

# 15 Relevant actions 2020



Comisión  
Federal de  
Competencia  
Económica



# Introduction

In 2020, due to the COVID-19 pandemic, the Federal Economic Competition Commission (COFECE or Commission) faced important contingent challenges to:

- 1) Maintain the continuity of its analyses and investigations in the markets that most impact the welfare of Mexicans, whilst protecting the health of its staff, of the representatives of economic agents under investigation and, in general, of the persons who carry out procedures before the Commission;
- 2) Monitor priority markets in the sanitary emergency to avoid conducts contrary to competition, as well as to resolve in an expeditious manner the concentrations or consultations related to these, in order to help invigorate the economy; and
- 3) Follow the dynamics of the digital economy where new platforms operate, which during the pandemic grew exponentially in the commercialization and distribution of goods and services.

Throughout these months, the rapid reconversion of internal processes, accompanied by a growing digitization undertaken months earlier by COFECE, allowed its work to remain constant, with its characteristic quality and technical rigor.

Economic competition will be essential to contribute to the reactivation of many value chains affected by the pandemic. Likewise, for growth to be sustained over the following years, it is necessary to implement State actions that encourage the participation of the greatest possible number of companies that can compete.



# Health / Laboratory tests and blood bank / Sanction

COFECE imposed **fin**es totaling 626 million 457 thousand Mexican pesos<sup>1</sup> on *Selecciones Médicas, Centrum, Impromed, Hemoser, Instrumentos y Equipos Falcón, Dicipa* and companies of Grupo Vitalmex for illegally coordinating their bids intenders 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) to contract integral services for laboratory tests and blood bank. Through agreements and the exchange of information these companies allocated contracts and sold these services with overprices, thus generating a damage to the treasury of at least 1.2 billion Mexican pesos<sup>2</sup>, preventing that these resources could be used to improve the services provided to the population. Since the Commission is not empowered to disqualify companies that collude, the resolution of this investigation was submitted to the Ministry of Public Administration for the corresponding legal effects.

1.- Approximately 31,287,253 USD, using an exchange rate of 19.77 MXN per USD hereinafter.

2.- Approximately 60,698,027 USD.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to appear before the Federal Judicial Power to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.





## Health / Polyethylene gloves / Sanction



***Productos Galeno and Holiday de México*** were fined a total of 28 million Mexican pesos<sup>3</sup>, as they were found to have coordinated prices and discount offers presented in bids called by IMSS to procure disposable polyethylene gloves. The case is relevant because this file had previously been closed because those sanctioned belong to a same Economic Interest Group. However, the Federal Judicial Power ordered a new proceeding considering that it is possible to prove a collusion when companies that are part of the same group participate and appear as competitors in the same tender.

3.- Approximately 1,416,287 USD.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to appear before the Federal Judicial Power to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.



## Health / Distribution of medicines / Sanction



Mexicans need affordable prices for medicines. Therefore, in 2020, the Commission **fined the Dutch fund *Moench Coöperatif* and Luis Doporto Alexandre with a total of 30 million 893 thousand Mexican pesos<sup>4</sup>**, as they failed to prove compliance with the commitments they assumed in 2018 to eliminate, in a total and permanent way, any possible link that might exist between *Nadro* and *Marzam*. This measure was imposed on them at the time to close an investigation for a possible unlawful concentration in the market for wholesale distribution and commercialization of pharmaceutical products, in which indications were found that the financing scheme and contractual guarantees agreed to buy *Marzam*, under certain assumptions, could transfer control of said company to *Nadro*.

4.- Approximately 1,562,620 USD.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to appear before the Federal Judicial Power to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.



## Health / Medical oxygen / Investigation

An investigation was initiated for possible relative monopolistic practices, consisting of establishing exclusivity conditions in the sale or purchase in the market for production, distribution and commercialization of medical oxygen and related services in the national territory. In the current context this input is a relevant medical treatment, since it is used to care for respiratory ailments, for the treatment or prevention of oxygen deficiency in the blood, in home services for invasive and non-invasive mechanical ventilation, as well as in surgical interventions.

This investigation should not be understood as a prejudgment on the responsibility of any economic agent, since to date, in definitive, no violations to the regulations on economic competition have been identified, nor the subject or subjects that, if applicable, could likely result responsible.





