

recommendations  
for compliance with  
the Federal Economic  
Competition Law  
addressed to the  
private sector

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This work is a tool for the public to learn about the basic aspects of Economic Competition Law. It is not an official interpretation of the Federal Economic Competition Commission (the Commission or COFECE) with respect to the Federal Economic Competition Law, the Regulatory Provisions of the Federal Economic Competition Law or any other legal provision applicable to the matter, therefore it may not be used to bind the Commission for any reason whatsoever. COFECE invokes its power to apply the legal provisions on the matter of economic competition without attending this present document.

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## 1. Introduction

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### 1.1 What is competition?

The effort made by two or more individuals, businesses or companies, to increase their market share, by offering more products' choices and of higher quality services at better prices.

### 1.2 Benefits of competition

When there is a competitive environment, the success of each company is determined by its ability to conquer consumer preference. Therefore, competition in the markets facilitates and stimulates a greater supply and diversity of products and services, at lower prices and with higher quality. In this sense, competition increases the purchasing power and welfare of consumers. It also allows companies to access inputs under competitive conditions, encourages them to innovate and be more productive. For all the above, competition implies a virtuous circle that generates economic growth and development.

**Figure 1. Benefits of competition.**



### 1.3 Competition policy

Competition policy consists of a series of instruments used by the State to protect and promote the efficiency of markets for the benefit of the consumer. Such policy is based, mainly, on the Federal Economic Competition Law (LFCE per its acronym in Spanish) and the institution that applies it, the Federal Economic Competition Commission (COFECE or Commission), which has a series of corrective, preventive and advocacy powers. These are summarized in Figure 2.

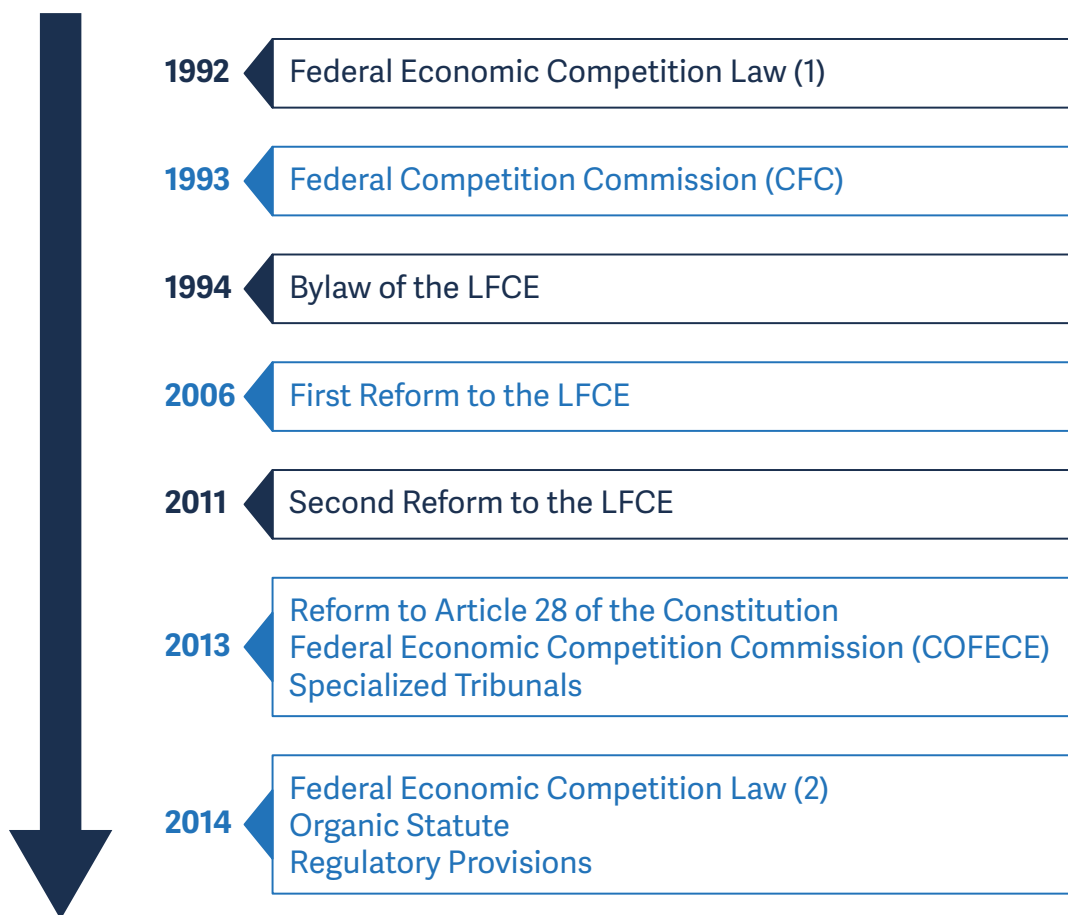
**Figure 2. Powers of the competition authority.**

<b>CORRECTIVE</b>
<ol style="list-style-type: none"><li>a. Investigates and, where applicable, sanctions anti-competitive practices.</li><li>b. Investigates markets with competition problems:<ul style="list-style-type: none"><li>• Orders the elimination of barriers to competition.</li><li>• Issues regulatory guidelines for access to essential facilities.</li></ul></li><li>c. Issues resolutions on competition conditions to establish or deactivate tariff regulation.</li><li>d. Files constitutional controversies (Article 28 of the Constitution).</li><li>e. Issues opinions on anti-competitive restrictions included in the current regulatory framework.</li></ol>
<b>PREVENTIVE</b>
<ol style="list-style-type: none"><li>a. Prevents the emergence of anti-competitive concentration:<ul style="list-style-type: none"><li>• Evaluates the characteristics of concentrations.</li><li>• Issues opinions on the granting of tenders, concessions and permits.</li></ul></li><li>b. Issues opinions on proposals of legal norms.</li></ol>
<b>ADVOCACY</b>
<p>Promotes the culture of competition and the application of principles of competition amongst:</p> <ul style="list-style-type: none"><li>• Public authorities</li><li>• Private Sector</li><li>• Academic Institutions</li><li>• Civil Society</li></ul>

## 1.4 Background

In Mexico, economic competition is an asset protected by article 28 of the Constitution. Although the first law of this matter dates back to 1992, the system was recently strengthened through a constitutional reform (2013) and the issuance of the new Federal Economic Competition Law (2014) (LFCE or Law). As a consequence of these events, the country has passed through an important process of institutional strengthening. The main milestones in the evolution of the institutional and legal framework for competition are shown in Figure 3.

**Figure 3. Evolution of the institutional and legal framework for competition in Mexico.**



## 1.5 Aim of the document

In light of this new regulatory scenario, COFECE issues this document with the aim of making recommendations and facilitating compliance with the LFCE and related regulations, aimed at companies, professionals, business chambers and professionals' associations. Henceforth, the term **organization** will be used to refer to any of these agents.

Attempting the strict compliance with the LFCE not only benefits society, but also allows organizations to decrease risks of legal and economic contingencies that could damage their finances and reputation. Moreover, it may help prevent individuals who are members of the organizations from facing administrative, civil and even criminal sanctions.

This effort by COFECE follows international best practices. Various agencies (governmental and non-governmental), emphasize the importance of respecting the legal frameworks on competition to ensure efficient functioning of markets and generate economic benefits to society. For example, the Organisation for Economic Co-operation and Development (OECD), in its OECD [Guidelines for Multinational Enterprises](#), includes a section (chapter X) on this subject, while the International Chamber of Commerce has published an antitrust compliance guide for business people of all countries. Likewise, other competition authorities generate similar documents for their respective jurisdictions.<sup>1</sup>

## 1.6 Structure of the document

Hereafter the following topics will be addressed:

- a. Aspects of the LFCE that all economic agents should be aware of.
  - General aspects of the Law, prohibited practices and legal consequences.
  - Examples of cases and sanctions imposed.
  - Compliance with the LFCE such as (i) a vital element for the good name and reputation of an economic agent, and (ii) a factor that generates legal certainty.
- b. Recommendations for the implementation of an effective compliance program.
- c. Resources offered by the LFCE for those who have incurred in breaching practices, for those affected for anticompetitive conduct and for those who have doubts regarding the scope or interpretation of the regulations.
- d. Useful references related to COFECE issued by other authorities and organizations.

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1. Section 5.2 of this document includes a list of references on this subject.



## **2. Aspects of the LFCE that all economic agents should be aware of**

### **2.1 Overview of the LFCE**

The LFCE aims to promote, protect and guarantee free market access and economic competition; as well as prevent, investigate, effectively prosecute, severely sanction and eliminate monopolies, monopolistic practices, unlawful concentrations, barriers to free market access and economic competition, and other restrictions to the efficient functioning of the markets.

