

## **FEDERAL LAW OF ECONOMIC COMPETITION**

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Federal Law of Economic Competition

### **CHAPTER I. GENERAL PROVISIONS ➔**

ARTICLE 1.- This law rules Article 28 of the Constitution on economic competition, monopolies and free market access. It is binding to all sectors of the economic activity(1) in the Mexican Republic.

ARTICLE 2.- The purpose of this law is to protect the competition process, and the free market access, by preventing monopolies, monopolistic practices and other restrictions that deter the efficient operation of the goods and services market.

For the purposes of this law, the Ministry shall be understood to be the Ministry of Trade and Industrial Promotion and Commission shall be understood to be the Federal Competition Commission.

(1) This is not an official translation of the "Ley Federal de Competencia Economica" enacted on December 24, 1992. The only official text is in "Diario Oficial de la Federacion" (Federal Official Gazette of that date. Printed for the 1st time pursuant to the law in the "Diario Oficial" dated December 24, 1992..- (Remittance No. 1 dated 1993).

ARTICLE 3.- All economic agents are subject to the provisions of this law, whether individuals or corporations, agencies or entities of the federal, state or local administration, associations, professional groups, trusts or any other form of participation in economic activities.

ARTICLE 4.- For the purposes of this law, the powers exercised exclusively by the state in

the strategic sectors describes in the fourth paragraph of Article 28 of the Political Constitution of the Mexican United States, do not constitute monopolies.

However, the agencies and entities that exercise the powers describes in the preceding paragraph shall be subject to the provisions of this law regarding acts not specifically considered as strategic areas.

ARTICLE 5.- Workers' associations created under the corresponding legislation to protect their interest, do not constitute monopolies.

Temporary privileges granted to authors and artists for the production of their work and those granted to inventors and individuals perfecting improvements for the exclusive use of their inventions, do not constitute monopolies either.

ARTICLE 6.- Associations or co-operatives that directly sell their products abroad, do not constitute monopolies, provided that:

Those products are the region's main income source, or are not dire need products:

The products are neither sold nor distributed in Mexico;

Membership is voluntary and members are free to join or resign;

Permits and authorisations issued by Federal Public Administration agencies or entities are neither granted nor distributed by such associations or co-operatives; and

In all cases, corporation is authorised by their corporate domicile's corresponding legislation.

ARTICLE 7. The following shall apply in order to set maximum prices for products and services that are essential for the Mexican economy or for mass consumption.

The Federal Executive shall be exclusively responsible for determining by decree, the goods and services that are subject to maximum prices; and

Without affecting other agencies' powers, the Ministry shall set, through founded and motivated intent of resolution, the maximum prices of goods and services as determined by the preceding section, pursuant to criteria which shall prevent supply shortages.

Without interpreting the following as a violation of this law, the Ministry may agree or co-ordinate with producers or distributors the necessary actions in this matter, to minimise the effects on competition and free market participation.

In co-ordination with the Ministry, the Federal Consumer Protection Agency shall be responsible for the inspection, surveillance and penalisation of maximum prices determined pursuant to this article, in accordance with the Federal Consumer Protection Law.

## **CHAPTER II. MONOPOLIES AND MONOPOLISTIC PRACTICES ➡**

ARTICLE 8.- Monopolies and state monopolies are prohibited, and also those practices which, pursuant to this law, diminish, impair or prevent competition and free participation in

the production, processing, distribution and marketing of goods and services.

ARTICLE 9.- Absolute monopolistic practices are contracts, agreements, arrangements, or combinations among competitive economic agents, whose aim or effect are any of the following:

To fix, raise, to agree upon or manipulate the purchase or sale price of the goods or services supplied or demanded in the markets, or to exchange information with the same aim or effect;

To establish the obligation to produce, process, distribute or market only a restricted or limited amount of goods, or to render a specific volume, number, or frequency of restricted or limited services;

To divide, distribute, assign or impose portions or segments of the current or potential market of goods and services, by means of a determinable group of customers, suppliers, time or spaces; or

To establish, agree upon or co-ordinate bids or to abstain from bids, tenders, public auctions or bidding.

The acts mentioned in this article will not have any legal effects and the economic agents engaged in such acts will be subject to the penalties established under this law, notwithstanding any criminal liability that may ensue.

