

Mexican Constitution

Article 28. In the United Mexican States there shall be no monopolies, monopolistic practices or government stores where monopoly goods are sold of any kind; nor exemption from taxes under the terms and conditions provided by law. Any prohibitions for the sake of the industry's protection shall be forbidden as well.

Consequently, the law shall punish severely, and the authorities shall effectively prosecute every concentration or hoarding of staple items in one or a few hands with the purpose of increasing their prices; every agreement, proceeding or organization by the producers, industrials, tradesmen or businessmen in the services sector, whatever their arrangements may be, so as to avoid unrestricted attendance or the competition among themselves or in order to compel the consumers to pay excessive prices and, in general, whatever constitutes an undue exclusive advantage in favor of one or more given persons and to the detriment of the general public or a particular social class.

The laws shall set forth the bases for setting the maximum prices for articles, materials or products deemed necessary for the national economy or for popular consumption, as well as for the setting of modalities for the organization of the distribution of such articles, materials or products in order to avoid unnecessary or excessive intermediation that may give rise to insufficient supply, as well as to the increase of prices. The law will protect the consumers and prompt their organization for the best care of their interests.

The functions exercised exclusively by the State in the strategic areas herein referred shall not constitute monopolies: postal system, telegraphs and radiotelegraphy; radioactive minerals and generation of nuclear energy; the planning and control of the national electric system, as well as the public service of transmission and distribution of electric energy, and the exploration and extraction of oil and the rest of the hydrocarbons, in terms of the sixth and seventh paragraphs of article 27 of this Constitution, respectively; as well as the activities expressly indicated by the laws issued by the Congress of the Union. The satellite communication and the railways are priority areas for the national development in terms of article 25 of this Constitution; in exercising its governing functions, the State will protect the safety and sovereignty of the Nation, and upon the granting of concessions or permits, it shall preserve or establish the control of the corresponding communication means according to the relevant laws.

(Fifth paragraph repealed)

The State, shall have the institutions and enterprises it may require to effectively conduct the strategic areas under its charge and the priority activities in which, in accordance with the laws, it takes part, by itself or with the social and private sectors.

The State will have a Central Bank, which shall be autonomous in exercising its function and administration. Its primary objective will be procuring the stability of the purchase power of the national currency, thus strengthening the control in respect of the national development under of the State. No authority may order the bank to grant financing. The State will have a public trust named Fondo Mexicano del Petróleo para la Estabilización y el Desarrollo (*Mexican Oil Fund for the Stabilization and Development*), which Fiduciary will be the central bank and shall have as purpose, pursuant to the law, the receipt, management and distribution of the income resulting from the allocations and contracts referred to in paragraph seventh of article 27 of this Constitution, except for the taxes.

The functions exclusively performed by the State, through the central bank, in respect of the strategic areas of minting of coins and issuance of notes shall not constitute monopolies. The central bank, in the terms established by the laws and with the corresponding participation of the competent authorities, shall govern the exchanges, as well as the intermediation and financial services, holding the necessary authority powers to

carry out said task and shall provide for the abidance thereof. The conduction of the bank shall be under the charge of the persons appointed by the President of the Republic with the approval of the Senate or the Permanent Commission, as applicable; they shall hold office for the periods which duration and staggered terms may allow for the autonomy of their functions; they may only be removed for serious cause and may not hold any other employment, position or commission save for those carried out on behalf of the bank and those of gratuitous nature within teaching associations, scientific, cultural or charitable institutions (sic DOF 20-08-1993). The persons in charge of the conduction of the central bank, may be subject to impeachment proceeding in accordance with the provisions set forth in article 110 of this Constitution.

The Executive Power will count on the coordinated regulatory entities in the energetic field, named National Hydrocarbons Commission and Regulatory Energy Commission, in the terms provided by the law.

There shall not be deemed monopolies the workers associations organized for the purpose of protecting their own interests and the associations or producers' unions so that, in support of their interests or the general interest, they may directly sell in the foreign markets the domestic or industrial products that are the main source of wealth of the region in which they are produced or which are not staple items, provided said associations are under the surveillance or control of the Federal Government or the States of the Republic, and upon prior authorization in that respect from the corresponding state legislatures in each case. Said legislatures may repeal, whenever the public need requires so, by themselves or upon the Executive's request, the authorizations granted for the incorporation of the aforementioned associations.

The privileges granted for a specific time frame in favor of the authors and artists for the producing of their works, and those granted for the exclusive use of their inventions to the inventors and to those performing an improvement thereof, shall not be deemed monopolies.

The State, abiding by the laws, may grant concessions in respect of the provision of public services or the exploitation, use, and profiting of goods owned by the Federation in cases of general interest, with the exceptions that the same provide. The laws shall set the modality and conditions that assure the efficiency of the provision of the services and the social use of the goods, and shall avoid the concentration phenomenon that goes against the public interest.

The abidance by the regimes of public service shall pursue what is set forth by the Constitution and may only be carried out through law.

Subsidies may be granted to priority activities, when they are general, of temporary nature, and do not substantially affect the Nation's finances. The State shall survey its application and evaluate the results of the same.

