

COFECE recommends modifications to Port Law and other measures to promote competition in maneuver services

- *The Commission has observed that Mexican ports present situations that may generate competition problems, such as exclusivities, direct award of contracts and deferment of tenders for maneuver services to load and unload all types of goods.*
- *It was also found that the Ministry of Communications and Transports (SCT for its initials in Spanish) needs to be granted with attributions to issue tariff regulations in cases where providers of these services are monopolies at ports where they operate.*
- *Lack of competition in maneuver services in ports affects logistics chains and competition in the country's industries, such as agri-food and oil.*

Mexico City, November 25, 2019.- The Federal Economic Competition Commission (COFECE or Commission) issued the Ministry of Communications and Transports (SCT for its initials in Spanish) and the respective commissions at the Senate and Chamber of Deputies, an opinion (OPN-008-2019) with recommendations to, among other actions, incorporate in the *Ports Law*, measures that favor the adoption of competition and free market access principles in tenders for *contracts for the partial assignment of rights (assignment of rights contracts or contracts)* for the provision of port maneuver services. The proposed measures have the purpose of avoiding conditions that cause inefficiencies and distortions in the country's productive and logistics chain, such as those for agri-food or oil, which are priority for the economy and Mexican families.

Mexican ports are logistic nodes where maritime transport converges with railway and highway transport to connect production centers or import of inputs and diverse products with consumption points within the national territory. 31.6% of international trade from Mexico is moved via maritime transport.

The movement of goods at Mexican ports is carried out through maneuvering services - loading and unloading, storage and handling, as well as delivery or reception-, which are provided by a third party (assignees) whom, in accordance with the *Port Law*, should obtain an *assignment of rights contract* of the respective Port Authority (*Administración Portuaria Integral, API for its initials in Spanish*). As a general rule, these are tendered.

From 2013 to date, COFECE has issued more than 100 opinions on the documents and respective participants of said tenders. Derived from these actions, the Commission has



observed situations that may generate competition problems in the maneuver services at diverse ports of the country, such as: **exclusivities and advantages** to certain assignees, **direct adjudication** of *contracts*, **deferment to carry out tenders** that allow for the entrance of new participants, ports with **sole providers** of maneuver services for this type of cargo, as well as the **inexistence of tariff regulation** in cases where competition conditions are not observed.

An example of how the lack of procompetitive regulation may affect a productive chain is the case of the port of Topolobampo, in the state of Sinaloa, where, despite the existence of a sole provider for the maneuvering of bulk agriculture, the tender to grant a *contract* for a second specialized facility for this type of cargo, has been indefinitely postponed. Conversely, tariffs for these services are not regulated, which is necessary as they do not face any competition. Furthermore, the SCT does not allow for the respective API to handle this type of cargo at public docks. The latter is aggravated by the fact that nearby ports do not offer maneuver services for corn in said state, the main grain producer in the country.

Other examples are observed in the State of Veracruz, where the assignee specialized in containers has an 85% market share, which may increase once its new terminal initiates operation in the port's expansion area. At Lázaro Cárdenas, in the State of Michoacán, a multi-purpose port terminal is prevented from participating in the loading and unloading of automobiles, which causes the operator specialized in vehicles to concentrate 100% of the market. At the port in Progreso, in the State of Yucatán, there is a sole assignee for the maneuver of bulk agriculture, and it is the only provider of the non-specialized service for these products at the public dock (known as *multi-purpose port terminals*). The tariff for service at both facilities is not regulated.

The Commission recommends adjustments to the *Ports Law*, to guarantee better prices, quality and opportunity conditions for the users of maneuver services at diverse ports in the country, as follows:

1. Incorporate measures to protect and promote competition in tenders for assignment contracts which include the following:
 - Tender rules should only establish the minimum requirements necessary for infrastructure and equipment to be tendered, as well as for bidders.
 - Technical evaluation should be objective, based on predetermined, transparent and clear criteria.
 - Any future assignment of an *assignment contract* or the partial or whole sale of social capital of an assignee should obtain COFECE's approval.



- Ensure that APIs submit *contract* tender documents to COFECE and effectively incorporate the measures issued in the respective opinion (this is given prior to the award).

It was also recommended to explicitly incorporate in article 127 of the Federal Economic Competition Law (LFCE for its acronym in Spanish) the imposition of fines and their amounts for API's breaches of COFECE resolutions.

2. Limit the granting of exclusivities and avoid advantages that may affect competition, via the modification of port operation rules or contacts, with measures such as:
 - Obtain a favorable opinion from COFECE when the object of an assignee's *contract* is modified.
 - Prohibit exclusivities, preferences, priorities or rights directed in favor of a certain type of facility, terminal, product, service or assignee.
 - Limit and establish assignee participation rules in port Planning Committees to avoid conflicts of interest or decision making that may grant advantages over other competitors.
 - Avoid direct awards and contract extensions, for this purpose, APIs should make third party applications public, for the award of spaces and tenders within an established period.
3. Establish the bases for the SCT to regulate tariffs when there is only one maneuvering service provider for a type of cargo in an area, or when COFECE issues a statement on the absence of competition conditions, which may be requested by the Ministry, APIs, or the affected users.

[See opinion OPN-008-2019 in Spanish](#)

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The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. This contributes to people's well-being and the efficient functioning of markets. With its work, COFECE seeks better conditions for consumers, more services of higher quality and a "level playing field" for companies.

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