

CODE OF REGULATIONS TO THE FEDERAL LAW OF ECONOMIC COMPETITION

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Published in the Diario Oficial de la Federacion, March 4, 1998.

This is not an official translation.

The only official text is in "Diario Oficial de la Federacion" (Federal Official Gazette).

Chapter I. General Provisions ➡

ARTICLE 1. For the purposes of the present Code of Regulations, the definitions contained in the Federal Law on Economic Competition, henceforth referred to as the Law, shall apply.

For those matters not provided for, either in the Law or this Code of Regulations, the Federal Code on Civil Procedures shall be applied in a supplementary manner.

ARTICLE 2. The text of those definitive judgments that have been emitted and the Commissions criteria, except where confidential information is concerned, shall be published in an informational gazette and an extract thereof in the Diario Oficial de la Federacion (the Governments official gazette). Such judgments and criteria shall be available to any person in the offices of the Commission for consultation.

ARTICLE 3. The periods contemplated in the Law or in this Code of Regulations shall begin as of the date in which the document in question is received at the Commissions filing desk.

ARTICLE 4. When the Law or the present Code of Regulations makes reference to days, it will be understood that the days referred to are business days, unless the contrary is stated. When no period is specified, it shall be understood that five business days are necessary for the performance of any such action.

Chapter II. On Monopoly Practices ➡

ARTICLE 5. Instructions or recommendations issued by business chambers or associations to their members with the aim or effect of engaging in the type of conduct contemplated in Article 9 of the Law are circumstantial evidence of the existence of an absolute monopoly practice.

The following, among others, constitute circumstantial evidence of engaging in the conduct referred to in Article 9, Section I, of the Law:

That the sales price offered on National Territory by two or more competitors for goods or services susceptible of being exchanged internationally be significantly higher or lower than their international reference price, except when the difference is attributable to the implementation of fiscal provisions, or to transport or distribution costs.

That two or more competitors establish the same maximum and minimum prices for a good or service, or adhere to sales or purchase prices for goods or services as set by a business association or chamber or any competitor.

ARTICLE 6. Economic agents may accredit before the Commission whether the gains in efficiency deriving from a relative monopoly practice have a favorable influence on the process of competition and free participation in the market, which must be taken into consideration in the evaluation of the conduct referred to in Article 10 of the Law.

Such gains in efficiency are deemed to include the following, among others:

The obtaining of savings in resources which permit the accused/alleged violator, on a permanent basis, to produce the same quantity of the good at a lower cost, or a greater quantity at the same cost;

The obtaining of lower costs if two or more goods or services are produced jointly than when separately;

The significant reduction of administrative costs;

Transfer of production technology, or knowledge of the market, and

Lowering of production or marketing costs derived from the expansion of an infrastructure or distribution network.

ARTICLE 7. Practices included in Article 10, Section VII, of the Law are deemed to include the following, without excluding others:

Systematic sales of goods or services at prices below their total average cost or their occasional sale below the variable average cost;

The granting of discounts by producers or suppliers to purchasers with the requirement of exclusivity in the distribution or marketing of the products or services, when such cannot be justified in terms of efficiency;

The persistent use of profits that an economic agent obtains from the sale of a good or

service for financing losses on another good or service;

The establishment of different prices or conditions of sale for different purchasers situated in equality of conditions, or

The action of 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 demand.

ARTICLE 8. For the effects of the provisions of Article 15 of the Law, the Commission shall require that state or municipal authorities, in a period not exceeding twenty days after notification of the request, manifest in writing whatever it is in their interests to express, attaching such documentary evidence as they may have in their possession, and offering such evidence as merits being presented.

Once the authority's pleading has been received, the Commission, in a period not exceeding ten days, shall admit or reject as appropriate the evidence offered, and shall fix a day and hour for the presentation of the said evidence within the following fifteen days. Once the evidence has been presented or the aforementioned term has run out, the Commission shall deliver a judgment within the thirty days following.

In the event of the period referred to in the first paragraph of this Article expiring without the Commission having received any pleading, the right to offer and present evidence shall extinguish.

