The Cartels and Leniency Review

Third Edition

Editor
Christine A Varney

Law Business Research

The Cartels and Leniency Review

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EDITOR'S PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcement. Some notable cartels managed to remain intact for as long as a decade before they were uncovered. Some may never see the light of day. However, for those cartels that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from more than two dozen jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. In part due to US leadership, stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

The authors of these chapters are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations, and many have served in senior positions in government. They know both what the law says and how it is actually enforced, and we think you will find their guidance regarding the practices of local competition authorities invaluable. This book seeks to provide both breadth of coverage (with chapters on 34 jurisdictions) and analytical depth to those practitioners who may find themselves on the front lines of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the third edition of *The Cartels and Leniency Review*. We hope that you will find it a useful resource. The views expressed in this book are those of the authors and not those of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

Christine A Varney
Cravath, Swaine & Moore LLP
New York
January 2015

Chapter 21

MEXICO

Luis Gerardo García Santos Coy and Mauricio Serralde Rodríguez[1]

I ENFORCEMENT POLICIES AND GUIDANCE

i Legal framework

In Mexico, antitrust matters are governed mainly by Article 28 of the Political Constitution of the United Mexican States (the Constitution),[2] the Federal Law of Economic Competition (the Competition Law)[3] and the Regulatory Provisions of the Competition Law (the Regulations).[4]

Pursuant to the Competition Law, cartel activities are categorised as absolute monopolistic practices, and include: all types of contracts or agreements, arrangements or combinations between competitors[5] that have as their purpose or effect price fixing, restricting the production or distribution of products, allocating segments of a particular market and bid rigging; or the exchange of information among competitors, with any of the above-mentioned purposes or effects.

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1 Luis Gerardo García Santos Coy and Mauricio Serralde Rodríguez are partners at Creel, García-Cuéllar, Aiza y Enríquez, SC. The authors acknowledge the assistance of associate Michel Narcia Martínez in the preparation of this chapter.

2 This article of the Constitution was subject to a significant amendment in 2013, which resulted in the enactment of the new Competition Law.

3 The first Mexican competition law was enacted in 1993, and was subject to several amendments. On 2014, a competently new Competition Law was enacted, which became effective on 7 July 2014.

4 The Regulations in force were issued in early November 2014.

5 For antitrust purposes, an agreement need not be formal or written; it may be a non-binding arrangement or understanding. A concerted practice arises where direct or indirect contact has the effect of altering one or more parties' commercial conduct in a way that is not wholly dictated by market forces and the companies' independent reaction to them.

Article 53 of the Competition Law establishes that:

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

I. To fix, raise, agree upon or manipulate the purchase or sale price of the goods or services supplied or demanded in the markets;

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

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

IV. To establish, agree upon or coordinate bids or to abstain from bids, tenders, public auctions or bidding; and

V. To exchange information with any of the above-mentioned purposes or effects.[6]

The aforementioned acts and agreements will produce no legal effects as they are null and void, and participating economic agents will be subject to the sanctions and fines established in the Competition Law without prejudice to the criminal responsibility that may arise therefrom. Absolute monopolistic practices are sanctioned *per se*; therefore, no other elements – such as a dominant position – are taken into consideration when sanctioning such practices.

On 10 June 2013, a major amendment to the Constitution was enacted (the Telecommunications Act) that significantly affects the competition regime. The Telecommunications Act entered into force on 12 June 2013. This amendment mainly aims to level the playing field of the telecoms and broadcasting industry in Mexico by giving a newly formed telecoms regulator the power to crack down on monopolistic practices and keep telecoms and broadcasting companies from controlling more than 50 per cent of the market. Importantly, the amendment also entails significant changes to competition-related matters, the competition authority and its powers.

The former Federal Competition Commission (FCC) published the documents mentioned below to provide more certainty and guidance for economic agents and competition practitioners. Currently, these documents are still being considered by the Antitrust Authorities (as defined below); however, it is anticipated that they will be modified or supplemented in the near future:

a Guidelines for applying to the leniency programme, established in the Competition Law;[7]

b Guidelines for the Notification of Concentrations, which is an extensive and theoretical document, describing the merger review process;

6 The former competition law considered exchange of information as illegal only if related to price fixing.

7 Such Guidelines provide specifics on the procedure that shall be followed, providing more certainty to the economic agents applying for leniency.

