



Comisión
Federal de
Competencia
Económica

Leniency: Good Practices and Lessons Learnt

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1) DIFFERENCES IN SANCTIONS IMPOSED BY OTHER DOMESTIC REGULATORS



INVESTIGATIVE AUTHORITY'S POWERS



Receives and reviews complaints regarding antitrust violations.



Conducts cartel investigations.



Receives leniency applications and grants conditional leniency.



Issues the Statement of Objections.



Files criminal complaints before the Public Prosecutor for cartel conducts.



THE LENIENCY PROGRAM IN MEXICO

Any economic agent that has:

Directly participated in a cartel or on behalf a company

Engaged or is engaging in a cartel

Any economic agent or individual that has:

Contributed, fostered, induced or participated in the commission of a cartel

May acknowledge such actions before the Commission provided that:

✓ It is the first

✓ It cooperates fully and continuously

✓ It terminates its participation

100% fine reduction + criminal immunity

Otherwise, it may provide additional evidence



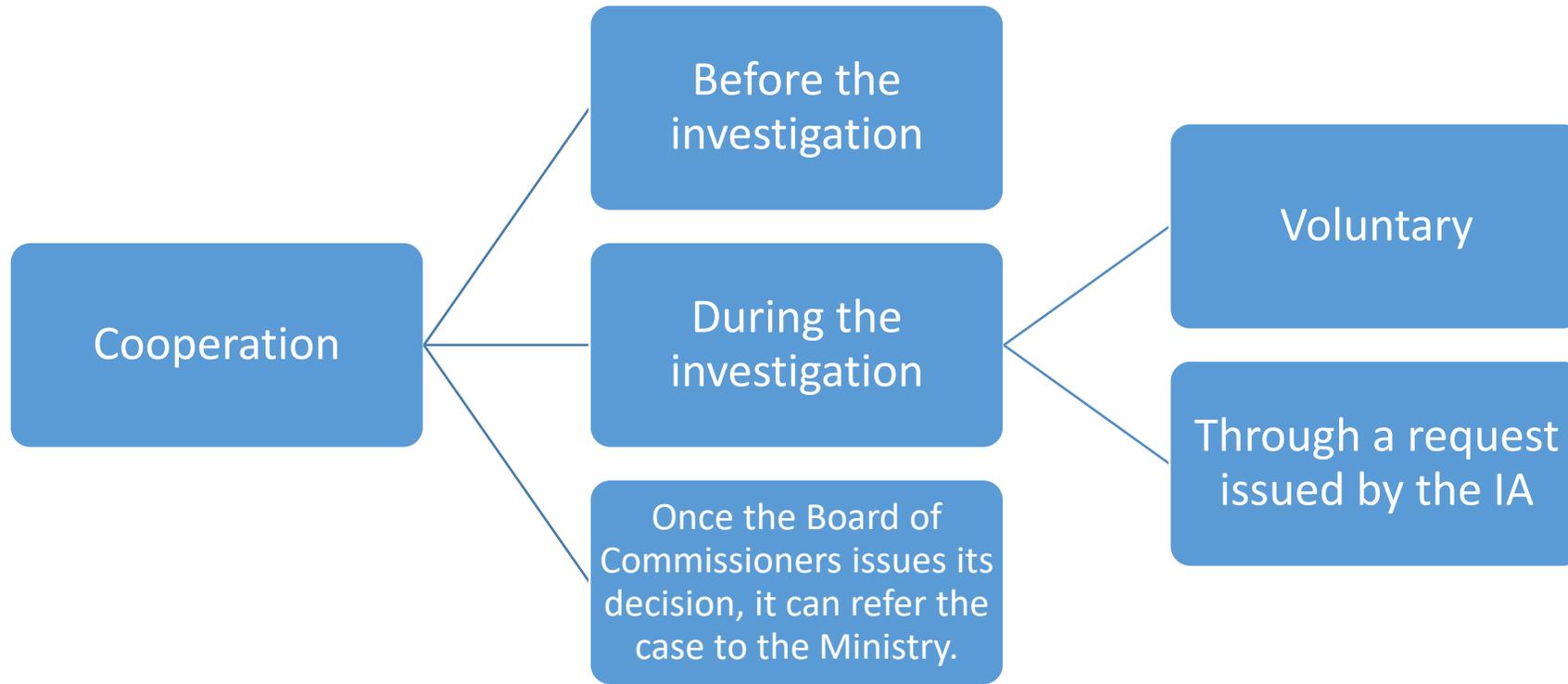
Possible fine reduction of 50%, 30% or 20% off the maximum established + criminal immunity

