

**REGULATORY PROVISIONS FOR THE IMMUNITY AND SANCTION REDUCTION  
PROGRAM FORESEEN IN ARTICLE 103 OF THE FEDERAL ECONOMIC  
COMPETITION LAW**

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**Article 1.** The purpose of the present instrument is to establish the Regulatory Provisions of article 103 of the Federal Economic Competition Law.

**Article 2.** For the purposes of these Regulatory Provisions, the definitions established by the Law and by the Statute are applicable.

**Article 3.** The procedure to request the conditional benefit referred to in article 103 of the Law shall be processed in accordance with the following:

I. The interested party must make its application by voice mail to the telephone number and/or email address that the Commission shall indicate on its website for such purpose, in which it will be specified:

- a. The identity of the interested party;
- b. The express manifestation of its willingness to obtain the benefit;
- c. Sufficient data for establishing contact with the interested party or its representative regarding the request, at least, name of natural or legal person, telephone and/or email, address in Mexico City to hear and receive notifications, and
- d. The market or markets, including the goods and/or services subject of the application.

It is understood by interested party as any economic agent who has incurred or is engaging in an absolute monopolistic practice; who participates or has participated directly in absolute monopolistic practices on behalf of, or on the account and order of legal persons; and the economic agent or individual who aids, abets, induces or has aided, abetted or induced the commission of absolute monopolistic practices.

An application that is processed by means other than those specified above shall be considered as not submitted, without prejudice to any subsequent submission in accordance with the means hereby indicated.

The communications that the interested party makes later will be made directly with the administrative unit responsible for processing the sanction reduction benefit, without passing through the Commission's filing office, and with its corresponding code number.

II. Once the message has been received by any of the valid means indicated above, the area responsible for processing the sanction reduction benefit will issue an agreement in which it will order to inform the assigned code number to the interested party. Within the five working days from the date of receipt of the application, the applicant will be informed, via email of the assigned code number, the day, time and place to attend a meeting, in order to deliver the information and documents in the applicant's power.

In the event that in the meeting the interested party acts through a legal representative, the latter must accredit its personality in accordance with the Law and its Regulatory Provisions.

The interested party may request, on one occasion only, the postponement of the date for delivery of the information and documents in its possession, at least three working days before the holding of the meeting, for duly justified reasons.

The interested party must identify the legal persons that form part of its economic interest group that have incurred or are engaging in the absolute monopolistic practices and the individuals that have directly participated in absolute monopolistic practices, in its representation or its behalf and order, of which is aware, that may aspire to receive the same corresponding sanction reduction benefit. The same shall apply to the economic agent or individual who has aided, abetted, induced or participated in the commission of absolute monopolistic practices. Said persons will be subject to the same obligations as the applicant. In this case, the interested party must appoint a common representative, specifying the address in Mexico City for hearing and receiving notifications, its telephone and/or email address. All notifications made to the common representative or the persons authorized by the common representative shall be understood to be valid for the represented.

In case of failing to attend the meeting on the date and time indicated, the Investigative Authority, on the following day, will cancel the application and assigned code, thus losing the priority it had over other applicants. The foregoing is without prejudice to the possibility of submitting a new application.

III. The Investigative Authority must process applications in the order in which they were submitted and shall not evaluate any other before it has decided on a previous one.

IV. Within a period of forty working days, counted from the day following the conclusion of the meeting referred to in subsection II, the Investigative Authority shall review the information provided in order to determine whether it complies with the provisions of article 103 of the Law. This period may be extended up to four times, which shall be personally notified to the applicant.

During this period, the applicant shall continue to provide elements in its possession, and which may be available to it. The Investigative Authority may request clarifications of the information submitted, which should be provided by the applicant.

