

REGULATORY PROVISIONS FOR THE QUALIFICATION OF INFORMATION DERIVED FROM LEGAL COUNSEL PROVIDED TO ECONOMIC AGENTS

Chapter I

General Provisions

Article 1. For the purpose of these Regulatory Provisions, in addition to the definitions contained in the Law and in the Organizational Statute, it is understood as:

- I. **Qualifying Committee:** body responsible of analyzing and issuing a decision in accordance to a Qualification Request for information that may be protected in accordance to articles 2 and 3 of these Regulatory Provisions.
- II. **Exclusion Procedure:** procedure through which digital files are excluded or physical information is returned as it was deemed protected by the Qualifying Committee in terms of these Regulatory Provisions.
- III. **Qualifying Procedure:** procedure in which the Qualifying Committee analyzes and resolves the Qualification Request presented by the Requesting Party.
- IV. **Requesting Party:** any person that submits a Qualification Request who owns the information subject to these Regulatory Provisions.
- V. **Qualification Request:** written request through which the Requesting Party states that the information provided or obtained by the Commission during an investigation procedure, or derived thereof, is subject to protection in terms of these Regulatory Provisions.

Article 2. In the procedures outlined in these Regulatory Provisions, the Commission does not consider nor grants evidential value to the information derived from communications between the Requesting Parties and their lawyers when it is proved that said communications which serve the purpose of obtaining external legal counsel between the Requesting Party and its lawyer. The Requesting Parties may expressly authorize the Commission to use the referred information. This consent must be in writing.

Article 3. If within the same document there is information as the one referred to in the previous article along with information not related to the Requesting Party's legal counsel, only the information subject to protection will be excluded in accordance with these Regulatory Provisions, complying at all times with the transparency and access to information obligations, pursuant to articles 124 and 125 of the Law.

Chapter II

Qualification Request

Article 4. The Qualification Request must be addressed to the Directorate General in charge of the ongoing procedure and be presented before the Commission's Filing Office. The Qualification Request must contain:

- I. Name, registered name or corporate name of the Requesting Party;
- II. Name of the legal representative and, if applicable, the document that certifies his or her personality;
- III. An address in Mexico City and authorized personnel to receive notifications;
- IV. The explicit mention that the document is a Qualification Request in terms of these Regulatory Provisions, the identification of the corresponding investigation case-file

number, as well as the act or proceeding through which the information was obtained by or provided to the Commission.

- V. A clear and precise description of the information that, according to the Requesting Party, should be subject to protection in accordance with the terms provided by these Regulatory Provisions;
 - a. When it involves an electronic file, the file-path must be provided, its extension, file name, format of the file and any additional information that enables for the localization and safeguarding of the file; as well as the type of file (contract, letter, e-mail, memorandum, report, others), name of the author, name of the recipient, date of the file, subject of the file, and its description.
 - b. When it involves a physical file, the type of document (contract, letter, e-mail, memorandum, report, others), as well as the name of the author, name of the recipient, date of the document, title of the document, subject and description of the file, and any other element that allows for association of the document to its content.
- VI. A brief description of the legal counsel contained in the communication subject to the Qualifying Request, as well as the reasons for which the Requesting Party considers the information should be protected under the terms of these Regulatory Provisions.
- VII. Credit that the person who provides the legal advice, pursuant to article 2 of these Regulatory Provisions, is legally authorized to practice the profession of lawyer or holds a law degree, in terms of the applicable legislation; and
- VIII. Any other elements the Requesting Party deems relevant.

The elements stipulated in sections V and VI must be submitted in a closed envelope.

Article 5. If during the handling of an investigation or in a proceeding derived from an investigation, a public official comes across information that might be subject to protection, pursuant to these Regulatory Provisions, he or she must inform the General Director in charge of the procedure, to implement the safeguards and protection measures established in article 7 of these Regulatory Provisions.

Within the five days following that in which the General Director in charge of the procedure was informed, he or she shall notify the holder of the information of this situation so that, within ten days after the notification, the holder may attend the Commission's offices in order to review the said information.

Once the information is reviewed, the holder of such information will have ten days to submit the corresponding Qualification Request which will be processed according to the terms provided in Chapter IV of these Regulatory Provisions.