The Commission will protect the confidentiality of the identity of the Economic Agent.



COOPERATING WITH OTHER REGULATORS

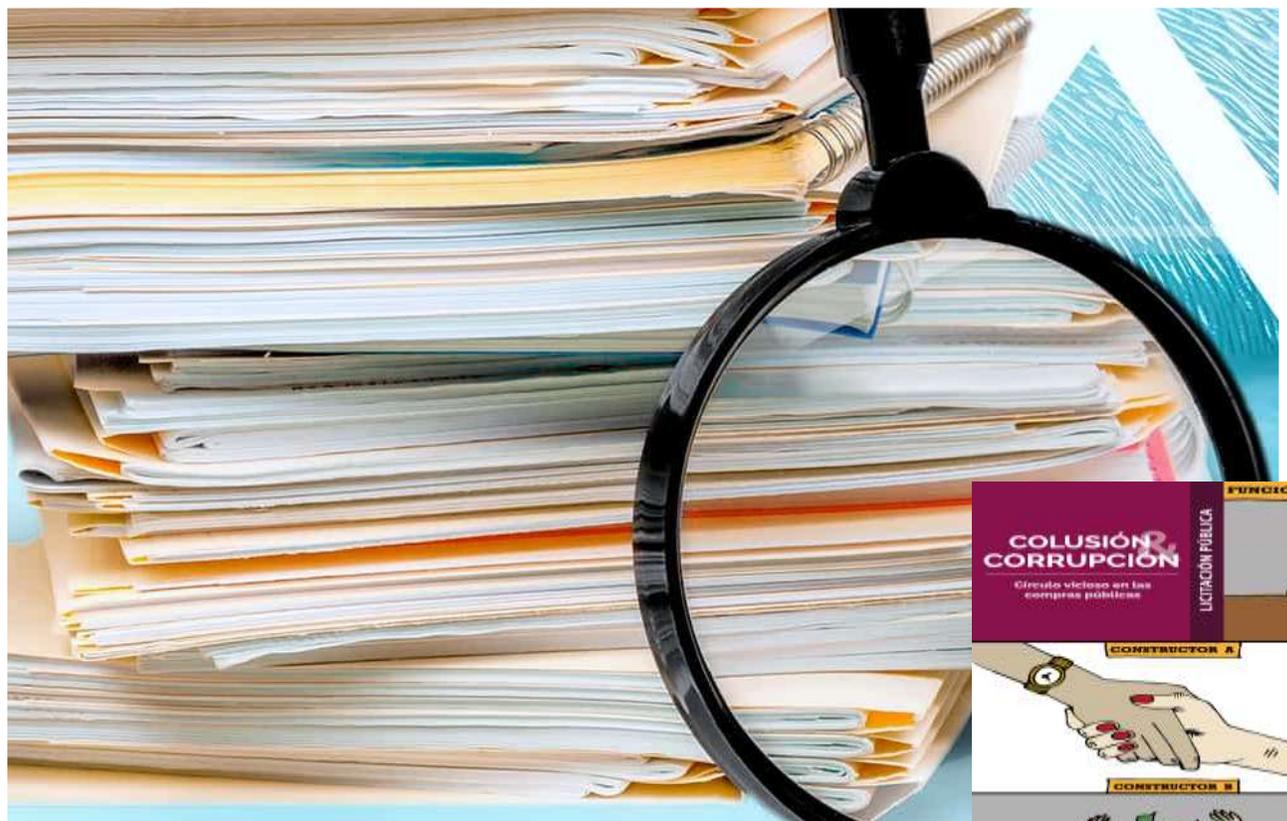
Bid-rigging cases present the perfect opportunity to cooperate with other regulators, particularly with the Ministry of Public Service:



WHY THE MINISTRY OF PUBLIC SERVICE?

