

“Bid-Rigging - Procurement Peril”

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*Malaysia Competition Conference 2017
Competition Law: Breaking Norms, Managing Change*

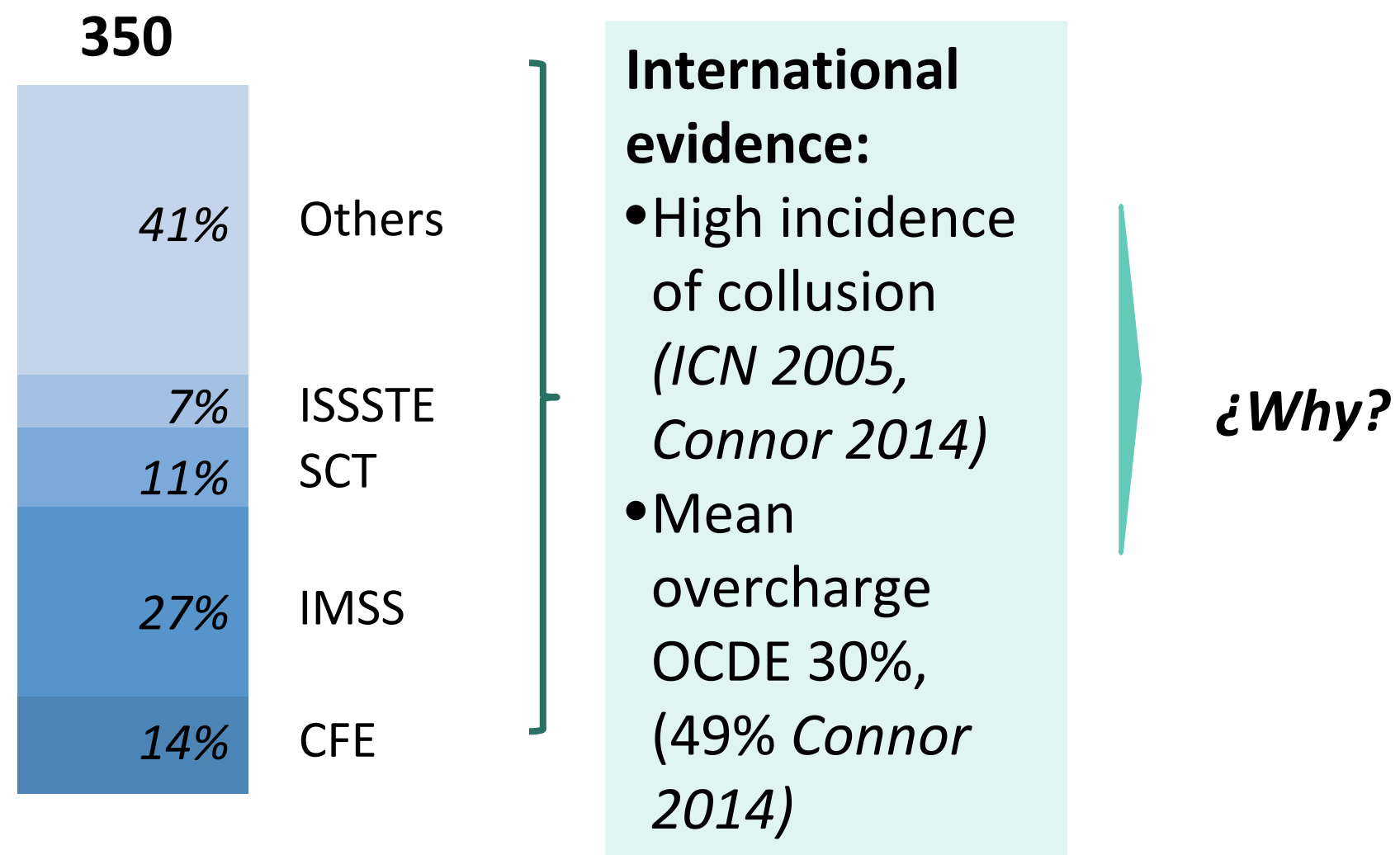
1. Public procurement markets are prone to bid-rigging.
2. Cases in Mexico illustrate how collusion and the impact of redesigning procurement procedures on prices.
3. Lessons learned can be replicated with large potential savings.

