

Recommendations for complying with the Federal Economic Competition Law

Rights and Obligations in Competition Matters



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Recommendations for complying with the Federal Economic Competition Law

Federal Economic Competition Commission



Comisión
Federal de
Competencia
Económica

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Presentation

When companies have to compete for consumers' preference, they seek to offer products and services that meet their tastes, needs and budget more closely. Also, if a company participates in a market where there is intense competition, it will wish to increase its efficiency to remain in it, which motivates it to invest to become more productive and innovate¹. This, in turn, creates economic growth for the country. Therefore, economic competition entails benefits for everyone: consumers, companies and the economy in general.

For such reason, Mexico, like many countries, has a policy aimed at ensuring competition in the markets so all Mexicans may benefit from it. The Federal Economic Competition Commission (COFECE or Commission) is a body within the Mexican State endowed with constitutional autonomy whose mission is to promote, protect and guarantee competition in the markets, thus contributing to the welfare of families and the country's economic growth.² This is achieved through the joint effort of several actors, and in the case of companies, it requires they adopt the principles of competition in their daily activities and promote actions to comply with the Federal Economic Competition Law (LFCE or Law).

Procuring strict compliance with the Law within companies, allows them to reduce risks of legal and economic contingencies that may damage their finances and reputation. Likewise, it prevents employees and senior managers from facing administrative, civil or even criminal sanctions for carrying out or contributing to anticompetitive conduct. Additionally, it creates certainty for business decision-making and confidence for customers.

Given the importance of compliance with the LFCE within companies, COFECE presents this document with recommendations to facilitate the development of business programs designed to this end.

The document is structured as follows: it begins with a brief description of the benefits of compliance with the LFCE for companies; it then proposes recommendations for establishing or adapting a compliance program³ in matters of economic competition; it subsequently describes the resources that COFECE makes available to companies to learn about and comply with the LFCE; finally, it provides brief summaries of recent cases solved by this Commission and offers references that may be useful when designing a compliance program with the LFCE.

1. Griffith et al (2006); Grünewald (2009); in Economic Competition, Platform for growth 2018-2024, COFECE (2018)

2. COFECE is in charge of overseeing competition in the rest of the markets in the national territory, while the Federal Telecommunications Institute is the competition authority in the telecommunications and broadcasting markets.

3. *Compliance program* may be understood as the guidelines established with the purpose of complying with the applicable legal framework. For a program to be effective in complying with the law and reducing risks, it must be known and followed by all members of the organization (senior managers and employees).

1. Benefits for companies of complying with the Federal Economic Competition Law

The purpose of the LFCE is to promote, protect and guarantee free market access and economic competition; as well as to prevent, investigate, fight, prosecute with efficacy, severely punish and eliminate monopolies, monopolistic practices, unlawful concentrations, barriers to free market access and economic competition⁴, and other restrictions to the efficient functioning of the markets⁵. COFECE is in charge of enforcing the Law to ensure that companies compete intensely to win over consumer preference in all the markets within the national territory, except those of broadcasting and telecommunications which fall within the scope of powers of the Federal Telecommunications Institute (IFT), (see Table 1 for a summary of COFECE's powers).

The LFCE grants rights and obligations to economic agents. These are defined as *every natural or legal person, 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 the economic activity*⁶. Therefore, any natural or legal person that undertakes some sort economic activity is obliged to comply with the LFCE.

Non-compliance with the Law by companies and/or their employees or senior managers may lead to administrative sanctions, legal fees, reputational damage, and in the case of natural persons, loss of employment, and in some occasions, criminal sanctions, including the possibility of imprisonment. Violations of economic competition regulation, even if unintentional, may have consequences for the financial situation, image and even the viability of the companies.

Moreover, business compliance becomes more relevant as competition authorities strengthen the use of their powers and exercise their tools with greater effectiveness (see Graph 1 on COFECE's institutional strengthening).

4. *Barriers to competition* are understood as those structural characteristics of the market, fact or act of a company, as well as the legal provisions which have as a purpose or effect of preventing access by competitors or limiting their ability to compete in the markets, or which prevent or distort competition.

5. Article 2 of the LFCE.

6. Paraphrase of article 3, section I of the LFCE. In the document the terms economic agent, organization and company will be used interchangeably to refer to economic agents.

Table 1. Main powers of COFECE.⁷

Corrective	a) Investigates and, if necessary, sanctions anticompetitive practices and unlawful concentrations.
	b) Investigates markets with competition problems in order to issue recommendations to public authorities or order the elimination of barriers to competition or regulate the access to essential inputs.
	c) Issues resolutions on competition conditions to set or deactivate tariff regulation.
	d) Files constitutional controversies on acts or provisions that violate the exercise of its powers.
	e) Requests the Head of the Federal Executive Branch, the initiation of constitutional actions on laws issued by federative entities that may be contrary to the provisions of articles 28 and 117 of the Constitution.
	f) Issues opinions on anticompetitive restrictions contained in the regulatory repertory in force.
Preventive	<p>a) Prevents the formation of anticompetitive concentration through:</p> <ul style="list-style-type: none"> ▪ Evaluating the possible effects of concentrations. ▪ Issuing opinions on the granting of tenders, concessions and permits.
	b) Issues opinions on draft regulations.
Advocacy⁸	<p>Promotes the competition culture and the application of competition principles amongst:</p> <ul style="list-style-type: none"> ▪ Authorities ▪ Private sector ▪ Academic institutions ▪ Civil society ▪ General public

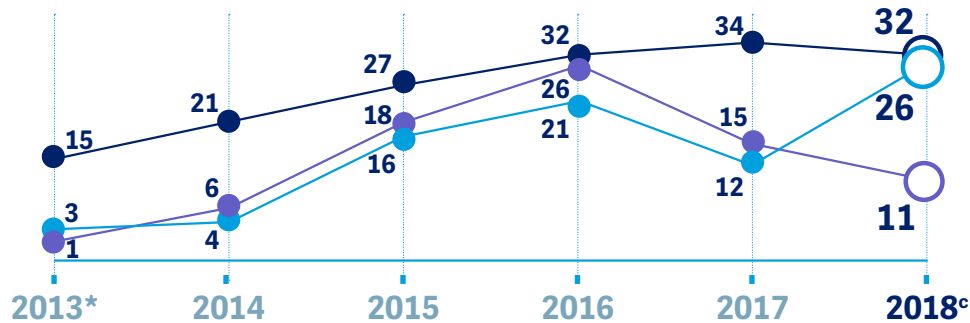
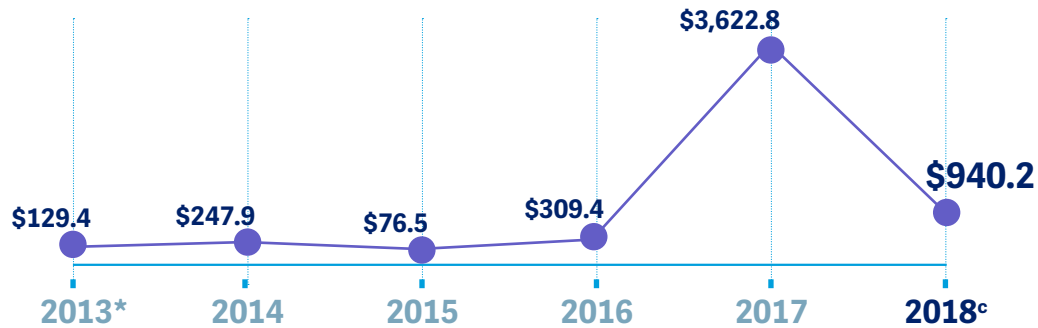
7. For a more detailed description of these powers, please refer to the document Economic Competition Tools. Available, in Spanish, at www.cofece.mx/publicaciones

8. To learn more about COFECE's advocacy work please refer to the sections on Get Closer to Competition and Publications, both in Spanish www.cofece.mx

Graph 1. Evolution of the use of COFECE's corrective powers.

i) Evolution of investigation capabilities.^a

■ Simultaneous investigations ^b
 ■ Requests to adhere to the Immunity Program
 ■ On-site searches carried out

**ii) Fines imposed for violations to the LFCE in millions of Mexican pesos.^d**

* Figure only includes data for the period of COFECE's work, from September 11 to December 31, 2013.

a. Includes investigations for absolute monopolistic practices and relative monopolistic practices.

b. Number of investigations for absolute and relative monopolistic practices and unlawful concentrations that were standing and that were in process during the reported year. Figures may differ with respect to other years due to the validation of information and the counting methodology.

c. Figures may differ from those reported quarterly due to their update.

d. These fines refer to the economic sanctions that COFECE imposed on individuals or companies for violations of the LFCE and as enforcement measures. Some of these fines are being litigated in the Federal Judicial Power, therefore figures may vary from those reported previously due to their updating.

