Competition - Mexico

Does leniency mean immunity from third-party claims?

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Economic agents that participate in cartel activities(1) in Mexico can admit to their involvement and apply for leniency in the hope of obtaining a reduced fine from the Federal Competition Commission (for further details please see "Leniency for cartel participants under Federal Competition Law").

The law provides that a resolution granting an applicant the maximum reduction - which reduces the fine to a nominal sum of approximately $4.50 - cannot be contested through either administrative or judicial procedures.

Unfortunately, the wording of the provision is confusing and open to an unhelpfully broad scope of interpretation. Various commentators have offered many different interpretations, some of which go so far as to consider that the leniency programme would grant immunity to the applicant against civil claims by third parties for damages and lost profits.

The correct interpretation of the provision appears to be that a resolution issued by the commission in favour of an applicant that has obtained such a reduction cannot be contested either by the beneficiary or by other economic agents that challenge the commission's decision to impose a minimum fine. However, this should not be interpreted to mean that such resolutions will limit the right of a third party to initiate a civil claim for damages and lost profits suffered as a result of the illegal conduct.

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Endnotes

(1) Defined by the Federal Competition Law as absolute monopolistic practices.

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