

Mexico

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MERGER CONTROL

1. Are mergers and acquisitions subject to merger control in your jurisdiction? If so, please describe briefly the regulatory framework and authorities.

Mergers and acquisitions are governed by the Federal Law of Economic Competition (*Ley Federal de Competencia Económica*) (the Competition Law) and its Regulations (*Reglamento de la Ley Federal de Competencia Económica*) (the Regulations). The rules provide the framework for the control of mergers and acquisitions qualifying for investigation and are enforced by the Federal Competition Commission (the Commission), an independent administrative body within the Ministry of Economy (*Secretaría de Economía*) (see box, *The regulatory authority*).

2. What are the relevant thresholds/triggering events?

If certain thresholds are reached (see below), a pre-merger notification will be required for:

- A merger.
- An acquisition of control.
- Any other action through which corporations, associations, stocks, equity interests, trusts and assets in general become concentrated among competitors, suppliers, customers or any other economic agents.

The relevant thresholds are based on the minimum wage in effect in Mexico City at the time of filing (the Salary). A pre-merger notification must be filed if:

- The value of a transaction or a series of transactions executed in Mexico is equal to or higher than 12 million times the Salary (about US\$50 million (about EUR41.1 million)).
- A transaction or a series of transactions results in one economic agent holding 35% or more of the assets or shares in another economic agent in Mexico, where the assets or sales of the target firm amount to more than 12 million times the Salary (about US\$50 million (about EUR41.1 million)); or
- Two or more economic agents enter into a transaction and their assets or annual sales worldwide, jointly or separately,

add up to more than 48 million times the Salary (about US\$200 million (about EUR164 million)) and the transaction results in an additional accumulation in Mexico of assets and capital stock of more than 4.8 million times the Salary (about US\$20 million (about EUR16.4 million)).

For an overview of the notification process, see *Mexico: merger notifications flowchart*.

3. Please give a broad overview of notification requirements. In particular:

- Is notification mandatory or voluntary?
 - When should a transaction be notified?
 - Is it possible to obtain formal or informal guidance prior to notification?
 - Who should notify?
 - To which authority should notification be made?
 - What is the form of notification?
 - Is there a filing fee? If so, how much?
 - Is there an obligation to suspend the transaction pending the outcome of an investigation?
- **Mandatory or voluntary.** If the thresholds are met, notification is mandatory (see *Question 2*).
 - **Timing.** A notification must be made before a transaction is closed or becomes effective and, in any event, before there are any legal or material effects in Mexican territory (particularly relevant for transactions taking place abroad). A transaction produces a material effect if it has an impact on the competition process. The transaction does not need to be legally binding or enforceable for it to have a material effect.
 - **Informal guidance.** Private parties can apply to the Commission for a non-binding opinion on a transaction to determine, among other things, whether or not a pre-merger notification is required. Opinions are for guidance purposes only and at the discretion of the Commission (depending on the foreseeable impact on the competition process). The request must

be based on factual, real and accurate circumstances and not hypothetical circumstances or assumptions.

- **Responsibility for notification.** The Competition Law requires the merging or acquiring party to notify, in order for the Commission to obtain the relevant information to determine the resulting market power and control. The merged or selling party is also entitled, but not obliged, to notify. Ideally, both parties should notify, especially considering that an in-depth Commission analysis will require information from both parties.
- **Relevant authority.** All pre-merger notifications should be made to the Commission.
- **Form of notification.** There is no standard or statutory form to complete. However, the notification must meet at least the following requirements:
 - be in Spanish and in writing;
 - indicate the names or corporate names of the parties to the transaction;
 - include any draft contract, financial statements for the last tax year of all the parties, details of their market shares and all other data relating to the intended transaction.
- **Filing fee.** The filing fee is about US\$10,000 (about EUR8,214).
- **Obligation to suspend.** There is no specific provision requiring suspension of the transaction pending the outcome of an investigation. Therefore, provided a proper notification has been filed before the transaction is closed or becomes effective, and before there are any legal or material effects in Mexican territory (*see above*), the transaction can be closed before the Commission has issued a resolution. However, under this approach the parties run the risk of having to comply with any subsequent Commission resolution which:
 - attaches conditions to its approval (such as requiring the divestiture of assets);
 - requires the transaction to be unravelled; or
 - imposes sanctions and fines (depending on the seriousness of the breach).

