The Dominance and Monopolies Review

Third Edition

Editor
Maurits Dolmans

Law Business Research

The Dominance and Monopolies Review

The Dominance and Monopolies Review

Reproduced with permission from Law Business Research Ltd.

This article was first published in
The Dominance and Monopolies Review - Edition 3
(published in June 2015 – editor Maurits Dolmans)

For further information please email
Nick.Barette@lbresearch.com

The Dominance and Monopolies Review

Third Edition

Editor
Maurits Dolmans

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, Felicity Bown

ACCOUNT MANAGER
Joel Woods

PUBLISHING MANAGER
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Jo Morley

SUBEDITOR
Timothy Beaver

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-52-3

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAN ÖBERG & ASSOCIÉS AB

ANJARWALLA & KHANNA

ANJIE LAW FIRM

BAKER & MCKENZIE LLP

CASTRÉN & SNELLMAN ATTORNEYS LTD

CLEARY GOTTLIEB STEEN & HAMILTON LLP

CORRS CHAMBERS WESTGARTH

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ SC

DE BRAUW BLACKSTONE WESTBROEK NV

ELIG, ATTORNEYS-AT-LAW

FATUR LAW FIRM

LEVY & SALOMÃO ADVOGADOS

MARKIEWICZ & SROCZYŃSKI GP

MIKROULEA-STAIKOURAS AND ASSOCIATES, LAW FIRM

NIEDERER KRAFT & FREY LTD

NISHIMURA & ASAHI

P&A LAW OFFICES

PRAGMA LEGAL

SOEMADIPRADJA & TAHER

VIEIRA DE ALMEIDA & ASSOCIADOS

CONTENTS

EDITOR'S PREFACE

As this new edition of *The Dominance and Monopolies Review* will show, several of the trends that were apparent in the previous few years have continued – except that commitment decisions in Europe seem to be falling out of favour and the Commission is returning to more old-fashioned punitive enforcement. Most obvious perhaps is the ongoing disruption of traditional sectors of the economy by the emergence of digital services and online distribution. This has led to a series of cases and pending investigations in various jurisdictions involving online and IT firms, including companies as diverse as Amazon (Germany, India); HRS (Germany); Booking.com (Germany, France); Expedia (Germany); Intel (EU); Motorola (EU); Samsung (EU); Google (EU, Brazil, Canada, India); PMU (France); Vente-privee.com (France); OnlinePizza Norden (Sweden); Snapdeal and Flipkart (India); Qualcomm (China, EU, Korea, Taiwan, US); IDC (China); and Tencent (China).[1]

Two trends in this context deserve special attention. The first is the threatened re-emergence of form-based analysis, at the expense of the economic analysis of dominance and foreclosure effect in abuse cases; the second is the ongoing politicisation of the competition process.

The first trend is perhaps the most surprising and disappointing. When the Commission adopted its decision in *Intel* in 2009, it followed in part its own guidance as set out in the notice on the application of Article 102 of the TFEU[2] by including a

1 The editor and his firm are involved in various cases discussed in this preface and chapters, but none of the comments are made on behalf, or at the request, of any client, and none bind any client or the firm.

2 European Commission, Guidance on enforcement priorities in applying Article 82 of the EC Treaty, 2009/C 45/02, available at: http://ec.europa.eu/competition/antitrust/art82/guidance.pdf.

detailed analysis of the restrictive effects of Intel's discounts. [3] Although there is debate about the finding of facts in the case, the Commission at least tried to demonstrate actual foreclosure of equally efficient competitors. On appeal, however, the General Court of the European Union held that this was unnecessary, because the rebates in question were 'by their very nature' abusive.[4] There was no need to review the exclusionary effects, the Court held, or to apply an 'equally efficient competitor' test.

The court thus threw cold water on the hopes of the antitrust community that the court would apply a 'more economic approach'. It can be argued that the judgment was no surprise since exclusivity discounts had always been considered an abuse, or that it was not as bad as it sounded since the judgment was still based on economic theories. It is true, for instance, that where it can be shown that a customer's full demand is contestable, the judgment can be distinguished on the facts because the dominant firm does not leverage market power.[5] Moreover, as pointed out in the EU chapter of this book, the court stated that the 'as-efficient competitor' test is still relevant for non-conditional pricing practices. Finally, we still have the *Post Danmark* case, where the court held that Article 102 does not 'seek to ensure that competitors less efficient than the undertaking with the dominant position should remain on the market […]. Competition on the merits may, by definition, lead to the departure from the market or the marginalization of competitors that are less efficient.'[6]

Even that scant comfort, however, is now under threat. The recent opinion of the Advocate-General in *Post Danmark II*, which came out in May 2015, includes unhelpful statements.[7] Advocate-General Kokotte rejects arguments that the 'as-efficient competitor' test should be applied, fulminating not only against the test, but against 'expensive economic analyses' more generally and the 'disproportionate use of the resources of the competition authorities and the courts'.[8] The Advocate-General also opines that there is no need for foreclosure to exceed any *de minimis* threshold,[9] leaving open the question of why competition law should be applied to conduct that cannot be shown to have had much of an effect at all on competition. Perhaps she was impressed by the thought that the case involved retroactive discounts, leveraging a non-contestable share of 70 per cent protected by a statutory monopoly. It is to be hoped that this kind of thinking is applied only where 'the abusive nature is immediately shown' (i.e., in the

3 Case COMP/C-3 /37.990 *Intel*, Commission decision of 13 May 2009, paragraphs 1,002 to 1,577.

4 Case T-286/09 *Intel*, judgment of 12 June 2014, paragraphs 85, 88.

5 See various articles in the first issue of the *Competition Law & Policy Debate*, 2015/1 CLPD.

6 Case C-209/10, *Post Danmark A/S v. Konkurrenceradet*, judgment of 27 March 2012, EU:C:2012:172, paragraphs 21–22.

7 Case C-23/14, *Post Danmark A/S II*, Opinion of Advocate General Kokott delivered on 21 May 2015, available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=164331&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=480796.

8 Ibid., paragraphs 66–73.

9 Ibid., paragraph 85-94.

case of clear *per se* abuses)[10] but recent developments in pending EU cases are worrying – with the Commission issuing a statement of objections in the *Google* case for supposed foreclosure in product comparison services in spite of the dynamic nature of that sector and the great success of competitors such as Amazon, eBay and others in the shopping sector, which dwarf Google's shopping service.

