved in the concentration, provided these economic agents engage, directly or indirectly, in the relevant market or its related markets. When it is not possible to identify such participation, this circumstance must be fully justified;
 - V. The information provided by the Economic Agents to demonstrate greater market efficiency as a result of the concentration and which will impact favorably on the process of competition and free market access, and
 - VI. Other criteria or analytic instruments provided for in the Regulatory Provisions and the technical criteria.

Article 64. Regarding a concentration or a proposal thereof, the Commission shall consider the following as indications of an unlawful concentration:

- I. it confers or may confer the surviving entity, the acquirer or the Economic Agent resulting from the concentration, substantial market power in terms of this Law, or if it increases or could increase said substantial market power, by which free market access and economic competition may be hindered, diminished, harmed or impeded;
- II. If it has or may have the purpose or effect of imposing barriers to entry, impeding third parties access to the relevant market, to related markets or to essential facilities or of displacing other Economic Agents, or
- III. If its purpose or effect is to substantially facilitate the concentrating parties to incur in practices prohibited under this Law and, particularly, in monopolistic practices.

Section IV

Concentrations that may not be investigated

Article 65. Concentrations approved by the Commission may not be investigated pursuant to this Law, except if the resolution was reached under the assertion of false information or when it has been subject to ulterior conditions which were not fulfilled in the legal timeframe provided for such purpose.

Concentrations not requiring prior notice to the Commission may not be investigated if one year has passed since their execution.

BOOK THREE THE PROCEDURES

TITLE I THE INVESTIGATION

Sole Chapter The Investigation

Section I Initiation of an Investigation

Article 66. The Commission's investigations shall be initiated ex-officio or per the request of the Federal Executive Branch, directly or through the Ministry, the Consumer Attorney, or upon a private request, and shall be the responsibility of the Investigative Authority.

The investigation requests brought by the Federal Executive Branch, directly or through the Ministry, or through the Consumer Attorney, shall have preferential status.

Article 67. Regarding infringements to this Law, any person may bring complaints before the Investigative Authority in connection with absolute monopolistic practices, relative monopolistic practices or unlawful concentrations.

Article 68. The written motion of complaint shall contain at least:

- I.** Name or corporate name of the complainant;
- II.** 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;
- III.** Name or corporate name, and in case it is known, address of the defendant;
- IV.** Succinct description of the facts that motivate the complaint;
- V.** 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;

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- VI.** 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
 - VII.** 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.

Article 69. The Investigative Authority shall analyze the complaints filed through the Commission's filing office, and within the following fifteen days shall issue a decision:

- I.** Ordering the initiation of the investigation;
- II.** Dismissing the complaint, partially or totally, for being notoriously inadmissible, or
- III.** Informing the complainant, for a single instance, that the written motion of complaint fails to meet the requirements established by this Law or the Regulatory Provisions, thereby granting the possibility for the complaint to be clarified or completed within a fifteen-day period, which may only be extended by the Investigative Authority for an additional fifteen-day period in duly justified cases. After the complaint is clarified or completed, the corresponding decision shall be issued 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 established by this Law, the complaint shall be dismissed.

The Investigative Authority's decision for dismissing a complaint must be notified to the complainant within the following fifteen days after the expiration of the time period for clarifying and completing the complaint, this not precluding that the complainant may bring a new 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.

Article 70. The Investigative Authority shall dismiss a complaint on grounds of notorious inadmissibility when:

- I.** The alleged facts do not constitute infringements to this Law;
- II.** It is evident that the Economic Agent(s) involved do not have substantial power in the relevant market, regarding relative monopolistic practices or unlawful concentrations complaints;

- III. The defendant Economic Agent and the stated facts and conditions in the relevant market have been the subject matter of a previous resolution in terms of articles 83, 90 and 92 of this Law, except for the cases of false information or noncompliance with conditions or remedies set forth in said resolution;
- IV. There is a pending procedure before the Commission concerning the same relevant market's facts and conditions, after the alleged offender has been notified, and
- V. The claimed facts concern a concentration notified pursuant to article 86 of this Law, which is pending for resolution by the Commission. Nevertheless, Economic Agents may collaborate with the Commission by providing such data and documents they deemed pertinent so these are taken into account when issuing the resolution. The complainant shall not be granted access to the concentration file or documents and may not challenge the procedure; however, the decision incorporating the provided information into the concentration file must be notified.

Section II
Performance of the Investigation

Article 71. In order to initiate an investigation for monopolistic practices or unlawful concentrations an objective cause is required.

An objective cause is any indication of the existence of monopolistic practices or unlawful concentrations.

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 days, whenever the Investigative Authority considers that there are duly justified causes for such extensions.

Article 72. The Investigative Authority may order the joinder of files that are related by reason of their subject matter. Likewise, it may order the initiation of new investigations for diverse and autonomous facts in addition to those initially investigated, as is most appropriate for the prompt and expedite processing of the investigations.

Article 73. The Investigative Authority may require any individual or undertaking to submit the information or documents deemed necessary in performing its investigations, and shall state the legal status the individual or undertaking have under the investigation, either as a defendant or as a collaborating third party. Moreover, it may summon individuals or undertakings related to the facts for interviews, as well as order and conduct on-site inspections, regarding locations where there may be elements to be included in the substantiation of the investigation.

The individuals, undertakings and Public Authorities shall have a ten day period to submit the information and documents required by the Investigative Authority. This period may be extended for an additional ten day period at their request, if the complexity and volume of the information requires the extension.

Article 74. The Public Authorities shall provide, within the scope of their jurisdictions, the assistance required by the Investigative Authority's public officers for the fulfillment of their duties and enforcement of this Law.

Article 75. The Investigative Authority's head may order the performance of on-site inspections, which will be subject to the following rules:

- I. The Investigative Authority shall issue the inspection order, that shall contain the purpose, scope and duration to which the procedure will be restricted; the name and address of the inspected individual or undertaking; the name or names of the authorized personnel that shall carry out the inspection either jointly or separately, as well as a warning indicating that should access be denied, hindering the performance of the procedure or refusing to provide the documents or information requested, the enforcement measures established in the Law shall be imposed;
- II. The Investigative Authority shall conduct the on-site inspections in order to obtain the information and documents related to the investigation.

On-site inspections cannot exceed two months, which may be extended for an equal period, if warranted by the investigation;

- III. Inspections shall be conducted on business days and during business hours only by duly authorized and previously identified personnel, who must exhibit the inspection order to the individual found at the address when the on-site inspection takes place.

The Investigative Authority may allow an inspection to be initiated on non-business days and hours or for an inspection to be continued into non-business days and hours, in which cases the document that orders the inspection shall indicate the corresponding authorization;

- IV. The inspected Economic Agent, its officers, representatives or supervisors of its facilities or buildings are obligated to allow the on-site inspection, facilitating the Investigative Authority's authorized personnel to carry out their duties, which shall be authorized to:
 - a. Access any office, premise, site, means of transport, computer, electronic device, storage device, file cabinet or any other media that could contain evidence regarding the acts or facts pertaining to the visit;
 - b. Verify ledgers, documents, papers, files or information, whatever its material support, related to the inspected Economic Agent's economic activity;
 - c. Produce or attain copies or extracts in any format, of said ledgers, documents, papers, files or information which may be stored or generated by electronic means;

- d. Secure all ledgers, documents and other means from the inspected Economic Agent during the time and in the measure required to conduct the on-site inspection, and,
- e. Request explanations regarding the facts, information or documents related to the purpose and objective of the on-site inspection from any of the inspected Economic Agent's officers, representatives or personnel, and record their answers.

The information obtained by the Commission from the on-site inspection may only be used for the purposes provided for in this Law.

For the effective performance of the on-site inspection, the Investigative Authority may authorize the participating public officers to request the immediate assistance of the public force.

In no case may the authority seize or forcefully remove information from the inspected Economic Agent.

During the conduction of the on-site inspection, the personnel authorized by the Investigative Authority to conduct said proceedings may take pictures or video recordings, or reproduce by any means papers, ledgers, documents, files or information generated through any technology or material support and which are related to the subject matter of the procedure. The photographs and videos taken, and any other piece of information gathered pursuant to this article, may be used by the Investigative Authority as material with full evidentiary value.

When sealing and securing the inspected Economic Agent's offices, premises, ledgers, documents and any other means under inspection, the public officers conducting the proceedings may seal and mark said items, as well as order their safekeeping and legal deposit under the responsibility of the inspected Economic Agent or the individual present at the inspection. A prior inventory shall be performed to that end.

When a document or object secured in terms of the previous paragraph, is essential for the performance of the Economic Agent's activities, its use or extraction shall be allowed prior reproduction of the information contained therein by the authorized public officers.

On-site inspections shall be conducted in consideration of production, distribution and marketing capacity for goods and services, so as to avoid damages to the Economic Agent or consumers.

If the inspected Economic Agent, its officers or the supervisors of the inspected premises do not grant access to the personnel authorized to conduct the inspection, or do not provide the requested information and documents, or if they obstruct the performance of the on-site inspection in any way, such circumstance shall be stated in the corresponding minutes and the facts attributed to the eventual offender in the statement of probable responsibility shall be presumed as true, without prejudice of the application of the enforcement measures deemed pertinent and the criminal liability which may arise;

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- V.** The inspected Economic Agent has the right to render observations to the authorized public officers during the conduction of the inspection which will be recorded in the minutes. In addition, the inspected Economic Agent may provide evidence related to the facts contained in said minutes, or exercise this right in writing by filing a motion within five days following the moment in which the inspection minutes were drafted;
 - VI.** inspection shall be registered in a minute which shall include a detailed description of the facts or omissions witnessed by the authorized personnel. The minutes shall be drafted by the authorized personnel in the presence of two witnesses proposed by the individual present at the inspection, or designated by the authorized public officers if the individual present refuses to propose said witnesses, should this occur, it shall be included in the minutes.