c Assessments of Market Power in Competition Matters, and Relevant Market in Competition Matters,[8] which were prepared upon the request of the former FCC (sponsored by USAID) for the purposes of describing best international practices, international cases and investigations, and the current and prevailing technical approaches used in the analysis and assessment of market power and market definition;

d Guidelines on the compliance with the Competition Law by Associations, Commercial Chambers and Groups of Professionals; and

e Draft Guidelines on the Technical Criteria for the Imposition of Fines on Economic Competition-Related Matters.

ii The competition authority

As a consequence of the Telecommunications Act, two new autonomous constitutional bodies were created as enforcers of the Mexican antitrust regime: the Federal Institute of Telecommunications (IFETEL), with exclusive jurisdiction over competition issues in the broadcasting and telecoms sectors, and the Federal Economic Competition Commission (FECC, which, together with the IFETEL, comprise the Antitrust Authorities), with exclusive jurisdiction over competition issues in all other sectors.

The Antitrust Authorities are in charge of enforcing the Competition Law by preventing and investigating, *inter alia*, those monopolistic practices (either cartels or abuse of dominance) and illegal concentrations whose purpose or effect is to diminish or impede free competition with respect to similar or substantially related goods or services.

The maximum authority of the FECC and IFETEL is vested in their respective Plenum, composed of seven commissioners, each with a term of office of nine years. In most cases, resolutions of the Plenum are adopted by majority vote of the commissionaires, except for those where a qualified majority is required, such as the designation of the technical secretary, the investigatory authority[9] and the issuance of injunctive relief.

The Antitrust Authorities now have a specific investigatory authority in charge of all investigations, including absolute monopolistic practices, abuse of dominance and illegal concentrations (mergers). These new investigatory authorities (similar to prosecutors) will be in charge of conducting the investigation, as well as the formal administrative procedures (following the formalities of a trial) for those cases involving conducts in which the FECC has sufficient elements to demonstrate the existence of a cartel.

iii Cartel enforcement

Several investigations have been initiated against cartel activity involving, *inter alia*, fixing bids on the sale of medical supplies to governmental agencies, and price fixing related to sugar, milk, beer, vitamins, tortillas, distribution of medication, airline tickets, use of credit and debit cards, cathode ray tubes, liquid crystal displays, optical disc drives,

8 This document was prepared by Howard H Chang, David S Evans and Richard Schmalensee.

9 Both Antitrust Authorities appointed their respective investigation authorities in October 2014.

hermetic compressors, automotive parts (diverse markets), distribution of eggs, real estate services and transportation (maritime and terrestrial). About 50 per cent of these investigations had an international element.

iv Administrative procedure

The Competition Law establishes an administrative procedure to investigate cartels that may be initiated by the Antitrust Authorities or at the request of the President of Mexico (directly or through the Ministry of Finance), the Bureau of Consumer Protection, by any party, by operation of law (*ex officio*) following an informal tip-off, or as a consequence of an application to the leniency programme.

A complaint may be filed by any person or entity, even if it is not affected by the practice.

Pursuant to the Competition Law, the Antitrust Authorities require the existence of an objective cause in order to initiate an investigation. In this regard, the following conducts are considered to be *prima facie* evidence (i.e., objective causes) that a cartel activity is currently ongoing or has been carried out:

a The invitation or recommendation addressed to one or more competitors to fix prices, conditioning the supply or the terms of production, commercialisation or distribution of products and services in a relevant market; or to exchange information with the same aim or effect.

b The selling price offered in Mexico by two or more competitors of goods or services that are subject to be exchanged abroad is substantially higher or lower than the reference price abroad, or the change in price over a fixed period is considerably different to the change of prices abroad during the same period, except in those cases deriving from the application of tax regulations, costs of transportation or distribution.

c The instructions, recommendations or commercial standards adopted by commercial chambers, associations, professional institutions or similar groups are designed to fix prices, coordinate the offer of products or the supply of services or other terms of production, commercialise or distribute products or services in a relevant market; or the exchange of information with the same aim or effect.

d Two or more competitors establish the maximum or minimum prices for a product or service; or adhere to the same selling or purchase prices for products or services that have been issued by an association or commercial chamber or any competitor.

The procedures initiated by the Antitrust Authorities to investigate cartels are separated into two stages:

a an investigation stage, during which the investigatory authority should gather all elements required to demonstrate that illegal activities were carried out; and

b an administrative procedure in the form of a trial, by means of which the parties will be able to defend themselves against the allegations of the investigatory authority and any findings resulting from the investigation. In this second stage, the investigatory authority and the presumed guilty economic agent will be considered the parties to the procedure.

