

# 15 RELEVANT ACTIONS 2018



Comisión  
Federal de  
Competencia  
Económica

# Introducción



Mexicans demand an economy that benefits them and eradicates the privilege of the few. When these conditions are met, the positive impact is twofold: families have access to a greater range of goods and services at the lowest possible prices; and, any given individual may participate in a market and face a level playing field, free from unjustified legal, political or economic barriers.

Here lies the importance of the Federal Economic Competition Commission's (COFECE or Commission) work. Its mandate is to investigate, and when the case arises, sanction companies that fail to comply with the Federal Economic Competition Law (LFCE as per its initials in Spanish), in addition to fostering, at the three levels of government, laws and public policy decisions that do not hinder the possibility of competition in markets.

During 2018, COFECE used all its technical capabilities and powers granted by law to foster competition in markets that are crucial to the national economy, such as the market for pharmaceuticals, LP gas, oil, air transport, *tortillas*<sup>1</sup> and finance, among others.

The following are the Commission's 15 most representative actions in 2018.

1.- *Tortillas* are a staple in Mexicans' diet, and are a type of thin, unleavened flatbread, made from powdered hominy (nixtamalized maize).

## Public Procurement/Catheters and Condoms/ Fine



# 1

When public procurement is carried out under competition conditions, the government obtains the best conditions regarding price, quality and financing. COFECE monitors the conducts of governmental suppliers to ensure collusion is not present. The Commission established a fine of 112 million pesos<sup>2</sup> for *Dentilab, Productos Galeno, Holiday de México, Trenkes* and *Productos Adex*, as well as 7 individuals, for absolute monopolistic practices (horizontal restraints or collusive agreements) in the market for the production, distribution and commercialization of latex catheters and condoms purchased by the national health sector.



Note: Once the parties have been notified, the Law grants the sanctioned economic agents the right to go before the Federal Judiciary to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.

2.-. Approximately 5.8 million dollars



## Services/Transportation and Custody of Securities/Fine



# 2

The daily transactions of diverse businesses, as well as banks, require services for the transportation and custody of securities, which consists in the reception and delivery of said securities via ground transportation units. The Commission fined *Cometra*, *Seguritec*, *SEPSA*, *Tecnoval*, *Tameme*, *Panamericano* and *Grumer*, companies involved in the transportation and custody of securities, as well as ten individuals, for colluding to fix prices and market segmentation. The fines totaled 123.5 million pesos.<sup>3</sup>

Note: Once the parties have been notified, the Law grants the sanctioned economic agents the right to go before the Federal Judiciary to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.

3- Approximately 6.4 million dollars



# 3

Efficiency requires industries to have a reliable supply of inputs at the lowest possible cost. The existence of diverse suppliers and the freedom to choose or switch from one supplier to another is crucial. In the supply of industrial gases, *Cryoinfra*, *Infra* and *Praxair México* committed to restoring competition and free market access in the markets for the wholesale distribution and commercialization of oxygen, nitrogen and industrial grade liquid argon through a set of measures to eliminate the contractual conditions which limited their customers from switching suppliers. Said companies were being investigated for possible relative monopolistic practices.



# 4

COFECE has the power to investigate and, when necessary, sanction transactions between companies that result in sufficient market power to fix or set prices. In 2016, the journalistic report known as the Panama Papers recounted a possible unlawful merger in the market for pharmaceuticals, which involved the distributors *Nadro* and *Marzam*. In consequence, the Commission initiated an investigation. Both the Dutch fund *Moench Coöperatif* and Luis Doporto Alejandro presented and accepted commitments to restore competition in the wholesale commercialization of pharmaceutical, personal care and beauty products nationwide, which resulted in the early closing of the investigation. *Moench* and *Doporto* are required to, among other commitments, demonstrate before COFECE, within a determined timeframe, that all connections between *Nadro* and *Marzam* have been eliminated.



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# 5

*Corporación Interamericana de Entretenimiento (CIE)*, a Mexican entertainment and media company, requested the early closing of an investigation for the possible abuse of dominant market position in the production of live entertainment shows, operation of entertainment centers and automated ticket sales. To this end, *CIE* and its companies, *OCESA*, *Venta de Boletos por Computadora*, *ETK Boletos*, *Operadora de Centros de Espectáculos* and *Inmobiliaria de Centros de Espectáculos* committed to, among other actions, eliminating exclusivity clauses in their contracts with promoters and live entertainment operators in establishments not owned by Grupo CIE, abstaining from including similar conditions in future contracts as well as refraining from increasing the accumulation of rights over third party properties that have a capacity of over 15 thousand spectators in Mexico City, over the next five years.



## Notification/Initiation of trial-like procedure

# 6

Once the Investigative Authority concludes a probe and finds sufficient evidentiary elements to indicate the probable responsibility for anticompetitive conducts, the initiation of a trial-like procedure is determined, in which economic agents are granted the right to present a defense against the allegations brought against them. In 2018, the Commission notified diverse agents their right to present their defense against allegations of unlawful conducts before COFECE's Board of Commissioners issued a final resolution.