Chapter III. On the General Rules for the Analysis of the Relevant Market and Substantial Power ➡

ARTICLE 9. For the effects of Article 12 of the Law, the Commission shall identify the goods or services which make up the relevant market, whether produced, marketed or supplied by the economic agents, and those that are or may be substituted for them, whether domestic or foreign, as well as the time required for such substitution to take place. Subsequently the Commission shall define the geographic area in which the said goods or services are supplied or in demand, and within which the option exists to go without distinction to suppliers and customers without incurring appreciably different costs; the Commission shall also take into consideration the cost of distributing the said good or service, and the cost and the probabilities of access to alternative markets.

Likewise, those economic and normative restrictions of a local, federal or international nature which prevent access to the said substitute goods or services, or which prevent the access of users or consumers to alternative sources of supply, or the access of the suppliers to alternative customers, shall be considered.

ARTICLE 10. In order to determine the market share to which Article 12, Section I, of the Law makes reference, sales indicators, number of customers, productive capacity, or any other factor that the Commission deems appropriate, shall be taken into consideration.

ARTICLE 11. For the effects of Article 13, section II, of the Law, elements which may be regarded as entry barriers include the following:

Financial costs or the costs of developing alternative channels, limited access to financing, technology or efficient channels of distribution;

The amount, indivisibility and period of recoupment of the required investment, as well as the absence or scarce profitability of alternative uses of infrastructure and equipment;

The need to possess concessions, licenses, permits or any kind of governmental authorization, as well as rights of use or usufruct protected by legislation in the area of intellectual and industrial property;

The investment in advertising required for a trademark or trading name to acquire a presence in the market sufficient to enable it to compete with already established trade marks or names;

The limitations on competition in international markets;

The restrictions constituted by the common practice of the economic agents already established in the relevant market, and

The acts of federal, state, or municipal authorities which discriminate in the awarding of promotional incentives, subsidies or assistance to certain producers or distributors, or firms marketing or supplying goods or services.

ARTICLE 12. In order to determine whether an economic agent has substantial power in the relevant market, pursuant to Article 13, section VI, of the Law, the following criteria shall also be taken into account:

The degree of positioning of the goods or services in the relevant market;

The lack of access to imports or the existence of high importation costs;

The existence of high cost differentials which could face consumers on turning to other suppliers.

ARTICLE 13. The Commission shall publish in the Diario Oficial de la Federacion the method for calculating the ratios for determining the degree of concentration which exists in the relevant market and the criteria for their application.

Chapter IV. On Concentrations ➡

ARTICLE 14. The identification of the economic agents referred to in Article 18, section II, of the Law shall refer at least to the principal economic agents which together supply the relevant market.

ARTICLE 15. In order to determine whether a merger or concentration is to be objected to and sanctioned in accordance with Article 18, section III, of the Law, in addition the following criteria shall be considered:

The evaluation in the relevant market of the gains in efficiency which, in the terms of Article 6 of this Code of Regulations, may derive from the concentration, which gains must be accredited by the economic agents carrying out the said concentration;

The effects of the concentration, both in the relevant market upon other competitors and demanders with respect to the good or service, and in other related markets and economic

agents, and

The share equity of the economic agent or agents involved in the transaction on other economic agents participating directly or indirectly in the relevant market or in related markets. When it is not possible to identify the indirect shareholders, this circumstance must remain fully justified.

ARTICLE 16. The conditions which the Commission may establish as binding upon the economic agents under the terms of Article 19, section I, of the Law, may consist in:

Engaging in a particular conduct, or abstaining from the said conduct;

Divesting to third parties certain assets, rights, company sections or shareholdings;

Eliminating a particular line of production;

Modifying or eliminating terms or conditions of the agreements that are intended to be entered into;

Undertaking to carry out acts oriented towards fostering the participation of the competitors in the market, as well as providing access thereto for the sale of goods and services, or

Any other such conditions aimed at avoiding that the concentration reduce, impair or prevent competition or free participation in the market.

The Commission may not impose conditions that are not directly inked to the correction of the effects of concentration. The conditions imposed must be in proportion with the correction that is intended.

In the event of the Commission wishing to dictate a judgment whose purpose is to make the concentration in question subject to the fulfillment of certain conditions, notifiers may request that the Commission give prior consideration to their own proposals.

