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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM**

**Session II: Leniency Programmes in Latin America and the Caribbean –  
Recent Experiences and Lessons Learned**

-- Contribution from Mexico --

12-13 April 2016, Mexico City, Mexico

*The attached document from Mexico (COFECE) is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session II at its forthcoming meeting to be held on 12-13 April 2016 in Mexico.*

Contact: Ms. Lynn Robertson, Global Relations Co-ordinator, Competition Division [Tel: +33 1 45 24 18 77 -- E-mail address: Lynn.ROBERTSON@oecd.org]

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# LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



## 14th Latin American and Caribbean Competition Forum 12-13 APRIL 2016, Mexico City, Mexico

### Session II: Leniency Programmes in Latin America and the Caribbean – Recent Experiences and Lessons Learned

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#### -- CONTRIBUTION FROM MEXICO (COFECE) --

#### 1. Introduction

1. The Federal Economic Competition Commission (*Comisión Federal de Competencia Económica* – COFECE or the Commission) has the mandate to promote and defend market access and free competition by preventing and eliminating monopolistic practices and restrictions on the efficient operation of markets.

2. Absolute monopolistic practices<sup>1</sup>, also known as cartels, consist of mechanisms the purpose or effect of which is to limit, diminish or eliminate competition among economic agents that are mutual competitors within a market, by fixing prices, restricting the supply of goods or services, segmenting the market, rigging bids for public procurement, or sharing information with the purpose or effect of obtaining these outcomes.<sup>2</sup>

3. These practices are harmful, as they have severe repercussions on consumer welfare: first, they lead to prices similar to those of a monopoly, and hence higher than those that would prevail in a situation of free competition and, second, they diminish the supply of goods or services, thereby affecting economic growth.

<sup>1</sup> Article 53 of the Federal Economic Competition Act (LFCE).

<sup>2</sup> “*Guía del Programa de Inmunidad y Reducción de Sanciones*”, COFECE, 2015, p. 7.

4. In Mexico, conduct of this kind is deemed illegal under any circumstances, i.e. it is punishable<sup>3</sup> per se, as it inevitably inflicts damage on free competition in the market in which it is pursued. This means that, in order to punish such practices, it is not necessary to resort to considerations of any kind with respect to efficiency losses: all that is needed is to prove the existence of a contract, agreement, arrangement or combination among competing economic agents with the purpose or effect of any of the four hypotheses spelled out above.

5. In many countries around the world, combating these practices has become a priority for competition policy, recognising the great losses occasioned to national economies and to the global economy as a whole. In this regard, the Organisation for Economic Cooperation and Development (OECD) estimates that prices in an industry subject to a cartel structure are between 10% and 20% higher than they would be without such a structure.<sup>4</sup> In Mexico, especially since 2007, combating cartels has also been considered a priority for the competition authority, leading to the adoption of best international practices for their prevention, detection and punishment.

6. The most important move to date for addressing absolute monopolistic practices in Mexico was perhaps the adoption of a leniency or penalty reduction policy<sup>5</sup> through the Programme of Immunity and Sanction Reduction (the Programme).<sup>6</sup> The possibility of reducing penalties is established in article 103 of the Federal Economic Competition Act (*Ley Federal de Competencia Económica* – LFCE) and seeks to facilitate the detection, investigation and punishment of absolute monopolistic practices by granting administrative benefits to those economic agents or individuals who acknowledge, before the COFECE, that they are engaged or have been engaged in these illegal practices and who cooperate with the authority. These administrative benefits are graduated, in the sense that the first economic agent to apply for admission to the Programme will enjoy the greatest reduction in administrative penalties.<sup>7</sup> Subsequent applicants may obtain a reduction in their fine of up to 50, 30 or 20% of the permitted maximum, provided they supply additional evidence to that already in the hands of the COFECE, and comply with the requirements described above.

7. In addition to the administrative benefits consisting of a reduction in possible penalties, natural persons who join the Programme may be granted immunity from the criminal liability to which they could be subject for their participation in practices of this kind.