If the inspection is conducted simultaneously in two or more places, detailed minutes describing the unfolding events shall be drafted for each inspection. In this case, the presence of two witnesses shall be required for every premise where inspection minutes are drafted, in terms of the previous paragraph.

The inspection minutes shall contain:

- a.** Name or corporate name of the inspected Economic Agent;
- b.** Time, day, month, and year in which the proceedings are commenced and concluded;
- c.** Street, exterior and interior number, neighborhood, county, state and postal code of the location where the inspection is conducted; if this were not possible, register the information that may identify the place in which the proceedings are conducted;
- d.** Number and date of the inspection order;
- e.** Purpose of the inspection;
- f.** Names and identification information of the personnel authorized to conduct the inspection;
- g.** Name and office or position of the person present during the proceedings;
- h.** Name and address of the witnesses;
- i.** An indication of the opportunity awarded to the inspected Economic Agent to exercise its right to render observations to the public officers during the inspection, as well as its statements if they are so issued and the evidence provided;
- j.** A narrated account of the facts relative to the proceedings and the indication of whether documents or information have been reproduced, pictures taken, videos filmed or other evidentiary elements obtained during the conduction of the proceedings. If the case may be, these elements shall be attached to the corresponding minutes;
- k.** An indication of the opportunity awarded to the inspected Economic Agent for rendering clarifications and observations to the inspection minutes, within five days following its drafting, and
- l.** Name and signature of those intervening in the proceedings, and, if the case may be, the indication that the inspected Economic Agent refused to sign the minutes;

- m. Before or during the conduction of the on-site inspection, the Investigative Authority may request technical or specific assistance from the Federal Public Administration's agencies or entities in order to carry out the inspection.

A copy of the inspection minutes shall remain with the individual(s) present during the proceedings, notwithstanding refusal to sign, situation which shall not affect its validity.

Article 76. The information and documents that have been obtained by the Investigative Authority in the exercise of its powers shall be considered as reserved, confidential or public in the terms of this Law.

Article 77. The Investigative Authority may file a claim or complaint, at any time, before the Office of the Attorney-General regarding probable criminal conduct in matters of free market access and economic competition and, if the case may be, collaborate in the investigations arising from such claim or complaint.

If the investigation provides evidence from which a presumption may be drawn suggesting that there is an impact producing damages and losses upon consumers, the statement of probable responsibility shall be handed over to the Consumer Attorney for the corresponding effects.

Section III Conclusion of the Investigation

Article 78. Upon conclusion of the Investigation, the Investigative Authority, within a sixty-day period, shall bring before the Board of Commissioners an investigative opinion that either proposes:

- I. The initiation of the trial-like procedure, due to objective elements that indicate a probable responsibility of the investigated Economic Agents, or
- II. The closing of the case file when there are no elements to initiate the trial-like procedure.

In the case established under subsection I above, the Board of Commissioners shall, pursuant to the Organizational Statute, order the procedural oversight authority to initiate the trial-like procedure by notifying the alleged offenders.

For cases under subsection II, the Board of Commissioners, based on the official records in the investigation file may order the closing of the case file or the initiation of the trial-like procedure pursuant to the previous paragraph, due to objective elements that indicate a probable responsibility of the investigated Economic Agent(s).

Article 79. The investigative opinion shall contain at least:

- I. The identification of the investigated Economic Agent(s), and, if the case may be, of the alleged offender(s);
- II. The investigated facts and their probable purpose or effect on the market;
- III. The evidentiary elements and other means of conviction that are included in the investigation file and their analysis, and
- IV. The elements that support the sense of the proposal and, if applicable, the legal provisions that may have been infringed, as well as the consequences that may result from such violation.

TITLE II

THE TRIAL-LIKE PROCEDURE

Chapter I

The Procedure

Section I

Notification

Article 80. The procedure shall commence with the notification to the alleged offender or offenders, with the statement of probable responsibility referred to in article 79 of this Law.

Article 81. The parties to the trial-like procedure are the Economic Agent against whom the statement of probable responsibility was issued and the Investigative Authority.

Article 82. The person or undertaking having brought the claim shall collaborate with the Investigative Authority in the trial-like procedure in terms of the Organizational Statute.

Section II

Conduction of the Procedure

Article 83. The trial-like procedure shall be carried out according to the following provisions:

- I. Once notified, the alleged offender shall have access to the file and a non-extendable forty-five day period to reply and thereby assert any arguments available to it under the law, bring forth the documentary evidence at its disposal, as well as introduce the evidentiary elements requiring further processing.

The alleged offender must address each of the facts stated under the statement of probable responsibility. The facts to which no reference is made shall be construed as true, except otherwise proven. The same shall apply in case no reply is brought forth, within the period provided in the preceding paragraph.

- II.** The Investigative Authority shall be awarded a non-extendable fifteen working-day period to provide its position regarding the arguments and evidence brought forth by the alleged offender;
- III.** Upon expiration of the period established in the previous subsection, the procedural oversight authority shall, if applicable, order either the dismissal or admissibility of the evidentiary elements provided, and it shall also set the location, date and time for evidentiary processing. The evidentiary elements shall be processed within a twenty-day period from the admission date.

All evidentiary elements are admissible, except confessions and testimonial evidence on behalf of Public Authorities. Evidentiary elements shall be dismissed if not brought forth in accordance to law, if not related to the facts subject matter of the procedure, as well as unnecessary or illegal elements;

- IV.** Once the evidence is processed and within the following ten day period, the Commission may order further evidence gathering and processing or summon for closing arguments, in terms of the following subsection;
- V.** Once any further evidence has been introduced, the Commission shall set a period not exceeding ten days, for the alleged offender and the Investigative Authority to submit their closing written arguments, and
- VI.** The file shall be considered completed on the date the written closing arguments are submitted or upon expiration of the period established in the previous subsection. Upon completion, the file shall be assigned by the Commission's Chair to the Commissioner-Rapporteur, in a rotating manner, rigorously following the Commissioners' designation order, as well as the chronological order in which the file was completed. The Commissioner-Rapporteur is charged with the duty of preparing the resolution project for the Board of Commissioners' approval or modification.

In the latter case, the Commissioner-Rapporteur shall include the modifications or corrections suggested by the Board of Commissioners to the resolution project.

Within ten days following the file's completion, the alleged offender or the complainant have the right to request an oral hearing before the Board of Commissioners to render any statements they deem appropriate.

The Commission shall issue the resolution within a non-extendable forty-day period.

Section III
Evidence Assessment

Article 84. The Commission is vested with broad discretion to assess evidence, determine its relative value, comparing certain evidentiary elements with respect to the others, and establish the final result from such assessment.

The Commission's evidence assessment shall be based on the overall appraisal of the direct, indirect and indicative evidentiary elements that appear throughout the procedure.

Chapter II
Final Resolution

Article 85. The final resolution shall contain at least the following:

- I. The assessment of evidence that was conducive in deciding whether, engagement in a monopolistic practice or unlawful concentration, was or was not proven;
- II. In the case of relative monopolistic practices, the determination that the responsible Economic Agent or Agents have substantial market power as provided for in this Law;
- III. The determination ordering the definitive suppression of the monopolistic practice or unlawful concentration, or its effects, or the determination to undertake measures or actions, omission of which caused the monopolistic practice or unlawful concentration, as well as the means and timeframes to prove compliance thereof before the Commission, and
- IV. The determination imposing sanctions.

TITLE III
CONCENTRATION NOTIFICATION PROCEDURE

Chapter I
Concentration Notification Procedure

Article 86. The following concentrations must be authorized by the Commission before their execution:

- I. When the originating act or sequence of acts, notwithstanding the place of performance, are worth within Mexican territory, directly or indirectly, an amount in excess to the equivalent of eighteen million times the current daily general minimum wage in the Federal District;

- II. When the originating act or sequence of acts, imply the accumulation of thirty-five percent or more of the assets or stock of an Economic Agent, whose annual sales originating in Mexican territory or assets in the country, are worth an amount in excess of the equivalent of eighteen million times the current daily general minimum wage in the Federal District, or
- III. When the originating act or sequence of acts, imply an accumulation within Mexican territory of assets or capital stock in excess of the equivalent to eight million four hundred thousand times the current daily general minimum wage in the Federal District, and two or more of the Economic Agents participating in the concentration have annual sales originating in Mexican territory or assets in Mexican territory which are worth, jointly or separately, an amount in excess of forty eight million times the current daily general minimum wage in the Federal District.

The acts carried out in infringement of this article shall be null and void, without prejudice of the Economic Agents' administrative, civil or criminal liability and that of the persons who ordered or contributed to the execution thereof, as well as the notary public or attesting official who may have intervened.

The legal acts concerning a concentration may not be registered in the corporate ledgers, formalized under a public deed nor registered in the Public Commercial Registry until the Commission has issued its authorization or the legal timeframe under article 90, subsection V, has elapsed, without the Board of Commissioners having issued a resolution.

The Economic Agents involved that do not fall under the hypotheses established in subsections I, II and III of this article may voluntarily notify concentrations to the Commission.

