

The following translation to English of the official document is only for informative purposes, the original version is available in Spanish at: <http://www.ift.org.mx/sites/default/files/guia%20para%20la%20presentacion%20de%20denuncias%20de%20practicas%20monopolisticas%20y%20concentraciones%20ilicitas.pdf>

AGREEMENT whereby the Board of the Federal Telecommunications Institute issues the Guide for filing complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors with the Investigative Authority of the Federal Telecommunications Institute

In the margin, a stamp that reads: Federal Telecommunications Institute.

AGREEMENT WHEREBY THE BOARD OF THE FEDERAL TELECOMMUNICATIONS INSTITUTE ISSUES THE GUIDE FOR FILING COMPLAINTS REGARDING MONOPOLISTIC PRACTICES AND UNLAWFUL CONCENTRATIONS IN THE TELECOMMUNICATIONS AND BROADCASTING SECTORS WITH THE INVESTIGATIVE AUTHORITY OF THE FEDERAL TELECOMMUNICATIONS INSTITUTE

BACKGROUND

- I. Through Agreement P/IFT/090518/338, dated May 9th, 2018, the Board of Commissioners (Board) of the Federal Telecommunications Institute (Institute), in its 17th Ordinary Session, decided to submit to public consultation, for a period of 30 working days, the “*Draft Guide for filing complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors*”; and the Investigative Authority, acting as the proponent area, executed and processed the public consultation, which involved receiving the comments and opinions expressed on the occasion thereof. Said agreement states as follows:

“FIRST. It is hereby decided to submit to public consultation the “DRAFT GUIDE FOR FILING COMPLAINTS REGARDING MONOPOLISTIC PRACTICES AND UNLAWFUL CONCENTRATIONS IN THE TELECOMMUNICATIONS AND BROADCASTING SECTORS (SINGLE Annex), for a period of 30 working days, starting the working day following the publication of its summary in the Official Gazette of the Federation.

[...]

THIRD. The Institute’s Investigative Authority, acting as the proponent area, shall execute and process the public consultation hereunder.”

The said public consultation was conducted for a period of 30 working days, from May 21st to June 29th, 2018, and was published in the Official Gazette of the Federation on May 18th, 2018.

- II. Once the period of 30 working days for the public consultation was over, the Investigative Authority was in charge of receiving and collecting the comments and contributions and, as per Article 138, Section II, of the Federal Economic Competition Law (LFCE), on August 24th, 2018, issued a report with a summary of comments received, as well as considerations thereof, which was published on the date of its issuance on the Institute’s webpage for widespread dissemination.
- III. Through official instrument No. IFT/110/AI/095/2018, dated September 7th, 2018, the Investigative Authority forwarded to this Institute’s General Coordination of Regulatory Improvement the Draft “Guide for Filing Complaints Regarding Monopolistic Practices and unlawful concentrations in the telecommunications and broadcasting Sectors with the Investigative Authority of the Federal Telecommunications Institute” (Guide) and the project’s Null Regulatory Impact Analysis, in order to request its non-binding opinion, in accordance with the Institute’s Guidelines for Public Consultation and Regulatory Impact Analyses.
- IV. Through official instrument No. IFT/211/CGMR/202/2018, dated October 2nd, 2018, the Institute’s General Coordination of Regulatory Improvement forwarded its non-binding opinion concerning the Null Regulatory Impact Analysis.
- V. Through official instrument No. IFT/110/AI/119/2018, dated October 31st, 2018, the Institute’s Investigative Authority requested from the Federal Economic Competition Commission the opinion referred to in Article 138, Section I, of the LFCE, concerning the Guide.
- VI. Through official instrument No. ST-CFCE-2018-285, dated November 6th, 2018, the Federal Economic Competition Commission answered the official instrument referred to in the previous paragraph, informing that it had no comments whatsoever concerning the Guide.

By virtue thereof and

CONSIDERING

FIRST.- The Institute Jurisdiction. In accordance with Articles 28, paragraphs fifteen and sixteen, of the Constitution; 7, paragraphs one and third, of the Federal Telecommunications and Broadcasting Law, and 5, paragraph one, of the LFCE, the Institute is an autonomous body, with legal personality and its own patrimony, the purpose of which is the efficient development of broadcasting and telecommunications.

Furthermore, the Institute is the authority on economic competition in the broadcasting and telecommunications sectors, so it shall exclusively exercise the powers established by Article 28 of the Constitution and the laws applicable to the Federal Economic Competition Commission.

Thus, as per Article 12, Section XXII, paragraph three, letter b), of the LFCE, concerning article 187 of Regulatory Provisions for the Federal Economic Competition Law for telecommunications and broadcasting sectors, the Institute has the power to issue, prior public consultation, directives, guides, guidelines and technical criteria regarding investigations on monopolistic practices and unlawful concentrations, among others.

Based on Article 138 of the LFCE, the Board of the Institute has the powers for the issuance hereof, with the end in view of releasing the "*Guide for filing complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors with the Investigative Authority of the Federal Telecommunications Institute*".

SECOND.- Source of Issuing this Guide. Article 12, Section XXII, paragraph three, letter b) of the LFCE states that the Institute shall issue, guidelines for investigations on monopolistic practices and unlawful concentrations, with revisions thereto taking place at least every 5 years, in accordance with paragraph two of Article 138 of the LFCE.

On the other hand, the Investigative Authority is the Institute's body in charge of conducting investigations referred to in the above paragraph; it is therefore convenient to issue this Guide in order to advise the general public about the filing of complaints about monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors, particularly as regards the information and documents needed to comply with requirements of Article 68 of the LFCE.

Thus, the Guide includes information about:

- a) Anticompetitive behaviors that may be investigated by the Institute's Investigative Authority;
- b) What is meant by objective cause;
- c) Procedures to start and investigation;
- d) The requirements to be fulfilled by the written complaint;
- e) The resolutions that may be issued by the Institute's Investigative Authority, once the written complaint had been filed;
- f) The anticompetitive behaviors report, and
- g) The classification of information attached to the written complaint.