The chapter on US developments contains a similarly troubling case. In a judgment concerning an exclusive dealing policy of a pipe-fitting manufacturer – admittedly, under Section 5 of the Federal Trade Commission (FTC) Act – the US Court of Appeals for the Eleventh Circuit in April 2015 affirmed the FTC's decision that the conduct was illegal because: '[t]he governing Supreme Court precedent speaks not of "clear evidence" or definitive proof of anticompetitive harm, but of "probable effect".'

Perhaps surprisingly, the chapter on China shows a spark of hope for economists. It discusses the case of *Qihoo 360 v. Tencent*, following Qihoo 360's accusing Tencent of abusive practices in instant messaging. The Supreme Court of China conducted a careful analysis, including a review of economic factors. It held that while the usage share of Tencent's instant messaging services was above 80 per cent, it nonetheless could not be found dominant in the market for instant messaging services. It took into account that in a two-sided market for free services, Tencent had no power over price, and had to keep innovating in order to counter dynamic competition, in a market where users engaged in multi-homing and could switch if the quality of Tencent's service deteriorated relative to that of its rivals. *Qihoo 360 v. Tencent* is rightly branded a landmark case and an example for other authorities and courts to consider.[11]

As to the second trend, politicians' attempts to influence competition cases are not new, of course. But 2014 saw a worrying intensification, at least at the European level. The French and German governments, for instance, at the instigation of national publishers and others, have put private and public pressure on the European Commission to pursue new and unprecedented theories of harm in the IT sector.[12] They are targeting in particular what is called the 'GAFA', an acronym for some of the main non-EU online service companies, demanding extraordinary remedies including trade secret disclosures and structural measures.[13] They solicited support from the

10 Ibid., paragraph 75.

11 Other such examples can be found in Germany and Brazil: *Verband Deutscher Wetterdienstleister eV v. Google*, Reference No. 408 HKO 36/13, Rechtbank Hamburg, 11 April 2013; *Buscape v. Google*, judgment of the 18th Civil Court of the State São Paulo – Case No. 583.00.2012.131958-7 (September 2012).

12 Joint Letter from Ministers Sigmar Gabriel (Germany) and Arnaud Montebourg (France), to Commissioner, Joaquin Almunia on 16 May 2014, available at www.magazinemedia.eu/wp-content/uploads/Translation_Letter_SG-AM_2014-05-28.pdf. See also the letter sent to the Commission by four German ministers in May 2015, available at www.bmwi.de/BMWi/Redaktion/PDF/A/anschreiben-der-minister-an-eu-kommissare,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf.

13 'Projet de loi pour la croissance, l'activité et l'égalité des chances économiques (EINX1426821L)'; see: www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=E1BDCC

European Parliament, which went as far as adopting a resolution requesting the break-up of an internet company based outside the EEA for alleged abuse of dominance, without any investigation (let alone proper review) of facts, law, or economics.[14] The notion of 'punishment before trial' may be amusing as literary entertainment,[15] but is profoundly troubling when coming from a European institution. Nor is the European Parliament alone in Brussels in raising questions. A commissioner was reported making statements in a pending case suggesting that complaints are 'well-founded' before a statement of objections was even sent.[16] He is said to have stated: 'We [Europe] need two to three global players. This applies to software, and hardware and all of these [online sectors].' 'If you look at America, which is comparable in size, or Korea, Japan, China, they have very strong powers and we need that too.'[17] On another occasion, he is quoted saying that 'The European Union should regulate internet platforms in a way that allows a new generation of European operators to overtake the dominant US players' and the goal was to 'replace today's web search engines, operating systems and social networks'.[18] Such statements could be understood not only to prejudge the outcome, but also to suggest protectionist objectives.

Competition Commissioner Vestager wisely tried to calm the waters,[19] and the President of the European Commission appears to be aware of the risks.[20] Nonetheless, every Commissioner has a vote in competition cases. Article 41 of the Charter of

---

E5C4C26E5B3A7E9115CBB2458B.tpdila07v_2?idDocument=JORFDOLE000029883713&type=general&typeLoi=proj&legislature=14.

14 European Parliament resolution of 27 November 2014 on supporting consumer rights in the digital single market (2014/2973(RSP)), available at www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2014-0071+0+DOC+XML+V0//EN&language=EN.

15 'Let the jury consider their verdict,' the King said […]. 'No, no,' said the Queen. 'Sentence first — verdict afterwards.' *Alice's Adventures in Wonderland,* Lewis Carroll.

16 *Welt am Sonntag,* 12 April 2015, p. 1, 'EU will härter gegen Google vorgehen', available at www.welt.de/print/wams/article139419627/EU-will-haerter-gegen-Google-vorgehen.html.

17 29 September 2014, Oettinger's Comments to EU Parliament; video recording of the Parliament hearing: www.elections2014.eu/en/new-commission/hearing/20140917HEA64706, relevant statements at 2:04:50.

18 Speech by Commissioner Oettinger at Hannover Messe, 'Europe's future is digital', https://ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-hannover-messe-europes-future-digital_en; *Economist*, 'Nothing to stand on', 18 April 2015, at www.economist.com/news/business-and-finance/21648606-google; *New York Times*, 'Europe's Google problem', 28 April 2015, www.nytimes.com/2015/04/28/opinion/joe-nocera-europes-google-problem.html?_r=0.

19 Statement by Commissioner Vestager on antitrust decisions concerning Google, Brussels, 15 April 2015. 'We will be exclusively guided by the facts, the evidence and by the EU's antitrust rules.' Available at: http://europa.eu/rapid/press-release_STATEMENT-15-4785_en.htm.

20 Minutes of the 2122nd meeting of the Commission held in Brussels (Berlaymont) on Wednesday 15 April 2015, http://ec.europa.eu/transparency/regdoc/rep/10061/2015/EN/10061-2015-2122-EN-F1-1.PDF.