ARTICLE 17. The notification of the concentrations referred to under the terms of Article 20 of the Law must be made before any of the following possible events take place:

The legal act is completed in accordance with the applicable legislation or, should it be the case, the condition precedent is fulfilled to which this act is subject;

Control is acquired de facto or de jure, or exercised directly or indirectly over an other economic agent; or before assets, participation in trusts, partners capital contributions or shares of another economic agent are acquired de facto or de jure;

A merger agreement is signed between the economic agents involved, or

In the case of a succession of acts, before executing that which, when completed, would result in the exceeding of the amounts laid down in the said Article.

In the case of concentrations resulting from legal acts carried out in other countries, these must be notified before they have legal or material effects on Mexican national territory.

ARTICLE 18. The merging party, the party acquiring control of the companies or

associations, or the agent which is intending to carry out the act or produce the effect of accumulating shares, partners capital contributions, participation in trusts or assets that constitute the object of the transaction, are obliged to notify the concentration, without prejudice to its being carried out by any of the economic agents participating in the transaction.

ARTICLE 19. For the effects of Article 20 of the Law, the general daily minimum wage in force in the Federal District on the day previous to that on which the notification is made shall be considered; and, in the event of the operations being contracted in foreign currency, the rate of exchange to be applied shall be that for settling obligations denominated in foreign currencies for payment in the Mexican Republic, determined by the Banco de Mexico and published in the Diario Oficial de la Federacion the day before the said notification. In the event of failing to notify a concentration, the procedure set forth in Chapter V of this Code of Regulations shall be followed ex officio, and the current general daily minimum wage and the rate of exchange published by the Banco de Mexico on the day before the transaction shall be considered.

ARTICLE 20. For the effects of Article 21, Section I, of the Law, the notification of the concentration shall include:

Identity, company or business name of the economic agents notifying the concentration and of those participating in it directly or indirectly;

If appropriate, the name of the legal representative and the documents which accredit the said representatives legal capacity, domicile for service of notifications and persons authorized for such effects, as well as data permitting their rapid localization;

The constitutional charters and reforms thereof, or attested copies of the bylaws of the economic agents involved;

The financial statements of the immediately preceding fiscal year, or the statement of earnings of the economic agents involved;

Certification of the structure of the capital stock of the participating economic agents prior to the concentration, carried out by the person legally empowered to do so, without requirement of recording in the notaries record book, apostle or acknowledgment of signature, or any other formality, whether the companies in question are domestic or foreign corporations, providing also a description of the new structure of the said capital. Likewise, the share-holding of each direct or indirect share-holder must be identified, both before and after the concentration, and that of the persons who currently have and subsequently are to have control;

Description of the concentration, its aims and type of operation, and the draft of the legal act in question, as well as the clauses by virtue of which the parties undertake not to compete and the reasons for the stipulation of the said clauses;

Mention of the economic agents involved in the transaction which have direct or indirect holdings in the capital stock, in management or in any activity of other economic agents which produce or market goods or services of identical or similar types or substantially related to the goods or services of the economic agents participating in the concentration;

Description of the principal goods or services produced or offered by each of the economic agents involved, specifying their use in the relevant market and list of similar goods and services and the principal economic agents which produce, distribute or market them in the

national territory;

Data regarding the market share of the economic agents involved and those of their competitors, and

Localization of the plants or business establishments of the economic agents involved, the situation of their principal centers of distribution and the relation these have with the said economic agents.

The documents referred to in Sections II and III above shall be presented either in the original or in a certified copy or, alternatively, a simple copy for collation with the original.

When the notification fails to furnish all the requisites referred to in Sections I to VIII above, the Commission shall give warning to the notifiers in order that, within a period not exceeding five days, the required information be supplied; in the event of the said information not being presented within the aforementioned term, the concentration shall be deemed unnotified. In like manner, the concentration shall be deemed unnotified when any material requested additionally to the aforementioned is not presented within the period specified in Article 21, Section II, of the Law. The Commission shall only require such additional material as is relevant for the analysis of the concentration in accordance with the criteria set forth in the Law, which shall exclusively constitute the basis and motivation of the corresponding requirement.

The promoter shall be informed of the Commissions decision to deem a concentration unnotified within five days following the day on which the term for presenting the required information expires.

In the absence of the Commission issuing and notifying the aforementioned decision, once the aforementioned period of five days has come to an end it shall be understood that the promoter has presented the entirety of the information required.