V. If the information provided by the applicant complies with is the provisions of article 103 of the Law, the Investigative Authority shall issue a conditional immunity agreement in which it shall indicate the chronological order of its request and, if applicable, the maximum percentage of the reduction of the fine allowed. Otherwise, will inform that the information provided by the applicant does not comply with the provisions of article 103 of the Law and will return the information, thus the Investigative Authority will cancel the application and the assigned code. In the latter case, the applicant will lose the priority it had over others, therefore the following in chronological order will occupy the position of the applicant whose code was cancelled, after fulfilling the requirements established in this article.

VI. The agreements issued in accordance with the above subsection shall be personally notified to the applicant. Where there is an investigation open, the conditional immunity agreement shall be granted in accordance with the markets being investigated. Otherwise, it shall be granted on the basis of the information provided by the applicant and/or that obtained by the Commission in respect of the market object of the application.

The information provided will only be used for the purposes established in article 103 of the Law, except for that established in article 11 of these Provisions.

**Article 4.** The benefit foreseen in article 103 of the Law can be requested only before the issuance of the agreement for the closure of the investigation.

**Article 5.** The individuals who receive the benefit established in article 103 of the Law will not be disqualified in terms of article 127 of the Law.

**Article 6.** For the purposes of subsection II, article 103 of the Law, full and continuous cooperation will be understood as the following, but not limited to:

A. During the investigative stage:

I. Recognize participation in the reported absolute monopolistic practice;

II. The termination of participation in a reported, recognized and investigated absolute monopolistic practice. The Investigative Authority may require the applicant not to immediately terminate its participation in the conduct in order to obtain information and documents it deems necessary to carry out its investigation, for which purpose an agreement shall be issued stating such situation.

III. Maintain confidentiality, except for justified reasons, of the information that was given to the Commission in the processing of its request. The Investigative Authority shall determine the cases in which there is justified cause, upon request of authorization of the applicant to not keep confidentiality of the information; without prejudice to the second paragraph of article 12 of this Regulatory Provisions.

IV. The delivery, within the indicated deadlines, of all information and documents that are required in the investigations, through the different investigative tools that the Investigative Authority has at its disposal;

V. Allow and cooperate in the proceedings and actions performed by the Investigative Authority;

VI. Carry out actions within its reach to ensure cooperation of natural or legal persons referred to in subsection II, fourth paragraph of article 3 of these Provisions;

VII. Not to destroy, falsify or hide information, and

VIII. Report all possible absolute monopolistic practices in which there has been participation or is participating in the market referenced to in article 3, subsection VI of these Provisions, of which it is aware;

B. During the trial-like procedure:

I. Do not deny its participation in the conduct for which the benefit was requested;

II. Provide as evidence the supervening information and/or documents, whose processing is useful for the trial-like procedure;

III. Allow the Technical Secretariat to carry out proceedings and actions; and

IV. Not destroy, falsify or hide information.

The obligations of full and continuous cooperation shall apply to both the applicant and the legal persons that are part of the economic interest group that have incurred in the absolute monopolistic practices and to the individuals who have participated directly in the absolute monopolistic practices, in their representation or at their behalf and order. The same shall apply to the economic agent or individual who aided, abetted or induced the commission of absolute monopolistic practices.

When from the analysis of the actions carried out by the applicant, it is determined a lack of cooperation of identifiable natural persons to whom the benefit had been extended, these persons may be excluded from the benefit while maintaining it for the rest of the beneficiaries. Where, on the contrary, the natural persons to whom the benefit has been extended have cooperated and the applicant has not cooperated, the natural person may be considered as the subject of the benefits as if it he has applied for them himself.

**Article 7.** During the investigation, with the prior authorization of the Investigative Authority, instead of presenting documentation, the applicant may provide oral statements consisting of a detailed description of the circumstances of time, manner and place in which the absolute monopolistic practices were carried out, this will be established in an exact manner in the respective minute, which shall be signed by the applicant or its legal representative. The rest of the elements that support what is indicated by the applicant must be presented in writing and/or physically.

**Article 8.** When issuing the resolution to the trial-like procedure, the Board of Commissioners may revoke the conditional benefit of the sanction reduction in the event of the applicant's failure to comply with obligations stipulated in article 103 of the Law.