# Gasolines / Service stations / Sanction



Gasoline is a widespread consumption good necessary for the mobility of persons, either by private vehicles or public transport, as well goods. Its price affects both families and the country's productive sector. The Commission **sanctioned several companies and a natural person for agreeing on the prices of retail gasoline in Tijuana and Mexicali**, in Baja California, which generated a damage to the market estimated in more than 27 million Mexican pesos<sup>5</sup>. Fines imposed totaled **51 million Mexican pesos**<sup>6</sup>.

5.- Approximately 1,365,705 USD.

6.- 2,579,666 USD.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to appear before the Federal Judicial Power to review the legality of the Commission's actions. Some of the economic agents involved in this case requested said review.



# Energy / National Electric System / Constitutional controversy

The Supreme Court of Justice ordered the suspension of the *Policy of reliability, security, continuity and quality of the National Electrical System*, whilst awaiting a definitive resolution on the matter, as a result of the constitutional controversy presented by the Commission against this instrument, by considering that it hampers the principles of competition and free market access ordered by the Constitution. The *Policy*, published in May 2020 by the Ministry of Energy, eliminates the competition regime in the generation and supply of electricity established by the regulation in force, as it limits open and non-discriminatory access to transmission and distribution grids, as well as the economic dispatch criteria in the wholesale electricity market. In addition, it grants advantages in favor of certain participants, reduces the ability to compete of others, sacrifices efficiency and establishes barriers to entry in electricity generation.





# Agri-food/ Retail commerce/ Competition study and investigation

The Commission published the ***Study on Competition in the modern channel of retail commerce of food and beverages*** in which it identified the existence of state and municipal regulatory obstacles that have caused a high market concentration in few self-service chains with national presence, a situation that could prevent consumers from obtaining better prices. In addition, this market concentration would allow them to impose terms and conditions on small suppliers, such as delaying payments or applying discounts over these, conducts that create uncertainty and negatively impact in their finances.

Likewise, an investigation was initiated for **possible relative monopolistic practices in the supply, distribution and retailing of consumer goods and related services** to determine whether there are one or several economic agents that are abusing their power to unduly displace other agents in the market, substantially impede their access, or to establish exclusive advantages in favor of one or several economic agents.

This investigation should not be understood as a prejudgment on the responsibility of any economic agent, since to date, in definitive, no violations to the regulations on economic competition have been identified, nor the subject or subjects that, if applicable, could likely result responsible.





## High impact markets/ Economic recovery/ Recommendations



The health emergency of 2020 led to the downfall of production and demand in different markets, affecting to a great extent small and medium companies. In contrast, bigger companies have greater possibilities to prevail, which increases the risk for a high market concentration. For this reason, it is relevant to ensure that public policy decisions for economic recovery promote the maximum possible participation of companies. In the document ***Proposals on economic competition to contribute to the recovery on the Mexican economy***, the Commission presents 12 actions to promote the participation of more companies in the markets that are relevant for the national economy, either due to their crosscutting impact in several markets or for their effect in the pocket of Mexican families.



## 12 actions to contribute to economic recovery

- 1. Create a public bureau** with information on the compliance with payments of public utilities: electricity, water, Infonavit or Fovisste (both social housing institutions) in order for more people to have access to financial options
- 2. Expedite the entry of generic drugs into the market** eliminating rules and conditions that prevent the entrance of competitors
- 3. Comply with the legal framework in force for the electric sector** regarding the economic dispatch of electricity and the non-discriminatory access to grids
- 4. Grant in an expedite and non-discriminatory way the permits to import and export gasolines**
- 5. Reform the public procurement law** to limit the exceptions to public tenders, facilitate international tenders and establish collusion as a cause for disqualification
- 6. Reduce the concentration in passenger transportation** allowing users to have more options and better prices
- 7. Issue guidelines through CONAMER** for local governments to eliminate restrictions to competition in LP gas, gasolines and freight transportation
- 8. Avoid restrictions to foreign trade** without a previous analysis into the possible damage to consumers and sectors and for countervailing duties to not exceed the damage
- 9. Retrieve public goods' concessions which are about to expire** and grant new ones through tenders to those who offer the best conditions to consumers
- 10. Reform the Ports Law** to incorporate competition principles and facilitate tariff regulation when there is a sole supplier of maneuver services in a port
- 11. Modify the Railway Service Law** to achieve an articulated network for this mode of transport and incorporate competition principles
- 12. Empower COFECE to file actions of unconstitutionality** regarding general laws that violate competition principles



