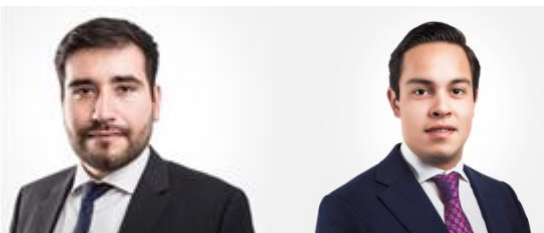


+ Quick Guide for Antitrust Dawn Raids in Mexico



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According to article 75 of the Federal Law on Economic Competition (“Law”), the Investigative Authority of either the Federal Economic Competition Commission or the Federal Institute of Telecommunications (either of them, the “Antitrust Authority”) are entitled to order the performance of “verification visits” (a.k.a. dawn raids) in order to get and secure evidence that may prove a breach of Mexican antitrust laws in an ongoing investigation.

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I. Preliminary considerations

- a)** The order to carry out the verification visit does not require an ex-ante judicial review or approval.
- b)** The Antitrust Authorities may request the assistance of the federal police forces (and will probably arrive to the premises to be raided with a significant number of police officers).
- c)** Front desks, internal security guards, in-house legal counsel, compliance officers and IT employees shall be properly trained on how to react to a verification visit in order to avoid confrontations with the Authority.
- d)** No documents shall be destroyed either before or after the verification visit (take into account that electronic data is difficult to destroy completely). Significant fines may arise if this happens.
- e)** During an inspection, the investigated entity, as well as its officers, representatives or individuals in charge of its facilities, are obliged not only to allow the inspection, but also to facilitate the proceeding of the officers of the Investigative Authority.
- f)** The officers conducting the visit may access any office, computer, electronic equipment, drawer, etc. where there might be evidence.
- g)** They may review the company's books, documents, records, etc., obtain photocopies, take photographs; may secure them, and can question any officer, legal representative or personnel of the raided entity (and write down their responses).
- h)** On-site inspections cannot exceed two months. However, such term may be extended for an equal period in extraordinary circumstances.

II. The verification visit order

As provided by section I of article 75 of the Law, the verification visit's order (the "Order") shall contain at least:

- (i) The purpose, scope and duration to which the visit will be restricted;
- (ii) The name and address of the inspected individual or undertaking;
- (iii) The name or names of the authorized personnel that will carry out the inspection;

- (iv) A warning indicating that should access be denied, hindering the performance of the procedure or refusing to provide the documents or information requested, the enforcement measures established in the Law may be used; and
- (v) The signature of the head of the Investigative Authority.

III. Steps to survive and succeed

Step 1: Prepare and train

Responsible: Management	<p>Management shall appoint beforehand an officer(s) of the company to be in charge of verification visits of the Antitrust Authorities ("Antitrust Officer"). This individual(s) is normally part of the in-house legal team or the compliance team.</p> <p>Management should provide regular training to all its employees on antitrust laws and on how to react to dawn raids.</p>
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Step 2: The frontliners

Responsible: Front desk or security	<p>Front desk or security shall inform the Antitrust Authority's officials that they will be allowed to carry out the verification visit and that the appropriate officials of the company will come immediately.</p> <p>In case the Investigative Authority arrive or request the assistance of the police, front desk/security shall inform them that the company will fully cooperate in the terms mentioned in the order of visit.</p> <p>Front desk or security shall inform immediately the Antitrust Officer (and in its case the in-house legal counsel) of the arrival of the Antitrust Authority's officers.</p>
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Step 3: The Order

Responsible:
Antitrust
Officer

The Antitrust Officer shall inform the company's external legal counsel immediately and request their support and assistance during the visit.

The Antitrust Officer shall verify that the Order complies with all requisites established by the Law and that it is duly signed by the Head of the Investigative Authority. The Antitrust Officer shall also check that the order:

- That is addressed specifically to the company.
- States the correct and exact address of the premises that are going to be inspected (including the floor and the areas where the Antitrust Authority's personnel will be carrying out the verification visit).
- The date, the duration and working hours authorized to perform the verification visit.
- The names and charges of the officials authorized to carry out the verification visit.
- The scope and object of the verification visit.

Copies of the officials' personal ID and the Order shall be made. These copies shall be made immediately and must be sent, via email, to the in-house legal team and the external legal counsel of the company.

The Antitrust Officer shall designate two witnesses of the company that will verify at all times the actions of the Antitrust Authority's officials.

Step 4: The raid team

Responsible: Antitrust Officer	<p>The Antitrust Officer shall set up a team (the "Raid Team") to coordinate the company's response to the inspection, composed of at least one member of senior management, a member of the in-house legal team and the external competition lawyer.</p> <p>Arrange for members of the IT team to be available as their input will be needed.</p> <p>Designate which individuals will shadow each of the Antitrust Authority's official at all times. They must write down everything, including details on dates, hours and information/data taken. These individuals will ideally belong to the company's in-house legal team or the compliance department.</p>
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Step 5: During the visit

Responsible: Antitrust Officer, the Raid Team	<p>Provide access to public servants to all the offices, premises, computers, electronic devices, storage devices, archives and, in general, to information and documents (i) requested by the authority and (ii) related to the investigated conduct as specified in the order.</p> <p>Provide all the assistance requested by the Antitrust Authority during the verification visit. Do not go beyond of what it is specifically requested.</p> <p>Avoid to offer/show documents, objects, information or to give explanations that have not been specifically requested by the Antitrust Authority.</p> <p>Shadow the Antitrust Authority's officials at all times and write down all their actions, including details on dates, hours and information/data reviewed or taken (desks, files, IT systems, archives, and computers they inspect; and to whom they speak of the company).</p>
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Record all communications between the Antitrust Authority's officials and the employees of the company.

