

# 15 relevant actions 2019



cofece

Comisión  
Federal de  
Competencia  
Económica

At COFECE we are motivated to foster competition in all markets in the country, as this generates greater welfare for Mexicans and promotes regional development and inclusive economic growth.

Competition can make a difference in the welfare of Mexican families by bringing quality products at the best possible prices. For this reason, during 2019, our efforts encompassed a wide range of markets, from the production and sale of tortilla in municipalities of Chiapas, to those linked to large logistical services that distribute inputs and products to millions of people and thousands of companies throughout the country.

COFECE also contributed to close gaps for impunity. We imposed fines on companies who coordinated to manipulate prices in a number of tenders in the public health sector, with the aim of unduly profiting from public procurement to the detriment of the public purse.

The account provided by COFECE in the following pages presents these and other efforts of analysis, investigation and institutional organization aimed at strengthening competition in the Mexican markets during 2019, as well as promoting an ever-broadening alliance with public, economic and social stakeholders in favor of an inclusive economy.

To **favor**  
household  
**economy**



# 1



Tortilla is a part of the staple diet of Mexican families. Its price affects mainly low-income families. COFECE sanctioned tortilla producers in the state of Chiapas for entering into agreements to sell tortillas at an overprice - amounting at least 1 peso per kilogram. The Commission fined **5 individuals and three tortilla associations in Palenque with over 2 million pesos,**<sup>1</sup> as well as **11 producers of dough and tortilla in the municipality of Ángel Albino Corzo with 340 thousand pesos.**<sup>2</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.

1. Approximately 106 thousand USD, using an exchange rate of 18.79 MXN per USD hereinafter.

2. Approximately 18 thousand USD.



## 2



Medicines are an essential good for people facing an ailment; their quality of life depends on them to a large extent. COFECE's Investigative Authority determined the existence of elements indicating possible **unlawful agreements to manipulate prices and allocate markets in the chain of production, distribution and sale of pharmaceuticals in the Mexican territory**. Thus, several companies and individuals were notified with a Statement of Probable Responsibility so they can exercise their defense in a trial-like procedure.



# 3



The creation of startups brings benefits to consumers. However, in certain instances when a big company acquires a startup, the enterprise resulting from that merger might have an advantage that decreases competition and the benefits of innovation. Thus, **the Commission decided to block the concentration between *Walmart* and *Cornershop***, as the economic agent resulting from the transaction could, amongst other potential anticompetitive effects, cause the exit of *Walmart's* competitors from the *Cornershop* platform due to uncertainty in the strategic use of information they provide and produce within the platform from the sale and purchase of their products.

Note: Once the Commission issues the resolution to block the concentration, the Law grants the economic agents involved in the transaction 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. The Federal Economic Competition Law (LFCE) establishes that a concentration shall be understood as a merger, acquisition of control, or any other act by means of which companies, associations, stock, partnership interest, trusts or assets in general are consolidated, and which is carried out among competitors, suppliers, customers or any other Economic Agent. Such transactions are commonly known in the international arena simply as mergers, or mergers and acquisitions.



## 4



Bus lines are the means of transportation between cities most often used by Mexicans. In the ***Study on competition in federal passenger transportation***, COFECE found that updates to the legal framework are needed, as it currently inhibits the entry of new competitors to different routes, thus limiting the variety of schedules and types of services offered. Likewise, the legal framework leads to users paying higher prices in different routes. When a new participant begins operating a route without prior competition, average ticket prices drop 40%. Nevertheless, in 8 out of 10 routes in the country which could be served by at least two different suppliers, travel options are available from only one Economic Interest Group.



## 5



Passengers who arrive at national airports require safe, quality and reasonably priced taxi services to reach their final destinations. However, **the *Cancun International Airport* prevented new groups from providing taxi services** at its facilities, favoring groups currently operating and limiting new competitors from offering their services. This conduct caused an average overprice to consumers of 8%. Thus, COFECE fined the Airport with 72.5 million pesos.<sup>4</sup> Moreover, the Airport shall allow access to concessionaires bearing permits issued by the Ministry of Communications and Transportation (SCT) to operate at this airfield.

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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.

