

COMMUNICATION FROM MEXICO

The following is the final text of a paper received from the Permanent Mission of Mexico which was circulated as an advance copy for the Working Group's meeting of 1-2 July 2002.

HARD CORE CARTELS

Introduction

The Federal Competition Commission (CFC) is an administrative organ, deconcentrated from the Ministry of Economics, created in 1993 to enforce the Federal Law on Economic Competition (LFCE). It is endowed with technical and operative autonomy to pursue its functions and to issue its decisions. Its structure supports impartial decision-making and, to the extent possible, independency regarding political pressure.

The CFC protects the competition process by eliminating monopolistic practices based on procedures initiated through the filing of private claims or ex-officio, as a result of an investigation undertaken by the CFC.

The document presents the regulatory framework and the analytical elements the CFC applies to combat so-called absolute monopolistic practices, defined under the LFCE as agreements, arrangements or combinations among competing agents having the object or effect of fixing prices or supply, allocating markets or rigging bids.

General Information

According to the LFCE, anti-competitive conducts are classified into absolute and relative practices¹. Absolute monopolistic practices are collusion acts celebrated between competitors to fix prices or output, divide markets or rig bids. The CFC is empowered to address and sanction cartels, and to do so it only needs to prove the collusive practice actually occurred. No determination of substantial market power or damage is required as, pursuant to the law, these acts are deemed to always harm competition, economic efficiency and the consumer, and are forbidden *per se*. A cartel is aimed at raising prices above the competitive level and reducing production and supply of goods

¹ The LFCE also prohibits the so-called relative monopolistic practices, which include vertical restraints and abusive conducts and are evaluated under a rule of reason approach. In order for these practices to infringe the LFCE, it must be determined that they unduly displace, or intend to displace, competitors from the market, and that the presumed responsible party has substantial power in the relevant market. See LFCE, Arts. 8, 10, 11 and 12.

and services. The LFCE also explicitly forbids as an absolute practice the exchange of information aimed at or with the effect of fixing, increasing, or manipulating prices.

Article 9 of the LFCE establishes that absolute monopolistic practices are contracts, agreements, arrangements, or combinations among competitive economic agents, whose aim or effect is any of the following:

- I. To fix, raise, to agree upon or manipulate the purchase or sale price of the goods or services supplied or demanded in the markets, or to exchange information with the same aim or effect;
- II. To establish the obligation to produce, process, distribute or market only a restricted or limited amount of goods, or to render a specific volume, number, or frequency of restricted or limited services;
- III. To divide, distribute, assign or impose portions or segments of the current or potential market of goods and services, by means of a determinable group of customers, suppliers, time or spaces; or
- IV. To establish, agree upon or coordinate bids or to abstain from bids, tenders, public auctions or bidding.

The acts mentioned in this article will have no legal effects and the economic agents engaged in such acts will be subject to the penalties established under the LFCE, notwithstanding any criminal liability that may ensue.

The Plenum is the CFC's decision-making organ in charge of resolving and imposing administrative sanctions for the infringement of the LFCE and its Regulations, and of agreeing on the filing of claims before the Federal Public Ministry.

Regarding the latter power, the Plenum is responsible for notifying criminal authorities the commission of monopolistic practices that may imply criminal violations.

These practices may be in breach of the Federal Criminal Code in terms of title Fourteen, Chapter I, Article 253 (and further) regarding "Crimes against national consumption and wealth". According to these provisions, besides being absolute monopolistic practices, the following conducts are considered crimes:

- (a) Hoarding, hiding or refusing to sell goods without reason, in order to affect supply or to increase consumer prices.
- (b) Any act or proceeding that is aimed at or actually impedes or hinders free access to producing or trading.
- (c) Limiting or handling output with the purpose of maintaining unfair prices.
- (d) Any agreement or combination, however established, among producers, industries, dealers or transportation business aimed at hindering competition that leads consumers or users to pay excessive prices.
- (e) Stop producing, processing, distributing, supplying or selling goods or rendering services with the aim of obtaining higher prices or affecting consumer supply.

According to Article 5 of the Regulations to the LFCE, instructions or recommendations issued by business chambers or associations to their members with the aim or effect of engaging in the type of conduct foreseen in Article 9 of the Law are circumstantial evidence of the existence of a collusive agreement.

