



Comisión
Federal de
Competencia
Económica

The leniency program in Mexico

Latin American and Caribbean Competition Forum

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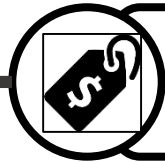
April 2016

1. CARTEL ENFORCEMENT



CARTEL CONDUCTS IN MEXICO

Agreements between competitors in order to:



Fix prices



Allocate markets



Restrict supply



Bid rigging



**Exchange information with one of the
aforementioned purposes or effects**



CHARACTERISTICS OF CARTEL CONDUCTS

Secret



Retaliation



**Harm to
consumer**



**Destruction
of evidence**



Monitoring



**Aware they
are illegal**



STRENGTHENING CARTEL ENFORCEMENT

2006

- The law established the Leniency Program.
- On-site inspections (Judicial order required).

2011

- Fines based on the turnover of infractors.
- Criminal penalties.
- Leniency program exempts from criminal responsibility.
- Unannounced on-site searches.

2014

- Strengthening of investigative powers.
- Disqualification of directives.
- Criminal sanctions for destroying evidence during dawn raids.
- Confidentiality of the initiation of investigations.



CURRENT SANCTIONS

Fines of up to 10% of annual turnover.

Undertakings

Maximum fines equivalent to 180,000 UMA's
(around \$740,000 USD)

Facilitators

On behalf or on account and order of undertakings:

- Ineligibility for executive positions during a maximum 5 year period.
- Maximum fines equivalent to 200,000 UMA's.
(\$820,000 USD)

Individuals

Criminal sanctions

- Jail time of 5-10 years.
- Fines of 1,000 and up to 10,000 UMA's.
(up to \$41,100 USD)



CRIMINAL ENFORCEMENT IN MEXICO

The criminalization of cartel conduct was established since 2011. However, in 2014, the sanctions were increased and new penalties were established.

- ❖ **5 up to 10 years jail time in cartel conducts**
- ❖ **From 1 to 3 years jail time for destroying documents or information during dawn raids.**

Investigations in criminal matters will **be initiated per request of the Investigative Authority**, upon the issuance of the Statement of Objections.

Criminal proceedings will be conducted by the Office of the Attorney General, not by the Commission.

Leniency applicants will not face criminal responsibility.

Additionally, the Commission may request the dismissal of a case when the administrative sanctions are complied with (among other requirements).



2. THE LENIENCY PROGRAM IN MEXICO



THE BENEFITS OF LENIENCY PROGRAMS



It allows to initiate investigations.



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



It generates cost savings during investigations.



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



THE LENIENCY PROGRAM IN MEXICO

Any economic agent that has:

Directly participated in a cartel or on behalf a company

Engaged or is engaging in a cartel

Any economic agent or individual that has:

Contributed, fostered, induced or participated in the commission of a cartel

May acknowledge such actions before the Commission and apply for the sanction reduction benefit established in the FECL (imposition of a minimum fine), provided that:

✓ It is the first

✓ It cooperates fully and continuously

✓ It terminates its participation

100% fine reduction + criminal immunity

Otherwise, it may provide additional evidence

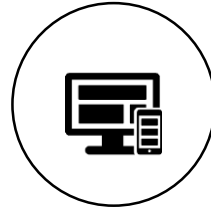


Possible fine reduction of 50%, 30% or 20% off the maximum established + criminal immunity

The Commission will protect the confidentiality of the identity of the Economic Agent.



HOW TO APPLY TO THE LENIENCY PROGRAM?



Voicemail: telephone number: 27896500, ext. 6632.
24 hrs
E-mail: inmunidad@cofece.mx



Application which includes:
Identity of applicant, expression of interest to apply to the program, contact information, market related info.



Meetings:
The applicant may request a meeting with the Head of the Investigative Authority prior to applying to the Program.



LENIENCY PROGRAM: MARKERS

- A marker is a **“place in line”** given to an applicant according to the date and time that the application was received.
- It guarantees the **chronological preference** of an application during a **limited period of time**.
- Provided that the applicant delivers sufficient information to COFECE which would allow for the **initiation of an investigation procedure or to assume the existence of a cartel conduct**.





WHEN TO APPLY?

Firms or individuals may apply to the Program **at any time before the investigation is initiated.**

When there is already an ongoing investigation, applications related to such investigation must be made **before the Investigative Authority concludes the investigation procedure.**

In order to obtain greater benefits, **parties are encouraged to apply as soon as they can.**



WHAT INFORMATION TO PROVIDE?