4. Approximately 3.85 million USD.



## 6



***Aeromexico* and *Mexicana* airlines were fined for a total of 88 million pesos<sup>5</sup>** because they agreed to jointly establish minimum or base prices in at least 112 air routes in the Mexican territory, between April 2008 and February 2010. This conduct is estimated to have affected over 3.5 million travelers, who collectively payed overprices of approximately 2 thousand million pesos.<sup>6</sup>

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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.

5. Approximately 4.68 million USD.

6. Approximately 106.3 million USD.



## 7

Frequently, credit is the instrument that enables families to acquire assets and small and medium companies to operate in better conditions. For this reason, the quality of credit information (your credit history as an applicant) available to financial institutions is an essential factor to determine your repayment capacity and obtaining a credit. **COFECE fined *Dun & Bradstreet* - a company that collects and processes credit information for these purposes - with 27.4 million pesos<sup>7</sup>** for refusing to share information with competing companies, despite being bound to do so by the Law to Regulate Credit Information Systems.

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.

7. Approximately 1.45 million USD.



# **Boosting** the country's **competitiveness**



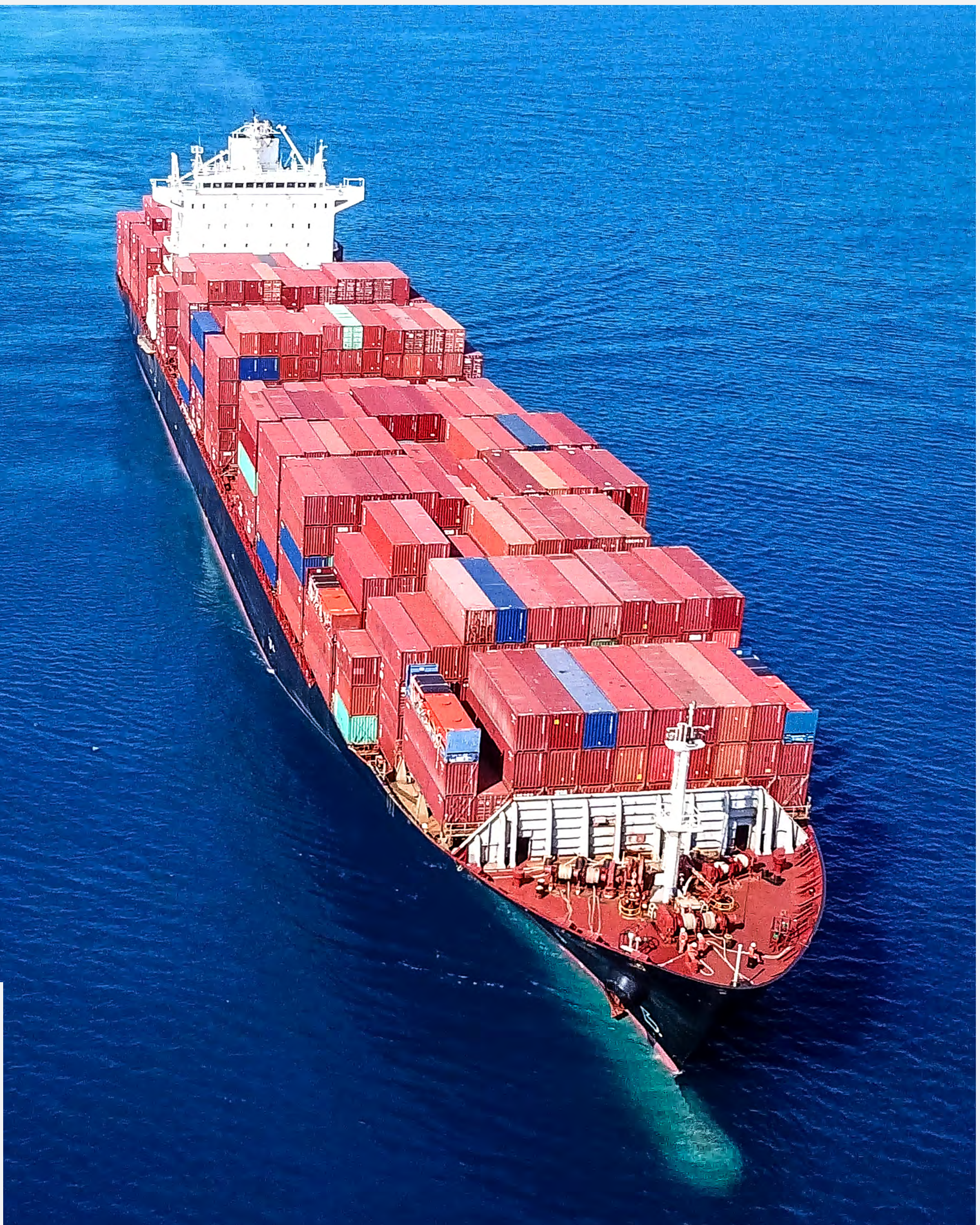
# 8

6500

The Mexican government issues debt to finance projects, goods and services offered to the public. This financial product is acquired by individuals and institutions seeking to garner the best returns to their investments. **Several economic agents were notified of probable responsibility,** as the Investigative Authority determined that in the market for the brokerage of debt securities issued by the Mexican government, there is sufficient evidence, in a part or several parts of this market, of arrangements to manipulate prices of said securities or to create obligations to abstain from trading or acquiring them.



## 9



In Mexico, 60% of imported inputs - such as maize, wheat and other grains - enter by ports. Such grains are involved in the production of basic consumer goods. Ports also mobilize 31% of international trade. Based on their importance, **COFEC** issued an opinion recommending additional measures to be included in the *Law of Ports* to incentivize and enable the entry of new competitors in port maneuvers, or alternatively, for SCT to regulate fees in the absence of competition. For example, in Topolobambo there is only one provider for handling bulk agricultural produce, since bidding for a second specialized facility for this cargo has been postponed indefinitely and SCT does not allow public docks to handle this type of cargo; regardless, fees for these services are not regulated. Lack of competitors for maneuvering services is a problem also present in the ports of Veracruz, Lázaro Cárdenas and Puerto Progreso.



