

# FEDERAL LAW OF ECONOMIC COMPETITION

Mexico

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At the margin, a seal with the Mexican coat of arms reading:  
United Mexican States. Presidency of the Republic.

I, CARLOS SALINAS DE GORTARI, Constitutional President of the United Mexican States,  
to its inhabitants, ye know:

That the Honorable Congress of the Union has deemed it convenient to submit to me the  
following

## DE C R E E

"THE CONGRESS OF THE UNITED MEXICAN STATES, HEREBY D E C R E E S:

### FEDERAL LAW OF ECONOMIC COMPETITION<sup>1</sup>

#### CHAPTER I - GENERAL PROVISIONS

##### ARTICLE 1

This law regulates Article 28 of the Constitution regarding economic competition,  
monopolies and free market participation. Its observance is binding in the entire Republic and  
applies to all sectors of economic activity.

##### ARTICLE 2

The purpose of this law is to protect the process of competition and free market  
participation, through the prevention of monopolies, monopolistic practices and other  
restrictions  
that deter the efficient operation of the market for goods and services.

For the purposes of this law, the Secretariat shall be understood as The Secretariat of  
Commerce  
and Industrial Promotion, and Commission shall be understood as the Federal Competition  
Commission.

##### 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 municipal administration,  
associations, professional groups, trusts or any other form of participation in economic  
activities.

##### ARTICLE 4

For the purpose of this law, faculties exercised exclusively by the state in the  
strategic sectors described in the fourth paragraph of Article 28 of the Political Constitution of  
the United Mexican States, do not constitute monopolies.

However, agencies and state organizations responsible for the exercise of the faculties described in the preceding paragraph will be subject to the provisions of this law, regarding activities in sectors not specifically considered as strategic.

#### **ARTICLE 5**

Associations of workers formed in accordance with relevant legislation to protect their interests, do not constitute monopolies.

Privileges granted to authors and artists for the production of their work for a given period of time, and those granted to inventors and individuals perfecting an improvement for the exclusive use of their inventions, do not constitute monopolies either.

#### **ARTICLE 6**

Associations or cooperatives that sell their products directly abroad, do not constitute monopolies, provided that:

1. Said products are the principal source of wealth produced in the region, or are not a basic commodity;
2. They are neither sold nor distributed in Mexico;
3. Membership is voluntary and members are free to join or resign;
4. Permits or authorizations issued by agencies or entities of the Federal Public Administration, are neither granted nor distributed by such associations or cooperatives; and
5. In each case, incorporation is authorized by the legislature that corresponds to their corporate domicile.

#### **ARTICLE 7**

In order to fix maximum prices for products and services essential for the domestic economy or for mass consumption, the following shall apply:

6. The Federal Executive shall be exclusively responsible for determining, through decree, the goods and services subject to maximum prices; and
7. Without affecting the powers invested to other agencies, the Secretariat shall set, through founded and motivated intent of resolution, the maximum prices of goods and services determined by the preceding section, pursuant to criteria which shall seek to prevent shortages of supply.

Without interpreting the following as a violation of this law, the Secretariat may concert or coordinate with producers or distributors necessary actions in this matter, to minimize the effects on competition and free market participation.

The Federal Consumer Protection Agency, under the supervision of the Secretariat, will be responsible for the verification, surveillance and penalization of maximum prices determined pursuant to this article, in accordance with the Federal Consumer Protection Act.

### **CHAPTER II - MONOPOLIES AND MONOPOLISTIC PRACTICES**

## **ARTICLE 8**

Monopolies and tax corners are prohibited, as are practices which, pursuant to this law, diminish, impair or prevent competition and free participation in the production, processing, distribution and marketing of goods or services.