Circumstantial evidence of engaging in the conduct referred to in Article 9, Section I, of the Law include, among other:

- I. That the price offered by two or more competitors for goods or services liable for international trade be significantly higher or lower than their international reference price, except when the difference is attributable to the implementation of fiscal provisions, or to transport or distribution costs.
- II. That two or more competitors establish the same maximum and minimum prices for a good or service, or adhere to selling or purchase prices for goods or services as set by a business association or chamber or any competitor.

It is worth noting that the recommendations issued by business chambers or organisations aimed at reducing learning and information costs, although intended to favour consumers and business by providing them with elements to determine prices, occasionally have the effect of promoting collusion among suppliers. This provision has proved to be useful in a context of poor competition culture, where the business community and its associations and chambers were used to promote collusive acts.

Pursuant to Article 35, paragraph I of the LFCE, once the existence of an absolute monopolistic practice has been detected, the CFC may require to responsible parties to bring such infringements to an end. In addition, the CFC determines the fines to be applied to the transgressors taking into account the seriousness of the collusive act.

In the determination of fines applicable to absolute monopoly practices, the considers the following statutory criteria²:

- (i) statutory maximum fine of up to the equivalent of 375 thousand times the general minimum wage in the Federal District (\$1,621,153.00 at current exchange rate);
- (ii) the seriousness of the violation;
- (iii) the damage caused;
- (iv) the degree of premeditation;
- (v) the agent's market share;
- (vi) the size of the market affected;
- (vii) the length of the practice or concentration; and
- (viii) the recurrence or background of the agent as well as his financial status.

In practice, to estimate the damage caused by transgressors to consumers and clients³ when dealing with price fixing collusions, and depending on the available information, the CFC considers

² Articles 35, paragraph IV, and 36 of the Regulations to LFEC.

the price difference before and after the collusive arrangement and multiplies it by the average sales volumes before and after the arrangement.

The LFCE foresees the application of the highest penalties to enterprises engaged in cartels. Maximum permissible fines are expressed in minimum wages; additionally the law provides fines against natural persons⁴ (\$32,423.00 at the current exchange rate). The LFCE also provides for imprisonment for natural persons but it is the judicial authority who determines such sanctions.

Fostering the existence of legal incentives to strengthen CFC's performance.

There are two issues affecting the adequacy of provisions that prohibit collusive practices: the seriousness and amount of the sanctions against cartels that are available under competition, and the probability that any given cartel is detected and prosecuted.

The LFCE establishes an adequate structure of sanctions, including fines to both companies and natural persons engaged in illicit conducts, as well as criminal penalties for the latter. Fines and criminal penalties applicable to individuals provide incentives for cartel participants to desert secret agreements and submit information to the CFC. The threat of large fines against enterprises provides incentives in the same sense because such cooperation may induce the imposition of less severe fines.

However, the legal framework does not provide for leniency programs and so the CFC frequently lacks elements to detect collusive agreements. It also faces some opposition to information and document requirements needed to compile legal evidence to substantiate proceedings.

Currently, possible amendments to the legislation are being studied to reduce (or even eliminate) sanctions imposed on agents that, under a leniency scheme, promote observance of the LFCE and its regulations. These amendments are intended to provide the procedure with legal certainty and to assure private agents, by specifying the benefits granted to agents that declare infringement on a voluntary basis, recognise their participation or contribute to the proceeding.

Case-specific Information

Examples of hard core cartels investigated and sanctioned by the CFC follow. A distinction is made between cartels celebrated in the domestic market place and those agreed abroad that affected the Mexican marketplace.

I. ABSOLUTE MONOPOLISTIC PRACTICES IN THE MEXICAN MARKETPLACE

A. TORTILLA⁵

In January 2000, the CFC learned that Club Cadena Maíz Tortilla, SA de CV (Camato) suggested its members to set at \$4 (domestic currency) the selling price per kg of corn tortillas in Mexico City and surroundings. The CFC initiated an ex-officio investigation into the commission of absolute monopolistic practices.

Camato is a firm comprised of tortilla producers, millers and tortilla dough manufacturers, that chairs the Masfresca program, aimed at the promotion of tortilla sales under this trademark. The objective of Masfresca is to compete by offering enhanced quality and taste tortillas at an adequate

³ As mentioned before, estimation of damage is not needed to prove the violation of the LFCE. However, the uses this estimation for the determination of the fines.