The Commission may require information from other economic agents related with the concentration, without it being construed thereby that the said agents are accorded the nature of party to the concentration procedure.

The economic agents shall present exclusively the information referred to in Sections I to VII above, when they accredit before the Commission that it is plainly manifest that the transaction will not have as its object or effect an increase in substantial power in the relevant market or diminish, impair or prevent competition and free participation.

The Commission may grant exemption to the presentation of any requisite, when duly justified cause exists for said exemption.

ARTICLE 21. It shall not be necessary to notify pursuant to Article 21, Section I, of the Law:

Legal acts regarding shares or partners capital contributions of foreign companies, when the economic agents involved in the said acts do not thereby acquire the control of Mexican companies, nor accumulate in the national territory shares, partners capital contributions, shares in trusts or assets in general, additional to those which, directly or indirectly, they possess prior to the transaction, and

Transactions in which an economic agent has had in property or possession, directly or indirectly, over a period of at least three years, 98% of the shares or partners capital

contribution within itself or the economic agents involved in the transaction. In this case, the economic agents shall only be obligated to notify the Commission, within five days following the day on which they carry out the transaction, by means of a written declaration which shall contain:

- a. The identity, company or business name of each of the economic agents participating directly or indirectly in the transaction;
- b. Name of the legal representative, documents accrediting his or her legal capacity and domicile for the purpose of serving notifications;
- c. Certification by the person legally empowered for such purpose of the structure of the capital stock of the economic agents participating, both before and after the concentration, distinguishing shareholdings of each direct or indirect shareholder, accrediting irrefutably that the concentration is a corporate restructuring, and
- d. Succinct description of the transaction.

ARTICLE 22. For effects of the last sentence of Article 21, Section III, of the Law, the Commission shall, at the request of the interested party, issue a certificate of non-objection within the five days following the presentation of the corresponding application.

Chapter V. On Procedure ➔

First Section. On the Opening of the Investigation ➔

ARTICLE 23. Pursuant to Chapter V of the Law, the Commission shall commence an investigation when it has knowledge of facts from which it may deduce the probable existence of:

Monopoly practices;

The prohibited concentrations that are referred to in the Article 16 of the Law, even such as have obtained a favorable decision on the basis of false information;

Non-compliance with the obligation to effect notification in terms of Article 20 of the Law.

In the cases of Sections I and II, the procedure shall begin de officio with the issue of the corresponding judgment or on request by a third party with the presentation of a complaint. In the case of Section III, the said procedure shall only be opened ex officio.

ARTICLE 24. The complaint referred to in Article 32 of the Law shall include:

Identity, company or business name of the complainant;

Name of the legal representative if appropriate, and simple copy of the documents accrediting the legal capacity of the said representative, domicile for the serving of notifications and authorized persons for such effects, as well as data permitting his or her rapid location;

Name, denomination or trading name and, if known, the domicile of the accused;

Description of the facts that constitute the substance of the monopoly practice or the prohibited concentration;

In the case of relative monopoly practice and prohibited concentrations, the data by means of which the relevant market may be defined and the substantial power of the accused in the said market are to be assessed;

In the case of relative monopoly practice, the evidence adduced as a basis for considering that the complainant is being, or in the future may be, unduly displaced from the relevant market or from other markets, or that access to the said markets may be substantially impeded, or may be affected by the granting of exclusive advantages;

In the case of concentrations, it must be accredited that the complainant produces or intends to produce goods or provide services equal, similar or substantially related to those produced or provided by the economic agents which have carried out the concentration in question or that it is a customer, consumer or supplier in the relevant market;

When appropriate, the elements that demonstrate that the complainant has suffered or may suffer damage or loss, for the effects of Article 38 of the Law;

When appropriate, the elements that allow it to be demonstrated that the information on the basis of which the Commission approved the concentration was false;

If possible, such data as allow other economic agents to be identified which might be affected by the monopoly practice or prohibited concentration;

A list of the documents that accompany the complaint and the evidence offered as grounds for reaching a decision, indicating the precise relation with the reported facts, and

Any other evidence that the complainant believes to be pertinent and, in the case of not having such evidence available, indicating the place or file in which they are to be found, so that the Commission may seek to make such evidence available.