On account of the above and pursuant to Articles 28, paragraphs fifteen and sixteen, of the Political Constitution of the United Mexican States; 7 paragraphs one and three, and 15, Section XVIII, of the Federal Telecommunications and Broadcasting Law; 5, paragraph one, 12, Section XXII, paragraph three, letter b), and 138, Section III, of the Federal Economic Competition Law, as well as 1, paragraphs one and three; 4, Section I, and 6, Section XXXVIII, of the Organizational Statute of the Federal Telecommunications Institute, the Board of the Institute issues the following:

AGREEMENT

FIRST. The "*Guide for filing complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors with the Investigative Authority of the Federal Telecommunications Institute*" are issued and attached hereto.

SECOND. Let the "*Guide for filing complaints regarding monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors with the Investigative Authority of the Federal Telecommunications Institute*" be fully published in the Official Gazette of the Federation and on the webpage of the Federal Telecommunications Institute.

The President Commissioner, **Gabriel Oswaldo Contreras Saldívar**.- Signature.- The Commissioner, **María Elena Estavillo Flores**.- Signature.- The Commissioner, **Mario Germán Fromow Rangel**.- Signature.- The Commissioner, **Adolfo Cuevas Teja**.- Signature.- The Commissioner, **Javier Juárez Mojica**.- The Commissioner, **Arturo Robles Rovalo**.- Signature.- The Commissioner, **Sóstenes Díaz González**.- Signature.

The Agreement hereunder was approved by the Board of the Federal Telecommunications Institute during its XXXIV Ordinary Session, held on November 14th, 2018, with the unanimous vote of Commissioners Gabriel

Oswaldo Contreras Saldívar, María Elena Estavillo Flores, Mario Germán Fromow Rangel, Adolfo Cuevas Teja, Javier Juárez Mojica, Arturo Robles Rovalo y Sóstenes Díaz González; pursuant to paragraph twenty, Sections I and III; and twenty-one, of Article 28 of the Political Constitution of the United Mexican States; articles 7, 16 and 45 of the Federal Telecommunications and Broadcasting Law; 5 and 8 of the Federal Economic Competition Law, as well as articles 1, 7, 8 and 12 of the Organizational Statute of the Federal Telecommunications Institute, through Agreement P/IFT/141118/779.

Commissioner Javier Juárez Mojica attended, participated and issued his reasoned vote during the Session, by means of an electronic remote call, in accordance with Article 45, paragraph four, of the Federal Telecommunications and Broadcasting Law, and 8, paragraph three, of the Organizational Statute of the Federal Telecommunications Institute.

GUIDE FOR FILING COMPLAINTS REGARDING MONOPOLISTIC PRACTICES AND UNLAWFUL CONCENTRATIONS IN THE TELECOMMUNICATIONS AND BROADCASTING SECTORS WITH THE INVESTIGATIVE AUTHORITY OF THE FEDERAL TELECOMMUNICATIONS INSTITUTE.

INTRODUCTION

Pursuant to Article 28 of the Political Constitution of the United Mexican States, the Federal Telecommunications Institute (Institute) is an autonomous body, with legal personality and its own assets, the purpose of which is the effective development of broadcasting and telecommunications. To this end, the Institute is in charge of the regulation, promotion and oversight of the use, development, and operation of the radio spectrum, networks and the provision of broadcasting and telecommunication services, as well as the access to active and passive infrastructure and other essential facilities.

The Institute is also the economic competition authority in the telecommunications and broadcasting sectors and in this regards, its purpose is to guarantee free competition and market access, as well as to prevent, investigate, fight monopolistic practices, unlawful concentrations and other limitations to the efficient operation of markets.

In order to better fulfill its duties as the economic competition authority, the Institute has, among others, investigation powers provided for in the Political Constitution of the United Mexican States and the Federal Economic Competition Law.

The Investigative Authority is the Institute's body in charge of substantiating, among others, investigations on monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors and, in exercising its powers, it has technical and managerial autonomy to decide over its operation and resolutions.

Investigations on monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors may start ex officio, upon request from the Federal Executive Power or upon request of an individual, through the issuance of the corresponding initiation decision by the Investigative Authority.

PURPOSE

This Guide has an informative character and is aimed at informing the general public about the filing of complaints about monopolistic practices and unlawful concentrations in the telecommunications and broadcasting sectors with the Institute's Investigative Authority, particularly as regards the information and documents needed to comply with the requirements of Article 68 of the Federal Economic Competition Law.

To this end, the Guide describes some of the anticompetitive behaviors that may be investigated by the Institute's Investigative Authority; what is meant by "objective cause"; ways to start an investigation; requirements to be fulfilled by the written complaint; the resolutions that may be issued by the Institute's Investigative Authority upon receiving and analyzing the written complaint; the possibility to produce reports about any anticompetitive behavior, as well as the different categories into which the information provided to the Investigative Authority may be classified.

This is an orientation guide. It is therefore not intended to interpret or replace the applicable legal framework.

CONTACT

For any questions, comments or any other issues concerning this Guide, economic agents, interested parties and the general public may contact the following telephone number: (55) 50 15 40 00, extension 4229, and e-mail address: consultasguia.denunciasai@ift.org.mx

GLOSSARY

For the purposes hereof, following are the meanings of:

Terms	Meaning
Investigative Authority	The Investigative Authority of the Federal Telecommunications Institute
Written complaint	A free-style written document whereby any person informs the Investigative Authority about the possible commission of monopolistic practices or unlawful concentrations and shall include, at least, the requirements established in Article 68 of the LFCE.
Regulatory Provisions	Regulatory Provisions of the Federal Economic Competition Law for the telecommunications and broadcasting sectors.
Institute	Federal Telecommunications Institute
Investigation	Proceedings conducted by the Institute's Investigative Authority in order to verify the existence of objective elements pointing out to the possible liability of one or various economic agents regarding the commission of monopolistic practices or unlawful concentrations, which is carried out in accordance with provisions of Book Three, Title I, Single Chapter, Sections II and III of the LFCE.
LFCE	Federal Economic Competition Law

1. ANTICOMPETITIVE BEHAVIORS

Following is a brief description of some of the anticompetitive behaviors that may be investigated by the Investigative Authority.