1. Public procurement markets are prone to bid rigging.

The design of the procurement procedures can ease or inhibit collusion.

... associated with procurement rules and strategies that ease cartel activity

Amount of federal procurement contracts
Thousands of million pesos, 2016



Source: Compranet
Excluding PEMEX

In Mexico, public procurement presents a high risk of collusion and overprices ...

Factors that eased collusion

Competition policy

- Non-existent (legal collusion) or weak (lack of powers and faculties to detect and sanction collusion)

Tender rules

Reduction of rivalry among suppliers

- Joint-bids without restrictions
- Distribution of contracts among close bids (multiple allocation)
- Frequent and fragmented tenders
- Exclusive domestic tenders and other barriers to entry

Ease of monitoring between colluded suppliers

- Public information about winning and losers bids
- High reference prices

Buyers' incentives

- Focus (regulation and supervision) on compliance with procedures, not outcomes of the process

2. Enforcement & the case of IMSS' supply of insulin and intravenous fluids illustrates collusion and the impact of redesigning procurement procedures on prices.

Bid-rigging is an illegal practice in many countries.

It can be investigated and sanctioned under competition law rules, and even under criminal law in some jurisdictions including Mexico.

Competition Authorities typically pursue bid-rigging in three stages:

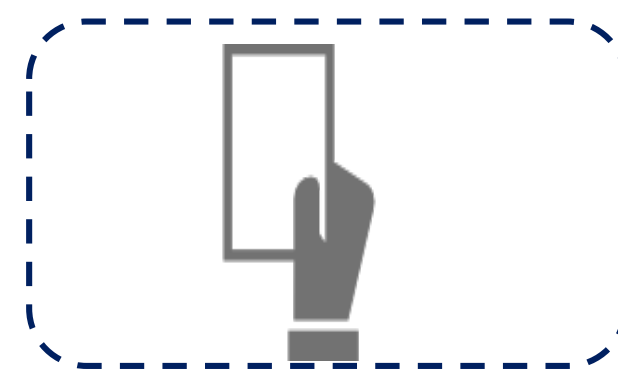
Detection



Prosecution



Sanctions



For the detection stage, Cofece uses different tools such as its leniency program and **economic analysis** to start ex-officio investigations.

Detection- Leniency program

According to the ICN at least 75 jurisdictions worldwide have implemented leniency programmes

Cofece's leniency program is a powerful tool to uncover bid rigging cartels.

The applicant must cooperate fully and continuously and must terminate its participation in the cartel. The first applicant will receive a 100% fine reduction; subsequent applicants will receive fine reductions of 50, 30 or 20. All applicants receive criminal immunity.

Benefits to Cofece



It allows us to initiate investigations



Access to information



Saves costs during investigations




Deters the creation of new cartels

Detection- screening

Additional tool to avoid over-reliance in leniency.

Bid-Rigging agenda

Leniency



Proactive detection methods



SCREENING: Especially in strategic markets

Screens are statistical tests designed to identify markets where competition problems exist and detect the firms involved in a conspiracy, by finding improbable events or anomalous patterns in the data.

Prosecution - Bid-rigging cases

Ongoing cases:



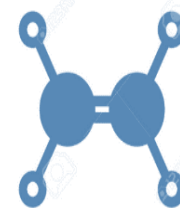
Public procurement (aggregated purchases) of health products.