Source: COFECE

Hence, establishing a compliance program that allows companies to identify specific risks of falling into non-compliance with the competition regulation and establish preventive measures to mitigate them, brings them significant benefits as it allows them to:

1. **Prevent, and not just react:** Preventing unlawful conducts can avoid a possible investigation and/or sanction from COFECE; it will always be less costly to prevent violations to the Law than to react after infringing it.
2. **Avoid risks and sanctions:** The LFCE establishes administrative and criminal sanctions for anticompetitive conduct carried out by economic agents. Knowing the specific risks that derive from infringing the Law helps to mitigate them. In addition, in case of proving the existence of an anticompetitive conduct, it is possible for companies to be subject to collective actions' proceedings⁹, or that those persons or companies that have suffered damages or harms as a result of the practice lodge judicial actions against the company and claim the payment of their rights before specialized tribunals in matters of economic competition. This would lead to, in addition to legal costs during the procedure, the expense for the company of repairing the damages.
3. **Protect employees and senior managers:** A compliance program with the Law within companies protects the overall company, and employees and senior managers in particular, by preventing them from participating in violations of the Law that imply legal processes which, apart from being lengthy, can result in sanctions for the involved persons.
4. **Protect the company's reputation:** It is difficult to quantify the reputational damage to an economic agent when it becomes publicly known that it has carried out illegal conducts and created a damage in the market in which it participates; however, the consequences can include everything from the loss of customers and contracts to a drop in the value of shares for those companies listed on the stock exchange. Therefore, avoiding reputational damage is an important reason for complying with the Law.
5. **Create security and certainty:** Knowing the legal framework allows economic agents to act with certainty that their actions are legal and do not imply risks. This allows them to compete intensely through profitable business strategies that comply with the legal framework.

9. Article 12 section XXVIII of the LFCE.

6. **Exercise their rights and protect their commercial interest:** Knowing the LFCE and implementing a compliance program allows companies not only to compete for consumer preference, but also to identify and fight anticompetitive conducts from suppliers, competitors and other players that are damaging competition and the business environment in the market in which they participate or in markets in which they buy their inputs. Thus, economic agents can file a complaint or report before COFECE regarding the actions of other economic agents and even from authorities that are limiting or hampering the process of competition or entry into a market.

2. Recommendations for designing and implementing an effective compliance program

Because of the above benefits, compliance of the economic competition legislation should be an integral part of programs of social responsibility programs and compliance, as well as the codes of ethics and conduct of companies. A compliance program is a useful tool to ensure that the operation of an organization, as well as the performance of its senior managers and employees, adhere to the LFCE.

While compliance programs related to economic competition matters should be tailored to the needs, risks, resources and situation of each company, there are basic elements that all companies may consider. Some of these are presented below.

2.1. Fostering a culture of corporate competition

The key for the success of every compliance program resides in achieving that it becomes part of the corporate culture of companies. Therefore, one of the basic elements of this type of programs is to ensure that senior managers and employees know, understand and respect the LFCE, in order to avoid non-compliance risks. It is equally – if not more – important for people to internalize the value of complying with this regulation. Only then will the program's efficacy be long lasting and useful in any dilemma or pressure scenario.

To create a corporate competition culture, it is advisable to:

- **Recognize the importance of complying with the LFCE:** A component of the compliance culture resides in recognizing and understanding the importance and benefits of ensuring actions in accordance to the Law. In addition, it is important to publicize the property, personal and reputational costs that a violation to the Law would imply.
- **Make visible the commitment by the highest corporate level:** Generating a strong message about the importance of adhering to competition principles facilitates the adoption of a commitment to act in accordance with these. It is imperative that the commitment comes from the highest hierarchical body within the organization, this means, the board of directors, the CEO or the manager. Only in this way can the message permeate throughout the organization and, eventually, become part of its culture.
- **Include economic competition in the codes of ethics or conduct:** Many companies have codes of conduct or ethics, or documents that express the values under which they operate. In this sense, it is convenient that compliance with the LFCE to be integral part of said codes or documents, so that this commitment works, not only to reduce specific risks and contingencies in the matter, but also as part of a broader aspiration of corporate social responsibility.
- **Create synergies with other compliance programs:** Some companies have compliance programs for specific issues such as corruption and money laundering prevention, security or environmental care. In this way it is possible to create synergies and savings by including the obligations related to the LFCE as a complementary element of efforts in other matters.

2.2. Dedicate human and monetary resources

The successful adoption of a compliance program requires investing time, effort and where applicable, money for its design, implementation and monitoring; the amount of resources required vary according to the size of the organizations and the risks they face.

In terms of human resources, for a compliance program to be effective, it is advisable to appoint a person in charge of this important responsibility, preferably with a support team. Also, it is advisable that the profile of the person that develops and implements the compliance program in matters of competition to be adequate to the reality and particular needs of the company. Furthermore, it is relevant that the appointed person has direct communication and the support of the company's senior manager.

It is also of great importance that the company's senior managers and, above all, those in charge of designing and executing the program are trained in this matter and fully understand the implications of the LFCE. To this end it is possible, according to their resources, to implement training in the subject.¹⁰

In the case of small and medium companies, the person in charge of finances or management may be the best positioned to develop and implement a compliance program. Larger companies may even have a specialized department in charge of it.

Generally, the legal department – if it exists – is responsible of developing and supervising compliance programs in other matters. Therefore it can also be in charge of compliance with the LFCE. There are also other areas of the company that can fulfill this function, such as risk control or auditing.

In monetary terms, it is important to allocate sufficient resources to the program to be designed, implemented, evaluated and continuously improved. The amount of money to be allocated obviously depends on the size of the organization and its financial situation. Nevertheless, at the moment of deciding how many resources to inject into the design and implementation of an effective compliance program, it is necessary to remember that this constitutes a profitable investment to the extent that it reduces risks and contingencies, while contributing to broader objectives in matters of corporate social responsibility.

10. See section "2.5 Have continuous and tailored training" for further reference.

2.3. Evaluate the company's risks

Before designing and implementing a compliance program, it is necessary to elaborate a risk matrix that identifies those that are most significant or specific for the company. This allows to establish tailored mitigation actions and controls that can provide adequate and proportional solutions to each of them.

In terms of competition, there are risks common to all companies, regardless of their size or market share; for example, committing an Absolute Monopolistic Practice (PMA per its acronym in Spanish). This may be exacerbated or minimized by certain characteristics of the market in which the company participates, such as the type of products and services it offers or the existence of points of contact with competitors, for example, in business representation organizations or through the participation in tenders. Another risk not necessarily related to the size of the company, is interfering with or hindering the investigation of the competition authority.

There are other risks that depend more on the type of company and its specific characteristics, such as its size or market share¹¹. For example, companies with larger market shares must conduct their business practices carefully, since their risk of engaging in a Relative Monopolistic Practice (PMR per its acronym in Spanish) is greater, especially if they seek to or result in unduly displacing, preventing access or giving exclusive advantages to other companies and the conduct falls within those prohibited by the Law¹².