4. Please outline the procedure and timetable.

Commission report

Once the notification has been filed, the Commission will examine it to ascertain whether it is complete. If necessary, it can request additional data or documents within 20 calendar days following the filing by issuing a deficiency notice. Applicants must provide the additional information within 15 calendar days of service of the deficiency notice. If a deficiency notice is

served, the 45-day period (*see below*) is suspended pending the provision of the additional information.

After the notification has been filed (or, if additional information has been requested, after the additional information has been provided), the Commission will prepare a report on the transaction and issue a resolution.

Commission resolution

The Commission must issue a resolution within 45 calendar days of notification. This will either:

- Clear the transaction.
- Clear the transaction subject to conditions (for example, requiring the divestiture of assets).
- Block the transaction and possibly impose sanctions and fines (depending on the seriousness of the violation).

Interested parties can challenge the resolution through an appeal for reversal (*see Question 9*).

5. How much publicity is given about merger enquiries? Can the parties request that certain information is kept confidential?

There is no provision requiring publicity. The Commission's final resolution is published in the *Commission Gazette* and the Federal Register.

All the information and documents obtained directly by the Commission when carrying out its investigations and those filed with the pre-merger notification are kept strictly confidential. Public servants will be held liable for the disclosure of confidential information, except when disclosed by order of a competent authority.

6. Can third parties make representations and, if so, how?

Third parties can file formal complaints alleging that an illegal concentration is taking place, provided that the concentration in question has not been executed or already notified to the Commission. However, once the complaint is filed, the Commission will take over the case and the third party is not permitted to directly participate in the investigation as an interested party.

However, third parties can influence the Commission by producing relevant information demonstrating the harm that the transaction has or may have occasioned against them.

7. What is the substantive test?

A transaction will be prohibited if its purpose or effect is to diminish, damage or deter competition and free access to equal,

similar or substantially related goods or services. In order to determine whether this is the case, the Commission will investigate all the economic agents participating in the relevant market and, more specifically, whether the acquiring or merging entities will have substantial market power.

The Competition Law provides a list of guidelines to determine the relevant market, namely:

- The possibility of substituting the goods or services in question.
- The distribution cost of the goods.
- The costs and potential access to other user or consumer markets.
- The federal, local or international statutory restrictions which limit the access of users or consumers to alternative supply sources, or of suppliers to alternative consumers.

In order to determine whether the acquiring or merging entities will have substantial market power, the Commission will examine the following issues:

- The market share of the acquiring or merging entities and whether they can unilaterally set prices or restrict supply in the relevant market without competitors being able or potentially able to counteract these measures.
- The entry barriers and the elements that may alter those barriers.
- The existence and market power of any competitors.
- Possible access to sources of raw materials or other inputs needed to manufacture products or provide a service, by the acquiring or merging entities and their competitors.
- The recent performance and behaviour of the acquiring or merging entities.

The Commission will identify the goods or services which make up the relevant market and those that are or may be substituted for them (whether domestic or foreign), as well as the time required for this type of substitution to take place. Then, it will define the geographic area in which the goods or services are supplied or are in demand, and within which it would be possible to change suppliers and customers without incurring appreciably different costs. The Commission also takes into account the cost of distributing the goods or services, and the cost and probability of access to alternative markets.

To determine market share, the Commission can take into consideration sales indicators, the number of customers, output capacity, or any other factors it considers appropriate.

The Commission has published in the Federal Register the method for calculating ratios to determine the degree of concentration in the relevant market. The index, known as the "Concen-

tration" or "Pascual" index, was written by the current Commissioner, Dr Pascual García de Alba and is a Mexican adaptation of equivalent indices used abroad (such as the Herfindahl-Hirschman Index (HHI)).

8. What remedies are available to the regulator and what powers of enforcement does it have?

Under the Competition Law, the Commission has the power to:

- Require the parties to fulfil any behavioural or structural conditions it may impose on the transaction.
- Order the total or partial divestiture of any assets or businesses involved in the concentration.
- Impose fines ranging from US\$6,000 (about EUR4,928) to US\$1.5 million (about EUR1.2 million) or, in cases where there has been a serious restriction of competition, a fine of up to 10% of the infringer's annual sales during the previous tax year or up to 10% of the value of its assets (whichever is higher). It is unclear whether the annual sales refer to worldwide or domestic sales, but a consistent interpretation would restrict it to domestic sales only. Fines can be imposed even if notification has been made.