Article 87. As provided for in the previous article, Economic Agents must obtain authorization for conducting a concentration, prior to performing any of the following:

- I. Perfecting the legal act in accordance with the applicable legislation, or, if the case may be, fulfilling the condition precedent to which said act is subject;
- II. The direct or indirect acquisition or exercise of factual or legal control of another Economic Agent, or the factual or legal acquisition of another Economic Agent's assets, trust participation, partnership interest or stock;
- III. The execution of a concentration agreement among the involved Economic Agents, or
- IV. Regarding a sequence of acts, the culmination of the last one, due to which the amounts provided for in the previous article are surpassed.

Concentrations resulting from legal acts executed abroad must be notified before having legal or material effects in Mexican territory.

Article 88. The Economic Agents that directly participate in the concentration are obligated to notify it.

In cases where the direct participants are not able to notify, due to a legal or factual impossibility validated before the Commission, or in the case established under article 92 of this Law, the notification may be carried out by the surviving entity, by the party acquiring control over the companies or associations, or by the party intending to perform the act or to produce the effect of accumulating stock, partnership interest, trust participation, or assets under the transaction.

In the written notification the notifying parties shall appoint a common representative, except when they are not able to do so for duly justified causes. In the absence of a duly justified cause for failing to appoint the common representative, the Commission shall appoint the representative ex-officio.

The parties involved in the transaction must abstain from exchanging information that may lead to punishable actions under this Law.

Article 89. The concentration notification shall be filed in writing and must include and be accompanied by:

- I. The name or corporate name of the Economic Agents that notify the concentration, and of those participating directly or indirectly;
- II. If the case may be, the name of the legal representative and the document or instrument that contains the representation powers in accordance with the applicable legislation. Likewise, the name of the common representative, an address to receive notifications and the individuals authorized for such effects, as well as other data that could allow prompt localization;
- III. A description of the concentration, kind of transaction and a draft of the corresponding legal act, as well as a draft of the non-compete clauses if these were to exist, and the reasons for their inclusion;
- IV. The documents and information that explain the purpose and motive of the concentration;
- V. The articles of incorporation and any amendments thereof and, if the case may be, the bylaws of the involved Economic Agents;
- VI. The involved Economic Agents' financial statements for the previous year;
- VII. A description of the involved Economic Agents' capital structure, whether Mexican or foreign, identifying each partner or stockholder's direct or indirect holdings, before and after the concentration, and of the individuals or legal entities that have and will have control thereof;

- VIII.** An indication regarding the Economic Agents involved in the transaction that either have direct or indirect participation in the capital structure, in the administration or in any activity of other Economic Agents that produce or market equal, similar or substantially related goods or services to those provided by the Economic Agents participating in the concentration;
- IX.** The information regarding the market share of the Economic Agents involved and that of their competitors;
- X.** The location of the involved Economic Agents' facilities or establishments, the location of their main distribution centers and the relationship between these and said Economic Agents;
- XI.** A description of the main goods or services that are produced or offered by each Economic Agent involved, specifying their use in the relevant market and a list of similar goods or services, and the main Economic Agents that produce, distribute or market the latter in Mexican territory, and
- XII.** Other elements deemed pertinent by the Economic Agents notifying the concentration for its analysis.

The documents referred to in the previous subsection II can either be submitted by public deed or certified copy thereof.

Article 90. For processing the notification procedure the following shall be complied with:

- I.** When the written notification fails to comply with the requirements established in subsections I to XII of the previous article, the Commission, within the ten days after the written notification has been filed, shall inform the notifying parties that their notification fails to meet the requirements established by this Law and will grant an additional ten-day period for the parties to submit the missing information. Said period may be extended per request of the notifying party in duly justified cases;
- II.** In case the additional submission of information is not filed in the terms established in the previous subsection, the Commission, within the ten days following the expiration of the period, shall issue and notify the decision considering the notification as not filed;
- III.** The Commission may request additional data or documents within the following fifteen days after receiving the concentration notification, which shall be provided by the notifying parties within an equal period that may be extended under duly justified cases.

The Commission may require additional information considered necessary for the concentration analysis. When the additional information is not filed within the period provided for in the preceding paragraph, the concentration notification shall be considered as not filed, thus, the Commission shall issue and notify the notifying party the corresponding decision within ten days following the expiration of said period.

The Commission may require additional information from other Economic Agents related to the concentration, as well as the reports and documents considered relevant to conduct the analysis of the concentration as set forth under this Title of the Law to any individual or undertaking, including the notifying parties and any Public Authority, without these being considered as parties under the procedure.

The requirements established in the previous paragraph shall not suspend the legal timeframes to resolve on the notification. The required parties shall file the information within the ten-days after the requirement is notified, this period may be extended for an equal term upon a duly justified request;

- IV.** If the Commission has not issued and notified the decision whereby the concentration notification is considered as not filed and the legal timeframes referred to in the preceding subsections I and III have expired, the procedure shall continue;
- V.** To issue its resolution, the Commission shall have a sixty-day period that will commence upon receipt of the written notification or, if the case may be, upon reception of the additional documents requested. Upon conclusion of such period without the issuance of a resolution, it may be understood that the Commission has no objection to the notified concentration.

Regarding concentrations considered to pose possible risks for the competition process and free market access, the Commission shall inform the notifying parties within at least a ten-day period prior to the case being scheduled for a Board of Commissioners session, in order to allow the parties to propose conditions or remedies that may correct the aforementioned risks.

The Commission's resolution may authorize, object or subject the authorization to certain conditions that are intended to prevent the possible effects to free market access and economic competition which could result from the notified concentration;

- VI.** Under exceptionally complex cases, the Commission may extend the legal timeframes established under subsections III and V of this article, for an additional forty-day period;
- VII.** For the effects established in subsections III and V of this article, the notification shall be considered as received and the decision to receive for processing considered issued on:

- a. The day the written notification is filed, when the Commission has not issued a decision informing the notifying parties that their notification lacks the requirements established by this Law thereby granting an additional period for the parties to submit the missing information, as provided for in subsection I of this article, or
- b. The day the additionally required information is filed, when the Commission has not issued and notified the decision whereby the notification is considered as not filed in terms of subsection II of this article.

VIII. The Commission's favorable resolution shall not prejudice on the execution of monopolistic or other anticompetitive practices which, in terms of this Law, hinder, damage or impede free market access or economic competition. Hence, a favorable resolution does not excuse involved Economic Agents from further liabilities.

The Commission's favorable resolution shall have a validity period of six months, and may only be extended for one additional period under duly justified causes.

The notifying parties may submit, from the moment the written notification is filed and until one day after the concentration is scheduled for a Board of Commissioners session, proposed conditions to avoid hindering, damaging or impeding the process of economic competition and free market access as a result of the concentration.

In case the proposed conditions are not submitted together with the written notification, the timeframe for issuing a resolution shall be stayed and shall be computed from the initial stage.

Article 91. The conditions that the Commission may establish or accept from the Economic Agents, in terms of the previous article, may consist of:

- I. Carrying out or abstaining from a specific action;
- II. Divesting specific assets, rights, partnership interest or stock in favor of third parties;
- III. Modifying or eliminating terms or conditions from the acts intended to be executed;
- IV. Committing to implement actions that are intended to foster the participation of competitors in the market, as well as providing them access or selling of goods or services, or
- V. Other measures aimed at preventing the concentration from hindering, impairing or preventing competition or free market access.

The Commission may only impose or accept conditions that are directly related to correcting a concentration's effects. The conditions that are imposed or accepted shall be proportionate to the intended correction.

Article 92. Upon notification of the concentration, the Economic Agents may expressly request that the procedure be conducted pursuant to this article, for which the notifying parties shall bring forth to the Commission information and the corresponding elements of conviction that clearly demonstrate that the concentration will not hinder, damage or impede free market access and economic competition, in terms of this article.

It is clear that a concentration does not have as its purpose or effect to hinder, damage or impede free market access and economic competition, when the acquiring party has no participation in markets related to the relevant market in which the concentration takes place, or is not an existing or potential competitor of the acquired party and, in addition, any of the following circumstances concur:

- I. The transaction implies the participation of the acquiring party in the relevant market for the first time. Consequently, the relevant market's structure shall not be modified and will only involve the total or partial substitution of the acquired Economic Agent by the acquiring party;
- II. Prior to the transaction, the acquiring party does not hold control over the acquired Economic Agent, and as a consequence of the transaction, the former increases its relative participation in relation to the latter, without attaining more power to influence the company's operation, administration, strategy and main policies, including appointing board members, directors or managers;
- III. The party acquiring stock, partnership interest or participation units has the control of a company and increases its relative participation in the company's capital structure, or
- IV. In the cases provided for by the Regulatory Provisions.

The notification of a concentration under the procedure established in this article shall be made in writing and shall contain the information and documentation referred to in subsections I to XII of article 89 of this Law.

Within the five-day period following reception of the concentration notification, the Commission shall issue its decision on its admissibility, or, pursuant to the last paragraph of this article, order its inadmissibility and for the case to be processed under article 90 of this Law.

The Board of Commissioners shall resolve whether the concentration complies with the criteria of clearly not hindering, damaging or impeding free market access and economic competition, as foreseen under this article, within a period no greater than fifteen days following the admissibility decision. Upon conclusion of said timeframe without the Board of Commissioners issuing a resolution, it shall be understood that there is no objection to the concentration.

When the Commission considers that the concentration does not fall under the criteria of subsections I to IV of this article, or the information provided by the Economic Agent is incomplete, the Commission shall issue a decision for processing the case under article 90 of this Law.