Investigation stage

All investigations are initiated through a formal order.

In the case of the FECC, within a period of 120 days after the investigation is initiated, the investigatory authority shall publish on the FECC's website the provisions of Law that may have been breached, the relevant market under investigation and the file number corresponding to the investigation.

On the other hand, in those cases where the IFETEL considers it convenient to request the support of third parties, it may publish an abstract of the investigation to be initiated, which shall only contain the economic activities to be investigated. Such abstract shall be published in the Official Gazette of the Federation or via other means of communication. The above allows all the parties related to the relevant market or affected by the conduct to offer elements to support the Antitrust Authorities in completing the investigation.

The investigation must be completed within a period of between 30 and 120 business days counted from the date of publication of the abstract, a term that may be extended for up to four additional terms.

Administrative procedure (following the formalities of a trial)

Within the 60 business days following the conclusion of the investigation stage, the investigatory authority shall submit for the consideration of its Plenum a report to either initiate an investigation, if there are sufficient elements to demonstrate the existence of a cartel, or close the investigation. The Plenum of the corresponding Antitrust Authority shall order the closing of the file or initiate the administrative procedure in the form of a trial, through the issuance of a presumed responsibility order, by means of which such Antitrust Authority may serve process to the presumed guilty parties. These parties will then have 45 business days to submit their arguments to defend themselves, to provide the documentary evidence and to offer other evidence that should be analysed. After the presumed guilty parties submit their arguments, the investigatory authority will have up to 15 business days to contest such arguments. Once this period elapses, the Antitrust Authority will determine if the evidence should be dismissed or admitted, and will schedule a date for the production of the admitted evidence (such production shall be made within a term of up to 20 business days after the evidence is admitted).

If required, the Antitrust Authority may have an additional 10 business days to gather additional evidence. Once the additional evidence has been produced, the Antitrust Authority must set a term of not more than 10 business days for submission of closing arguments by the presumed guilty parties and the investigatory authority. The file shall be considered as integrated once the closing arguments are submitted or the term to submit them elapses. Once the file is integrated, it will be turned over to the reporting Commissioner who shall prepare and submit a draft resolution for the approval of the Plenum of the Antitrust Authority. Moreover, once the file is integrated, the defendant (or, if applicable, the claimant), will have a term of 10 business days to request an oral hearing before the Plenum of the Antitrust Authority to submit any clarification with respect to arguments or evidence submitted during the procedure.

The Antitrust Authority must issue a resolution within 40 business days of the date on which the file is integrated. A normal procedure before the Antitrust Authority can take from seven to nine months (this time period does not contemplate the investigation

process, the time to be devoted to serving process to foreign entities or the appeal process, described below).

Provisional remedies

Each of the Antitrust Authorities has the authority to issue injunction orders with respect to those collusive arrangements or activities allegedly carried out by economic agents, subject to an administrative procedure.

Requests for information or dawn raids

The Antitrust Authorities have the authority to request information by written order, and may compel a subject to provide 'all necessary information' in connection with an investigation. Such information normally includes details of the relevant businesses, market data, information about the alleged infringement and copies of relevant documents.

The Antitrust Authorities are also authorised to carry out surprise visits (dawn raids) and to request the assistance of public force to enforce the Competition Law. Likewise, pursuant to the Competition Law, the Antitrust Authorities are authorised to seize documents or equipment and to conduct interrogations during such visits.[10]

Evidence

All types of evidence will be admissible in the procedure, such as documentary evidence, testimonies, expert opinions and any other kind of evidence permitted by law and by the Federal Civil Procedures Code, which is applied in a supplementary manner to the Competition Law.

Appeal process

As provided in the Constitution, the Antitrust Authorities' decisions shall only be appealed through an indirect *amparo* (a constitutional claim for judicial review of an administrative action), which shall not be suspensive and which shall only be heard by specialised courts that have been recently created. An exception, however, is when the FECC's decisions impose fines or divestments, for which an *amparo* will *de facto* continue to be suspensive until the case is finally resolved (this *de facto* suspension does not apply to decisions of the IFETEL).

Furthermore, when challenging the constitutionality of the Competition Law or its Regulations, such unconstitutionality may also be challenged through an *amparo*.