⁴ Monetary fines to be imposed to natural persons involved in collusive conducts may be of up to 7 500 times the minimum general wage in the Federal District.

⁵ Tortillas are one of the products of the Mexican basic consumption basket.

price. Masfresca represents 17 thousand corn producers and millers supplying 10 percent of the domestic market and 5.8% of the 12 thousand tortilla stores in Mexico City's metropolitan zone.

Tortilla stores linked to Camato are not a single economic agent. Therefore, the indications or suggestions issued regarding tortilla prices for competing tortilla stores are an absolute monopolistic practice in breach of the LFCE.

The CFC decided that Camato and several tortilla stores that observed the price recommendation were guilty of an absolute monopolistic practice. It ordered them to refrain from this practice and imposed a fine. The CFC later confirmed its decision regarding the reconsideration appeals filed by the infringers.

Without a collusive agreement, tortilla stores will be free to set their prices, thereby thousands of tortilla consumers in Mexico City will have options to satisfy their demand.

B. CUSTOMHOUSE BROKERS ASSOCIATION

The CFC initiated an ex-officio investigation into the commission of absolute monopolistic practices, upon learning of the establishment of an agreed rate among the members of Cancun customhouse brokers association (AAAC).

This sector recently underwent an important deregulation process by means of which clear, non-discriminatory rules were established for the granting of customs patents. Customs brokers are thereby free to directly deal their wages with users. AAAC issued an agreement regarding the application of uniform rates, based upon criteria used before deregulation, including sanctions for those failing to observe established charges.

The Plenum of the CFC decided to fine AAAC and ordered it to refrain from the practice, to revoke the rate agreement and to make all its members aware of this decision. It also ordered AAAC to notify this decision to the National Confederation of customhouse brokers associations.

The CFC sanctions and tries to prevent this type of conducts in view of the harm they pose on competition and society, and because they are not justified on efficiency grounds. The compulsory nature of the agreement implies that its adverse effects may not be avoided by import or export businesses, thereby affecting foreign trade.

C. MEXICAN CARGO AGENTS ASSOCIATION

The CFC initiated and ex-officio investigation into the possible commission of absolute monopolistic practices in maritime cargo downloading services. During its enquiry the CFC also become aware of indications of similar conducts being carried out in air cargo within Mexico City airport. A second investigation was thus initiated. The alleged responsible agent was in both cases the Mexican Cargo Association (AMAC).

In the case regarding air cargo unloading, AMAC issued a notice indicating the applicable rate for its services. It later send another notice recommending its members to charge a given amount per downloaded air cargo ton or cubic meter.

It is worth noting that the agreement fixing prices for downloading air cargo was issued previously to the enactment of the LFCE, but the rate agreement remained in force after the law's enactment.

On the other hand, the rate recommendation for maritime cargo downloading was issued in breach of the LFCE.

Price fixing intended to homologate air cargo downloading rates delivered through a notice was not liable to sanction before the entry into force of the LFCE, but following this date the continued observance of the price fixing agreement was deemed in breach of Article 8, section I and Article 9 of the law.

In turn, rate fixing for maritime cargo downloading was also considered to be in violation of the LFCE, based upon the above-mentioned provisions.

The CFC decided to impose fines for the infringements incurred in maritime and air cargo downloading. AMAC was ordered to refrain from carrying out absolute monopolistic practices, to revoke the agreements and notices and to tell its members the risks of incurring again in this practice.

D. AUCTIONS OF TREASURY CERTIFICATES OF THE FEDERATION

The CFC investigated possible anticompetitive practices among participants in the weekly auctions of Treasury Certificates of the Federation, carried out by Banco de Mexico. The investigation showed that in October and November 1993, Grupo Bursatil Mexicano, Casa de Bolsa, S.A. de C.V., Banco Nacional de Mexico, S.A., Operadora de Bolsa Serfin, S.A. de C.V., Casa de Bolsa Grupo Financiero Serfin, Probursa, S.A. de C.V., Casa de Bolsa Grupo Financiero Probursa, and Banco Internacional, S.A., Grupo Financiero Prime Internacional, coordinated their bids in some auctions. The involved parties thus obtained the certificates at a discount rate different from that which would have prevailed in a competitive auction.