## 10

Large operations<sup>8</sup> that involve the merging of two or more companies must be notified before COFECE, in order to assess whether the transaction will not generate concentration levels in the market that might adversely impact consumers' pockets. If companies do not notify such transactions, they must be investigated, and the involved economic agents could be fined for failing to comply with this obligation. In 2019, the following unnotified concentrations were sanctioned:

- In the market for dairy products, **Nestlé México, Société des Produits Nestlé and Nestec e Innovación de Alimentos** - the latter a subsidiary of Grupo Lala - were fined with a total of 7 million 922 thousand pesos.<sup>9</sup>
- To financial institutions **Banco Ve por Más y Bankool**, joint fines of 753 thousand pesos.<sup>10</sup>
- In the market for auto parts, **BorgWarner and Remy Holdings** were fined with a total 1 million 460 thousand pesos.<sup>11</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.

8. Transactions whose value exceeds 18 million of Units of Measurement and Update (or UMA, for its acronym in Spanish, is the economic reference in pesos to determine the amount of payment from obligations and alleged assumptions provided for in the federal law), or when acquiring 35% or more of a company with sales or assets in Mexico surpass 18 million UMAs or amasses assets or social parts exceeding 8 million 400 thousand UMAs and its sales in Mexico amount to more than 48 million UMAs (Article 85 of the LFCE).

9. Approximately 421 thousand USD.

10. Approximately 40 thousand USD.

11. Approximately 77.6 thousand USD.



To **promote**  
public **spending**  
efficiency  
and **fight**  
corruption



# 11



Collusion in public procurement causes impairment to public spending and generates illegal profits for those involved in this conduct. Consequently, *Productos Galeno*, *Dentilab* and *Holiday de México*, **suppliers of toothbrushes who colluded to rig bids and allocated the market in diverse tenders of the health sector**, were fined with a total of 18 million 93 thousand 862 pesos.<sup>12</sup> It is estimated that their overpriced sales caused a damage to the health sector of 4 million 169 thousand pesos.<sup>13</sup>

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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.