9. Is there a right of appeal against a decision?

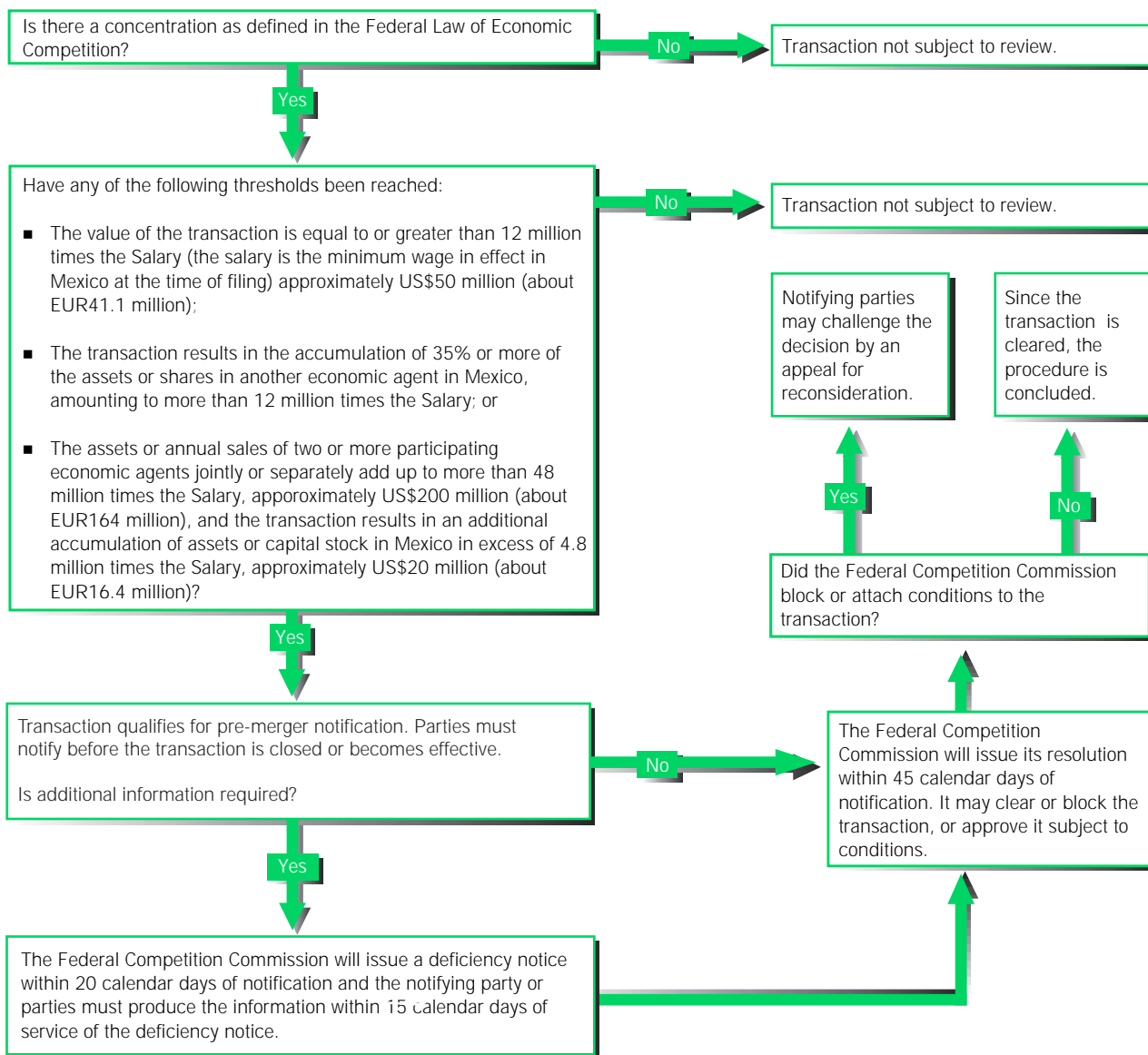
An affected party can make an administrative appeal for reversal (*Recurso de Reconsideración*) against a Commission resolution. It must be filed with the Commission within 30 business days of service of the original resolution. The Commission adjudicates the appeal.

A further appeal on constitutional grounds under an "*Amparo*" proceeding (similar to US *habeas corpus* or UK judicial review) can be filed before a District Court. It must be filed within 15 business days of service of the Commission appeal decision.