This conduct is incompatible with the LFCE, and thus agents involved were fined.

E. LAUNDRIES AND DRY CLEANERS

On 3 August 1993, the CFC began an investigation into the laundry and dry cleaner industry, after finding important similarities in the rates charged by several competing companies. The investigation showed that the National Chamber of Laundry Industries and the National Association of Professional Cleaners, printed, sold and distributed among their members price lists. The determined that these similarities were the direct result of information exchange among competitors in order to set rates, in this case through the above mentioned chambers and associations.

The CFC collected the necessary evidence to prove the illegal practices by these organizations and other companies chosen at random. After analysing the evidence, the CFC found them, as well as Jiffy Cinco, S.A. de C.V., and Industria Pegaso, S.A. de C.V., guilty of violating the Law.

The CFC imposed the corresponding fines and ordered these two organizations to cease the illegal practice and to order their members to remove the list of prices and rates from their establishments.

This case emphasizes that chambers and business associations must avoid facilitating unlawful information exchanges among their members. As all other economic agents, these associations must also adapt their behaviour to the provisions of the LFCE.

II. COLLUSIVE PRACTICES WITH INTERNATIONAL EFFECTS

In recent years the number of detected cartels affecting several markets has increased. This is explained by the growing interrelation between international markets and by the effects of economic globalisation.

The CFC has addressed international anticompetitive operations that affect Mexican markets and has cooperated wherever appropriate with foreign competition agencies regarding such enforcement actions.

In view of its relevance for the international community, a more detailed analysis of absolute monopolistic practices with an international dimension that were sanctioned by the CFC follows.

Between 1996 and 2000, the CFC conducted an ex officio investigation⁶ into the lysine market. Additionally, the CFC initiated ex officio investigations about international cartels in the citric acid and vitamin markets in 1998 and 1999, respectively. In each case, the CFC initiated the investigation based upon circumstantial evidence of possible damage to Mexican markets. Such evidence was found on the respective determinations of the United States Department of Justice (US DoJ). The following table summarises the CFC actions with respect to the three cases referred above.

Case	Charge	LFCE	Initiated	Resolved	CFC decision
Lysine	Price fixing agreement among competitors	Infringement to ⁷ Article 9(I) of the LFCE.	8 July 1996	22 June 1998	A Mexican and a Japanese firm were penalized with fines.
Citric Acid	Price fixing agreement among competitors	Infringement to Article 9(I) of the LFCE.	27 November 1998	31 January 2002	Three multinational firms were penalized with fines.
Vitamin	Price fixing agreement among competitors	Infringement to Article 9(I) of the LFCE.	27 May 1999	Still in process	

A. THE LYSINE CASE

On 25 October 1996, the CFC had notice that top executives of Archer Daniels Midland Co. (ADM) pleaded guilty in a United States proceeding to the charges of conspiracy to fix prices and to allocate sale volumes in the lysine world-wide market from 1994 to 1996. And, that three Asian companies, Ajinomoto Co. Inc. (Ajinomoto), Kyowa Hakko Kogyo Co. Ltd. (Kyowa), and Sewon America Inc (Sewon), were convicted for their participation in these agreements.

The US Court resolution provided circumstantial evidence of possible damage to the Mexican lysine market since ADM and Kyowa had directly and indirectly participated in the Mexican lysine market in the period between June of 1994 to December of 1996. As a consequence, on 8 July 1996 the CFC decided to initiate an ex-officio investigation (number IO-42-96) regarding a price fixing agreement among competitors in the commercialisation of animal feed-grade lysine in Mexico from 1994 to 1996. The agreement investigated constitutes an absolute monopolistic practice that violates paragraph 1 of Article 9 of the LFCE.

⁶ The ex officio investigation is a proceeding pursuant to Article 15 of the LFCE.

⁷ The inherent illegality of absolute monopolistic practices means that the procedure the CFC follows to determine their existence does not require a full competition analysis; it is only required to determine the actual existence of an arrangement between competing economic agents. In economic terms, it is sufficient to determine that the economic agents participate in the same market or markets for them to be considered competitors. Confirming that a market was divided, or that attempts to divide it were made, or that prices were coordinated, is generally enough to conclude that they are competitors, since there would be no point in carrying out such practices if the agents involved did not or could not participate in the same relevant market or markets.