If the holder does not appear before the Commission to review the information or if a Qualification Request is not presented within the assigned timeframe, it will be understood that the holder authorizes the Commission to use the referred information.

In the case foreseen in this article, the public official who came across the information will not be allowed to disclose it, neither shall he or she continue to intervene in the handling of the respective

proceeding, until the Qualification Request is resolved as unfounded or there is an implicit consent, as established by the previous paragraph.

Chapter III

On the Integration of the Qualifying Committee

Article 6. There shall be two Qualifying Committees, each consisting of three permanent members appointed by the Head of the Investigative Authority, when related to an investigation, or by the Technical Secretary, when related to a procedure under its charge resultant of an investigation. The members of the Qualifying Committee shall not depend hierarchically on each other and must meet with the following conditions:

- I. To serve as part of the Administrative Unit under which the procedure in question is being conducted;
- II. Not to be subordinated directly or indirectly to the General Director in charge of the procedure;
- III. Hold a hierarchical level of General Coordinator or superior;
- IV. Is legally authorized to practice the profession of lawyer or holds a law degree, in terms of the applicable legislation. The Head of the Investigative Authority and the Technical Secretary will appoint three substitute members for each Committee, as appropriate.

Pursuant to section II of this article, if a member of the Committee is directly or indirectly subordinated to the General Director in charge of the procedure, he or she shall be replaced by a substitute member for the respective Committee.

The Committee's deliberations require the vote of all its members and decisions will be made by a majority of votes.

The Committee may be assisted by staff from the Directorate General of Market Intelligence when technical forensic support is needed to locate the file and, when applicable, to exclude the referred file from the electronic mean in which it is hosted.

Chapter IV

On the Procedure for the Handling of a Qualification Request

Article 7. Once a Qualification Request is received, the necessary measures to safeguard and protect the information will be implemented, depending on the characteristics of the information, so that no public official apart from the Qualifying Committee can access the information before it is resolved if it qualifies as protected in accordance with these Regulatory Provisions. Among the safeguarding measures that may be implemented are the packaging of the information, its storage in a safe place and kept by public officials that are not part of the investigation or proceeding, among others.

The submission of the Qualification Request will not suspend the timeframes for the investigation, or the proceeding resultant of an investigation.

Article 8. The Qualifying Committee must abstain from disclosing all information that is subject to a Qualification Request, as the Committee is the only body authorized to analyze the information exclusively to resolve Request for Qualification submitted. Failure to comply with this provision will

result in the applicable sanctions in terms of the last paragraph of article 55 of the Organizational Statute.¹

Article 9. The Qualification Procedure must be substantiated as follows:

- I. Within the next five days following the reception of the Qualification Request at the Commission's Filing Office, the General Director in charge of the procedure will forward the Qualification Request along with its accompanying elements to the Head of the Unit in which the investigation or procedure resides.
- II. Within the next five days following the reception by the Head of the Investigative Authority or the Technical Secretary of the Qualification Request and the elements that accompany it, he or she shall issue an agreement transferring the Request to the Committee, with the purpose of applying the Qualification Procedure. Said agreement will be notified personally to the Committee and to the Requesting Party. When the information has been put under the safeguard of the Directorate General of Market Intelligence as a result of a dawn raid, the Committee will request its remission.
- III. The Committee will analyze the Qualification Request and within ten days from the notification of the official document referred to in the previous fraction (which may be extended for ten additional days, when duly justified), it will issue an agreement which will:
 - a) Admit the Qualification Request and assign a date and time for the session of the Qualifying Committee, during which it will be determined whether the Qualification Request is grounded or not; or
 - b) Caution the Requesting Party on a single occasion, when the Qualification Request is missing any of the requirements established on article 4 of these Regulatory Provisions, in order for the Requesting Party to complete or clarify the Request within a term no greater than five days, which may be extended once for one equal term, when duly justified.

If the five days expire and the caution has not been addressed or the requirements for the Qualification Request foreseen in Article 4 of these Regulatory Provisions have not been fulfilled, the Request will be deemed as not submitted, maintaining the right to submit a new Qualification Request on one more occasion.