Chapter II

Exceptions to the Obligation of prior Authorization

Article 93. The authorization for concentrations established in article 86 of this Law shall not be required in the following cases:

- I. When the transaction involves a corporate restructure, in which the Economic Agents belong to the same economic interest group and no third entity participates in the concentration;
- II. When the holder of stock, partnership interest or units of participation increases its relative participation in a company's capital stock which it has controlled since its incorporation or commencement of operations, or, when the Board of Commissioners had previously authorized the acquisition of such control and the former then increased its relative participation in the capital stock of the referred company;
- III. When the transaction concerns the incorporation of a management, guaranty or any other sort of trust, whereby the Economic Agent transfers its assets, stock, partnership interest or participation units without the purpose or necessary consequence of transferring said assets, stock, partnership interest or participation units to a company other than both the trustor and the corresponding fiduciary institution. However, if the guaranty trust is executed, this shall be notified in case the thresholds referred to in article 86 of this Law are surpassed;
- IV. When the transaction concerns legal acts of foreign companies, over stock, partnership interest or participation units, or under trust agreements entered into abroad and related to companies not residing in Mexico for tax purposes, insofar as the companies involved do not acquire control over Mexican companies, nor accumulate stock, partnership interest, participation units or participation in trusts or assets in general within the Mexican territory in addition to those which they directly or indirectly owned prior to the transaction;
- V. When the acquiring party is a variable income investment company and the transaction has as its purpose the acquisition of stock, obligations, assets, securities or documents with resources resulting from the placement of the investment company's shares among the investing public, except if as a result or because of the transactions, the investment company may have significant influence over the decisions of the Economic Agent involved in the concentration;

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- VI.** In the acquisition of stock, assets, titles or the representative documents of the capital stock of companies or whose underlying assets represent equity of legal entities, and which are traded on stock exchanges in Mexico or abroad, when the act or sequence of acts does not entitle the purchaser to own ten percent or more of such capital stock, obligations convertible into stock, assets, securities or documents, and the acquirer does not have the powers for:
- a.** Appointing or removing members of the board, directors or managers of the issuing company;
 - b.** Imposing, directly or indirectly, decisions on the general meetings of stockholders, partners or equivalent bodies;
 - c.** Holding ownership rights that allow, directly or indirectly, to exercise voting regarding ten percent or more of a legal entity's capital stock, or
 - d.** Directing or influencing, directly or indirectly, the management, operation, strategy or the main policies of a legal entity, by means of equity holdings, contractually or otherwise.
- VII.** When the acquisition of stock, partnership interest, participation units or trusts is performed by one or more investment funds merely for speculation purposes, and which do not have investments in companies or assets that participate or are employed in the same relevant market as the Economic Agent involved in a concentration, or
- VIII.** In any other case established by the Regulatory Provisions.

TITLE IV THE SPECIAL PROCEDURES

Chapter I

Investigations to Determine Essential Facilities or Barriers to Competition

Article 94. The Commission shall commence either ex-officio or per request of the Federal Executive Branch, directly or through the Ministry, the investigation procedure when there are elements suggesting there are no effective competition conditions in a market and aiming to determine the existence of barriers to competition and free market access or of essential facilities that could generate anticompetitive effects, which shall be conducted pursuant to the following:

- I.** The Investigative Authority shall issue the initiation decision and shall publish its extract in the Federal Official Gazette, which shall identify the market subject to the investigation with the purpose of allowing any person to provide elements during the investigation. The investigation period shall commence on the date on which said extract is published, and shall not last less than thirty or exceed one hundred and twenty days. The investigation period may be extended by the Commission for as much as two additional periods in case there are causes that justify such action;

- II.** The Investigative Authority shall have all the investigation powers provided for by this Law, including requiring the necessary reports and documents, summoning and performing interviews with the individuals or undertakings related to the case in question, conducting on-site inspections and ordering any proceeding considered adequate. When referring to essential facilities, the Investigative Authority shall analyze, throughout the investigation, all of the criteria under article 60 of this Law;
- III.** Upon conclusion of the investigation and if there are sufficient elements to determine that there are no effective competition conditions in the investigated market, the Investigative Authority shall issue, within the following sixty-day period after concluding the investigation, a preliminary investigative opinion; otherwise, it shall propose the closing of the case file to the Board of Commissioners.

When issuing the preliminary investigative opinion, corrective measures deemed necessary to eliminate the restrictions to the efficient operation of the investigated market shall be proposed, for which the Investigative Authority may request, if applicable, a non-binding technical opinion from the sector's coordinating public entity or the corresponding Public Authority regarding said corrective measures.

If the case may be, the preliminary investigative opinion shall be notified to the Economic Agents that may be affected by the proposed corrective measures, including the possible barriers to competition or the regulation on access to an essential facility, as well as, if the case may be, to the sector's coordinating public entity or to the corresponding Public Authority;

- IV.** The Economic Agents with legal standing in a determined matter may assert the arguments available to them under the law and bring before the Commission the evidentiary means they deem pertinent, within the forty five day period following the date on which the corresponding notification has taken effect. Upon expiration of said period, a decision shall be issued if the case may be, regarding the dismissal or admission of evidentiary elements, as well as the place, time and hour for their processing;
- V.** Once evidence has been processed, and within the following ten day period, the Commission may order the submission of further evidentiary elements, or summon for closing arguments, in terms of the following subsection;
- VI.** Upon conclusion of the submission of further evidentiary elements, the Commission shall set a period, not exceeding fifteen days, for the written formulation of closing arguments, and
- VII.** The file shall be considered completed upon expiration of the period for the written formulation of closing arguments. The involved Economic Agent may propose to the Commission, only once, suitable and economically feasible measures to eliminate the competition problems identified at any moment until the file is completed.

Within five-days following the reception of the written proposal of measures referred to in the previous paragraph, the Commission may request that the Economic Agent, if the case may be, submit the corresponding clarifications in a five-day period. Within ten days following the reception of the written proposal or clarifications thereof, as the case may be, an opinion shall be submitted before the Board of Commissioners, which shall resolve upon the Economic Agent's proposals within the following twenty days.

In case the Board of Commissioners refuses the Economic Agent's proposal, it shall justify its decision and the Commission shall issue, within five days, the decision reinstating the procedure.

Upon completion of the file, the Board of Commissioners shall issue the corresponding resolution within a period no greater than sixty days.

The resolution of the Commission may include:

a. Recommendations to Public Authorities.

The resolutions in which the Commission determines the existence of legal provisions that unduly impede or distort free market access and competition in the market, shall be notified to the competent authorities, for these to act accordingly pursuant to their scope of jurisdiction and under the procedures provided for in the laws in force. These resolutions must be published;

- b.** An order to the corresponding Economic Agent to eliminate a barrier that unduly affects free market access and the competition process;
- c.** The determination on the existence of essential facilities and guidelines to regulate, depending on the case, the access modes, prices or rates, technical and quality conditions, as well as the implementation schedule, or
- d.** The divestiture of the involved Economic Agent's assets, rights, partnership interest or stock, in the necessary proportions to eliminate the anticompetitive effects, shall proceed when other corrective measures are not sufficient to solve the identified competition problem.

The resolution shall be notified, depending on the case, to the Federal Executive Branch and the corresponding sector's coordinating entity, as well as to the affected Economic Agents, and shall be published in the Commission's media outlets and its relevant information in the Federal Official Gazette.

If the party holding title over the essential facility considers it no longer meets the requirements to be considered as such, it may request the Commission to initiate the investigation established under this article, with the purpose of determining if such requirements are still being met.

If the Commission thereby determines that the good or service does not meet the requirements to be considered an essential facility, the Commission's prior resolution regulating access thereof shall cease to have legal effect, effective from that moment.

The resolution pertaining to the divestiture of assets referred to in this article does not constitute the sanction referred in article 131 of this Law.

In all cases, the Commission shall verify that the proposed measures will generate efficiency gains in the markets, consequently these measures shall not be imposed when the Economic Agent with legal standing in the procedure demonstrates, in due course, that the barriers to competition and essential facilities generate efficiency gains and have a favorable impact on the economic competition process and free market access, thus overcoming their possible anticompetitive effects, and resulting in an increased consumer welfare. Among the gains in efficiency for consideration are those which result from innovation in the production, distribution, and marketing of goods and services.

Article 95. The resolutions whereby the Commission determines the existence of barriers to competition and free market access or essential facilities shall be notified to the corresponding sector regulators in order for them to determine, within the scope of their jurisdiction and according to the procedures provided in the current legislation, the actions to achieve competition conditions.

When the Commission becomes aware of acts or general regulations issued by a State, the Federal District or a Municipality, which could contravene articles 28 and 117, subsections IV, V, VI, and VII of the Political Constitution of the United Mexican States, among others, or that violate powers of the Federation, it shall notify such circumstance to the head of the Federal Executive Branch, through its Legal Advisor, so he/she files a constitutional controversy if deemed pertinent, or to the competent entity for the same purpose.

The Commission shall express its motives for considering that the general acts or regulations mentioned in the previous paragraph contravene the constitutional provisions.

In case the Federal Executive Branch considers that the initiation of a constitutional controversy is not pertinent, the Legal Advisor shall publish the reasoning behind this decision.

In case that the Commission becomes aware of acts or general provisions issued by a constitutional autonomous entity, Congress, or the Federal Executive Branch, which encroach upon its powers, it may lodge a constitutional controversy in the terms established in subparagraph 1, of subsection I, of article 105 of the Political Constitution of the United Mexican States.