ARTICLE 10.- Subject to verification of articles 11, 12 and 13 of this Law, relative monopolistic practices are deemed to be those acts, contracts, agreements or combinations, which aim or effect is to improperly displace other agents from the market, substantially hinder their access thereto, or to establish exclusive advantages in favour of one or several entities or individuals, in the following cases:

Some of the economic agents that do not compete among themselves are: to set, impose or establish the exclusive distribution of goods and services, by means of the subject, geographical location, or 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 or that may be specified;

To set the prices or other conditions that a distributor or supplier has to abide by when marketing or distributing goods or providing services;

The conditioned sale or transaction when buying, acquiring, marketing or providing other goods or additional services, normally different or that can be differentiated, or on the basis of reciprocity;

The sale or transaction subject to the condition of not using or acquiring, marketing or providing goods or services produced, processed or distributed or sold by a third party;

The unilateral action based on refusing to sell or provide to specific individuals, goods or services available and normally offered to third parties;

The agreement reached among several economic agents or the invitation extended them to exert pressure against customers or suppliers, in order to discourage them from specific behaviours, to apply retaliations or force them to act in a specific manner; or

In general, all the actions that unduly damage or impair the process of competition and free access to production, processing, distribution and marketing of goods and services.

ARTICLE 11.- The following conditions have to be proven for the practices in the preceding paragraph to be deemed violating the Law:

That the party assume to be responsible has substantial power in the relevant market;

That they are carried out regarding the goods or services corresponding to that relevant market.

ARTICLE 12.- The following criteria must be evaluated in order to determine which are the relevant markets:

The possibility to substitute the goods or services in question by other national or domestic goods or services, taking into consideration the technological potential, to what extent consumers have substitutes the time required for that substitution;

The distribution cost of the goods; their relevant inputs; their supplements and substitutes from other regions and from abroad, taking into account freight, insurance, custom duties and non custom restrictions, the restrictions imposed by the economic agents or their associations and the time required to supply the those regions from the market;

The costs and potential access to other markets of users or consumers; and

The federal, local or international standard restrictions that limit the access of users or consumers to alternative supply sources, or the access of the suppliers to alternative customers.

ARTICLE 13.- The following should be evaluated in order to determine if an economic agent has substantial power in the relevant market:

Its market share and whether it can unilaterally set the prices or restrict the supply in the relevant market without the competitive agents being able to act or to potentially counteract that power:

The entry barriers and the elements that may alter those barriers and also other competitors' offer;

The competitors existence and power;

The possibility the economic agent and its competitors have to access the input sources;

Its recent performance; and

All other criteria established in the regulations of this Law.

ARTICLE 14.- Pursuant to Section V, Article 117 of the Political Constitution of the Mexican United States, the acts of the state authorities which direct or indirect objective is to ban the entrance of exit into or from their territory of Mexican or foreign goods or services shall not have legal effects.

ARTICLE 15.- The Commission may investigate ex-officio or at the request of a party if it witnesses the acts referred to in the previous Article, and as the case may be, to declares their existence. The declaration shall be published in the Federal

Official Gazette and may be challenged by the State authorities before the Supreme Court of Justice of the Nation.

### **CHAPTER III. CONCENTRATIONS ➡**

ARTICLE 16.- For the purposes of this Law, concentration is understood to be the merger, acquiring the control or any other action through which corporations, associations, stocks, equity interest, trusts and assets in general are carried out amongst competitors, suppliers, customers or any other economic agents.

The Commission shall challenge and sanction those concentrations which objective or effect is to diminish, damage or deter competition and free access to equal, similar or substantially related goods and services.

ARTICLE 17.- Upon investigating concentrations. The Commission shall consider as signs of the assumptions mentioned in the article here in above, that the act or attempt:

Grants or may grant to the merger, the acquirer or economic agent resulting from the concentration, the power to unilaterally set prices or substantially restrict supply in the relevant market, without the competing agents being able to actually or potentially, counteract that potential;

Intends or may intend to unduly displace the other economic agents or hinder heir access to the relevant market; and

- Intends or pretends to substantially allow the participants in that act or tentative the exercise of monopolistic practices referred to in chapter two of this Law.