This Law is applicable to all areas of economic activity and is to be observed in the Mexican Republic. All economic agents are subject to the compliance and observance of the LFCE, understanding as an economic agent any individual or corporation, both for-profit and non-profit, offices and entities of the public administration (in its three levels), state-owned and autonomous organizations, associations, business chambers, professional associations, trusts, or any other form of participation in economic activity.<sup>2,3</sup>

Hereafter, the term **Economic Agent** will also be used to refer to the organizations defined above.

### **2.2 Practices prohibited by the LFCE in matters of competition**

According to the LFCE there are two types of sanctionable monopolistic practices: the absolute monopolistic practices and the relative monopolistic practices. In addition, the Law identifies unlawful concentrations as a prohibited conduct.

#### **2.2.1. Absolute monopolistic practices (collusion)**

Absolute monopolistic practices are agreements between competing economic agents, which have as their object or effect:

- manipulating or fixing the price of sale or purchase;
- restricting the production or purchase of goods;
- allocating customers or markets;
- coordinating offers in tenders or bids; or
- exchanging information with the object or effect of carrying out any of the above conduct.

Liable economic agents or natural persons may be sanctioned for:

- a. carrying out or having participated directly or indirectly in the practice, or
- b. having assisted, propitiated or induced said practice.

Absolute monopolistic practices, also called “collusive” or economic cartels, require the existence of contracts, agreements, arrangements or combinations between competitors, which do not necessarily have to be in writing. The authority can infer these acts and prove their existence through indirect evidence.

It is also important to remember that the LFCE sanctions the object (purpose) as well as the effect (consequence). For further reference on absolute monopolistic practices, you may consult the document ‘Economic competition tools’ issued by COFECE,<sup>4</sup> as well as articles 53 of the LFCE and 3 of the Regulatory Provisions (DR, per its acronym in Spanish).

Contact between competitors generates the greatest risk on matters of economic competition. Therefore, in this matter it is recommended to exercise maximum prudence and care.

### 2.2.2. Relative monopolistic practices (abuse of dominant power)

Relative monopolistic practices are those actions carried out by one or various companies or Economic Agents with substantial market power, with the purpose or effect of:

- unduly displacing an Economic Agent
- impeding its access to a market, or
- establishing exclusive advantages in favor of one or several Economic Agents.

Substantial market power is defined, in general terms, as the ability to fix prices or restrict supply without competitors being able to counter said power.

Only the conducts indicated in Figure 4 can be considered relative monopolistic practices.

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4. Document available in Spanish.

**Figure 4. Conducts that can be considered relative monopolistic practices.**

**MARKET SEGMENTATION**

The setting, imposition or establishment between economic agents that are not competitors of each other, of the exclusive commercialization or distribution of goods or services by reason of subject, geographic locations or specific periods. Likewise, the imposition of the obligation not to manufacture or distribute within a given period.

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**RESALE PRICE MAINTENANCE**

The imposition of the price or other conditions that a distributor or supplier must comply with when providing, commercializing or distributing goods or services.

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**EXCLUSIVITIES**

The sale or purchase subject to the condition of not using, acquiring or selling the goods or services of a third part.

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**TIED SALES**

The sale conditioned upon the purchase, acquisition, sale or provision of another good or service normally different or on a reciprocal basis.

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**REFUSAL TO DEAL**

The unilateral action of refusing to sell to determined persons available goods or services normally offered to third parties.

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**BOYCOTT**

The concertation among several economic agents or the invitation to them to exert pressure on any economic agent or to refuse to sell or acquire goods or services from said agent.

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**PREDATORY PRICING**

The sale below costs accompanied by elements that allow to presume the possibility to recoup the losses through future price increases.

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**LOYALTY DISCOUNTS OR CONDITIONED SALES**

The granting of discounts, incentives or benefits to a buyer under the condition not to use, acquire or sell the products or services of a third party; or conditioning the sale on the requirement of not providing or selling these products to third parties.

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**CROSS-SUBSIDIES**

The use of profits obtained from the sale or provision of a good or service to finance the losses that result from the sale or provision of another good or service.

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**PRICE DISCRIMINATION**

The establishment of different prices or conditions for selling or purchasing from different buyers or sellers in equivalent circumstances.

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### **RAISING RIVALS' COSTS**

The action of one or several economic agents with the purpose or effect of directly or indirectly increasing costs, hindering the production process or reducing the demand faced by another economic agent.

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### **OBSTACLES TO THE ACQUISITION OF AN ESSENTIAL FACILITY**

The refusal, restriction to access or access under discriminatory conditions to an essential facility.

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### **MARGIN SQUEEZE**

The reduction of margins between the price of accessing an essential facility and the final price of the good or service offered to the final consumer who requires said facility for its production.

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*The preceding definitions have an informative purpose. To learn the exact definition, consult Article 56 of the LFCE.*

This type of conducts can have two very different results: either constituting an efficient commercial strategy, or harming competition. Therefore, a practice of this nature will not be considered unlawful if the economic agent demonstrates that it generates efficiency gains and has a favorable impact on the process of competition and free market access overcoming its possible anticompetitive effects, and results in improvement of consumer welfare.

For further reference on absolute monopolistic practices, you may consult the document named '*Economic competition tools*' issued by COFECE, as well as articles 54 through 56 of the LFCE and 4 through 9 of the DR.<sup>5</sup>

#### **2.2.3. Unlawful concentrations**

In terms of the LFCE, a concentration is the merger, acquisition of control or any other act by virtue of which companies, associations, shares, partnership interests, trusts or assets in general are joined, that are carried out among competitors, suppliers, customers or any other Economic Agents.

Generally, companies concentrate with the objective of expanding markets and increasing their efficiency, which might bring benefits for consumers. However, some concentrations might generate anticompetitive structures. Given the above, article 62 of the LFCE establishes as unlawful those concentrations whose purpose or effect is to hinder, diminish, damage or prevent free market access and economic competition.

In order to prevent concentrations that could have the aforementioned effects, article 86 of the LFCE indicates those concentrations that must be notified to COFECE before being carried out in accordance with specific thresholds, which are detailed in Figure 5. COFECE has the powers to authorize, not authorize or

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5. Document available in Spanish.

subject to compliance of conditions the notified transactions.<sup>6</sup> Likewise, COFECE has a year to investigate those concentrations that do not require prior notification to the Commission (Article 65 of the LFCE).

**Figure 5. Thresholds for the notification of concentrations.**

A CONCENTRATION MUST BE NOTIFIED:		
When the transaction implies an amount superior to 18 million times the SMGDVDF.*	When the transaction implies the accumulation of 35% or more of assets or shares of an Economic Agent, whose annual sales or assets in the national territory are above 18 times the SMGDVDF.	When the transaction implies the accumulation of assets or social capital superior to 8 million 400 thousand times the SMGDVDF** and the annual sales of the Economic Agents parties to the deal, jointly or separately, amount to more than 48 million times the SMGDVDF***

\* This equates to \$1,261,800,000.00 MXN.

\*\* This equates to \$588,840,000.00 MXN.

\*\*\* This equates to \$3,364,800,000.00 MXN.

+ SMGDVDF: Acronym Current Daily General Minimum Wage in the Federal District.

To determine if a concentration represents a risk to competition, COFECE analyzes:

- If the concentration confers or might confer substantial power to the economic agent resulting from the concentration, or increases such power.
- If the operation has or may have the purpose or effect of establishing barriers to entry, unduly displacing other agents or preventing their entry into the market.
- If the transaction has the purpose or effect of facilitating monopolistic practices.

Articles 63 and 64 of the LFCE explain in more detail the type of analysis that COFECE carries out on matters of concentrations. For further reference you may consult *'Economic competition tools'*, as well as the *'Technical criteria for the calculation and application of a quantitative index for measuring market concentration'*.<sup>7</sup>

6. Independently of this, COFECE may investigate any concentration that might be presumed unlawful (during the course of the first year since it was carried out), despite it being non-notifiable.

7. Both documents available in Spanish language.

#### 2.2.4. Applicable sanctions

The LFCE provides the imposition of severe sanctions to those who carry out absolute monopolistic practices, relative monopolistic practices and unlawful concentrations. These are of diverse nature and are described below.

##### *Administrative sanctions*

Depending on the type of conduct and its seriousness, the economic competition authority may:

- order the correction or suppression of the monopolistic practices or unlawful concentration in question;
- fine the economic agents who carry out relative monopolistic practices or unlawful concentrations for up to 8% of their annual incomes;
- fine the economic agents who carry out absolute monopolistic practices for up to 10% of their annual incomes;
- disqualify to act as advisor, administrator, director, manager, senior manager, executive, agent, representative or attorney in fact in a legal person for a time-frame of up to five years and impose fines for up to the equivalent of two hundred thousand times the daily general minimum wage in the Federal District (SMGDVDF, per its acronym in Spanish)<sup>8,9</sup> to those who participate directly or indirectly in monopolistic practices, in representation or on behalf and under orders of legal persons; and fine for up to the equivalent to one hundred eighty thousand times the SMGDVDF<sup>10</sup>, to those who have assisted in monopolistic practices.