10. What are the penalties for:

- **Failure to notify or a delay in notifying?**
 - **Failure to observe a decision of the regulator?**
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- **Failure to notify.** For failure or delay in notifying a transaction, the Commission can impose a fine of up to US\$400,000 (about EUR328,542).
 - **Failure to observe.** For failure to observe a Commission resolution, the Competition Law provides for sanctions of up to approximately US\$6,000 (about EUR4,928) for each day of non-compliance.

MEXICO: MERGER NOTIFICATIONS



Country Q&A

11. If a merger is cleared, are any restrictive provisions in the agreements (such as non-compete covenants) automatically cleared?

Any ancillary provisions are automatically cleared, unless the Commission imposes particular conditions on the provision in question.

Non-compete covenants are subject to special review and notifying parties are bound to expressly disclose their existence.

12. Are any industries specifically regulated?

No industries are specifically regulated (but see *Question 15* in relation to constitutionally permitted monopolies).

RESTRICTIVE AGREEMENTS AND PRACTICES

13. Are restrictive agreements and practices regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

Under the Competition Law, conduct which diminishes, impairs or prevents competition and free market access in the production, processing, distribution and marketing of goods or services is prohibited.

There are two different kinds of conduct:

- **Absolute Monopolistic Practices (AMP).** These are horizontal practices (*see below*) and are considered illegal per se. An AMP will have no legal effect and firms engaged in these

types of practices are subject to penalties established under the Competition Law, as well as potential criminal penalties.

- **Relative Monopolistic Practices (RMP).** These are vertical practices (*see below*) and are judged under a balancing analysis or the rule of reason. This involves establishing a market definition, assessing the market power that the firms have in the relevant market and, consequently, the impact of the conduct on competition in that market.

AMP

AMP are contracts, agreements, arrangements or combinations among competitors, the aim or effect of which is (or may be):

- **Price-fixing.** To agree on or manipulate the purchase or sale price of the goods or services supplied or demanded in the markets by raising prices, or exchanging information with the same aim or effect.
- **Output restrictions.** To agree to produce, process, distribute or market only a restricted or limited amount of goods, or to provide a specific volume, number or frequency of restricted or limited services.
- **Market allocation.** To divide, allocate, assign or impose portions or segments within a current or potential market for goods or services, by means of a determinable group of customers, suppliers, time or spaces.
- **Bid-rigging.** To establish, agree on or co-ordinate bids, or to abstain from bids, tenders, public auctions or bidding.

RMP

RMP are acts, contracts, agreements or combinations, whose aim or effect is to improperly exclude other agents from the market, substantially hinder their access, or to establish exclusive advantages in favour of one or several entities or individuals through:

- **Vertical market allocation.** Where non-competing economic agents agree to the exclusive distribution of goods or services according to subject, geographical location or for specific periods of time, including the division, distribution or assignment of customers and suppliers, and also the obligation to not manufacture or distribute goods or services for a specific period of time.
- **Vertical price-fixing.** Setting prices or other conditions that a distributor or supplier has to follow when marketing or distributing goods or providing services.
- **Tying arrangements.** Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of those contracts.
- **Exclusive arrangements.** Making a sale or transaction subject to the condition that one party does not use, acquire, market or provide the goods or services supplied by a third party.
- **Refusal to deal.** Refusing to sell or provide to specific individuals goods or services available and normally offered to third parties.

- **Boycott.** Where an agreement is reached among several economic agents, or an invitation is extended to them, to exert pressure on customers or suppliers in order to discourage them from specific behaviour or to force them to act in a specific way.
- In general, any other action that unduly damages or impairs the competition process and free market access. The type of conduct that may be caught by this provision includes predatory pricing, loyalty rebates, cross subsidies, price or treatment discrimination or action by one or several economic agents, the object or effect of which is or may be, directly or indirectly, to increase costs for their competitors, or to impede their productive process or reduce their demand.

All types of RMP are caught, provided the firms involved have significant market power equivalent to dominance.

14. Do the regulations only apply to formal agreements or can they apply to informal practices?

Competition law in Mexico applies both to formal and informal agreements. An object or intention to engage in illegal conduct is enough to constitute a violation of the Competition Law and its Regulations, even if it does not produce any actual negative effect. Therefore, non-written or tacit agreements relating to illegal conduct are also caught by the rules.