Ministry of Public Service

It's the entity in charge of overseeing public procurement procedures, and thus the one that can sanction illegal conducts in them.



COMIC PANEL 1 (Top Left): **COLUSIÓN CORRUPCIÓN** - Ciclo vicioso en las compras públicas. **LICITACIÓN PÚBLICA**. **FUNCIONARIO X**: "Para mejorar la movilidad, vamos a construir un nuevo puente." **Gobierno de Tal Poblado**. **LICITACIÓN tipo PUENTE requisitos**.

COMIC PANEL 2 (Top Right): **COLUSIÓN**. **CONSTRUCTOR A**: "Dejame esta y así te quedas con la próxima, y así la vendemos más cara." **CONSTRUCTOR B**: "Y así no competimos... ¡¡¡WATO MECHER!"

COMIC PANEL 3 (Middle Left): **CONSTRUCTOR A** and **CONSTRUCTOR B** shaking hands. **COLUSIÓN**.

COMIC PANEL 4 (Middle Right): **CONSTRUCTOR A** handing a yellow envelope to **FUNCIONARIO X**. **COLUSIÓN**. **CONSTRUCTOR B** with a dollar sign and arrows.

COMIC PANEL 5 (Bottom Left): **FUNCIONARIO X**: "Para mejorar la movilidad, vamos a REPARAR el puente." **Gobierno de Tal Poblado**. **LICITACIÓN REPARACIÓN PUENTE requisitos**.

COMIC PANEL 6 (Bottom Middle): **CONSTRUCTOR A** celebrating with money. **COMPRAS PÚBLICAS INEFICIENTE**. **EN REPARACIÓN**. **CONSTRUCTOR B** with a bridge under construction.

COMIC PANEL 7 (Bottom Right): **COLUSIÓN CORRUPCIÓN** - Se cierra el círculo vicioso y volvemos a empezar...

Footer: Para conocer sobre compras públicas competitivas contacta a la COFECE. [facebook/cofece](https://www.facebook.com/cofece), [@cofece_mx](https://twitter.com/cofece_mx), www.cofeca.ms. **cofece** logo.



MINISTRY OF PUBLIC SERVICE: LEGAL FRAMEWORK

General Law of Administrative Responsibility

- **TITLE 3. CHAPTER III. Acts carried out by private persons in connection with serious administrative offenses.**

Art. 70. Bid-rigging is considered a serious administrative offense.