Fundamental Rights of the European Union therefore requires every Commissioner, and the College as a whole, to handle proceedings impartially.[21] Thus, before a Commissioner reaches a conclusion, she or he should examine every element and each piece of evidence with an open mind, and reserve judgment until all rights of defence have been exhausted. Even the *appearance* of pre-judgment should be avoided.[22] And 'it is no answer to a charge of bias to look at the terms of a decision and to say that no actual bias is demonstrated or that the reasoning is clear, cogent and supported by the evidence'.[23]

Statements that appear to prejudge the outcome of the case, or even prejudge elements of a decision such as whether a defendant has a '*de facto* monopoly' before the firm has been fully heard, undermine the credibility of the law, the process and the European Commission itself.[24] A legitimate question arises whether a Commissioner in such a situation should not be recused from the decision-making, to avoid the appearance of bias. The Hon Justice Barling (now a chairman of the UK Competition Appeals Tribunal) recently set an example of integrity when he recused himself in *Sky v. Ofcom* merely on the ground that he had given a thoughtful speech on a relevant topic after the case had been decided by the CAT, and before it was remitted back to the CAT by the Court of Appeal.[25] He stated, appropriately, that 'my own view of whether I would deal with the remitted matter impartially and in accordance with my judicial oath is not relevant: it is the appearance which is important in this context'.[26]

Questions about appearance of pre-judgment are even more sensitive when, as in the European Commission, the team that investigates the defendant is also the one conducting the hearing, briefing the College of Commissioners, and writing the decision.[27] The requirement of impartiality encompasses not only 'subjective

---

21 Article 41(1)(a) of the CFR guarantees 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken'. Under Article 6(1) of the TFEU, the CFR 'shall have the same legal value as the Treaties'.

22 See, e.g., ECtHR, Appl. No. 22330/05, *Olujić v.Croatia*, 5 February 2009, paragraph 63 ('in respect of the question of objective impartiality even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done"').

23 See, e.g., ECtHR Appl. No. 58442/00, *Lavents v. Latvia*, 28 November 2002, paragraphs 118–121; and ECtHR Appl. No. 22330/05, *Olujić v. Croatia*, 5 February 2009, paragraphs 61–68.

24 See, e.g., Levy and Rimsa, 'Why Competition Commissioners Should Be Cautious in Commenting Publicly On Active Antitrust Cases', 36 *ECLR* 1 (2015).

25 Ruling (Constitutional Tribunal), 26 and 27 March 2014, *Sky UK Limited, Virgin Media, the Football Association Premier League and British Telecommunications plc v. Office of Communications & Ors*. Available at http://catribunal.org.uk/files/1156-59_Judgment_CAT_9_060515.pdf.

26 Ibid., paragraph 83.

27 See, e.g., *R v.Gough* [1993] UKHL 1 (Lord Goff) ('But there is also the simple fact that bias is such an insidious thing that, even though a person may in good faith believe that he was

impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice' but also 'objective impartiality, insofar as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the *institution* concerned'.[28] Even with the best of intentions, and recognising the excellence and intellectual integrity of many Commission officials, is it humanly possible for a team that has spent one or two years intensely investigating and prosecuting a case, to avoid the risk of unconsciously interpreting and screening information in a way that confirms their beliefs or hypotheses? Where investigation, hearing and decision are prepared by the same team, there is a serious risk of confirmation bias.[29] Reinforcing this concern is the longstanding, but still surprising, fact that the College of Commisisoners does not read the parties' briefs and does not attend oral hearings. Not even the Commissioner for Competition participates. In other words, the decision is prepared by a Commissioner (and is adopted by a College) without direct personal knowledge of the facts and the proceedings, based on hearsay, set out in internal documents and summaries to which the parties have no access, and that are prepared by a team that has acted as detective and prosecutor. As the OECD warned, '[c]ombining the function of investigation and decision in a single institution can save costs but can also dampen internal critique'.[30] Incidental internal procedures, such as devil's advocate teams and peer review panels, are useful, but are only stopgaps. In light of the quasi-criminal nature of EU infringements proceedings, under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms,[31] the proper solution would be to separate the investigative team from the team that prepares the Commission decision, which should include the Commissioner, and for the latter team to review the statement of objections and the response, as well as to attend the oral hearing. There is no chance that this will happen in the coming year, but it is hoped that the discussion on this topic will finally be taken seriously.

I would like to thank my colleagues Nicholas Levy and Andris Rimsa for their thoughts, as well as all of the contributors for taking time away from their busy practices to prepare their insightful and informative contributions to this third edition of *The Dominance and Monopolies Review*. I look forward to seeing what evolutions 2015

---

acting impartially, his mind may unconsciously be affected by bias […]').

28 Emphasis added, Case C-439/11 P *Ziegler v.Commission*, EU:C:2013:513, paragraphs 154–155; Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Poste v.UFEX and Others*, EU:C:2008:375, paragraph 54; and Case C-308/07 P *Gorostiaga Atxalandabaso v.Parliament*, EU:C:2009:103, paragraph 46.

29 See, e.g., RS Nickerson, 'Confirmation bias: A Ubiquitous Phenomenon in Many Guises' (1998) 2 *Review of General Psychology* 175–220 ('the seeking or interpreting of evidence in ways that are partial to existing beliefs, expectations, or a hypothesis in hand').

30 'OECD Country Studies – Competition Law and Policy in the European Union' (2005), p. 62, see also pp. 61, 63–69, available at www.oecd.org/daf/competition/prosecutionandlawenforcement/35908641.pdf.

31 See, e.g., Forrester, 'Due process in EC competition cases: A distinguished institution with flawed procedures?' (2009) 34 *European Law Review* 817.

holds for the next edition of this book. Especially eagerly awaited are the European Court's judgment in *Intel* and *Post Danmark II* (conditional pricing) and the European Commission decision in *Gazprom* and *Google*, the *Qualcomm* investigations in various countries, and the US authorities' reviews of practices of patent assertion entities and privateers, which are also directly relevant for the EEA and other jurisdictions.

Maurits Dolmans
Cleary Gottlieb Steen & Hamilton LLP
London
June 2015

Chapter 17

MEXICO

Luis Gerardo García Santos Coy, Mauricio Serralde Rodríguez and Jorge Kargl Pavía[1]

I INTRODUCTION

i Statutory framework

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

As a result of an amendment to the Constitution, passed in June 2013 (the Telecommunications Act), the Federal Telecommunications Institute (IFETEL) was created as an autonomous constitutional body with exclusive jurisdiction over competition issues in the telecommunications and broadcasting sectors; likewise, the former Federal Competition Commission (the former FCC) was dismantled and a new Federal Economic Competition Commission (FECC) created, also as an autonomous constitutional body, with exclusive jurisdiction over competition matters in all areas

1 Luis Gerardo García Santos Coy and Mauricio Serralde Rodríguez are partners and Jorge Kargl Pavía is an associate at Creel, García-Cuéllar, Aiza y Enríquez SC.