## **ARTICLE 9**

Absolute monopolistic practices are contracts, agreements, arrangements, cartels or combinations among competitive economic agents, whose aim or object are any of the following:

8. To fix, raise, concert or manipulate the purchase price or sale of goods or services supplied or demanded in the markets, or to exchange information with the same purpose or effect;
9. To establish an obligation only to produce, process, distribute or market a restricted or limited amount of goods, that restricts or limits the number, volume, or frequency of service;
10. To divide, distribute, assign or impose portions or segments of a present or potential market of goods and services, by means of a determinable group of customers, suppliers, time or spaces; or
11. To establish, rig or coordinate bids or abstention of bids in tenders, public auctions or biddings.

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

## **ARTICLE 10**

Subject to verification of articles 11, 12 and 13 of this Law, relative monopolistic practices are considered to be those acts, contracts, agreements, cartels or combinations, which purpose or effect is to improperly displace other agents from the market, substantially impede their access thereto, or to establish exclusive advantages in favor of one or several entities or individuals, in the following cases:

12. Between economic agents that do not compete between each other, fixing, imposition or establishment of exclusive distribution of goods or services, by means of subject, geographic location or period of time, including the division, distribution or assignment of customers or suppliers; as well as the imposition or obligation not to manufacture or distribute goods or render services for a determined period of time or for a period of time subject to determination;
13. The imposition of price or other conditions that a distributor or supplier must comply with when selling or distributing goods or rendering services;
14. The sale or transaction subject to the purchase, acquisition, sale or distribution of another additional good or service, normally distinct or distinguishable, or through a reciprocal basis;
15. The sale or transaction subject to the condition of not using or acquiring, selling or

providing other additional goods or services produced, processed, distributed, or marketed by a third party;

16. A unilateral action consisting in refusing to sell or supply to certain persons available goods or services that are normally offered to third parties;
17. The agreement between various economic agents or the invitation extended to them to exert pressure over a certain customer or supplier, in order to dissuade him from executing a certain practice, to retaliate, or to force him to act in a certain manner; or
18. Any act, in general, that improperly impairs or impedes the process of competition and free participation in the production, processing, distribution and marketing of goods or services.

#### **ARTICLE 11**

Practices in the preceding article, are in violation of the law under the following conditions that must be proven:

19. That the presumed responsible party has substantial power in the relevant market; and
20. That practices are carried out in connection with goods or services pertaining to such a relevant market.

#### **ARTICLE 12**

In order to determine the relevant market, the following criteria must be evaluated:

21. The possibilities of substituting the goods or services in question, with others of domestic or foreign origin, bearing technological possibilities, and the extent to which substitutes are available to consumers and the time required for such substitution;
22. The distribution cost of the product, of its raw materials; of its supplements and substitutes from other regions and from abroad, considering freight, insurance, tariffs and other non-tariff restrictions, as well as those restrictions imposed by economic agents or by their associations, and the time required to supply the market from said regions;
23. The cost and probability of users or consumers seeking other markets; and
24. Federal, local or international regulatory restrictions which limit the access by users or consumers to alternate sources of supply, or the access of suppliers to alternate customers.

#### **ARTICLE 13**

In order to determine whether an economic agent has substantial power in the relevant market, the following must be considered:

25. Its share in the relevant market and the possibility to fix prices unilaterally or to restrict supply in the relevant market, without competitive agents being able, presently or potentially, to offset such power;
26. The existence of entry barriers and of elements that can foreseeably alter said barriers as well as the supply of other competitors;

27. The existence and power of its competitors;
28. The possibility of access of economic agents and of competitors for sources of input;
29. Its recent development; and
30. Other criteria established by the regulations of this Law.

#### **ARTICLE 14**

Pursuant to Article 117, Section V, of the Political Constitution of the United Mexican States, acts performed by state authorities motivated directly or indirectly to prohibit the entry or exit of goods or services from state territories, of domestic or foreign origin, shall have no legal force or effect.

#### **ARTICLE 15**

The Commission may investigate ex-officio or at the request of an interested party, whether the acts referred to in the preceding article develop and, in such case, declare their existence. The declaration shall be published in the Official Gazette of the Federation and may be contested by the state authority before the Supreme Court of Justice of the Nation.