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<sup>3</sup> The penalties that may be imposed on an economic agent (natural or legal person) for engaging in an absolute monopolistic practice are of two kinds: (i) penalties of an administrative nature: a fine of up to 10% of economic income for a legal person, a fine of up to the equivalent of 200,000 times the general minimum wage valid in the Federal District (SMGVDF) and prohibition from holding executive or representative positions for up to five years, for natural persons, or a fine of up to 180,000 times the SMGVDF for aiders and abettors, (ii) penalties of a criminal nature: a prison term of five to ten years and a fine of 1,000 to 10,000 days (“*Guía del Programa de Inmunidad y Reducción de Sanciones*”, COFECE, p. 12).

<sup>4</sup> Carlos Mena Labarthe, Laura A. Méndez Rodríguez and José Roldán Xopa, “*Derecho de la Competencia en México*”, Editorial Porrúa, Mexico, 2015, p.502.

<sup>5</sup> The Federal Economic Competition Act also provides for a benefit of exemption and early termination, with conditions, for relative monopolistic practices (articles 101 and 102). It is important to note that this Contribution refers exclusively to the benefit established in article 103.

<sup>6</sup> For the sake of clarity, in Mexico the term "immunity programme" is used instead of "leniency programme".

<sup>7</sup> 1x the general minimum wage valid in the Federal District (SMGVDF).

8. In a move to strengthen the Programme's implementation, the COFECE recently published "Guidelines for the Immunity and Penalty Reduction Programme" (*Guía del Programa de Inmunidad y Reducción de Sanciones – the Guidelines*), intended to serve as a tool to help economic agents understand the manner in which they can obtain the benefits referred to in article 103 of the LFCE.

9. The purpose of this Contribution is to provide: (i) a brief description of the Programme, including its objectives, background, legal framework, guidelines, distinction from other measures of law enforcement and marker system; (ii) the relationship of the Programme to international cartels; (iii) the results of the Programme; and (iv) some conclusions as to the relevance and the outlook for this Programme in our country.

## 2. The COFECE Immunity and Penalty Reduction Programme

### 2.1 Objectives

10. The power to grant a penalty reduction in exchange for cooperation with the authority is a strategy adopted by many countries as a way of strengthening the capacities of their competition agencies<sup>8</sup> for detecting and gathering evidence on collusion for subsequent investigation and punishment. As a general rule, programmes of this kind around the world involve the total or partial reduction of penalties that would be applicable to members of the cartel, in exchange for information on their participation, evidence and documentation that will be useful to the authority in its investigation.<sup>9</sup>

11. Under the Mexican programme, any economic agent that has participated directly or in representation of another party in an illegal agreement with its competitors, or has aided and abetted, encouraged, or induced such participation, may opt for a reduction in the applicable penalties in exchange for **full and ongoing cooperation** with the authority. The Programme is intended to ensure that applicants provide valid information and documentation on the activities of the cartel, so that COFECE will have more evidence for detecting and punishing conduct of this kind.

12. The objective of the Programme is to serve the public interest by suppressing absolute monopolistic practices, detecting their existence more readily, and giving the Commission an additional tool for investigating and punishing them for the benefit of all Mexicans.

### 2.2 Background and legal framework of the Programme

13. The legal framework governing the benefit of penalty reduction in Mexico has been amended over the years with a view to including best international practices. The most important amendments are reviewed briefly below:

- *Introduction of the Programme.* Major reforms were made to the Federal Economic Competition Act in June 2006, incorporating some of the best international practices in the area of competition policy. Article 33 bis 3 of that law established the benefit of penalty reduction and empowered the Commission to reduce penalties for those economic agents that provide sufficient evidence to demonstrate the existence of anticompetitive agreements, and also increased the amount of the applicable penalties. In addition, with a view to the Programme's further consolidation, a new

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<sup>8</sup> Carlos Mena Labarthe, Laura A. Méndez Rodríguez and José Roldán Xopa, "*Derecho de la Competencia en México*", Editorial Porrúa, Mexico, 2015, p.502.

