

COFECE sanctions polyethylene gloves providers for coordinating their prices and discounts bids in public procurement in the health sector

- *The Commission proved the responsibility of Galeno and Holiday in the execution of absolute monopolistic practices, also known as collusive agreements or cartel conducts, in the market for polyethylene medical healing materials for the health sector and purchased by the IMSS.*
- *Despite both companies belong to the same economic interest group, Galeno and Holiday participated as competitors to each other in the same items of the investigated tenders.*
- *The relevance of this case lies in the definitive ruling from the Federal Judiciary, which determined that participants in public biddings must compete, present unique proposals and participate independently in the process, even when they belong to the same economic interest group.*

Mexico City, February 18, 2020.- The Board of the Mexican Federal Economic Competition Commission (COFECE or Commission) imposed fines amounting 28 million 790 thousand pesos to *Productos Galeno (Galeno)* and *Holiday de México (Holiday)*, as well as two individuals who acted on their behalf, for committing absolute monopolistic practices consisting of coordinating, in terms of prices and discounts, the bids submitted for the same items in public tenders convened by the Mexican Social Security Institute (IMSS for its acronym in Spanish) to procure disposable polyethylene gloves.

Absolute monopolistic practices are agreements, arrangements or information exchanges between competing economic agents with the purpose of manipulating prices, restricting supply, allocate markets or coordinate bids in tenders.

In case file DE-020-2014, the Board of Commissioners found that *Galeno* and *Holiday*, which belong to the same economic interest group since they are owned by persons with a consanguineous relationship, appeared as competitors to each other by presenting independent bids for the same items in the investigated procurement processes – corresponding to 2011, 2012 and 2013-, in which they also were the only participants. However, when drafting their proposals, they exchanged information in order to coordinate



their bids; for instance, and as a result of the coordination, prices and discounts bided by *Galeno* and *Holiday* were prepared by the same person.

Lack of competition in public tenders of polyethylene gloves deterred a lower purchase price. In fact, prices rose 103.8% between 2010 and 2013, years corresponding to the investigated tenders. It is estimated that overprices in the purchase of this product by the public health sector reached 32.8% for large gloves and 31.5% for medium gloves, resulting in an estimated damage to the public purse of 42 million 280 thousand pesos.

Therefore, the Board of COFECE sanctioned *Galeno*, *Holiday* and two natural persons who acted on their behalf with fines amounting 28 million 790 thousand pesos. These sanctions were established taking into consideration the economic capacity of the parties involved.

This case is relevant since COFECE had previously determined the closure of the file because *Galeno* and *Holiday* belonged to the same economic interest group. Nevertheless, the Federal Judiciary ordered COFECE to issue a new proceeding after considering that it is possible to prove an absolute monopolistic practice when companies belonging to the same group participate and appear as competitors with each other in the same public tender. Thus, this resolution by the Federal Judiciary enabled the Commission to sanction the collusion between these companies despite they belong to the same economic group.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to go before the Judiciary so that the legality of COFECE's actions can be reviewed through an indirect *amparo*.

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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.