## Financial / Card payments system / Preliminary Investigative Opinion

COFECE's Investigative Authority established that **there are no competition conditions in the card payments network in Mexico, due to the probable existence of barriers to competition that generate costs and anticompetitive requirements for the entry of new participants into this market**, which is essential for transactions between cardholders and businesses. This network consists of banks that issue cards and/or affiliate businesses, the card brand holders (for example, *Visa* and *MasterCard*) and the clearinghouses that process the transaction. Only two of the latter, *E-Global* and *Prosa*, operate in Mexico. This investigation found, among other aspects, that the only existing card payment network applies rules that prevent the entry of other networks that could offer better conditions for users. In addition, eight banks are co-owners of the clearinghouses that process the operations, which provides them with information and advantages over other competing banks.

From the issuance of the Preliminary Investigative Opinion, economic agents interested in this procedure may present the statements and arguments they deem appropriate, in order for the Board of the Commission to issue the final resolution on this case.





# Transportation / Freight railway service / Resolution on competition conditions



The Commission determined the lack conditions for effective competition on 20 routes of public freight railway transportation services of chlorine, ethylene oxide, anhydrous ammonia and caustic soda, originating in the southern region of the state of Veracruz, all of them operated by *Kansas City Southern de México* or by *Grupo México*, through *Ferrosur* and *Ferromex*. With this resolution, **the Regulatory Agency of Railway Transport proceeded to regulate service rates** for these routes. 4 of Pemex's 7 petrochemical complexes are located in Veracruz, and produce the inputs required for over 50% of the processes of the pharmaceutical, fertilizer, food-processing, cleaning and personal care, automotive and construction industries among many other in the manufacturing sector.

Once the parties have been notified, the Law grants the sanctioned economic agents the right to appear 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



# Digital markets / Digital advertising / Investigation

An **investigation** was initiated for possible **relative monopolistic practices in the market for digital advertising services**, which could consist of tied purchases or sales and/or increasing costs, hindering the production process or reduction of the demand from other economic agents. In the digital economy new categories of products and services have been created, as well as innovative business models that benefit society. Digital advertising allows internet users to have more options to search content, compare and purchase different goods and services; while advertisers have new means to carry out their campaigns. In 2019, Mexico was the second country with the highest investment and growth in digital advertising in Latin America.



11



## Digital Markets / Digital platforms / Concentrations analysis



The Federal Judicial Power **set an important precedent in the definition of COFECE's powers regarding digital markets, by determining that the decision regarding the concentration between *Uber* and *Cornershop* corresponds to the Commission.** This is relevant in the current context where commerce through digital platforms takes greater relevance in the economic life of the country. In its determination, the Judicial Power established that: 1) the companies related to the concentration are not telecommunications concessionaires, but rather use these for the provision of services through the internet; 2) that the services provided are logistics and intermediation between users, drivers and delivery companies, and not telecommunications; and 3) the notifying parties use the internet as an input, which does not constitute the platforms' service nor represent their source of income. Regarding the operation, the Board of Commissioners authorized the transaction in its terms, because after a detailed analysis determined that the operation has few probabilities to affect the process of competition.