Chapter II

Procedure to Determine Market Conditions

Article 96. When the legal or regulatory provisions expressly provide for a resolution or opinion on matters concerning effective competition, existence of substantial market power in the relevant market or other analogous terms, or when so determined by the Federal Executive Branch by decrees or executive orders, the Commission shall issue ex-officio, upon request from the Federal Executive Branch, directly or through the Ministry, upon request from the corresponding sector's coordinating entity, or upon request from the affected party, the corresponding resolution or opinion, for which the following procedure shall be conducted:

- I. For cases in which the request is filed by an interested party or the corresponding sector's coordinating entity, the petitioner shall submit the information needed to identify the relevant market and the substantial market power pursuant to this Law, as well as express the grounds giving rise to the need for issuing a resolution or opinion. The Regulatory Provisions shall establish the requirements for filing these petitions;
- II. Within the following ten days, the initiating decision shall be issued or the petitioner shall be requested to provide missing information that allows the Commission to identify the relevant market and the existence of substantial market power. Said request must be complied with within a fifteen-day period from the moment in which the request is notified. In case the stated requirement is not complied with, the petition shall be considered as not filed;
- III. The Commission shall issue the initiating decision and publish its extract in the Federal Official Gazette, which shall contain the market under consideration in order for any person to contribute to the investigation. The extract may be publicized in any other media outlet when the Commission considers the issue as sufficiently relevant;
- IV. The investigation period shall initiate upon publication of the extract and cannot be less than fifteen or exceed forty five days.

The Commission shall require submission of the necessary reports and documents and summon the related individuals for compulsory interviews;

- V. Upon conclusion of the corresponding investigation, and if there are elements to determine the existence of substantial market power, or the absence of effective competition conditions, or other analogous terms, the Commission shall issue a preliminary opinion within a thirty-day period from the issuance of the decision to conclude an investigation. Its extract shall be published on the Commission's media outlets and the opinion's relevant data shall be published in the Federal Official Gazette;

- VI.** The Economic Agents that prove their standing concerning the matter before the Commission, may thereby assert their rights and bring forth the means of conviction deemed pertinent, within twenty days following the publication of the preliminary opinion's relevant data in the Federal Official Gazette;
- VII.** Within ten days following the expiration of the timeframe provided in the previous subsection, the dismissal or admissibility of the evidentiary elements shall be decided upon; likewise, the place, date and time for evidence processing shall be defined;
- VIII.** Processing of evidentiary elements shall be conducted within a period not exceeding twenty days from their admission;
- IX.** The file will be considered as completed once evidence has been processed or the corresponding period has expired, and
- X.** Once the file is completed, the Commission shall issue a resolution or opinion within a maximum period of thirty days, which shall be notified, if the case may be, to the Federal Executive Branch and to the corresponding sector's coordinating entity and published on the Commission's website as well as its relevant data in the Federal Official Gazette. The foregoing, so that, if the case may be, the corresponding sector's coordinating entity may establish the regulation and the corresponding measures, for which it may request a non-binding opinion from the Commission.

The Commission may extend the timeframes established under subsections IV, VIII and X of this article only once and for an equal period under duly justified circumstances.

Article 97. In the case of article 9 of this Law, the Commission may issue an opinion per request of the Federal Executive Branch, which shall be processed in terms of the previous article, except in cases where priority attention is requested, in which case the Commission shall issue the opinion as soon as possible, considering the timeframes provided by this Law.

Chapter III

Procedure for Issuing Opinions and Resolutions concerning the granting of Licenses, Concessions, Permits and others

Article 98. When the Commission, pursuant to the laws or per determination of the Federal Executive Branch through decrees or executive orders, directly or through the Ministry, issues an opinion or authorization concerning the granting of licenses, concessions, permits, assignments, sales of stock belonging to concessionary or permit holding companies or other analogous matters, the following procedure shall be initiated and performed:

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- I. In cases brought forth by an interested party or by the corresponding sector's coordinating authority, the Regulatory Provisions shall establish the requirements for filing the request;
 - II. Within the following ten days, the Commission shall issue a decision either receiving or requesting the interested party to submit additional information and documents within an equal period. If the request for missing information and documents is complied with, the Commission shall issue a reception decision within the following ten days. If the request for additional information and documents is not complied with, the petition shall be considered as not filed, and
 - III. The Commission shall issue the opinion within a thirty day period from the reception decision or from the decision receiving the requested additional information and documents. For rendering the opinion, articles 63 and 64 of the Law shall be applicable.

The opinion request shall be filed on the date indicated in the corresponding tender call or its specifications. The opinion request shall always be prior to the submission of economic offers.

The tendering entity must provide the Commission, prior to the publication of the tender, with the call documents, the tender specifications, draft contracts and other relevant documents for the Commission to understand the intended transaction.

The timeframes defined in subsection III of this article may be extended by the Commission only once for an equal period for duly justified causes.

When there is no tender or contest, the Economic Agents must obtain, before the transaction is carried out or the resolution is issued by the competent authority, the Commission's respective resolution in the terms of this article.

Article 99. For the purposes related to the previous article the following shall be considered:

- I. The tendering or convening entity must provide the Commission with the information referred to in the third to last paragraph of the previous article, within a minimum thirty day period before the publication date of the tender;
- II. The Commission may request the tendering or convening entity any relevant or missing documentation or information to perform the corresponding analysis, within a ten day period after the submission of the information in terms of the previous subsection;
- III. Within fifteen days following the submission of the information referred to in the previous subsections, depending on the case, the Commission must resolve on the measures related to the protection of competition that should be included in the tender call, its specifications and annexes, or other tender documents, and

- IV.** The Commission shall agree with the convening entity regarding the dates on which the opinion requests by the interested parties shall be submitted, and the date in which the Commission shall notify its resolution, considering the terms defined in subsections II and III of the previous article.

Chapter IV

Exemption and Fine Reduction Procedures

Article 100. Before the statement of probable responsibility is issued in a procedure before the Commission for a relative monopolistic practice or unlawful concentration, the Economic Agent subject to the investigation may, on one occasion express in writing its intention to attain the exemption and fine reduction benefit established in this Law, provided the following is verified before the Commission:

- I.** Its commitment to suspend, eliminate or correct the corresponding practice or concentration, in order to restore the process of free market access and economic competition, and
- II.** The proposed means are legally and economically feasible and appropriate to avoid, or eliminate, the relative monopolistic practice or unlawful concentration under investigation, stating the timeframes and terms of verification thereof.

Article 101. Within the following five days of the reception of the written statement referred to in the first paragraph of the preceding article, the Investigative Authority shall suspend the investigation and may request the Economic Agent subject to the investigation to submit the necessary clarifications in a five day period and shall notify the complainant, if any, so it may assert the arguments available to it under the law within an additional five-day period. Within a ten day period, the Investigative Authority shall submit before the Board of Commissioners an investigative opinion regarding the Economic Agent's request and the investigation file. The Commission shall issue a resolution within a twenty day period from the reception of the Investigative Authority's opinion.

In case the Board of Commissioners dismisses the proposal brought forth by the requesting Economic Agent, the Commission shall issue a decision for reinstating the procedure within a five day period.

Article 102. The resolution referred to in the preceding article, may order the following:

- I.** Award the corresponding exemption and fine reduction benefit, and
- II.** The measures to restore the process of free market access and economic competition.

Economic Agents shall accept the definitive resolution expressly and in writing within a fifteen day period from the date in which they are notified.

In the event that the Economic Agent does not expressly accept the resolution, the suspended procedures will be reinstated.

Economic Agents may only receive the benefits under this article once every five years. This timeframe shall be computed from the acceptance of the Commission's resolution.

Notwithstanding the resolution under this article, third parties may claim damages for civil liability in connection with the relative monopolistic practice or unlawful concentration revealed to the Commission in terms of the previous article.

Article 103. Any Economic Agent who has engaged or is engaging in an absolute monopolistic practice; has participated directly, on behalf or by account and order of undertakings in absolute monopolistic practices, and the Economic Agent or individual which has contributed, fostered, induced or participated in the execution of an absolute monopolistic practice, may acknowledge such actions before the Commission and apply for the sanction reduction benefit established by this Law, provided that:

- I. It is the first, among the Economic Agents or individuals involved in the conduct, to provide sufficient supporting evidence in its possession or which may be available which, to the Commission's judgment, allows for the investigation procedure to be initiated or, if the case may be, allows for the presumption of the existence of an absolute monopolistic practice;
- II. It cooperates fully and continuously throughout the investigation and, if the case may be, within the trial-like procedure, and
- III. It undertakes all necessary actions so as to no longer engage in the unlawful practice.

Upon compliance with the above requirements, the Commission shall issue the corresponding resolution and impose the minimum fine.

The Economic Agents or individuals that do not comply with the provisions under subsection I above, 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 this article are met. To determine the amount of fine reduction, the Commission shall take into account the chronological order in which requests are submitted and the supporting evidence is provided.

The individuals who have directly engaged in absolute monopolistic practices, on behalf or account and order of Economic Agents receiving the sanction reduction benefits may benefit from the same reduction in sanction insofar as they submit available evidentiary elements, cooperate fully and continuously throughout the investigation and, if the case may be, during the trial-like procedure, and carry out all the necessary actions to terminate their participation in the unlawful practice.

The Commission shall uphold the confidential nature of the identity of the Economic Agent and the individuals who seek to apply for the benefits under this article.