ARTICLE 18.- The Commission shall take into consideration the following elements, in order to determine if the concentration has to be challenged or sanctioned pursuant to this Law:

The relevant market, pursuant to Article 12 of this Law;

The identification of the economic agents that supply the corresponding market, the analysis of the power it has in its relevant market pursuant to Article 13 of this Law, and the degree of concentration in that market; and

All other analytical criteria and instruments prescribes by the regulation of this Law.

ARTICLE 19.- If from the investigation and processing established herein, the result is that the concentration constitutes an act foreseen in this Chapter, besides applying the corresponding legal measures or penalties, the Commission may:

Subject that act to the compliance with the conditions established by the Commission; or

Order the partial or total divestiture of what has been improperly concentrated, the

termination of the control or the elimination of the acts, as the case may be.

ARTICLE 20.- The Commission should be notified of the following concentrations, before they are made:

If the value of a transaction or a series of transactions is equal to or higher than 12 million times the general minimum wage in effect for the Federal district;

If a transaction or a series of transactions implies the accumulation of 35 per cent or more of the assets or shares of an economic agent which assets or sales amount to more than 12 million times the general minimum wage in effect in the Federal District; or

If two or more economic agents participate in the transaction, and their assets or annual volume of sales, jointly or separately add up to more than 48 million times the general minimum wage in effect in the Federal District, and that transaction implies an additional accumulation of assets and capital stock in excess of four million eight hundred thousand times the general minimum wage in effect in the Federal District.

In order to register those acts which by their nature should be registered in the Public Trade Registry, the economic agents under items I and III should credit that they have obtained favourable resolutions from the Commission or that they have given the notification mentioned in this Article without the Commission issuing a resolution in the term established in the following article.

ARTICLE 21.- For the purposes of the article above, the following shall apply:

The notice shall be made in writing and shall be attached to the draft of the legal act in question, and shall include the names or corporate names of the corresponding economic agents, the financial statements of the last fiscal year, their market share and all other data that reveals the intended transaction;

The Commission may request additional data or documents within the twenty calendar days beginning on the day the notification is received. The interested parties submit this information before the Commission within fifteen calendar days. The period may be extended when duly justified;

The Commission shall have forty five calendar days beginning on the day the notification is received, or as the case may be, of the additional documents requested, to issue its resolution. It shall be understood that the Commission has no objections if this period of time goes by and the Commission has not issued a resolution;

Under the responsibility of the President of the Commission, he may extend the term established under Sections II and III for up to sixty additional calendar days, in exceptionally complicated cases;

The resolution of the Commission must be duly founded and motivated; and

A favourable resolution shall not bias the realisation of other monopolistic practices forbidden by this Law, and therefore does not relieve the corresponding economic agents from other responsibilities.

ARTICLE 22.- The following may not be challenged pursuant to this law:

The concentrations with a favourable resolution, except when that resolution has been obtained based on false information, and

The concentrations that do not require prior notification, a year after they were carried out.

#### **CHAPTER IV. FEDERAL COMPETITION COMMISSION ➔**

ARTICLE 23.- The Federal Competition Commission is a deconcentrated administrative entity of the Ministry of Trade and Industrial Development. It shall be technically and operatively autonomous and shall be responsible for preventing, investigating and combating monopolies, monopolistic practices and concentrations, in accordance with this law and shall be autonomous in issuing its resolutions.

ARTICLE 24.- The Commission shall have the following abilities:

To investigate the existence of monopolies, state monopolies, concentrations and illicit practices;

To establish the co-ordination procedures to fight and prevent monopolies, state monopolies, concentrations and illicit practices;

To resolve the cases under its competence and impose administrative sanctions for violations of this Law and denounce before the Public Prosecutor criminal practices on competition and free access to the markets;

To comment on the adjustments to the federal public administration programs and policies when their effects may be contrary to competition and free market access;

When requested by the Federal Executive, to comment on the amendments to the drafts of laws and regulations, on those items dealing with competition and free market access;

When deemed pertinent, to give its opinion on competition and free market access regarding the laws, regulations, agreements, circular letters and administrative acts, and those opinions shall not have legal effects and the Commission shall not be bound to issue an opinion;

Prepare and internally enforce in the Commission the organisation and procedures manuals;

Participate with the competent authorities in entering treaties, agreements or international agreements on competition and free market access regulations or policies, of which Mexico is or intends to be signatory; and

All other powers vested herein and other laws and regulations.