1.1 Absolute monopolistic practices¹

Also known as economic cartels or collusive agreements, such as contracts, agreements, arrangements or combination among competing economic agents, having the following purpose or effects:

- a) Price fixing/manipulation: fixing, rising, agreeing or manipulating the sales or purchase price of goods or services supplied or demanded in markets;
- b) Supply constraint: establishing an obligation not to produce, process, distribute, market or acquire but only a restricted or limited amount of goods, or the provision or transaction of a restricted or limited number, volume or frequency of services;
- c) Market segmentation: dividing, distributing, allocating or imposing portions or segments of a current or potential market of goods and services, by customers, suppliers, times or spaces determined or that may be determined;
- d) Concerted positions: establishing, agreeing or coordinating bids or abstentions at biddings, contests, auctions or buyouts, and
- e) Information exchange: exchanging information with any of the purposes or the effects referred to in the four previous paragraphs.

1.2 Relative monopolistic practices²

They include any action, contract, agreement, procedure or combination thereof that confirms the following assumptions:

- a) Market segmentation: Amongst Economic Agents not competing amongst each other, the fixing, imposing or establishing of exclusive marketing or distribution of goods or services by virtue of undertakings, geographic locations or specific periods of time, including the division, distribution or allocation of clients or suppliers, as well as imposing the obligation not to manufacture or distribute goods or provide services for a determined or determinable period of time ;
- b) Fixing resale prices: Imposing price or all other conditions a distributor or supplier must observe in supplying, marketing or distributing goods or services;
- c) Tied sales: Conditioning a sale or transaction to the purchase, acquisition, sale or provision of another good or service generally different or distinguishable or on reciprocity bases;

¹ Provided for in Article 53 of the LFCE.

² Provided for in articles 54 and 56 of LFCE.

- d) Exclusivity: Conditioning a sale, purchase or transaction to not using, acquiring, selling, marketing or providing goods or services that have been produced, processed, distributed or marketed by a third party;
- e) Refusal to deal: Unilateral refusing to sell, market or provide to certain individuals goods or services that are available and normally offered to third parties;
- f) Boycott: Agreement between several Economic Agents or invitation thereto to pressure against a certain Economic Agent or to refuse to sell, market or acquire goods or services from such Economic Agent, in order to dissuade it from a particular conduct, subject it to retaliation or compel it to act in a specific direction;
- g) Predatory price-cutting: Selling below medium variable cost or below medium total cost, but above its medium variable cost, if there are elements to assume the Economic Agent shall be able to recover losses by future price increases, in terms of the Regulatory Provisions;³
- h) Loyalty discounts or conditioned sales: Granting discounts, incentives or benefits from producers or suppliers to buyers under the condition not to use, acquire, sell, market or provide goods or services produced, processed, distributed or marketed by a third party, or the acquisition or transaction subject to the condition to not sell, market or provide goods or services subject matter of sale or transaction to a third party;
- i) Cross-subsidy: Using profits the Economic Agent attained from the sale, marketing or provision of a good or service to finance losses by reason of sale, marketing or provision of a different good or service;
- j) Price discrimination: Setting different prices or selling conditions for different buyers or sellers under equivalent conditions;
- k) Cost increases for competitors: The acts of one or several Economic Agents with the purpose or effect, whether directly or indirectly, of increasing costs or hinder productive processes or reducing the demand favoring one or a number of different Economic Agents;
- l) Blocking access to an essential input: The denial, restriction to access or access under discriminatory terms and conditions to an essential facility by an Economic Agent or Agents, and
- m) Margin squeeze: The margin squeeze, consisting in reducing the existing margin between the price of accessing an essential facility provided by one or several Economic Agents and price of good or service offered to the final consumer by such same Economic Agents using the same essential facility for its production.

In order to be considered as relative monopolistic practices, these behaviors shall be performed by one or more economic agents with individual or joint substantial power in the same relevant market where the practice is carried out,⁴ that is, that the said economic agents, either individually or as a group, may fix prices or restrict the supply of a good or service in the relevant market, without having any competing economic agents that may, either currently or potentially, thwart the said power.⁵

It is also necessary that these behaviors have or may have as purpose or effect in the relevant market or in any related market⁶ to unduly displace other Economic Agents, prevent substantial access or establish exclusive advantage in favor of one or a number of Economic Agents.

1.3. Unlawful concentrations⁷

Anticompetitive behaviors consisting in the merger, acquisition of control or any act by means of which companies, associations, shares, equity interests, trusts or assets in general are joined together, and is carried out among competitors, suppliers, clients or any other economic Agents. having as purpose or effect to hinder,

³ Additionally and pursuant to Article 4 of Regulatory Provisions, the following shall be considered regarding the said behavior: (i) the distribution of average total cost and average variable cost among subproducts or co-products, to which end the technical characteristics of manufacturing, distribution or commercialization processes shall be taken into account, as well as all technical and economic elements that fix their cost; (ii) in case of an investigation initiated upon request, the complainant shall provide the Institute with the elements that serve as a basis for the calculation of goods or services considered to have been affected by the reported practice, and (iii) it shall be presumed that one or more economic agents may recover losses if, besides having substantial power in the relevant market where the practice is taking place, they have sufficient financial capability or exceeding production capacity or reputation to affect the competition and free concurrence in the markets where they concur.

⁴ Relevant market determination is conducted pursuant to articles 58 of the LFCE and 5 of Regulatory Provisions.

⁵ The elements to be analyzed by the Institute in order to determine whether one or various economic agents have substantial market power are provided for in articles 59 of the LFCE and 7 and 8 of Regulatory Provisions.