For this reason, it is advisable that their commercial activities are properly supervised to minimize the risk of carrying out an anticompetitive practice¹³. Since the analysis of the risk of committing abuse of dominance conducts is complex and depends on several factors, it is advisable to seek the support of specialized advisors for a risk assessment in this regard. (See Table 2 to learn more about the risks of non-compliance with the LFCE and its consequences).

11. *Market share* is defined as the percentage that a company controls in a market in which it participates, generally measured according to the total sales.

12. Articles 54 and 56 of the LFCE.

13. *Anticompetitive practices* can be understood as those conducts that reduce, damage, prevent or condition in any way free market access or economic competition in the production, processing, distribution or commercialization of goods and services.

Additionally, it is necessary to take into account that market conditions change. Companies that at certain moment were not at risk of committing a PMR, can increase their relative importance in the market through a purchase or merger operation¹⁴, or by and organic process of growth or business expansion. Therefore, their compliance programs should be flexible enough and consider these changes. It is also a good practice to take into account any circumstance that modifies the situation of a company, including personnel movements, changes in the applicable regulation, corporate adjustments or changes in the business model used, and incorporate mechanisms to address the risks derived from these. In this sense it would be advisable to make periodic adjustments to the corporate risk matrix.

Regarding employees, it is important to identify those in greater risk of breaching the LFCE so that special attention can be given to increase their awareness and understanding. This, without neglecting the fact that everyone must know and participate in the compliance programs.

Finally, it is important for employees to know what obligations they have in of the event of being investigated or being part of an investigation by COFECE, so that they fully comply with the LFCE in this regard and avoid sanctions like enforcement measures – economic and criminal – for hindering or preventing the authority from carrying out its investigation proceedings.

14. Referred to as “concentrations” in the LFCE.

Table 2. Risks of non-compliance with the LFCE and its consequences.¹⁵

i) Committing an Absolute Monopolistic Practice (PMA), also known as collusion or economic cartel.¹⁶	
What is a PMA?	<p>Carrying out an agreement, contract, arrangement or combination (either tacit or explicit) amongst competing companies, with the purpose or effect of:</p> <ol style="list-style-type: none"> 1. Fixing prices: manipulating in a coordinated way a price or a range of prices. 2. Restricting supply: agreeing to limit the amount of products or services offered as this generally results in an increase in prices. 3. Market segmentation: dividing a market, either geographically, in time or by customer portfolio. 4. Coordinating bids in tenders: jointly organizing the participation in tenders, for example, establishing turns to win, or by dividing the market by products or customers. 5. Exchange information with any of the above purposes or effects: sharing strategic information with competitors that may lead to a collusion agreement.¹⁷
What type of companies can commit a PMA?	<p>All companies, regardless of their size or market share. These conducts are sanctioned per se, this means, by the simple fact of being committed, even when they have been endorsed or coordinated by public authorities of any order of government.</p>
In which type of sectors the risk may increase?	<p>In those where there are/is:</p> <ul style="list-style-type: none"> ■ Few competitors in the market. ■ High costs of entry into the market. ■ Product lines and /or services that are homogeneous or with few possibilities for differentiation. ■ Stability in the market structure or little innovation.

15. For a more detailed description of these conducts, please refer to document Economic Competition Tools. Available, in Spanish, at www.cofece.mx/publicaciones/cultura-de-la-competencia/www.cofece.mx/publicaciones/cultura-de-la-competencia/

16. Article 53 of the LFCE.

17. For more information, please refer to the Guide for the Exchange of Information amongst Economic Agents. Available, in Spanish, at www.cofece.mx/publicaciones/%20marco-juridico-y-normativo/

<p>Which areas inside the company are at greater risk?</p>	<ul style="list-style-type: none"> ■ Staff who has contact with competitors: sales, marketing, etc. ■ Staff who participates in business chambers and associations. ■ Persons who are part of the governing body of two companies when these are competitors between each other. ■ Senior managers and employees of chambers and business associations.
<p>What sanctions does the LFCE establish for committing a PMA?¹⁸</p>	<p>Administrative:</p> <ul style="list-style-type: none"> ■ For having incurred: fine of up to 10 percent of the income of the economic agent. ■ For having participated directly or indirectly in representation or on behalf of others: a fine of up to the equivalent of 2,000 Measure and Update Units (UMA per its acronym in Spanish) (approximately 16.1 million Mexican pesos¹⁹) and disqualification from holding a management position for up to five years. ■ For having assisted, propitiated or induced: a fine of up to 180,000 times the UMA (approximately 14.5 million Mexican pesos) and disqualification from holding a management position for up to five years. ■ In case of recidivism: sanctions for up to double of the determined by the Commission.²⁰ <p>Criminal:²¹</p> <ul style="list-style-type: none"> ■ For having incurred: Prison for a term of five to ten years.

18. Article 127 of the LFCE.

19. The value of an UMA is of \$84.49 Mexican pesos, established by the National Institute of Statistics and Geography, published in the Federal Official Gazette on January 10, 2018. In force from February 1, 2019. The value of the UMA is updated annually.

20. Article 127 of the LFCE establishes that "A recidivist will be considered as such when: a) Having incurred in an infringement that has been sanctioned, commits another conduct prohibited by the Law, regardless of its own type or nature; b) At the beginning of the second or subsequent procedure there is a previous final resolution that has caused state, and c) That between the beginning of the procedure and the resolution no more than ten years have passed."

21. Article 254 of the Federal Criminal Code.

ii) Committing a Relative Monopolistic Practice (PMR), also known as abuse of dominance.²²

What is a PMR?	<p>Any act, contract, agreement, procedure or combination by which a company abuses its substantial power²³ in the relevant market with the intention of unduly displacing, preventing access or establishing exclusive advantages through the following conducts:²⁴</p> <table border="0"> <tr> <td>1. Vertical contracts</td><td>9. Cross subsidies</td></tr> <tr> <td>2. Vertical price restrictions</td><td>10. Price discrimination</td></tr> <tr> <td>3. Tied purchases or sales</td><td>11. Raising competitors' costs</td></tr> <tr> <td>4. Conditioned purchase or sale (exclusivities)</td><td>12. Refusal, restriction or discrimination in access to essential inputs</td></tr> <tr> <td>5. Refusal to deal</td><td>13. Margin squeeze</td></tr> <tr> <td>6. Boycott</td><td></td></tr> <tr> <td>7. Predatory pricing</td><td></td></tr> <tr> <td>8. Discounts or conditioned purchases</td><td></td></tr> </table>	1. Vertical contracts	9. Cross subsidies	2. Vertical price restrictions	10. Price discrimination	3. Tied purchases or sales	11. Raising competitors' costs	4. Conditioned purchase or sale (exclusivities)	12. Refusal, restriction or discrimination in access to essential inputs	5. Refusal to deal	13. Margin squeeze	6. Boycott		7. Predatory pricing		8. Discounts or conditioned purchases	
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5. Refusal to deal	13. Margin squeeze																
6. Boycott																	
7. Predatory pricing																	
8. Discounts or conditioned purchases																	
When is a PMR sanctioned?	<p>When any agent with substantial market power carries out any of the thirteen conducts listed above, with the purpose or effect of unduly displacing, preventing access or establishing exclusive advantages, and the conduct does not create gains in efficiency (which have to be proven in the case that a probable responsibility is determined at the conclusion of an investigation).</p>																
What type of companies can commit a PMR?	<ul style="list-style-type: none"> ▪ Companies, businesspersons and professionals with substantial power (individually or jointly) in a market. ▪ Business representation bodies and groups of professionals that offer their services to members. 																
In which type of sectors may the risk increase?	<p>In those with:</p> <ul style="list-style-type: none"> ▪ Few competitors in the market. ▪ High market concentration. ▪ Barriers to entry or expansion. 																