Legal Considerations

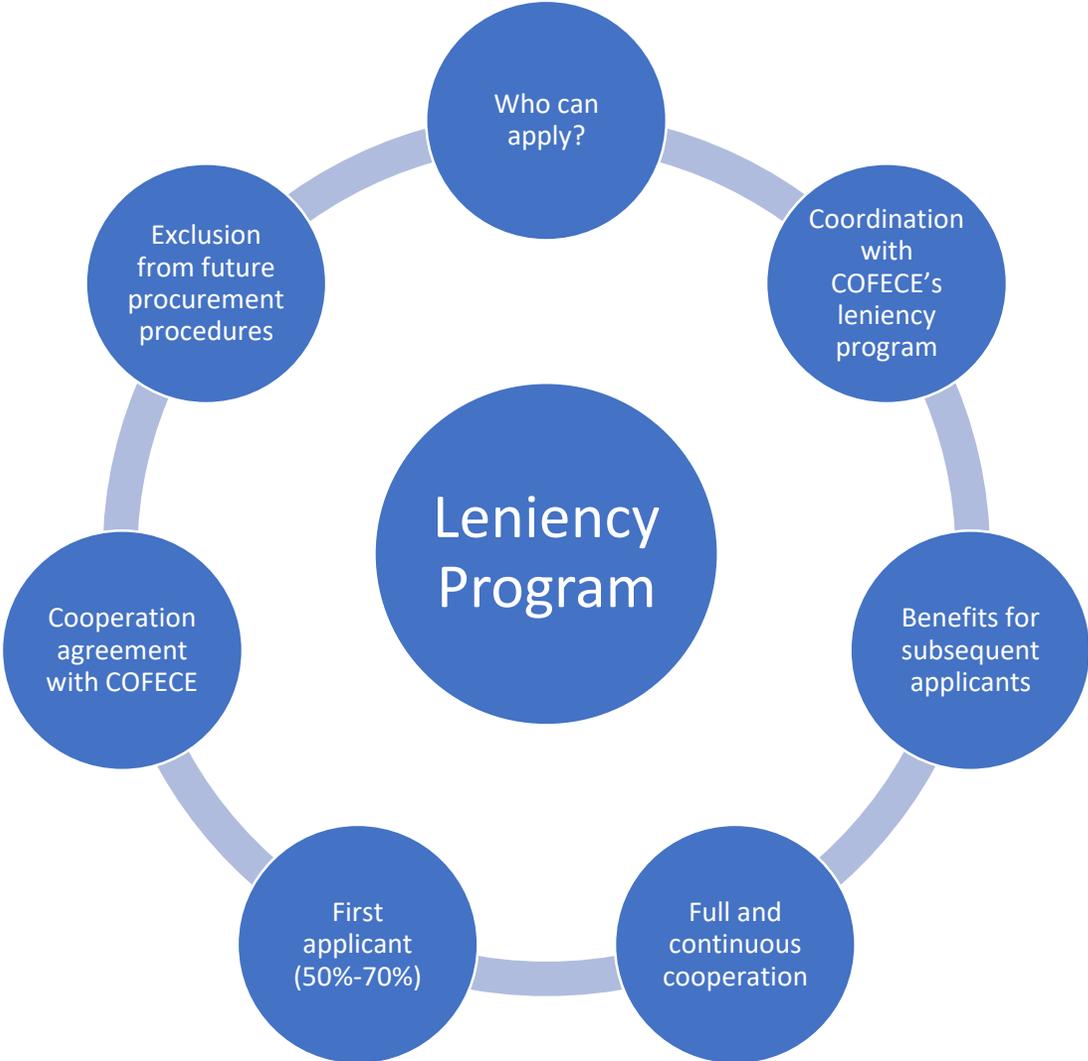
- Art. 70 – Collusion – Agreements between competitors with the purpose or effect of either obtaining an illegal benefit from public procurement processes or damaging public finances.

Sanctions

- Economic sanctions
- Temporal exclusion from participation in public procurement procedures



MINISTRY OF PUBLIC SERVICE: LENIENCY PROGRAM



WINDOWS OF OPPORTUNITY

Improve efficiency, transparency and accountability between agencies.

Improve public procurement processes, train public servants to detect both collusion and corruption..

What can be improved?

Coordinate the leniency programs for both collusion and corruption.