## Digital markets / Digital strategy / Institutional modernization

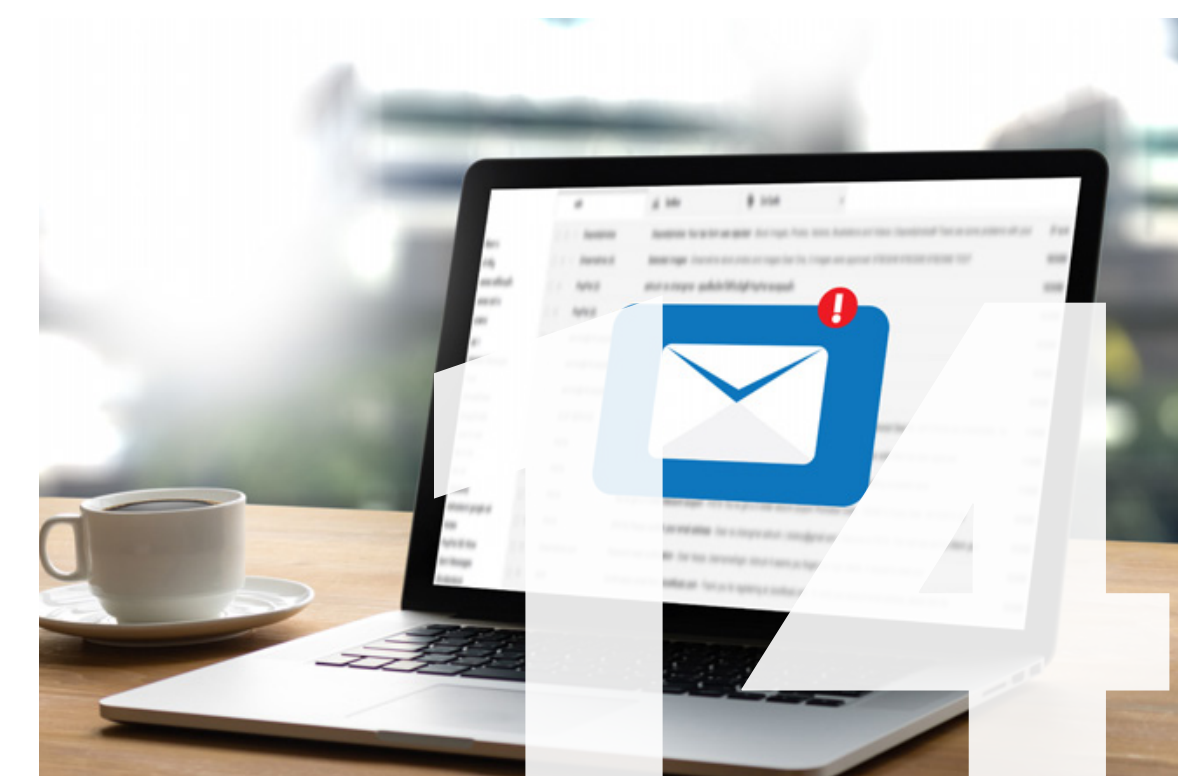


This year, the **General Directorate of Digital Markets** was created with the aim of advancing the analysis of the digitization of the Mexican economy and to exercise with greater efficacy the powers conferred by the **Federal Economic Competition Law**. This new unit is part of *COFECE Digital Strategy*, a document that defines the actions that the Commission will undertake to successfully address its analyses and investigations in digital markets.



## Agency digitization / Regulatory Provisions / Use of electronic means

COFECE continued along the path to migrate towards the possibility of carrying out all of its procedures electronically, which generates important benefits for the public. To this end, it published the ***Emergency Regulatory Provisions on the use of electronic means*** and began operations of its **Electronic Filing Office**. Accordingly, it is now possible to remotely carry out the processing of: complaints, investigations for monopolistic practices, unlawful concentrations, essential inputs, barriers to competition and competition conditions; the immunity program and benefit of fine exemption or reduction; as well as appearances, testimonials, confessionals, oral hearings, among other proceedings. In addition to the above, there are other measures such as **notifications of agreements and resolutions of the Board of Commissioners through email**, as well as the use of electronic means to conduct meetings and interviews with economic agents, as well as Board sessions.





## Organization Model / Equity and equality / Certifications



COFECE works in all fields to be an institution of excellence. A relevant aspect is labor equity, among other reasons because organizations where this prevails are more productive and efficient. This year, the Commission became **the first public institution in America to obtain the promotion to the intermediate level Move of the EDGE international certification**, world-leader in assessment and standard certification in gender equality. In addition, it achieved the recertification and the gold level in the **Mexican Standard NMX-R-025-SCFI-2015 on Labor Equality and Non-Discrimination**. Both distinctions acknowledge the actions undertaken in terms of recruitment, promotion, training and development of its staff to advance on its path towards workplace equality.