The agreements mentioned in this section will be notified personally.

The session referred to in this article will be held within twenty days following the date in which the notification of the admission agreement takes place. This deadline can be extended on a single occasion for an equal term, when duly justified.

- IV. Once the Qualification Request has been analyzed, the Qualifying Committee will deliberate in a collegiate manner and decide whether the request is founded or unfounded for each file or document analyzed, as follows:

¹ Article 55 of the Organizational Statute of the Commission states that public officials that fail to maintain confidentiality will be subject to civil, administrative and criminal sanctions.

- a) In case that the Qualifying Committee determines that the information qualifies as protected in terms of these Regulatory Provisions, the corresponding safeguarding measures and the Exclusion Procedure referred to in Chapter VI of these Regulatory Provisions will be ordered;
 - b) In the case that the Qualifying Committee determines the information is not subject to protection under the premises stipulated in these Regulatory Provisions, an order will be issued for its referral to the Directorate General in charge of the proceeding to utilize it, without prejudice that the Commission exercised the corresponding enforcement measures to determine if the Requesting Party incurred in false declarations, in terms of article 127, section III, of the Law.
- V. The decision taken by the Qualifying Committee will be notified personally to the Requesting Party within the following ten days of the corresponding session.

The General Director in charge of the procedure as well as those public officials assigned to that Directorate will not have access to the information indicated by the Requesting Party, until it is resolved that the information referred to in the Qualification Request is not subject to the protection scenarios established in these Regulatory Provisions.

Article 10. The decision referred to in section V, Article 9 of these Regulatory Provisions, must contain, at least:

- a. Name, registered name or corporate name of the Requesting Party.
- b. Time, day, month and year of the session of the Qualifying Committee.
- c. Identification information of the corresponding investigation or procedure, as well as the act or diligence through which the Commission obtained the information.
- d. Name and identification information of the public officials who were part of the Qualifying Committee.
- e. The analysis of the Qualification Request and its corresponding decision; and
- f. The safeguarding measures and initiation of the Exclusion Procedure, when applicable, and the referral of the information to the General Director in charge of the procedure.

Chapter V

Of the procedure during on-site inspections (dawn raids)

Article 11. During the on-site inspections stipulated in article 75 of the Law, raided Economic Agent who wishes to submit a Qualification Request, is subject to section V of said article, in accordance with the following:

- I. During on-site inspections, the raided party or person with whom contact has taken place, may request the protection of information, per file or document collected by the Commission under the terms of these Regulatory Provisions. This request will be included in the minute of the on-site inspection. In this case, the public officials authorized to conduct the diligence will implement the necessary safeguarding and packaging measures, in the presence of the raided party or with whom contact has taken place. This will also be included in the minute of the on-site inspection.

This information will be safeguarded by the Directorate General of Market Intelligence so that the measures foreseen in article 7 of these Regulatory Provisions can be enacted.

- II. The raided party will be informed of the requirement to present the Qualification Request within the following twenty days after the inspection is concluded, and the corresponding minute has been issued. This timeframe may be extended once for an equal period, when duly justified.

If the inspected party does not request the protection of the information obtained during the inspection and subsequently considers that there is information that should be protected under these Regulatory Provisions, it must submit a Qualification Request within the timeframe referred to in the previous paragraph. Once the Qualification Request is presented, the procedure foreseen on Chapter IV of these Regulatory Provisions will be initiated.

If the inspected party requires a copy of digital information obtained during the inspection to present the Qualification Request, the timeframe referred to in this section will start running after the copy of the information has been received by the party. The copies must be requested to the Commission within the following five days after the inspection is concluded, and the corresponding minute is complete.

Chapter VI

Exclusion Procedure

Article 12. In case the Qualifying Committee deems the Qualification, Request founded, the following will proceed:

- I. In case of physical information, an order for its return to the Requesting Party will be issued. All safeguarding measures for the information will be maintained at all times until the Requesting Party collects it at the Commission's Filing Office.
- II. In the case of electronic files obtained during on-site inspections, the Qualifying Committee will order the exclusion of said file, which will be attested in writing.

*This is a courtesy translation produced by the Federal Economic Competition Commission
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.*