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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**Competition Compliance Programmes – Note by Mexico**

8 June 2021

This document reproduces a written contribution from Mexico (COFECE) submitted for Item 1 of the 133<sup>rd</sup> OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

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## *Mexico (COFECE)*

### 1. Introduction

1. The Federal Economic Competition Law (LFCE) does not expressly recognize or mention compliance programs as an element that may be taken into consideration when carrying out any of its enforcement proceeding.
2. For this reason, the Federal Economic Competition Commission's (COFECE or Commission) efforts in the matter have focused on advocacy activities promoting the design and implementation of compliance programs as an important aspect of its wider efforts to generate awareness and promote the observance of the Federal Economic Competition Law (LFCE for its acronym in Spanish).
3. COFECE has drafted and broadly disseminated documents which lay out the fundamental elements of an effective compliance program.
4. Other relevant advocacy efforts include the organization of (and participation in) events and training fora, as well as designing and publishing training tools related to competition compliance.
5. Finally, the contribution briefly explores the topic of debarment, as its inclusion in the procurement law as a sanction for those individuals who engage in bid rigging could be an important incentive for companies to comply with the LFCE.

### 2. Promoting compliance of the Federal Economic Competition Law

6. COFECE has carried out several outreach efforts to promote compliance with the LFCE and showcase the benefits of competition before diverse audiences and types of businesses. This section describes these efforts which include: i) the publication of documents aimed at explaining the importance of complying with the LFCE; ii) outreach events and online training; as well as iii) activities derived from institutional collaboration with other actors or public authorities.

#### 2.1. Recommendations for complying with the LFCE

7. In 2019 the Commission published the *Recommendations for complying with the Federal Economic Competition Law* (a revision and updating of a document first published in 2015).<sup>1</sup> One of the main messages of this document is that strict compliance with the LFCE allows companies to reduce legal and economic risks that may damage their finances and reputation, as well as to prevent employees from facing administrative, civil or even criminal sanctions. In this sense, the document describes the benefits of competition and complying with LFCE and provides the elements that, in the view of the Commission, should be covered by any effective compliance program. These are:

- *Foster a corporate culture of competition:* by making a clear commitment, especially by the higher levels of the organization, to recognize the importance of complying with the LFCE, which should be visible through all the levels of the

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<sup>1</sup> The complete 2019 document is available at [https://www.cofece.mx/wp-content/uploads/2021/02/DYO\\_Recom-ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/02/DYO_Recom-ENG.pdf) and the 2015 document is available at <https://www.cofece.mx/recommendations-for-compliance-with-the-federal-economic-competition-law-addressed-to-the-private-sector/?lang=en>

company; and by including economic competition in the company's codes of ethics or conduct and creating synergies with other compliance programs such as those for preventing corruption or money laundering.

- *Allocate sufficient human and monetary resources:* by investing time, effort and even financial resources for its proper design, implementation and monitoring.
- *Evaluate the company's risks:* through the elaboration, for example, of a matrix that identifies those risks that are more significant or specific to the company and establish tailored actions and controls that provide adequate and proportional solutions to reduce said risks.
- *Consider competition compliance when drafting guides, manuals and policies:* which should be developed drawing from the risk matrix and define what employees may or may not do; and which should be dynamic and written in an employee-friendly language.
- *Include continuous and tailored training:* that explains the reasons behind the existence of the compliance program as well as the consequences of not following it, especially for senior managers and other relevant staff.
- *Establish internal reporting systems and disciplinary actions:* that should not only have the purpose of deterring misconducts but also of reflecting the company's true commitment with competition compliance.
- *Establish mechanisms for proper monitoring and auditing:* that allow senior managers or the person in charge of the program to ensure that it is running properly, by gathering and analyzing information on the actions and/or controls to address risks, on the training provided to employees, and on the program's periodic updates.
- *Consider mechanisms for its evaluation:* in order to subject the program to periodic evaluations in order to ensure that it is achieving its objective and, if necessary, implement updates and improvements.

## 2.2. Other advocacy initiatives

### 2.2.1. Publications related with the content of the LFCE

8. The Commission continuously issues documents aimed at explaining the benefits of competition and the importance of complying with the LFCE to different audiences. Examples of documents with content that supports the understanding of rights and obligations under the LFCE and hence the design and implementation of an effective compliance program are:

#### *Competition Toolkit*<sup>2</sup>

9. This document explains to the general public the basic aspects of Mexican competition law and policy. It covers in detail the concept of economic competition, the purpose of COFECE as a competition authority and the tools that it has to enforce the LFCE. Also, the document provides reader friendly definitions of the main concepts of competition such as monopolistic practices, mergers, barriers to competition and other procedures provided by the LFCE. Finally, it provides guidance on the sanctions that can

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<sup>2</sup> The complete document is available in Spanish at [https://www.cofece.mx/wp-content/uploads/2017/11/Herramientas\\_CompetenciaEconomica\\_vf250815.pdf#pdf](https://www.cofece.mx/wp-content/uploads/2017/11/Herramientas_CompetenciaEconomica_vf250815.pdf#pdf)

be imposed by the Commission as well as the tools available to economic agents when interacting with the authority.

### *Competition and Small and Medium Enterprises (SMEs)*<sup>3</sup>

10. The document provides guidance, especially for SMEs, on three main matters: what competition is and how it benefits them; how can enforcement of the Federal Economic Competition Law protect SMEs; and how can SMEs contribute to competition in the markets. The document also helps SMEs to understand how violations to the LFCE are addressed by the Commission, the sanctions provided by the law for engaging in anticompetitive practices and how SME's can approach COFECE to report possible breaches to the law which affect them.