Identification of defendants

ADM BioProductos, SA de CV (hereinafter referred to as "BioProductos") is the ADM import and sale office in Mexico. During the period analysed, ADM held 99.9 % of the stock of BioProductos's parent company, Controladora ADM, SA de CV.

Kyowa held the majority share of Fermentaciones Mexicanas, SA de CV (Fermex). Fermex is the major domestic producer of animal feed-grade lysine, but it did not engage in imports during the period investigated.

The CFC considered that the cartel was affecting the sales of animal feed grade lysine in Mexico. Lysine is an amino-acid used as an animal and human feed additive to meet varied nutritional requirements. It can be obtained from natural sources, such as fish and soy products, as well as in a synthetic form. Synthetic or mono-hydrochloride lysine, is produced by fermenting carbohydrate-rich solutions, which are residual by-products of cereal processing.

In the synthetic lysine market, two different types can be distinguished: the USP (United States Pharmacopea) mono-hydrochloride lysine, which is top quality lysine used as a supplement for human consumption and as an ingredient of pharmaceutical products; and the one with a minimum content of 98.5 % of lysine mono-hydrochloride anhydrous, which is mainly used as a supplement in the animal food-processing industry (hereafter animal feed-grade lysine), mainly for swine and poultry.

In spite of the technical feasibility to use lysine for human consumption instead of the animal feed-grade one as an ingredient in the animal food process industry, they do not belong to the same relevant market. The highest quality of the former also represents a significant price difference compared with the latter, such price differences make substitution economically unfeasible.

According to CFC calculations, the domestic market of animal feed-grade lysine had a turnover of 423.2 million of pesos (equivalent to US \$32,423.00, at the average exchange rate for the period) from June 1996 to December 1998.

According to internal information disclosed by the defendants, in the period 1994-1996:

- BioProductos and Fermex were under management control of ADM and Kyowa, respectively.
- Weighted average prices for animal feed-grade lysine sold in Mexico by both firms showed similar level and increases, such pattern disclosed a correlation index of 0.9967 in the referred period.
- The market share held by BioProductos increased from 24% in 1994, to 36% in 1995, then decreased to 31% in 1996. The average share was 30%. On the other hand, Fermex's average market share was 66% from 1994 to 1996, which is lower than the 73% average market share from 1991-1996.

Sanctions

In the lysine case, the CFC imposed fines to BioProductos, and Kyowa. It considered the following factors to assess the fines:

- (i) Lysine constitutes an important ingredient in the food-processing industry; thus the consequences of anti-competitive behaviour had widespread effects to the detriment of consumers in Mexico.
- (ii) Fixing prices is a grave fault designed to severely damage or even eliminate any form of competition in the market of animal feed-grade lysine for sale in Mexico.
- (iii) BioProductos and Fermex carried out such practices with premeditation.
- (iv) The financial capacity of the companies involved in the cartel was settled as equal to the value of their respective total assets registered in 1996.

The CFC additionally ordered to BioProductos and Fermex to bring the violations to an end, and henceforth to refrain from any agreements or behaviour which may have the same or similar object or effect.

B. THE CITRIC ACID CASE

Between 1996 and 1998, several companies admitted their guilt before the US Department of Justice (DoJ) for taking part in a price fixing and market segmentation conspiracy in the international citric acid market, thus making themselves liable to various sanctions in the United States of America.

On 27 November 1998, the CFC initiated an ex-officio investigation into the commission of price fixing in the Mexican citric acid market.

Identification of defendants

During the period covered by the investigation almost all of the US convicted firms participated, directly or indirectly, in the Mexican citric acid market. Three out of five cartel members investigated under the ex officio proceeding were found to be involved in anticompetitive practices in the Mexican marketplace: Archer Daniels Midland Company (Archer), Haarmann & Reimer Corporation (Haarmann) and F. Hoffmann-La Roche (La Roche).

Citric acid is an organic acid naturally obtained from lemon and *Aspergillus niger* fungus and may also be industrially produced from various sugars. Citric acid is used as flavour additive and preservative in soft drinks and processed foods, as well as in the manufacture of detergents, chemical, textile, pharmaceutical and cosmetic products. The cartel affected the production, marketing, distribution and sale of citric acid.