22. Article 54 and 56 of the LFCE.

23. A company's ability to fix prices or restrict the supply of goods and services without having a competitive reaction from any other company to counteract it. Article 59 of the Federal Economic Competition Law establishes the elements to consider in determining whether a company or group of companies has substantial power in the relevant market. It is important to clarify that having substantial power in a market does not presuppose the commission of an anticompetitive practice.

24. For a detailed description of each conduct the Annex of this document can be consulted.

<p>Which areas inside the company are at greater risk?</p>	<ul style="list-style-type: none"> ■ Personnel who have contact with suppliers, distributors and/or customers. ■ Staff responsible of the business strategy, sales and/or marketing. ■ Staff of business representation bodies.
<p>What sanctions does the LFCE establish for committing a PMR?²⁵</p>	<ul style="list-style-type: none"> ■ For having incurred: Fine up to 8 percent of the annual income. ■ For having participated directly or indirectly in representation or on behalf of others: a fine of up to the equivalent to 200,000 UMA (approximately 16.1 million Mexican pesos) and disqualification to serve in senior management positions for up to five years. ■ For having assisted, propitiated or induced: a fine of up to 180,000 times the UMA (approximately 14.5 million Mexican pesos) and disqualification to serve in senior management positions for up to five years. ■ In case of recidivism: sanction up to the double of that determined by COFECE.

25. Article 127 of the LFCE

iii) Carrying out a concentration with adverse effects to competition.	
What is a concentration?	A merger, acquisition of control or any act by virtue of which companies, associations, shares, social parts, trusts or assets in general are joined together among economic agents.
Which are analyzed <i>ex ante</i>?	<ul style="list-style-type: none"> ■ Some operations have to be notified to COFECE before being carried out. Allowing the Commission to analyze their possible effects and decide whether to authorize them, authorize them with conditions or object to them. ■ According to the LFCE, the operations that exceed certain monetary thresholds²⁶ must be notified before they are carried out. ■ As of 2018, notification can be made electronically through the Electronic Notification System of Concentrations (SINEC)²⁷. ■ In addition, economic agents can voluntarily notify concentrations before COFECE for analysis, even when they do not exceed the thresholds established by Law.
Which ones are analyzed <i>ex post</i>?	<p>Regardless of whether they exceed or not the thresholds, some concentrations may create damages to competition. The LFCE considers a concentration as unlawful when it has as a purpose or effect to hinder, reduce or prevent free market access and competition in the market where it occurs.²⁸</p> <p>Furthermore, if a concentration that exceeds the thresholds established in the Law is not notified to the Commission, the companies involved in the operation could be subject to sanctions.²⁹</p> <p>COFECE may investigate operations that should have been reported but were not.</p>

26. The thresholds established in article 86 of the LFCE are the following:

>18 million of UMA (approximately 1,520.8 mdp);

>35 percent of assets, if sales >18 million UMA;

>8.4 million of UMA (approximately 709.7 million pesos) of assets accumulation or social capital; and

>48 million of UMA (4,055.1 million pesos) in the total of assets or sales of the participants.

27. From 2020, all notifications of concentrations must be carried out electronically. For more information the *Guide for Merger Notification* can be consulted. Available in Spanish at www.cofece.mx/publicaciones/marco-juridico-y-normativo

28. According to article 65 of the LFCE, concentrations that do not require prior notification before the Commission, that is, that they do not exceed the thresholds, can be investigated by the Commission within a period of up to one year after their execution.

29. Article 90 of the LFCE.

What sanctions does the LFCE establish in matters of concentrations?³⁰

Concentrations that should have been notified and were not notified:

- Fine of up to 5 thousand UMA and 5 percent of annual income.

Unlawful concentrations:

- **For having incurred:**
 - Total or partial divestment.
 - Fine of up to 8 percent of the annual income.
 - Correction or suppression of the practice.
- **For participating directly or indirectly in representation or in account of:** fine for up to the equivalent of 200,000 UMA (approximately 16.1 million Mexican pesos) and disqualification for up to five years to serve in senior management positions.
- **For having assisted, propitiated or induced:** fine for up to 180,000 times the UMA (approximately 14.5 million Mexican pesos).

30. Article 127 of the LFCE.

iv) Not cooperating with COFECE during an investigation or the analysis of a market.	
How can COFECE require or request cooperation of companies during an investigation?	<p>In order to carry out the investigations for anticompetitive conducts and for the analysis of concentrations, COFECE needs to know how the market works and to have information about economic agents that participate in it. To this end, it has the power to request information through, among other, requirements³¹ or subpoenas from companies and persons related with or that have knowledge about the investigated market, even if they are not object of the investigation or if they are not part of the analyzed operation. The reception of requisitions and subpoenas to appear from COFECE do not presuppose the carrying out of an anticompetitive conduct. However, failure to cooperate with the investigation, hindering (for example, through civil disobedience actions or false information declaration), or failing to respond to COFECE's requests may result in fines and criminal sanctions.</p>
What type of companies present this risk?	<p>The following can be subject to information requisitions, subpoenas for appearances and on-site searches³², among other actions or request from the Commission:</p> <ul style="list-style-type: none"> ▪ Companies that are part of an investigated or analyzed market. ▪ Those who operate in related markets. ▪ Their senior managers or employees.
What sanctions could be imposed for failure to cooperate or hinder an investigation?³³	<p>Administrative:</p> <ul style="list-style-type: none"> ▪ Up to 3 thousand UMA (\$253,470), quantity that may apply for each day of non-compliance. <p>Criminal:³⁴</p> <ul style="list-style-type: none"> ▪ Prison for one to three years. ▪ Fine of 500 to 5,000 days.

31. Request from COFECE of various data or documents necessary for the processing of several procedures, including investigations or market analyses.

32. Paraphrase of article 75 of the LFCE: These are proceedings or unannounced visits carried out by COFECE's Investigative Authority as part of an investigation into probable violations to the LFCE. An on-site search by COFECE does not prejudice the responsibility of a company or the persons visited.

33. Article 126 of the LFCE.

34. Article 254 bis 1 of the Federal Criminal Code

2.4. Elaboration of guides, manuals and compliance policies

Based on the risk assessment or matrix referred to in the previous section, the performance rules and/or internal controls that will be used to address them must be identified. To this end, it is advisable to prepare documents containing the compliance instruments, such as guides, manuals or policies (Table 3 offers some recommendations of elements to be included in the companies' compliance documents, depending on their risk matrix).

For example, if a company constantly participates in public tenders, compliance documents may define what the personnel can and cannot do before, during and after a tendering process. In other cases, they may establish that those employees that carry out purchases from suppliers who are also competitors of the company, to be different to the employees responsible for sales or marketing, in order to avoid risks of incurring in anticompetitive conducts.

Texts must be dynamic and updated as necessary. In addition, they must be clear and written in a language understandable to all members of the company.

Table 3. Recommendations of elements to include the companies' compliance documents.**i) Recommendations to avoid a PMA.***In the company*

- Avoid exchanging information on pricing, sales and strategies with competitors, which may result in a collusion agreement.
- Ensure that company's representatives before a chamber or business association are aware of the competition legal framework.
- Inform staff that a collusion agreement is unlawful per se, even when coordinated by a public official.
- During a merger or acquisition process amongst companies, avoid exchanging unnecessary sensitive information and, if it is the case, adopt the necessary safeguards for the exchange of sensitive information.³⁵

In a business representation body

- Avoid the design of formal or informal rules that discourage competition amongst members or associates.
- Avoid suggesting, recommending, endorsing, discussing or being the vehicle for the exchange of strategic information that may configure a collusive agreement.
- Do not force members to provide information or exchange it amongst themselves.
- When information exchanges are made, be sure the information is historical, sufficiently aggregated, preferably collected and managed by an independent third party, and that it does not contain sensitive elements that may create coordination of actions amongst competitors.

35. Consult the *Guide for Exchange of Information amongst Economic Agents*. Available, in Spanish, at www.cofece.mx/publicaciones/marco-juridico-y-normativo

ii) Recommendations to avoid a PMR.