Latex material



Latex gloves



Polyethilene materials



Laboratory studies and blood banks integral services

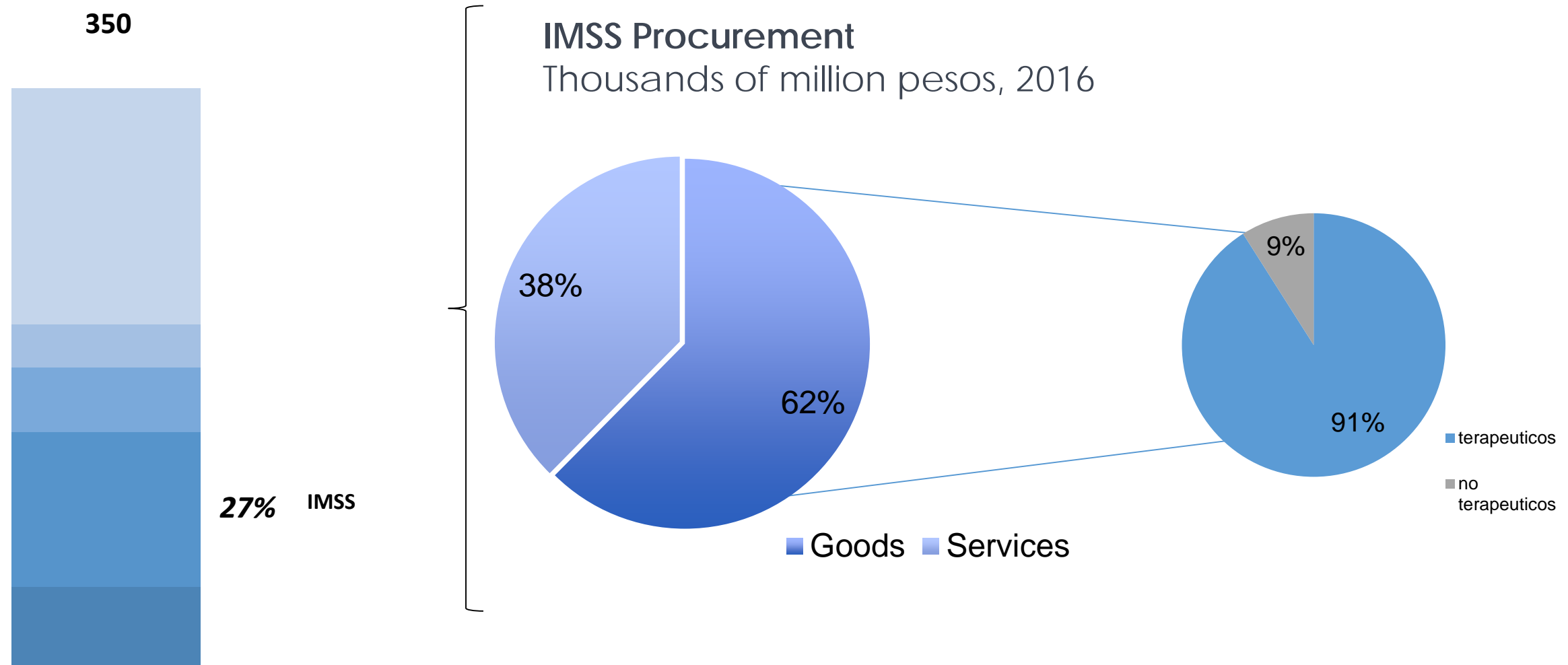


Public procurement of services for media reports

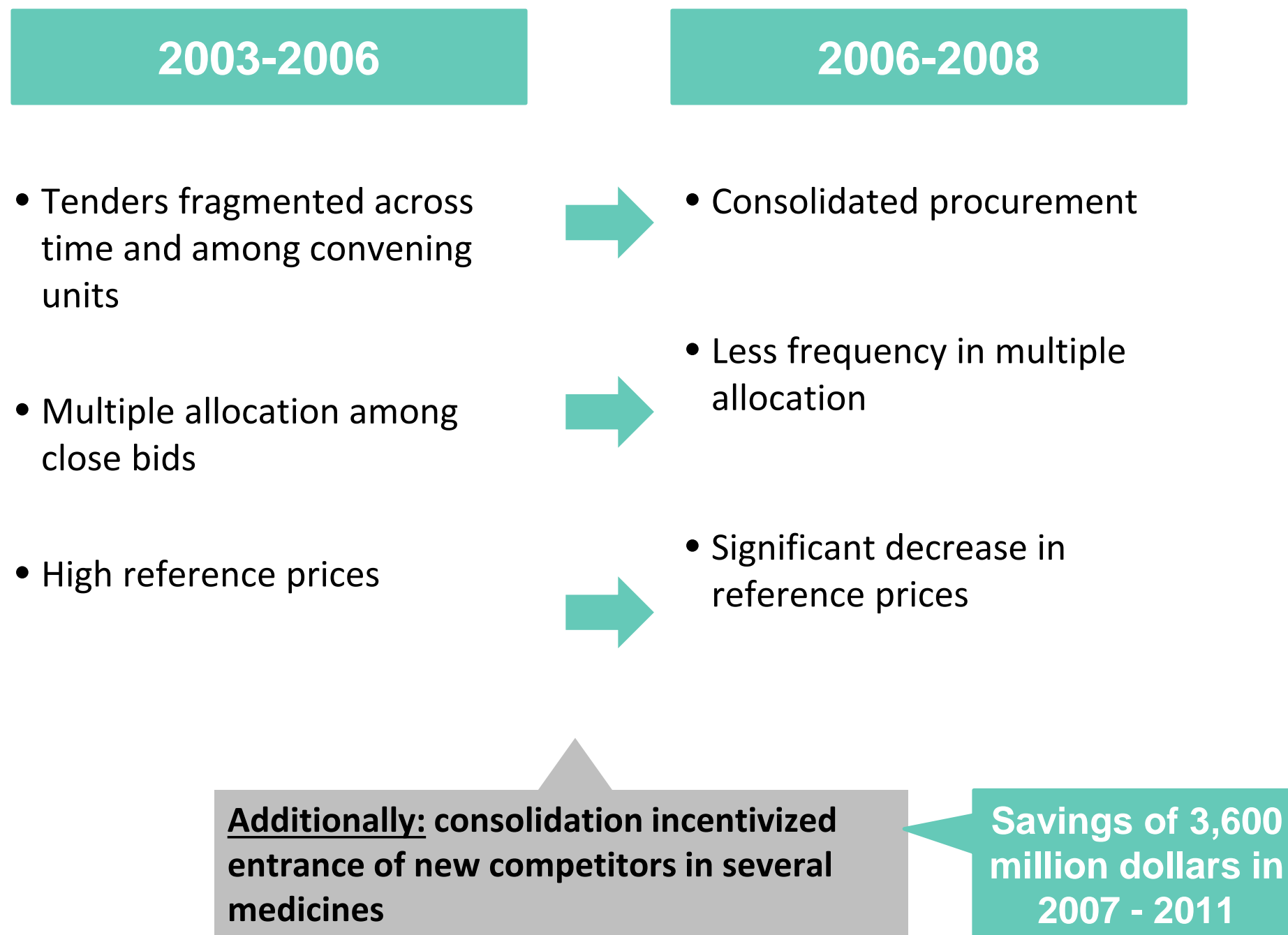
Flagship case IMSS

Generic pharmaceuticals represent nearly half of IMSS procurement

Amount of federal procurement contracts
Thousands of million pesos, 2016



In 2006-2008, IMSS modified its procurement policies to reduce the likelihood of collusion ...