15. Please summarise any exclusions or exemptions.

There are no general exclusions or exemptions under Mexican competition law.

There are exceptions for some specific activities, undertaken by federal government entities, considered as legal monopolies under Articles 4, 5 and 6 of the Competition Law. However, this does not mean that federal entities which carry out activities that constitute a permitted monopoly are completely exempt from the scope of the Competition Law. For instance, Petroleos Mexicanos, the state oil company solely in charge of upstream activities, is still subject to the Competition Law should it attempt to restrict supply sources, impose tying arrangements, refuse to deal or carry out other similar practices.

16. Is there any formal guidance on product and geographic market definition?

When defining a market, the Commission will:

- Identify the goods or services which make up the relevant market, any substitutes for them (domestic or foreign), and the time required for substitution to take place.
- Identify the geographic area in which the relevant goods or services are supplied or in demand, and any real alternatives available without incurring different or substantial costs.

In doing so, the Commission will take into account the distribution cost and the probability of supplying the relevant product (its analysis encompasses both supply and demand aspects). It will also consider economic and normative restrictions (local, federal, or international) preventing access to actual substitutes or alternative sources of supply for users and customers, or preventing suppliers from reaching alternative customers.

Market share is measured by considering sales indicators, the number of customers, output capacity, and any other factors that the Commission may consider appropriate.

17. Is there a formal notification requirement? In particular:

- Is it possible/advisable to notify?
- Is it possible to obtain informal guidance?
- Who should notify?
- To which authority should notification be made?
- What is the form of notification?
- Is there a filing fee? If so, how much?

- **Notification.** There is no provision under Mexican competition law requiring the parties to notify a potentially anti-competitive agreement or practice.

- **Informal guidance.** It is possible to obtain informal guidance (consultation). Any legal person or individual (including governmental and non-governmental organisations) can request Commission guidance on any subject relating to competition and free market participation. However, Commission opinions are non-binding and have no legal effect.

- **Responsibility for notification.** A Commission opinion can be requested by an interested economic agent who is able to demonstrate that the requested opinion is based on real, as opposed to hypothetical, facts and circumstances.

- **Relevant authority.** The Commission.

- **Form of notification.** The request for consultation should be in writing and in Spanish, attaching any relevant information that may be important for the Commission analysis. There is no standard form.

- **Filing fee.** There is no filing fee for a Commission consultation.

18. Please outline the procedure and timetable.

Once the consultation has been filed, the Commission has ten days to issue a deficiency letter to the interested party (once only), if it considers that the information provided is insufficient. If requested, the additional information must be presented within

15 days.

The Commission must issue its opinion within 30 days of either the date of filing or the date of production of the additional information.

If the interested party fails to provide the additional information on time, the consultation will be dismissed. The party can request an extension to produce the information, or file a new request for consultation.

For the procedure when an investigation is triggered by a third party complaint or the Commission starts an investigation on its own initiative, see *Question 20*.

19. Are details of any potentially restrictive agreement or practice made public during the investigation? If so, can the parties request that any information is kept confidential?

A consultation procedure initiated by one of the parties to a potentially restrictive agreement or practice is not made public and is not open to third party participation. All information presented to the Commission by the filing party will be kept confidential.

This is not the case if the Commission initiates the investigation itself, or at the request of an interested third party (see *Question 20*).

20. Can third parties initiate an investigation by making a complaint or representations during the course of an investigation? If so, how?

Any person (in the case of an AMP) or any affected party (in the case of a RMP or illegal concentration) can file a written complaint with the Commission. In the case of a RMP or concentration, the complainant must include details of the alleged infringement, and/or evidence showing that he has suffered (or may suffer) substantial damage. Groundless claims will be rejected by the Commission.

Once a claim has been filed and accepted by the Commission, or the Commission decides to initiate an investigation itself, it will officially publish an abstract announcing the opening of an investigation in the Federal Register. The abstract will state the alleged infringement and the relevant market (at a minimum). Its purpose is to give notice to other persons who may want to participate in the investigation. Under no circumstances will the identity of the firm or economic agent under investigation be revealed.

The investigation begins from the day of publication and will last between 30 and 90 days. In exceptionally complex cases, the Plenum (entire body) of the Commission can agree to extend the term by a further period not exceeding 90 days.

After publication, any person willing to contribute to (or to present new allegations relating to) the investigation can do so,

even before the summons is served on the alleged infringer.