##### *Criminal sanctions*

The person who orders or executes contracts, agreements, arrangements or combinations amongst competing economic agents, which have as their purpose or effect to fix prices, allocate markets, restrict supply, agree bids in tenders or exchange information with such purposes or effects<sup>11</sup> may be sanctioned with five to ten years of prison and a fines from one thousand up to ten thousand times the SMGDVDF<sup>12</sup>.

The person who on their own or through an intermediary, during the performance of an on-site searches, through any means totally or partially alters, destroys or disturbs documents, images or electronic files that contain information or data, with the purpose of diverting, blocking or impeding the investigation of a possible criminal act or the administrative proceeding, on matters of competition may be sanctioned with one to three years of prison and with a fine of five hundred to five thousand times the SMGDVDF<sup>13</sup>.

#### *Civil sanctions (payment of damages to affected parties)*

Those persons that have suffered damages or losses deriving from a monopolistic practice can file judicial actions before the Specialized Courts in Matters of Economic Competition, Broadcasting and Telecommunications to obtain a reparation. Actions can be individual or collective. In order for the affected parties to be able to claim damages and losses it is necessary that: (i) there is a confirmed resolution of the Board of Commissioners of COFECE that determines the existence of a monopolistic practice and (ii) a causal relation between said practices and the claimed damages and losses is proved.

#### *Enforcement measures*

In addition to the commented sanctions, the LFCE provides that the Commission can apply enforcement measures to carry out its functions. Among these, it contemplates fines of up to the amount equivalent to three thousand times the SMGDVDF<sup>14</sup>, quantity that can be applied for each day that passes without compliance with an order, for example, for each day that an agent continues carrying out a monopolistic practice after its suppression was ordered. It also contemplates arrest for 36 hours.

#### **2.2.5. Examples of sanctions that the Mexican competition authority has imposed**

Tables 1, 2 and 3 present some examples of sanctions for absolute monopolistic practices.

**Table 1. Price fixing in the poultry industry.**

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**FILE:** [IO-005-2009-III](#)  
**RESOLUTION DATE:** October 2013

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<b>TYPE OF PRACTICE</b>	Absolute Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"><li>• Industrias Bachoco</li><li>• Grupo San Antonio</li><li>• Avícola Pilgrim's Pride</li><li>• Tyson Operaciones</li><li>• Pollos Querétaro</li><li>• Unión Nacional de Avicultores (for co-acting)</li><li>• Six natural persons (in representation or under orders of the legal persons who employed them).</li></ul>
<b>MARKET</b>	Production, distribution and commercialization of products of the poultry industry in the Federal District.
<b>SPECIFIC CONDUCT</b>	The companies published their prices and the timeframe in which they would be in force in spreads of the Unión Nacional de Avicultores (UNA).
<b>SANCTIONS</b>	<ul style="list-style-type: none"><li>• Suppression of the practice.</li><li>• Fines for 131 million 998 thousand 848 Mexican pesos</li></ul>
<b>LEGAL STATUS</b>	In judicial review.



**Table 2. Setting of commissions in real estate services.**

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**FILE:** [DE-019-2007](#)  
**RESOLUTION DATE:** May 2014

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<b>TYPE OF PRACTICE</b>	Absolute Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"><li>• 12 real estate agencies.</li><li>• 11 brokers, heads of real estate agencies.</li><li>• 1 independent real estate broker.</li><li>• Grupo Inmobiliario del Lago (GIL) (for co-acting and inducing the practice).</li><li>• AMPI Chapala (for coacting and participating).</li></ul>
<b>MARKET</b>	Services of the real estate branch in Ribera del Lago de Chapala.
<b>SPECIFIC CONDUCT</b>	Setting the commission to be charged for the provision of services provided by professionals of the real estate branch.
<b>SANCTIONS</b>	<ul style="list-style-type: none"><li>• Suppression of the practice.</li><li>• Fines of 53 million 230 thousand 359 Mexican pesos.</li><li>• Removal of provisions in GIL's regulation that provide the establishment of minimum percentages for commission or any other form of price fixing.</li></ul>
<b>LEGAL STATUS</b>	Confirmed
<b>OF INTEREST</b>	The investigation was initiated after a complaint filed by a real estate agent (more on complaints in section 4.3).

**Table 3. Coordination in bids for tenders of insulin and serums.**

<b>FILE: IO-003-2006</b>	
<b>RESOLUTION DATE: March 2010</b>	
<b>TYPE OF PRACTICE</b>	Absolute Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"> <li>• Eli Lilly and Compañía de México, S.A. de C.V.</li> <li>• Laboratorios Cryopharma</li> <li>• Probiomed</li> <li>• Laboratorio Pisa</li> <li>• Fresenius</li> <li>• Baxter</li> </ul>
<b>MARKET</b>	Tenders for insulin and serum for the Mexican Institute of Social Security (IMSS, per its acronym in Spanish).
<b>SPECIFIC CONDUCT</b>	Establishing, arranging or coordinating bids in public procurement for insulin and serum convened by the IMSS.
<b>SANCTIONS</b>	<ul style="list-style-type: none"> <li>• Suppression of the practice.</li> <li>• Fines of 151 million Mexican pesos.</li> </ul>
<b>LEGAL STATUS</b>	Resolution confirmed by determination of the Supreme Court of Justice of the Nation (SCJN, per its acronym in Spanish). Amparo only for effects of recalculation of the fine.
<b>OF INTEREST</b>	
The sentence of the SCJN endorsed the validity of the economic analyses as indirect proof to detect anticompetitive conducts.	

Tables 4 and 5 present examples of sanctions for relative monopolistic practices.

**Table 4. Tied sale in fuels and services for its transport.**

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**FILE:** [DE-024-2010](#)  
**RESOLUTION DATE:** August 2013

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<b>TYPE OF PRACTICE</b>	Relative Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"><li>• Pemex- Refinación</li><li>• Pemex (for co-acting)</li></ul>
<b>MARKET</b>	Transportation of fuels from Storage and Distribution Terminals (TARs, per its acronym in Spanish) to service stations.
<b>SPECIFIC CONDUCT</b>	Tied sale consisting in forcing service stations to contract the transportation of fuel from TARs to service stations with tanker trucks operated by unionized staff of Pemex-Refinación. By being the sole seller of gasoline in the country, Pemex-Refinación had substantial market power.
<b>SANCTIONS</b>	<ul style="list-style-type: none"><li>• Suppression of the practice.</li><li>• Fines of 651.6 million Mexican pesos to Pemex-Refinación.</li><li>• Fines of 1.6 million Mexican pesos to Pemex.</li></ul>
<b>LEGAL STATUS</b>	In judicial review.

**Table 5. Exclusivities and tied sales in carbonated beverages.**

<b>FILE: DE-021-2003</b> <b>RESOLUTION DATE: November 2005</b>	
<b>TYPE OF PRACTICE</b>	Relative Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	Member companies of the "Coca-Cola System" (Yoli de Acapulco, Coca Cola Femsa, Propimex, Inmuebles del Golfo, Panamco México, Panamco Bajío, Panamco Golfo, Grupo Contal, Embotelladora La Favorita, Embotelladora Zapopan, Industria Refresquera Peninsular, Embotelladora La Victoria, Refrescos Victoria del Centro, Embotelladora de San Juan, The Coca Cola Export Corporation).
<b>MARKET</b>	Distribution and commercialization of carbonated beverages throughout the national territory.
<b>SPECIFIC CONDUCT</b>	Subject the sale of carbonated beverages of the Coca Cola brands to retail stores under the condition of not selling nor promoting the carbonated beverages of the brands of Big Cola (of Ajemex) and of unilaterally refusing to sell to retail stores that sell Big Cola, carbonated beverages of the brands of Coca Cola, even when said carbonated beverages are available and are normally offered to third parties.
<b>SANCTIONS</b>	<ul style="list-style-type: none"> <li>• Suppression of the practice.</li> <li>• Fines of 651.6 million Mexican pesos to Pemex-Refinación.</li> <li>• 157 million 950 thousand Mexican pesos (10 million for each one of the indicated companies).</li> </ul>
<b>LEGAL STATUS</b>	Confirmed
<b>OF INTEREST</b>	The investigation started by a complaint presented by the owner of retail store.

### 2.2.6. The collaboration with a public authority does not exempt from compliance with the LFCE

In some occasions, situations have arisen in which public authorities themselves coordinate or in a manner endorse practices forbidden by the LFCE. It is important that the economic agents know that said circumstance in no way justify the conduct or exonerate them from liability. Table 6 presents an example of a case of this nature.

