



COMISIÓN FEDERAL DE COMPETENCIA  
MÉXICO

## INVESTIGATION

# TECHNIQUES FOR ANTI- COMPETITIVE PRACTICES IN MEXICO

ANDREA MARVAN SALTIEL  
MEXICAN FEDERAL COMPETITION COMMISSION

TAIPEI  
SEPTEMBER 2013

# REGULATION OF ANTICOMPETITIVE PRACTICES: BRIEF OVERVIEW

## CONSTITUTIONAL FRAMEWORK

### ■ Article 28 of the Constitution

- Provides a broad definition of illegal anticompetitive practices.
- Prohibits anticompetitive practices:
  - Monopolies,
  - Monopolistic practices, and
  - Government monopolies.

## CONSTITUTIONAL FRAMEWORK

### ■ The Law shall severely punish:

- All concentration or hoarding in one or a few hands of basic commodities with the object of raising prices.
- All agreements, processes or combinations undertaken by producers, industrialists, tradesmen or service entrepreneurs, to prevent competition or free market access or competition and force consumers to pay exaggerated prices.
- Whatever constitutes an undue exclusive advantage in favor of one or more persons and against the public in general or a certain social class.

## CONSTITUTIONAL AMENDMENT

- Article 28 was recently amended in June 2013. Important modifications were made:
  - Federal Competition Commission was transformed into an independent agency.
  - New powers were granted to the Commission:
    - Rulemaking power,
    - Power to eliminate barriers to competition,
    - Power to regulate access to essential facilities, and
    - Power to divest stock or assets in order to eliminate anticompetitive effects.
- Modifications are yet to be made to the Federal Law of Economic Competition.

## FEDERAL LAW OF ECONOMIC COMPETITION

- Based on the principles established in the Constitution, the Law translated them into specific procedures.
- The Commission may investigate:
  - Absolute monopolistic practices
  - Relative monopolistic practices
  - Mergers

## PRACTICES INVESTIGATED BY THE COMMISSION

- Absolute Monopolistic practices (per se) – Multi-firm horizontal anticompetitive agreements, also known as cartels:
  - Price-fixing,
  - Restriction of output,
  - Market division, and
  - Bid rigging.

## PRACTICES INVESTIGATED BY THE COMMISSION

- Relative monopolistic practices (rule of reason) – Single-firm and multi-firm conduct.
- Illegal mergers – Mergers whose object or effect is to diminish, damage or impede competition and free market access involving similar or substantially related goods and services.

## 2011 AMENDMENT

- **Federal Law of Economic Competition was amended in 2011**
  - **New enforcement powers = a higher risk of detection:**
    - Power to order and conduct surprise inspections.
    - Power to search electronic devices, using the tools of IT forensics.
  - **Sanctions**
    - Caps on sanctions were increased.
    - Criminal sanctions were established for engaging on cartel conduct.

## SANCTIONS AND REMEDIES

## SANCTIONS

- **Administrative:**
  - **Fines** – Maximum sanction of up to 10% of the firm's income.
    - In case of recidivism – Double the amount of the fine and divestiture of assets.
  - **Corrective** – Order injunctions and the divestiture of a merger.
- **Criminal** – Up to 10 years of jail time for participants in a cartel (absolute monopolistic practices).

## REMEDIES

- **Collective actions** were implemented as a remedy for anticompetitive practices in 2011.
- **People who have been harmed** by a monopolistic practice or an illegal merger, may file a claim individually or collectively following Federal Rules of Civil Procedure.

## TOOLS FOR INITIATING AN INVESTIGATION

## HOW TO INITIATE AN INVESTIGATION

- A.** Through a formal complaint
- B.** Ex Officio
  - a.** Monitoring of markets
  - b.** Cooperation with other government entities
  - c.** International cooperation
  - d.** Leniency applications
  - e.** Informal complaints

## FORMAL COMPLAINTS

- Fulfill detailed requirements
  - Written form
  - Description of facts
- Who can file a complaint?
  - Absolute monopolistic practices – Anyone.
  - Relative monopolistic practices – Harm and injury is required.

## EX OFFICIO

- The Commission may initiate an investigation by itself without a formal complaint.
- Five sources are mostly used by the Commission to initiate an ex officio investigation.
- Commonly, the Commission uses a combination of these sources.

