



Comisión  
Federal de  
Competencia  
Económica

# Fighting Cartels: What We Mean by Deterrence

**Carlos Mena Labarthe**  
**Head of the Investigative Authority**

---

November 2016

- 1. DETERRENCE**
- 2. ELEMENTS OF DETERRENCE**
- 3. EFFECTIVE CARTEL ENFORCEMENT & OUTREACH**
- 4. FUTURE CHALLENGES IN MEXICO TO ACHIEVE EFFECTIVE DETERRENCE**



**1. DETERRENCE**

**2. ELEMENTS OF DETERRENCE**

**3. EFFECTIVE CARTEL ENFORCEMENT &  
OUTREACH**

**4. FUTURE CHALLENGES IN MEXICO TO ACHIEVE  
EFFECTIVE DETERRENCE**



---

# DETERRENCE

---

The ultimate goal of cartel enforcement is deterrence.

Deterrence levels are determined by two main factors:



*The level of the  
sanction*



*The probability that the  
conduct will be detected  
and punished*



A **significant risk** of detection will affect the cost-benefit analysis of entering into a cartel and will deter cartel conduct



1. DETERRENCE

2. ELEMENTS OF DETERRENCE

3. EFFECTIVE CARTEL ENFORCEMENT &  
OUTREACH

4. FUTURE CHALLENGES IN MEXICO TO ACHIEVE  
EFFECTIVE DETERRENCE

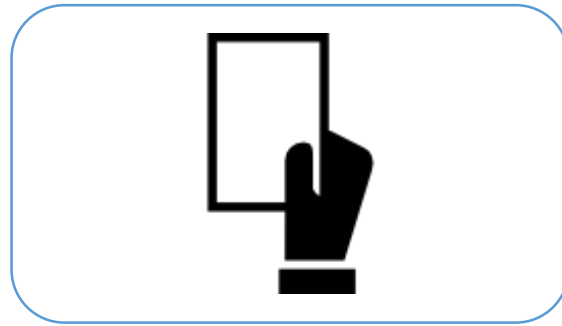


# ELEMENTS OF DETERRENCE

## Characteristics of severe sanctions:



Optimal level of fines



Sanctions on Individuals



Criminal Sanctions



## Fines in Mexico:

10% of the offender's  
income



Recidivism:  
Double of such amount-  
divestiture



# ELEMENTS OF DETERRENCE



## Sanctions on individuals

One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing.

**Fines**



**Disqualification penalties**

### Mexico:

Maximum fines equivalent to \$740,000 USD



Since 2014, a disqualification order of up to 5 years



## Criminal sanctions

Since cartels are considered the most harmful conduct, sanctioning them criminally has been an international trend

It also gives individuals incentives to self-report through a leniency application

### Mexico:

Criminal sanctions were established in 2011. Since 2014, individuals may receive from 5 up to 10 years of jail time



1. DETERRENCE
2. ELEMENTS OF DETERRENCE
- 3. EFFECTIVE CARTEL ENFORCEMENT & OUTREACH**
4. FUTURE CHALLENGES IN MEXICO TO ACHIEVE EFFECTIVE DETERRENCE





---

# EFFECTIVE CARTEL ENFORCEMENT & OUTREACH

---

In order for competition agencies to achieve deterrence, agencies must have an effective law enforcement system.

Investigative tools to detect and sanction cartels:



↑  
Effective cartel awareness programs may increase deterrence



# EFFECTIVE CARTEL ENFORCEMENT



## Leniency Program

It makes cartel membership less attractive as there is an **increased risk** that one of the cartel participants will report the existence of the cartel.

### Deterrence benefits



It facilitates the access to information that otherwise would be difficult to get.



It has a deterrent effect on the creation of new cartels.



Violators learn about the penalties they face and the rewards available if they confess.

## Mexico:

COFECE's leniency program is celebrating its 10th anniversary

To date, we have received a total of **114** applications, **51%** to international cartels and **49%** to national.



---

# EFFECTIVE CARTEL ENFORCEMENT

---



## On site searches

Useful whenever the threat of destroying information and evidence exists.

May prompt leniency applications.

### Mexico:

Since 2011 we can order and execute unannounced inspections. Before the 2011 reform, inspections were permitted but had several procedural locks.



## Monitoring

A combination of tools that could include both pro-active and reactive detection measures is viewed to be most effective.

The analysis of the markets as well as the behavior of the undertakings is part of the evidence that can be collected through intelligence.

### Mexico:

In 2014 the Intelligence Unit was created which is in charge of monitoring, analyzing different markets and continuous surveillance of markets.



# OUTREACH



Effective cartel awareness programs may have a deterrent effect, increase the number of cases reported and ultimately the number of cartels detected.

Climate of mistrust within cartels



Awareness efforts



Leniency Program

Agency takes an active role



Provide training to specific groups  
(Industry regulator and public procurers)

## Mexico:

COFECE and Mexican NCA's have used this tool to detect and deter anticompetitive practices within the public procurement field such as bid rigging.



1. DETERRENCE
2. ELEMENTS OF DETERRENCE
3. EFFECTIVE CARTEL ENFORCEMENT & OUTREACH
4. **FUTURE CHALLENGES IN MEXICO TO ACHIEVE EFFECTIVE DETERRENCE**



# FUTURE CHALLENGES IN MEXICO TO ACHIEVING EFFECTIVE DETERRENCE

## Imposing criminal sanctions on individuals

Criminal sanctions were incorporated in the Mexican legal system due to international experience.

### Coordination



## Coordination with the anticorruption system

Under the new anticorruption legislation enacted in 2015 there is a leniency program for bribery.

Anticompetitive conduct and corruption involve secret coordination between agents.



Both represent a great harm to society

## Damages and civil liability

It has been cornerstone of the enforcement in North America but in Mexico it has not been effective.

It would be impossible to calculate the sanction taking into account any restitution payment.

IMSS filed a damages claim against members of a pharmaceutical cartel.



**Thank you!**

**[cmena@cofece.mx](mailto:cmena@cofece.mx)**

