

COFECE-001-2021

COFECE sanctions banks and natural persons who established illegal agreements in the secondary market for the intermediation of government debt securities

- *The Commission found evidence that 7 banks and 11 traders agreed 142 illegal agreements to sell or buy at a certain price, or not to commercialize or acquire certain bonds of government debt.*
- *The conduct affected some operations of the secondary market of government securities between 2010 and 2013.*
- *According to the estimated harm to the market of 29 million Mexican pesos and the previous competition law, in force during those years and that establishes lower amounts of sanctions, those responsible were fined with a total of 35 million 75 thousand Mexican pesos.*
- *This case is relevant because it destabilizes the conditions that facilitate carrying out illegal agreements in the financial sector. This market must be reliable and competitive as it can have a great impact on public finances and on the possibilities of savings of the investing public.*

Mexico City, January 25, 2021.- The Board of Commissioners of the Federal Economic Competition Commission (COFECE or Commission) imposed fines for a total of 35 million 75 thousand Mexican pesos to *Barclays Bank, Deutsche Bank, Santander, Banamex, Bank of America, BBVA Bancomer, J.P. Morgan* and to 11 natural persons (traders). This because they colluded in some operations of the secondary market for the service of intermediation of debt securities issued by the Mexican government. To this end they exchanged messages (*chats*) using technological communication platforms that banks hire as work tools.

The Commission proved, in file IO-006-2016, that the aforementioned banks and *traders* established 142 agreements contrary to the Federal Economic Competition Law (LFCE, per its acronym in Spanish), to manipulate prices, establish the obligation to not commercialize and/or acquire certain government securities in specific transactions (not general agreements), which had a direct impact on the price of the related instruments in said transactions of the secondary market.

With these conducts, a harm was generated to the investing public who acquired the bonds object of the collusion. It is calculated that these anticompetitive practices, carried out between 2010 and 2013, generated a harm to the market of 29 million 389 thousand

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Mexican pesos. For example, in one of the cases the agreement was to raise the quoted price that they would give to a retirement fund (afore).

Thus, COFECE imposed fines for a total of 35 million 75 thousand Mexican pesos to those responsible.

It is worth mentioning that:

- Given the period in which these conducts were carried out, the applicable competition law is prior to the one in force and establishes lower amounts for sanctions in comparison to the current LFCE, and
- There is a methodology for the calculation of the amount for fines that is applied in all the cases that COFECE handles, which is based on the constitutional principle of proportionality based on the proved damage to the market. The economic capacity of the sanctioned party is used to fix, as the case may be, the maximum limit.

This case is relevant because the resolution enforces the law in the financial sector; moreover it deters illegal agreements in the sector, whether between banks or persons who act on their behalf, by destabilizing the conditions that facilitate these type of agreements. Thanks to the intervention of COFECE there have already been changes in the way these economic agents interact.

Due to its impact on the economy, the financial sector is a priority for the work of the Commission. For this reason, this competition authority has investigated and sanctioned anticompetitive conducts that affected users in the markets of Afores and in the market of credit information. In addition, it has presented opinions to promote competition in the markets of fintech, Afores, automatic teller machines, banking fees, card payments systems, among others. All of this generates and promotes better conditions for users of financial services and gives them certainty to choose the option that better suits their needs, at a price determined by the market and not artificially determined by the banks.

Once the resolution has been notified to the parties, 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

ANNEX:

How does the governmental securities market operate?

It is composed of two blocks:

- 1) **The primary market** in which the issuer that needs financing, that is the Mexican government through the Ministry of Finance (which issues the debt bonds, at certain terms and rates, such as Cetes, MBonos, Bondes and Udibonos) and the Banco de México (which by law is responsible for placing or selling it) participate. On the other side there is group of authorized financial institutions that invest (buy) on these instruments with the objective of obtaining returns.
- 2) **The secondary market** begins to operate when government debt securities are already in the hands of the aforementioned financial intermediaries, among which are banks, which through their traders exchange (buy and sell) these debt bonds. By law, only authorized institutions participate in this market, such as the banks themselves and stock exchanges

Trader: is the person who on behalf of financial intermediaries buys or sells stocks, debts and other instruments in the securities markets, with the aim of obtaining the greatest benefits (returns) in the short, medium and long term.

Collusion: is the anticompetitive conduct defined in the LFCE as an **absolute monopolistic practice**, that is, contracts, agreements, arrangements or combinations between competing economic agents, whose purpose or effect is to manipulate prices, restrict or limit the supply or demand, divide or allocate markets, arrange or coordinate bids in tenders, as well as exchange information between them to carry out any of the above conducts.

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The Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, COFECE seeks better conditions for consumers, greater output and better services and a “level playing field” for companies.