## 1. MONITORING MARKETS

- Screening –The Commission has used screening as a tool to analyze certain markets in a series of cases which have either resulted in an investigation or not. A very important case which will be explained later is bid rigging in public procurement of medicines.
- Public information – Searching newspapers, the Internet, and all sorts of public information has also become useful to initiate an investigation.
- EXAMPLE – Price-fixing of tariffs between anesthesiologists

## 2. COOPERATION WITH OTHER GOVERNMENT ENTITIES

- Constant communication with other government entities, federal and local, has proved to be an important tool for starting an investigation.
- It is crucial that government officials from other entities and agencies, understand what an anticompetitive practice is and which “red flags” should they look for which may signal an anticompetitive practice.
- Example – Bid rigging in public procurement of medicines

### 3. INTERNATIONAL COOPERATION

- Specially important in international cartels.
- Aspects that should be taken into consideration:
  - Discovery – Documents given by the applicant to an agency may be subject to discovery in other jurisdictions. Also, documents exchanged amongst agencies could also be subject to discovery.
  - Waivers – The type of information exchanged between agencies is sometimes subject to a waiver granted by the applicant.

### 4. LENIENCY APPLICATIONS

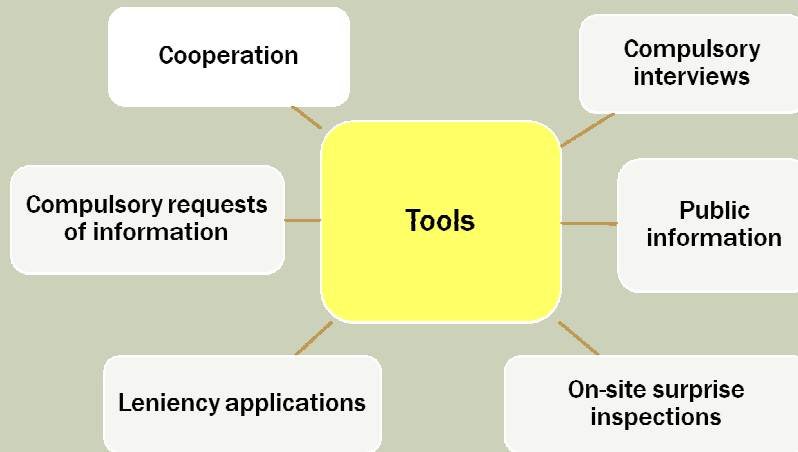
- May only be filed when they refer to absolute monopolistic practices.
- Incentives used by the program:
  - Clear guidelines
  - Marker system
  - Application through email or voice mail
  - Second-in policy
  - Confidentiality
  - Criminal immunity
- 62 applications have been received since its creation, out of which 73% (47 applications) were filed during 2011 and 2012.
- Markets - Hermetic compressors, liquid crystal display monitors (LCD's) and cathode ray tubes (CRT's).

## 5. INFORMAL COMPLAINTS

- In contrast to formal complaints, informal complaints do not have to fulfill any specific requirements.
- Additionally, they may be presented in a written or oral form.

TOOLS USED DURING THE  
INVESTIGATION STAGE

## TOOLS USED DURING AN INVESTIGATION



## COMPULSORY REQUESTS OF INFORMATION AND INTERVIEWS

- **Compulsory requests of information** - The Commission may order the submission of information and documents deemed relevant and appropriate to perform its investigations.
- **Compulsory interviews** - Anyone related to the conducts investigated by the Commission or with knowledge thereof, or anyone who has knowledge of the market or of the subject matter of an investigations, is obliged to attend the Commission's citation for an interview.

## SURPRISE ON-SITE INSPECTIONS

- Order and conduct surprise searches to firms who are being investigated.
- Ask for any information and documents which may be related to the investigation.
- Firms are compelled to provide access to offices, computers, electronic devices, storage devices and any other device which may contain evidence of anticompetitive practices.
- The Commission may not seize any information.
  - May ask for copies or reproduce papers, books, documents, files and information generated electronically or through optical or any technology.

## SANCTIONS FOR NON-COMPLIANCE

- The Commission may impose sanctions for non-compliance with a compulsory request of information and with a citation for an interview.
- Also, the Commission may impose sanctions for not cooperating during a search.
- Supplying false information to the Commission is sanctioned with a fine of up to 175,000 times the minimum daily wage, separately from any criminal responsibility which might arise from providing false information to an administrative authority.

## ADDITIONAL TOOLS

- Leniency applications – During the investigation period, cartel members may still apply for leniency.
- Public information
- Cooperation - With other government agencies and with competition agencies from other jurisdictions.

THANK YOU!

CONTACT:  
AMARVAN@CFC.GOB.MX