

FECC initiates first criminal action against probable cartel

May 11 2017 | Contributed by [SAI Consultores SC](#)

Overview

First criminal action

Future challenges

Overview

Criminal action is considered to be an effective tool to dissuade cartels across the globe. It was introduced into the Mexican competition law framework in 2011,⁽¹⁾ after the Federal Law of Economic Competition and the Federal Criminal Code were amended. Further, in 2014, as a consequence of the new Federal Law of Economic Competition's enactment, the applicable dispositions on criminal liability were modified to increase penalties and adjust some procedural issues.

Absolute monopolistic practices may be punished with a prison sentence of five to 10 years or 1,000 to 3,000 'days of fine'.⁽²⁾ Prosecution is carried out by the attorney general after the Federal Economic Competition Commission (FECC) investigative authority files a claim or complaint, which may be formulated only after the issuance of a probable responsibility dictum.⁽³⁾ A final resolution by the FECC on the responsibility of an economic agent is not required to initiate a criminal action. Criminal liability does not apply to parties that enjoy the benefits of the FECC immunity programme and cooperate with the FECC during an investigation.

Until now, no criminal action has been taken against cartels in Mexico.

First criminal action

On February 2017 the FECC investigative authority published a press release on its website stating that it had, for the first time, requested the attorney general to initiate criminal action against persons involved in absolute monopolistic practices.⁽⁴⁾

The criminal action, which will be pursued by the Attorney General's Office, derives from the results of an investigation previously initiated by the FECC investigative authority regarding the coordination between economic agents that sold medical supplies to public health institutions in Mexico between 2009 and 2015.⁽⁵⁾ The investigative authority claims that the acquisition of these products caused public health institutions to be overcharged by approximately 52% and pay an undue government expense of at least Ps381 million (approximately \$20 million).

Future challenges

Mexico lacks experience on how to apply all of the dispositions regarding criminal action against cartels in practice. In particular, no clear criteria on how the attorney general will prosecute criminal action in parallel with the FECC's trial-like administrative procedure exist.

This first case must answer the following questions:

- How will the attorney general treat economic agents that enjoy the benefits of the FECC's

AUTHORS

[Mariana Carrion](#)



[Lucía Ojeda Cárdenas](#)



immunity programme?

- How will the outcome of the FECC's trial-like administrative procedure impact criminal action and vice versa?
- What investigation will the attorney general carry out in addition to that of the FECC?

This case constitutes an important landmark in Mexico's promotion of competition and will most likely be the first of many. The FECC and the attorney general will work closely and carefully to set a precedent that will safeguard the credibility of criminal penalties.

For further information on this topic please contact [Mariana Carrión Valencia](#) or [Lucia Ojeda Cardenas](#) at SAI Consultores SC by telephone (+52 55 59 85 6618) or email (mcv@sai.com.mx or loc@sai.com.mx). The SAI Consultores website can be accessed at www.sai.com.mx.

Endnotes

(1) The Federal Law of Economic Competition that was in force from 2011 was derogated on June 7 2014 and a new law was issued in 2014.

(2) According to Article 29 of the Federal Criminal Code, a 'day of fine' is the daily net income of the condemned person on the date on which it executed the offence, considering all of its earnings. The lower limit will be equivalent to the existing daily minimum wage of the place where the offence was executed.

(3) That is, after the FECC's investigation has been concluded and there is sufficient evidence to initiate a trial-like procedure against the economic agents that have been identified as likely being responsible for the commission of an absolute monopolistic practice.

(4) The press release is available in Spanish [here](#). See also the press conference held by Carlos Mena Labarthe (in Spanish) on this matter, available [here](#).

(5) It is not publicly known who the case is against or to which market it relates. However, on February 2 2017 the FECC issued a press release on the notification of economic agents for probable absolute monopolistic practices regarding latex products sold to the public health system. It has been rumoured by the press that this is the probable cartel which will be criminally prosecuted.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).