**Table 6. Market segmentation endorsed by a municipal authority.**

<b>FILE:</b> <a href="#">DE-014-2010</a>	
<b>RESOLUTION DATE:</b> March 2012	
<b>TYPE OF PRACTICE</b>	Absolute Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"> <li>• Somos Chiapas, A.C. and its president.</li> <li>• Consejo Estatal de la Industria de la Masa y la Tortilla de Chiapas, A.C., and its president.</li> <li>• Municipal authorities of Tuxtla Gutiérrez.</li> </ul>
<b>MARKET</b>	Commercialization of corn tortillas in Tuxtla Gutiérrez.
<b>SPECIFIC CONDUCT</b>	Market allocation through the signature of an agreement, endorsed by the municipal authority, to territorially delimitate the commercialization of corn tortilla in the municipality. The territory was divided in four zones and exclusivity rights for the sale of tortillas were established.
<b>SANCTIONS</b>	<ul style="list-style-type: none"> <li>• Fines of 860 thousand Mexican pesos to both associations of producers and retailers of tortilla and their presidents.</li> <li>• Fines of 60 thousand Mexican pesos to the involved public officials.</li> </ul>
<b>LEGAL STATUS</b>	Confirmed
<b>OF INTEREST</b>	
Despite the participation of the municipal authority, the Board of Commissioners resolved the existence of the absolute monopolistic practice.	

### 2.3 Importance of complying thoroughly with the LFCE

Compliance with the economic competition legislation should be an integral part of the values of the organizations. Reputation and success of these are based not only in the way they address their clients, but also in the manner they conduct their businesses within the parameters imposed by the law and the good practices.

In addition, the operation of businesses increasingly takes place in a globalized environment in which competition laws play a transcendent role. Infringements to competition law in many parts of the world, even those unintended, may have serious consequences on the financial condition, reputation and even the companies' feasibility. For senior managers and employees, this could also result in the job loss, disqualification, fines and even prison sentences. It takes a lot of time, money and effort to achieve a good name and reputation or to position a brand, for an act of irresponsibility or ignorance to generate these consequences.

Although competition laws are complex in their analysis, there are basic rules that organizations (as well as their officials and employees) must know and follow. Likewise, they must be able to identify situations where it is necessary to seek legal counsel. On the other hand, it is important to remember that the LFCE is also an ally for companies, as it allows them to fight anticompetitive practices of suppliers, competitors or other parties, public or private, that impose restrictions to free market access and competition and affect the general business environment.

In this sense, a better understanding of the competition system and, in particular, an effective compliance program in this matter, allows to:

- a. avoid violations of the law,
- b. reduce risks and contingencies,
- c. protect employees and senior management,
- d. create security and certainty, and
- e. exercise rights and protect commercial interests.

This document aims to contribute with practical recommendations for organizations who wish to create a competition compliance program. These recommendations offer principles and general settings and in no way contain opinions which may bind the Commission, nor does it substitute for advice from specialists. There is no unique compliance program and its development and implementation could be very different between several organizations.

### 3. Recommendations for the implementation of an effective compliance program

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#### 3.1 Creation of a corporate culture of compliance with the LFCE



The key for the success of every compliance program lies in achieving that the conducts foreseen by it become part of the organization's corporate culture. This is not easy to achieve and requires much more than just a training session, a conference or an email from the general director. Success is achieved by investing time and effort at different levels, although the quantity of resources varies depending on the size of the organizations.

There is an ethical element in the development of these programs. Therefore, seeking for said program become a part of the business culture and go beyond merely trying to avoid sanctions is recommended. Economic agents in Mexico are increasingly evolving towards a business performance based on corporate values and in an internal consensus on doing things right, for its own benefit and for the society's.

Of course, a big challenge for this type of programs is ensuring that the LFCE is understood and respected by senior managers and employees in order to avoid unnecessary legal and financial risks. But beyond this, it is equally or more important for people to internalize the value of complying with this regulation. Only then will the program work in a lasting way and before dilemma or pressure scenarios.

The organizations' leaders play a key role, as they will drive others to take part in the effort. Actions communicate more than words: when the tone and the message in favor of competition is clear and explicit, and when that interest is backed up on specific actions, the others will follow the example.

The following recommendations help create a corporate culture of compliance with the LFCE.

#### 3.1.1. Make the commitment visible

The first step is to create a blunt message, in the sense it is important that for the organization to adhere to the principles of competition. It is fundamental that the commitment comes from the highest hierarchical body from within the organization, this means, the board of directors, the general director or the sole manager. Only then may the message permeate throughout the organization and, eventually, take part of its culture. This commitment cannot be understood as a fashion or be transient; on the contrary, it must develop alongside a program that is sustained throughout time and subject to monitoring.

#### 3.1.2. Recognize the importance of complying with the LFCE

A component of the culture of compliance with the LFCE resides in recognizing and understating that a responsible performance significantly reduces the risks that individuals and corporations could face in the case of an LFCE infringement of. These risks are high and include the equity, personal and reputational spheres.

#### 3.1.3. Create codes of ethics or conduct

Many organizations have codes of conduct or ethics or simple manifestations of the values that lead them. In this sense, it is convenient that compliance with competition laws to be an integral part of said documents, in such way that this commitment works not only to reduce risks and contingencies, but also as a part of a wider corporate social responsibility aspiration.

#### 3.1.4. Create synergies with other compliance programs

Some organizations have compliance programs for specific topics, for example for anticorruption, security, hygiene or money laundering. In this order of ideas, compliance with the LFCE could be complementary to this type of efforts, creating synergies or savings.



## 3.2 Appointment of a person in charge of compliance and the use of allocated resources for this purpose



In order for a compliance program to be effective to appointment a person with an adequate professional profile, as the one in charge of this important responsibility, preferably with a support team, is recommended.

### 3.2.1. Person in charge and functions

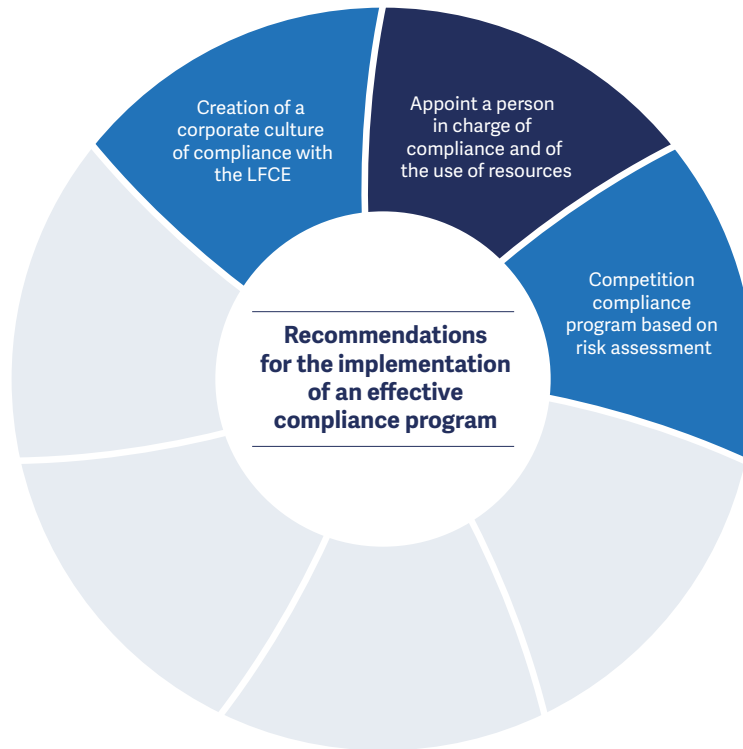
In general, the legal department -if it exists- can develop and supervise the compliance program. Nevertheless, there may be departments in charge of other topics – risk control or audit for example – which also could perform said functions in a satisfactory way. In the case of SMEs, the person in charge of finances or management could be the most adequate person. Bigger companies might also have a specialized department.

It is important for the appointed person to have direct communication and the support of top senior managers from which the original commitment comes.

### 3.2.2. Resources

The program must have adequate resources, although it is clear that this depends on the size of the organization and their availability. However, the organization must take into account that an effective compliance program constitutes a profitable investment, as it reduces risks and contingencies and contributes with wider objectives regarding corporate social responsibility.