⁶ Pursuant to Article 6 of the Regulatory Provisions, related markets are those that involve goods, services or geographical areas other than those that are part of the relevant market, but that affect or are influenced by the conditions of competition and free concurrence prevailing in it. For the determination of related markets, pursuant to the precept referred to, goods or services that are inputs in the production, distribution or marketing chain may be considered; those who are complementary goods or services and, in general, those economic activities that affect or influence the conditions of competition and free concurrence of the relevant market, or vice versa.

⁷ Provided for in articles 61 and 62 of the LFCE.

diminish, harm or impede free market access or economic competition with respect to equal, similar or substantially related goods or services.

Concentrations approved by the Institute may be investigated whenever such resolution was obtained based on false information, or when the resolution has been subject to subsequent conditions and the same were not performed within the term established to such effect.

Concentrations not requiring to have been previously notified to the Institute may be investigated within the year following their occurrence.⁸

2. INVESTIGATION

An **objective cause** is required to sustain the start of an investigation.⁹

The Investigative Authority requires information or data to legitimize the exercise of its powers. There shall therefore be a correspondence between the facts that motivated the start of an investigation and any of the assumptions considered as anticompetitive behaviors by the LFCE.

During the investigation, the Investigative Authority may request the gathering of files related by matter or, else, the opening of new investigations about facts differing or separate from those initially under investigation, depending on which is more convenient for the prompt and expeditious resolution of the investigations.¹⁰

The powers of the Investigative Authority to initiate investigations about the probable existence of monopolistic practices or unlawful concentrations that may lead to liabilities and the application of sanctions expire after 10 years, as from the date the behavior forbidden by the LFCE was discontinued or the unlawful concentration took place.¹¹

2.1. Objective cause

Objective cause refers to any indicia of the existence of monopolistic practices or unlawful concentrations.¹² An indicia may be understood as a true circumstance out of which a conclusion may be obtained by logical induction, about the existence or inexistence of a fact to be demonstrated.¹³

The objective cause justifies the start of an investigation, since it reveals the possible correspondence among facts narrated as part of the complaint or known by the authority and assumptions provided for by the LFCE as anticompetitive behaviors and the eventual constitution thereof.

Once an investigation has been initiated upon the probable existence of any anticompetitive behavior in the telecommunications and broadcasting sectors, the Investigative Authority, through the different legal resources available, will seek to gather convincing elements to determine whether or not there is an anticompetitive behavior and, if such is the case, sustain the possible liability of one or more economic agents accordingly.

2.2. Indicia of Anticompetitive Behaviors

The definition of indicia of some anticompetitive behaviors includes but is not limited to the following:

2.2.1 Regarding absolute monopolistic practices:¹⁴

- a) The invitation or recommendation addressed to one or a number of competitors to coordinate prices, the supply, demand or manufacturing conditions, marketing or distribution of goods or services within a market or to Exchange information with the same purpose or effect;
- b) Whenever the purchase or sale price offered in the national territory by two or more economic agents competing against each other and susceptible of being exchanged internationally is significantly higher or lower than the international reference price, or its evolution tendency over a certain period is significantly different from the evolution of international prices over the same period, excepting when the difference results from the application of tax related provisions, transportation or distribution expenses;
- c) Instructions, recommendations or commercial standards adopted by chambers of commerce, associations, professional colleges or similar bodies, to coordinate prices, the supply or demand of goods or services or other conditions of manufacture, marketing or distribution of goods or services in the market, or to exchange information with the same purpose or effect;

⁸ Pursuant to Article 65 of the LFCE.

⁹ Pursuant to Article 71, paragraph one, of the LFCE.

¹⁰ Pursuant to Article 72 of the LFCE.

¹¹ Pursuant to Article 137 of the LFCE.

¹² Pursuant to Article 71, paragraph two, of the LFCE.

¹³ The above conforms to the Judicial Power of the Federation thesis entitled "INDITIA. CONCEPT.", which may be located under the following reference: Epoch: Eighth epoch. Registration number: 211525. Instance: Collegiate Courts. Type of thesis: Single. Reference: Judicial Weekly of the Federation, Vol. XIV, July 1994. Matter(s): Criminal. Page: 621.

¹⁴ Pursuant to Article 3 of Regulatory Provisions.

- d) Whenever two or more competitors fix the same minimum and maximum prices for a good or service, or adhere to the purchase and selling prices of a good or service issued by an association or chamber of commerce or any competitor, or
- e) Whenever two or more competitors abstain from participating or fix or coordinate their offers or participations in certain geographic areas.

2.2.2 Regarding unlawful concentrations,¹⁵ if the concentration or attempted concentration:

- a) Confers or may confer substantial market power, in the terms provided in the LFCE, to the surviving entity, the acquirer or the economic agent resulting from the concentration, or increases or may increase such substantial market power, as a result of which the free market access and economic competition might be hindered, diminished, harmed or impeded;
- b) Having or that may have as purpose or effect the establishment of barriers to entry, preventing third parties from accessing the relevant market, related markets or to essential facilities, or displacing other Economic Agents, or
- c) Having as purpose or effect to substantially facilitate, to those participating in said concentration, to incur in conducts prohibited by this Law, particularly, monopolistic practices.

3. PROCEDURES TO START AN INVESTIGATION

The LFCE has established the following procedures to start an investigation about possible monopolistic practices or unlawful concentrations:¹⁶

- *Ex officio*;
- Upon request of the Federal Executive Power, acting on its own or through the Ministry of Economy or the Federal Consumer Protection Agency, or
- Upon request of an interested party (complaint).

3.1. Ex officio

The Investigative Authority is entitled to start *ex officio* investigations about absolute monopolistic practices, relative monopolistic practices, or unlawful concentrations whenever it gets information about acts that may constitute *indicia* of the presence thereof, are punishable and have or may have, as its purpose or effect, producing any of the circumstances described in articles 53, 54, Section III, and 62 of the LFCE.