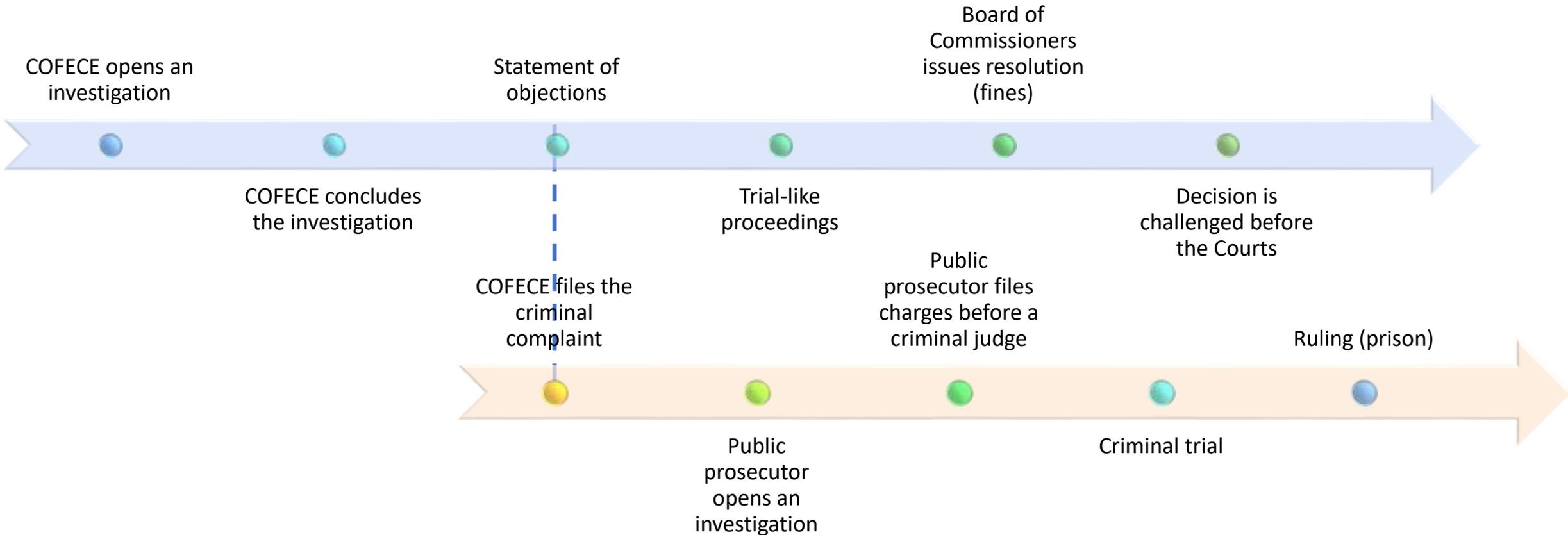
Challenge: ensure confidentiality of the applicants' identities.



2) WHETHER DIFFERENT DEADLINES OF PROCEEDINGS OR CERTAIN PROCEDURAL STEPS CAUSED ANY PROBLEM, HOW THESE HAVE BEEN TACKLED IN CONCRETE CASES



ANTITRUST CRIMINAL PROCEDURES



CHALLENGES CONCERNING LENIENCY APPLICANTS

- Once the complaint has been filed, criminal proceedings will run their course without considering what is happening on the administrative field.
- Full and **definitive leniency** is not granted until the **Board of Commissioners issues its resolution.**
- Leniency applicants do **NOT** have a **legal obligation** to cooperate with the Public Prosecutor.





FIRST CRIMINAL COMPLAINT PRESENTED BY COFECE

- ✓ Health sector;
- ✓ Presented in 2017;
- ✓ Public prosecutor opened an investigation.

3) MEANS FOR EXCHANGE OF CONFIDENTIAL INFORMATION



In the case of
International cartels

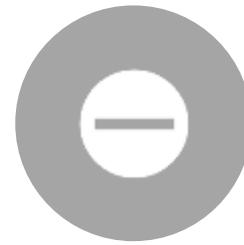
- COFECE suggests to applicants the **issuance of a waiver.**
- **Identify the jurisdictions in which the applicant has requested leniency.**
- **Identify if the conducts were materialized in Mexican territory.**



Means for
exchange of
confidential
information



THE IMPORTANCE OF
TRANSPARENCY AND
CONFIDENTIALITY



THE INFORMATION
OBTAINED AS A RESULT
OF THE MEXICAN
LENIENCY PROGRAM **IS**
CONSIDERED
CONFIDENTIAL, AND
THEREFORE COFECE IS
NOT ALLOWED TO
DISCLOSE THE SOURCE
OF THE INFORMATION.



THE SECRECY IS KEY TO
THE APPLICANTS



4) EXCHANGE OF NON-CONFIDENTIAL INFORMATION



Exchange of non-confidential information

- Cooperation with other Competition Agencies
 - Informal cooperations
 - MOUs
 - The possibility for a competition authority to refer a case to the other, should an anticompetitive practice be observed on the latter's territory;-
 - Cooperation on technical matters, for instance, through capacity building or the exchange of public officials.



Thank you