<sup>9</sup> International Competition Network (ICN) "Anti-Cartel Manual: Drafting and implementing an effective leniency policy", *ICN CWG Subgroup 2: Enforcement Techniques*, 2014, p. 4.

General Directorate of Investigations of Absolute Monopolistic Practices was created in 2007, and steps were taken to promote the Programme actively.

- *Strengthening of the Programme.* In 2011, further legislative amendments were adopted, giving the Commission the capacity to conduct unannounced inspections and further raising the amount of the established penalties, and absolute monopolistic practices were made an offence under the Federal Criminal Code. These measures served to strengthen the Programme by increasing the risk of detection of cartels and the severity of the attendant penalties, which for the first time included criminalisation for natural persons participating in a collusive activity.
- *Constitutional reform:* In 2013, the present COFECE was created as an autonomous constitutional body with expanded powers.<sup>10</sup> In 2014, a new LFCE was published, together with its regulatory provisions, and the necessary reforms were made to the Federal Criminal Code to allow the COFECE to eliminate criminal punishment for those who adhere to the Programme in a satisfactory manner.<sup>11</sup> Article 103 of the new LFCE confirms the benefit of penalty reduction, amending it in some respects while retaining the general format of previous years.

14. The legal framework of the Programme in Mexico, then, consists of: (i) the LFCE (specifically article 103) and (ii) the Regulatory Provisions<sup>12</sup> to the LFCE.

### **2.3 Guidelines for the Immunity and Penalty Reduction Programme**

15. Pursuant to the LFCE, in 2015 the COFECE published the *Guidelines for the Immunity and Penalty Reduction Programme* (the Guidelines) in order to offer some useful guidance to economic agents and the general public as to how the COFECE accepts, analyses and resolves applications for the penalty reduction benefit and, as the case may be, immunity from any criminal liability that agents might incur for engaging in an absolute monopolistic practice.

16. The guidelines, which follow the legal framework of the COFECE in the area of penalty reduction, seek to clarify and bring transparency to the manner and the procedures by which that framework is implemented, and thereby offer greater legal security and certainty to all interested parties.

### **2.4 Difference from other law enforcement measures**

17. The secrecy and the sophistication of cartels pose a major obstacle to their detection, investigation and punishment. In response to those challenges, the COFECE is using the Programme as an innovative tool in its strategy to disrupt the secrecy and stability of cartels. The rationale behind this programme is to provide incentives to members of a cartel, whereby they can escape punishment if they

<sup>10</sup> The new Federal Economic Competition Act of 2014 provides for a system of weights and counterweights, in that it separates the authority responsible for the investigation stage (Investigative Authority, AI) from the one that resolves the administrative court proceedings.

<sup>11</sup> Article 254 bis of the Federal Criminal Code provides punishment of imprisonment for five to ten years for anyone who engages in absolute monopolistic practices. However, according to article 103 of the LFCE there is no criminal liability for economic agents who obtain the benefit referred to in that article, following a resolution of the COFECE finding that the terms established in that provision, and other applicable provisions, have been fulfilled.

<sup>12</sup> Regulatory Provisions 114, 115 and 116 elaborate on the elements of the Programme addressed in the law (persons covered, purposes, and formal and temporary elements), the procedure to be followed in applying for the benefit, the chronological order to be considered at the time applications are submitted, and the percentage reduction in the applicable fine, among other elements of the Immunity Programme.

admit to their participation and provide information on the illegal behaviour. The objective is to make it easier for some of the economic agents involved to confess to the competition authority and reveal the existence of the cartel, thus undermining the trust that is a key element of any such arrangement. The strategy thus seeks to spark a "race to the door" of the authority among cartels' participants, by creating sufficient incentives for the Programme to be an effective tool, and rewarding those economic agents who are the first to report a cartel. In comparison with other investigative mechanisms, it should allow cartels to be detected and investigated simply and at lower cost.

