COFECE-040-2017

COFECE launches investigation over possible relative monopolistic practices in the market of laboratory tests and certification of products in the rubber industry

The conducts that will be investigated are related to possible abuse of market power with the intent of unduly displacing competitors, impeding market entry or establishing exclusive advantages to one or several Economic Agents.

Mexico City, August 23, 2017.- The Federal Economic Competition Commission's (COFECE or Commission) Investigative Authority has published on its website and in the Official Gazette of the Federation (DOF), the initiation of the investigation following charges (file DE-040-2016) over possible relative monopolistic practices in the market of issuance of laboratory test results and the certification of products related to the rubber industry.

The Investigative Authority has indicated that the issuance of laboratory test results and certification of materials and products, in some cases mandatory, are fundamental to ensure quality, technical characteristics and/or security of marketed goods and services. Maintaining competitive conditions in the certification process of the products, as well as the issuance of laboratory test results, reduces the costs for the industry and companies that make use of these, therefore enhancing competition, which in turn favors quality and price for end consumers. To that effect, any person that holds evidence relevant to the investigation may present these to the Investigative Authority.

Relative monopolistic practices consist of any act, contract, agreement or procedure carried out by companies that exert substantial market power with the intent of unduly displacing other agents, substantially impeding their access or establishing exclusive advantages in favor of one or several Economic Agents. Examples of relative monopolistic practices are tied sales defined as the conditioning of a sale or transaction to the purchase, acquisition, sale or provision of another food or service; predatory price cutting; price discrimination; increase of competitor's costs; unilaterally refusing to sell; impeding access or margin squeezing of an essential facility; among others.

Given the timeframe of the possible conducts that have given rise to this investigation, the investigation will be carried out in accordance with the provisions established in articles 10, sections III, X and/or XI, 11, 12 and 13 of the Federal Economic Competition Law (former law) published in the Official Gazette of the Federation (DOF) on December 24, 1992, and in accordance with articles 1, 2, 4, 10, 12, sections I and XXX, 26, 27, 28, sections I, II, and XI, 52, 54, 56, sections III, X and/or XI, 58, 59, 66, 67, 68 and 69, sections I and 71 of the current Federal Economic Competition Law (FECL) published in the DOF on May 23, 2014.

COFECE's Investigative Authority stipulated in the initiation decision that there is objective cause that indicates the possible existence of relative monopolistic practices in the referenced market.

Notwithstanding, this probe should not be construed as a prejudgement of responsibility of any Economic Agent but as an action that enables COFECE to detect if conducts contrary to the previous law or current FECL have been incurred.

COFECE's Investigative Authority has the power to conduct investigations in cases of probable infringement of the FECL, and therefore has the power to request the necessary reports and documentation, conduct compulsory interviews to those who are related to the case and perform onsite inspections to contribute to the investigation, as well as gather other means of conviction considered as necessary to determine the truth in regards to the procedure. Once this stage has concluded, if there are elements to determine existence of monopolistic practices, suspected offenders shall be called to defend themselves in a trial-like procedure. Once the dismissal or admissibility of the evidentiary elements has been established, the Board of Commissioners shall proceed according to the Law.

The deadline for this investigation is up to 120 business days, starting February 21, 2017. This period of time can be extended up to four times.

If a relative monopolistic practice is proven, economic agents could be sanctioned in the following terms: a fine up to the equivalent of eight percent of their annual income and the order to suppress the conduct. In the case of the participation of a natural person in these practices in representation or on behest of the companies, they may be sanctioned with the equivalent of 200 thousand times UMAs ("Units of Measure and Update" (one UMA is equivalent to 73.04 Mexican pesos)

What is a relative monopolistic practice?

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MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through these, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, it seeks better conditions for consumers, greater output and better services and a "level playing field" for companies.