### 3.3 Competition compliance program based on risk assessment



As mentioned, breaching the LFCE creates risks of diverse nature. In this sense it is necessary to manage risks and know the potential level of exposure faced by the organization. Therefore, it is advisable to:

#### 3.3.1. Elaborate organization's risk map

One of the first practical steps for implementing a compliance program consists in elaborating a risk matrix, and to design controls that could provide adequate and proportional solutions for each of them. Risks and controls depend on the type of organization and of other specific characteristics (for example the size of the company, the type of sector in which it is located, the degree of market concentration, if it is vertically integrated or if it deals or has points of contact with competitors). Figure 6 notes in a general manner certain type of risks, the economic agents who are prone to incur in these, as well as the minimal considerations for the design of the corresponding controls. Section 3.4 summarizes the topic on precautions and controls.

**Figure 6. Figure 6. Risks by type of Economic Agent.**

Risk	Susceptible Economic Agents	Controls to minimize risks must be designed to:
Carry out, promote or contribute in an absolute monopolistic practice (art. 53 of the LFCE).	All economic agents, regardless of their size or participation in the market	<p>Avoid communications and agreements between competitors that have as a purpose or effect price fixing, restriction of supply, market allocation, coordination of bids in tenders or the exchange of information with the foregoing purposes or effects.</p> <p>Avoid any of the above conducts, even when a public authority endorses or coordinates their performance.</p> <p>In case of having incurred or participated in these practices, request a prompt application to COFECE's immunity program.</p>

Risk	Susceptible Economic Agents	Controls to minimize risks must be designed to:
Carry out an exchange of information that has the purpose or effect of a monopolistic practice (art. 53 section V of the LFCE), in the context of a chamber or association.	Economic agents who are members of a chamber or association.	<p>Avoid exchanging information that could configure a collusive agreement.</p> <p>Avoid requesting the chamber or association to exercise vehicle functions for the exchange of information that could configure a collusive agreement.</p> <p>Having representatives in the chamber or association trained in the competition legal framework.</p> <p>In the case of incurring or participating in these practices, request a prompt application to COFECE's immunity program.</p>
	Business chambers or associations, professionals' associations, as well as their senior managers and employees	<p>Avoid that the design of rules to deter that members compete against each other.</p> <p>Avoid suggesting, recommending, endorsing, criticizing, discussing or being the vehicle for the exchange of strategic information that could configure a collusive agreement.</p> <p>When information exchanges are made, information must be historic, sufficiently aggregated, preferably recollected and managed by a third independent party, and not include sensible elements that create unlawful coordinated effects.</p> <p>Not obliging members to provide information neither to exchange it between them.</p> <p>Train its representatives regarding the competition legal framework.</p> <p>In the case of incurring or participating in an absolute monopolistic practice, request a prompt application to COFECE's immunity program.</p>

Risk	Susceptible Economic Agents	Controls to minimize risks must be designed to:
<p>Carry out, promote or contribute to a relative monopolistic practice (articles 54 to 56 of the LFCE).</p>	<p>Companies, businesspersons and professionals with substantial power in the relevant market, as well as senior managers and employees of said companies.</p>	<p>Avoid the execution of business practices that could be framed in the assumptions noted on article 56 of the LFCE, who could unduly displace, substantially prevent access, or generate exclusive advantages.</p> <p>If it is the case, consider applying for the exemption and reduction of the amount of the fines benefit.</p>
	<p>Business chambers or associations, professionals' groups, particularly those who offer their services to their members.</p>	<p>Not agreeing a boycott to a determined supplier of goods or services.</p> <p>Not using membership policies to exclude or discriminate against competitors that do not fulfill the affiliation requirements.</p> <p>Not restricting members from having deals with non-members.</p> <p>Not conditioning the granting of services to the purchase of other services.</p> <p>Not imposing restrictions or prohibitions to the way members develop their advertising.</p> <p>If it is the case, consider applying for the exemption and reduction of the amount of the fines benefit.</p>

Risk	Susceptible Economic Agents	Controls to minimize risks must be designed to:
<p>Carry out a concentration that requires authorization from COFECE without obtaining it, or carrying out an unlawful concentration (Chapter VI of the Second Title of the LFCE).</p>	<p>Companies projecting to carry out a concentration that: (i) surpasses the thresholds foreseen on article 86 of the LFCE or (ii) could have as a purpose or effect to hinder, reduce, harm or prevent free market access or economic competition.</p>	<p>Notify, in all cases, the concentration to COFECE when the thresholds are surpassed.</p> <p>Analyze in advance the consequences of the operation in terms of the LFCE.</p> <p>Notify the concentration before COFECE in a voluntarily, even when the thresholds are not surpassed, when there could be a risk to competition.</p> <p>Avoid the exchange of sensible information for carrying out the concentration, and if it is the case adopt the necessary safeguards for the exchange of sensible information that is necessary for the operation.</p> <p>Design and propose feasible commitments to COFECE for the authorization of the concentration.</p> <p>If it is the case, consider applying for the exemption and reduction of the amount of the fines benefit.</p>

Risk	Susceptible Economic Agents	Controls to minimize risks must be designed to:
<b>Divert, block or impede an investigation from COFECE.</b>	All economic agents, as well as their senior managers and employees, that are subject to on-site searches from COFECE.	<p>Inform all senior managers and employees about their rights and obligations when they are subject to an on-site search.</p> <p>Ensure that all managers and employees are informed that hiding, omitting, altering, destroying or disrupting in a total or partial manner documents, images or electronic files that contain information or data with the objective of diverting, blocking or impeding the investigation of a possible felony or the execution of an administrative proceeding regarding competition, are a cause for a criminal sanction and fines.</p>

As shown in figure 6, there are common risks and therefore it is recommended that the entire organization adopts measures to avoid the existence of illegal agreements between competitors (fix prices, allocate markets, restrict the supply, coordinate bids in tenders or exchange information with purpose or effect of carrying out said conducts). For those cases in which the absolute monopolistic practice has already been committed, it is advisable to foresee a prompt application to COFECE’s immunity program (see section 4.1).

Figure 6 also empathizes one of the contexts in which an exchange of strategic information could happen that could damage competition by facilitating coordination of collusive behaviors: in chambers and associations. For a wider and deeper understanding of the recommendations of this particular topic, consulting COFECE’s document *“Guideline for the exchange of information amongst Economic Agents”* is recommended.

On the other hand, companies with high market shares run the risk of incurring in relative monopolistic practices (in case of having substantial power in accordance to the applicable provisions). For said purpose, it is advisable for their activities to be dully supervised. This analysis is much more complex and could require the support of specialized advisors.

Additionally, it must be taken into account that market conditions change. Companies that at certain moment were not in risk of carrying out relative monopolistic practices (abuse of dominance) could acquire market power through an acquisition or through the growth process or expansion. Therefore, compliance programs must be flexible enough to consider such changes.

Figure 6 considers economic agents that will carry out a concentration, which must ensure that: (i) no strategic information exchanges that could harm competition are made and (ii) they are not making an unlawful concentration.

Chambers and associations are prone to advice, suggest, orchestrate, conceal or execute absolute or relative monopolistic practices, in the latter case through the abuse of dominant position to displace non-members from the market, among other conducts.

Finally, all economic agents must know their rights and obligations in case of an on-site search from COFECE, to avoid the sanctions that are applied to those who hamper said searches.

### 3.3.2. Identify the people with greater exposure to risk

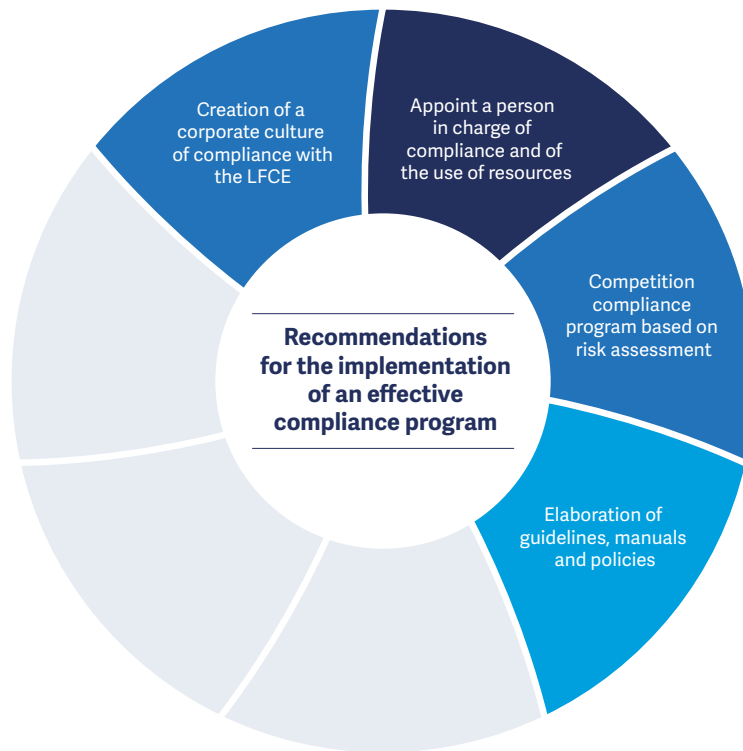
Although all employees of an organization must know and participate in compliance programs, it is important to identify those people who are at a greater risk of violating the LFCE (for example, for the case of absolute monopolistic practices, those who have contact with competitors, such as sales staff or marketing, as well as those who participate in chambers and associations).

