



COMISIÓN FEDERAL DE COMPETENCIA  
MÉXICO

# Mexico's experience with single-firm dominant conduct

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## The Constitution provides a broad definition of illegal anticompetitive practices...

**Article 28:** Monopolies, monopolistic practices and government monopolies are prohibited. The law will severely punish:

- ✓ “All concentration or hoarding in one or a few hands of basic commodities with the object of raising prices”,
- ✓ “All agreements, processes or combinations undertaken by producers, industrialists, tradesmen or service entrepreneurs, to prevent competition or free market access or competition and force consumers to pay exaggerated prices”
- ✓ “Whatever constitutes an undue exclusive advantage in favor of one or more persons and against the public in general or a certain social class”

# ... and the Federal Law of Economic Competition (LFCE) translates these definitions into specific procedures – one of which addresses single-firm dominant conduct

Procedure	Relevant LFCE provisions
Merger review process	<b>Article 16:</b> The CFC shall challenge and punish those concentrations whose object or effect is to diminish, damage or impede competition and free market access involving similar or substantially related goods and services
Absolute monopolistic practices	<b>Article 9:</b> Contracts, agreements or combinations among competing agents whose object or effect is to: 1) fix prices, 2) restrict output, 3) divide markets, 4) rig bids. These conducts shall have no legal effects
Relative monopolistic practices	<b>Articles 10</b> (in conjunction with 11, 12 and 13), 7 and 24 paragraph V

**Today's subject**

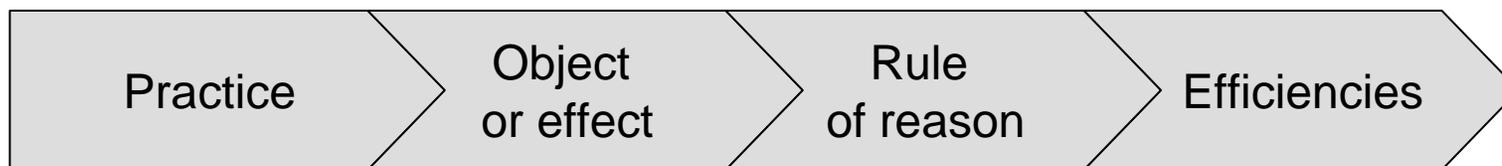
# The Commission evaluates relative monopolistic practices through two broadly defined processes

	Description	Legal basis (LFCE)
<b>Conduct</b>	<p><u>Relative monopolistic practices</u>: acts, agreements or combinations whose object or effect is to unduly exclude, substantially impede access, or establish exclusive advantages in favor of one or more persons. Subject to rule of reason analysis</p>	<ul style="list-style-type: none"><li>• Art. 10 (typification of practices)</li><li>• Arts. 11,12, 13 (rule of reason)</li></ul>
<b>Regulation</b>	<p><u>Declaration on effective competition conditions</u>: CFC empowered to resolve on the existence of effective competition conditions as a prerequisite for economic regulation by sectoral regulators or the Ministry of the Economy</p>	<ul style="list-style-type: none"><li>• Art. 7 (Ministry of the Economy)</li><li>• Art. 24 (sectoral regulators)</li></ul>

# The LFCE lays out a structured analysis process to determine whether a conduct constitutes an illegal practice



## Steps for analysis (LFCE)



***How does it work?***

Typifies observed conduct into one of 11 practices

Determines if conduct:  
 ✓ Unduly excludes  
 ✓ Substantially impedes access  
 ✓ Establishes exclusive advantages

Agent must wield substantial market power in the relevant market

Efficiency defense must show:  
 ✓ Conduct has favorable effect on competition  
 ✓ Anticompetitive effects offset by consumer benefits

***Why is it there?***

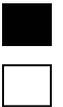
**Typification provides legal certainty**