For instance, the information and documents that the applicant may provide are:

- A **detailed description of the goods or services**.
- A **description of the cartel conduct and an acknowledgement of the applicant's participation** in the conduct.
- **Evidence** such as agreements, memorandums, minutes, activity reports, correspondence or e-mails, telephone records, personal reports and signed declarations by the participants in the agreement.
- The **names of the individuals or undertakings**.
- The **duration, geographical scope and timeframe** of the cartel.
- Explanation of the **monitoring mechanisms**.
- A **glossary** of specialized terms.
- An indication of **any other relevant information** even if it is not available to the applicant but could be collected by the authority.
- The individuals or undertakings to whom the applicant **wishes to extend the benefits within its group**.



FULL AND CONTINUOUS COOPERATION

Terminate its participation in the cartel.

Abstain from destroying, falsifying or concealing information.

Uphold as confidential the information brought before the COFECE.

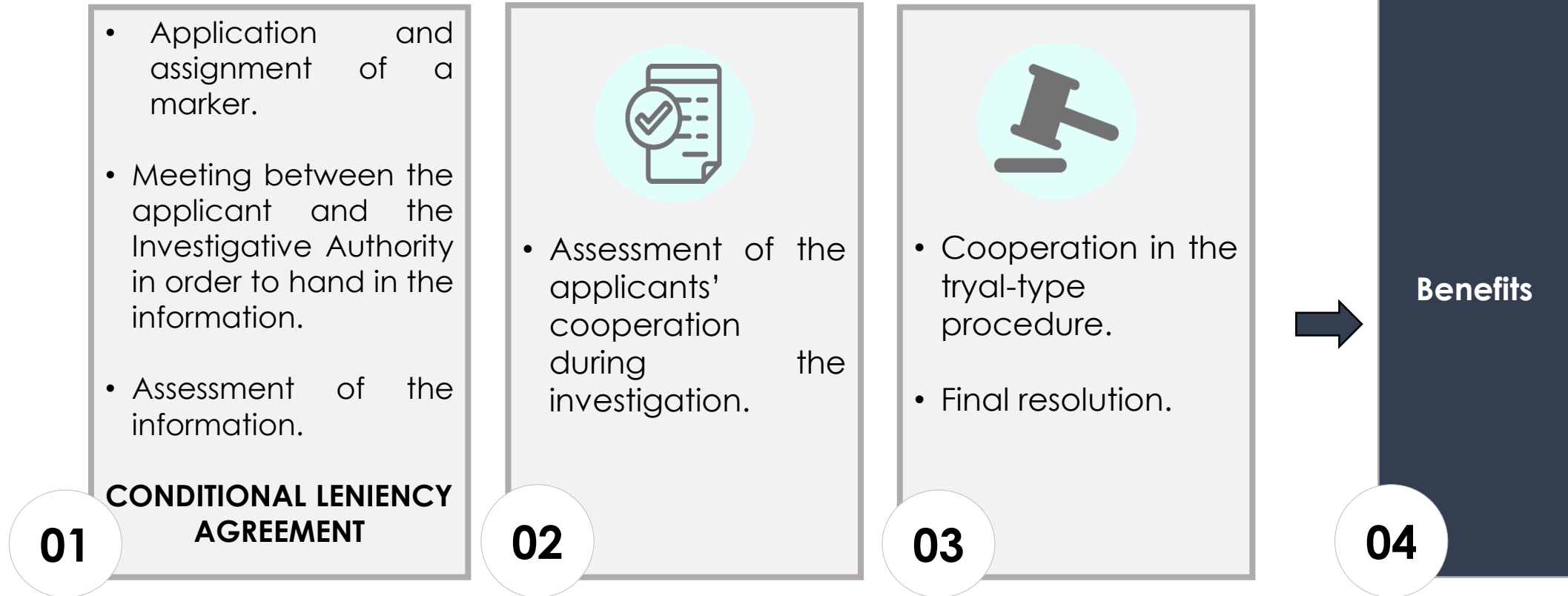
Deliver in due time the information and documents requested by COFECE during the investigation.

Make sure that individuals who participated in the cartel should cooperate during the investigation.

Cooperate during the proceedings.



LENIENCY PROCEDURE



THE BENEFITS OF THE LENIENCY PROGRAM

Allows the reduction of up **to virtually 100% of penalties or fines that would apply to the 1st applicant**, arising from the violation of the FECL.