After the investigation, if the Commission considers that a violation of the Competition Law has occurred, the procedure is as follows:

- The Commission will summon the alleged infringer(s), inform it of the nature of the investigation and serve it with a copy of the complaint (if any).
- The party summoned will have 30 calendar days to submit, in writing, its defence arguments, attaching any documentary evidence available at the time.
- Once the evidence has been received, the Commission will set a period of up to 30 calendar days for the alleged infringer(s) to submit verbal or written pleas, if it wishes to do so.
- The Commission will rule on the case within a further 60 calendar days.

21. What are the regulator's enforcement powers and what are the other consequences of implementing a prohibited restrictive agreement or engaging in a prohibited practice? In particular:

- What orders can be made and fines imposed?
- Can an entire agreement be declared void (that is, not only any restrictive provisions)?
- Can personal liability (civil or criminal) attach to individual directors or managers?
- Can third parties bring claims for damages?

- **Orders and fines.** The Commission can impose the following sanctions:

- restraining and cease and desist orders to suspend, correct or eliminate the illegal practice; and/or
- fines of up to (the equivalent of):
 - US\$1.5 million (about EUR1.23 million) for having participated in an AMP;
 - US\$950,000 (about EUR780,287) for having participated in a RMP; and
 - US\$420,000 (about EUR344,969) for violations to the catch-all provision (*section VII, Article 10, Competition Law*).

In the event of a repeated offence, an additional fine can be imposed of up to twice the initial fine.

- **Impact on agreements.** If the restrictive provision is an AMP, then the entire agreement can be considered null and void. If the restriction amounts to an RMP, the sanction will apply only to that particular restrictive provision, unless it can be fully justified that the whole agreement is affected by the violation.
- **Personal liability.** The Commission can impose the following sanctions on individuals:
 - a fine of up to (the equivalent of) US\$30,000 (about EUR24,641) for having made a false declaration or submitted false information to the Commission, regardless of any criminal liability;
 - a fine up to (the equivalent of) US\$30,000 (about EUR24,641) for individuals who directly participated in illegal practices or concentrations on behalf of, or on account of, corporations.
- **Third party claims.** Any economic agent or legal entity, proving during the proceeding that it has suffered damage resulting from the illegal practice or illicit concentration, can file a claim before a judicial federal court to obtain compensation. Damages can only be claimed if the Commission has made a finding of infringement. In this event, the court can take into consideration the damages estimated by the Commission.

22. Is there a right of appeal against a decision of the regulator?

Commission resolutions can be challenged through an appeal for reversal, which must be filed within 30 working days of service of the original ruling. As a result, the Commission ruling can be reversed, amended or confirmed.

Enforcement of the challenged resolution is suspended pending the appeal decision. In some instances where third parties may suffer damage, suspension will only be granted if the appellant can provide a sufficient guarantee to repair any damage and to compensate for any loss of profit if the reversal is not granted.

The Commission will rule on the appeal and serve its decision within 60 days of filing. If it remains silent, the original resolution is deemed to be confirmed.

23. Please summarise any powers that the relevant regulator has to investigate potentially restrictive agreements or practices.

The Commission can request the information or documents necessary for it to carry out its investigations, and summon those involved if cases are brought. The information and documents obtained directly by the Commission when carrying out its investigations (and those filed with it) are strictly confidential. In order to exercise its powers efficiently, the Commission can reprimand individuals or firms in contempt and impose fines of up to US\$6,500 (about EUR5,339) for each day in contempt.

THE REGULATORY AUTHORITY

Name. Federal Competition Commission (*Comisión Federal de Competencia*) (the Commission)

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Outline structure. The Commission is an independent administrative body within the Ministry of Economy. A five-member, decision-making board adjudicates all cases by majority vote. The Chairman and four commissioners appointed by the President of Mexico hold office for staggered ten-year terms. There are different offices and bureaux, such as M&A, Investigations, Economics, General Counsel, Privatisations and Regulatory Office, and International Regulation. Most of these report directly to the Executive Secretariat, which is the office in charge of co-ordinating the operative offices.

Responsibilities. The Commission is empowered to protect the competition process and free market access by preventing monopolies, monopolistic practices and other restrictions that deter the efficient operation of goods and services markets. The Commission is autonomous when adjudicating cases. It has extensive investigatory powers, including subpoena powers for production of documents and testimonies, the power to make cease and desist orders, and to impose fines.

