

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**DISCUSSION ON HOW TO DEFINE CONFIDENTIAL INFORMATION**

-- Mexico --

29 October 2013

*This note is submitted by Mexico to the Working Party No. 3 of the Competition Committee FOR DISCUSSION under Item IV at its forthcoming meeting to be held on 29 October 2013.*

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## DEFINITION OF CONFIDENTIAL INFORMATION

### – Mexico –

Submitted by Mexico's Federal Economic Competition Commission to the Working Party No. 3 on October 29, 2013

**1. Describe how your jurisdiction defines information which is to be treated as confidential in the course of investigations under your competition laws.**

1. Article 31 bis of the Federal Law of Economic Competition (FLEC or Law)<sup>1</sup> provides that parties must submit a summary, along with a list of information they consider confidential. The Federal Economic Competition Commission (Commission or CFCE for its acronym in Spanish) then reviews the parties' submissions and grants the confidential treatment if the information in question negatively impacts, upon disclosure, the market position of the submitting firm. Any information classified as confidential cannot be disclosed. Confidential information must be kept separated from public information and must be secured.

2. Moreover, the FLEC limits public disclosure of on-going investigations. It provides that during the proceedings, i) details of the cases cannot be made public except for the investigated conduct in the market, and that ii) parties cannot have access to the file until a Statement of Objections is issued. Also, it establishes that public statements can be made by the Commission only after the Plenum has taken a final decision and once the resolution has been notified directly to the parties involved.

3. In addition, the CFCE must observe the definitions and criteria established in the Federal Law of Transparency and Access to Government Public Information (LFTAIPG for its Spanish acronym)<sup>2</sup> regarding the confidentiality of personal information.

**2. Include definitions from constitutional and statutory provisions, as well as definitions included in regulations and government or agency practice.**

4. See response to question 2, paragraph 6.

**3. Does the definition of confidential information turn on the nature of the information (e.g., business secrets, personal information), the manner in which it is obtained by the agency, how the agency intends to use it, or some combination of the above?**

5. The definition of confidential information is given by the nature of the information and the manner in which it is obtained. The legal support for such classification can be found in the FLEC and in the LFTAIPG.

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<sup>1</sup> Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/104.pdf>

<sup>2</sup> Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf>

6. Article 31 bis of the FLEC defines the nature of the information in the following terms:

- *Reserved information*, is the information which can only be accessed by the parties involved in a competition proceeding;
- *Confidential information*, is the information that, upon disclosure to other parties involved in the proceeding (or its competitors), might harm its competitive position; information that contains personal data requires parties' approval to be disclosed; information that might compromise the parties' security or its disclosure is prohibited by law;
- *Public information* is that available at any public source or public records.

7. Regarding the manner in which the information is obtained, Article 31 bis also stipulates that information and documents obtained by the Commission during an investigation and through on-site searches, can be classified as reserved, confidential or public.

8. In consistency with Article 31 bis of the FLEC, Articles 13, 14, 18 and 19 of the LFTAIPG provide broader definitions to the terms in paragraph 6, as well as the manner in which this information could be obtained.

**4. Is the definition of confidential information used in competition investigations specific to competition enforcement, or does the definition apply generally to situations where the government acquires information from undertakings or individuals?**

9. As mentioned in questions 1 and 2, the investigated parties define what information should be treated as confidential. The confidential treatment is given if the information in question negatively impacts, upon disclosure, the market position of the submitting firm.

10. The above is consistent with Article 19 of the LFTAIPG, that stipulates that when submitting information, firms and individuals shall indicate which documents contain confidential information, reserved or commercial reserved, as long as it is in their right to classify it as such.

**5. What role does the source of the information have in determining confidentiality? Can the agency challenge the source's confidentiality claims or designations, and what is the process for doing so? In the event of disagreement, who is the final decision-maker, and when is this decision made?**

11. See responses of question 1 paragraph 1 and question 3 paragraphs 9.

12. In case the party disagrees with the challenge made by Commission's, it can file an "amparo"<sup>3</sup> arguing a violation of its hearing rights, legality and certainty of the process. Through the "amparo", the court is the final decision-maker in deciding whether or not the information may be considered as confidential. The court's final claim should be within the legal framework mentioned in the paragraphs above.

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<sup>3</sup> An *amparo* is a proceeding established in Articles 103 and 107 of the Mexican Constitution to provide all persons with protection against unconstitutional acts by government. It is available to any party who can raise a claim that he/she is being subjected to an unconstitutional law or that his/her due process rights are being infringed.

13. The court's decision can be given during the investigation process or after the Commission's decision. In case the information has been published by the Commission before the court's decision, the official that received the information from the party may be subject to administrative liability.