## Also, in 2020 the COFECE:

### To make competition prevail:

- Accepted the commitments offered by the Associations of Public Brokers to correct possible anticompetitive practices  
<https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-022-2020-English.pdf>

### Initiated investigations for:

- Absolute monopolistic practices in the market for the leasing of non-residential real estate spaces  
[https://www.cofece.mx/wp-content/uploads/2020/10/COFECE-039-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/10/COFECE-039-2020_ENG.pdf)
- Collusion in the market for waterproofing products  
[https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-035-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-035-2020_ENG.pdf)
- Collusion in the market for marine diesel  
<https://www.cofece.mx/wp-content/uploads/2020/02/COFECE-007-2020.pdf>
- To determine competition conditions in the services for maritime passenger transportation in routes with origin and/or destination in the northern zone of the state of Quintana Roo  
[https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-029-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-029-2020_ENG.pdf)

### To promote competition:

- Issued an opinion on proposal to regulate the commissions charged by Afores  
[https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-041-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-041-2020_ENG.pdf)
- Proposed not to issue the draft that modifies the Agreement to obtain import and export permits for hydrocarbons and oil products  
[https://www.cofece.mx/wp-content/uploads/2021/01/COFECE-046-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2021/01/COFECE-046-2020_ENG.pdf)
- Recommended that the application of regulation in gasoline markets should incentivize competition in order to reduce its final price to the public  
<https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-027-2020-English.pdf>
- Proposed, jointly with a group of specialists in public procurement, a new public procurement law to promote better public expenditure and reactivate the Mexican economy  
[https://www.cofece.mx/wp-content/uploads/2020/07/Comunicado\\_Ley\\_Contrataciones\\_Publicas\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/07/Comunicado_Ley_Contrataciones_Publicas_ENG.pdf)



## Links guide

1. Fine for collusion in tenders for integral services for laboratory tests and blood banks  
[https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-031-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-031-2020_ENG.pdf)
2. Sanction imposed on suppliers of polyethylene gloves for colluding in tenders  
<https://www.cofece.mx/wp-content/uploads/2020/02/COFECE-006-2020.pdf>
3. Sanction imposed on Moench Coöperatif and Luis Doporto for failing to comply with commitments  
<https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-026-2020-English.pdf>
4. Possible abuse of market power in the production, distribution and commercialization of medical oxygen in the national territory  
[https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-030-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/07/COFECE-030-2020_ENG.pdf)
5. Sanction for collusion in the retail sale of gasolines in Baja California  
[https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-034-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/09/COFECE-034-2020_ENG.pdf)
6. Constitutional controversy against the issuance of the Policy for the reliability, security, continuity and quality of the National Electric System  
<https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-023-2020-Eng.pdf>
7. Possible relative monopolistic practices in the supply, distribution, and retail commercialization of consumer goods and Competition study in retail  
[https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-040-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-040-2020_ENG.pdf)  
[https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-042-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/11/COFECE-042-2020_ENG.pdf)
8. Proposals to contribute to the recovery of the Mexican economy  
[https://www.cofece.mx/wp-content/uploads/2020/10/COFECE-038-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/10/COFECE-038-2020_ENG.pdf)
9. Lack of effective competition conditions in the card payments system  
[https://www.cofece.mx/wp-content/uploads/2020/12/COFECE-045-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/12/COFECE-045-2020_ENG.pdf)
10. Lack of competition in railway freight transport routes of Veracruz  
<https://www.cofece.mx/wp-content/uploads/2020/02/COFECE-004-2020.pdf>
11. Possible relative monopolistic practices in the market for digital advertising services  
[https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-033-2020\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2020/08/COFECE-033-2020_ENG.pdf)
12. COFECE is competent to resolve the concentration between Uber and Cornershop  
[https://www.cofece.mx/wp-content/uploads/2020/05/COFECE-020-2020\\_-cornershop-uber.pdf](https://www.cofece.mx/wp-content/uploads/2020/05/COFECE-020-2020_-cornershop-uber.pdf)
13. The digital markets unit is created  
<https://www.cofece.mx/wp-content/uploads/2020/03/COFECE-013-2020-DIGITAL-STRATEGY-Vf.pdf>
14. COFECE digitizes, Regulatory Provisions on the use of electronic means for investigation procedures and others  
<https://www.cofece.mx/wp-content/uploads/2020/06/COFECE-024-2020.pdf>
15. EDGE Certifications and NOM-25 on equity and equality  
<https://www.cofece.mx/igualdad-y-equidad/>



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