### **CHAPTER III - CONCENTRATIONS**

#### **ARTICLE 16**

For the purposes of this law, a concentration shall be understood as a merger, or acquisition of control, or any other act whereby companies, partnerships, shares, equity, trusts or assets in general are concentrated among competitors, suppliers, customers or any other economic agent. The Commission shall contest and penalize those concentrations whose purpose or effect is to diminish, impair or impede competition and free market participation regarding equal, similar or substantially related goods or services.

#### **ARTICLE 17**

In reference to the preceding article, the Commission, when investigating concentrations, will interpret as evidence the following act or attempt:

31. Bestows or may bestow on the merging party, the acquirer or the economic agent resulting from the concentration, the power to fix prices unilaterally or to substantially restrict the stock or supply in the relevant market, without the competing economic agents being able, presently or potentially, to offset such power;
32. Intends or may intend to improperly displace other economic agents or to prevent their access to the relevant market; and
33. Intends or has the effect of substantially permitting the participants in said act or attempt to engage in monopolistic practices as referred to in Chapter Two hereof.

#### **ARTICLE 18**

In order to determine whether a trust should be contested or penalized pursuant to this law, the Commission must consider:

34. The relevant market, in terms of article 12 hereof;
35. The identification of the economic agents that supply the market in question, an analysis of their power in the relevant market according to article 13 hereof, and the degree of concentration in said market; and
36. Other criteria or analytic instruments provided in the regulation of this Law.

#### **ARTICLE 19**

If, as a consequence of the investigation and review of the procedure established herein, it is proven that the concentration constitutes an act foreseen in this chapter, in addition to imposing the appropriate legal measures or penalties, the Commission may:

37. Subject such act to compliance with the conditions established by said Commission; or
38. Order a partial or total divestiture of what has been improperly concentrated, terminate the control or eliminate the act, as required.

#### **ARTICLE 20**

The Commission must be notified of the following concentrations before they are carried out:

39. If the value of a single transaction or series of transactions amounts to over 12 million times the minimum general wage prevailing in the Federal District;
40. If a single transaction or series of transactions implies accumulation of 35 percent or more of the assets or shares of an economic agent, whose assets or sales amount to more than 12 million times the minimum general wage prevailing in the Federal District; or
41. If two or more economic agents take part in the transaction, and their assets or annual volume of sales, jointly or separately, total more than 48 million times the minimum general wage prevailing in the Federal District, and such transaction implies an additional accumulation of assets or capital stock in excess of four million eight hundred thousand times the minimum general wage prevailing in the Federal District.

In order to inscribe acts that according to their nature should be registered in the Public Commercial Register, the economic agents referred to in points I through III must establish that they have received favorable ruling from the Commission, or that they have given the notification referred to in this article without the Commission having issued a decision within the time given in the following article.2

#### **ARTICLE 21**

For the purposes of the preceding article, the following shall apply:

42. The notice shall be in writing, together with a draft of the legal act in question, which shall include the names or corporate names of the economic agents involved, their financial statements for the latest fiscal year, their participation in the market share, and other factors that permit knowledge of the intended transaction;
43. The Commission may request additional information or documents within twenty calendar days after receiving notification. This information must be submitted to the Commission by the interested parties within fifteen calendar days. This time limit may be extended in duly justified cases;

44. The Commission shall have forty-five calendar days after acquiring notification or if in such case additional documents are requested, to issue a decision. Once said time limit has expired and no decision has been given to the interested parties it shall be understood that the Commission has no objections whatsoever;
45. In exceptionally complex cases, the Chairman of the Commission may, under his responsibility, extend the time limit referred to in Sections II and III for up to sixty more calendar days;
46. The decision of the Commission must be duly founded and motivated; and
47. A favorable decision shall not prejudice the realization of other monopolistic practices prohibited by this Law; therefore, it does not exempt economic agents implicated from other responsibilities in which they may incur.