A copy of the complaint and of the remaining documents that accompany it must be presented for each of the accused parties.

ARTICLE 25. Within ten days following the day on which the complaint is received at the filing desk, a judgment must be delivered, which:

Orders the beginning of the investigation;

Either rejects the complaint as being clearly contrary to law;

Or cautions the complainant once only, in the event of its declaration having omitted any of the requirements set forth in the Law or in this Code of Regulations, in order that it may provide clarification or make good the deficiency within a period of no more than fifteen days, which period may be extended by the Commission for an equal period, in duly justified cases. Once the said deficiency has been attended to, the corresponding judgment shall be emitted within the following five days.

Should the aforementioned period end without the Commissions advice being answered or

without the said requirements being complied with, the complaint will be held not to have been presented. The Commissions judgment deeming the complaint unrepresented shall be notified to the complainant within the five days following that on which the period for responding to the caution has expired.

If no judgment is emitted within the aforementioned periods the corresponding investigation will be deemed to have begun.

ARTICLE 26. The Commission shall reject the complaint as being clearly contrary to law, when:

The reported facts are not considered pursuant to the Law to be monopoly practices or prohibited concentrations;

The facts and conditions in the indicated relevant market have already been subject to a judgment in terms of Article 33 of the Law;

Proceedings are pending before the Commission in reference to the same facts, after having issued a summons against the alleged violator;

There are notification proceedings already under way regarding of a concentration which has still not taken place. In this case the Commission shall take into consideration the elements contributed in the complaint in order to resolve the notified concentration; nevertheless, the complainant shall not have access to the documentation relating to the said concentrations nor shall be entitled to question the proceedings, and

When the reported facts are not likely to take place in the near future.

ARTICLE 27. An abstract of the judgment whereby the Commission officially gives opening to a an investigation shall be published in the Diario Oficial de la Federacion within the ten days following delivery of the said judgment, which abstract shall, at the least, mention the monopoly practice or prohibited concentration to be investigated, and the market in which it is to take place; the said abstract may be disseminated in any other medium of communication when the Commission deems the business in question to be of sufficient importance, with the purpose of enabling any person to assist in the investigation. In no case in the process of publication referred to in the present paragraph shall the identity, company or business name of the economic agents involved be revealed.

The period of investigation shall begin from the day on which the judgment is published, and shall be not less than thirty days nor in excess of ninety. In exceptionally complex cases, the Plenum of the Commission may extend the term by further periods not exceeding ninety days.

Once the abstract of the judgment has been published, persons wishing to make contributions to the proceedings may do so even before summons is served on the alleged violator, as well as presenting new allegations regarding the facts motivating the investigation.

ARTICLE 28. Once an investigation is begun, from which it becomes clear that sufficient evidence exists to determine: that the object or effect of the monopoly practice or prohibited concentration is or might be to reduce, impair or prevent the process of competition and free participation in the market at national level; that other economic agents exist which are involved; or that a plurality of monopoly practices or prohibited concentrations exist, the Commission may institute a single proceeding, allow the facts forming the basis of the

complaint to be extended, or initiate new proceedings, as it deems most suitable for the prompt and efficient handling of the issues.

ARTICLE 29. All persons who have any relation with the facts being investigated by the Commission shall be obligated to provide to the Commission within the period that shall be allotted them, under oath, the relevant information and data required in writing, as well as to appear to declare when summonsed.

ARTICLE 30. Once the investigation is concluded, if sufficient elements exist to bear out the existence of monopoly practices or prohibited concentrations, the Chairman and the Executive Secretary of the Commission shall serve a writ of alleged responsibility, which shall include the name and domicile of the alleged violator, the facts that constitute the substance of the monopoly practice or prohibited concentration which is imputed to it, the articles which are being violated, and the evidence on which the allegation of violation is supported, wherewith the Commission shall summons the alleged violator.

ARTICLE 31. The procedures performed by the Commission before serving the summons shall be fully valid for purposes of upholding the writ of alleged violation. In the performance of the said procedures the provisions regarding evidence set forth in this Code of Regulations shall be applicable where appropriate.

In the event of the existing evidence being insufficient to uphold the alleged violation by an economic agent, the Plenum of the Commission shall decree the closing of the file and, in that case, notify this excision to the complainant.