**Size does not demonstrate harm**

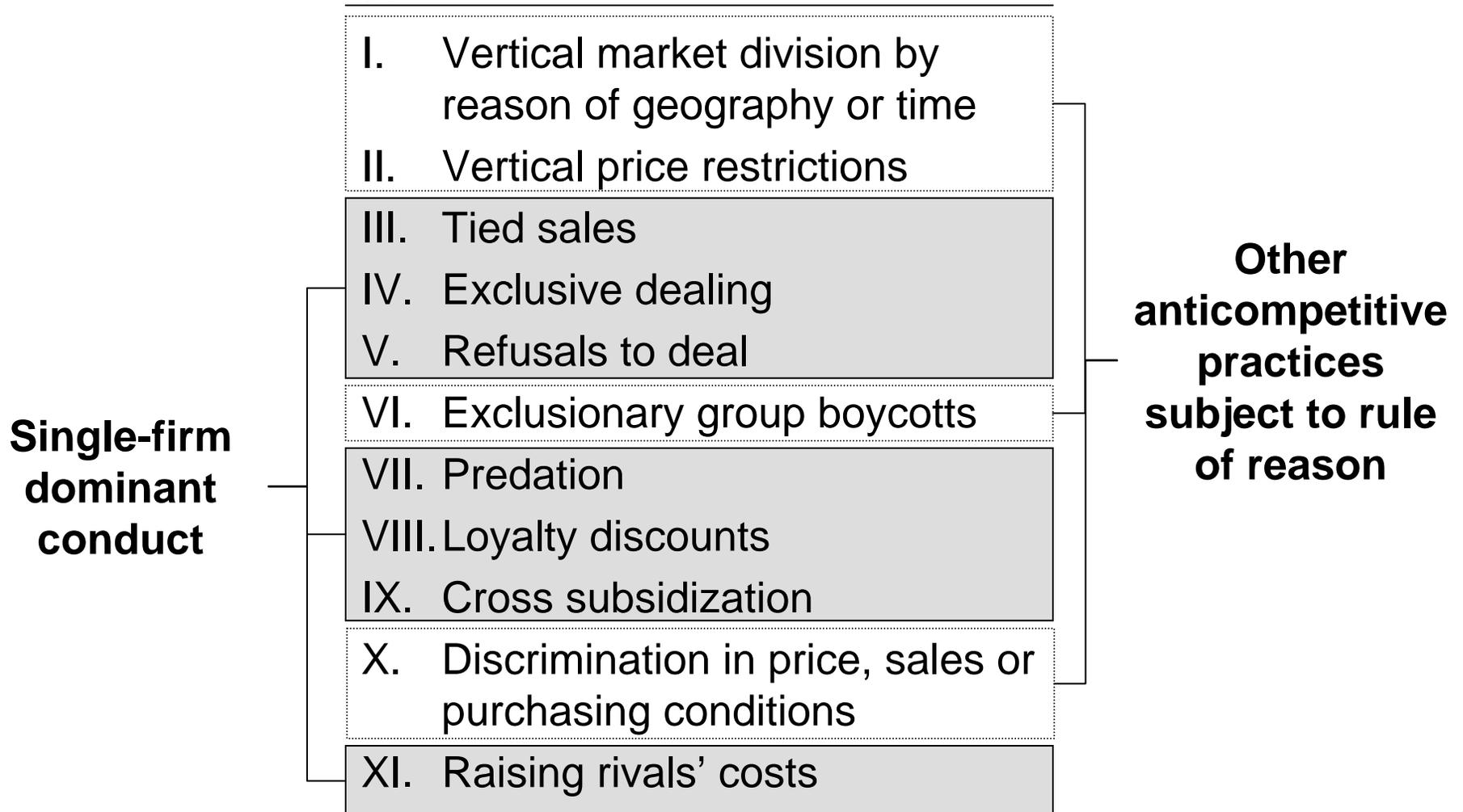
**Competitor injury doesn't demonstrate a violation**

**What's important is the net effect on welfare**

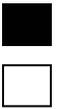
# Relative practices are not limited to single-firm dominant conduct...