2 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 in 7 July 2014.

3 Both the Federal Economic Competition Commission and the Federal Telecommunications Institute issued their own Regulations to the Competition Law, the first issued on 10 November 2014, and the second on 12 January 2015. It should be noted that, other than the Competition Law and the Regulations, there is no statutory guidance with respect to relative monopolistic practices; nevertheless, both the FECC and IFETEL encourage economic agents to approach them to discuss, either formally or not, any questions they may have with respect to a specific matter.

and industries other than the broadcasting and telecoms sectors. The IFETEL and the FECC (together, the Antitrust Authorities) are the agencies in charge of enforcing competition law, and in doing so, preventing and investigating anti-competitive conduct and vertical restraints.

The Competition Law is applicable to any private individuals or entities, profit or non-profit, government entities at national, state or municipal levels, associations, commercial chambers and associations, trusts or any other forms of involvement in an economic activity (economic agents).

In this regard, the Competition Law provides that monopolies, monopolistic practices and barriers which reduce, damage, hinder or condition in any way free and open competition in the production, processing, distribution or commercialisation of goods and services are forbidden in Mexico. For such purposes, the Competition Law establishes the specific provisions and proceedings applicable to the investigation of relative monopolistic practices (abuse of dominance), absolute monopolistic practices (cartel activity), concentrations (mergers and acquisitions), barriers to entry and the determination of the existence of essential inputs, and the determination of market power on behalf of an economic agent.[4] For purposes of this chapter, we will only look at relative monopolistic practices.

Relative monopolistic practices are similar to conduct analysed under the rule of reason in other jurisdictions, since for such conduct to be illegal, certain requirements must be met (as opposed to cartel activity, which is *per se* illegal) and, on a general basis, are carried out in vertical relationships within the production chain (between non-competing agents). Such requirements and practices are further detailed in Section IV, *infra*.

ii Antitrust Authorities

The supreme authority of each of the Antitrust Authorities is vested in its plenum, composed of seven commissioners, each with a term of office of nine years.[5] The commissioners are appointed by proposal of the President of Mexico,[6] and must be

4 The proceeding to determine barriers to entry and essential inputs is new in the Mexican antitrust regime (similar to that in the UK regime). Such proceeding allows the Antitrust Authorities to: (1) issue recommendations to governmental authorities in order to eliminate legal provisions which unduly limit free and open competition, (2) order the corresponding economic agent to eliminate a specific barrier to entry, (3) impose asymmetric regulations with respect to an essential input; and (4) order the divestiture of assets or stock as necessary in order to eliminate any anticompetitive effects, which will only be imposed in those cases in which other remedies are not enough to eliminate the identified anticompetitive effects.

5 It should be noted that, upon the creation of both Antitrust Authorities, each of their commissioners were appointed for terms of three, four, five, six, seven, eight and nine years in order for their replacement to be staggered. As from the first time in which each new replacement is appointed, each commissioner will be appointed for a term of nine years.

6 The process for the appointment of commissioners is the following. All candidates shall successfully pass a test prepared by an evaluation committee (comprised by the heads of

ratified by the Senate. Each Antitrust Authority also has a president, appointed by the Senate, for a four-year term. In most cases, decisions by the plenum are adopted by the majority vote of the commissioners, except for those cases in which a qualified majority is required, such as the designation of the technical secretary and the investigative authority and the issuance of an injunctive relief.

Each of the Antitrust Authorities has a specific investigative authority in charge of all investigations for anti-competitive behaviour, including relative monopolistic practices, absolute monopolistic practices and illegal concentrations (mergers). These new investigative authorities (similar to a prosecutor) are in charge of conducting the investigation, as well as acting as prosecutor in the formal administrative procedures (following the formalities of a trial) in those cases involving conduct in which the Antitrust Authorities have gathered sufficient evidence of the existence of illegal conduct pursuant to the Competition Law.

Neither of the Antitrust Authorities has issued any specific key policy statement with respect to the investigation and prosecution of relative monopolistic practices – in fact, none of their annual programmes expressly refer to such anti-competitive practices.[7] Notwithstanding the foregoing, and although none of these actions are aimed directly at preventing the existence of relative monopolistic practices, some actions provided for in the Antitrust Authorities' annual programmes will doubtless lead to the identification of

---

the Bank of Mexico, the National Institute for Evaluation of Education and the National Institute of Statistics and Geography) with the opinion of at least one education institution and in accordance with best practices. The evaluation committee then sends to the President of Mexico a list with three to five candidates for each available position. The President of Mexico then selects from such list the definitive candidate and sends it to the Senate for its ratification.

It should be noted that the Constitution also sets out the impediments to be a commissioner, such as, not having been Secretary of the State, Federal Attorney General, senator, federal or local representative, governor of any state or Chief Minister of the Federal District, within the year prior to appointment.

7 The FECC's annual program for 2015 includes specific actions aimed to: (1) enhance competition and prevent cartel activity in public bids; (2) analyse market conditions within the agro-food sector; (3) analyse market conditions within the transportation sector; (4) analyse harm suffered by consumers as a consequence of lack of competition in key economic sectors; and (5) analyse the impact of local regulations in free and open competition (FECC, 2015 Work Programme, available at www.cofece.mx).

IFETEL's annual programme for 2015 focuses on encouraging convergence in the telecommunications and broadcasting sectors, consumer and audience protection, institutional strengthening, developing regulatory policies and guidelines, encouraging deployment of infrastructure and developing a spectrum policy. Such a plan does not include any specific statements with respect to the investigation of relative monopolistic practices or any other type of anti-competitive behaviour (IFETEL, 2015 Work Programme, available at www.ift.org.mx/sites/default/files/comunicacion-y-medios/informes/pat-2015-vf.pdf).

potential relative monopolistic practices and therefore, cause investigations in this regard to be carried out.