Second Section. On the Summons ➡

ARTICLE 32. For the effects of Article 33, Section II, of the Law, the summonsed shall make reference to each of the facts expressed in the writ of alleged responsibility. Those facts regarding which the alleged violator makes no declaration shall be deemed to be true, excepting proof to the contrary; the same shall be the case should the alleged violator fail to answer to the complaint within the period indicated in the aforementioned Section II.

The alleged violator shall present its answer to the complaint and offer the evidence which it considers relevant, on a sole or several occasions, but in all cases must do so within the period referred to in Article 33, Section II, of the Law.

ARTICLE 33. Evidence shall be offered with the documents referred to in Article 33, Section II, of the Law, with a clear exposition of the facts that it is wished to demonstrate. It will be the responsibility of the offerer to perform the necessary acts leading to the timely presentation of the evidence, for which purpose the Commission shall provide any relevant assistance.

When offering the evidence, this should be accompanied, as appropriate, by the following:

- I. The document containing the interrogatories which are to be answered;
- II. The interrogatories on the basis of which the witnesses are to be examined;
- III. Reference to the place, the periods and the objects and documents which are to be perused in the examination or inspection;
- IV. The material of the expert evidence and the questionnaire of questions and the

appointment of the expert witness.

If appropriate, the complainant shall be permitted to add to the interrogatory or the questionnaire.

ARTICLE 34. Once the writ of alleged violation has been answered, the admission of evidence shall be decided, and the place, day and time for the presenting of the said evidence shall be fixed. All types of evidence are admissible. Evidence that is not offered in accordance with the law, has no relation with the substance of the issue, is contrary to law or unnecessary shall be refused.

The presenting of the evidence offered and admitted shall take place within a period not exceeding twenty days after the date of admission.

Supervening evidence may be presented as long as a final judgment has not been pronounced.

The Commission shall give the interested parties a minimum of three days notice of the beginning of the proceedings necessary for the presentation of the evidence which has been admitted.

ARTICLE 35. Expert witnesses may deliver their opinion within a period not exceeding fifteen days from the day after that on which they accept and swear to the undertaking. The said period shall be extendible at the Commission's discretion in cases where it is duly justified. In the event of the specialist appointed by the alleged violator failing to appear without justified cause to deliver his or her report within the period allotted for this purpose, the evidence shall be declared void.

ARTICLE 36. The Commission may at any time have recourse to such evidence as it deems necessary in order to discover the truth regarding the facts that constitute the substance of the monopoly practice or prohibited concentration, and that constitute reasonable grounds for reaching a decision; such limitations and prohibitions regarding evidence that bear upon the economic agents shall not apply to the Commission.

The Commission shall take care that the proceedings be not suspended nor interrupted, for which purpose it shall provide all the necessary means whereby the such proceedings conclude with the respective judgment. Likewise it shall order all necessary measures to bring the proceedings to a satisfactory outcome.

The legal representatives of the economic agents, for whom the power to answer interrogatories is not contemplated, may be summonsed by the Commission to appear in order to testify regarding the facts of which they have knowledge.

ARTICLE 37. When the evidence adduced to substantiate the alleged violation, and offered as constituting reasonable grounds for reaching a decision, is based on testimonial, expert, or real, demonstrative, or objective evidence brought by the complainant, the alleged violator may present, at the moment of answering the writ of alleged violation, a cross-interrogatory for the expert and other witnesses, or regarding points that it deems relevant regarding the inspection. The Commission shall establish the venue, day and time for the necessary formalities to take place.

ARTICLE 38. When an economic agent directly or indirectly involved in a proceeding refuses to allow the examination or inspection ordered by the Commission, or fails to

answer the questions put to it, the said questions, whereby it is sought to ascertain the truth, shall be deemed to have been answered in the affirmative, excepting proof to the contrary. The same shall be done if the said economic agent fails to exhibit the object or document which it has or is able to have in its possession.

ARTICLE 39. Once the evidence has been examined, the Commission, for the better elucidation of the issues, within a period which shall not exceed fifteen days, may allow, the practice of such additional probatory measures that it deem relevant for the clarification of the facts that are the object of the proceeding, which procedure shall be take place during the twenty days following, it being the duty of the Commission to permit the economic agents a prior opportunity to answer according to their best interests. The Commission shall call for briefs:

- I. Having expired the period of fifteen days referred to in the previous paragraph, when no performance of additional procedures has been declared;
- II. Once the further evidence allowed for greater security of decision has been examined, or
- III. The period has expired which is referred to in Article 33, Section II, of the Law, when the alleged violator has failed to answer summons, confesses the facts or there are no proofs to be presented.