## **ARTICLE 22**

The following may not be contested under this Law:

48. Concentrations that have received a favorable ruling, except when such ruling was obtained on the basis of false information; and
49. Concentrations that do not require prior notification, a year after being carried out.

## **CHAPTER IV - FEDERAL COMPETITION COMMISSION**

### **ARTICLE 23**

The Federal Competition Commission is an administrative entity of the Secretariat of Commerce and Industrial Promotion. It shall be technically and operationally autonomous and is responsible for the prevention, investigation and contesting of monopolies, monopolistic practices and concentrations, in accordance with the terms of this Law. It shall be free to issue its own decisions.

### **ARTICLE 24**

The Commission is empowered to::

50. Investigate the existence of monopolies, tax corners, practices or concentrations prohibited by this law, to which end it may require from individuals and other economic agents the relevant information or documents;
51. Establish mechanisms of coordination to contest and prevent monopolies, tax corners, concentrations and illicit practices;
52. Solve cases of competition practice and impose administrative penalties for the infringement of this Law, and to report to the Public Prosecutor criminal practices regarding competition and free market participation;
53. Issue opinions concerning adjustments in programs and policies of the Federal Public Administration, whose effects may damage competition and free market participation;
54. Issue opinions, when requested by the Federal Executive, about modification of law and regulation policy regarding competition and free market participation;
55. Issue opinions, when considered pertinent, about competition and free market

participation, regarding laws, regulations, agreements, orders and administrative acts, without such opinions having any legal effect, and without the Commission being compelled to issue an opinion;

56. Prepare and enforce internally, the organization of manuals and rules of procedure;
57. Participate with the appropriate entities the celebration of international treaties, agreements or pacts, in connection with regulations or policies involving competition and free market participation, in which Mexico is or intends to be a party; and
58. All others vested in it by this and other laws and regulations.

#### **ARTICLE 25**

The Commission shall be integrated by five commissioners, including the Chairman. It shall conduct its debates as a collegiate body and its decisions shall be reached by a majority of votes, empowering the Chairman with the deciding ballot in the event of a tie.

The Commission shall have the necessary staff to expedite matters efficiently, in accordance with the authorized budget.

#### **ARTICLE 26**

Its commissioners shall be appointed by the head of the Federal Executive and they must meet the following requirements:

59. Be Mexican citizens, professionally qualified in matters related to the purposes of this law, over thirty-five and under seventy-five years of age;
60. Have distinguished themselves professionally in public or academic services substantially related to the purposes of this Law.

The commissioners must refrain from engaging in any other employment, work, be it public or private activity, except in teaching or educational appointments. Also, they shall be disqualified from deciding matters in which they may have a direct or indirect interest, in terms of the regulations of this Law.

#### **ARTICLE 27**

The commissioners shall be appointed to serve in their positions for renewable periods of ten years, and they may only be removed from office for serious reasons that have been duly justified.

#### **ARTICLE 28**

The Chairman of the Commission shall be appointed by the head of the Federal Executive and shall have the following powers:

61. To coordinate the works of the Commission;
62. To implement, enforce and supervise the established relevant internal policies;
63. To issue and publish an annual report concerning the performance of the responsibilities of the Commission, including the results of its actions with regard to topics concerning competition and free market participation;
64. To request from any authority in Mexico or abroad information the Commission may require in order to investigate possible infringements of this Law;
65. To act as a representative of the Commission; to designate and remove personnel; to

create the necessary administrative units considering the existing budget, as well as to delegate powers; and

66. All others vested upon him by laws and regulations.

#### **ARTICLE 29**

The Commission shall have an Executive Secretary appointed by the Chairman of the Commission, who shall be responsible for the operational and administrative coordination.

The Executive Secretary will certify the acts in which he participates.

### **CHAPTER V - PROCEDURES**

#### **ARTICLE 30**

Proceedings before the Commission shall be initiated ex-officio or at the request of an interested 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 relevant cases.