Individuals who are part of the board of directors of two or more economic agents that are not part of a same economic group (common managers) deserve special attention. Greater risks happen when said economic agents are competitors among themselves, since common managers could be a vehicle for exchanging strategic information.

### 3.3.3. Maintain the validity of programs

Programs must be subject to periodic reviews in such way that they consider and incorporate any supervening circumstance that modify the risk matrix. The foregoing could happen, for example, in light of staff turnover (particularly if staff that worked with competitors is hired), changes in the applicable regulation, corporate adjustments or changes in the business model. It is advisable to make an annual evaluation for said effects.

### 3.4 Elaboration of guidelines, manuals and policies



Once the risks are identified, the compliance instruments should be elaborated, which may include specific documents such as guidelines and manuals. These documents must be “alive”, that is, updated as often as necessary, be clear and be written in plain and comprehensible language for all the members of the organization. It is advisable for employees that receive training to sign a document that proves their commitment to the adoption and compliance with the program.

In this sense, the following recommendations are made:

#### 3.4.1. Reflect the rules of performance and/or internal controls for each risk

Based on the risk matrix, the rules of performance and/or internal controls that will be used to address each risk must be identified. For example, if a company constantly participates in public tenders, what can and cannot be done before, during and after a tendering process could be defined. That said, if it is a chamber or an association in which competitors gather, protocols on the exchange of information should be defined in such way that this conduct does not constitute an illegal act. It could also be established that those employees that conduct purchases from suppliers that are competitors, to be different to those employees responsible of sales or marketing.

Figure 7 mentions some recommendations for the design of a compliance program for chambers and associations that reduces this risk, in the context of the formal meetings they convene or coordinate.

**Figure 7. Recommendations for conducting meetings in chambers and associations**

<b>When a meeting is convened and/or coordinated in a chamber or association, it is advisable to:</b>
<ol style="list-style-type: none"><li>1. Have an agenda established before each meeting.</li><li>2. Keep a detailed record of all the points discussed in the meetings.</li><li>3. Have the assistance of representatives, from both the chamber or association as well as from members, trained in the competition legal framework in force.</li><li>4. Conduct a formal expression of commitment and responsibility to monitor strict compliance with the LFCE from assistants.</li></ol>
<b>In the case that sensible comments from the perspective of the LFCE are made, it is suggested to:</b>
<ol style="list-style-type: none"><li>1. Reject immediately the information, noting that it has not been requested.</li><li>2. Document the incident.</li><li>3. Consult a lawyer specialized in the matter.</li></ol>

#### 3.4.2. Personnel training

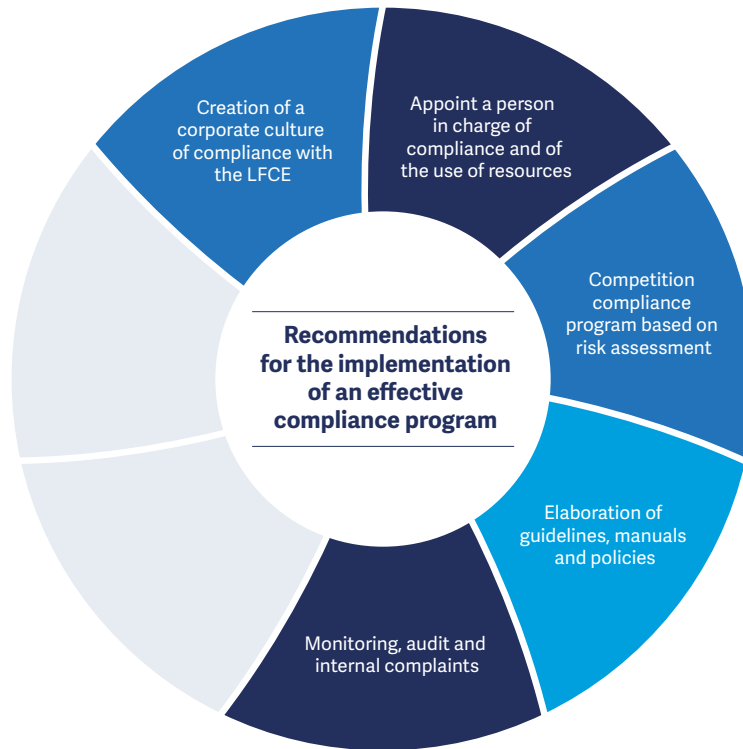
Training is very important so that senior managers and other relevant staff can execute the compliance program. Said training must have as a goal, at least, to clarify the basic scope of the LFCE. Staff must have the necessary knowledge for the purpose of identifying situations that could lead to an illegality act, as well as those cases in which it is necessary to make careful assessment. Likewise, it is important for training to explain the reasons of the program's existence, as well as the consequences – legal and non-legal- of not complying with it.

It is convenient to begin the training with those employees that have a greater exposure to risk. It is recommended for new employees to also receive immediate training specially if they are going to take on risky positions.

Training must be provided by experts in competition or by trainers that have been properly trained. Training must allow discussion with experts, therefore the size of groups must be adequate to the corresponding dialogue. Participation from senior managers is also of great use.



### 3.5 Monitoring, audit and internal complaints



#### 3.5.1. Monitoring

It refers to the follow up of key information that allows senior managers and those responsible for the program to ensure that the compliance program works correctly. It is important to gather and analyze data useful for this end, for example: if actions and/or controls to address each identified risk in the matrix have been designed, if training has been granted, if the program is duly documented or if there are periodic verifications or updates to the program.

#### 3.5.2. Audits

These complement monitoring as they imply an in-depth review, from the perspective of compliance with the LFCE, of the activity of the specific areas of the organization. Audits are not only useful for detecting deviations of the compliance program, but also to identify possible infringements to the regulation that could be corrected immediately. In this sense, they have both a preventive and a corrective character.

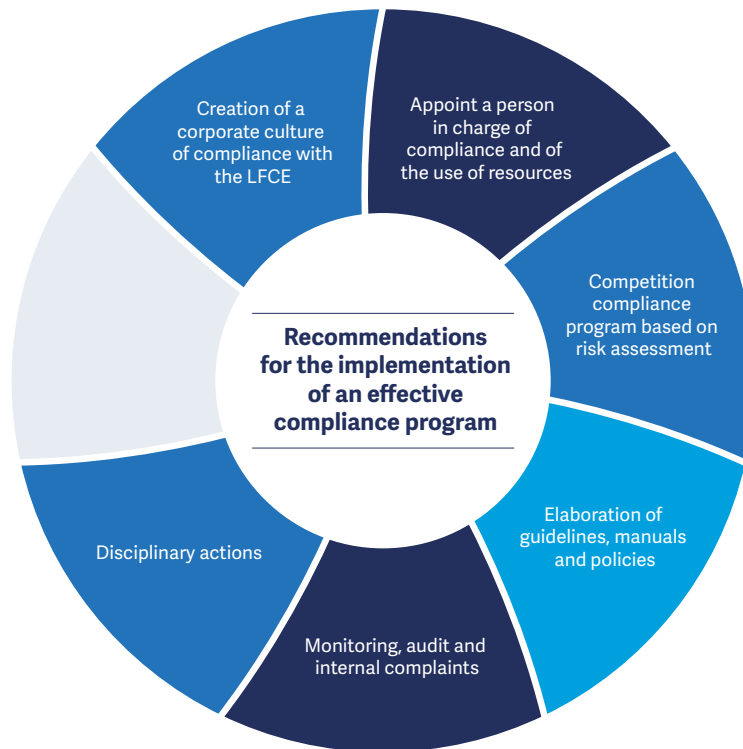
For the internal audit to be effective, it is important that auditing area has enough independence to guarantee objectivity of its work. In this same sense, it is advisable to recur to external auditors in a periodic manner.

Audits are especially relevant for organizations with greater levels of risk or exposure.

### 3.5.3. Internal complaints

Employees who consider that the program or the Law is not being complied with, should be able to report such circumstance to the person in charge of the program without fear of reprisals from their superiors or colleagues. It should be made clear to whom, how, when and where such reports could be presented.

### 3.6 Internal disciplinary actions



Establish disciplinary actions applicable to those who do not comply with the LFCE is recommend. This is not only for the purpose of deterring bad behavior, but also to reflect a true commitment.

The disciplinary sanction must apply to any member of the organization without any distinction. Generating incentives to strengthen the culture of competition; for example, compliance with and support for the program may be seen as a positive aspect in employee evaluations, is also recommended.