Some of the aforementioned cases took place in the following markets:

- Credit information services
- Air passenger transportation
- Production, distribution and commercialization of eggs
- Ground Passenger transportation at the Cancún Airport
- Toothbrushes procured by the health sector
- Production, distribution and/or commercialization of wholesale salt
- Corn *tortilla* in the municipalities of Palenque and Ángel Albino Corzo, in the state of Chiapas



## Labor/Soccer player recruitment/Investigation

# 7

The possible commission of absolute monopolistic practices (horizontal restraints or collusive agreements) in the process of recruitment and signing of human resources may inhibit the mobility of employees in the labor market, which would merit the enforcement of the *Federal Economic Competition Law*. The Commission's Investigative Authority initiated a probe for possible absolute monopolistic practices in the market for the recruitment of professional soccer or football players nationwide.





# 8

LP gas is fundamental for families in Mexico, whom allocate 4.4% of their total expenditure to gas and electricity consumption. Approximately 90 million Mexicans use it as domestic fuel. COFECE's Investigative Authority published an Investigation Initiation Decision for possible collusion in the market for the national distribution and commercialization of LP gas.





## The Digital economy/ Electronic commerce/ Investigation



# 9

Electronic commerce platforms represent new shopping options, and also exert competitive pressure on traditional markets. Nevertheless, to avoid negative effects on competition and free market access, the corresponding authorities must exercise oversight. In 2018, COFECE initiated, for the first time, an investigation related to digital markets for possible relative monopolistic practices (abuse of dominance or vertical restraints) in the market for electronic commerce platforms in Mexico.

## Water heaters/ Concentration blocked

# 10

On occasion, concentrations among companies, through a merger, alliance, acquisition or other mechanisms, may risk competition in the markets in which they operate, as the transaction may result in sufficient market power to set prices, displace or hinder the market entry of competitors. Therefore, the Commission has the power to authorize, condition or block concentrations. COFECE's Board of Commissioners blocked the transaction that consisted in *Rheem's* acquisition of *Grupo Industrial Saltillo's (GIS)* water heating assets, such as facilities, brands and property licenses, in the market for water heaters.



## Agri-food/ Seeds/ Concentration conditioned



# 11

The supply of food at the best possible cost contributes to society's well-being. That is why the agri-food sector requires low cost inputs to spur productivity. To maintain competition conditions, the Board of Commissioners set conditions for the *The Monsanto Company* and *Bayer Aktiengesellschaft* merger which called for the divestiture of the vegetable seed business, genetically modified cotton seeds and glufosinate-ammonium based, non-selective herbicides. In the analysis of the transaction, COFECE collaborated with competition authorities in the United States and the European Union.



## Public Procurement/ Infrastructure in Tabasco/ Constitutional controversy



# 12

Public tenders are the ideal means through which the State procures goods and services under the best possible conditions. In 2018, the Commission issued an opinion on the “*Decree that amends and adds diverse provisions to the Public Works and Related Services Law and the Acquisitions, Leasing and Public-Sector Services Law*” (Decree) for the state of Tabasco, as it would gravely affect competition and free market access in the state’s public procurement processes. The changes implied discretionary risks, room for corruption and surcharges in public procurement. Regardless, the State Executive published the provisions, therefore COFECE requested that the *Procuraduría General de la República* (the Attorney General’s Office) request the Supreme Court of Justice verify the constitutionality of said legal modifications. This legal recourse is currently in review.



# 13

Greater competition in energy markets result in consumer benefits: greater supply, quality and the best possible prices. COFECE recommended that the Ministry of Communications and Transport eliminate the exclusivity exercised by *Aeropuertos y Servicios Auxiliares (ASA)*, in the services for storage, commercialization and retail of fuels for aircrafts at national airports. Transitory article 9 of the regulations for the Airports Law, which granted exclusivity, was repealed after this opinion was issued.

## Better services/ Procedure simplification

# 14

COFECE has sought the simplification of procedures, diminish costs and times to the benefit of economic agents interested in carrying out a concentration. In April 2018, the Board of Commissioners analyzed the first concentration using the Electronic Procedure System (SITEC), which resulted in the authorization of the transaction between *RLH Properties and Obrascón Huarte Lain* (OHL). The use of this system has resulted in a reduction of 32% in time expended notifying a concentration regarding the time used when presenting a hard copy version of documentation at COFECE's offices.

Bienvenido



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## Best practices/ Progress in the rankings



# 15

COFECE rose to three and a half stars (out of five) in the Global Competition Review's (GCR) world ranking. The British journal's ranking is an international benchmark regarding the performance and effectiveness of the most important antitrust agencies around the world. The specialized publication considered, among other relevant factors, the investigations opened in new markets as well as the record fines imposed, the lodging of the first criminal complaint against several individuals for bid-rigging in public procurement for the health sector, as well as COFECE personnel's professionalization, among other positive developments.



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Disclaimer:

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