Price fixing abroad took place from July 1991 to June 1995, but the enquiry into its effects on the Mexican market only included the period starting from June 1993 (date on which the LFCE entered into effect) to June 1995.

Evidence of collusion

- Defendants were under management control of undertakings convicted in the US under parallel charges. In addition, all of them imported citric acid from cartelised providers.
- Domestic producers revealed reduced availability of suppliers and, in consequence a strong commercial dependence on the defendants.

- Several trading firms imported citric acid at the price fixed by the agents investigated, and therefore the international price agreement had effects on the Mexican market.
- The analysis concluded that citric acid prices in Mexico tended to the international fixed price.

During the process, Archer presented various commitments in accordance with Article 41 of the Regulations of the LFCE⁸, accepting its responsibility in the practice investigated and requesting an early conclusion of the proceeding.

Haarmann and la Roche did not succeed in lessening the merits of the monopolistic practice for which they were summoned.

Sanctions

Based upon the above analysis, the Plenum of the Commission determined that Archer, Haarmann and La Roche were responsible for the commission of an absolute monopolistic practice, and therefore imposed a fine on each of them.

La Roche and Haarmann filed appeals for reconsideration against the aforementioned resolution and its clarification. However, on 18 January 18 2002, La Roche presented commitments in terms of Article 41 of the Regulations to the LFCE which the CFC considered suitable and economically feasible for preventing the monopolistic practices sanctioned.

The arguments expressed by Haarmann were invalid, and could not lessen the merits of the considerations on which the CFC based its decision.

The Plenum resolved to declare the appeal for reconsideration filed by Haarmann unfounded, and it therefore confirmed the resolution in all its terms. It also resolved to accept the commitment proposed by La Roche and modified the challenged resolution, reducing the amount of the fine imposed on La Roche.

C. THE VITAMIN CASE

On 20 May 1999 the US DoJ released an informative note related to the prosecution of the Swiss pharmaceutical F. Hoffmann La Roche Ltd (Hoffmann La Roche), and a German firm, BASF Aktiengesellschaft (BASF AG), for their participation in a decade-long worldwide conspiracy to fix prices and allocate sales volumes of vitamins used as human food and animal feed additives and as nutritional supplements, including vitamins A, B2, B5, C, E, Beta Carotene and vitamin premixes. As to Rhone-Poulenc, the French cartel member, the note confirmed it had qualified for protection from criminal prosecution by cooperating with the investigation under the Antitrust Division's Corporate Leniency Program.

Due to the existence of Mexican subsidiaries of the undertakings involved in the above mentioned agreement and circumstantial evidence contained in the DoJ informative note, the CFC undertook an enquiry into the cartel's impact on the Mexican marketplace.

⁸ Article 41 of the Rulings to the LFCE establishes that at any stage of a proceeding pursued before the , and before the latter emits a final decision, the alleged violator shall be entitled to present a written undertaking whereby it undertakes to suspend, suppress, correct or not carry out the alleged relative monopoly practice or prohibited concentration.

For this purpose economic agents shall accredit that:

I. The process of competition and free participation in the market shall be restored, and

II. The measures proposed shall be appropriate and economically viable to leave without effects the monopoly practice or concentration, indicating the periods and terms for their verification.

On 27 May 1999 the CFC initiated an ex officio investigation (number IO-09-99) into the commission of absolute monopolistic practices consisting of: (i) international price fixing with effects in Mexico, and (ii) price fixing among domestic competitors. In addition, affected consumers are filing complaints to provide evidence against the defendants. The CFC has not issued a decision in this case, however, the main findings are provided.

Productos Roche, SA de CV (Roche) and Syntex, SA de CV (Syntex) are Mexican subsidiaries of Roche Holding, Ltd, the parent company of Hoffmann La Roche. BASF Mexicana, SA de CV (BASF Mexicana), is a Mexican subsidiary of BASF, AG. Roche, Syntex and BASF Mexicana import and distribute bulk vitamins to human, animal food, pharmaceutical and cosmetic producers.