In *ex officio* investigations, the Investigative Authority may obtain the objective cause from different sources of information, such as:

- a) Public information;
- b) Economic analyses, market research or surveys;
- c) Information obtained through cooperation with other authorities;
- d) Information provided by other administrative units in the Institute, and
- e) Information obtained during other investigations supported by the Investigative Authority, among others.

Additionally, the objective cause may be obtained from information or documents provided by economic agents requested to be included in the Immunity and Reduction of Sanctions Program (¹⁷ after incurring in an absolute monopolistic practice.¹⁸

3.2. Upon request of the Federal Executive Power

The Federal Executive Power, acting on its own or through the Ministry of Economy or the Federal Consumer Protection Agency, may request the Investigative Authority to start an investigation regarding the possible existence of monopolistic practices or unlawful concentrations in the telecommunications and broadcasting sectors, which shall be conferred a preferential status.¹⁹

3.3. Upon request of an interested party

Any person may file a complaint with the Investigative Authority concerning an infringement of the LFCE as regards absolute monopolistic practices, relative monopolistic practices or unlawful concentrations,²⁰ by means of a free-style written document meeting the requirements established by Article 68 of the LFCE.

¹⁵ Pursuant to Article 64 of the LFCE.

¹⁶ Pursuant to Article 66 of the LFCE.

¹⁷ Provided for in Article 103 of the LFCE.

¹⁸ The "GUIDE TO THE IMMUNITY AND PENALTY REDUCTION PROGRAM FOR THE TELECOMMUNICATIONS AND BROADCAST SECTORS" was issued through an agreement of the Institute's Board, published in the Official Journal of the Federation on January 9th, 2017, and available at the following link: http://www.dof.gob.mx/nota_detalle.php?codigo=5468788&fecha=09/01/2017.

¹⁹ Pursuant to Article 66 of the LFCE.

²⁰ Pursuant to Article 67 of the LFCE.

The written document may be submitted at the Institute's Filing Office, which is located in Insurgentes Sur 1143, Planta Baja, Colonia Nochebuena, Delegación Benito Juárez, C.P. 03720, in Mexico City, during working hours and days, according to the calendar that the Institute publishes every year in the Official Gazette of the Federation. In like manner, complaints may be filed through electronic media established to these effects by the Institute's Investigative Authority.

The written complaint must be in Spanish and signed.²¹ In case a person does not know how or cannot sign, they may stamp their fingerprint in the presence of two witnesses, who will have to sign the corresponding written document.²²

The LFCE states that the failure to comply with any of the aforementioned requirements the complaint shall be deemed as not filed.²³

4. REQUIREMENTS TO BE FULFILLED BY THE WRITTEN COMPLAINT

The LFCE establishes that the written complaint concerning monopolistic practices and unlawful concentrations shall comply with the requirements described and explained below:²⁴

I. Name, registered name or company name of the complainant.²⁵

According to LFCE, the complainant's full name shall be stated, in the case of natural persons, or the registered name or company name, if it is a legal person.

In accordance with the above, it is convenient to consider the following:

- For individual persons: include the complainant's full name, without abbreviations, as it appears in their official identity document;
- Should the claimant be a individual person acting on their own, it is convenient to attach a photocopy of their official identity document to the written complaint.

As an official identity document, the complainant may present any of the following: valid Passport issued by the Ministry of Foreign Affairs; valid voting card issued by the National Electoral Institute; professional license issued by the Ministry of Education; military service card, issued by the Ministry of National Defense, or any other official credential with photograph and signature, issued by federal, state or Mexico City's government offices.

- For legal person: include the full registered name or company name, without abbreviations, as it appears in the Articles of Incorporation or in those who amend the registered name or company name.

II. Name of the legal representative, if such is the case, and an official instrument accrediting his/her personality; address for hearing and receiving notifications and authorized persons, as well as telephones, e-mail addresses and other information as may facilitate contact.²⁶

a) Name of the complainant's legal representative.

The LFCE establishes that the complaint shall contain the legal representative's full name, in case the complainant acts through the former.

b) Document accrediting the personality of the complainant's legal representative.

The LFCE establishes that the complainant's legal representative shall accredit his/her personality by means of an original or certified copy of the notarial evidence or the document or instrument certifying the representation powers to be used to act on behalf of the individual person or legal person represented by him/her.²⁷

In this regards, it is convenient to take the following into account:

- Representation powers may be stated in instruments issued by public notaries or brokers;
- Public instruments where representation powers are stated shall be provided in full, with no corrections, deletions or modifications and comply with security standards, including public notaries or brokers' kinograms, signatures and stamps;
- If the complainant's legal representative already has a record at the Institute's Public Concessions Registry, he/she may indicate the folio number of the registration certificate and any other information

²¹ Pursuant to Article 112, paragraph one, of the LFCE.

Article 113 of the LFCE establishes that the complainant may attach documents in a language other than Spanish to the complaint, to which end they shall enclose the translation, by an expert, of the issues considered to be relevant, without prejudice that the Institute may ask the complainant to have the documents fully translated by an expert, when deemed pertinent, and that the Institute will not take into account the contents of documents in a language different from Spanish.

²² Such formalities are provided for in articles 112 of the LFCE, and 33 and 34 of Regulatory Provisions.

²³ The above conforms to articles 69, Section III, and 112, paragraph two, of the LFCE.

²⁴ Such requirements are provided for in Article 68 of the LFCE.

²⁵ Requirement provided for in Article 68, Section I, of the LFCE.

²⁶ Requirement provided for in Article 68, Section II, of the LFCE..

²⁷ Pursuant to Article 111, paragraph one, of the LFCE.

that might be helpful in finding his/her record, in order that the Investigative Authority can verify the representation;

- Representation powers shall be valid and not have been revoked prior to the date of submittal of the written complaint, and
- Should the complainant revoke the representation powers, they should immediately notify the Investigative Authority and if such is the case, they shall designate a new legal representative, the latter having to accredit their personality as established by the LFCE.

c) Address for hearing and receiving notifications.