It exempts from **criminal liability**. That is to say, **not being sanctioned monetarily or with deprivation of freedom for this matter**.



If the applicant requested immunity in another country, there is **no restriction for also applying before the Mexican competition authority**.



Subsequent applicants **may obtain a reduction of up to 50%, 30% or 20% of the amount of fines** that would apply them.



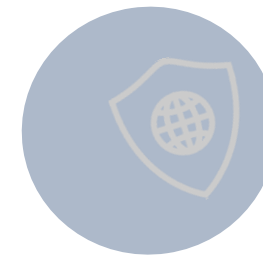
INTERNATIONAL CARTELS

In case of international cartels, COFECE **suggests to identify those jurisdictions in which the applicant has requested leniency.**




Identify the **possible materialization** of the conduct in national territory.

COFECE suggests the **issuance of a waiver.**



THE IMPORTANCE OF TRANSPARENCY AND CONFIDENTIALITY

The Courts have recently issued some criteria regarding confidentiality during leniency applications:

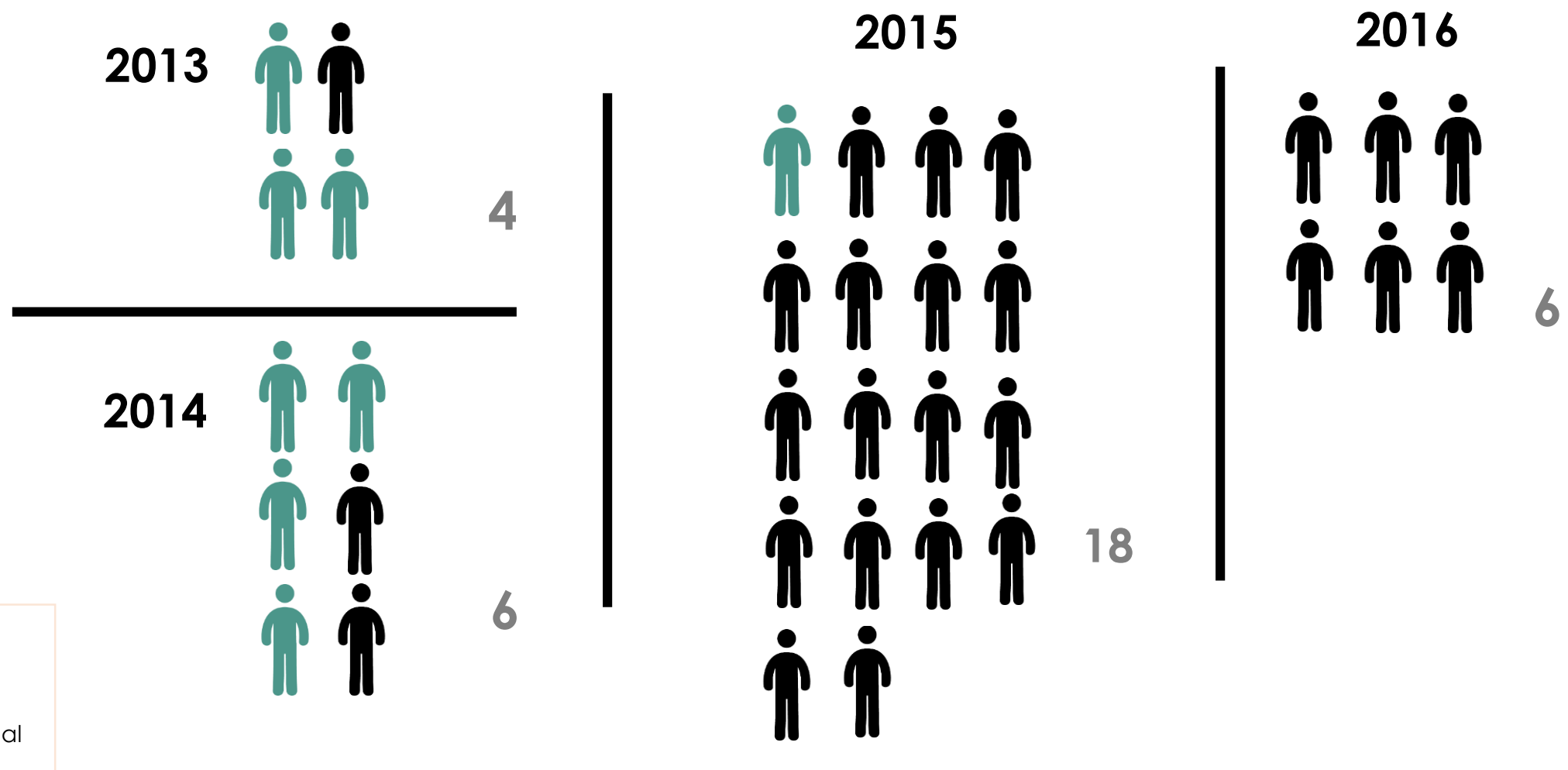
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- The information obtained as a result of the leniency program **must be considered confidential**, which obliges the Authority not to reveal the origin of the information.
 - This secrecy provides efficiency to the leniency programme.
 - Therefore, only the applicant can have access to the immunity file.