Notwithstanding Rhone Poulenc's participation in the US Corporate Leniency Program, in Mexico its subsidiaries were also subject to investigation: Rhone Poulenc Rorer, SA de CV, and Rhone Poulenc Animal Nutrition, SA de CV. Rhone Poulenc undertakings (hereinafter collectively referred as Rhone Poulenc) process bulk vitamins to produce and commercialise vitamin premixes within Mexico, whereas Rhone Poulenc Animal Nutrition, SA de CV also imports them.

Likewise, the CFC requested information and documents from several related firms. Vitamins A, B2, B5, C, E, Beta Carotene are sold in bulk and as premixes to be added to other products. Bulk vitamins are homogeneous products mainly processed as nutritional additives to animal and human food, cosmetic and pharmaceutical products. Vitamin premixes are differentiated products elaborated according to customer's technical requirements, main customers are animal food manufacturers. Thus, differences in packaging, distribution, customer profiles and different pricing structures among bulk vitamins and premixes lead to separate the bulk vitamins market from the vitamin premixes market.

Basic vitamins consumed in Mexico are imported and premixes for animal consumption are produced using imported basic vitamins.

Although the international conspiracy lasted from January 1990 through February 1999, in Mexico the investigation was jurisdictionally limited to the period from 1993, the LFCE enactment year, to 1999.

During the investigation, the CFC has found the following evidence:

- The Mexican market of bulk vitamins is supplied basically through imports, mainly arriving from France, Switzerland, Germany and the US, where, excluding the US, the cartel members' headquarters are located. In addition, Rhone Poulenc Rorer, Roche and BASF Mexicana were under management control of Rhone Poulenc, Hoffmann La Roche and BASF AG, respectively, which are also the main exporters of bulk vitamins in their respective countries.
- According to CFC estimates, over-prices were charged on bulk vitamins imported to Mexico by Roche, BASF Mexicana and Rhone Poulenc Rorer from 1994-1999; i.e. import prices in Mexico were above estimated cartel import prices in the US. Additionally, the commercialisation policy followed by the cartel members impedes arbitrage among their respective subsidiaries; such situation supports the existence of significant over-pricing of most vitamins under the cartel's control.
- During the 1996-1998 period, Roche and BASF Mexicana held an average joint share of approximately 68% of the sales of all vitamins under the cartel's control, which evolved from 59.2% in 1994 to 77.2% in 1998.

- In order to assess the likelihood that Mexico was affected by the international vitamin cartel, the prices of US imported vitamins were compared with those prevailing in Mexico during the periods for which HLR and Basf AG pleaded guilty. Significantly higher or lower prices in Mexico were considered an important element to analyse the international collusion's effect in Mexico.
- Another element taken into account in the evaluation of the vitamin cartel was to study the price behaviour of five out of six vitamins investigated. These were compared to the prices of another group of vitamins not identified under the DoJ's investigation. For this purpose, price indexes were calculated, based upon the implicit prices that resulted from dividing the value of total imports by the total volume.

The investigation concluded that F. Hoffman-La Roche Ltd., Basf Aktiengesellschaft, Rhone Poulenc S.A., Productos Roche, S.A. de C.V., Syntex, S.A. de C.V., Basf Mexicana, S.A. de C.V. and Rhone Poulenc Animal Nutrition, S.A. de C.V., were allegedly responsible of an absolute monopolistic practice, in violation of Articles 8 and 9, I of the LFCE. This practice consisted in taking part in an international agreement to fix the level and subsequent price increases for vitamins A, E, 2 (riboflavine), B5 (Cal Pan), C and beta carotene, which affected the Mexican market by eliminating competition among colluded agents and generating anticompetitive effects through the imposition of higher prices than would have prevailed under competition conditions.

Consequently, the Plenum decided to summon F. Hoffman-La Roche Ltd., Basf Aktiengesellschaft, Rhone Poulenc S.A. (at present Aventis, S.A.), Productos Roche, S.A. de C.V., Syntex, S.A. de C.V., Basf Mexicana, S.A. de C.V. and Rhone Poulenc Animal Nutrition, S.A. de C.V., as alleged responsible parties to enable them to submit their declarations and evidence.

The case is still pending. Following the end of the second stage of the proceedings, the CFC will be able to analyse the evidence presented by the alleged responsible parties and issue its decision.