ARTICLE 25.- The Commission shall be integrated by five commissioners including the corresponding President. It shall confer as an entity and decisions shall be reached by majority of votes, and the President shall have the casting vote.

The Commission shall have the necessary personnel to efficiently take care of business pursuant to the authorised budget.

ARTICLE 26. - The commissioners shall be appointed by the Federal Executive and shall meet the following requirements:

To be a Mexican citizen, professionally qualified in public or academic matters in essence related to the purpose of this Law, between thirty five and seventy five years old; and

To have performed outstandingly in the professional public or academic fields related in essence to the purpose of this law.

The commissioners must abstain from performing other jobs, work or public or private activities, with the exception of teaching positions. Also, in accordance with the regulations, they may not participate in matters where they have a direct or indirect interest.

ARTICLE 27.- The commissioners shall be appointed to be in office for ten year periods, renewable, and may only be removed from office due to duly justified serious reasons.

ARTICLE 28.- The President of the Commission shall be appointed by the Federal Executive and shall have the following abilities:

To co-ordinate the works of the Commission;

To implement, execute and servile the enforcement of the internal policies established therein;

To issue and publish an annual report on the Performance of the Commission's duties, including the results of its actions on competition and free market access matters;

To request from the authorities of the country or abroad the information required to investigate potential infringements of this law;

To act as representative of the Commission, to appoint and remove personnel, to create the necessary technical units in accordance with their budget and also to delegate powers; and

All others vested by the laws and regulations.

ARTICLE 29.- The Commission shall have an Executive Secretary appointed by the Commission's President, and he shall be in charge of the operating and administrative co-ordination.

The Executive Secretary shall attest the acts in which he participates.

## **CHAPTER V. PROCEDURES** ➡

ARTICLE 30.- Proceedings before the Commission begin ex-officio or at the request of a party.

ARTICLE 31.- When exercising its powers, the Commission may request the necessary information or documents in order to carry out investigations, as well as to summon those involved in the corresponding cases.

The information and documents obtained directly by the Commission when carrying out its



investigations, and also those filed before it shall be strictly confidential. Public servants shall be held responsible in case of disclosure of that information, except when discussed by order of a competent authority.

ARTICLE 32.- All persons, in the event of absolute monopoly practices, or the party affected by the other practices or concentrations forbidden hereunder, may file a written complaint before the Commission against the alleged responsible, describing the nature of that practice or concentration.

In the case of corresponding monopoly practices or concentrations, the complainant shall include the elements that constitute those practices or concentrations, or as the case may be, the concepts that prove that the complainant has suffered or may suffer a substantial damage.

The Commission may reject the claims that are notoriously unfounded.

ARTICLE 33.- Proceedings before the Commission shall abide by the following basis:

The alleged responsible shall be summoned, and shall be notified the nature of the investigation, and shall attach, where applicable, a copy of the complaint;

The party summoned shall have a thirty calendar day term to submit an affidavit of defence and to attach the documentary evidence in his possession and shall submit all evidence that should be reviewed;

When the evidence has been reviewed, the Commission shall set a no longer than thirty calendar day term to submit the verbal or written pleas; and

Upon integration of the file, the Commission shall issue a resolution within the following 60 calendar days.

Any matter not covered herein shall be governed by the regulations of this law.

ARTICLE 34.- In order to efficiently execute its powers, the Commission may use the following legal pressure:

Admonition; or

Fine up to the equivalent of 1,500 times the minimum wage in effect in the Federal District. This amount may be imposed per day of non-compliance with the Commission's order.

## **CHAPTER VI. SANCTIONS ➡**

ARTICLE 35.- The Commission may assess the following sanctions:

Order to suspend, correct or eliminate the concentration practice in question;

Order the partial or total deconcentration of what has been unduly concentrated notwithstanding the applicable fine, as the case may be;

Fine of up to the equivalent of seven thousand times the general minimum wage in the

Federal district for having declared falsely or submitting false information to the Commission, regardless of any criminal liability incurred therein;

Fine of up to the equivalent of 375 times the general minimum wage in the Federal district for having incurred in absolute monopoly practices,

Fine for the equivalent of up to 225 times the general minimum wage in the Federal District, for having engaged in relative monopoly practices and up to the equivalent of 100 thousand times the general minimum wage in the Federal District, in the event of the provision under Section 10 of this Law;

Fine up to the equivalent to 225 thousand times the general minimum wage in the Federal District, for having incurred in concentrations forbidden by this Law; and a fine up to the equivalent of 100 thousand times the general minimum wage in the Federal District for failing to notify a concentration when it should legally be done; and

Fine up to the equivalent of seven thousand five hundred times the general minimum wage in the Federal District to individuals who directly participate in forbidden monopoly practices or concentrations, on behalf of or on account of corporations.