#### *2.2.2. Online training*<sup>4</sup>

11. The Commission's website offers a section with online training on economic competition and the importance of complying with the LFCE. The courses are free and open to the general public. Those interested in taking them just need to contact COFECE electronically, complete a brief registration and access the content through the Moodle platform. To this day, the following courses are available in Spanish, and can be used by economic agents as part of a compliance program are:

- Antitrust rights and obligations
- Competition Policy in Mexico
- Competitive procurement design and bid rigging detection

#### *2.2.3. Outreach events*

12. COFECE regularly organizes and participates in events such as seminars, conferences and trainings with the business community. These have the aim of discussing the benefits of competition, the importance of strict compliance with the LFCE and explaining the work of the Commission. The General Directorate for Competition Advocacy is responsible for developing and participating in these activities. In 2019, this Directorate organized 16 in-person training sessions with different actors of the private sector regarding basic concepts of compliance with the LFCE. During 2020, despite the COVID-19 pandemic, the Commission has continued to engage virtually with the business community through online conferences, webinars for business associations and entrepreneurs.

#### *2.2.4. Institutional collaboration*

13. The LFCE stipulates that COFECE may establish coordination and collaboration mechanisms with other public authorities in matters of economic competition and for the compliance with the LFCE.<sup>5</sup> Two relevant examples of institutional collaboration with corporate compliance purposes are:

- In 2017, the Commission closely collaborated with the Energy Regulatory Commission (CRE per its acronym in Spanish) and the National Organization of Oil Retailers (ONEXPO per its acronym in Spanish) to provide training to owners and managers of the gasoline retail sector with the purpose of explaining to them their rights and obligations regarding the LFCE in light of the liberalization of

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<sup>3</sup> The complete document is available in Spanish at [https://www.cofece.mx/wp-content/uploads/2017/11/PyMESyCompetenciaEconomica\\_250815\\_vf1.pdf#pdf](https://www.cofece.mx/wp-content/uploads/2017/11/PyMESyCompetenciaEconomica_250815_vf1.pdf#pdf)

<sup>4</sup> All training courses are available at <https://cursos.cofece.mx/>

<sup>5</sup> Article 12, subsection XXVII of the LFCE

prices in the gasoline and diesel markets. These training sessions played an important role during a time of transition from a model with a single national price determined by the Ministry of Finance (SHCP for its acronym in Spanish) to one based on competition in which each service station would have the freedom to set the retail price of gasoline and diesel. Therefore, these sessions focused, among other subjects, on explaining to station owners and managers the dynamics of a competed market, the importance of differentiation among competitors through price and other variables, what a cartel agreement is and how it may be investigated and sanctioned by the competition authority, as well as what the leniency program is and how they may apply to it. Through these efforts, the Commission reached over 2400 owners and managers from 25 states of the country.

- In 2019, the Commission, the Ministry of Public Administration (SFP per its acronym in Spanish) and the Internacional Chamber of Commerce organized a workshop related to the relevance of compliance programs.<sup>6</sup> One of the main topics discussed in this event was the overlap between competition and the fight against corruption, especially in the context of bid rigging in public procurement and how effective compliance programs can play a role fighting or deterring this practice. In the context of this event, the Recommendations for complying with the LFCE were published.

### 3. Compliance topics to be explored

#### 3.1. Debarment

14. Currently, the public procurement legal framework already includes provisions that contribute to competitive bidding by complying with the LFCE, such as requiring participants to sign a letter of integrity in which they acknowledge that they are aware of the LFCE and declare that their proposal has been submitted in strict compliance with this law.<sup>7</sup>

15. Notwithstanding the above, this procurement framework has ample potential for further improvement. For example, the inclusion of debarment as a sanction for those individuals who engage in bid rigging could be an important incentive for companies to comply with the LFCE and to further enhance competitive bidding.

16. In this sense, the Commission has long called for its inclusion in the legal framework. Most recently, in July 2020 along with several civil society organizations and public institutions, a proposal for a new General Law on Acquisitions, Leases and Services of the Public Sector was presented before Congress. Among other things, it suggests including debarment for up to five years as a sanction for companies that engage in bid rigging. This proposal was submitted for discussion to the Transparency and Anti-Corruption Commission of the Chamber of Deputies in the context of the Open Parliament Initiative.<sup>8</sup> To this day, the reform is still pending discussion and resolution as the Transparency and Anti-Corruption Commission has only issued a preliminary opinion on the matter.<sup>9</sup>

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<sup>6</sup> A memoir of the event is available, in Spanish, at <https://www.cofece.mx/wp-content/uploads/2019/11/MemoriaForo.pdf>

<sup>7</sup> Article 29, subsection IX of the General Law on Acquisitions, Leases and Services of the Public Sector.

<sup>8</sup> See Joint Press Release available at: [https://www.cofece.mx/wp-content/uploads/2020/07/Comunicado\\_Ley\\_Contrataciones\\_Publicas\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/07/Comunicado_Ley_Contrataciones_Publicas_ENG.pdf)

<sup>9</sup> The preliminary opinion is available, in Spanish, at: <http://www5.diputados.gob.mx/index.php/camara/Comision-de-Transparencia-y-Anticorrupcion2/Parlamento-Abierto>