

COFECE sanctions *Moench Coöperatif* and Luis Doporto for failing to comply with the commitments made to totally and permanently eliminate any possible link between Nadro and Marzam, in the market for the distribution of pharmaceutical products

- *The commitments were accepted by the Board of Commissioners of COFECE in June 2018, thus the Investigative Authority closed the file for probable unlawful concentration.*
- *For breaching the commitments, Moench and Luis Doporto Alejandro are sanctioned with fines amounting 30 million 893 thousand Mexican pesos, also they must prove compliance with said commitments.*
- *In the contrary case, the Commission may establish enforcement measures and, in the event of recidivism, shall impose a fine for up to the double of the corresponding amount.*

Mexico City, June 30th, 2020.- The Board of Commissioners of the Mexican Federal Economic Competition Commission (COFECE or Commission) imposed combined fines for over 30 million 893 thousand pesos to the Dutch fund *Moench Coöperatif* (*Moench*) and to Luis Doporto Alejandro for failing to demonstrate compliance with the commitments made before this Commission to eliminate, in a total and permanent way, any possible link that could exist between *Nadro* and *Marzam*, a commitment previously established in the resolution of the file investigating a possible unlawful concentration between these two companies.

In April 2016, several newspaper articles known as *Panama Papers* published a complex financial operation through which *Moench* obtained a credit from a person close to the majority shareholder and then president of the Board of the pharmaceuticals distributor *Nadro*, to buy a part of *Marzam's* shares, which is also a participant in the market for the distribution of pharmaceutical products.

Hence, the Investigative Authority initiated the *ex officio* investigation, under file IO-001-2017, to determine a possible unlawful concentration in the market for wholesale distribution and commercialization of pharmaceutical, personal hygiene and beauty products in the Mexican territory. During the investigation process, evidence was found signalling that, under certain assumptions, the financing scheme and contractual guarantees could transfer control of *Marzam* to *Nadro*.



In June 2018, *Moench* and Luis Doporto Alejandro requested adherence to the exemption and fine reduction benefit; in exchange, they committed to restore the process of competition in the investigated market, either through full payment of the credit or through the divestiture of the participation in *Marzam* acquired by *Moench*. Both to terminate any possible link between these pharmaceutical distributors.

When verifying implementation of the commitments, COFECE found that *Moench* and Luis Doporto Alejandro presented an “alternative” scheme for complying with the resolution. This scheme comprised a series of legal actions abroad, which in the opinion of this Commission do not reliably undermine the possibility that *Nadro* could eventually exercise control or influence over *Marzam*, and whose content and implementation is different from the commitments originally established by the Board of Commissioners and accepted by the economic agents.

In this context, the Board of Commissioners resolved to fine the Dutch fund *Moench* and Luis Doporto Alejandro for approximately 30 million 893 thousand pesos, in addition to ordering the submission, within a set timeframe, of documentation and information that proves compliance with the original commitments. In the contrary case, the Commission may establish enforcement measures, and in the event of a recidivism, impose a fine of up to double the amount that would correspond to them, without prejudice to the criminal liability that may be incurred.

Once the parties have been notified, the Law grants them the right to go before the Federal Judiciary to review the legality of the Commission’s actions.

Press Release: *COFECE’s investigation led Moench Coöperatif and Luis Doporto Alejandro to restore competition in the pharmaceutical market*

Public resolution of the investigation (in Spanish)

What is an unlawful concentration? (in Spanish)

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