II YEAR IN REVIEW

Due to the substantial changes in the Mexican antitrust legislation and the relatively recent creation of the Antitrust Authorities, all investigations involving relative monopolistic practices that have been initiated by such authorities are still ongoing, whereas those in which the Antitrust Authorities have issued final decisions were initiated by the former FCC.

Of the existing investigations that have been concluded by the FECC since October 2013, one has resulted in the economic agents being guilty of relative monopolistic practices,[8] one was closed due to lack of evidence,[9] and one was closed after certain remedies were offered by the economic agent.[10] With respect to those investigations initiated by the former FCC and concluded by IFETEL, two were closed due to lack of evidence[11] and one concluded with the imposition of a fine.[12]

Since its creation in late 2013, the FECC has started four investigations into relative monopolistic practices in the markets of: (1) the generation, processing and commercialisation of credit information;[13] (2) production, distribution and commercialisation of gases in general;[14] (3) storage and shipping of non-crystallising

8 File DE-015-2010. Investigation involving discounts subject to exclusivity in the market of commercialisation of house furniture in the State of Jalisco.

9 File DE-026-2009. Investigation involving resale price maintenance, imposition of resale conditions and refusal to sell in the market of bulk distribution of magazines in the Mexico City area.

10 File DE-030-2011. Investigation involving tied sales and refusal to sell in the market of exportation of Mexican avocados to the United States of America.

11 File E-IFT/UC/RR/0001/2014. Investigation involving tied sales and refusal to sell in the market of commercialisation of television channels for pay-TV providers. It should be noted that this file was closed as a consequence of a constitutional appeal in which a Federal Court ordered IFETEL to analyse certain evidence included in the file.
File E-IFT/UC/DGIPM/PMR/0001/2013. Investigation involving tied sales, exclusive dealing, refusal to sell, discounts subject to exclusivity, cross subsidizing and price discrimination in the market of sale of advertising space in broadcasting TV, pay-TV and other audio-visual communication media, as well as in the market of the commercialisation of contents for pay-TV.

12 File E-IFT/UC/DGIPM/PMR/0002/2013. Investigation involving any conduct carried out by one or more economic agents whose direct or indirect purpose or effect is to increase other economic agents' costs, hinder their productive process or reduce the demand they face in the market of interconnection services in Mexico.

13 File IO-001-2015.

14 File DE-006-2014.

honeys and their derived products;[15] and (4) in the automobile parking spaces for the provision of ground transportation to and from the Mexico City airport.[16]

Similarly, IFETEL has, since its creation, begun four investigations relating to (1) the sale of advertising in broadcasting TV in Mexico;[17] (2) the commercialisation of telecommunications services, the provision of Internet services and the distribution and commercialisation of contents transmitted through Internet and pay-TV;[18] (3) the provision of pay-TV services in the state of Sinaloa;[19] and (4) the distribution and commercialisation of electronic air time recharges for mobile services in Mexico.[20]

It is also important to mention that during the past year, the specialised federal courts have issued several decisions involving procedural aspects of the investigations carried out by the Antitrust Authorities: specifically, the courts have supported the fact that economic agents subject to investigations by the Antitrust Authorities cannot challenge any of their actions until a final resolution is issued. This means that even if an economic agent considers that a specific action by the Antitrust Authorities contrary to the Constitution or implies a violation to the economic agent's constitutional rights, such agent must wait until a final decision is issued by the Antitrust Authorities without any injunctive relief being available until then.

Last, it is important to bear in mind that until now, it has been unclear what policy the Antitrust Authorities will follow with respect to the types of relative monopolistic practices that will be prosecuted. There are also certain aspects that remain unclear, such as the status of privilege in client–attorney communications and the guarantee against self-incrimination.

III MARKET DEFINITION AND MARKET POWER

Similar to other jurisdictions, in Mexico, the definition of relevant market broadly encompasses two concepts: (1) the relevant product market, which refers to the goods and services involved in a specific analysis; and (2) the geographical market, which is the geographical area in which such goods and services are offered.[21]

15 File DE-017-2013.

16 File DE-015-2013.

17 File UCE/DE-003-2014.

18 File UCE/DE-001-2014.

19 File E-IFT/UC/DGIPM/PMR/0008/2013.

20 File E-IFT/UCE/DGIPM/PMR/0006/2013.

21 Pursuant to Article 58 of the Competition Law, the following shall be taken into account in defining the relevant market:

a the possibility of substituting a product or service for others, domestic or foreign, taking into account any technological capabilities, the extent to which consumers have access to substitute products and the time required for such substitution;

b the distribution cost of the product itself, of its relevant inputs; of its supplements and of substitutes from other regions and from other countries, including freight, insurance,

i Relevant product market

The relevant product market includes all products or services that are considered substitutes. This is determined based on a substitutability test that may be supported by econometric and statistic tests.

Whether a product or service is a substitute for another product or service and hence, should be deemed a relevant product, is determined on a case-by-case basis, usually concerning the price, the product's or service's characteristics, and its intended purpose.

It is not uncommon for the Antitrust Authorities to carry out substitutability tests in terms of demand-side and supply-side substitution, as well as the potential competition (i.e., the introduction of new technologies).

Due to the fact that the Antitrust Authorities have only resolved a few cases since their creation, it is not possible to foresee what criteria will be applied when defining a specific relevant market; nevertheless, the former FCC issued several decisions across a wide number of industries that may be helpful in anticipating the approach that the current Antitrust Authorities may follow in a specific case.

ii Geographical market

The geographical market refers to the region, zone or place in which the relevant product is commercialised under similar distribution or provision conditions, without facing significant barriers both from the demand side and the supply side. This implies that the geographical market will correspond with the area in which an economic agent may increase the price of a product or service without attracting sellers from other areas, and without causing consumers to move to other areas to acquire the relevant product. A geographical market may be as broad as a global market or as limited as a specific zone or region within a city.

The elements that determine the scope of the geographical area include legal restrictions, transportation costs and tariffs, and the life cycle of a product. These elements determine the ability of consumers to move to another area or of suppliers to enter into a specific area.

The Antitrust Authorities also analyse the volume of imports and exports of a specific product, as well as their destination and origin, in order to determine whether a geographical market should be defined as national or international; more restrictive geographical markets are usually defined in those cases involving services that, due to their nature, are only provided in specific areas.

