

COFECE identified differentiated regulations among similar competitors in the market for the access to infrastructure and port services in Puerto Vallarta, state of Jalisco

Mexico City, May 25, 2018.- The Federal Economic Competition Commission's (COFECE or Commission) Board of Commissioners decreed the closure of investigation DE-004-2016 for the possible commission of a relative monopolistic practice in the market for access to infrastructure and provision of port services in the states of Jalisco and Nayarit, specifically in Puerto Vallarta's port area. A report indicating possible exclusive advantages favoring certain economic agents at said port resulted in the initiation of an investigation on March 15, 2016.

After the first investigation period, COFECE deemed there was insufficient evidence to prove relative monopolistic practices in the port of Puerto Vallarta. However, COFECE identified that differentiated regulation is being enforced on marine operators, which could affect the determination of their compensations and fees, placing some companies at a disadvantage when competing in the market.

As per the investigation's results, the Port Authority of Puerto Vallarta (*Administración Portuaria Integral de Puerto Vallarta, Apival*), a company in which the State is a majority shareholder, has the Ministry of Communication and Transportation's (SCT) concession to manage the port area. Additionally, Apival operates *Los Peines*, a tourist marina in the same port. As such, Apival has a dual function: operate a marina and authorize the operation of all tourist marinas located at the port, through a contract of partial assignment of rights.

Therefore, *Los Peines* tourist marina, which is operated and exploited by Apival, competes directly with other privately-operated marinas, however, the compensation paid to operate them is different from the compensation paid by Apival.

As per the Federal Rights Law, private operators pay a compensation according to an appraisal carried out by the Institute for Administration and Appraisal of National Goods (*Instituto de Administración y Avalúos de Bienes Nacionales* or INDAABIN). By contrast, Apival pays a compensation for the administration of the Puerto Vallarta port area, as



defined by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público, SHCP*), yet there is not a specific compensation for the operation of *Los Peines* marina. According to the information gathered during the investigation, the compensation paid by Apival to operate *Los Peines* marina is significantly lower than that of the competitors operating in the same port area. The aforementioned impacts different economic agent's capacity to compete.

The existence of different regulations may generate disadvantages among market participants, which is why it is relevant that the SCT revise this situation to ensure that competition conditions prevail among marinas, without generating distinction between those that are public and private.

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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