3. OUTCOMES AND LESSONS LEARNED



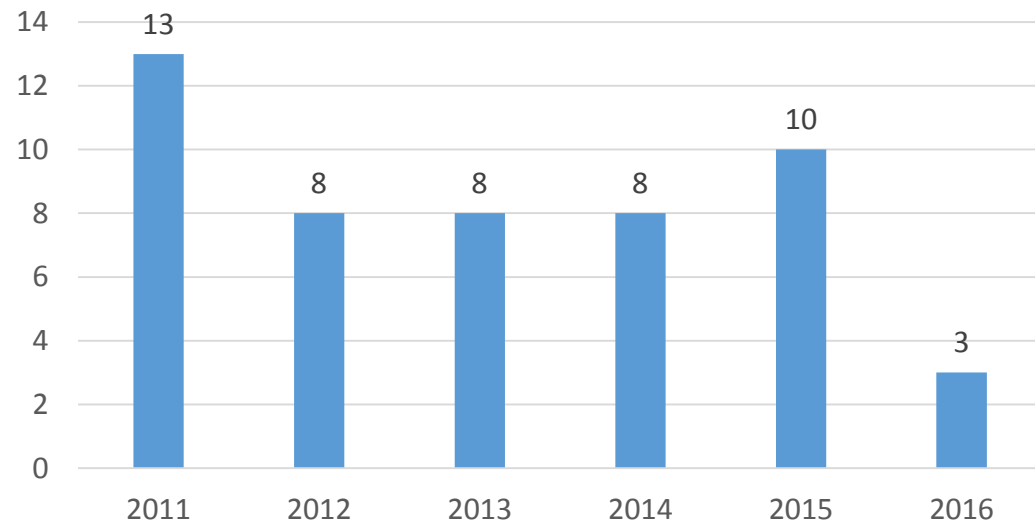
This year, the Commission has received 6 leniency applications



-  National
-  International

CARTEL INVESTIGATIONS

Investigations initiated per year



2016 ONGOING INVESTIGATIONS

SECTOR	INVESTIGATED MARKETS
Agricultural	Egg, corn
Transportation	Air, maritime
Healthcare	Polyethene, latex
Other services	Monitoring media services
TOTAL: 11 PUBLIC CASES	



4. INTERNATIONAL COOPERATION



INTERNATIONAL COOPERATION IN LATIN AMERICA



Proliferation of competition regimes in Latin America: **Cooperative relationships based on shared commitments**



Fight anticompetitive practices and realize the benefits of trade liberalization.



Communicating benefits of competition and the need for vigorous competition law enforcement.



Better understanding within the region of the harm of hard-core cartels and the role played by regulators.

Trends in recent years...

- **Increasing competition authorities powers** to sanction cartel activities
- **Increased anti-cartel enforcement** actions
- First use of **recently introduced corporate leniency programs**



Success stories based on:

- Use of **leniency programs** in Latin America.
- Increase of **international cooperation: guidelines, enforcement.**

Significant successes in detecting and prosecuting cartels:







- Benefits of active and effective anti-cartel enforcement in the region.



5. CHALLENGES



CHALLENGES

-  To monitor how the Leniency Program will develop as the damage claims and class actions issues unfold.
-  To make credible use of the sanctions, the imposition of fines and jail penalties.
-  To complement these mechanisms with proactive detection including monitoring and intelligence tools.
-  To continue carrying out advocacy efforts in order to spread the culture of competition.
-  To protect the identity of the applicant *vis à vis* third parties rights.
-  To watch the relationship that will develop between the Leniency Program and the criminal and anti-corruption procedures.



Thank you!

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