12. Approximately 962.3 thousand USD.

13. Approximately 221.7 thousand USD.



# 12



Effective fight against collusion in public procurement can lead to a criminal sanction, which was set forth in the competition legal framework in 2011. **COFECE's Investigative Authority presented a criminal complaint before the Office of Attorney General of Mexico** against several individuals who, according to investigations, probably colluded to rig the results of public tenders issued by the health sector. This was the second time that the Commission exercised this legal power.



## 13



The health sector is one of the biggest buyers in the Mexican State. Hence, it must warrant the best possible conditions for acquiring goods and services needed to provide healthcare to millions of persons. In 2019, the Commission notified diverse companies and individuals of their probable responsibility **for coordinating bids or abstaining from participating in public tenders** issued by public institutions of the health sector that procure integrated services of laboratory tests and blood bank. Infringers can exercise their right of defense in a trial-like procedure.



## 14



COFECE is a tireless activist in promoting the benefits of competition for the efficient spending of public resources. In fulfilling this endeavor, it has analyzed and investigated tender processes, laws and guidelines to promote competition in public procurement. Profiting from this experience, the National Workers' Housing Fund Institute (INFOVAVIT, as per its acronym in Spanish) requested that the Commission issue an **opinion and recommendations to include pro-competitive measures in its procurement provisions**. This was necessary as, for instance in 2017, only 13% of all procurement was executed through public tenders. INFONAVIT included the recommendations issued by COFECE to its new regulations, aiming at a more efficient spending.



# Regulatory **framework**



## 15



The Commission published the ***Regulatory provisions for the qualification of information derived from legal counsel provided to economic agents***, establishing measures for the handling of information derived from legal counsel between a lawyer and his client. It is possible that, while wielding its investigative tools, COFECE comes into possession of information potentially prone to be protected by such legal privilege, which is established to protect privacy, defense and confidentiality of communications between a lawyer and his client/company: these types of communications must be protected and lack evidentiary value.



# Links Guide

1. Sanctions in the market for tortilla in municipalities of the state of Chiapas:  
[https://www.cofece.mx/wp-content/uploads/2019/09/COFECE-035-2019\\_English\\_final.pdf](https://www.cofece.mx/wp-content/uploads/2019/09/COFECE-035-2019_English_final.pdf) y  
<https://www.cofece.mx/wp-content/uploads/2019/10/COFECE-041-2019-English.pdf>
2. Notification of probable responsibility for collusion in the market for pharmaceuticals:  
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3. *Walmart - Cornershop* concentration blocked:  
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4. Study on competition in federal passenger transportation:  
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5. Cancun Airport sanctioned for abuse of market power:  
[https://www.cofece.mx/wp-content/uploads/2019/09/COFECE-037-2019\\_Airport\\_Cancun\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2019/09/COFECE-037-2019_Airport_Cancun_ENG.pdf)
6. *Aeroméxico* and *Mexicana* sanctioned for collusion:  
<https://www.cofece.mx/wp-content/uploads/2019/04/COFECE-018-2019-English.pdf>
7. Credit information company sanctioned:  
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9. Opinion on port regulation:  
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10. Sanctions for unnotified concentrations:  
[https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-015-2019\\_English.pdf](https://www.cofece.mx/wp-content/uploads/2019/03/COFECE-015-2019_English.pdf)  
<https://www.cofece.mx/wp-content/uploads/2019/01/COFECE-003-2019-English.pdf>  
<https://www.cofece.mx/wp-content/uploads/2019/02/COFECE-006-2019-English.pdf>
11. Sanctions in the market for toothbrushes procured by the health sector:  
<https://www.cofece.mx/wp-content/uploads/2019/07/COFECE-034-2019-Eng.pdf>
12. Criminal complaint for collusion in public procurement of the health sector:  
<https://www.cofece.mx/wp-content/uploads/2019/10/COFECE-042-2019-English.pdf>
13. Notification of probable responsibility in laboratory services procured by the health sector:  
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14. Recommendations to Infonavit concerning public procurement:  
<https://www.cofece.mx/wp-content/uploads/2019/04/COFECE-025-2019-English.pdf>
15. Regulatory provisions for the handling of attorney-client communications:  
<https://www.cofece.mx/wp-content/uploads/2019/10/COFECE-039-2019-English.pdf>



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