The LFCE establishes that, in the first promotion, an address in Mexico City should be indicated for hearing and receiving notifications that may be ordered by the Institute.²⁸

As regards the aforementioned requirement, the following recommendations should be considered:

- Indicate the full address, with no abbreviations;
- Indicate the name of the street, avenue, alley or boulevard, the outer and inner number, if such is the case; the neighborhood, municipality, state and post code;
- In case of change of address, it is recommended that the Investigative Authority should be informed immediately so that the new address is kept on the records and notifications are forwarded thereto, and
- Should there be a change of address and the Investigating Agency is not informed, all notifications will be forwarded to the address indicated in the file and will come into effect.²⁹

Important: Actions will be notified by list, even those of a personal character, if the address is not indicated in the first promotion or it is not located in Mexico City, without prejudice of its being indicated later.³⁰

d) Authorized persons, as well as the terms under which such authorization is conferred.

According to the LFCE, the complainant may authorize all persons they deem convenient for the following purposes:

- Receiving personal notifications, conducting promotions, offering means of proof and, in general, performing necessary actions during the investigation, or ³¹
- Solely for hearing and receiving notifications and documents and getting acquainted with certifications included in the file when deemed appropriate.³²

If the authorization terms are not specified, it shall be understood that is only intended for hearing and receiving notifications and documents.³³

e) Other documents as may facilitate prompt localization of the complainant, their legal representative or authorized persons.

The LFCE establishes that telephone numbers, e-mail addresses and any other information as may help locate the claimant, their legal representative or authorized persons should be indicated.

In this regards, the following should be considered:

- Provide telephone numbers with area codes if they are located in other states of Mexico, and
- Provide information about places where corresponding persons may be located directly.

III. Name, registered name or company name and, if it is known, the address of the person denounced.³⁴

Pursuant to the LFCE, the complaint shall indicate the name, registered name or company name of the economic agents denounced for the probable commission of an anticompetitive behavior and their address, if it is known.

In this regards, the following should be considered:

- If the denounced person's correct or complete company name is not known upon submittal of the complaint, the latter may indicate the trade name, band, webpage or any other information used by the denounced entity to make itself known by third parties or the general public, and
- Should there be indicia of the participation of other individual persons or legal persons in the probable commission of anticompetitive behaviors and the latter cannot be identified upon submittal of the complaint, the complainant may manifest such situation and provide the corresponding information once it is obtained.

²⁸ Pursuant to Article 117, paragraph one, of the LFCE.

²⁹ Pursuant to Article 169 of Regulatory Provisions.

³⁰ Pursuant to Article 168, Section III, of Regulatory Provisions.

³¹ Article 111, paragraph two, of the LFCE.

³² Article 111, paragraph three, of the LFCE.

³³ Article 111, paragraph four, of the LFCE.

³⁴ Requirement provided for in Article 68, Section III, of the LFCE.

IV. A succinct description of the facts giving rise to the complaint.³⁵

The LFCE establishes that the written complaint shall include a succinct description of the facts giving rise to the complaint.

In connection with this requirement, it is convenient to consider the following:

- Clearly indicate the events the complainant knows about which may involve the probable commission of anticompetitive behaviors;
- Identifying the circumstances of mode, time and place of the facts;
- Avoid using undefined abbreviations or acronyms undefined, and
- Using a glossary in case technical terms are used.

The clearer the description of the reported facts, the Investigative Authority will have more elements to establish the relevance of the written complaint.

V. In case of relative monopolistic practices or unlawful concentrations, the complaint shall include a description of the main goods and services involved, establishing their use in the market and, in case it is known, the list of goods or services that are alike, similar or substantially related to the denounced person and the main economic agents processing, producing, distributing or marketing them in the national territory.³⁶

Under the LFCE, in the case of relative monopolistic practices or unlawful concentrations, the written complaint must include a description of the main goods or services involved, specifying their use in the market and, if it is known, the list of goods or services that are alike, similar or substantially related to the denounced persons, as well as the main economic agents processing, producing, distributing or marketing them in the national territory.

In this regards, it is important to include the following information, if it is known, in the written complaint:

- A description of the main economic agents participating in the market that are involved in processing, manufacturing, distributing or commercializing the aforementioned goods or services in the national territory, as well as associations or chambers of commerce that group market competitors together;
- An estimate of the complainant's market share and, if possible, that of the denounced person or entity and the other competitors in the market, separately at the municipal, local or regional level, specifying variables or methodology used to prepare such estimate, as well as the information or documents upon which estimates are based;
- A description of price structure and policies, manufacturing costs, sales volumes and usual negotiating conditions;
- A description of the characteristics and behavior of the market where the reported behavior is taking place;
- A description of the goods or services that are alike, similar or substantially related to the goods or services producing, distributing or marketing by the denounced person or entity;
- Should the complainant report actions related to the relative monopolistic practice consisting in predatory price-cutting, the former should provide the elements on which cost estimates for goods or services affected by the reported practice are based;³⁷
- An explanation about affectations caused by the reported anticompetitive behavior to the complainant's economic activity, indicating, if such is the case, if their access to the market has been prevented, they are being pushed aside from the same or they are affected by exclusive advantages granted to other companies;
- Name, registered name or company name of other economic agents that, according to the complainant, may be affected by the reported anticompetitive behavior ;
- If such is the case, a description of the damages the complainant considers have been caused to him/her as a result of the reported behavior, and
- If it is known, indicate the date when the reported anticompetitive behavior took place and ceased or, else, indicate whether the said behavior continues.

VI. List of documents and means of conviction attached to the complaint that are precisely related to the reported facts.³⁸

The LFCE state that the written complaint shall attach a list of documents and means of conviction in possession of the complainant that are precisely related to the reported facts.

³⁵ Requirement provided for in Article 68, Section IV, of the LFCE.

³⁶ Requirement provided for in Article 68, Section V, of the LFCE.

³⁷ Pursuant to articles 56, Section VII, of the LFCE y 4, Section II, of Regulatory Provisions.