18. Among the factors that distinguish this programme from other law enforcement measures or investigative mechanisms are the following:<sup>13</sup>

- *Deterrence.* Participation in cartels will be less attractive when there is a greater risk that one of the members will turn to the competition authority and report the cartel's existence.
- *Detection.* The Programme allows the competition authority to discover cartels on the basis of the reports filed by immunity applicants.
- *Punishment.* It allows for the effective application of penalties by making more and better evidence available on the cartel, which would be difficult to obtain by other means.
- *Cessation.* The cartels will cease operating because one or more participants leave the fold, either because they have joined the Programme or because they are afraid that someone else will do so.
- *Cooperation.* The Programme facilitates international cooperation among cartel investigators, as it allows the immunity applicant to indicate any other jurisdiction in which it has joined such a programme, and to give the authority a waiver<sup>14</sup> allowing it to communicate with that competition agency.

## 2.5 *Marker system and the granting of discounts*

19. Applications for admission to the Programme may be presented by any natural or legal person who is involved or has been involved in or has aided and abetted an absolute monopolistic practice. In terms of timing, the application can be presented before an investigation is launched, or afterwards at any moment until the decision concluding the investigation is issued.

20. Applications must be submitted to the Investigative Authority (AI) of the COFECE, either by voice mail or by sending an e-mail specifically indicating the applicant's wish to join the Programme, providing sufficient data for the authority to establish contact with the interested party or its representative, and specifying the industry or the market and/or the goods or services to which the application refers.

21. Applications filed will be addressed in chronological order by assigning them an alphanumeric key<sup>15</sup> and giving them a marker. The key will serve to identify and confirm the applicant's place in line, while the marker will indicate how long the applicant can maintain that place while the AI assesses the

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<sup>13</sup> International Competition Network, "Anti-Cartel Enforcement Manual: Drafting and Implementing an effective leniency policy", ICN CWG Subgroup 2: Enforcement Techniques, 2014, p.8.

<sup>14</sup> A waiver is a document signed by the applicant for the Immunity Programme, giving express consent for the competition authority to share the applicant's information with another competition agency.

<sup>15</sup> The Key will be constructed on the basis of the date and time the application is received, and will make it easier to keep the applicant's identity secret.

adequacy of the information provided. For as long as an applicant retains the marker for a specific good, product or service, no economic agent may take its place in line, even if able to comply immediately with the information and evidence requirements.

22. At the end of the period allowed by the AI for the applicant to compile and organise the information it will submit, a meeting will be held at the date, time and place indicated, for delivery of all the information and documentation the applicant may possess to substantiate its confession and its participation in an absolute monopolistic practice. The assessment of the application by AI will depend, among other things, on the information it has in hand, on the existence of an active investigation in the relevant market for the good or service reported, and the progress of the investigation, if any, into the practice or practices recognised by the applicant.

23. At the end of the assessment, the AI will advise the applicant as to the adequacy of the information and will either notify it of the cancellation of its application through the Decision (*Acuerdo*) on Cancellation of Key and Application<sup>16</sup>, or will grant it the benefits of the Programme on a conditional basis under the Conditional Decision on Immunity and Penalty Reduction<sup>17</sup>, subject to the applicant's full and ongoing cooperation until the process is completed.<sup>18</sup>

24. If the applicant fails to cooperate fully, the AI will issue a decision revoking programme benefits, and will communicate this to the applicant. However, the information supplied by the applicant and placed on the corresponding investigation file will not be returned and may be used in the determination of probable liability, which the AI will present during the administrative court proceedings and in the resolution of the COFECE Plenary (i.e. the Board of Commissioners).

25. It is important to note that the COFECE will at all times maintain strict confidentiality as to the identity of the applicants for the Programme<sup>19</sup>, in order to generate certainty for the interested parties.