... dramatically reducing prices

Prices of main pharmaceutical

Prod	Price Index Weighted average 2003 = 1.0					Variance %		
	200	200	200	200	200	05-06	06-07	05-07
	3	4	5	6	7			
1	1	1	0.94	0.27	0.19	-71%	-28%	-79%
2	1	1.01	1.03	1.04	1.07	1%	4%	4%
3	1	1	0.22	0.21	0.23	-2%	9%	7%
4	1	1	1	1	1.03	0%	3%	3%
5	1	1.01	1	0.62	0.55	-38%	-11%	-45%
6		1	0.94	0.7	0.66	-26%	-5%	-29%
7	1	0.99	1	0.99	0.71	-1%	-29%	-29%
8	1	1.05	1.02	0.76	0.6	-25%	-21%	-41%
9	1	1.04	1.06	0.92	1.12	-13%	22%	6%
10	1	1	0.99	0.85	0.85	-15%	1%	-14%
11		1	0.98	0.35	0.25	-65%	-29%	-75%
12	1	1.07	1.11	1.11	1.13	0%	2%	2%
13	1	1.07	1.12	1.13	1.17	0%	4%	4%
14	1	1.01	1.01	1	1.02	-2%	3%	1%
15	1	1.05	1.09	1.08	1.12	-1%	3%	2%
16	1	1.1	1.19	1.16	0.79	-3%	-31%	-33%
17	1	1.01	1.01	0.85	0.52	-16%	-39%	-49%
18		1	1.01	0.66	0.51	-34%	-24%	-50%
19	1	1	0.98	0.54	0.08	-45%	-85%	-92%
20	1	1	1.02	1.03	1.07	1%	4%	4%

Reductions vs. previous year

- Greater to 30%
- 10%-30%

• Constant prices until 2005, significant declines in subsequent years

• Total effect 2005-2007:

- 11 pharmaceuticals with an average reduction of 49% in the price
- 9 pharmaceuticals with an average increase of 4% in the price

The Commission investigated the existence of anticompetitive practices in these markets ...