In the company, when there is a possibility of having substantial market power

- Avoid carrying out business practices indicated in article 56 of the LFCE, which may unduly displace, substantially impede the access, or create exclusive advantages in favor of one or several companies.
- Document the efficiency gains created by the business practices that may represent a PMR and the rationality of its implementation.

In a business representation body, when there is the possibility of having substantial market power

- Avoid using membership policies to exclude or discriminate against competitors that do not meet membership requirements.
- Do not restrict union members from having deals with non-members.
- Do not condition services to the purchase of other services.
- Avoid imposing restrictions or prohibitions to members' advertising.
- Do not serve as a space for the formation of boycott agreements against a supplier of products or services, when members may, jointly, have a broader market share and/or the possibility of establishing the conditions that prevail in this.

iii) Recommendations to avoid investigations for unlawful or non-notified concentrations.

- Notify a concentration to COFECE whenever it exceeds the established thresholds, before it is carried out.
- Perform a preliminary analysis of the possible consequences of the operation in terms of the LFCE.
- Take care and avoid the exchange of unnecessary sensitive information for the realization of the concentration and, if necessary, adopt the necessary safeguards for the exchange of strategic information that is needed for the operation.
- If appropriate, from early stages design and propose to COFECE viable conditions for the authorization of the concentration in order to avoid that competition and free market access be diminished, damaged or prevented as a result of the notified operation.
- Request meetings with public officials in charge of analyzing the notified concentrations in order to resolve doubts from agents, related to the proposed operation.
- Notify to COFECE on a voluntary basis a concentration for which risks to competition are identified, even when it does not exceed the thresholds, to help to prevent sanctions for an unlawful concentration.

iv) Recommendations for cooperation with COFECE during an investigation.

Information requests

- Deliver to COFECE the requested information in time and form.
- Make employees aware that when the complexity of the volume of information requires it, COFECE's Investigative Authority may issue an extension, for a single occasion.
- In appearances it is not enough to be present, but it is necessary to answer the questions and clarify the facts. In case of doubt about how to respond, contacting COFECE staff is recommended.

On-site searches

Before the visit:

- Inform all senior managers and employees about their rights and obligations when they are subject of on an on-site search.
- Ensure that all senior managers and employees are aware that hiding, omitting, altering, destroying or disturbing in a total or partial manner the documents, images or electronic files that contain information or data with the purpose of deviating, hindering or preventing the investigation of a possible criminal act or the administrative procedure on matters of competition are grounds for criminal sanction and fines.

During the visit:

- Allow access to the duly identified COFECE public officials and, if it is the case, to those acting as witnesses.
- Cooperate fully and permanently with the authorized personnel.
- Provide the necessary facilities to the personnel of the Commission for the adequate development of the visit.
- Answer the questions made by public officials about facts, information or documents related to the purpose and aim of the visit.
- Notify the staff of COFECE of the entry or exit from the visited address of persons with knowledge of the facts under investigation, reporting the exit of computer equipment, electronic devices or any other means that may contain information of the economic activity of the visited.

2.5. Have continuous and tailored training

Ongoing training is essential for senior managers and other relevant personnel of the company to be able to execute the compliance program. It should, at least, aim to clarify the basic scope of the LFCE and provide the personnel with the necessary knowledge to identify situations that could lead to an unlawful conduct. It is also advisable that employees sign a document attesting that they have received training and their commitment to adopt and comply with the program.

Likewise, it is important that the training explains the reasons behind the existence of the compliance program, as well as the consequences of not complying with it. It is advisable to start training employees who have a greater exposure to risk, as well as new employees who will assume functions in risk positions, and even offer them material with more in-depth content.

Training should be provided by experts on matters of competition or by trainers who have been properly trained. Moreover, it should allow for discussion with experts, so the size of groups would have to be appropriate to facilitate dialogue. Participation of senior managers is also very useful.

While COFECE does not certify companies, it does offer — according to the available resources — trainings on compliance on matters of economic competition³⁶.

2.6. Monitoring and auditing the compliance program

Monitoring allows senior managers and the person responsible for the program to ensure that it is running smoothly. It is important to gather and analyze useful information for this purpose, for example: if actions and/or controls to address each risk identified in the matrix have been designed, if training has been provided, if the program is properly documented or if there are periodic verifications or updates to the program.

Moreover, audits, whether internal or external, complement monitoring as they imply a thorough review, from the perspective of compliance with the LFCE, of the activity of specific areas of the organization. Audits are both preventive and corrective in nature since, on the one hand, they allow for the detection of deviations from the compliance program, and on the other, they identify possible violations of the regulation that must be corrected immediately and, if necessary, notified to COFECE³⁷. In many companies, audits are periodically conducted on subjects or even on the whole operation of the company, thus elements of compliance on matters of economic competition could be included to save resources and time.

36. For further information, you may write to cumplimiento@cofece.mx.

37. See chapter 3 for a description of the resources that COFECE makes available for companies in these cases.

For an internal audit to be effective, it is important that the area in charge has enough independence to guarantee objectivity of its work. In this same sense, if possible, it is advisable to use external auditors on a regular basis. Audits are especially relevant for organizations or areas within a company with greater levels of risk or exposure.

2.7. Establish internal report systems and disciplinary actions

It is advisable to establish in the program disciplinary measures enforceable on those who do not comply with the LFCE. This not only has the purpose of deterring misconduct, but also to reflect a true commitment of the company to compliance in competition matters.

The disciplinary sanction must be applied to any member of the organization without distinction. It is advisable to create incentives to strengthen the culture of competition; for example, the compliance and support for the program can be deemed as a positive aspect in the evaluations of employees.

When an employee considers that the program or the Law is not complied with, she may be able to report the circumstance to the person in charge of the program, without fear of reprisals from her superiors or co-workers. It should be made clear to whom, how, when and where such reports may be made.

It is also possible to consider “internal exemption programs”, which encourage the confession and report of possible violations of the Law at early stages, allowing a timely referral to the competition authority.

2.8. Evaluate the compliance program

The program should be subject to a periodic evaluation with the purpose of ensuring that it is achieving its objective so that, if necessary, it may be updated, improved and/or strengthened.

To evaluate the effectiveness of the program it is possible to conduct surveys, knowledge tests, post-training sessions and interviews with key persons of the organization. The evaluation can be on the entire program or about some of its elements.

2.9. Additional recommendations for a compliance program

Other areas of attention for companies concerning compliance with the LFCE are: i) the participation in public tendering processes, and ii) the operation in recently liberalized markets, for example, those that changed as a result of the Energy Reform.

First, the fight against collusion in public procurement is one of COFECE's strategic axes. In recent years the Commission has sanctioned several collusive agreements for coordinating bids in public procurement processes.³⁸

In this regard, companies participating in public tenders are recommended to carry out, among others, the following actions:

- Develop and present quotations and economic proposals for a tender unilaterally, that is, following their own commercial strategy, without considering those of the competitors.
- Avoid contact and/or exchange of information with competitors during the meetings of a procurement process.
- Where more than one company of a group³⁹ participates in a same tender, ensure that the proposals are determined in an independent manner within each company and not by agreement between the companies of the group⁴⁰.
- Report to COFECE any evidence of collusion in public tender processes through the means described in the next chapter of the document, even when they are facilitated by public servants.

Second, in Mexico some markets that in the past decades were exclusive of the State and /or where sales prices were set by means of maximum price policy have been liberalized, which entails various challenges for regulators as much as for companies who participate in it. Thus, liberalization changes the rules of the game and opens the possibility for the participation and/or the growth of new entrants and for greater competition in the markets.

38. See chapter 4 on recent cases for some examples.

39. The Supreme Court of Justice of the Nation established in the Thesis I.4º.A.J/66 that an Economic Interest Group (GIE, per its acronym in Spanish) is a set of natural and/or legal persons that, despite having autonomous legal personality, have related commercial and financial interests, in such a way that they coordinate their administrative, commercial, legal and corporative activities to achieve a common objective.