³⁸ Requirement provided for in Article 68, Section VI, of the LFCE.

As mentioned in number “**2.1. Objective cause**” hereof, an objective cause is required to sustain the start of an investigation; therefore, elements provided in the written complaint are essential, because, together with the reported facts, they shall constitute the objective cause.

For illustration purposes, following is a list of elements that may be included in the complaint in order to sustain the facts, which will depend on the anticompetitive behavior that is being reported:

- Printed e-mails, preferably with the corresponding certifications, as per articles 210-A and 217 of the Federal Civil Procedure Code;
- Minutes or records of corporate assemblies;
- Minutes or records of meetings;
- Any other documents where a record is kept of communications among the persons involved in the reported facts;³⁹
- Contracts, agreements or arrangements among the persons involved in the reported facts;
- Invoices issued or received among the persons involved in the reported facts;
- Surveys or statistic information about a market or its operation;
- Marketing studies;
- Studies revealing audience levels;
- Market research;
- Studies on users subscription levels;
- Studies about the structure of a market and its evolution over a certain period;
- A list of names, address and contact information of persons involved in the reported facts;
- Journalistic news;
- Notices or press releases issued by private financial entities in Mexico or any other jurisdiction;
- Photographs, audios and/or videos;⁴⁰
- Sentences, resolutions or arbitral awards issued by competent authorities in Mexico or any other jurisdiction;
- Advertising about the commercial offer of goods or services, including discounts, bargains or sales, among others;
- Financial reports;
- Audited financial statements, and
- Records containing notarized facts, prepared by a notary public or broker, among others.

Additionally, it is convenient to take the following into account:

- Present a list of documents and means of conviction attached to the complaint, identifying them by annex and describing each of them, and
- The documents and means of conviction may be submitted by means of a physical, electronic, optic or any other technology media.

It is important to stress that the sole presentation of documents does not guarantee the relevance of the complaint, since the latter shall contain indicia of the existence of the reported anticompetitive behavior.

VII. Any other elements the complainant may deem pertinent and, in case they are not in possession thereof, indicate the place or file where they can be found, so that necessary proceedings may be continued during the investigation.⁴¹

The LFCE states that the claimant may indicate the place or file of location of other conviction elements in case of not having them as may indicate the possible commission of an anticompetitive behavior, so that the Investigative Authority can act accordingly during the investigation.

5. AGREEMENTS TO BE ISSUED BY THE INSTITUTE’S INVESTIGATIVE AUTHORITY UPON SUBMITTAL OF THE WRITTEN COMPLAINT

With the first action conducted by the Investigative Authority regarding the written complaint, a number shall be assigned to the file for identification purposes.

Once the Investigative Authority receives a complaint regarding monopolistic practices or unlawful concentrations in the telecommunications or broadcasting sectors, the former evaluates its procedure, that is, it analyzes if the reported facts and the elements provided constitute an objective cause that justifies the start of an investigation.

³⁹ These elements shall be provided by at least one of the persons involved in the proceedings or otherwise justify the possession thereof.

⁴⁰ These elements shall be provided by at least one of the persons involved in the proceedings or otherwise justify the possession thereof.

⁴¹ Requirement provided for in Article 68, Section VII, of the LFCE.

The Investigative Authority will avail of a period of 15 working days, starting on the working day following the date of receipt of the written complaint, during which it shall render an agreement:⁴²

- Ordering the start of the investigation;
- Dismissing the complaint, or
- Advising the complainant on a single occasion.

5.1 Ordering the start of the investigation

If the complaint meets the requirements of the LFCE and Regulatory Provisions and there is an objective cause, an agreement shall be issued ordering the start of the investigation. The issuance of this agreement does not prejudice about the liability of an economic agent whatsoever.⁴³

5.2 Dismissing the complaint⁴⁴, either totally or partially

The Authority will issue the agreement dismissing the complaint either totally or partially in view of its notorious impropriety when any of the following assumptions is actualized:

I. The reported facts do not constitute an infringement to the LFCE.

This impropriety assumption is actualized in case the facts described by the complainant in their writ have no relation whatsoever to anticompetitive behaviors established by the LFCE.

II. It is notorious that the economic agent(s) involved have no substantial power in the relevant market, in case of the complaints concerning relative monopolistic practices or unlawful concentrations.

One of the necessary elements for the configuration of relative monopolistic practices is that the economic agent(s) involved in the behavior have substantial power in the relevant market.⁴⁵

In this connection, the Investigative Authority shall analyze the reported facts and elements provided by the complainant, as well as the available information and documents to determine whether it is notorious that the denounced economic agent(s) do not have substantial power in the market.

III. The denounced economic agent and the facts and conditions in the relevant market indicated have been the matter of a previous resolution in accordance with articles 83, 90 and 92 of the LFCE, except for the case of false information or non-compliance of conditions foreseen in the resolution itself.

This impropriety assumption is actualized if the complaint is related to facts upon which there is already a pronouncement by the Institute's Board, concerning the existence of an anticompetitive practice, or a concentration previously notified and authorized.

The above, excepting when the concentration was authorized on the basis of false information or, else, when the corresponding resolution was subject to the fulfillment of subsequent conditions and were not fulfilled in the period established for this purpose.⁴⁶

IV. There is a procedure pending with the Institute concerning the same facts and conditions in the relevant market, following serving notice to the probable responsible Economic Agent.

These grounds for impropriety are actualized if the complaint refers to the same facts currently being analyzed as part of another procedure under trial-like procedure and concerning the same conditions in the relevant market.

V. The reported facts are related to a concentration notified in accordance with Article 86 of the LFCE which has not been resolved by the Institute.

The dismissal of a complaint is applicable if the facts described and the elements provided by the complainant refer to a concentration notified to the Institute and no having been resolved by the Board.

In spite of the above, economic agents may assist the Institute by submitting the information and documents they may deem relevant so that the latter may be considered in issuing its resolution.