---

tariffs and non-tariff restrictions, restrictions imposed by economic agents or by their associations, and the time required to supply the market from such regions;

c the cost and probabilities that users or consumers have to reach out to other markets; and

d federal, state or international legal provisions which limit access on behalf of users or consumers to alternative supply sources or access by suppliers to alternative customers.

iii Market power

In Mexico there is no specific market share or threshold at which the existence of market power on behalf of one or more economic agents is presumed, and this must be analysed on a case-by-case basis: a high market share does not necessary imply the existence of market power, whereas a low market share does not necessary imply the absence thereof.

The Competition Law provides that in order to determine whether one or more economic agents have market power, the Antitrust Authorities must take into consideration (1) their market share and whether they can set prices or limit supply in the relevant market without their competitors being able to countervail such power; (2) barriers to entry; (3) the existence and power of their competitors; (4) access by the economic agents and their competitors to input sources; and (5) the economic agent's recent behaviour.

Additionally, the FECC also takes into account the products' or services' positioning in the relevant market, the lack of access to importations or the existence of high importation rates, and the existence of relevant price differences that consumers may face when reaching out to other suppliers.

The Competition Law provides for the possibility of joint market power (a concept introduced in the former Competition Law in 2011). When determining the existence of joint market power on behalf of independent economic agents, the FECC considers whether the corresponding economic agents differentiate themselves from the other agents participating in the relevant market, taking into account factors that favour common incentives or interdependent strategic behaviour, or that such economic agents show a similar behaviour. It should be noted, however, that there are no legal precedents on this specific subject, neither by the former FCC nor by the Antitrust Authorities and therefore, it is still unclear the criteria that such authorities will follow when analysing this provision.

IV ABUSE

i Overview

Relative monopolistic practices (abuse of dominance) refer to certain behaviour on behalf of one or more economic agents that (1) falls within any conduct defined as such in the Competition Law; (2) is carried out by one or more economic agents which, individually or jointly, have market power in the same market as that in which the conduct takes place; (3) has or may have as purpose or effect, to improperly displace other economic agents from the relevant market or related markets, to materially hinder them from entering the market, or to establish exclusive advantages in favour of one or more economic agents.

In Mexico, conduct classified as relative monopolistic practices include exclusionary abuses, discrimination and exploitative abuses, all of which are addressed further below.

The Competition Law provides that that a relative monopolistic practice will not be deemed illegal as long as the conduct generates efficiencies and has a positive impact on free and open competition, outweighing the conduct's anti-competitive effects, resulting in benefits to consumers, in which case such conduct should be considered as competitive on the merits and therefore legal pursuant to the Competition Law.

In this regard, the Competition Law recognises as efficiency gains:

a the introduction of new products or services;

b the utilisation of leftovers, defective products or perishable products;

c cost reductions derived from the creation of new production techniques and methods, asset integration, increases in the production scale and the production of different products or services with the same production factors;

d the introduction of technological advances that produce new or improved products or services;

e the combination of productive assets or investments and their recoup that improves the quality or increases the usages for the products or services;

f improvements in quality, investments, and their recoup, opportunity and service that have a positive impact within the distribution chain; and

g any other factors that demonstrate the contribution to consumer welfare derived from the conduct outweighing its anti-competitive effects.

It should be noted from (g) that the list of efficiencies provided under the Competition Law is not exhaustive and so economic agents may submit evidence of additional efficiencies generated by an investigated conduct.

ii Exclusionary abuses

Relative monopolistic practices in the form of exclusionary abuse are tied sales; exclusive dealing; refusal to deal; boycotts; predatory pricing; exclusivity or discounts, incentives or benefits subject to exclusivity; cross-subsidisation; any conduct carried out by one or more economic agents whose direct or indirect purpose or effect is to increase other economic agents' costs, hinder their productive processes or reduce the demand for their products; denial of access to or price discrimination of an essential input; and margin squeeze.

Tied sales

This refers to the sale or transaction subject to the purchase, acquisition, sale or the obligation to provide a different product or service, usually different or distinguishable, or upon the basis of reciprocity. Tied sales must necessarily include a main product or service and a tied product or service, in which case the displacement or material hindering in prejudice of other economic agents must occur with respect to the commercialisation of the tied product or service.

Exclusive dealing

This refers to the sale of a product or service subject to the obligation not to use, acquire, sell, commercialise or provide the products or services produced, processed, distributed or commercialised by a third party.

Refusal to deal

This refers to a unilateral refusal to sell, commercialise or provide to a specific economic agent, products or services available and normally offered to third parties. It should be

noted that on a general basis, this conduct requires that the economic agent refusing to deal does not have a valid justification for such a refusal in order to be deemed as illegal.

Boycott

This refers to an agreement among several economic agents or an invitation to these to exert pressure against an economic agent or to refuse to sell, commercialise or acquire products or services to or from such economic agent with the purpose of dissuading it from engaging in a specific conduct, retaliating against it or compel it to act in a specific way.

Predatory pricing

This refers to the sale of products or services at prices lower than their variable median cost or lower than their total median cost but higher than their variable median cost when there is evidence to assume that such losses will be regained through future price increases.

Specifically, when the FECC analyses this conduct with respect to multi-product companies, such authority will also consider the distribution of the total median cost and the variable median cost between sub-products or co-products, for which the technical characteristics of the production, distribution or commercialisation process will be taken into account, as well as the economic principles applicable to the determination of costs. The median cost should be calculated for the period of time in which the conduct has been analysed. Additionally, in the event an investigation has been triggered as a consequence of a claim filed by a party, such party must provide the basis for the cost calculation referred to in its claim. Finally, the FECC should also consider that the corresponding economic agents may regain their losses when, in addition to having market power in the relevant market, there are arguments that they will maintain such market power when regaining such losses.

Discounts, incentives or benefits subject to exclusivity

This refers to the granting of discounts, incentives or benefits on behalf of producers or suppliers to purchasers subject to an obligation not to use, acquire, sell, commercialise or provide the products or services produced, processed, distributed or commercialised by a third party. This also refers to an obligation imposed by a purchaser on a producer or supplier not to sell, commercialise or supply to a third party the products or services subject to the transaction.

Cross-subsidisation

This refers to the use of profits made by an economic agent from the sale, commercialisation or provision of a product or service to finance the losses derived from the sale, commercialisation or provision of a different product or service.

