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COMPETITION COMMITTEE**

LATIN AMERICAN COMPETITION FORUM

-- Session I: Using Leniency to Fight Hard Core Cartels --

Contribution from Mexico

9-10 September 2009, Santiago, Chile

The attached document from Mexico is circulated to the Latin American Competition Forum FOR DISCUSSION under session I of its forthcoming meeting to be held in Chile on 9-10 September 2009.

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**LATIN AMERICAN COMPETITION FORUM
- 9-10 September 2009, Santiago, Chile -**

Session I: Using Leniency to Fight Hard Core Cartels

**The Mexican Experience
Contribution from Mexico's Federal Competition Commission**

1. This note provides further information to the background paper “Leniency as the Most Effective Tool in Combating Cartels” written by Mr. Kloub for the first session of the Latin American Competition Forum to be held next September, 2009, on the Mexican Leniency Program.
2. Mexico's Leniency Program was formally introduced as part of the amendments made in the year 2006 to the Federal Economic Competition Law (hereinafter LFCE) and its Rulings. Prior to the amendments, in very rare occasions, the Federal Competition Commission (hereinafter CFC or Commission) applied discretionary reduction of administrative fines to those economic agents involved in an on-going investigation in which they took part.
3. The leniency program created under the LFCE is in line with the best international practices, the recommendations of the International Competition Network (ICN), and the Organisation for Economic Cooperation and Development (OECD). The program is regulated by the LFCE and its bylaw is only applicable to the reduction of administrative fines. The program does not include the exemption or waiver of criminal penalties.
4. Main aspects of Mexico's leniency program:
 - It is intended only for cartel applicants (either companies or persons) that incur in an absolute monopolistic practice (commonly referred to as hard core cartels) as stated within Article 9 of the LFCE.

- It allows for the first cartel member that denounces the existence of the hard core cartel to receive full leniency. This may happen if the following requirements, as established within Article 33 bis 3 of the LFCE, are met:
 1. The economic agent submits all relevant and convincing evidence it has which may in turn enable the CFC to prove the existence of a hard core cartel or otherwise, allow it to carry out an investigation with such purposes;
 2. Provides full and continuous cooperation to the CFC throughout the investigation, as well as during the administrative procedure which will be held in the form of a trial;
 3. To comply with all requests made by the CFC either during the investigation or during the administrative procedure held in the form of a trial. For example, the CFC may require the economic agent to take effective action to terminate its part in the illegal activity.
- In this case, the first applicant can receive a reduced fine up to a minimum daily wage (which currently is an amount approximately 4 U.S. Dollars). The subsequent members of the cartel that request their admission to the program of the CFC may benefit from leniency but will not receive total immunity. However, and depending on the evidence these applicants provide, they may still obtain a significant reduction in fines that range from 50% to 20%.
- It is important to notice that the CFC will do its best efforts to maintain the identity of the economic agent as confidential during the whole process, even after the investigation has ended.

5. When the program came into effect in 2006 there was a lack of formal procedures in the decision process and the estimation of reduction of fines which created uncertainty. For this reason, the CFC been continuously working in producing printed materials for the economic agents that explain the scope and procedures related to the leniency program.

6. In addition, the CFC is currently working on the “Leniency Program Guidelines”. This document is aimed at increasing the transparency of the program and to serve as an internal benchmark for the staff of the CFC on how to handle a leniency applicant. In particular, the guidelines will be useful to provide specific information on: (i) possible *leniency plus* provisions (the CFC’s current aims are to convince actual and future applicants to benefit from a reduction in fines in respect to one infringement by co-operating in relation to another.) (ii) handling of companies’ high level management and advisory staff liability; (iii) provisions regarding international cooperation; and (iv) handling of oral requests for leniency.

7. The general procedure for accepting an application is the following:

1. An informal meeting is held by the staff of CFC with the agent or agents that are suspected of incurring in illegal practices included in Article 9 of the LFCE and who wish to explore their options for possible leniency or immunity. The agents may discuss a hypothetical case in order to avoid compromising themselves at this stage.
2. Even if the informal meeting does not take place, all possible applicants have to send an e-mail to the leniency address or leave a message in the special voice mail of the CFC requesting their inclusion in the leniency program and accepting their participation in a cartel. Applicants must forcefully mention the specific market in which it operates, and provide contact details. The system automatically assigns a password to the applicant and within the next two days, the CFC within the Cartel Investigation Area must hold a conversation with the legal representative of the

applicant in order to establish an appointment in order to deliver all the information it holds regarding the cartel.

3. The CFC is obligated to review the information delivered by the applicants. If the information is deemed sufficient to demonstrate the existence of the cartel or at least relevant enough to start an investigation the process will be initiated.. However, the acceptance of the leniency application will remain subject to the condition of having the applicant's full and continuous cooperation until the end of the investigation.

8. Subsequent applicants will only be accepted to the program if the information they hold would provide better or substantial evidence that will help with the sanctioning of the cartel.

9. Recently, the program has proven to be a successful tool for the detection of cartels and for obtaining information and evidence that otherwise would have been very difficult to obtain. The CFC has received seven leniency requests since the program started.

10. The benefits of having a leniency program have been very valuable to the CFC since many of its investigations would have proven to be very difficult to start without the information leniency applicants have provided to dismantle cartels and impose sanctions. Therefore, the CFC is convinced that well structured, transparent, leniency programs are a very effective tool in the fight against cartels.