The Regulatory Provisions shall set forth the procedure according to which the benefit stated in this article and the fine reduction thereof, shall be requested and resolved.

Chapter V

Procedure for Requesting Formal Opinions and General Guidance in Matters of Free Market Access and Economic Competition

Article 104. Any Economic Agent may request a formal opinion from the Commission in matters related to free market access and economic competition when it concerns new or unresolved issues in connection to the application of this Law and considers it is a relevant topic.

The Commission shall issue a formal opinion when the following requirements are met:

- I. That the substantive assessment of a certain conduct, for the purposes of this law's application, raises a matter for which the applicable legal framework, including judicial precedents, do not provide any clarification or for which there are no directives, guides, guidelines, technical criteria or general orientations publicly available, nor precedents in the Commission's decisions, or previous formal and specific opinions in matters of free market access and economic competition;
- II. from a preliminary assessment of the particularities and circumstances of the requested opinion, the convenience of clarifying the new questions through a formal opinion is shown, considering the following elements:
 - a. The economic relevance, from the consumer's perspective, regarding the goods and services affected by the agreement or practice;
 - b. The extent to which the conduct referred to in the request for formal opinion reflects or is likely to reflect a conduct or an extended economic use in the market, or
 - c. The relevance of the investments corresponding to the conduct referred to in the request for formal opinion in connection to the size of the affected companies.
- III. That the Commission be capable of issuing its formal opinion on the basis of the information submitted, without the need to proceed to an additional investigation concerning the facts. However, the Commission may use any additional available information from public sources, previous proceedings or any other source and may require additional information from the Economic Agent requesting the formal opinion.

The Commission shall not address requests for formal opinion under the following circumstances:

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- a. That the subject matter of the request be identical or similar to those cases pending resolution before the Commission or a judicial entity;
 - b. That the conduct pertaining to the request be under investigation by the Investigative Authority or be subject to a procedure before the Commission or a judicial entity, or
 - c. When the subject matter pertaining to the request is hypothetical, unrealistic, unspecific or no longer applied by the parties. However, Economic Agents may submit before the Commission a request to obtain a formal opinion in connection to matters established in an intended agreement or conduct yet to be executed. In these cases, the transaction must have reached a significantly advanced stage for the request to be processed. Subsection I of this article shall not be applicable to these opinions.

The issued formal opinion shall be binding for the Commission.

The responses to the opinion requests brought forth by Economic Agents shall not be binding when these are made under unrealistic and unspecific situations; these situations do not coincide with the facts or data of such request; the applicable legislation is modified or the situations related to the request have changed, or these concern matters established in an agreement or a conduct that is at a project stage and is yet to be executed.

Article 105. Economic Agents may request a formal written opinion from the Commission through a motion that clearly states the following:

- I. The identity of the affected Economic Agents and an address for the Commission to contact the requesting parties;
- II. The specific subject matter on which the opinion is requested;
- III. Complete and thorough information regarding all the relevant issues for a proper assessment of the matters brought forth, including the pertinent documents.
- IV. A reasoned explanation stating why the formal opinion request concerns one or more new issues;
- V. Any other information that allows an assessment in terms of this Chapter of the Law and, particularly, a statement that the conduct referred to in the formal opinion request is not pending resolution in a procedure being conducted before a judicial entity;
- VI. Whether the formal opinion request contains elements that are considered to be Confidential Information, the clear indication of such elements shall be included in a separate annex, with an explanation of the reasons for which the Commission should consider the information as confidential, and
- VII. Any other pertinent information or documents for the matter in question.

Article 106. When the Commission receives a formal opinion request it shall be subject to the following:

- I. Within ten days following the reception of the formal opinion request, the Commission's Chair shall convene the Board of Commissioners and submit the request. Within a five day period, the Board of Commissioners shall determine whether a formal opinion is to be issued in connection with the request, notifying its resolution to the interested Economic Agent within an additional five day period;
- II. Within the following five days after the Board of Commissioners decides to issue its formal opinion, the file shall be sent to the unit in charge of its processing which may, within the following ten days, require additional information and documents from the interested party. The Economic Agent requesting the formal opinion shall provide the required information and documents within the following fifteen days after being required, or file a reasoned explanation regarding the impossibility of providing such information and documents;
- III. If the information is not provided within the period established in the preceding subsection, the formal opinion request shall be considered as not filed, notwithstanding that the interested party may request an extension of said timeframe or file a new request;
- IV. Once the Commission's unit charged with processing the formal opinion request has completed the file, the Commission's Chair shall issue a decision whereby the file is assigned to the Commissioner-Rapporteur, in a rotating manner, rigorously following the Commissioners' designation order, as well as the chronological order in which the file was completed. The Commissioner-Rapporteur shall have the obligation of submitting the formal opinion proposal for its discussion within a fifteen day period from the date in which the formal opinion was assigned, or if the case may be, the file's completion date. The Commissioner-Rapporteur may extend the timeframe referred to in this subsection for an additional fifteen days under duly justified causes, and
- V. The Board of Commissioners shall issue its formal opinion concerning free market access and economic competition within a ten day legal timeframe after the day on which the Board of Commissioners convenes for a session where it discusses and approves the draft proposal.

Article 107. Economic Agents may withdraw a formal opinion request at any time. However, the information submitted in this regard shall be kept by the Commission, and may be used for further proceedings in accordance with this Law.

Article 108. The formal opinions in matters concerning free market access and economic competition issued by the Commission shall contain:

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- I. A succinct description of the facts on which it is based, and
 - II. The main legal arguments underlying the Commission's interpretation of the new issues concerning this law, which were posed in the request.

The formal opinions may be limited to answering a section of the request's subject matter. Likewise, these may also analyze additional aspects to those mentioned in the request.

Article 109. The formal opinions shall be published on the Commission's website, safeguarding Confidential Information.

Article 110. Regardless of the procedure for issuing formal opinions, the Commission shall provide general orientation to any individual or undertaking, as well as to any Public Authority, in connection with the application of this Law, in the terms provided for by the Regulatory Provisions.

TITLE V GENERAL RULES APPLICABLE TO THE PROCEDURES

Chapter I Legal Representation

Article 111. Economic Agents' legal representation before the Commission must be evidenced by the official notarized transcript of the public instrument or a certified copy thereof that contains the corresponding legal powers, granted pursuant to the formalities established by the applicable legislation, which may be filed along with the initial motion or may be recorded in the authorized persons registry, which may be established for such purpose by the Commission.

Economic Agents or their legal representative may authorize the persons deemed appropriate to receive notifications, file motions, offer evidentiary elements, appear for evidence processing, bring forth closing arguments and, in general, to undertake the necessary acts for the due substantiation of proceedings. The authorized individuals under these terms may not substitute or delegate their authorization.

Economic Agents or their legal representative may appoint individuals for the sole purpose of hearing and receiving notifications and documents, and for accessing the file, these individuals shall not have the powers stated in the previous paragraph.

When filing motions, if the Economic Agents fail to specify the scope of the authorizations for the individuals appointed, it shall be understood that these are authorized only for the purposes described in the previous paragraph.

No individual may have access to a file without being previously authorized or its legal representation accounted in the file and verified for such purposes by the Commission, and no file may be consulted outside the schedule established by the Commission's filing office.

Chapter II

Requirements for the Motions before the Commission

Article 112. Motions and written statements shall be filed in the Spanish language and must be signed by the movant. When the movant should not know how or is unable to sign, he/she shall use his/her fingerprints in the presence of two witnesses, who shall sign alongside. Failure to comply with the requirements for motions provided in the previous paragraph, shall result in motions being considered as not filed.

If a person who has participated in a proceeding conducted by the Commission refuses to sign, or if the case may be, provide his/her fingerprints, this circumstance shall be noted in the report minutes drafted for such effects. The lack of signature or fingerprints shall not render the Commission's acts null or void.

Article 113. The movant may submit documents along with its motions in a language other than Spanish, however, it must attach a translation by a certified expert, of the sections it deems relevant, under the party's own responsibility, notwithstanding that the Commission may request additional translations or the translation in full by a certified expert when deemed pertinent.

The Commission shall not consider the text of documents in a language other than Spanish. The Commission may collect, in any ongoing proceedings, documents in a language other than Spanish and attach them to the file, along with the translation of the aspects deemed relevant by the Commission.

Any person who does not speak Spanish may attend the proceedings accompanied by an interpreter, whose expenses shall be covered by the party offering or proposing the proceeding. When the interviewee so requests, aside from including its statement in Spanish, the statement may be drafted in its own language and by its own hand and writing. The interpreter, prior to performing its functions, shall pledge to do so honestly, and this shall be included in the corresponding minutes.

For all which is not herein provided, the Regulatory Provisions shall apply.

Chapter III *Legal Timeframes*

Article 114. When the timeframes or periods established by this Law and the Regulatory Provisions are referred to in days, these shall be understood as business days. With respect to those referred to in months or years, the calculation shall be computed from date to date, considering non-business days.

When no timeframe or period is specified, a five day period shall be understood as the timeframe or period for any action.

Article 115. Official acts shall be performed on business days and hours.

Business days are all days in the year, except Saturdays and Sundays, and those that are declared as non-business days according to the annual working calendar published in the Federal Official Gazette. The days in which work is suspended or the offices of the authority remain closed, shall be considered as non-business days for all legal effects, except for those cases when proceedings are expressly allowed to be performed on specific days.

Working hours for notifications and the performance of proceedings are from 7:00 to 19:00 hours.

