

## COFECE sanctions condom and latex catheter suppliers for bid rigging in public procurement in the health sector

- *The greatest demand for condoms and latex catheters comes from the main public health institutions in Mexico, such as IMSS, ISSSTE, SSA, SEDENA, SEMAR and PEMEX.*
- *The anticompetitive conducts resulted in over-priced contracts, which had an impact on the capacity of the state to cover other needs of population.*
- *The fines total 112 million Mexican pesos.*

**Mexico City, March 20, 2018.-** The Federal Economic Competition Commission's (COFECE or Commission) Board of Commissioners identified the companies: Dentilab, Productos Galeno, Holiday de México, Trenkes and Productos Adex, as well as 7 individuals,<sup>1</sup> who acted on behalf of some of these companies, executed absolute monopolistic practices in the market for the production, distribution and commercialization of latex condoms and catheters, purchased in Mexico by the public health sector.

The Commission specified in file DE-024-2013 that the following unlawful conducts were carried out:

- Contracts, agreements, arrangements or combination of these among competing economic agents with the purpose or effect of fixing, agreeing upon, increasing or manipulating, through market research, the accepted or maximum prices established by the Mexican Social Security Institute (IMSS) for the acquisition of latex catheters (Foley and Nelaton catheters) in diverse centralized procurement processes; and

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<sup>1</sup> Juan Ernesto de la Puente and Fernando Ángel Ibarra representing Dentilab; Alfonso Treviño Giorguli, from Galeno; Alfonso Treviño Rubalcava, from Holiday and Trenkes; Mario Sáenz Echave and Jorge Rubén Sandoval, from Adex; Humberto Navarro Mandujano, from Holiday, Galeno and Trenkes (Holy Group).



- Agreements with the purpose or effect of fixing, agreeing upon and coordinating either sitting out or presenting a tender in diverse public procurement processes held by the IMSS for the acquisitions of latex catheters and condoms.

Regarding the manipulation of acceptable or maximum prices for Foley and Nelaton catheters<sup>2</sup>, Productos Adex and Productos Galeno succeeded in listing the goods at prices higher than those that would be obtained through competitive conditions, via market investigations carried out by convening authorities in the health sector for centralized procurement processes in 2011, 2012 and 2013.

Likewise, Grupo Holy (made up by Galeno Products, Holiday de México and Trenkes) and Dentilab entered into an agreement to coordinate or arrange when to present or abstain from bidding, in multiple public procurement processes, convened by the health sector for the acquisition of Foley catheters and condoms, during the years 2009, 2011 and 2012.

In the agreement, Dentilab and Grupo Holy established that:

1. Dentilab would maintain an 80% participation in condom acquisition procedures at the federal and state levels, while Grupo Holy would obtain 20%. This behavior occurred in 2009, 2011 and 2012.
2. Likewise, they divided the market for a procurement process in 2012 for the acquisition of Foley catheters: 80% for Grupo Holy and 20% for Dentilab.

Derived from this market distribution, these companies presented positions to win or lose the bids, or abstained from participating in them, as well as obtaining the agreed market percentages.

It is worth noting that, as of 2006, the IMSS began to make consolidated purchases of these products, so the behavior affected main State public health institutions, such as the Institute of Social Security and Services for State Workers (ISSSTE), the Ministry of Health (SSA), the Ministry of National Defense (SEDENA), the Ministry of the Navy (SEMAR) and Petroleos Mexicanos (PEMEX).

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<sup>2</sup> Foley catheters are inserted into the bladder for urinary catheterization, the Nelaton have the same use, only they cannot remain in the bladder.

The behaviors, in addition to affecting the process of competition and free market access, infringe upon the public purse, as they resulted in the payment of premiums on these products, causing an estimated damage of 177 million 67 thousand 392 pesos.

Consequently, COFECE's Board of Commissioners fined Dentilab, Galeno Products, Holiday de México, Trenkes and Adex Products, and the 7 individuals who acted on behalf of these companies, with amounts that together total 112 million 850 thousand 638 pesos, which are enforced considering the agent's economic capacity. In addition, considering these are government procurement processes, the public version of the resolution was ordered to be submitted to the Ministry of Public Administration for any legal effects that may arise.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to go before the Judiciary so the legality of the Commission's actions may be reviewed.

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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 the markets. Through its work, it seeks better conditions for consumers, greater output and better services and a "level playing field" for companies.*



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