Development of a data base of IMSS' pharmaceutical tenders

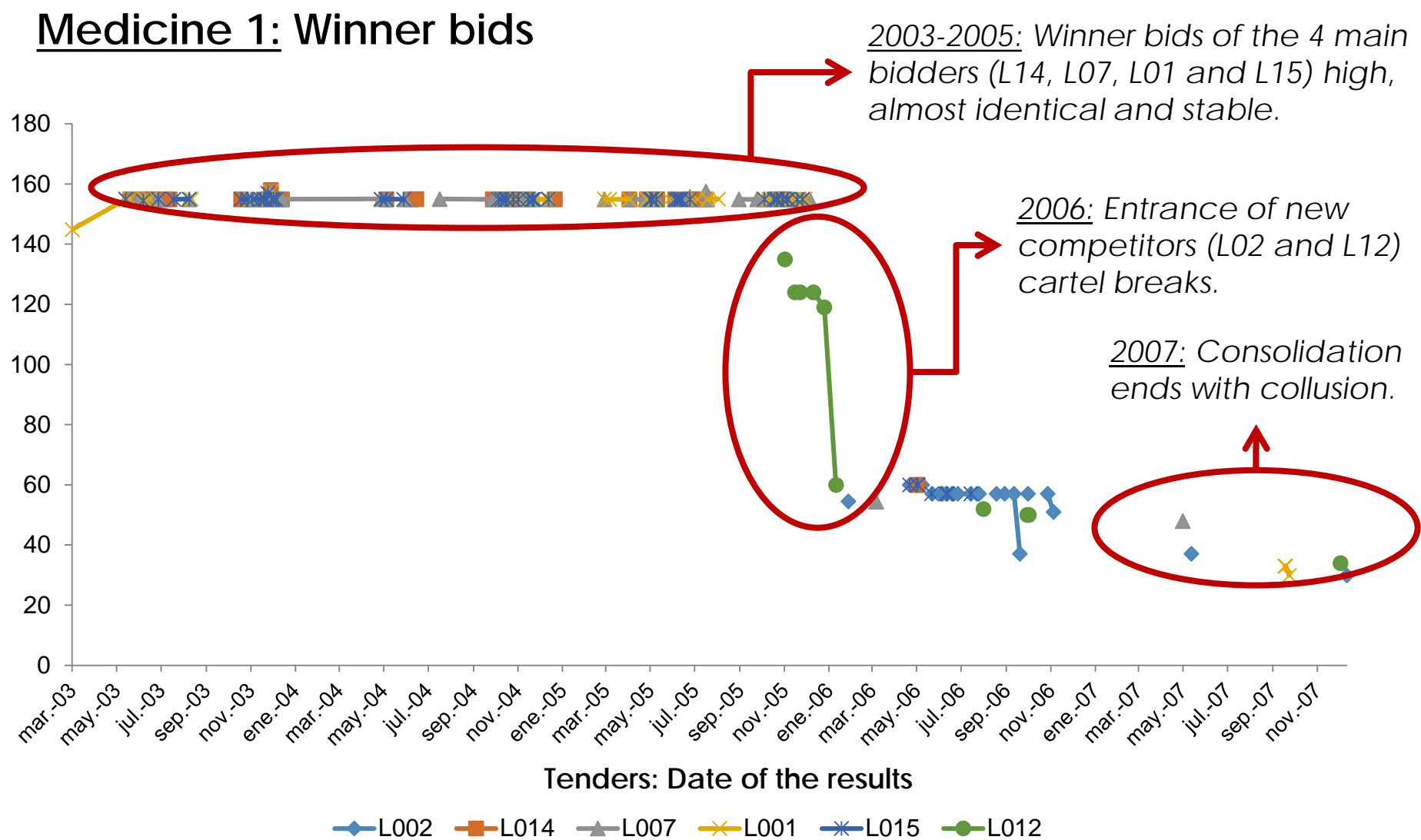
Data 2003-2007

Products	250
Tenders	289
Calls	58
Records	130,52
	0
Total	\$34,50
Procurement in Millions	3