26. Similarly, applicants must protect confidentiality with respect to the information delivered to the Commission in the processing of their application to join the Programme, and the cooperation they provide during the investigation process.

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<sup>16</sup> When the information and documentation are not sufficient for launching an investigation or presuming that an absolute monopolistic practice exists. In this case, all the documents delivered by the applicant to COFECE will be returned and no use will be made of them.

<sup>17</sup> When the information and documentation are sufficient for launching an investigation or presuming an absolute monopolistic practice. The Conditional Immunity Decision will indicate the chronological order in which the application was filed, the percentage reduction of the fine that would be applicable if the practice were to be punished as established, and the applicant's obligations of full and ongoing cooperation.

<sup>18</sup> The actions involved in full cooperation by the applicant include: keeping confidential the information delivered to the COFECE in the processing of its application to join the Programme, until the decision to initiate an investigation is published; terminating participation in the absolute monopolistic practice reported and investigated, unless the AI instructs otherwise; when the AI considers this appropriate, it may place specific obligations on the applicant, such as to terminate its illegal conduct; to respond and deliver promptly the information and documents required during the investigation; to permit and participate in the actions taken by the AI, including, but not limited to, inspections, summonses and notifications of various acts; to take the steps necessary to guarantee participation of the individuals involved in the reported conduct and not to destroy, falsify or conceal information.

<sup>19</sup> Articles 124 and 125 of the LFCE contain provisions on the responsibilities of public servants for the handling of information marked confidential.

27. The adoption by COFECE of the marker system has improved the functioning of the Programme by encouraging cartel members to compete in self-reporting, by giving interested applicants greater certainty, by giving applicants the opportunity to take the first step and demonstrate to the competition authority their willingness to cooperate, and by allowing the Commission to limit the time for considering an application as serious and committed.<sup>20</sup>

### 3. International cartels and the Immunity and Penalty Reduction Programme in Mexico

28. Globalisation has led to a significant increase in international trade. According to Antonio Capobianco, John Davies and Sean F. Ennis of the OECD in their research paper of 20 June 2014 entitled “*Implication of Globalisation for Competition Policy: The Need for International Co-operation in Merger and Cartel Enforcement*”, the number of competition law enforcement activities related to cross-border mergers and cartels has risen by between 250 and 466% since the 1990s.

29. The COFECE has been investigating cartels for more than 20 years. In 1999, it looked into a cartel in the vitamins market that had previously been discovered and prosecuted in the United States. For the COFECE this investigation represented an important milestone in the development of its international cartel control activities: it was able to identify accurately the damage caused by these anticompetitive practices, and as a result to redefine its efforts to combat such behaviour. Since the vitamins case, COFECE has continued its efforts to combat international cartels, and the Programme has played a central role in offering incentives to ensure that conduct with a multi-jurisdictional dimension and an impact on the domestic economy is reported in Mexico.

30. COFECE's commitment to combat international cartels has been motivated not only by international inertia, but also by a clear understanding of the harmful impacts that such behaviour has on domestic markets. A number of studies have shown that, on average, the surcharge that international cartels impose on consumer prices amounts to around 25%.<sup>21</sup> Those studies also show that cartels tend to be more brazen in countries that make less effort to detect and combat them, and this is reflected in the increase in the volume of exports to those countries.<sup>22</sup> In short, this means not only that cartels sell greater quantities in countries with weaker detection and control mechanisms but also that the degree of overpricing is higher than in those countries with strong detection and control systems. For these reasons, the COFECE has made it a priority to send an unequivocal signal that international cartels will be detected and investigated in Mexico.

#### 3.1 International cartels and the jurisdictional requirement in Mexico

31. In practice, the LFCE makes no distinction between domestic and cross-border cartels, and the term “**absolute monopolistic practices**” is used regardless of the scope of the conduct, in pursuit of the same objectives.<sup>23</sup>

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<sup>20</sup> COFECE, “Use of Markers in Leniency Programs”, OECD Working Party No. 3 on Co-operation and Enforcement, 21 Nov 2014, p.4.