II COOPERATION WITH OTHER JURISDICTIONS

Mexico is party to multiple international treaties in which cooperation between the competition agencies is addressed. These treaties have been signed with Canada and the United States, members of the North America Free Trade Agreement, Colombia

10 It is advisable for corporations active in the Mexican market to conduct mock dawn raids to make sure that their personnel know how to handle an inspection visit if necessary.

and Venezuela (members of the G-3 Free Trade Agreement), Costa Rica, El Salvador, Guatemala, the European Union, and the European Free Trade Association (Iceland, Norway, Liechtenstein and Switzerland), and with Bolivia, Chile, Israel, Japan, Nicaragua and Uruguay in the form of bilateral free trade agreements.

Furthermore, Mexico has also executed bilateral cooperation agreements with the United States, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Japan, Nicaragua and the Republic of Korea, the main purpose of which is, in most cases, to promote the effective application of competition laws and coordination between agencies to avoid jurisdictional conflicts.

Likewise, the FECC liaises with the International Competition Network, the Organisation for Economic Co-operation and Development, the Asia-Pacific Economic Cooperation, the United Nations Conference on Trade and Development and the Latin-American Competition Forum. It is expected that the Antitrust Authorities will continue down the same path as the former FCC.

The Constitution provides for the application of the treaties and cooperation agreements, so the use of information gathered from the competition agencies of other jurisdictions in the course of an investigation by the Antitrust Authorities is legal if applicable requirements are met. However, it is possible that, if there is no agreement between the agencies to declassify as confidential the information obtained from the relevant cooperation,[11] the relevant Antitrust Authority might not be able to use it to sustain its investigation due to fulfilling the due process principle.

Pursuant to the Guidelines on the Leniency Programme, the Antitrust Authorities will not share the identity of the applicant or the information provided to competition agencies of other jurisdictions. Nonetheless, in international cases, a request for a waiver (either substantive or procedural) from leniency applicants to share such information with other agencies is a common practice; applicants may refuse to grant such waiver without such denial being considered by the Antitrust Authorities as a lack of cooperation for purposes of the leniency programme.

Finally, the Antitrust Authorities may serve process on foreign entities in Mexico, using the corresponding diplomatic channels applicable to each jurisdiction.

III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

i Jurisdictional limitations and defences

A monopolistic practice that takes place outside Mexico will only fall under the purview of the Antitrust Authorities if it produces any effects in the Mexican market. Typically, the FECC considers that a practice has effects in Mexico if the relevant products were either manufactured or sold in Mexican territory. The FECC will continue to be active in analysing the effects of global cartels within Mexico, but this is less likely to be an activity pursued by the IFETEL as, typically, the telecoms sector has a national

11 Almost all of these agreements establish the confidential use of information gathered from the cooperation between agencies, unless there is an agreement between the agencies.

geographical scope. If the parties to cartels have any activities in Mexico, it is likely that the investigation will consider whether their Mexican affiliates have also carried out any illegal activity in Mexico. Moreover, the Antitrust Authorities can consider the foreign holding company as being responsible for the activity and the Mexican subsidiary as an assistant thereto. Entities of the same economic group involved in monopolistic practices will be held jointly responsible for it.

The Antitrust Authorities shall consider all the evidence submitted by the plaintiff and third parties related to the investigation, and the corresponding economic agent shall bear the burden of proof on their own assertions. If they do not attempt to refute the assertions alleged against them, they will be presumed to be true.

The Antitrust Authorities' investigation powers are limited to a 10-year statute of limitation, counted as from the date on which the illegal practice was carried out or produced effects.

ii Exemptions

The Constitution and the Competition Law provide a certain number of limited exceptions to different activities that are outside their scope and, consequently, do not constitute monopolistic practices, such as the powers exercised exclusively by the state in strategic sectors, workers' associations, patent and copyright owners, and associations of exporters. However, in the case of associations of exporters, the exception will only apply if the following conditions are met:

a the products must be the main source of wealth in the region where they are produced or are not a basic need;

b the products are not sold or distributed within Mexican territory;

c such associations are under the official supervision or protection of the federal or local governments of Mexico, and have obtained prior authorisation from their corresponding local laws in order to be incorporated as an association of exporters;

d membership of the association is voluntary, and allows the free admittance and withdrawal of its members; and

e the association does not grant permits or authorisations that are exclusively reserved for entities of the federal public administration.