The Nation shall have a Federal Antitrust Commission, which shall be an autonomous body, with legal capacity and assets and liabilities of its own, whose purpose shall be to guarantee the unrestricted competition and attendance, as well as to prevent, investigate, and fight against the monopolies, the monopolistic practices, the concentrations and other restrictions to the efficient functioning of the markets, in the terms that this Constitution and laws establish. The Commission shall have the necessary powers to effectively fulfill its purpose, among them to order measures to eliminate the barriers to competition and to unrestricted attendance; regulate the access to essential supplies, and order the disincorporation of assets, rights, membership interests, or shares of the economic agents, in the necessary proportions to eliminate anticompetitive effects.

The Federal Telecommunications Institute is an autonomous body, with legal capacity and assets and liabilities of its own, whose purpose is the efficient development of the broadcasting and telecommunications, pursuant to what is set forth in this Constitution and in the terms set by the law. For such effect, the regulation, promotion, and supervision of the use, exercise, and

exploitation of the radio-electric spectrum, the networks, and the provision of the broadcasting and telecommunications services shall be under its charge, as well as the access to active and passive infrastructure and other essential supplies, guaranteeing what is established in articles 6th and 7th of this Constitution.

The Federal Telecommunications Institute shall also be the authority in subject of antitrust of the broadcasting and telecommunications sectors, therefore, in these matters it shall exclusively exercise the powers that this article and the laws establish for the Federal Antitrust Commission, and it shall regulate in an asymmetrical form the participants in these markets with the purpose of effectively eliminating the barriers to the competition and free attendance; it shall impose limits on the national and regional concentration of frequencies, to the granting of concessions and to the indirect ownership controlling various means of communication that are concessionaires of broadcasting and telecommunications serving one same market or zone of geographic coverage, and shall order the disincorporation of assets, rights, or shares necessary to assure the compliance with these limits, guaranteeing what is set forth in articles 6th and 7th of this Constitution.

The granting, revocation, as well as the authorization of assignments or changes to the shareholding control, ownership or operation of companies related to concessions in matters of broadcasting and telecommunications shall correspond to the Institute. The Institute shall notify the Secretary of the branch prior to its determination, who may issue a technical opinion. The concessions may be of commercial, public, private, and social use which includes the community and indigenous ones, which shall subject to, in accordance with their purposes, the principles established in articles 2nd, 3rd, 6th, and 7th of this Constitution. The Institute shall set the amount of the compensations for the granting of the concessions, as well as for the authorization of the services related to these, with previous opinion of the tax authority. The opinions that this paragraph refers to shall not be binding and shall be issued in a term no greater than thirty days; once this term has elapsed without the opinions being issued, the Institute shall continue with the corresponding processes.

The concessions of the radio-electric spectrum shall be granted through public bids, to the ends of assuring the maximum attendance, preventing phenomena of concentration affecting the public interest and assuring the lowest price of the services for the final user; in no case shall the determining factor to determine the winner of the bid be only economic. The concessions for public and social use shall be non-profit and shall be granted under the mechanism of direct award pursuant to what is set forth by the law and in conditions that guarantee the transparency of the procedure. The Federal Telecommunications Institute shall keep a public record of concessions. The law shall establish an effective sanctions scheme that shall indicate as cause for revocation of the concession title, among others, the non-compliance with the final resolutions in cases of behaviors related to monopolistic practices. In the revocation of concessions, the Institute shall previously notify the Federal Executive, so it can exercise, in such case, the necessary powers and duties that guarantee the continuity of the provision of the service.

The Federal Telecommunications Institute shall guarantee that the Federal Government has the necessary authorizations for the exercise of its duties.

The Federal Antitrust Commission and the Federal Telecommunications Institute, shall be independent in their decisions and functioning, professional in their performance and impartial in their actions, and shall act pursuant to the following:

- I. They shall issue their resolutions with full independence;
- II. They shall exercise their budget autonomously. The House of Representatives shall guarantee the budgetary sufficiency in order to allow the effective and timely exercise of their powers and duties.