40. According to the judgement issued by the Second Collegiate Circuit Tribunal on Administrative Matters Specialized in Economic Competition, Broadcasting and Telecommunications, with residence in Mexico City and jurisdiction throughout the Republic in the session of April twenty-fifth of two thousand nineteen in the review of *amparo* R.A. 84/2018, when in a tender two companies participate in same item of the same tender, they are considered mutual competitors, even if they are part of the same GIE.

On the one hand, companies already present must rethink their commercial strategies, in addition to ensuring that they do not use their market share to unduly displace or prevent the entry of other companies (that is to say, carrying out a PMR). On the other hand, companies that enter recently liberalized markets or already participate in them should be aware of the LFCE to ensure they comply with it and avoid either a practice contrary to competition or, if applicable, detect it and, if necessary, bring forth a complaint. Some specific recommendations include:

- Know the LFCE, as well as the sectoral regulation in force for the market, in case it exists.
- Establish mechanisms for compliance with the LFCE, as well as with sectoral regulations, specially is there is asymmetric regulation for some company or companies.
- Report to COFECE any evidence of collusion or abuse of dominance carried out by companies in the market, even if it is facilitated by a public official.
- Inform COFECE about the existence of regulatory barriers or lack of regulation that prevents competition or entry into a market.

To encourage competition in recently liberalized markets, COFECE publishes studies, advocacy documents and opinions aimed at sectoral regulators and other authorities, so that they make the necessary changes to allow the entry of companies and intense competition in these markets.⁴¹ These documents also can also be of great use for companies, as they allow them to learn about the competition conditions in the markets, as well as the challenges they may face when participating in them.

41. The Documents are available in Spanish at: www.cofece.mx/publicaciones/; and in English at: www.cofece.mx/publicaciones/publicaciones-en-ingles/.

3. Resources that COFECE makes available to companies

3.1. Immunity and Sanction Reduction Program⁴²

The Immunity and Sanction Reduction Program is an opportunity for economic agents who have been or are a part of collusive agreements to admit before COFECE their participation in the practice and cooperate fully and continuously with it, by delivering in timely manner relevant information that allows the identification or, in the case of initiated files, the investigation of a conduct. If they comply with the requirements of the program, the applicants can benefit from a reduction in the corresponding sanctions for carrying out a PMA, in addition to which they may be exempted from criminal liability.

To obtain immunity companies and natural persons must:

1. Recognize their participation in the PMA.
2. Put an end to the anticompetitive conduct.
3. Provide relevant information about the practice, including:
 - Who participated or is/are participating in the PMA? (economic agents, either natural or legal persons).
 - When did the PMA occur? (duration of the collusion agreement).
 - Where was it carried out? (market in which the practice was carried out)
 - How does the cartel and its monitoring system operate?
 - Any other information that is deemed relevant.
4. Cooperate fully and continuously with COFECE in the procedures that derive from an investigation.

42. Article 103 of the LFCE.

Being the first to apply to the program and comply with the obligations established in it, can imply a reduction in an eventual fine from up to 10 percent of the annual income, to only one UMA. The following companies that apply for this benefit may obtain a fine reduction of up to 50, 30 or 20 percent of the maximum allowed, respectively for the second, third or fourth agent that apply, when they provide additional elements of conviction to those already held by COFECE and comply with requirements described above. Hence the importance of making the application earlier before the authority through email or telephone, as is indicated below.

COFECE provides enough time for companies that have requested immunity to collect the information needed for the investigation, while maintaining the order in which the application was submitted.

The Commission will maintain the confidentiality of the provided information, as well as the identity of the economic agents who intend to avail themselves of this benefit.

Those interested should submit their application by voicemail at telephone number +52 (55) 2789 6632 or send an email to the address inmunidad@cofece.mx.

In this application, they must expressly state their wish to apply to the program and provide contact information. The application is submitted before COFECE's Investigative Authority at any time during the investigation period, and before the Statement of Probable Responsibility (DPR, per its acronym in Spanish) is issued.

To read a detailed explanation of the operation of the program, consulting the document *Guide of the Immunity and Sanctions Reduction Program*⁴³ is advised.

3.2. Procedures for Exemption and Reduction of the Amount of the Fines⁴⁴

This procedure is an opportunity for economic agents who are under investigation for a PMR or an unlawful concentration to request the anticipated termination of the investigation in exchange for fulfilling commitments that restore the competition process and free market access. This could represent significant savings of resources for the investigated company, as it could avoid incurring in legal costs during the investigation and the trial-like procedure. This benefit can be requested by any company or natural person under investigation through a written application submitted before COFECE's Investigative Authority issues a DPR.

43. Available in Spanish at www.cofece.mx/publicaciones/marco-juridico-y-normativo. It is also possible to access a video available at www.youtube.com/user/CFCEconomica/videos and an informational brochure on the subject available in Spanish at www.cofece.mx/autoriadad-investigadora/.

44. Articles 100 through 102 of the LFCE.

For a detailed explanation of the Procedure, reviewing the document *Guide of the Procedures for Exemption and Reduction of the Amount of Fines*⁴⁵ is recommended.

3.3. Formal complaints and reporting of anticompetitive practices

Any person can file a complaint before COFECE regarding an anticompetitive practice or an unlawful concentration. To do so, she must submit a written complaint that must contain at least the following elements:⁴⁶

- Name, denomination or business name of the complainant;
- Name of the legal representative if it is the case, and suitable document attesting its personality; address to hear and receive notifications, and authorized persons, as well as telephone numbers, email or other data that allow their prompt location;
- Name, denomination or company name and, if known, the address of the accused;
- Brief description of the facts that motivate the complaint;
- In the case of PMR 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;
- List of documents and means of conviction accompanying the complaint, precisely related to the facts denounced, and
- Other elements that the complainant deems relevant and, in case of not having these available, indicate the place or file in which these are located, so that what is necessary during the investigation is provided.

Before filing a complaint, it is advisable to consult further information about what the complaint should include.⁴⁷

⁴⁵. Available in Spanish at www.cofece.mx/publicaciones/marco-juridico-y-normativo.

⁴⁶. Article 68 of the LFCE.

⁴⁷. You may consult www.cofece.mx/autoridad-investigadora and review the infographic about bringing forth informed complaints available at www.cofece.mx/publicaciones/multimedia.

Alternatively, it is possible to submit an anonymous report on anticompetitive practices through COFECE's website in the section *Report an anticompetitive practice*. The anonymous report, besides requiring less information at the time of submission, can make sense in situations when there is a risk of retaliation, which deters the person from becoming a complainant. To file a report, the fields provided must be filled out, the most important being the description of the possible violations of the LFCE. If necessary, supporting documentation can be attached (Table 4 lists the differences between the claim and the anonymous report of anticompetitive practices).⁴⁸

Table 4. Comparison of characteristics between the formal complaint and the report of anticompetitive practices.

Complaint	Report
Admission subject to compliance with requirement of Article 68 of the LFCE.	Fewer requirements for its presentation.
Presentation in writing	Through electronic means
Indispensable to present sufficient evidence.	It is not necessary to present evidence.
If requirements are met the AI will initiate the processing.	The AI will use these reports to find possible lines of investigation.
Once the complaint is received, the AI shall issue an agreement through which: <ul style="list-style-type: none"> a. Warns the complaint from remedying omissions in the presentation's requirements of the complaint, b. dismisses the complaint for notoriously inadmissible, c. admits the file for processing on merits. 	Its submittal does not generate any formal action from the AI
Cannot be anonymous.	Can be anonymous.