<sup>21</sup> Levenstein, Margaret C., y Valerie Y. Suslow., *International Cartels*. Competition Law and Policy (ABA Section of Antitrust Law 2008), p. 1110.

<sup>22</sup> Clarke, Julian L. y Simon J. Evenett, *The deterrent effects of national anticartel laws: evidence from the international vitamins cartel*, The Antitrust Bulletin/Fall 2003, pp. 717-718.

<sup>23</sup> James M. Griffin, “An inside look at a cartel at work: Common characteristics of international cartels”, available at <http://www.justice.gov/atr/public/speeches/4489.htm>.

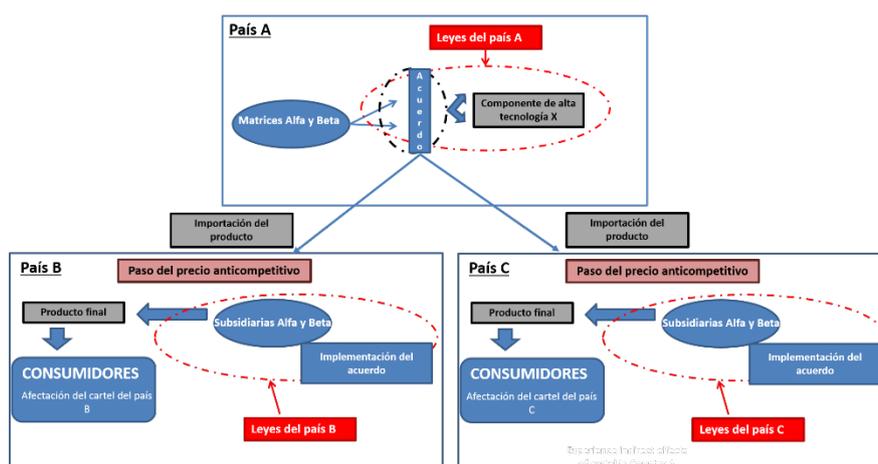
32. Article 1 of the LFCE provides that its scope of application extends to **"all areas of economic activity and its observance is obligatory in the Mexican Republic."** Article 2 of the LFCE provides, moreover, that its purpose is **"to promote, protect and guarantee free market access and economic competition, as well as to prevent, investigate, combat, prosecute effectively, severely punish and eliminate monopolies, monopolistic practices, unlawful concentrations, barriers to entry and to economic competition, as well as other restrictions to the efficient operation of markets."** These two provisions are essential in the context of cross-border cartels, in that they allow the COFECE to assume jurisdiction and thus to investigate, combat and prosecute effectively those anticompetitive practices that can have an impact on **economic activity in the Mexican Republic**, implying **restrictions on the efficient operation of markets**.

33. In the light of these provisions, any contract, agreement, arrangement or combination between competing economic agents that has an effect on economic activity in Mexico will meet the jurisdictional requirement needed to invoke action by the authority. The COFECE, then, can assume jurisdiction on the basis of the LFCE when any cartel created abroad has a direct or indirect impact on economic activity in Mexico.<sup>24</sup>

### 3.2 Applications by cross-border cartels to join the Programme

34. A cross-border cartel will normally be structured through collusive agreements concluded between parent corporations around the world for implementation through their affiliates or subsidiaries, causing effects in third countries (indeed, the affiliates or subsidiaries may not be aware of these agreements, but implement them at the behest of the parent company). This structure influences the way in which those companies can apply for the benefit of penalty reduction in Mexico, and in fact such applications under the Programme are often the result of leniency granted by other authorities around the world: i.e., the applications are part of global strategies in search of leniency. It is important that the competition authorities in Latin America and the Caribbean should be aware of the way in which these practices are structured and of the manner in which applications for penalty reduction or leniency can be effectively handled.