In this case, the complainant will not have access to documents related to the notification procedure for a concentration, nor shall be able to contest the procedure; however, the former shall be notified about the agreement whereby the information contained in the concentration file has been considered.

5.3 Advising the complainant on a single occasion

The complainant will be advised on a single occasion⁴⁷ if the complainant does not fulfill the requirements of the LFCE or the Regulatory Provisions.

In this case, the complainant will have a period not to exceed 15 working days to clarify or complete their written complaint. The said period may be extended for an equal term, only for duly justifiable cases.

⁴² Pursuant to Article 69, paragraph one, of the LFCE.

⁴³ Pursuant to articles 69, Section I, of the LFCE and 58, paragraph two, of Regulatory Provisions.

⁴⁴ Pursuant to Article 69, Section II, of the LFCE.

⁴⁵ Pursuant to Article 54, Section II, of the LFCE.

⁴⁶ Pursuant to Article 65, paragraph one, of the LFCE.

⁴⁷ Pursuant to Article 69, Section III, of the LFCE.

Within 15 working days following the date the prevention is complied with, the Institute shall issue the corresponding agreement.

In case the complainant does not comply with the prevention, either because a failure to present the submission within the period granted to that effect or when, having submitted the written complaint they fail to fulfill the requirements established by the LFCE, the complaint will be considered as not having been lodge, without prejudice that the complainant may submit it again.

In case the Investigative Authority does not issue and notify the agreement within the aforementioned period, the investigation will be considered as started and, therefore, the Authority shall issue the agreement starting the investigation upon the complainant's request.

The Single Annex hereof contains a diagram summing up the above.

6. ANTICOMPETITIVE BEHAVIORS REPORT

The persons having knowledge or information related to the possible existence of an anticompetitive behavior may report it anonymously at the Investigative Authority's microsite on the Institute's webpage, which may be accessed at the following link: <http://www.ift.org.mx/industria/autoridad-investigadora>.

In order to process the corresponding report, an electronic form shall be completed with the following information:

- a) If they wish, e-mail and telephone number;
- b) Company or trade name (if it is known) of the economic agent that is allegedly committing an anticompetitive behavior;
- c) A narration of the facts that presumably actualize an anticompetitive behavior;
- d) A description of the market where the reported behavior is taking place;
- e) A description of the affectation caused by the anticompetitive behavior to the complainant's anticompetitive behavior, indicating, if such is the case, if their access to the market has been hindered, they are being displaced or they are being affected by the exclusive advantages granted to other companies, and
- f) If such is the case, the complainant may submit information or documents they deem relevant to the Investigative Authority for its information.

The reported information may provide the Investigative Authority with indications to start an investigation *ex officio* due to the probable existence of an anticompetitive behavior.

In case the person submitting the report provides documents containing confidential data or information, they may request confidentiality, in accordance with number "**7. CLASSIFICATION OF THE INFORMATION**" herein.

The preparation of the report does not necessarily imply the processing of a procedure under the LFCE; therefore, the Investigative Authority will not be obliged to provide for the submittal of the said report.

The interested party may, at any time, file a complaint regarding monopolistic practices or unlawful concentrations in the telecommunications and broadcasting sectors, pursuant to requirements established by Article 68 of the LFCE, as described in number "**4. REQUIREMENTS TO BE FULFILLED BY THE WRITTEN COMPLAINT**" herein.

7. CLASSIFICATION OF THE INFORMATION

The information and documents submitted or attached to complaints may be considered as public, reserved or confidential, pursuant to Articles 3, Sections IX, X y XI, 124, paragraph one, and 125 of the LFCE.

Confidential information	Information that, if disclosed may cause damage or detriment to the competitive position of who provided it, contains personal data whose disclosure requires consent, may represent a risk to their security or when disclosure is prohibited by law. ⁴⁸
Public information	That which has been made known to the public by any means of public dissemination, is in records or in sources with public access. ⁴⁹
Reserved information	That which is only accessible to Economic Agents with legal right in the procedure. ⁵⁰

⁴⁸ Article 3, Section IX, of the LFCE.

⁴⁹ Article 3, Section X, of the LFCE.

⁵⁰ Article 3, Section XI, of the LFCE.

During the investigation, access to the file will not be allowed and during the subsequent stages of the procedure, only economic agents with legal right thereon, may have Access thereto, except for information classified as confidential.⁵¹

The LFCE establishes that the complainant is entitled to have information provided classified as confidential⁵² if it meets the following requirements:

- a) The complainant requests it explicitly, indicating which part of the information shall be classified as confidential;
- b) Accredit that the information to be subject to classification is confidential, that is, they shall demonstrate that any of the following assumptions is actualized:⁵³
 - i) If disseminated, it may harm or damage their competitive position;
 - ii) It contains personal information the dissemination of which requires their consent;
 - iii) It may jeopardize their security, or
 - iv) A legal provision prohibits its dissemination, and
- c) The complainant submits a summary of the information considered as confidential, to the Institute's satisfaction, in order to be included in the corresponding file. To these effects, the complainant may submit a description of the information they are requesting to be classified as confidential, identifying the essential and relevant elements of its content, omitting or replacing information considered as confidential because they actualize any of the assumptions described in the above paragraph.

Should the complainant accredit the confidential nature of the part of the information they wish to classify and explain why they were unable to submit the summary referred to in letter c) herein, the Investigative Authority may prepare the corresponding summary.

If, upon filing the complaint, the complainant fails to request the classification of the information as confidential, the Investigative Authority will advise them to indicate if the information provided is confidential and to accredit that situation.

If the complainant fails to comply with the prevention or if, upon complying therewith, they fail to indicate what part of the information provided in the complaint is confidential or fails to accredit it, the Investigative Authority will classify it ex officio if it is considered as such.

⁵¹ Article 124, paragraph two, of the LFCE.

⁵² Pursuant to articles 3, Section IX, 76 and 125 of the LFCE.

⁵³ Under Article 3, Section IX, of the LFCE.

SINGLE ANNEX