## Relative monopolistic practices typified in Art. 10 LFCE



**... and some of them were only recently raised to the level of law**



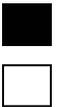
### **Relative monopolistic practices typified in Art. 10 LFCE**

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- I. Vertical market division by reason of geography or time
- II. Vertical price restrictions
- III. Tied sales
- IV. Exclusive dealing
- V. Refusals to deal
- VI. Exclusionary group boycotts
- VII. Predation
- VIII. Loyalty discounts
- IX. Cross subsidization
- X. Discrimination in price, sales or purchasing conditions
- XI. Raising rivals' costs

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- *Previously contained in catch-all provision and specified in LFCE rules (therefore declared unconstitutional)*
  - *Clarified during reforms*

# Efficiency considerations may tilt the balance against illegality of single-firm dominant conduct



## Case example: Wal Mart

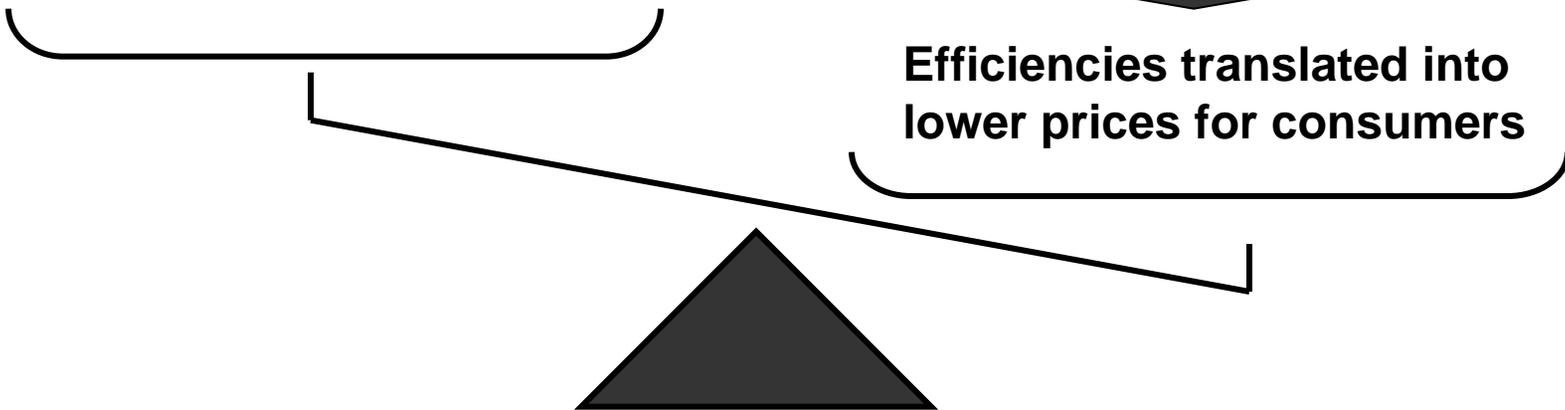
**Claim:** Wal Mart was pressuring its suppliers to charge higher prices to its competitors, under threat of suspending purchases of their products

**Efficiencies:** Wal Mart argued that lower prices from suppliers resulted from cost reductions in its distribution systems:

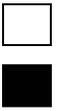
- Better inventory management
- Shorter average payment period



**Efficiencies translated into lower prices for consumers**



# Mexico's competition law doesn't prosecute exploitative prices, but allows for price regulation when warranted by competition analysis



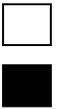
## Article 24 LFCE

- Sectoral legislation foresees price regulation only when effective competition conditions are absent:
  - ✓ Telecommunications
  - ✓ Railroads
  - ✓ LP gas
- CFC charged with judging whether competition conditions exist

## Article 7 LFCE

- The Executive has the constitutional attribution to issue price controls throughout the economy
- Recent reforms to LFCE now require the Executive to obtain a CFC resolution declaring the absence of competition conditions before exercising this attribution

# A dominance determination triggers sectoral regulation in telecommunications (once litigation concludes)



## Case example: Telmex

- The Federal Telecommunications Law empowers the Commission to determine if carriers have a dominant position
- A dominance determination allows the Federal Telecommunications Commission to impose specific obligations on this carrier



In 1997 the Commission initiated an *ex-officio* procedure to determine if Telmex had a dominant position

The Commission determined that Telmex possessed substantial market power in five telephony markets:

1. Local telephony service
2. National long distance service
3. International long distance service
4. Access or interconnection to local networks
5. Interurban transport

Underpinning the CFC's analysis were the following considerations:

- Telmex's degree of vertical integration
- Its ability to unilaterally fix prices
- The existence of high entry barriers

**Telmex *amparo* still pending**