

COFECE investigates possible unlawful concentrations in the milk market

- *There is evidence that economic agents would have concentrated without notifying the Commission, which may have caused damage to the dynamics of competition in the market.*
- *The investigation is carried out in the production of raw milk market and in the production, distribution and commercialization of pasteurized milk and dairy products.*
- *If an unlawful concentration is found, COFECE may order the divestiture of assets.*

Mexico City, January 17, 2017.--- The Federal Economic Competition Commission's (COFECE) Investigative Authority published in its website and in the Federal Official Gazette (DOF) the initiation of two investigations under the files IO---003---2016 and IO---004--2016, for possible unlawful concentrations in the market for the production of raw milk and for the production, distribution and marketing of pasteurized milk and dairy products.

According to the Federal Economic Competition law (FECL), concentrations must be notified to COFECE when they meet the thresholds established in the Law, for instance, when the value of the transaction is greater than 1.2 thousand pesos, COFECE has to assess whether or not this concentration will have an impact on competition in the market.

Unlawful concentrations should be understood as those transactions, which have as their purpose of effect to obstruct, diminish, harm or impede free market access or competition. These conducts may: (i) confer or increase substantial market power of an economic agent; (ii) unduly displace other economic agents or establish entry barriers that impede their access to the relevant market or to essential facilities or (iii) facilitate the implementation of monopolistic practices.

COFECE may open an unlawful concentration case when: i) having the obligation to be notified, the notification filing is not submitted, ii) being notified and authorized, false information is presented or failing to comply with the conditions established in the resolution; or iii) without having the obligation to notify, competition risks are detected, provided that a year has not passed since the execution of the transaction.

Considering the period in which the alleged conducts were executed, the investigation is based on articles 16, 17 and 18 of Federal Economic Competition Law published in the Official Gazette of the Federation on December 24, 1992; as well as on articles 61, 62 and 64 of the current law published on May 23, 2014. This, in order to determine whether the conducts included therein were enacted.

This investigation procedure should not be understood as a prejudgment given that, until now, no infringements to the Federal Economic Competition Law (FECL) have been identified, nor the individual(s) of the infringement. If by the end of the investigation, it is found that such individuals are allegedly responsible, full procedural rights will be granted.

If an unlawful concentration is proved to exist, the Board of Commissioners may impose the following sanctions: order the correction or suppression of the unlawful practice; order partial or total divestiture of an unlawful concentration; order the termination of control or suppression of acts and impose a fine of up to 8% of the economic agent's annual turnover.

In addition, when failing to notify a concentration, the fine could be up to five thousand "Units of Measure and Update" (until January 31, one UMA is equivalent to 73.04 pesos) or up to 5% of the economic agent's annual turnover. Directors and executives who have directly or indirectly participated in an unlawful concentration may be disqualified for up to 5 years and fined with up to 200 thousand UMAs, among other sanctions.

Additionally, according to the FECL, COFECE could impose a fine up to 180 thousand UMAs to public notaries who participate in the acts concerning a concentration without COFECE's prior authorization.

The deadline for these inquiries is from 30 to 120 business days; starting July 8, 2016 for file IO---003---2016 and August 30, 2016 for file IO ---004---2016, when their respective initiation decisions were published. These periods may be extended up to four times.

[Read the initiation decisions \(in Spanish\): IO---003---2016 and IO---004---2016.](#)

[View an infographic on illicit concentrations \(in Spanish\).](#)

[View the presentation: Investigations on the markets for the production of raw milk; and for the production, distribution and marketing of pasteurized milk and dairy products \(in Spanish\)](#)

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