IV LENIENCY PROGRAMMES

Economic agents participating in cartels (either corporations or individuals) may voluntarily confess their participation in these types of practices and apply for the benefit of a substantial reduction in the fines that may be imposed by the Antitrust Authorities, as well as immunity from criminal liability. After such reduction, the fine imposed could be as low as the equivalent of the daily minimum wage for the Federal District.[12]

12 Currently 67.29 pesos.

To apply for the leniency programme, the party must fulfil the following requirements:

a it must be the first to provide evidence that allows the corresponding Antitrust Authority to demonstrate the existence of the practice;

b it must fully and continuously cooperate with the Antitrust Authority; and

c it must cease its participation in the illegal conduct.

The Competition Law also provides for the possibility of reducing the fine of parties that are not the first to cooperate if they provide additional evidence to that already in possession of the relevant Antitrust Authority. In this case, the Antitrust Authority may reduce the fine by 50 per cent, 30 per cent or 20 per cent, respectively, bearing in mind the order in which the corresponding request is filed.

To obtain these benefits, the application shall be submitted prior to the issuance of the official communication ordering the conclusion of the investigation.

After analysing all the evidence provided, the Antitrust Authority will decide whether to grant immunity. If granted, the Antitrust Authority and the applicant will execute the relevant agreement. If, after analysing the evidence provided by the applicant for leniency, the Antitrust Authority resolves not to grant immunity, it will not be able to use such evidence in the case.

V PENALTIES

i Administrative sanctions

The type and amount of the penalties will depend on the term during which the illegal activities were carried out and whether the entities are national or foreign.

If the activities were carried out before 10 May 2011, or the infringer is an entity that has no tax reporting obligations in Mexico or any income for Mexican tax purposes, the Antitrust Authorities may impose a fine of up to 1.5 million times the minimum wage.[13]

Pursuant to the Competition Law, the Antitrust Authorities may impose a fine of up to 10 per cent of their annual revenues in Mexico. For these purposes, the Antitrust Authorities will take into account all taxable income in Mexico during the last fiscal year in which the illegal practice was carried out.

Furthermore, the Antitrust Authorities may impose other smaller fines, such as:

a fines of up to 13.4 million pesos for individuals participating in illegal practices on behalf of a corporation;

b fines of up to 11.7 million pesos for providing false information or statements; and

c fines of up to 12.1 million pesos for assisting in the execution or implementation of illegal practices.

13 Approximately US$7.4 million.

In addition to the above, the new Competition Law incorporates a new sanction for individuals, consisting of the disqualification and restriction of participation in management and directorship positions and acting as attorney-in-fact for economic agents, during a period of up to five years.[14]

On this basis, the Antitrust Authorities must take the following elements into account (and consequently justify them when imposing the fine):

a the seriousness of the violation;
b the damage caused;
c the degree of premeditation;
d the participation in the markets;
e the size of the market affected;
f the duration of the practice; and
g the background, repeated offences and financial condition of the infringer.

Furthermore, in cases of recurrence, a fine of up to twice the amount of the fine determined by the corresponding Antitrust Authority can be imposed upon the infringer and, under certain specific circumstances, the Antitrust Authority may force the sale of assets.

The final amount of the fine will vary depending on all these circumstances.

ii Criminal penalties

The Federal Criminal Code provides penalties of between five and 10 years' imprisonment and a fine of between one thousand and ten thousand days' salary[15] for those individuals that ordered, executed or carried out an absolute monopolistic practice,[16] and between one and three years' imprisonment and a fine of between 500 and 5,000 days' salary for altering, destroying, or affecting any documents, images or digital files containing data with the purpose of misleading, obstructing or impeding an investigation or during the performance of a dawn raid. In addition, penalties of between four and eight years' imprisonment and a fine of between 100 and 300 days' salary may be imposed for providing false information.

14 For such purposes, the Antitrust Authorities shall evidence the gross negligence or wilful misconduct, or both, of the individuals participating in illegal practices on behalf of a corporation.

15 Pursuant to the Mexican Federal Criminal Code, one day's salary shall be calculated pursuant to the daily net income of the individual at the time of the infringement.

16 The sole exchange of information with the aim or effect of fixing, raising, agreeing upon or manipulating the purchase or sale price of the goods or services supplied or demanded in the markets is subject to criminal liability.