ARTICLE 40. The file shall be understood to be complete at the date of presentation of the briefs or on expiration of the period for their presentation; the Commission shall issue the ruling within the following three days.

ARTICLE 41. At any stage of a proceeding pursued before the Commission, and before the latter emit a definitive judgment, the alleged violator shall be entitled to present a written undertaking whereby it undertakes to suspend, suppress, correct or not carry out the alleged relative monopoly practice or prohibited concentration, for which purpose economic agents shall accredit that:

- I. The process of competition and free participation in the market shall be restored on the cessation of the effects of the monopoly practice or prohibited concentration, and
- II. The measures proposed shall be such as are appropriate and economically viable to leave without effects the monopoly practice or concentration, indicating the periods and terms for their verification.

Once the aforementioned undertaking has been received, the proceeding shall be suspended until the Commission, within a period of fifteen days, emits its judgment, whereby the said proceeding may be concluded without prejudice to the possibility of imposing sanctions in respect of the engaging in monopoly practices or prohibited concentrations and without prejudice to the complainant being able to claim losses or damages.

Third Section. On Notifications ➡

ARTICLE 42. The notifications effected by the Commission may be served:

- I. Personally;
- II. By list, and
- III. To the authorities, or when the Commission expressly orders it, by writ delivered by messenger or ordinary post or registered post with acknowledgment of receipt.

Personal notifications shall be performed within the terms of Section III, when the interested party so requests, enclosing the receipt for payment of the corresponding service.

ARTICLE 43. The following shall be notified in person:

- I. Judgments of the Plenum of the Commission;
- II. Request for additional information;
- III. Ruling by which a complaint is dismissed or a complaint or a notification of concentration is deemed not presented;
- IV. Summons served on the alleged violator;
- V. The ruling whose purpose is to caution the interested party;
- VI. Rulings directed at any person extraneous to the proceedings under way before the Commission, and that indicated in Article 52 of this Code of Regulations, and
- VII. Whenever it is expressly ordered by the Commission, applying to some situation not contemplated in the previous sections.

ARTICLE 44. It shall be understood that any personal notification is served on the person to whom it is directed, its legal representative or natural persons authorized for that effect; in the absence of these, the notifier shall leave notice of citation with the person who is found present in the domicile, requiring that the interested party be in attendance at a fixed time on the following business day. If the domicile is found to be closed up, the notice of citation shall be left in a visible place.

If the person to whom notification is to be given does not attend on the notice of citation, the notification shall be understood as served on any person who happens to be in the domicile at which the process is served, and in the event of the said person refusing to receive it or, alternatively, of the premises being found shut up, the process shall be served by means of an official notice which shall be affixed in a place visible therefrom.

The notifier shall make out a report in writing regarding the procedures by means of which the notification is served, in which shall be recorded the manner in which it was ascertained that the correct domicile was located, the legal status of the person who received it, the date and hour at which notification was effected and the proceeding which was notified.

ARTICLE 45. Personal notifications may be performed by public servants of the Commission or those of other departments of the federal, state or municipal Public Administrations with which the Ministry enters into agreements on collaboration for the purpose, as well as by means of notary public. The said notifications may also be

performed in the offices of the Commission when the interested party attends.

ARTICLE 46. For those notifications which do not require personal execution a list shall be issued which shall be made available to the public in the Commission's offices. For each ruling or judgment, the number of the file in which it is delivered and the subject of the said ruling or judgment shall be stated, without mentioning the identity, company or business name of the economic agents involved in the proceeding, nor any other information that could be used to identify them.

The list shall be brought up to date every week with the inclusion of all those rulings emitted during the previous week; it shall also include on every page the Commission's official seal.

When the economic agents fail to indicate their domicile on their initial communication, any notification, even personal notifications shall be executed by means of the list.

ARTICLE 47. All notifications shall take effect on the day following that on which they are executed.