The information and documents obtained by the Commission in connection with its investigations, as well as those submitted to it, shall be strictly confidential. Public servants will be held responsible in case of disclosure of said information, except when disclosed as a result of an order by the competent authority.

#### **ARTICLE 32**

Any person, in case of absolute monopolistic practices, or affected parties, or in the case of other practices or concentrations prohibited by this Law, may file a written complaint before the Commission against the alleged responsible, describing the nature of such practice or concentration.

In case of relative monopolistic practices or concentrations, the complainant must include the elements that constitute such practices or concentrations and, as the case may be, the circumstances that prove that the complainant has sustained or may sustain substantial damage or loss.

The Commission may discard complaints that are notoriously inadmissible.

#### **ARTICLE 33**

Proceedings before the Commission shall comply with the following bases:

67. The alleged responsible shall be summoned, informing him of the nature of the investigation, and attaching, if applicable, a copy of the complaint;

68. The summoned party shall have thirty calendar days to submit an affidavit of defense, to adjoin documentary evidence of its possession, and to submit any other kind of evidence that merits review;

69. Once the evidence has been reviewed, the Commission shall set a time limit not exceeding thirty calendar days for the submission of the pleas, whether verbal or written; and

70. Upon completion of the file, the Commission must issue a decision in 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 impose the following legal measures:

71. Admonition; or

72. Fine of up to 1,500 times the minimum general wage prevailing in the Federal District, amount which may be imposed for each day of non-compliance with the order issued by the Commission.<sup>3</sup>

### **CHAPTER VI**

#### **PENALTIES**

#### **ARTICLE 35**

The Commission may impose the following penalties:

73. Order of suspension, rectification or elimination of the practice or concentration in question;

74. Order of partial or total divestiture of what has been improperly concentrated, regardless of the fine that may be applicable in such cases;

75. Fine of up to seven thousand five hundred times the minimum general wage prevailing in the Federal District for having made false statements or for having submitted false information to the Commission, regardless of any criminal liability for which the responsible party may be subject;

76. Fine of up to three hundred seventy five thousand times the minimum general wage prevailing in the Federal District for having engaged in an absolute monopolistic practice;

77. Fine of up to two hundred twenty five thousand times the minimum general wage prevailing in the Federal District, for having engaged in any relative monopolistic practice, and of up to one hundred thousand times the minimum general wage prevailing in the Federal District regarding the provision contained in section VII of article 10 hereof;

78. Fine of up to two hundred twenty five thousand times the minimum general wage prevailing in the Federal District for participating in a concentration prohibited by this Law; and a fine of up to one hundred thousand times the minimum general wage prevailing in the Federal District for failing to notify a concentration to the Commission, when obliged by the law; and

79. Fine of up to seven thousand five hundred times the minimum general wage prevailing in the Federal District to individuals who engage directly in monopolistic practices or prohibited concentrations, on behalf or through representation and mandate of corporations.

In case of a repeated offense, an additional fine of up to twice the initial amount may be imposed.<sup>4</sup>

## **ARTICLE 36**

When imposing fines, the Commission must consider the seriousness of the violation, the damage caused, the degree of intentionality, the violator's market share, the size of the market affected, the length of the practice or concentration, and the violator's relapse or background, as well as its financial capacity.

## **ARTICLE 37**

In case of infringements that are particularly serious, as referred to in sections IV and VII of article 35, through deliberation, the Commission may impose, instead of the fines stipulated therein, a fine of up to ten percent of the annual sales obtained by the violator during the previous fiscal year, or up to ten percent the value of the violator's assets, whichever is higher.

## **ARTICLE 38**

The economic agents that prove during the proceedings that they have sustained damages and loss as a result of a monopolistic practice or illicit concentration, may file a legal claim to obtain compensation for damages and loss. In such case, the court may take into consideration the damage and loss as estimated by the Commission.

