

COFECE closes probe for possible collusion in market for watt-hour meters and emphasizes opportunities for improvement in public procurement processes

- *COFECE was investigating probable absolute monopolistic practices in the production, distribution and/or commercialization of watt-hour meters acquired by the CFE.*
- *Collusion may only be confirmed if those whom are in agreement are competitors. In this case, it was concluded that the investigated companies are not, as they belong to the same Economic Interest Group. Also, they never submitted simultaneous bids for the same type of meter (same budget line item) in CFE public tenders.*
- *Independently from the investigation's results, COFECE's Board of Commissioners underscored the recommendation for the CFE to open tenders to allow for the participation of international companies with similar production and supply capacities to those of the Economic Interest Group with the purpose of having greater supplier options.*

Mexico City, November 28, 2019.- The Federal Economic Competition Commission's (COFECE or Commission) Board of Commissioners resolved to decree the closure of the investigation of possible absolute monopolistic practices in the market for the production, distribution and/or retail of watt-hour meters -known as electricity meter- acquired by the *Comisión Federal de Electricidad* (Federal Electricity Commission or *CFE* for its initials in Spanish). COFECE's Board of Commissioners concluded that the investigated companies are part of the same Economic Interest Group (EIG or Group); furthermore, during the investigation period, simultaneous bids to compete between each other for the same publicly procured CFE budget line item were not detected.

The investigation identified in file DE-023-2017 initiated as a result of a complaint indicating that between the years of 2013 and 2016, the companies *Comercializadora IUSA Medidores (IUSA)* and *Controles y Medidores Especializados (Conymed)*, among others, allegedly carried out acts of collusion in *CFE's* watt-hour meters public procurement processes.

COFECE's Investigative Authority analyzed, among other elements, 16 procurement procedures that took place between 2009 and 2018, and identified that:



1. *Conymed* is part of an Economic Interest Group whose members include, among other companies, *Comercializadora IUSA Medidores (IUSA)*, *Industrias Unidas*, *IUSA GE*, *IUSA Medición y Medidores IUSA*. All of these, despite having their own legal personality, have similar commercial and financial interests, therefore they coordinate their administrative, legal and corporate activities to achieve common purposes.
2. *Conymed* and the rest of the investigated Economic Interest Group companies never presented themselves as competitors for the same budget line items of the tenders investigated. From 2009 to 2012, the aforementioned Group participated in all watt-hour meter tenders called for by the *CFE*, through various companies, without more than one EIG member company simultaneously submitting bids for the same budget line item. As of 2013, *Conymed* - as a new member of the EIG - participated in procurement procedures but did so exclusively for the acquisition of the biphasic watt-hour meters budget line, while other companies from the Group acted alone in procurement processes that required single-phase and three-phase meters. In all cases, they did not present themselves as competitors, as they submitted bids for different types of electricity meters, without coinciding in a single budget line item.

In this sense, the investigated companies are not competitors, as they belong to the same EIG, furthermore, they abstained from participating and simulating competition in the same budget line item in all public procurement processes analyzed by COFECE.

Therefore, and in accordance with the Federal Economic Competition Law which indicates that confirming the existence of a cartel requires participants to be competitors, there are insufficient elements to confirm the claim of the absolute monopolistic practice. For this reason, the Board of Commissioners decreed the closure of the file.

It is noteworthy to indicate that to determine what should proceed in this matter, according to law, COFECE had to wait for the production of legal precedent, which is not directly linked to the watt-hour meter market, that establishes the possibility of sanctioning companies from the same EIG for collusion, if and only if they compete for the same budget line item.

Independently from the result of this investigation, it is relevant for COFECE's Board of Commissioners to underscore the effects that tender design can have on the public tender result:



- Of the 16 *CFE* public calls for tenders between 2009 and 2018, analyzed by COFECE, approximately 230 different budget line items were awarded, of which the investigated *EIG* companies won all but one. In some of the tenders, other companies competed without winning a single budget line item, except for a single-phase meter tender which was obtained by *Electrometer* in 2017.
- According to the content analysis for the bidding rules of these meters, it is considered that tender documents may have been favorable for the Group's companies, either because the tender rules sometimes requested watt-hour meter specifications that were compatible or practically identical to those patented by *EIG* companies, or because short delivery times for meters were virtually impossible to comply with for new competitors.
- In comparison with the tenders investigated, during the tender called for by the *CFE* in 2019 - whose public procurement documents were modified, among other ways, in the aspects mentioned above - six proposals were presented in total, five were evaluated and contracts were awarded to four competing companies, with a saving of at least 18% compared to the prices paid for the meters in 2018.

For the future, with the objective that *CFE* meter tenders guarantee greater competition, more participants and better procurement conditions in favor of the semi-public company, it is recommended that the productive State company use the international tender figure to allow for the participation of foreign suppliers that have the production and delivery capacity similar to the *EIG* companies that were investigated.

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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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