Margin squeeze

This refers to the reduction of margins between the access price to an essential input provided by one or more economic agents and the pric`e of the product or service offered to end-consumers by those same economic agents, using for its production the same input.

iii Discrimination

Relative monopolistic practices in the form of discrimination consist of imposing different prices or sale conditions with respect to different customers or suppliers that should be considered in equal or equivalent conditions.

iv Exploitative abuses

Exploitative abuses are described by the Competition Law in the form of resale price maintenance and territory or customer allocation among non-competing economic agents. It should be noted that in Mexico excessive pricing is not considered illegal.

Resale price maintenance

This refers to the imposition of prices or other conditions upon a distributor or supplier with respect to the provision, commercialisation or distribution of products or services.

Territory or customer allocation

This refers to agreements between economic agents that are not competitors among themselves to fix, impose or establish exclusive commercialisation of distribution of products or services based on subject, geographical area, or determined time periods, including the division, distribution or allocation of customers or suppliers, as well as to the imposition of an obligation not to produce or distribute products or provide services for a determined or determinable period of time. It should be noted that should this conduct be carried out by competing economic agents it will not be considered a relative monopolistic practice but rather an absolute monopolistic practice (cartel activity).

V REMEDIES AND SANCTIONS

i Sanctions

For incurring in a relative monopolistic practice, a penalty of up to 8 per cent of the economic agent's turnover within the last year in which the conduct was committed may be imposed, excluding revenues originating from sources outside Mexico, as well as taxable income if it is subject to preferential taxt treatment. When imposing a fine, the Antitrust Authorities will take into account elements, to determine the seriousness of the violation, such as the damaged caused, the indications of intent, the corresponding market share, the size of the affected market, the duration of the conduct, the corresponding economic agent's financial capacity and, if applicable, any obstruction to the Antitrust Authorities' actions.

ii Behavioural remedies

In those cases in which the Antitrust Authorities find an economic agent guilty of a relative monopolistic practice, in addition to the fine previously mentioned, the Antitrust Authorities may impose upon the corresponding economic agent an obligation to cease the sanctioned conduct.

The Antitrust Authorities may also impose injunctive relief during the investigation of relative monopolistic practices in cases in which the investigative authority considers

that continuation of the conduct may cause damage that is difficult to repair or may cause difficulties in guaranteeing the efficiency of the investigation. Such injunctive relief may consist, *inter alia*, of an order to suppress the conduct and an obligation to do or not to do upon the investigated economic agents.

Finally, economic agents subject to an investigation of relative monopolistic practices may offer remedies consisting of cessation of such conduct to restore free and open competition in order to terminate the investigation by the Antitrust Authorities early, and even to reach a settlement obtaining a reduction to the applicable fine or not be fined at all. An economic agent may only apply for this benefit once every five years, and such application must be filed before an order of probable responsibility is issued by the Antitrust Authorities (such order is further addressed in Section VI, *infra*).

iii Structural remedies

In the event of repeated offences, the Antitrust Authorities may order the divestiture or sale of assets, interests or shares of the economic agents in order to eliminate the anti-competitive effects.

VI PROCEDURE

The Competition Law establishes an administrative procedure for the investigatation of relative monopolistic practices that may be initiated *ex officio* by the Antitrust Authorities, at the request of the President of Mexico (directly or through the Ministry of Finance), at the request of the Bureau of Consumer Protection, or in consequence of a claim filed by any party, even if it is not affected by the practice. It should be noted that the Competition Law provides that, in order to start an investigation, the Antitrust Authorities require the existence of an objective cause.

Investigations carried out by the Antitrust Authorities with respect to relative monopolistic practices are divided into two stages: the investigation stage and the administrative procedure.

The investigation stage in when the investigative authority must gather all evidence required to prove the existence of illegal activities. Such investigation stage may last between 30 and 120 business days from the date on which the order to begin the investigation was issued, a term that may be extended for up to four additional terms of between 30 and 120 business days.

During the investigation stage, the Antitrust Authorities may gather documents and information by written requests for information from any parties that may have information useful to the investigation. Such requests usually include details of the relevant businesses, market data, information about the alleged infringement and copies of relevant documents.

The Antitrust Authorities may also carry out surprise visits (dawn raids) and request the use of the public forces for such purposes. Likewise, pursuant to the Competition Law, the Antitrust Authorities are authorised to seize documents or devices, as well as to question the economic agent's employees and officers.

The administrative procedure follows in the form of a trial, by means of which the parties will be able to defend themselves against the allegations resulting from the

investigative authority and any findings resulting from the investigation. During this second stage, both the investigative authority and the economic agent will be considered parties to the procedure.

The administrative procedure, in the form of a trial, begins within 60 business days of the conclusion of the investigation stage, in which the investigative authority must submit an opinion for the consideration of the plenum to either begin the trial phase or close the investigation.

In the event the plenum orders the beginning of the administrative procedure followed in the form of a trial, the Antitrust Authority will issue an order of probable responsibility to the accused economic agents, who then have 45 business days to submit arguments in their defence and to provide the relevant evidence.

The investigative authority then have up to 15 business days to respond to the agents' arguments. Once these 15 business days elapse, the Antitrust Authority will determine whether the evidence should be dismissed or admitted, and will schedule a date for production of the admitted evidence (such production should be made within 20 business days of the evidence being admitted).

Once the production of the admitted evidence has been carried out, both the agents and the investigative authorities will have 10 business days to submit their closing arguments, after which the Antitrust Authority should issue a final resolution within the next 40 business days.

Final decisions issued by the Antitrust Authorities may only be challenged by economic agents by way of constitutional appeal (*amparo*) before a federal court with no injunctive relief available to them, except for those cases in which the FECC imposes fines or orders a divestiture, in which cases a constitutional appeal will suspend application of the FECC's determination until a definitive ruling is issued by the courts (this suspension does not apply to decisions issued by IFETEL).

VII PRIVATE ENFORCEMENT

The Competition Law provides that a person who has suffered damages or lost profits as a consequence of a monopolistic practice (including relative monopolistic practices) may file a civil claim for damages before the federal courts once a decision by the Antitrust Authorities is final. In this regard, the statute of limitations for filing such claim will be suspended as of the date in which the order to begin an investigation has been issued.