No judicial or administrative action based on this Law will proceed unless it has been established herein.

## **CHAPTER VII - APPEAL FOR REVIEW**

### **ARTICLE 39**

Pursuant to this Law and contrary to decisions issued by the Commission, an appeal for a reversal may be filed before said Commission within 15 working days following the date of notification of such decisions.

The purpose of the appeal is to revoke, amend or sustain the decision appealed and the rulings issued shall contain the assessment of the contested act, the legal principles on which it rests and the points of the decision. 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 in a document addressed to the Chairman of the Commission, indicating the name and address of the appellant and the offence. It must include the evidence considered necessary, as well as proof of the legal status of the petitioner.

The filing of the appeal shall suspend enforcement of the contested decision. In case of suspension of penalties referred to in sections I and II of article 35, and where third parties may sustain damage or loss, the appeal shall be admitted only if the petitioner provides sufficient guarantee to restore the damage and to compensate losses, if it does not receive a favourable ruling.

The Commission will issue and notify its decision within sixty days, following the date in which the appeal was filed. The absence of a ruling from the Commission in such term will imply that the contested decision has been sustained.

## **TRANSITORY ARTICLES**

### **FIRST**

This Law shall become effective within 180 days following its publication in the Official Gazette of the Federation.

## **SECOND**

The first appointment of the five commissioners of the Commission referred to by this Law, shall be by designation of two, four, six, eight and ten years, respectively. Subsequent appointments shall be made in accordance with this Law.

## **THIRD**

The following are hereby repealed:

80. The Organic Law of Article 28 of the Constitution regarding Monopolies, published in the Official Gazette of the Federation on August 31, 1934, as amended;
81. The Law on the Powers of the Federal Executive regarding Economic Affairs, published in the Official Gazette of the Federation on December 30, 1950, as amended;
82. The Law of Manufacturing Industries published in the Official Gazette of the Federation on May 13, 1941; and
83. The Law of Producers' Associations for the Distribution and Sale of their Products, published in the Official Gazette of the Federation on June 25, 1937.

Any provision not opposing this Law, issued pursuant to the legislation hereby repealed, shall continue in force until specifically revoked.

Mexico City, Federal District, December 18, 1992.- Salvador Abascal Carranza, Chairman.- Carlos Sales Gutierrez, Chairman.- Luis Pérez Díaz, Secretary.- Roberto Suarez Nieto, Secretary.- Scrawls."

In compliance with the provisions of section I of Article 89 of the Political Constitution of the United Mexican States and for its due publication and observance, I issue this Decree at the residence of the Federal Executive Power, in Mexico City, Federal District, on the twenty-second day of December of the year one thousand nine hundred and ninety-two. Carlos Salinas de Gortari.- Scrawl.- The Secretary of the Interior, Fernando Gutierrez Barrios.- Scrawl.

84. This is an unofficial translation of the "Ley Federal de Competencia Económica" issued in December 24, 1992. The only official text is in "Diario Oficial de la Federación" of that date.
85. Approximate equivalent amounts as of January of 1993 were: for section I, \$171 million new pesos (\$51 million US dollars); for section II, \$171 million new pesos (\$51 million US dollars); for section III, \$685 million new pesos and \$68.5 million new pesos (\$205 million US dollars and \$20.5 million US dollars).
86. An approximate equivalent for the amount in section II was as of January of 1993, \$ 21,405 new pesos (\$ 6,409 US dollars).
87. Approximate equivalent amounts as of January of 1993 were: for section III, \$107,000 new pesos (32,035 US dollars); for section IV, \$5.351 million new pesos (1.602 million US dollars); for section V, \$3.211 million new pesos and \$1.427 million new pesos (961,000 US dollars and 427,000 US dollars); for section VI, \$3.211 million new pesos and \$1.427 million new pesos (961,000 US dollars and 427,000 US dollars); and for section VII, \$107,000 new pesos (32,000 US dollars).