35. Following is a graphic description of the phenomenon of international cartels as observed by COFECE:



<sup>24</sup> Another example of the way the LFCE treats foreign actions that have an impact on economic activity in Mexico is the requirement under the merger control system, which provides as follows: Article 87, **"Concentrations resulting from legal acts executed abroad must be notified before having legal or material effects in Mexican territory."**

36. In the case of the COFECE Programme, an economic agent participating in an international cartel wishing to obtain the penalty reduction benefits stipulated in article 103 of the LFCE must provide evidence proving the existence of the collusive agreement as well as the impact on domestic markets or on some economic activity within the national territory caused by the alleged anticompetitive behaviour (for example, e-mails establishing the agreements or exchanging information, the place where the good in question is produced, the economic agent that performs the production, marketing or distribution chain whereby the good in question arrives in the national territory, the economic agents involved in that chain, the tariff line item under which the good is imported or exported to the national territory, etc.).

37. An application must contain all the elements needed to identify the economic interest group to which the applicant belongs and the elements that will identify the role played by each economic agent in that group<sup>25</sup> (for example, the annual reports of the economic interest group, Form 20-F submitted to the US Securities and Exchange Commission, the articles of agreement and current bylaws, etc.). Preferably, the applicant should present a description of the alleged illegal conduct, containing elements to demonstrate: (i) that the conduct reported constitutes a prohibited agreement; (ii) the product covered by the alleged agreement; (iii) the economic agents that are or were party to the alleged agreement; (iv) the period during which the alleged agreement was in effect; (v) the place in which the alleged agreement was carried out; and (vi) the probable impact on domestic markets or on some economic activity in the national territory.

38. In these cases, the COFECE may, within the framework of international cooperation, ask the applicant for a waiver<sup>26</sup> exempting the authority from its obligation of secrecy with respect to the application and allowing it to share information with other competition agencies.

#### 4. Results

39. It is very important to assess the effectiveness of any penalty reduction programme, as the success or failure of such instruments will depend on the level of transparency and legal certainty and the incentives that the authority is able to offer to private parties. This means that the authorities must be self-critical and must understand that a properly designed and implemented system will have a direct impact on the number of applications received and thus on the number of cartels broken up.

40. In addition, the legislative framework must also provide adequate incentives. In Mexico, the 2014 LFCE reform gave the COFECE better tools and improved the institutional design, thereby enhancing the probability that fines will be imposed and thus making them a truly deterrent tool. In a scenario where  $M$  is the possible fine [Spanish "*multa*"] that a cartel member might face,  $B$  is the benefit obtained by each cartel member for an anticompetitive practice, and  $P$  is the probability of detection and imposition of a fine by the authority, we may say that COFECE is currently striving to ensure that  $M(P) \geq B$ .

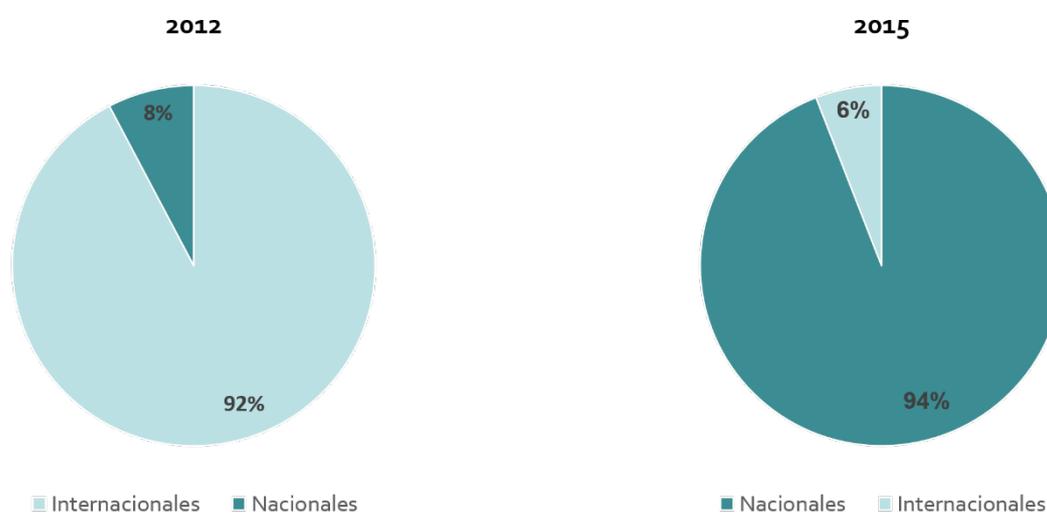
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<sup>25</sup> *Guía para la notificación de concentraciones* ["Guidelines for the notification of concentrations"], COFECE, *Acuerdo No. CFCE-247-2015*, page 8, "In order to consider that an economic interest group exists and that several persons may be considered as a single economic agent for purposes of the LFCE, it must be determined whether one person, directly or indirectly, coordinates the activities of the group in order to operate in markets and, furthermore, can exercise decisive influence or control over the other [person], whether in practice (de facto) or as a result of legal acts (de jure)."