Furthermore, a decision by the Antitrust Authorities finding an economic agent guilty of engaging in illegal conduct will also provide evidence of the responsibility of such economic agent for the purposes of the civil claim.

These civil claims may be filed either as individual or class actions, pursuant to the provisions of the Federal Code of Civil Proceedings. With respect to class actions, these may be filed by the Bureau of Consumer Protection, the FECC, the common representative of a class, non-profit organisations related to competition matters, or the Federal Attorney General.

Private enforcement is still an emerging area in Mexico, and there have been only a few cases of civil action deriving from the commission of relative monopolistic

practices and, to our knowledge, none has been successful; this means that there is an absence of case law or criteria as to the calculation of damages and lost profits.

VIII FUTURE DEVELOPMENTS

We are facing exciting times in competition-related matters in Mexico. Competition is one of the key elements of the agenda of the current federal administration. In particular, as a consequence of the issuance of the new Competition Law, the creation of new Antitrust Authorities, the enactment of new Regulations, a new special investigative authority and newly created specialised courts, a significant increase is expected in the activity of legal practitioners, and there are 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 depend on the Antitrust Authorities' ability to establish new structures and enforce the law, and also the conduct of the newly created specialised courts. The recently created FECC and IFETEL still face significant challenges 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 and fostering competition is essential for the future of the country.

Considering that in Mexico the Competition Law and the Regulations are relatively new, it is likely that new guidelines and criteria will be issued in order to assist in enforcement by the Antitrust Authorities – subsequent amendments should not be ruled out.

Specifically, the FECC has stated its intention of issuing several guidelines with respect to relative monopolistic practices:

a technical criteria for beginning investigations of relative monopolistic practices;
b guidelines for engaging in an investigation of relative monopolistic practices;
c a document regarding the offering of remedies for the granting of a reduction in fines;
d a document on the imposition of injunctive relief during an investigation of relative monopolistic practices; and
e a document regarding the determination of guarantees to suspend the application of injunctive relief.[22]

22 FECC Work Programme 2015.

Appendix 1

ABOUT THE AUTHORS

LUIS GERARDO GARCÍA SANTOS COY

Creel, García-Cuéllar, Aiza y Enríquez SC

Luis Gerardo García Santos Coy is a partner and heads the competition practice at the firm. He obtained his law degree (LLB) from Universidad Iberoamericana in 1993. A survey published in the *Global Competition Review* '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 *The International Who's Who of Competition Lawyers*, and has been recognised by *Chambers & Partners* and *Best Lawyers* 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 and 2015; 'A tough sheriff', published in the *International Financial Law Review* in December 2006; 'Overcoming the Constitutional Difficulties: Recent Trends in Mexican Competition Law' published in *Latin Lawyer* in July 2006; 'Competition and antitrust developments in Mexico' published by *Euromoney* in 2012; *The Cartels and Leniency Review*, published by Law Business Research in 2013, 2014 and 2015; 'Mexico: New Antitrust Authorities and a New Federal Economic Competition Law', published by the *Journal of European Competition Law & Practice*, Oxford University Press in 2014; and several other articles published by other recognised editorial houses. He joined the firm in 1989 and is a member of the Mexican Bar Association.

MAURICIO SERRALDE RODRÍGUEZ

Creel, García-Cuéllar, Aiza y Enríquez SC

Mauricio Serralde Rodríguez is a partner at the competition practice at the firm. He obtained his law degree (LLB) from the Instituto Tecnológico Autónomo de México in 2005. Mr Serralde has been recognised as an associate to watch in antitrust and competition by *Chambers Latin America* from 2011 to 2013, and in 2014 as a star associate, and selected in Best Lawyers since 2013, in the practice area of antitrust in Mexico.

Mr Serralde is co-author of 'A tough sheriff', published in the *International Financial Law Review* in December 2006; 'Overcoming the Constitutional Difficulties: Recent Trends in Mexican Competition Law', published in *Latin Lawyer* in July 2006; 'Competition and antitrust developments in Mexico' published by *Euromoney* in 2012; and the 'Mexico' chapters in *Cartel Regulation: Getting the fine down* in 2011; *PLC Cross-border Competition Handbook 2011*; *The Merger Control Review*, published by Law Business Research in 2010, 2011, and 2012; *The Cartels and Leniency Review*, published by Law Business Research in 2013, 2014 and 2015; *Immunity, Sanctions & Settlements*, published by Global Competition Review in 2014 and 2015; and 'Mexico: New Antitrust Authorities and a New Federal Economic Competition Law', published by the *Journal of European Competition Law & Practice*, Oxford University Press in 2014. He joined the firm in 2005 and is a member of the Mexican Bar Association.

JORGE KARGL PAVÍA

Creel, García-Cuéllar, Aiza y Enríquez SC

Jorge Kargl Pavía is an associate in the competition and telecommunications practices at the firm. He obtained his law degree (LLB) with honours from the Facultad Libre de Derecho de Monterrey in 2006 and his master of laws degree (LLM) in public law as top of his class from Mexico City's Universidad Anahuac in 2013. He has also undertaken postgraduate studies in economics and competition law at Universidad Iberoamericana in Mexico City and has a postgraduate diploma in economic regulation from the Mexican Federal Commission of Regulatory Improvement.

Mr Kargl is co-author of *A new era in Mexican Antitrust Enforcement*, published by the International Bar Association's Latin American Regional Forum in 2012, *Immunity, Sanctions & Settlements*, published by Global Competition Review in 2014 and 2015, 'Mexico: New Antitrust Authorities and a New Federal Economic Competition Law', published by the *Journal of European Competition Law & Practice*, Oxford University Press in 2014. He joined the firm in 2013 and is a member of the Mexican Bar Association, Mexico's National Association of Corporate Lawyers, of the international legal fraternity Phi Delta Phi (Salinas Martínez Chapter) and of the International Law Society at the Facultad Libre de Derecho de Monterrey.

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ SC
Paseo de los Tamarindos 60, Piso 3
Col Bosques de las Lomas
05120 Mexico City
Mexico
Tel: +52 55 4748 0600
Fax: +52 55 4748 0690
luis.garcia@creel.mx
mauricio.serralde@creel.mx
jorge.kargl@creel.mx
www.creel.mx