### 3.7 Evaluation of the competition program



The program should be subject to a periodic assessment in order to ensure that it is achieving its objective and that, if necessary, it may be updated, improved and/or strengthened.

Surveys, knowledge tests, post-training sessions, and interviews with key people within the organization can be conducted to assess the effectiveness of the program. The evaluation can be on the whole program or on elements of it.

## Compliance Program with the LFCE: point by point

1.	<p><b>Create a culture of compliance with the Law</b></p> <ul style="list-style-type: none"><li>• Make visible the commitment to competition from the highest hierarchical body in the organization.</li><li>• Recognize that compliance with the Law reduces individual and corporate risks.</li><li>• Integrate compliance with competition laws into codes of conduct or ethics.</li><li>• Seek synergies with pre-existing legal compliance schemes.</li></ul>
2.	<p><b>Appoint a person in charge of compliance and the use of resources allocated for this purpose</b></p> <ul style="list-style-type: none"><li>• Appoint a person in charge with knowledge of economic competition to develop and supervise the program.</li><li>• This person must have direct communication and have the support of the senior managers.</li><li>• The legal department can fulfill these functions. Otherwise, the area of risk control, auditing, or administration and finance (for SMEs) may be viable alternatives.</li><li>• The program must have adequate resources to fulfill its functions.</li></ul>
3.	<p><b>Risk assessment</b></p> <ul style="list-style-type: none"><li>• Identify the possible risks:<ul style="list-style-type: none"><li>- Carrying out an absolute monopolistic practice: participating in or promoting agreements to fix prices, restrict supply, allocate markets or coordinate bids in tenders; exchange information with any of said purposes or effects.</li><li>- Carrying out a relative monopolistic practice: in the case of companies with substantial power, abusing it to unduly displace other agents, prevent them from entering into the market or establish exclusive advantages.</li><li>- Failing to notify a concentration that required the authorization from COFECE.</li><li>- Carrying out an unlawful concentration.</li><li>- Obstructing or preventing on-site searches from COFECE.</li></ul></li><li>• Build a matrix with controls for each type of risk.</li><li>• Recognize the areas that are most prone to non-compliance with the LFCE:<ul style="list-style-type: none"><li>- sales,</li><li>- marketing,</li><li>- those that participate in chambers and associations,</li><li>- those that participate in tenders, or</li><li>- members of boards of directors who also serve in competing companies (interlocking directorates).</li></ul></li><li>• Keep the risk matrix updated in the event of regulatory changes or staff changes.</li></ul>
4.	<p><b>Elaboration of guidelines, manuals and policies</b></p> <ul style="list-style-type: none"><li>• Write documents that explain how to avoid risks and update them periodically.</li><li>• Provide training that address the following topics:<ul style="list-style-type: none"><li>- The scope of the LFCE</li><li>- The reasons why there is a compliance program</li><li>- The consequences - legal and non-legal - of not complying with the program</li></ul></li><li>• Train new employees and employees from riskier areas first.</li></ul>
5.	<p><b>Implement monitoring, audit, internal complaints, disciplinary actions and assessment schemes</b></p> <ul style="list-style-type: none"><li>• Verify compliance with the program by monitoring actions, the risk matrix and the training sessions.</li><li>• Carry out audits by an independent department for preventive and corrective purposes.</li><li>• Enable an internal reporting scheme with specific protocols so that employees are not subject to reprisals.</li><li>• Encourage adherence to the program and the Law by:<ul style="list-style-type: none"><li>- Disciplinary actions</li><li>- Incentive schemes</li></ul></li><li>• Evaluate the functioning and effectiveness of the program for its improvement and strengthening.</li></ul>

## 4. Resources provided by the LFCE

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### 4.1 Immunity Program

The LFCE establishes an immunity and sanctions reduction program which may benefit those Economic Agents or individuals who recognize before COFECE that they are carrying out or have carried out absolute monopolistic practices and that collaborate with the authority to detect and sanction these practices. The existence of this program aims to facilitate the detection of absolute monopolistic practices as well as to offer an alternative to companies that want to stop carrying out the practice and reduce the amount of the applicable sanction.

In this sense, the immunity program, established in article 103 of the LFCE, allows any economic agent that has contributed, promoted, induced, taken part of or is carrying out illegal agreements with its competitors, to opt for a reduction of the corresponding sanctions in exchange for its cooperation with the authority. Through this scheme, fines may be reduced from 10 percent of annual income in the national territory, to one minimum daily wage in force in the Federal District (SMGDVDF) for the first person to apply to the program. Additionally, those who apply to the immunity program are exempt from criminal liability.

Any natural or legal person can apply to this program, provided that:

- it is the first, among the economic agents or individuals involved in the conduct, to contribute with sufficient evidentiary elements that in the opinion of COFECE allow the initiation of an investigation or to presume the existence of the practice;
- cooperates fully and continuously with COFECE in conducting the investigation and, as the case may be, in the trial-like procedure; and
- carries out the necessary actions to end its participation in the absolute monopolistic practice.

Once these requirements have been fulfilled, COFECE will issue the appropriate resolution and will impose, as the case may be, a minimum fine consisting of the amount equivalent to one SMGDVDF.

Economic agents that are not the first to apply to the immunity program may obtain a reduction of the fine of up to 50, 30 or 20 percent of the maximum allowed, when they provide additional evidentiary elements to those that COFECE already has and meet the requirements described before. To determine the amount of the reduction, COFECE will take into consideration the chronological order of the presentation of the applications as well as the evidentiary elements presented.

Those interested must submit their application by voicemail at telephone number +52 (55) 27-89-66-32 or send an electronic mail to [inmunidad@cofece.mx](mailto:inmunidad@cofece.mx).

In their request, they must expressly indicate their wish to apply to the program and provide contact information.

COFECE will keep the identity of the economic agents who intend to benefit from this program confidential. The application can only be made before the issuance of the agreement to conclude the investigation.

Consult the '*Guide on the Immunity Program*', available on COFECE's website is also suggested.

Table 7 presents the case of an investigation of absolute monopolistic practice that was initiated as a result of the application of a participant to the immunity program.

**Table 7. Investigation initiated after application to the Immunity Program.**

<b>FILE:</b> <a href="#">IO-002-2009</a> <b>RESOLUTION DATE:</b> February 2014	
<b>TYPE OF PRACTICE</b>	Absolute Monopolistic Practice
<b>ECONOMIC AGENTS INVOLVED</b>	<ul style="list-style-type: none"> <li>• Whirlpool</li> <li>• ACC</li> <li>• Panasonic</li> <li>• Tecmuseh do Brasil</li> </ul>
<b>MARKET</b>	Hermetic Compressors
<b>SPECIFIC CONDUCT</b>	Fixing, arrangement and manipulation of prices of hermetic compressors in the national market.
<b>SANCTIONS</b>	<ul style="list-style-type: none"> <li>• Removal of the practice.</li> <li>• Fines of 223 million 273 thousand 399 pesos.</li> </ul>
<b>LEGAL STATUS</b>	Confirmed
<b>OF INTEREST</b>	
<ul style="list-style-type: none"> <li>• The investigation was initiated from a request for application to the immunity program by one of the agents participating in the agreement.</li> <li>• The sanction of said agent was reduced to one SMGDVDF (today it would be equivalent to \$70.10 MXN).</li> </ul>	

## **4.2 Procedures for exemption and reduction of the amount of fines**

Economic Agents subject to investigation for a relative monopolistic practice or an unlawful concentration may benefit with an exemption or reduction of fines. To do so, they must express in writing their interest in benefitting from this procedure before the investigation is concluded. In addition, in accordance with article 100 of the LFCE, they must prove to the Commission: (i) their commitment to suspend, suppress or correct the corresponding practice or concentration in order to reestablish the free market access and competition process; and (ii) that the proposed means are legally and economically viable and suitable to terminate the practice or concentration, indicating deadlines and terms for its verification.

Article 101 of the LFCE details the process and the timeframes to be followed after the presentation of the written statement mentioned in the previous paragraph, which concludes with the resolution of the Commission on the matter, which may or may not accept the proposal presented by the economic agent.

Economic Agents can only apply to this benefit once every five years, and the resolution issued will be without prejudice to the actions that affected third parties may exercise claiming damages (article 102 of the LFCE).

For further reference, consult COFECE's document called '*Guide of the Procedures for Exemption and Reduction of the Amount of Fines*'.<sup>15</sup>

## **4.3 Complaints and reports of anticompetitive practices**

### **4.3.1. Complaints**

Any person may bring forth a complaint regarding probable absolute monopolistic practices, relative monopolistic practices or unlawful concentrations to COFECE. To do this, she must submit a written complaint that must contain at least the requirements indicated in Figure 8.