In the event that the conditional benefit of the sanction reduction is revoked from an applicant, subsequent applicants shall maintain the positions they would have obtained in accordance with the chronological order of their application, and therefore these positions shall not be moved.

**Article 9.** When the applicant or the persons referred to in the penultimate paragraph of article 6 do not comply with the obligations established in article 103 of the Law and article 6, section A of these Regulatory Provisions during the investigative phase, the Investigative Authority shall inform them that it will recommend to the Board of Commissioners that the benefit referred to in article 103 of the Law not be granted. For such purposes, the Investigative Authority shall inform the Board of Commissioners of the elements that demonstrate the lack of cooperation of the persons indicated, as well as the repercussions that such situation had for the corresponding investigation.

The report referred to in this article may be carried out from the time the Investigative Authority issues the statement foreseen on article 78, subsection I of the Law and until the end of the period for presenting allegations.

**Article 10.** Once the trial-like procedure is initiated and until the integration of the file, in case the Technical Secretary observes actions or omissions that could imply a failure to comply with requirements referred to in article 103 of the Law and article 6, section B of these Regulatory Provisions, during the trial-like procedure shall issue an agreement by which the concerned economic agent is informed of this situation, so that the latter may, within the following ten working days, counted from the moment the agreement is notified, make clarifications or actions to remedy the breach, in case it is rectifiable.

In the event it is not remedied the non-compliance indicated in the previous paragraph, the Board of Commissioners, when issuing its resolution, may revoke the conditional benefit from the corresponding economic agent.

**Article 11.** In case the Commission revokes the conditional benefit of the sanction reduction for failure to comply with the obligations established in article 103 of the Law, the Commission may use the information provided by the applicant in the investigation, and, if applicable, in the corresponding resolution.

**Article 12.** The Commission shall maintain the identity of the applicants confidential. The Investigative Authority, at all times, shall maintain under safekeeping the integrated file of the procedure relating the sanction reduction benefit, which may be consulted by the applicant.

The applicant may request to the Investigative Authority or the Technical Secretary, as the case may be, to disclose its adherence to the benefit provided in article 103 of the Law. The Investigative Authority or the Technical Secretary, as applicable, may authorize that such adherence be made public where it does not impede the exercise of the Commission's powers.

**Article 13.** For issuance of the resolution referred to in the second paragraph of article 103 of the Law, and if the Board of Commissioners considers it appropriate to reduce the corresponding sanction, it will take into account the chronological order of the application presented and compliance with the obligations referred to in articles 103 of the Law by the applicant throughout the investigation and in the trial-like procedure.

#### **TRANSITORY ARTICLES**

**FIRST.** This Agreement shall enter into force on the day following its publication in the Federal Official Gazette.

**SECOND.** The procedures related to the sanction reduction benefit that are pending at the entry into force of this agreement, shall be conducted in accordance with the Regulatory Provisions in force at the time of their initiation.

**THIRD.** In the event that in an ongoing investigation, applications for the sanction reduction benefit are submitted after these Regulatory Provisions enter into force, these shall be processed in accordance with the Regulatory Provisions in force at the initiation of the investigation.

*This is a courtesy translation produced by the Federal Economic Competition Commission.<sup>1</sup>*

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<sup>1</sup> It is worth noting that, according to the *Good practices for incentivizing leniency applications* from the ICN Cartel Working Group, the term leniency refers to the "...system of immunity and reduction of fines and sanctions (depending on the jurisdiction) that would otherwise be applicable to a cartel participant in exchange for reporting on illegal anticompetitive activities and supplying information or evidence. Leniency programs cover both the narrower defined leniency policy as well as other elements supplementing the policy in a wider environment." In this sense, COFECE's Immunity and Sanction Reduction program is part of the Commission's Leniency system which also includes the benefits of exemption, sanction reduction and fine reduction foreseen on Chapter IV of the Federal Economic Competition Law.