VI 'DAY ONE' RESPONSE

When the Antitrust Authorities make an inspection visit, the visited entity is advised to follow these steps:

a contact the legal department and local counsel immediately;
b review the content of the search warrant and check the identification of the agents present;
c allow the Antitrust Authorities access to the company's facilities;
d not destroy any documents or electronic files;
e ensure that one of the company's representatives is with the Antitrust Authorities at all times;
f not have any casual conversations with the Antitrust Authorities and not give personal opinions on any subjects;
g consult with the legal department and local counsel on the need to provide answers to any questions, since the Antitrust Authorities may conduct interrogations;
h observe and take notes of all questions asked by the Antitrust Authorities;
i ask for a list of all documents and items gathered by the Antitrust Authorities and arrange for copies or back-ups, if possible; and
j leave any contact with the press to the legal department.

Any documents making requests for information must be carefully analysed in each specific case.

The Antitrust Authorities may issue a warning to economic agents or impose a fine up to the equivalent of 3,000 times the minimum wage[17] per day on them for breaching its orders (e.g., not responding to a request for information or not allowing the Antitrust Authority to carry out an on-site investigation).

All documents and information submitted to the Antitrust Authorities will be available to other economic agents served in the administrative procedure in order to fulfil the due process principle. Nevertheless, where there are grounds for information to be kept confidential (e.g., personal information or industrial secrets), the economic agents submitting such information can request that the Antitrust Authorities preserve it as such by complying with certain specific requirements.

VII PRIVATE ENFORCEMENT

After the final resolution is issued, affected parties that have suffered damages as a consequence of a monopolistic practice can file a lawsuit before the specialised courts in competition and telecommunications, seeking indemnification for damages and losses suffered as a result of such practice. The final resolution of the Antitrust Authorities will evidence the illegal conduct. Mexican law does not foresee punitive damages, only direct damages and lost profits.

17 Approximately US$15,528.46.

Moreover, the Antitrust Authorities or parties affected by monopolistic practices and illegal concentrations may also initiate class actions to request the payment of damages and compensation for lost profits. In this regard, the Federal Civil Procedures Code contains the rules for the procedure that apply to such class actions.

VIII CURRENT DEVELOPMENTS

We are facing exciting times for competition-related matters in Mexico. Competition is one of the key elements of the agenda of the current federal administration. In particular, now that the regulation of cartel activities will be strengthened and modernised with a new Competition Law, new Regulations, a new special investigatory authority and newly created specialised courts, there will be a significant increase in the activity of legal practitioners, and many new things to learn and challenges to come.

The success of the new legislation in creating a better environment for developing economic competition in Mexico will be tested on a daily basis, and will be subject to the Antitrust Authorities' ability to establish new structures and enforce the law, and to the scrutiny of the newly created specialised courts. The recently created FECC and IFETEL still face significant challenges as they are also facing many changes, and the creation of specialised teams is not an easy task. This is a completely new era for competition policy in Mexico, and we look forward to the success of the FECC and IFETEL, as promoting competition is essential for the future of the country.

Appendix 1

ABOUT THE AUTHORS

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Luis Gerardo García Santos Coy is a partner and heads the competition and antitrust practice at the firm. He obtained his law degree (LLB) from Universidad Iberoamericana in 1993. A survey published in the *Global Competition Review*'s '40 under 40: the world's brightest young antitrust lawyers and economists' (2004) cited him as one of the world's top young antitrust lawyers. Mr García has also been included in *Who's Who Legal: Competition* since 2005, and has been recognised by *Chambers & Partners* as an expert in the fields of M&A, corporate and competition/antitrust.

Mr García has published (as author or co-author) several articles, including the 'Mexico' chapters in *The Handbook of Competition Enforcement Agencies* in 2004 and 2005, *Cartel Regulation: Getting the fine down* in 2006 and 2011, *PLC Cross-border Competition Handbook 2011*, *The Merger Control Review*, published by Law Business Research, in 2010, 2011 and 2012, *Immunity, Sanctions & Settlements*, published by Global Competition Review in 2014, 'A tough sheriff', published in the *International Financial Law Review* (December 2006), 'Overcoming the Constitutional Difficulties: Recent Trends in Mexican Competition Law' published in *Latin Lawyer* (July 2006), 'Competition and antitrust developments in Mexico' published by *Euromoney* (2012), *The Cartels and Leniency Review*, published by Law Business Research, in 2013 and 2014, and several other articles published by *Euromoney*, *International Financial Law Review*, *Latin Lawyer* and *International Law Office*. He joined the firm in 1989 and specialises in competition law, mergers and acquisitions and corporate law.

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