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15. Document available in Spanish.

**Figure 8. Information that a complaint request must contain.**

Requirements
<ul style="list-style-type: none"><li>• Name, denomination or business name of the complainant;</li><li>• Name of the legal representative, if applicable, and suitable document attesting his personality; address to hear and receive notifications, and authorized persons, as well as telephone numbers, email or other data that allow their prompt location;</li><li>• Name, denomination or company name and, if known, the address of the accused;</li><li>• Brief description of the facts that motivate the complaint;</li><li>• In the case of relative monopolistic practices or unlawful concentrations, description of the main goods or services involved, specifying their use in the market and, if known, the list of the same, similar or substantially related goods or services of the accused and of the main economic agents that process, produce, distribute or commercialize these in the national territory;</li><li>• List of documents and means of conviction accompanying the complaint, precisely related to the events denounced, and</li><li>• Other elements that the complainant deems pertinent and, in case of not having these available, indicate the place or file in which these are found, so that what is necessary during the investigation is provided.</li></ul>

#### 4.3.2. Reports

Alternatively, it is possible to present a report on anticompetitive practices through COFECE's website. Those interested must fill in the fields provided, the most important being the description of the possible violations of the LFCE. Where appropriate, the supporting documentation can be attached. This report may be anonymous, however it will be necessary to provide a contact email address.

### 4.4 For those who have doubts and want to solve these before the authority

#### 4.4.1. Formal opinions

The LFCE contemplates that any Economic Agent may request in writing a formal opinion from the Commission on free market access and competition matters when it refers to the emergence of new or unresolved issues related to the enforcement of the LFCE. The formal opinion is issued by the Board and has binding effects.

Requirements and timeframes for the issuance of a formal opinion are shown in Figure 9. Reviewing articles 104 to 109 of the LFCE is also suggested.



**Figure 9. Requirements and timeframes for requesting formal opinions**

Information required in writing in the request		Requirements to issue a formal opinion
I. Identity of the Agents;		I. That there is no precedent or that it is a novel issue.
II. The specific questions on which the opinion is requested;		II. That after being assessed is considered useful.
III. Information on the relevant points, including relevant documentation;		III. That it can be done with the information provided by the agent and there is no need to carry out an additional investigation of the facts.
IV. An explanation of why the request raises one or more new issues;		
V. Declaration that there is no procedure on the conduct pending before a jurisdictional body;		
VI. Indication of confidential information and justification.		
Timeframe		
Receipt of the request of opinion.		
10 days	The request is presented to the Board.	
5 days	The Board resolves to issue the opinion or not.	
5 days	The Agent is notified of the Board's resolution. The file is transferred to the body in charge of the instruction.	
10 days	The body in charge requires additional information and documentation from the Agent.	
15 days	The Agent submits required information and documentation.*	
15 days	Discussion of the draft opinion (from the creation of the file).**	
10 days	The Board issues formal opinion.	

\* If the information is not submitted within the established deadline, the opinion will be deemed not to have been presented.

\*\* The Commissioner rapporteur may extend the term up to an equal term.

#### 4.4.2. General Guidance

As an alternative to formal opinions, any person may submit to the Commission a request for general guidance regarding the enforcement of the competition regulatory framework. Unlike the formal opinion, general guidance is issued by the Technical Secretary and has no binding effect. Figure 10 shows the requirements and timelines for requesting general guidance.

**Figure 10. Requirements and timeframes for requesting general guidance**

Requirements	
<p>Requests for general guidance must be submitted to the Commission in writing, stating:</p> <ul style="list-style-type: none"> <li>• Name, denomination or company name of the applicant;</li> <li>• The specific issues on which guidance is sought;</li> <li>• Any other information that enables the Commission to fully understand the matter on which guidance is sought;</li> <li>• Where appropriate, the indication and reasoned explanation of the elements that are considered confidential information; and</li> <li>• The declaration, under oath, that it is not aware that the issue to which the request refers is subject of any of the procedures established in the Law or in the Regulatory Provisions nor is it pending to be resolved before a jurisdictional body.</li> </ul>	
Timeframe	
Receipt of the request of guidance.	
10 days	The Commission may require additional information or clarification of issues to the Agent
5 days	The Agent replies to the requirement. The Commission issues a response to the request once it receives the information or clarification by the Agent. *
30 days	The Commission resolves the request. **

*\* If the information is not submitted within the established deadline, the request will be deemed not to have been presented.*

*\*\* The Commission may extend the term up to 30 days.*

## 5. Useful references

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### 5.1 Related to COFECE

#### 5.1.1. Legal instruments

This section lists the main instruments comprising the legal framework on competition and free market access in Mexico. It should be noted that this list will be updated with the emergence of new documents. These instruments can be accessed through the following links:

- [Political Constitution of the United Mexican State \(in Spanish\)](#)
- [Federal Economic Competition Law \(in Spanish\)](#)
- [Regulatory Provisions of the Federal Economic Competition Law \(in Spanish\)](#)
- [Organic Statute of the Federal Economic Competition Commission \(in Spanish\)](#)
- [Technical Criteria for the Calculation and Application of a Quantitative Index for measuring Market Concentration \(in Spanish\)](#)
- [Guide to process the investigation of relative monopolistic practices or unlawful concentrations' procedure \(in Spanish\)](#)
- [Guide for the initiation of investigations of monopolistic practices \(in Spanish\)](#)
- [Guide of the Immunity and Sanctions Reduction Program \(in Spanish\)](#)
- [Guide for the Exchange of Information amongst Economic Agents \(in Spanish\)](#)
- [Guide of the Procedures for Exemption and Reduction of the Amount of Fines \(in Spanish\)](#)
- [Normative Compendium \(in Spanish\)](#)
- [Federal Economic Competition Law \(in English\)](#)

#### 5.1.2. Institutional documents

COFECE complies with the legal obligation to publish documents that allow citizens to know the planning and progress of its activities. These include its 2014-2017 Strategic Plan, annual programs, as well as quarterly and annual reports. Similarly, it makes its strategy of competition advocacy through the collaboration with different actors in Mexican society available to the public.

To access these documents, the following links are provided:

- [Planning and Institutional Evaluation Performance \(in Spanish\)](#)
- [Competition Advocacy \(in Spanish\)](#)

### 5.1.3. COFECE's resolutions

Citizens can know the reasoning and argumentation of COFECE's Board (and the extinct CFC) in the cases that it resolves. The resolutions are available in a search engine on COFECE's website, through the following link:

- [Resolutions and opinions search engine \(in Spanish\)](#)

### 5.1.4. Outreach documents

COFECE publishes documents aimed at different audiences that provide information on how competition policy operates. Likewise, it produces reference materials that explain particular cases resolved by the authority. The following links are suggested:

- [Economic competition tools \(in Spanish\)](#)
- [SMEs and economic competition \(in Spanish\)](#)
- [Infographics \(in Spanish\)](#)
- [Case analysis \(in Spanish\)](#)

## 5.2 Issued by other organizations

This section presents a list of documents generated by competition authorities of other jurisdictions and international organizations. These can serve as additional support to implement competition compliance programs. In this regard, it is worth mentioning that these are included only as a reference. The recommendations contained in these documents are the sole responsibility of the issuer and obey the characteristics of specific regulatory systems.

As far as possible, documents available in Spanish are included. They are presented in alphabetical order according to the name of the jurisdiction or international body that publishes them.

- **International Chamber of Commerce (ICC)**  
ICC, [The ICC antitrust compliance toolkit](#), 2013. (In English).
- **Canada**  
Competition Bureau, [Corporate Compliance Programs](#), 2010. (In English).
- **Chile**  
Fiscalía Nacional Económica, [Competition law compliance programs](#), 2012. (In Spanish).  
Fiscalía Nacional Económica, [Trade associations and free competition](#), 2011. (In Spanish).

- **Europe**  
European Commission, [Compliance matters](#), 2012. (In English).
- **Japan**  
Japan Fair Trade Commission, [Guidelines concerning the activities of Trade Associations under the Antimonopoly Act](#), 1995. (In English).  
Organisation for Economic Co-operation and Development.  
OECD, [OECD Guidelines for Multinational Enterprises](#), 2011. (In English).
- **Singapore**  
Competition Commission Singapore, [Better business with competition compliance programme](#), no year. (In English).
- **Spain**  
Comisión Nacional de la Competencia (extinct, replaced by the Comisión Nacional de los Mercados y la Competencia), [Guide for trade associations](#), 2009. (In Spanish).
- **United Kingdom**  
Competition and Markets Authority, [Competition law risk: A short guide](#), 2014. (In English).  
Office of Fair Trading (extinct, replaced by the Competition and Markets Authority), [Quick guide to competition law compliance](#), 2009. (In English).



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