There are four basic areas of responsibility: investigations of illegal conduct and forbidden concentrations; merger control procedures; investigations of interstate commerce restrictions; and opinions and analysis in regulated sectors, either for obtaining permits or concessions according to sectorial laws, or to determine the existence of competition conditions in those regulated markets.

The Commission also has the following responsibilities:

- To establish co-ordination procedures to challenge illegal conduct.

- To report to the Public Prosecutor any practices that may be considered as criminal offences relating to competition and free market access.
- To comment on adjustments to federal public administration programmes and policies which may have an effect on the competition process and free market access.
- When requested by the Federal Executive, to comment on amendments to draft laws and regulations relating to competition and free market access.
- When deemed relevant, to give its opinion on competition and free market access relating to any laws, regulations, agreements, circular letters and administrative acts. (Opinions have no legal effect and the Commission is not bound to issue them.)
- To participate with the competent authorities in negotiating and entering into treaties, agreements or international agreements on competition and free market access regulations or policies.

The Commission has played an active role in monitoring the market in sectors being opened up to competition, which were previously reserved for state enterprises.

Procedure for obtaining documents. Resolutions on cases adjudicated by the Commission are published in the *Commission Gazette* (and extracts in the Federal Register), except for any confidential information. They are also available in the Commission's offices for consultation by any person.

An important federal law regarding access to, and protection of, public governmental information came into force in June 2003 (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*). It sets out the procedures and restrictions for obtaining documents, not only from the Commission, but from any governmental agency or administrative body.

MONOPOLIES AND ABUSE OF MARKET POWER

24. How is Article 81 enforced by your jurisdiction's national competition authority and courts in accordance with EC Regulation 1/2003 (EU member states only)? Are there any differences between the enforcement of Article 81 and the enforcement of your jurisdiction's national competition laws?

Not applicable.

25. Are monopolies and abuses of market power regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

There are no specific provisions regulating monopolies and the abuse of market power. Abuses of market power are treated under the Competition Law in the same way as other RMP.

The Commission is the authority empowered to conduct investigations and impose sanctions in these areas.

26. Are there any specific tests for dominance?

Under the Competition Law, dominance amounting to market power is any of the following:

- The power to unilaterally set prices or substantially restrict supply in the relevant market, without competitors being able to actually or potentially counteract that power.
- The power to drive other firms out of the relevant market or prevent access to it.
- The possibility of engaging in illegal practices prohibited under the Competition Law.

27. Are there any broad categories of behaviour that may constitute abusive conduct?

Engaging in RMP that have potentially anti-competitive effects constitutes abusive conduct.

28. Are there any exclusions or exemptions?

There are no exclusions or exceptions (*see Question 15*).

29. Can pre-notification guidance be obtained? If so, please outline the procedure.

It is possible to obtain informal guidance in the same way as for restrictive agreements and practices (*see Question 17*).

30. Please summarise the regulator's powers of investigation.

The Commission's powers of investigation are the same as those for restrictive agreements and practices (*see Question 23*).

31. What are the penalties for abuse of market power?

Penalties can be imposed on those abusing market power as for any other RMP (*see Question 21*).

32. How is Article 82 enforced by your jurisdiction's national competition authority and courts in accordance with EC Regulation 1/2003 (EU member states only)? Are there any differences between the enforcement of Article 82 and the enforcement of your jurisdiction's national competition laws?

Not applicable.

JOINT VENTURES

33. Please explain how joint ventures are analysed under competition law.

There are no specific provisions in the Competition Law for the analysis of joint ventures, or even for research and development joint ventures. Consequently, they are analysed under the same rules and procedure as mergers and acquisitions (*see Questions 1 to 12*).

PROPOSALS FOR REFORM

34. Please summarise any proposals for reform.

Some proposals for reform are currently pending review by the Mexican Congress. However, since they constitute a radical modification to the Competition Law, the proposals are experiencing difficulties being passed.

The proposals include the following reforms, which would, in the author's view, be beneficial to competition policy:

- Broader enforcement powers for the Commission to obtain and secure information.
- Leniency programmes.
- Criminal sanctions for hardcore violations, including imprisonment (currently very limited).
- Include within the Competition Law all violations today provided by the Regulations.
- Incorporate a definition for Economic Group or related parties for competition analysis into the Competition Law.
- Make associations and other form of organisations specifically subject to sanctions for indirectly participating in Competition Law violations.

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