48. The report can be made at: www.cofece.mx/autoridad-investigadora.

3.4. Electronic Notification of Concentrations System (SINEC)

As a part of the Electronic Procedures System (SITEC, per its acronym in Spanish), COFECE developed the SINEC, which allows agents to notify concentrations electronically, file documents, receive notifications, access files remotely 24 hours a day and carry out the concentration procedure entirely through electronic means.⁴⁹

Some benefits of the electronic notification are:

- Remote and uninterrupted notification and access to the file.
- Saving time and resources.
- Personal notifications on the process are carried out in the system, thus avoiding commutes for the economic agents.
- The status of the notification is known, as well as the responsible for the process within COFECE.
- Reduction of the duration of the notification process set forth by the LFCE by at least four working days.

3.5. Reporting of regulatory obstacles

While regulation has justified public policy purposes such as protecting security, the environment or the health of the population, in certain occasions it may have a negative impact in the markets by hindering competition, for example, when it:

- Restricts the entry, limits or unnecessarily reduces the number of companies in a market, for example, by establishing requirements of minimum distance between establishments in the same line of business.
- Inhibits the ability to differentiate, prevents or hinders suppliers from diversifying and differentiating their products or services from those of their competitors, in an unjustified manner, for example, by setting maximum or minimum prices for the purchase and sale of products or services.
- Creates uncertainty, that is to say, grants disproportionate discretion to the authority that enforces the regulation. For example, by not establishing the duration of concessions or clear grounds for their revocation or cancellation.

⁴⁹. You may review the document *Manual on the use of SINEC*, as well as a leaflet about concentrations, available in Spanish at www.cofece.mx/conocenos/secretaria-tecnica-2. For any doubt about concentrations notification, please write to the email addresses concentraciones@cofece.mx or sinec@cofece.mx.

In light of these cases, any person can present a report about the regulation that is harming the competition process in the market through COFECE's website, in the section *Report a regulatory obstacle*.⁵⁰ The interested party must fill in the required fields, indicating the name of the norm or regulation, where it can be consulted and briefly describe how it hinders competition. The report can be anonymous.

3.6. Telephone line for consultations

COFECE makes available to the public the telephone line + 52 55 2789 6500 to make consultations to the staff of COFECE and solve doubts on possible anticompetitive practices within or outside a company.

50. Available in Spanish at: www.cofece.mx/reporta-un-obstaculo-regulatorio/.

4. Recent cases resolved by COFECE⁵¹

Absolute Monopolistic Practice

Price fixing and coordination of bids in tenders for condoms and latex probes.

Anticompetitive conduct

Between 2009, 2011 and 2012, four companies and seven natural persons colluded in public tenders for condoms and latex probes of the health sector. The Commission proved that the following unlawful conducts were carried out:

- Two companies agreed prices in the market researches of public tenders to raise the Maximum Reference Prices.
- Four companies allocated the tenders: for example, company 1 took 80 percent of probes and company 2 the 20 percent. In condoms, the figures were inverted.

For these actions, the participants of the collusion agreement generated a harm on the market of over 177 million Mexican pesos, to the detriment of users of public health services.

Investigation and sanction by COFECE

- COFECE received a complaint for possible absolute monopolistic practices and initiated an investigation.
- In 2018, COFECE fined 5 companies and 7 natural persons with a total 112.8 million Mexican pesos.

File IO-024-2013. For further information, see the case analysis available in Spanish at www.cofece.mx/publicaciones/analisis-de-casos

51. The public can consult the reasonings and arguments of the Board of Commissioners of COFECE (and the extinct CFC) in the cases it resolves and the opinions it issues, which can be found through the tool *Resolutions and Opinions Search Engine*. Available in Spanish at www.cofece.mx/conocenos/pleno/resoluciones-y-opiniones

Absolute Monopolistic Practice

Price fixing and coordination of bids in tenders for media monitoring

Anticompetitive conduct

Between 2012 and 2016, three companies and five natural persons colluded in at least 24 public tender procedures for media monitoring services. The Commission proved that the following illegal conducts were carried out:

- Price manipulation in economic proposals and quotations in the market researches.
- Coordinated bids and/or abstentions for technical proposals and/or economic in invitation for at least three persons.

For these actions, the participants of the collusion agreement generated harm in the market estimated in 3.1 million Mexican pesos, to the detriment of 15 public institutions that were affected and could have used the resources to cover other needs.

Investigation and sanction by COFECE

COFECE initiated an investigation for possible absolute monopolistic practices. In 2018, it sanctioned the participants of the collusion with 7.2 million Mexican pesos.

File IO-006-2015. For further information, see the press release available in English at www.cofece.mx/publicaciones/news-office/?lang=en

Absolute Monopolistic Practice

Price fixing agreement in the market of tortillas in Jalisco

Anticompetitive conduct

In 2016, two industrial leaders of the maize dough and tortilla industry from Jalisco agreed to establish a price range of 9 to 14 pesos for the retail of one kilogram of tortilla. The agreement was facilitated by a state public official.

The damage caused by this collusive agreement was of 52.6 million Mexican pesos.

Investigation and sanction by COFECE

In March 2016 it initiated an investigation and found that two businessmen and one state public official had carried out this agreement and had publicized it in a press conference. In 2017, COFECE fined the three involved persons with over 390 thousand pesos.

File DE-009-2016. For further information, see the press release available in English at www.cofece.mx/publicaciones/news-office/?lang=en

Relative Monopolistic Practice

Production and promotion of live shows; operation and administration of live entertainment centers; and distribution and automatized commercialization of tickets.

Actions by the companies

The investigated companies signed contracts with several entertainment centers and promoters in which they established exclusivities in favor of the group that provided ticketing services.

Investigation by COFECE

In 2015, COFECE initiated an investigation for possible relative monopolistic practices based on evidence that one or several companies may have unduly displaced, prevented access to other participants or established exclusive advantages in favor of the companies that provide ticketing services.

Conclusion of the investigation

The LFCE allows that the economic agents involved in an investigation for relative monopolistic practices to present commitments with the purpose of restoring the competition process and free market access in exchange for closing the file in an anticipated manner, avoiding the imposition of fines.

The involved agents committed themselves to:

- Eliminate exclusivities in force with venues
- Waive future exclusivities with promoters and venues
- To not concentrate venues⁵²

In 2018, COFECE accepted the commitments and closed the investigation. As a result, it will promptly follow up on commitments to ensure that companies comply with them.

File IO-005-2015. For further information, see the press release available in English at www.cofece.mx/publicaciones/news-office/?lang=en

52. They will not be able to increase the accumulation of rights over venues with capacity superior to 15 thousand viewers in Mexico City for the following 5 years.

Relative Monopolistic Practice

Taxi services at the Mexico City International Airport (AICM, per its acronym in Spanish)

Anticompetitive conduct

To provide the taxi service in the AICM, a permit issued by the Ministry of Communications and Transport is required, as it is a contract signed with AICM for access to a federal zone and parking lot. Between 2008 and 2015, contracts signed with 6 taxi companies provided for:

- Only those companies that already provided services could increase the number of their units.
- This increase would be proportional to the number of units already owned by each group.

Furthermore, the AICM granted discounts different from the payment of compensations in amounts and periods to agents in the equal circumstances.

Investigation and sanction by COFECE

COFECE initiated an investigation and determined that the contracts of the AICM established exclusive advantages for some taxi companies, and prevented the entry of new competitors. In 2016, COFECE imposed fines on the AICM of 63 million Mexican pesos and ordered it to eliminate anticompetitive clauses, tender the allotment of new contracts and make publicly available the criteria for granting discounts.⁵³

File DE-015-2013. For further information, see the press release available in English at www.cofece.mx/publicaciones/news-office/?lang=en

53. This fine is under review by the Judiciary Power.

Concentration

Soriana and Controladora Comercial Mexicana (CCM).

The operation

In 2015, Soriana notified the intention to acquire 159 stores property of CCM

Analysis and actions by COFECE

COFECE analyzed the operation and determined that in 27 of the 159 local markets where the stores were located there would be risk to competition because Soriana would have high participation in them and would be unlikely that new competitors would enter. This would have conferred upon Soriana the power to increase their prices up to a 5.26 percent in those markets.

