

COFECE fines companies and natural persons for colluding in tenders for services for laboratory tests and blood banks convened by IMSS and ISSSTE

- *The Board of Commissioners determined that 11 companies and 14 natural persons coordinated their bids or abstained from bidding in several tenders convened by both public health institutions to the detriment of the treasury and affiliates.*
- *The conducts generated a damage to the treasury amounting at least one thousand 200 million Mexican Pesos due to the payment of overprices by IMSS and ISSSTE to the sanctioned companies.*
- *COFECE fined the involved economic agents a total of 626 million 456 thousand Mexican pesos.*

Mexico City, August 10, 2020.- The Board of Commissioners of the Mexican Federal Economic Competition Commission (COFECE or Commission) imposed a total fine of 626 million 457 Mexican pesos to *Selecciones Médicas (Seme)*, *Selecciones Médicas del Centro (Semece)*, *Centrum Promotora Internacional (Centrum)*, *Impromed*, *Hemoser*, *Instrumentos y Equipos Falcón (Falcón)*, *Dicipa*, *Grupo Vitalmex (Vitalmex)*, *Vitalmex Internacional*, *Vitalmex Administración* and *Vitalmex Soporte Técnico*, as well as to 14 natural persons who participated on behalf of these, for agreeing and/or exchanging information for coordinating bids or abstaining from tenders convened by the Mexican Institute for Social Security (IMSS for its acronym in Spanish) and the Institute for Social Security and Social Services for State Workers (ISSSTE for its acronym in Spanish) for the procurement of comprehensive services for laboratory tests and blood banks.

The aforementioned constitutes an absolute monopolistic practice, sanctioned by the Federal Economic Competition Law, by being arrangements and information exchanges between competing economic agents, with the purpose and/or effect of coordinating bids in public tenders.

Carrying out tests for clinical laboratory or blood bank laboratory are a main input for the care of affiliates, as these are essential for the detection and diagnosis of diseases and hospital care. These laboratory services are used by patients who have been referred by a medical area to have pre-diagnosis, diagnosis or follow up tests for any treatment for any specialty. For its part, comprehensive blood bank service is necessary for the medical staff



of public health institutions to obtain data to be used as input for several medical procedures, such as surgeries, treatment of hematological diseases, burns patients, among others.

In file DE-011-2016, the Commission proved that the economic agents established a *non-aggression pact*, for avoiding competition and allocate the items of 7 tenders convened by the IMSS and ISSSTE in 2008, 2010, 2011 and 2015. With this objective, they held intense communications through emails and phone calls to convene meetings during the days before and after the presentation of their bids in said procedures.

In 2008, representatives from the economic interest group formed by *Seme and Semece*, as well as *Centrum, Hemoser, Impromed, Falcón* and *Dicipa* agreed to allocate the tenders for providing comprehensive services for laboratory tests in several delegations and High Specialty Medical Units (UMAEs for their acronym in Spanish) from the IMSS. To this end, they identified the installed capacity they had in the respective delegations, in such way that each member could keep the one in which it had the greatest capacity for stocking that spot. To obtain the assignation, the winning party established the bidding price, which was used as a reference for the rest of the participants to present losing bids with a higher price, abstain from participating or making their technical proposal to be insolvent by omitting to present a commitment letter.

With minor variations, this coordination mechanism was repeated in the rest of the sanctioned processes:

- i) In the 2008 blood banks tenders from the IMSS, economic agents agreed that only *Impromed, Falcon* and *Hemoser* would participate.
- ii) In 2010, the cartel participated for the first time in an ISSSTE tender for the procurement of both services. In this case, the companies determined to present joint participation proposals in two blocks (each one comprising three companies) and allocated the six items of the tendered comprehensive services, three for each block.
- iii) In the 2011 IMSS laboratory services tender, the same allocation scheme was replicated, therefore each one retained practically the same delegations and/or UMAEs assigned to them in 2008.
- iv) In the 2011 IMSS blood bank procedure, all cartel companies participated and not only three as in 2008, and each one obtained allocations.



- v) In 2015, ISSSTE conducted 2 tenders, for each service. For laboratory services the economic interest group formed by *Vitalmex* companies engaged into the cartel with a joint bid with *Hemoser*. Even when moving forward, the newly economic agent abandoned the agreement, contracts were assigned by ISSSTE based on the agreements established by the cartelists.
- vi) In the last tender for the procurement of blood banks services from ISSSTE in 2015, 10 items were tendered: 6 for general processes and four including a special process (apheresis), and were distributed as follows: the general ones, one for each member of the group and the special ones between those who had the capacity to carry out said tests.
- vii) For the 2015 IMSS tenders (for comprehensive services for both blood banks and laboratory) the cartelists exchanged sensible and strategic information with the object of coordinating their bids. While the cartel did not achieve its final objective, the exchange of information created a real risk to the competition and free market access process.

The damage on the finances of both public institutions from this anticompetitive practice is estimated in more than one thousand 200 million Mexican Pesos, resulting from overprices- in some tests this was up to 58.8%- that were paid during ten years by both IMSS and ISSSTE.

The illegal conduct eliminated the possibility for both health institutions to use those resources for improving their medical units, in the hiring or training of health staff or in everyday operations of their health centers. Therefore, the agreements acted in detriment of the quality of health services to be provided to affiliated population, which is why this collusion is considered a serious conduct.

Consequently, the Board of Commissioners determined to sanction the participants of the collusion- 11 companies and 14 natural persons- with fines amounting 626 million 457 thousand 527 Mexican pesos, which are the maximum fines that can be imposed pursuant the competition law and the sanctioned parties' economic capacity.

According to the procurement law in force, COFECE is not empowered to limit or disqualify the participation of any company who has been sanctioned or is currently under investigation by this authority, in public procurement processes. In this sense, given that the resolution proves the participation of the companies in the anticompetitive practice, the Board also ordered to notify this matter, for the corresponding legal effects, to the Ministry of Public Administration, as well as to both IMSS and ISSSTE.



Once the parties have been notified, economic agents can go before the Federal Judiciary to request a review of the legality of COFECE's actions.

Read:

[What is an absolute monopolistic practice? \(in Spanish\)](#)

[Recommendations to promote competition and free market access in public procurement \(in Spanish\).](#)

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