

## COFECE sanctions Afores for entering into agreements to reduce transfers of individual accounts

- *The Board of Commissioners established that GNP Afore, Afore Sura, Afore XXI Banorte and Principal Afore, as well as 11 individuals engaged in absolute monopolistic practices in the market of pensions funds management services.*
- *The fund administrators entered into agreements that reduced competition between them to win the workers' preference, limiting transfers of accounts.*
- *The aggregate amount of the fines imposed on the Afores and sanctioned individuals amount to about 1,100 million pesos.*

**Mexico City, May 4, 2017.-** The Board of Commissioners of the Mexican Federal Economic Competition Commission (COFECE or Commission) determined the responsibility of Profuturo GNP Afore, Afore Sura, Afore XXI Banorte and Principal Afore, as well of 11 individuals for engaging in absolute monopolistic practices in the markets of pensions funds administration services in Mexico.<sup>1</sup> Thus, fines were imposed on them, that together added up to 1,100 million pesos.

The sanctioned economic agents entered into agreements to reduce transfers between Afores (Retirement Funds Administrators). This conduct reduced competition between the companies to win the workers' preference.

In a market in which investments and the commissions that Afores charge are regulated, transfers are a key source of competition. In agreeing to limit these, the incentives to offer a better service are reduced, and the possibility that workers have to reward or punish their Afore according to their degree of satisfaction is eliminated.

The individuals that acted on behalf of the fund administrators and who were found responsible in this case are: **i)** José Eduardo Silva Pylypciow, Carlos Eduardo Salas Westphal and Arturo García Rodríguez (Profuturo); **ii)** Enrique Ernesto Solórzano Palacio and Alejandro Múzquiz Díaz (Sura); **iii)** Francisco Javier González Almaraz and Ricardo Villalobos Muro (Afore Bancomer and Afore XXI), as well as Francisco Tonatiuh Rodríguez Gómez (Afore XXI), and **iv)** Alfonso Gabriel Cajiga Estrada, Ramón Elías Antonio Pando Leyva and

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<sup>1</sup> This investigation also included Afore Bancomer, which in March 2013 merged with Afore XXI, who acquired rights and obligations of the extinguished company.

Marcelino de la Garza Cárdenas (Principal). All of them committed absolute monopolistic practices as provided for in article 9, section III of the Federal Economic Competition Law (FECL), in force at the time when the conduct was executed.

The investigation of this file (IO-003-2015) initiated on February 10, 2015 and resulted in a Statement of Probable Responsibility issued by the COFECE's Investigative Authority on February 18, 2016, and the respective notification of the Statement to the alleged responsible between March and April of the same year.

In Mexico, every worker that is listed or has made contributions to IMSS or ISSSTE has a personal and individual account to which these contributions are sent, and that it is administered by an Afore. The workers have the right to choose which Afore will manage their retirement savings, in accordance with the restrictions on registration and transfer of account established in regulation.<sup>2</sup> However, six times between November 2012 and June 2014, general directors and chief operation officers agreed to reduce transfer of accounts between them, by establishing maximum amounts of weekly transfers that varied depending on the agreement. This action lessened competition.

The agreements were bilateral and established as follows: Profuturo-Afore Bancomer, around November 2012 to January 2013; Profuturo-Afore XXI, between October 2013 to May 2014; Afore XXI-Sura, between January and June 2014; Afore XXI-Principal, January to June 2014; Profuturo-Sura, March to June 2014; and Profuturo-Principal, February to June 2014.<sup>3</sup>

Implementation of the agreements was monitored through emails in which mechanisms were established to hide the identity of the Afores committing the conduct, such as using nicknames for the companies, which shows that the sanctioned knew about the illegality and consequences of the action. In addition, based on data from the sector regulator, CONSAR, it was proven that in the periods in which the agreements were in force, the transfers of accounts between the Afores involved were reduced.

The objective of this illegal practice was to reduce commercial expenses, which would have greater benefits for the Afores. As it is a market in which it is complex to modify the commissions amount, and in which investments are regulated, the funds administrators

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<sup>2</sup> Every insured worker has the right to choose an Afore or request the account transfer to another Afore, only after one year the worker has registered or after one year this transfer right was exercised. The worker can only transfer the account one year before when he/she transfers it to an Afore, whose SIEFORE corresponds to this/her age, would have registered a greater net income during the immediately preceding calculation period.

<sup>3</sup> The periods are approximate to the times in which the practices occurred.

sought to increase their profits from a reduction of their commercial expenses, of those destined to carry out account transfers, this through agreeing to reduce the, thus lessening competition. In 2014, of the total expenditure of an Afore, the commercial expenses represented about 34%, and came to be up to 50% of the commission charged to the workers. These actions, while seeking to reduce the costs of the administrators, were not reflected in better commissions for the clients.

Furthermore, some of sanctioned economic agents were not entitled to receive the Immunity Program benefits, since they did not fully satisfy the requirements of full and continuous cooperation in the trial-like procedure.

Once the matter has been resolved and notified to the parties, the Law grants the right to the sanctioned economic agents to come before the Federal Judiciary Branch to review the legality of COFECE's actions.

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*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. With this, it contributes to consumer welfare and efficient functioning markets. Through its work it seeks better conditions for consumers, greater output, better services and a “level playing field” for businesses.*