****Note that the Investigative Authority can make copies or extracts in any format of books, documents, papers, files or information stored or generated by electronic devices [see Section IV for inputs on the treatment of privileged information].**

Feel free to make all observations you need to the Antitrust Authority during the verification visit.

Step 6: Interviews and questionings

Responsible:
All officers
and
employees of
the company

The Antitrust Authority's officials may request employees to explain facts, documents and information during the verification visit and must record their replies.

Company's employees should keep their answers short and factual and not volunteer any information that has not been explicitly asked. **To all questions in which employees are not completely sure the answer, please answer "at this point, I do not know/recall the facts to provide an answer, but I will give an answer to you as soon as I recall."**

Refusal to answer such questions, or providing incorrect or incomplete answers, may put the company at risk of fines for obstructing the investigation.

Avoid displaying or offering documents, objects, information, or give explanations, which are not expressly requested by the Antitrust Authority during the verification visit.

Do not break any seal put by the Antitrust Authority's officials for securing certain desk, office, space, document or anything else.

Step 7: Digital Information

Responsible: IT Department	<p>IT department shall provide access to all digital devices and digital information of the company located in the facility under inspection.</p> <p>IT department shall take note of all forensic copies of hard drives or mobile phones taken or reviewed by the Antitrust Authority's officials.</p> <p>The Antitrust Authority's IT forensics team shall deliver, at the end of the raid, a digital copy of all digital information subtracted from the company. IT department shall verify that such copy is a true and original copy of what the Antitrust Authority took.</p>
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Step 8: Before the verification visit ends.

Responsible: Antitrust Officer and external legal counsel	<p>Make sure you have a copy of the Antitrust Officials contact details and IDs.</p> <p>Make sure you have a copy of all documents, desks, files, IT systems, hard drives, mobile phones, archives and computers the Antitrust Authority took, reviewed or inspected. Your list of data reviewed/copied/secured/taken shall match exactly with the Antitrust Authority's list.</p> <p>Make all the necessary observations to the officials during the verification visit.</p>
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Step 9: End of the visit of verification

Responsible: Antitrust Officer and external legal counsel	<p>Designate two witnesses of the company to sign the minutes that the Antitrust Authority will raise from the verification visit. Before signing, those individuals shall review such minutes to verify that they duly reflect the facts and omissions during the verification visit and that all observations made by the company's officials have been recorded.</p> <p>The Antitrust Authority shall provide you with a copy of the verification visit minutes, as well as a copy of the forensic copy of electronic IT device taken by them.</p> <p>**Any observation regarding the status of "privileged information" of certain pieces of information/documentation shall be stated in each of the partial and the final minutes.</p>
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Step 10: Post-verification actions

Responsible: Management, In-house and external legal counsel.	<p>Between Management, the in-house legal team and the external legal counsels, an action plan to review the information taken by the Antitrust Authority during the raid shall be put in place.</p> <p>Hiring e-discovery services is essential for the future legal defense of the company.</p> <p>Legal team shall request, when applicable, the confidentiality of the information taken by the Antitrust Authority in a later submission.</p> <p>If applicable, start preparing a defense.</p>
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IV. Privileged information

Privileged information is a rather new topic in Mexican Antitrust Law, as the first case dealing with this issue was recently resolved. However, it is now possible to claim that communications between independent lawyers (external counsel) and its clients are privileged when:

- a) Such communications were exchanged between the client and its independent lawyer. Communications between in-house counsel and company's officers are not protected.
- b) Such exchange should have happened within "administrative procedures of responsibility" whereby the analogy between the principles of criminal laws and administrative law may be applied.
- c) The independent lawyer have been acting as a defense lawyer would do in criminal cases, as strict confidentiality is required in order for the client to be able to communicate with its lawyer all necessary elements, in order to have a proper and professional legal defense.
- d) There is no evidence that the independent lawyer acted as co-participant in the conduct under investigation.

V. Sanctions for obstructing the verification visit

The Law sets different types of sanctions for obstructing the verification visit, going from a simple warning to an administrative arrest for up to 36 hours. Specifically, the following are the enforcement measures available to the Antitrust Authorities as set forth by the Law:

- a) Warnings.
- b) A maximum fine equivalent to 3,000 (three thousand) times the current daily general minimum wage in the Federal District, which may be applied for each day of non-compliance with an order;
- c) The assistance of the police or other Public Authorities, and
- d) Administrative arrest for up to 36 hours.

If the company or its officials or employees do not grant access to the public servants authorized to conduct the verification visit or do not provide the

requested information and documents or if they obstruct the performance of the verification visit in any way or do not answer the questions asked by the Antitrust Authority, circumstance will be stated in the corresponding minutes and the facts attributed to the company in the statement of probable responsibility shall be presumed as true, without prejudice of the application of the enforcement measures deemed pertinent and the criminal liability which may arise.