Included variables

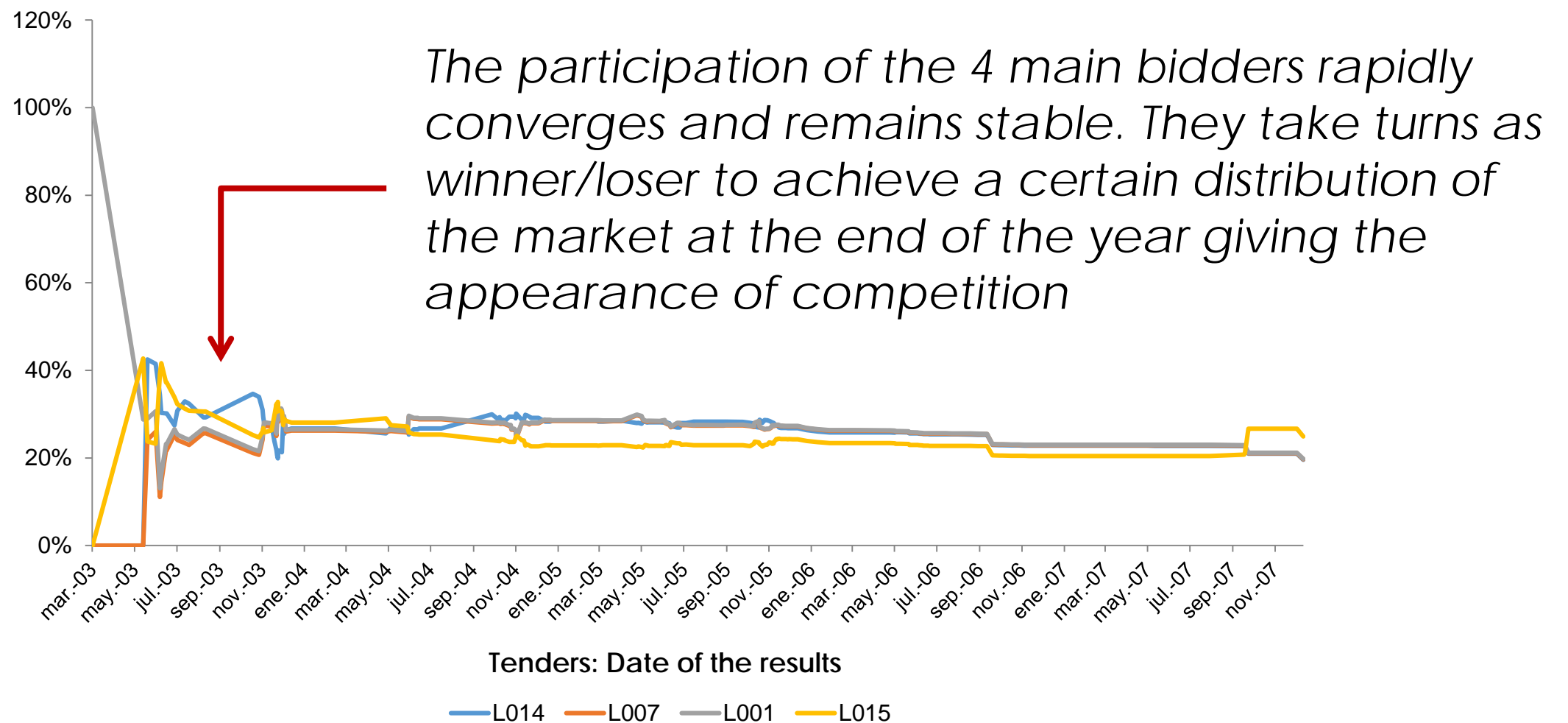
1. Product
2. Date of the tender
3. Convener unit
4. Type of tender(dom vs int)
5. Volume to procure
6. Bidders (RFC)
7. Quantity allocated per bidder
8. Price offered per bidder
9. Percentage allocated per bidder

... and found that per each most purchased medicine, there was evidence of collusion based on price evolution ...



... market participations ...

Medicine 1: Cumulative market participation of the 4 main bidders



... and communication among competitors

- Evidence of ongoing communication among executives responsible of the government sales from these companies: meetings and telephone communications
- Communication increased prior to the tenders



Cartel investigation completed in February 2010.