- III. They shall issue their own organizational statute, through a voting system by qualified majority;
- IV. They may issue administrative provisions of general nature exclusively for the fulfillment of their regulatory function in the sector of their competence;
- V. The laws shall guarantee, within each body, the separation between the authority competent at the stage of the investigation and the one that resolves in the procedures that are substantiated as a trial;
- VI. The government bodies shall comply with the principles of transparency and access to the information. They shall deliberate in a collegiate form and shall decide the issues by majority of votes; their sessions, agreements, and resolutions shall be of public nature with the exceptions determined by the law;
- VII. The general standards, acts, or omissions of the Federal Antitrust Commission and of the Federal Telecommunications Institute may be challenged only through the indirect amparo and shall not be subject of suspension. Only in the cases in which the Federal Antitrust Commission imposes fines or the disincorporation of assets, rights, membership interests, or shares, these shall be enforced until the amparo, if filed, is solved. When it is the case of resolutions of said organisms that arise from a procedure followed in the form of a lawsuit, only the resolution putting end to the dispute may be challenged and only by cause of violations committed in the resolution or during the procedure; the general provisions applied during the procedure may only be claimed in the amparo filed against the aforementioned resolution. Specialized judges and courts shall substantiate the amparo in the terms of article 94 of this Constitution. In no case shall ordinary or constitutional recourses be admitted against intraprocedural acts;
- VIII. The heads of the bodies shall present a work program annually and an activities report quarterly to the Executive and Legislative Powers of the Union; they shall appear before the Senate yearly and before the Houses of Congress in terms of article 93 of this Constitution. The Federal Executive may request the appearance of the heads before the Houses to any of the latter;
- IX. The laws shall promote the governmental transparency under principles of digital governance and open information for these bodies;
- X. The compensation received by the Commissioners must abide by what is set forth in article 127 of this Constitution;
- XI. The commissioners of the bodies may be removed from their post by two-thirds of the members present of the Senate of the Republic, for serious offense in the exercise of their duties, in the terms provided by the law, and
- XII. Each body shall have an Internal Comptrollership, whose head shall be appointed by two-thirds of the members present of the House of Representatives, in the terms set forth by the law.

The bodies of government, both of the Federal Antitrust Commission and the Federal Telecommunications Institute shall be integrated by seven Commissioners, including the Chair Commissioner, appointed at staggered times at the proposal of the Federal Executive with the ratification of the Senate.

The Chairman of each of the bodies shall be appointed by the Senate from among the commissioners, by the vote of two-thirds of the members present, for a period of four years,

renewable only once. When the appointment falls on a commissioner that concludes his appointment before said period, he shall perform the chairmanship only for the time that is left to conclude his appointment as a commissioner.

The commissioners must meet the following requisites:

- I. Be a Mexican citizen by birth and be in full enjoyment of his civil and political rights;
- II. Be over the age of thirty-five;
- III. Have good reputation and not have been convicted for a deceitful crime that deserves prison time for more than one year;
- IV. Hold a professional degree;
- V. To have performed outstandingly, for at least three years, in professional activities, of public or academic service, substantially related to matters similar to those of antitrust, broadcasting, or telecommunications, whichever corresponds;
- VI. Attest, in the terms of this provision, the necessary technical knowledge for the exercise of the position;
- VII. Not have been Secretary of State, Attorney General of the Republic, senator, federal or local representative, Governor of some State or Head of Government of the Federal District, during the year before his appointment, and
- VIII. In the Federal Antitrust Commission, not have occupied, in the last three years, any employment, position, or directive function in the companies that were subject to any of the sanctioning procedures that the cited body substantiates. In the Federal Telecommunications Institute, not have occupied, in the last three years, any employment, position, or directive functions in the companies of the commercial or private concessions holders, or of the entities related to them, subject to the regulation of the Institute.

The Commissioners shall refrain from performing any other employment, job, or public or private commission, except for teaching positions; they shall be prevented from having knowledge of issues in which they have direct or indirect interest, in the terms that the law determines, and shall be subject to the regime of liabilities of Title Fourth of this Constitution and of impeachment proceeding. The law shall regulate the modalities pursuant to which the Commissioners may establish contact to discuss issues of their competence with persons that represent the interests of the regulated economic agents.

The Commissioners shall remain in office for nine years and for no reason may they perform that position again. In case of absolute absence of any commissioner, the corresponding appointment shall proceed, through the procedure set forth in this article in order that the substitute concludes the respective period.

Those aspiring to be appointed as Commissioners shall attest the fulfillment of the requisites indicated in the numerals above before an Evaluation Committee integrated by the heads of the Banco de México, the National Institute for the Evaluation of the Education and the National Statistics and Geography Institute. For such effects, the Evaluation Committee shall convene its sessions whenever there is a commissioner vacancy, it shall decide by majority of votes and shall be presided by the head of the entity with most seniority in the position, who shall have a deciding vote.

The Committee shall issue a public call to fill the vacancy. It shall verify the compliance, by the candidates, with the requisites included in the present article, and to those who have fulfilled them, it shall apply an exam regarding knowledge on the subject; the procedure must observe the principles of transparency, publicity, and maximum attendance.

For the formulation of the knowledge exam, the Evaluation Committee must consider the opinion of at least two institutions of higher education and shall follow the best practices in the matter.

The Evaluation Committee shall send the Executive a list of at least three and at most five candidates that obtained the highest passing grades, for each vacancy. If the minimum of candidates were not met, a new call shall be issued. The Executive shall select from among those candidates, the candidate that it shall propose for the ratification before the Senate.

The ratification shall be done by the vote of two-thirds of the present members of the Senate, within the non-extendable term of thirty calendar days starting from the presentation of the proposal; in the recesses, the Permanent Commission shall immediately call the Senate. In case the Senate rejects the candidate proposed by the Executive, the President of the Republic shall submit a new proposal in the terms of the paragraph above. This procedure shall be repeated the times necessary if new rejections take place until only one candidate is approved by the Evaluation Committee, who shall be appointed commissioner directly by the Executive.

None of the acts of the selection and appointment process of the Commissioners may be appealed.