ARTICLE 48. For the effects of Article 38 of the Law, once a final judgment has been entered by the Commission, persons whose interests have been affected or damaged by the monopoly practice or prohibited concentration in question, may request the Commission in incidental proceedings to estimate their losses or damages.

Chapter VI. On Consultations and Opinions ➡

ARTICLE 49. Any person, whether natural or artificial, and including the agencies or other official bodies of the Federal, state or municipal public administrations may request consultation on the subject of competition and free participation in the market, for which purpose the following requirements shall apply:

The said request shall be presented in writing, accompanied by any information relevant for the analysis that shall be carried out by the Commission;

Should the information provided be deemed insufficient, the Commission shall require the party concerned to provide the same, on one sole occasion, within ten days following the presentation of the request, which shall be presented during the fifteen days following the Commissions requirement, and

The Commission shall satisfy the inquiry in a maximum period of thirty days following the presentation of the request, or the delivery of the information, according to the case.

If the said information is not provided within the period provided for in Section II above, the consultation shall be deemed not presented, without prejudice to the concerns entitlement to request an extension of the said period or to present a new inquiry.

ARTICLE 50. When legal or regulatory provisions expressly provide that questions of effective competition, existence of substantial power in the relevant market, or other questions regarding competition and free participation in the market are to be resolved, it shall be the responsibility of the Commission, excepting provision to the contrary, to emit the corresponding judgment. For this purpose, the Commission, either ex officio, or on the request of the respective authority or of an economic agent with some interest in the matter, shall emit a judgment in accordance with the following terms:

If necessary, it shall request the relevant reports and documents and shall serve subpoena upon those having relation with the case in question in order that they may render declaration;

On the basis of the analysis carried out, it shall emit a preliminary judgment and shall notify the affected, the petitioner and the remaining economic agents concerned of the substance of the said judgment;

In a period no less than fifteen days and not exceeding forty-five days, the affected, the petitioner and the remaining economic agents shall be heard, and

It shall turn the judgment over to the competent authority for the issues in question, without prejudice to any steps which the interested parties may wish to take before the Commission itself.

When the judgment is to be emitted at the request of the authority or other interested party, the Commission shall emit the preliminary judgment referred to in Section II above in a maximum period of thirty days following the presentation of the said request. This period and that indicated in Section III of the present Article may be extended by the President of the Commission, when this is justified, up to the maximum number of days contemplated for each case.

Notwithstanding the maximum periods contemplated in this article, the Commission shall resolve with due promptness, so that those authorities which are obligated to consider such judgments as are emitted pursuant to this article, may be able to apply in a timely manner the provisions in question.

ARTICLE 51. When in public bidding processes the favorable opinion of the Commission is required as a condition, this must be resolved within the procedures and periods established by the corresponding terms of reference which are established pursuant to the corresponding laws and upon agreement between the body calling for bids and the Commission.

Chapter VII. Motion for Reconsideration ➡

ARTICLE 52. The motion for reconsideration shall only be in order against judgments putting an end to a proceeding or those which hold a complaint not to have been presented or a concentration not notified.

In the case of those proceedings provided for in Chapter V, as well as those in Articles 8 and 50 of this Code of Regulations, the challenged judgment shall be evaluated on the basis of the court records, and the only admissible additional evidence shall be such as has subsequently come to light and which has a relation with the facts in dispute, which is susceptible of modifying the terms of the judgment, which must accompany the document in which the motion for reconsideration is set forth and shall be ruled by the relevant provisions in chapter V of the present Code of Regulations.

The only persons having a legitimate interest to file a motion for reconsideration against the judgments of the Commission shall be the complainant, the alleged violator, who shall be party to a procedure of notification of concentration, or those involved in the proceeding as contemplated in Article 50 of this Code of Regulations.

ARTICLE 53. The President of the Commission shall deliver a ruling that either admits or rejects the motion within a period of five days following its presentation. In the event of the motion being admitted, the alleged violator, the complainant and the economic agents referred to in Article 50, as appropriate, shall be given a hearing, so that, within a period of ten days, they may set forth whatever it is in their interests to express.

Provisional ➡

SOLE. The present Code of Regulations shall enter into force on the day following its publication in the Diario Oficial de la Federacion, except for Article 2, which shall enter into force after a period of six months following the said publication.