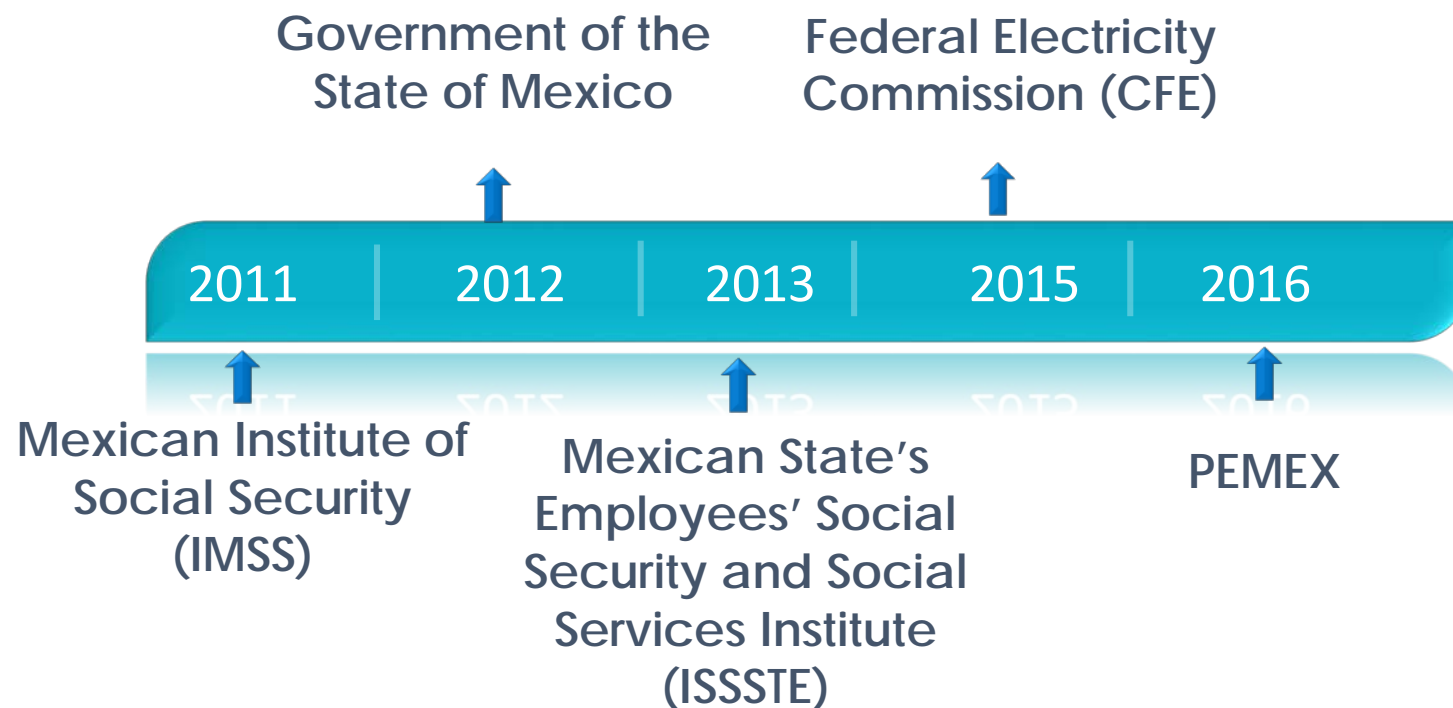
- Sanction of 150 million pesos (USD 11.5 Million at the time) to 5 firms and fines for 5 individuals that participated in the cartel. Maximum fine.
- Estimated harm: 622 million pesos (USD 48 Million at the time). The case helped to later modify law maximums for fining.
- The case was appealed and courts have confirmed the Commission's decision.

3. Lessons learned can be replicated with large potential savings.

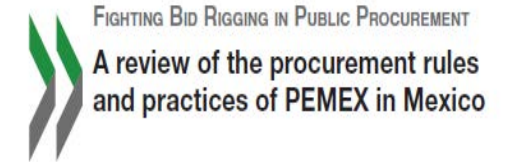
Lessons learned can be replicated with large potential savings

IMSS' work awakened the interest of other government institutions to fight bid rigging

With the objective of stepping up advocacy and deterring bid-rigging in public procurement in other government agencies, a series of studies were published in collaboration with the OECD addressing some of the main Mexican public purchasers.



Trainings to NCA's such as IMSS, Pemex, CFE, SFP, SEDENA, ISSSTE and the State of Mexico.



A Secretariat Analytical Report on Compliance with OECD Standards of Procurement Legislation, Regulations and Practices in CFE

In the 2011 OECD recommendations to IMSS, it was conveyed how the lack of competition in public procurement can become a niche for corruption.

Competition and anticorruption laws have the same objective in the sense of seeking to solve market failures to allow economic agents to compete under equal conditions and obtain greater value for money.



There is a need for an increased collaboration between anticorruption and competition authorities as there is an inverse relation between these; as the more corruption there is in a market, the greater the negative impact to competition.

Lessons learned can be replicated with large potential savings

Since the IMSS case in 2010, screening has been implemented as an important tool for detection and proactive enforcement against bid-rigging in priority sectors for the Mexican economy.

2010
IMSS case



Bid-rigging detected

2013
New Cofece



Strategy 2014-2017

Prioritization of public procurement

2014



Creation of Market Intelligence Unit

2015

Mexican tribunals recognize economic analysis as evidence



Thank you!

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