Non-working days and hours may be authorized for performing acts or for the conduction of proceedings and notifications, under duly justified causes, stating the causes and specifying the proceedings that must be conducted.

If a proceeding began on working hours and days, it may be conducted until its conclusion, without interruption and without the need of explicit authorization.

Article 116. The motions and documents must be filed only before the Commission's filing office within the working calendar and hours published in the Federal Official Gazette.

Motions may be filed on the day of their expiration once the Commission's filing office has closed, through electronic delivery, sent to the e-mail addresses which shall be published for those purposes. The system must generate a delivery receipt.

The motions and documents filed in terms of the preceding paragraph are only admissible when the original motion, its attachments and the receipt of electronic delivery are filed before the Commission's filing office on the business day following electronic delivery.

It shall suffice for the electronic transmission to contain the signed motion and a detailed list of the documents attached with an explanation of its contents, including the section of the motion listing each one of the attachments.

Any document that is filed in a different manner than the one established in this article does not interrupt or stay the corresponding legal timeframe, and shall not be considered as received until it is formally filed before the Commission's filing office.

In the event that the motion and documents filed electronically differ from the physical files presented before the Commission's filing office, the motion and documents shall be considered as not filed.

Chapter IV Notifications

Article 117. The individual or movant acting before de Commission in the first motion or proceeding, shall state an address to hear or receive notifications in the Federal District or, if the case may be, an address corresponding to the Commission's Regional Office where any of the procedures under this Law are being conducted.

Likewise, if there is interest in a particular individual being notified in the first place, due to his/her role in the matter, the interested party shall also state the address where such notification is to take place. It is not necessary to state the address of public officers as these will be always notified in their official residence.

The notifications shall be served in terms of the Regulatory Provisions.

Chapter V Procedures before the Commission filed by Electronic Means

Article 118. All of the procedures referred to in this Law, as well as any requirement may be processed by electronic means in accordance with the Regulatory Provisions, observing in every situation the principles of digital government and open data, as well as the applicable provisions concerning the electronic signature.

The Commission, for processing the acts concerning its procedures, shall authorize the parties that request so, to generate an electronic signature in compliance with the requirements established by the Regulatory Provisions.

Chapter VI Obligation to Cooperate with the Commission

Article 119. Any individual who has knowledge of or is related to any fact investigated by the Commission, or with the subject matter of its ongoing procedures, has the obligation to provide, within a ten day period, the information, objects and documents under its possession by the means required; to appear for interviews in the place, hour and date required, and to allow on-site inspections.

In the case of original documents, or certified copies thereof, the required individual may decide whether to file such documents for their subsequent retrieval once the Commission has carried out the corresponding reproductions and certifications.

Chapter VII
The Commission's Resolutions

Article 120. The Commission shall adopt its resolutions based upon the known facts, the information and the means of conviction available, when the Economic Agent served with process or the one whose actions are under investigation, and the individuals related thereto, refuse to provide information or documents, render statements, enable the conduction of proceedings which have been duly ordered or obstruct the investigation or the corresponding proceeding.

This article shall apply without prejudice to the corresponding sanctions.

All of the final resolutions adopted by the Commission under any of the procedures established in this Law, shall resolve upon the issues effectively brought forth by the Investigative Authority and the Economic Agents.

Chapter VIII
Deficiency Supplementation of this Law

Article 121. For all particular features not provided for under this Law or the Regulatory Provisions, the Federal Code of Civil Procedure shall be applied in a supplementary manner.

Chapter IX
Final Provisions

Article 122. The Commission shall strive so procedures are not suspended or interrupted, therefore, it shall act accordingly so they are concluded with the respective resolution. In addition, it shall dictate the necessary measures so as to legally conduct the procedure. Either ex officio or per request of a party, it will be able to regularize the procedure.

Article 123. The Commission may attain, before issuing its final resolution which concludes a procedure, the evidentiary elements deemed necessary to prove the veracity of the facts subject to the corresponding procedure, insofar as said means of conviction are recognized by this Law, and have an immediate relation with the facts of the proceeding. The limitations or proscriptions regarding evidentiary elements established in relation with the Economic Agents shall not apply to the Commission.

TITLE VI

INFORMATION

Sole Chapter

Classification of Information

Article 124. The information and documents obtained directly by the Commission during its investigations and on-site inspections shall be considered as Reserved, Confidential Information or Public Information, pursuant to article 125.

During the investigation, access to the file shall not be permitted and, during further stages of proceedings, only the Economic Agents with legal standing may have access to said file, with the exception of information classified as confidential.

The Commission's public officers shall be subject to responsibility in case the information supplied to them is disclosed. When an order from a competent authority compels information to be rendered, the Commission and said authority shall dictate the appropriate measures in order to safeguard the confidential information in terms of this Law.

Article 125. For the purposes of this Law, Confidential Information shall only be considered as such at the Economic Agent's request, and upon validation that the information has this characteristic. Likewise, the Economic Agent shall provide a summary of the information satisfactory to the Commission, for its inclusion in the file. If the Economic Agent is unable to provide said summary, it shall express the reasons for said inability, in which case the Commission may draft the corresponding summary.

Under no circumstances shall the Commission be compelled to provide Confidential Information, nor may it publish said information. The Commission shall take the necessary measures for said information's safeguarding.

The Commission's public officers shall abstain from publicly expressing or disclosing information related to the files or procedures before the Commission and that directly damages the parties involved, until the Economic Agent subject to investigation has been notified of the Board of Commissioners' resolution, always complying with the obligations under this article.

TITLE VII
ENFORCEMENT MEASURES AND SANCTIONS

Chapter I
Enforcement Measures

Article 126. In performing its responsibilities under this Law, the Commission, may apply the following enforcement measures:

- I. A warning;
- II. A maximum fine equivalent to three thousand times the current daily general minimum wage in the Federal District, which may be applied for each day of non-compliance with an order;
- III. The assistance of the police force or other Public Authorities, and
- IV. Arrest for as much as 36 hours.

Chapter II
Sanctions and Fines

Article 127. The Commission may impose the following sanctions:

- I. Order the correction or suppression of the monopolistic practice or unlawful concentration in question;
- II. Order the partial or total divestiture of an unlawful concentration in the terms of this Law, the termination of control or suppression of the acts thereof, as the case may be, this without prejudice to the fine that may be applicable;
- III. A maximum fine equivalent to one hundred seventy five thousand times the current daily general minimum wage in the Federal District for having rendered false statements or for having submitted false information before the Commission, regardless of any criminal liability to which the offender may be subject;
- IV. A maximum fine equivalent to ten per cent of the Economic Agent's annual income, for having incurred in an absolute monopolistic practice, regardless of the corresponding civil or criminal liability;
- V. A maximum fine equivalent to eight percent of the Economic Agent's annual income, for having incurred in a relative monopolistic practice, regardless of the corresponding civil liability;

- VI.** Order measures to regulate access to essential facilities under the control of one or several Economic Agents, for having incurred in the relative monopolistic practice established under article 56, subsection XII, of this Law;
- VII.** A maximum fine equivalent to eight percent of the Economic Agent's income, for having incurred in an unlawful concentration in terms of this Law, regardless of the corresponding civil liability;
- VIII.** A fine ranging from the equivalent of five thousand times the minimum wage to five percent of the Economic Agent's income for failing to notify a concentration when it was legally required to do so;
- IX.** A maximum fine equivalent to ten percent of the Economic Agent's income, for failing to comply with the conditions specified in a concentration resolution without prejudice to an order for divestiture;
- X.** Ineligibility to act as an undertaking's board member, manager, director, executive, agent, representative or legal representative for a maximum five year period and a maximum fine equivalent to two hundred thousand times the current daily general minimum wage in the Federal District, to those persons who directly or indirectly participate in monopolistic practices or unlawful concentrations, on behalf or on account and order of undertakings;
- XI.** Maximum fines equivalent to one hundred eighty thousand times the current daily general minimum wage in the Federal District, for persons or undertakings which have contributed, facilitated or instigated the execution of monopolistic practices, unlawful concentrations and other restrictions to the efficient operation of the markets in the terms of this Law;
- XII.** A maximum fine equivalent to eight percent of the Economic Agent's annual income, for failing to comply with the resolution issued pursuant to article 101 of this Law or subsections I and II of this article. The foregoing regardless of the corresponding criminal liability, for which the Commission shall file a complaint before the Public Prosecutor's Office;
- XIII.** A maximum fine equivalent to one hundred eighty thousand times the current daily general minimum wage in the Federal District, for the notary public or attesting official who participate in the acts concerning a concentration without prior authorization by the Commission;
- XIV.** A maximum fine equivalent to ten per cent of the Economic Agent's income that controls an essential facility, for failing to comply with the regulation related thereto and for failing to comply with an order to eliminate a barrier to competition, and

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- XV.** A maximum fine equivalent to ten per cent of the Economic Agent's income for failing to comply with the injunctive order referred to in this Law.

The income referred to in the preceding subsections shall be the accruable income of the Economic Agent involved in the illicit conduct, excluding income obtained from a foreign source of wealth, as well as taxable income if this is subject to a preferential tax regime, for the effects of the Income Tax from the previous fiscal year in which the infringement has taken place. If such information is not available, the calculation base of the previous fiscal year shall be used.

The Commission may request the necessary tax information to the Economic Agents or the competent authority in order to determine the amount of the fines referred to in the previous paragraph, being able to use the enforcement measures established under this Law if the request is addressed to the Economic Agent.