The Commission conditioned the operation to Soriana not acquiring these stores, or to sell them to a third party.

COFECE monitored compliance with the conditions established for the concentration and imposed Soriana a fine of 2.4 million Mexican pesos in 2017 for not complying with the conditions.

File CNT-021-2015. For further information, see the case analysis available in Spanish at www.cofece.mx/publicaciones/analisis-de-casos

Non-notified concentration

Alsea and Grupo Axo

The operation

Between June and July of 2013, Alsea accumulated shares from Grupo Axo's social capital. The commercial value of these shares exceeded one of the thresholds established in the LFCE (section III of Article 20), therefore it should have been notified to the Commission.

Analysis and actions by COFECE

COFECE conducted an investigation and determined that the companies violated the LFCE. Therefore, in 2015 it sanctioned them with over 28 million Mexican pesos as it was a serious breach to one of the main obligations derived from the LFCE.

File IO-001-2014. For further information, see the case analysis available in Spanish at www.cofece.mx/publicaciones/analisis-de-casos

Blocked concentrationWalmart and Cornershop.⁵⁴**The operation**

On September 13, 2018, the supermarket chain Walmart announced that it had reached an agreement to acquire Cornershop for 225 million dollars. Cornershop is a startup that operates the main digital platform for home delivery of purchases from supermarkets, pharmacies and specialty stores in Mexico.

Analysis and actions by COFECE

COFECE concluded in its technical analysis that, had the notified operation been authorized, the economic agents resulting from the concentration could:

- Unduly displace competitors from the Cornershop platform, because Walmart could have incentives to not participate in other platforms with the aim of artificially benefiting Cornershop.
- Displace other self-service stores competing with Walmart through the undue use of user information collected through the platform (location, products purchased, time of purchase, among others).
- Prevent Walmart's competitors from accessing the platform and favor self-service stores and prices clubs that are part of the group.
- Cause Walmart's competitors to abandon the platform, due to the lack of confidence and certainty on the use that Cornershop could make of the generated information.

Thus, the company resulting from the concentration between Walmart and Cornershop could have the ability to establish barriers to entry and prevent third parties from accessing the market or displace competitors.

Therefore, the Board of Commissioners determined not to authorize the concentration between Walmart and Cornershop.

File CNT-161-2018. For further information, see the press release available in English at www.cofece.mx/publicaciones/news-office/?lang=en

54. This case is under review in the Judiciary Power.

5. References

5.1. Outreach documents⁵⁵

COFECE publishes documents aimed at different audiences that provide information about competition policy. Likewise, it produces consultation materials that explain some resolved cases. Some of these documents are:

- [Economic Competition Tools \(in Spanish\)](#)
- [SMEs and economic competition \(in Spanish\)](#)
- [Studies on competition matters \(some English\)](#)
- [Infographics \(in Spanish\)](#)
- [Case Analyses \(in Spanish\)](#)
- [Cartoons](#)
- [Videos \(in Spanish\)](#)

5.2. Institutional documents

COFECE complies with the legal obligation to publish documents that allow citizens to learn about the planning and progress of its activities. These include its Strategic Plan 2018-2021, annual workplans, as well as quarterly and annual reports on results. Similarly, it makes available to the public its competition advocacy strategy. The following sections can be consulted in COFECE's website:

- **Planning and evaluation**
Available at www.cofece.mx/planeacion-y-evaluacion (in Spanish)
- **Culture of Competition**
Available at www.cofece.mx/publicaciones/cultura-de-la-competencia (in Spanish)

55. All documents are available in Spanish at: www.cofece.mx/publicaciones/

5.3. Documents from other competition organizations

Other competition authorities and international organizations also develop documents and guides that can be of use as reference and contribute in complying with the LFCE. Some examples of these documents are:

Association of Southeast Asian Nations (ASEAN)

- ASEAN Secretariat, *Competition Compliance Toolkit for Businesses in ASEAN*, (no year). Available at www.asean-competition.org (in English).

Brazil

- Conselho Administrativo de Defesa Económica, *Guidelines Competition compliance programs*, (2016). Available at <http://en.cade.gov.br> (in English).

International Chamber of Commerce (ICC)

- ICC, *Antitrust Compliance Toolkit*, (2013). Available at <https://cdn.iccwbo.org> (in English).

Canada

- Competition Bureau, *Corporate Compliance Programs*, (2010). Available at <https://www.competitionbureau.gc.ca> (in English).

Chile

- Fiscalía Nacional Económica, *Competition law compliance programs*, (2012). Available at <https://www.fne.gob.cl> (in Spanish).
- Fiscalía Nacional Económica, *Trade associations and free competition*, (2011). Available at <https://www.fne.gob.cl> (in Spanish).

Spain

- Comisión Nacional de la Competencia (extinct, replaced by the Comisión Nacional de los Mercados y la Competencia), *Guide for business associations*, (2009). Available at <https://www.cnmc.es> (in English and Spanish).

European Union

- European Commission, *Compliance matters*, (2012). Available at <https://op.europa.eu> (in English).

France

- Autorité de la concurrence, *Antitrust compliance and compliance programmes, Corporate tools for competing safely in the Marketplace*, (2012). Available at <http://www.autoritedelaconcurrence.fr> (in French).

Japan

- Japan Fair Trade Commission, *Guidelines concerning the activities of Trade Associations under the Antimonopoly Act*, (1995). Available at <https://www.jftc.go.jp> (in English).

Organisation for Economic Co-operation and Development (OECD)

- Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises*, (2011). Available at <http://www.oecd.org> (in English).

United Kingdom

- Competition and Markets Authority, *Competition law risk: A short guide*, (2014), available at <https://assets.publishing.service.gov.uk> (in English).
- Competition and Markets Authority, *Quick guide to competition law compliance*, (2009), available at <https://webarchive.nationalarchives.gov.uk> (in English).

Singapore

- Competition Commission Singapore, *What you can do to protect your business*, (2018). Available at <https://www.cccs.gov.sg> (in English).

5.4. Mexican legal framework related to competition⁵⁶

When designing and implementing a compliance program, it is of great importance to have the necessary legal references to legally sustain said effort. Hereunder, some resources to be considered are proposed:

- [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 \(in Spanish\).](#)
- [Guidelines for the notification of concentrations through electronic means before COFECE \(in Spanish\).](#)
- [Regulatory Provisions on the use of electronic means before COFECE \(in Spanish\).](#)
- [Technical Instructions of the Electronic Notifications System of the Federal Economic Competition Commission \(in Spanish\).](#)

56. All the resources are available at www.cofece.mx/publicaciones/marco-juridico-y-normativo

- [Technical Criteria for the Calculation and Application of a Quantitative Index for measuring Market Concentration \(in Spanish\)](#)
- [Technical Criteria for the Request for the Dismissal of the Criminal Process in Cases referred to in the Federal Criminal Code \(in Spanish\).](#)
- [Technical Criteria of the Federal Economic Competition Commission for the Request and Issuances of Precautionary Measures, as well as for the Fixing of Sureties \(in Spanish\).](#)
- [Guide to Process an Investigation Procedure for Absolute Monopolistic Practices \(in Spanish\).](#)
- [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 between Economic Agents \(in Spanish\).](#)
- [Guide of the Procedures of Exemption and Reduction of the Amount of Fines \(in Spanish\).](#)
- [Guide for the Notification of Concentrations \(in Spanish\).](#)
- [Normative Compendium \(in Spanish\)](#)
- [Federal Economic Competition Law \(in English\)](#)

Annex. Conducts that may 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.

Resale price maintenance

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

Tied sales

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

Exclusivities

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

Refusal to deal

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

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.

Predatory pricing

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

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.

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.

Price discrimination

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

Raising rival's 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.

Obstacles to the acquisition of an essential input

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

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.

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



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