In the event of repeated offence, an additional fine may be assessed up to twice the initial amount.

ARTICLE 36.- When assessing fines, the Commission shall consider the seriousness of the violation, the damage caused, the degree of premeditation, the participation in the markets of the infringed; the size of the market affected; the length of the practice or concentration and the recurrence or background of the infringed, and also his financial status.

ARTICLE 37.- In the event of the violations under Sections IV to VII of Article 35 that, in the opinion of the Commission, are specially serious, it may levy instead of the fines contemplated in them, a fine up to ten per cent of the annual sales of the infringed during the previous fiscal year or up to ten per cent of the value of the assets of the infringed, whichever is higher.

ARTICLE 38.- The economic agents that have proven to have suffered damages during the proceeding resulting from the monopoly practice or illicit concentration, may file a legal claim to obtain compensation for the damages. In that event, the court may take into consideration the damages estimated by the Commission.

Only the legal or administrative actions based on this law shall proceed.

## **CHAPTER VII. APPEAL FOR REVIEW ➡**

ARTICLE 39.- Pursuant to this Law and contrary to the resolutions issued by the Commission, an appeal for reversal may be filed before the Commission within the 30 working days following the date in which those resolutions are notified.

The objective of the appeal is to revoke, amend, modify or confirm the resolution appealed and the judgements issued shall contain the assessment of the act challenged, the legal basis that support them and the resolution items. The regulations of this law shall establish the terms and other requirements for the filing and substantiation of the appeal.

The appeal shall be filed through a document addressed to the Commission's President, and it shall state the name and domicile of the appellant and the offences. It shall include the evidence deemed necessary, and also the documents crediting the legal status of the petitioner.

The filing of the appeal shall stay the enforcement of the resolution challenged. In the event of stay of the sanctions under Sections I and II of article 35 and where third parties may suffer damages, the appeal shall be granted if the petitioner provides sufficient guarantee to repair the damages and to compensate the losses if the resolution is not favourable to him.

The Commission shall issue and notify the resolution within sixty days of the date in which the appeal was filed. It shall be understood that the act challenged is confirmed if the Commission remains silent.

### **TRANSITORY ARTICLES** ➡

ONE.- This Law shall be in effect 180 days after it has been published in the "Diario Oficial de la Federación" (Federal Official Gazette).

TWO.- The first appointment of the five commissioners of the Commission referred to in this law, shall be on this sole occasion of two, four, six, eight and ten year terms respectively.

Subsequent appointments shall be made in accordance with this law-

THREE.- The following are repealed:

The Organic Law of Article 28 of the Constitution on Monopolies, published in the "Diario Oficial de la Federación" (Federal Official Gazette) dated August 31, 1934 and its amendments;

The Law on the Federal Executive Powers on Economic Affairs, published in the "Diario Oficial de la Federación" (Federal Official Gazette) dated December 30, 1950 and its amendments;

The Manufacturing Industries Law published in the "Diario Oficial de la Federación" (Federal Official Gazette) dated May 13, 1941; and

The Producers Associations Law for the Distribution and Sale of Their Products, published in the "Diario Oficial de la Federación" (Federal Official Gazette) dated June 25, 1937.

All provisions not contrary to this law shall continue to be in effect until expressly revoked, pursuant to the legislation repealed.

Mexico City, D. F., December 18, 1922.- Representative Salvador Abascal Carranza, President.- Senator Carlos Sales Gutierrez, President.- Representative Luis Perez Diaz, Secretary.- Senator Roberto Suarez Nieto, Secretary.- (Rubrics).

In compliance with provisions of Section I of Article 89 of the Political Constitution of the Mexican United States and for its due publication and abidance with, I issue this Decree at the residence of the Federal Executive Power, in Mexico City, Federal District, on December twenty two nineteen ninety two. Carlos Salinas de Gortari.- (Rubric). The Secretary of the Interior, Fernando Gutierrez Barrios.- (Rubric)