In case of recidivism, fines may amount to the double of the original amount determined by the Commission.

A recidivist shall be considered as such when:

- a.** Having incurred in a previous infringement that has been punished, it incurs in another conduct prohibited by this Law, regardless of it being of the same type or nature;
- b.** At the beginning of the second or subsequent procedure there is a prior final resolution, and
- c.** No more than ten years have passed between the initiation of a procedure and the definitive resolution.

In case of infringements to this Law on behalf of public officers, the Commission shall send a duly justified and reasoned official document to the competent authority in order for it to initiate, if applicable, the corresponding administrative responsibility procedure, regardless of the criminal liability in which the public official may incur.

The Federal Executive Branch shall enforce the fines established in this article as well as those established under article 126 of this Law.

Under no circumstances, shall the Commission manage or dispose of the funds referred to in this article.

Article 128. For those cases in which Economic Agents, for any reason, do not file tax returns or their accrued income has not been determined for income tax effects, the following penalties shall be imposed:

- I.** A maximum fine equivalent to one million five hundred thousand times the current daily general minimum wage in the Federal District, for the infractions referred to in subsections IV, IX, XIV and XV of article 127 of the Law;

- II. A maximum fine equivalent to nine hundred thousand times the current daily general minimum wage in the Federal District, for the infractions referred to in subsections V, VII and XII of article 127 of the Law, and
- III. A maximum fine equivalent to four hundred thousand times the current daily general minimum wage of the Federal District for the infractions referred to in subsection VIII of article 127 of the Law.

Chapter III Imposition of Sanctions

Article 129. [No text].

Article 130. For the imposition of fines the elements that must be considered to determine the severity of the infraction are the damage caused; indications of intention; share of the offender in the market; size of the affected market; duration of the practice or concentration; as well as economic capacity, and if the case may be, the affectation to the Commission's exercise of its powers.

Chapter IV Sanction to Divest

Article 131. When infringement to this Law is committed by previously sanctioned individuals or undertakings for engaging in monopolistic practices or unlawful concentrations, the Commission shall consider the factors referred to in article 130 of this Law and may, rather than imposing the corresponding sanction, order the divestiture or transfer of the involved Economic Agents' assets, rights, partnership interest or stock, in the proportions necessary to eliminate anticompetitive effects.

For the effects of the preceding paragraph, in its resolution, the Commission must include an economic analysis that justifies the imposition of such a measure, stating the benefits for consumers.

For the purposes of this article, a previously sanctioned infringer of this Law, shall be considered as such when:

- I. The resolutions imposing sanctions have become final and conclusive, and
- II. At the beginning of the second or subsequent procedure there is a prior final and conclusive resolution, and that between the initiation of the procedure and the final and conclusive resolution no more than ten years have passed.

For the purposes of this article, the sanctions imposed upon a plurality of monopolistic practices or unlawful concentrations under the same procedure shall be considered as a single sanction.

The resolutions issued by the Commission pursuant to article 101 of this Law, shall not be considered as a sanction, for the purposes of this article.

The Economic Agents shall have the right to submit alternative divestiture proposals before the Commission issues the respective resolution.

When the Commission orders the divestiture or transfer of Economic Agents' assets, rights, partnership interest or stock, these shall be executed only until the amparo proceeding has been resolved, in case it is so lodged.

Chapter V *Compliance and Enforcement of Resolutions*

Article 132. Interlocutory proceedings regarding compliance and enforcement of the Commission's resolutions shall be processed pursuant to the interlocutory procedure provided for by this Law. Regarding the particular features not foreseen under this Law the Federal Code of Civil Procedure shall apply.

Article 133. Interlocutory proceedings may be filed ex-officio or upon request of an interested party verifying its legal standing. Once the procedure has commenced, the Economic Agent shall receive notice to reply, within a five day period, and thereby assert any arguments available to it under the law, or provide the evidentiary elements if deemed pertinent. The evidence admitted shall be processed within a twenty day period. Following evidence processing, the Commission shall grant a non-extendable five day period, in order for closing arguments to be submitted in writing.

Once closing arguments are submitted, the Commission shall declare the interlocutory file as completed and the matter shall be taken before the Board of Commissioners for its resolution within the following twenty days.

TITLE VIII **COMPENSATORY REMEDIES**

Single Chapter *Compensation of Damages and Losses*

Article 134. Individuals that may have suffered damages or losses deriving from a monopolistic practice or an unlawful concentration have the right to file judicial actions in defense of their rights before the specialized courts in matters of economic competition, broadcasting and telecommunications, once the Commission's resolution is final and conclusive.

The statute of limitations for lodging damages claims shall be stayed by the decision to initiate an investigation.

The Economic Agent's illegal actions shall be proven with the final resolution issued under the trial-like procedure, for the effects of lodging damages claims.

TITLE IX

STATUTE OF LIMITATIONS AND INJUNCTIVE MEASURES

Chapter I

Injunctive Measures

Article 135. 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 includes, but is not limited to:

- I. Issuing orders to cease and desist from engaging in actions which entail the probable conduct prohibited under this Law;
- II. Orders to perform or refrain from engaging in any conduct related to the subject matter of the complaint or investigation;
- III. Ensuring the safekeeping of the information and documents, and
- IV. Other actions deemed necessary or convenient.

Article 136. The Economic Agent may request the Board of Commissioners that, through the expedite procedure provided for in the Regulatory Provisions, a surety be established so as to reverse the injunctive measures foreseen in the previous article. The surety shall be sufficient to repair the damage that may be caused to the process of free market access and economic competition if the resolution obtained is adverse to its interests. The Commission shall issue the respective technical criteria for the establishment of sureties.

The stay ordered by the Commission does not prejudice on the merits of the case and its effects shall cease upon the expiration of the timeframe established by the Board of Commissioners or on the date the final resolution is issued.

Chapter II
Statute of Limitations

Article 137. The Commission’s powers to initiate investigations which may result in liability and imposition of sanctions, pursuant to this Law, expire within a ten year period, from the date on which the unlawful concentration is executed, or, in other cases, from the moment of the cessation of the unlawful conduct prohibited by this Law.

TITLE X
DEVELOPING DIRECTIVES, GUIDES, GUIDELINES, AND TECHNICAL CRITERIA

Sole Chapter
The Procedure for Developing the Directives, Guides, Guidelines and Technical Criteria

Article 138. For the development and issuance of the provisions that are contained in the directives, guides, guidelines, and technical criteria referred to in article 12, subsection XXII, of this Law, the following shall apply:

- I. The Commission shall publish an extract of the proposed draft in the Federal Official Gazette, and post it in full on the Commission’s website, in order to commence a thirty day public consultation period, so that any interested party may submit opinions before the Commission concerning the proposed draft. Likewise, the Federal Telecommunications Institute’s opinion shall be requested and gathered;
- II. Upon conclusion of the consultation period, the Commission shall review the comments received to the proposed draft and, within the following thirty day period it shall produce a report with a summary of the comments received together with its considerations, which shall be published on the Commission’s website, and
- III. Upon publication of the report referred to in the previous subsection, the Commission shall have a sixty day period to issue the directives, guides, guidelines, and technical criteria, an extract of which shall be published in the Federal Official Gazette and posted in full on the Commission’s website.

The directives, guides, guidelines and technical criteria referred to in this article must be reviewed at least every five years pursuant to article 12, subsection XXII of this Law.

TRANSITORY ARTICLES

First. This Executive order shall enter into force forty five natural days after its publication in the Federal Official Gazette.

Second. The Federal Economic Competition Law published in the Federal Official Gazette on December 24th 1992 is hereby abrogated.

Ongoing procedures at the time this executive order enters into force shall be processed according to the existing provisions at the time of initiation and by the administrative units established under the Organizational Statute issued pursuant to the following transitory article. The resolutions corresponding to such procedures may only be contested by amparo proceedings, in accordance with article 28 of the Political Constitution of the United Mexican States.

Third. For the appointment of the first head of the Investigative Authority, pursuant to the requirement established under subsection VII of article 31 of this Law, it shall be understood in the sense that three years prior to his/her appointment said individual should have not held employment, position, directive function or should not have represented in any manner the interests of an Economic Agent that has been subject to one of the procedures established under the Federal Economic Competition Law published in the Federal Official Gazette on December 24th 1992, in force until the entry into force of this Executive order.

Fourth. The Commission's Board of Commissioners must adapt the Organizational Statute to the provisions established in this Executive order within a period that shall not exceed thirty days computed from its entry into force. In the process of the adaptation, the current Organizational Statute shall still be applied until this Executive order enters into force, where not opposed to this Law.

Fifth. Within thirty days following the entry into force of this Executive order, the Chamber of Deputies shall form a technical working group, with the objective of analyzing and formulating adjustment proposals to the criminal legislation, in the matters referred to in this Executive order. The working group shall present the corresponding proposals within the following sixty days of its installation.

Sixth. In a period no longer than six months after this Executive order enters into force, the Board of Commissioners shall publish the Regulatory Provisions referred to in article 12, subsection XXII, of the Federal Economic Competition Law.

Seventh. Within a one year period calculated from the entry in force of this Executive order, Congress shall conduct the adjustments to the legal framework in order to harmonize the aforementioned with the principles in matters of competition and free market access foreseen in article 28 of the Political Constitution of the United Mexican States. For that end, Congress may request the opinion of the Federal Economic Competition Commission.

505 Santa Fe Av. Cruz Manca
Mexico City, 05349
Phone: 01 800 COFECE 1
(01 800 263323 1)



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