<sup>26</sup> A waiver must contain information on the grantor, the grantee, the scope of application, the nature of the information permitted, and the conditions of information management.

41. In this respect, the Programme stands out from other investigation mechanisms used by the COFECE in that there has been a notable increase in the number of applications submitted, rising from 4 in 2014 to 18 in 2015. Most of these applications have given the COFECE the opportunity to acquire important information that has strengthened its investigations or allowed the launch of more thorough investigations, and have thereby helped it to combat major cartels, both domestic and international.<sup>27</sup>

42. The level of transparency and legal certainty and the quality of incentive design in the Programme's implementation has been such that, for 2015, the results can indeed be deemed effective. As proof of this assertion, the proportion of applications coming from domestic and from international cartels has shifted. In previous years there was a greater proportion of applications arising from international cartels, reflecting global inertia over anticompetitive practices in certain industries, whereas in 2015 the number of applications concerning domestic cartels represented an overwhelming share, as can be seen in the following chart.



<sup>27</sup> Carlos Mena Labarthe, Laura A. Méndez Rodríguez y José Roldán Xopa, “Derecho de la Competencia en México”, Editorial Porrúa, Mexico, 2015, p.525

## 5. Conclusions

43. The benefits yielded by immunity programmes are many. On one hand, they allow the authorities to obtain all kinds of reliable information that could not be obtained in any other way, and at the same time they generate savings in the cost of collecting that information. These programmes also help to discourage the formation of new cartels by generating instability and uncertainty over whether one of the members will betray the others in order to avoid sanctions.

44. In Mexico, the Programme has yielded largely satisfactory results since its inception, and economic agents are increasingly aware of the benefits and advantages that it offers. However, there is still some distance to go, and in order to have a truly efficient programme the following elements will have to be taken into consideration:<sup>28</sup>

- Ensuring that cartel members who fail to cooperate with the authority are hit with the highest possible penalties and other negative consequences.
- Ensuring that economic agents who cooperate with the authority are not disadvantaged by this effort, i.e. to the extent that an applicant complies with the stated requirements, the authority must guarantee that it will receive the corresponding benefits.
- Creating certainty as to the use of information provided by the applicant in the case where penalty reduction is denied and/or no investigation is opened.
- Clearly defining the conditions (in particular, cooperation) that must be fulfilled for receiving benefits under the Programme.
- Clearly establishing the benefits that will be granted to the applicant or applicants, including natural persons.

45. In addition to these points, there is a need for greater and more effective international cooperation which, together with the existence of leniency or penalty reduction programmes worldwide, will allow international cartels to be attacked adequately. Such cooperation must recognise that a competitive market, free of cartels and other anticompetitive practices, is essential for the sustained growth of economies and for ensuring that the benefits of that growth accrue to all segments of the population.

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Ibid. p. 509