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COMPETITION COMMITTEE****LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I:
Fining methodologies for competition law infringements****- Contribution from Honduras -****24-25 September 2019, San Pedro Sula, Honduras**

The attached document from Honduras is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 24-25 September 2019 in Honduras.

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Session I: Methodologies for calculating fines for Competition Law violations

- Contribution from Honduras* -

1. Honduran competition regulations are outlined in Decree No. 357-2005, known as the Law for the Protection and Promotion of Competition (hereafter referred to as “the Law” or “the Competition Law”).
2. In principle, the legislation stipulates that both natural and legal persons can be found to be in violation of the Law.
3. Article 36 states that, without prejudice to appropriate criminal and civil proceedings, violations of the provisions of the Competition Law and its rules of procedure shall be subject to administrative penalties imposed by the Commission in accordance with the envisaged procedures and other applicable provisions.
4. Article 36 lists a wide range of violations, including:
 - restrictive practices that are prohibited due to their nature (Article 5) or effect (Article 7)
 - late notification of a merger
 - failure to submit or late submission of the information requested by the Commission
 - repeated violations involving prohibited practices
 - failure to stop engaging in unlawful practices
 - failure to comply with interim measures imposed by the Commission
 - failure to comply with corrective measures ordered by the Commission
 - failure to comply with a summons.
5. The Competition Law specifies a fine for each violation, which depends on the type of violation. The amount can be a fixed penalty, a range based on how many days the violation lasted, a percentage of the gross profit of the offending economic operator, or even a multiple of the economic return that the operator generated as a result of violating the Competition Law. It is worth noting that, to ensure the value of the fines remains the same in real terms, the Commission revises the amounts during the first quarter of each year based on the official Consumer Price Index figures published by the Central Bank of Honduras for the previous year.
6. From the above list of violations and fines, the fines for practices prohibited by the Competition Law are the hardest to calculate. It is important to note that the Law prohibits two types of restrictive practices: those prohibited because of their nature (Article 5) and

* This contribution was drawn up by the Technical Management of the Commission for the Protection and Promotion of Competition (*Comisión para la Defensa y Promoción de la Competencia*, CDPC)

those prohibited because of their effect (Article 7). The practices covered by Article 5 are what are known as horizontal agreements; those covered by Article 7 are prohibited and penalised only when the economic operator or operators have a sizeable market share.

7. The fine for this type of violation is equal to three times the economic return obtained, or if the return cannot be calculated, an amount determined by the Commission that may not exceed 10% of the gross profit that the operator obtained the previous tax year.

8. The Competition Law also stipulates that, in determining the fine, the Commission must consider the criteria set out in Article 39.

9. The criteria referred to in Article 39 of the Law are as follows:

- the severity of the violation
- repeated violations
- the type and scope of the anti-competitive practice
- the damage caused to consumers
- the size of the affected market
- the duration of the violation
- other similar factors.

10. Although the Competition Law sets criteria for determining exactly how much the fine will be, working out the relative weight of each criterion is challenging. The rule does suggest that the criteria should be analysed as a whole and it allows certain other, similar factors to be considered on a case-by-case basis.

11. In practice, the Commission has imposed fines on the various practices, calculating each fine on a case-by-case basis using the information and documentation available for each procedure. Currently, the possibility of fines on a sliding scale is being explored, which would give the penalty procedures greater transparency, predictability and legal certainty.

Table 1. Summary of fines

No.	Type of violation	Fine imposed
1	Vertical and horizontal agreements	Triple the economic return If the economic return cannot be determined, 10% of the gross profit
2	Late notification of a merger; failure to submit or late submission of the information requested by the Commission	Between HNL 1 000 (Honduran lempiras) and exactly HNL 50 000 per day of delay in complying with the decision, up to a maximum of thirty calendar days
3	Failure to attend a hearing following the first summons	Between HNL 10 000 and exactly HNL 15 000
4	Failure to submit information or submission of incomplete or inaccurate information, whether deliberately or through negligence (procedure to demand information)	Up to HNL 50 000

12. Notwithstanding the dissuasive aim of the penalties, it is important to stress that the purpose of the Competition Law is to protect free competition. The legislation therefore

provides for a series of mechanisms to reduce or waive an economic operator's penalty if it voluntarily co-operates in the investigation or accepts the charges for violation of the Competition Law.

13. Specifically, it specifies that at any stage of the procedure prior to the final decision, except where a repeat offender is involved, the economic operator or group of operators may ask the Commission to consider the charges as having been accepted and to impose the corresponding penalty, in which case the penalty is reduced by a third. If the economic operator or group wishes to benefit from this reduction, the alleged offender must co-operate properly with the investigation into the alleged restrictive practice by providing information and evidence that will determine the responsibility of other economic operators.

14. In this regard, the Commission has an administrative leniency programme that applies only to restrictive practices that are prohibited due to their nature (Article 5 of the Law on Business Cartels). Under the programme, if an economic operator co-operates with an investigation or penalty regarding a restrictive and prohibited practice in accordance with the requirements and terms set out in the Competition Law and its rules of procedure, that operator may, upon receipt of a payment order, benefit from either a total exemption or a partial exemption of between 20% and 50% of the fine that would otherwise have been due.

15. Finally, it should be noted that, if the newly adopted Honduran Criminal Code enters into force in November 2019, it will create penalties for crimes against the economy, the market and consumers, and would penalise restrictive agreements and practices. Penalties include prison sentences of four to eight years and fines equal to at least the economic return or the damage caused, rising to a maximum of four times that amount.