

## COFECE fines companies and natural persons for colluding in the market for medicine distribution

- *The economic agents involved in the undue practices were imposed fines amounting to a total 903 million 479 thousand Mexican pesos.*
- *In addition to the economic sanctions, 10 directors were disqualified from serving as advisors, administrators, directors, managers, executives, agents, representatives or proxies of said companies.*
- *These conducts generated a harm to the market estimated at 2 thousand 359 million Mexican pesos.*
- *The anticompetitive conducts were carried out in one of the most relevant markets to the life of Mexicans, affecting the population's constitutional right to health protection and household income.*

**Mexico City, August 16, 2021.-** The Board of Commissioners of the Federal Economic Competition Commission (COFECE or Commission) sanctioned *Casa Marzam (Marzam)*, *Casa Saba*, *Fármacos Nacionales (Fanasa)*, *Nadro* and *Almacén de Drogas*, as well as 21 natural persons who participated in their representation, for absolute monopolistic practices in the market for the distribution of medicines. Also, the *Asociación de Distribuidores de Productos Farmacéuticos de la República Mexicana [Association of Distributors of Pharmaceutical Products of the Mexican Republic] (Diprofar)* and a natural person were fined for collaborating in the execution of said practices. As a result of the above, fines for a total 903 million 479 thousand pesos were imposed and 10 executives from the sanctioned companies were disqualified.

In file number IO-001-2016 it is proved that the sanctioned economic agents conducted both agreements to restrict the supply, as well as conducts to fix, manipulate and increase the price of medicines, which were carried out in the following manner:

**Days off.** It consisted of an agreement between *Almacén de Drogas*, *Casa Saba*, *Fanasa*, *Marzam* and *Nadro*, with the collaboration of the *Diprofar*, for not distributing medicines in the national territory during mandatory holidays provided in the Federal Labor Law, as well as on *Good Friday* and the *Day of the Dead*. Through this conduct the distributors colluded to prevent some of them, competitors between each other, from supplying pharmacies on non-working days. This practice was carried out during a period of almost 10 years, from June 2006 to late December 2016.

**Credit Committee.** *Almacén de Drogas*, *Casa Saba*, *Fanasa*, *Marzam* and *Nadro* colluded to not to distribute or commercialize only a restricted or limited amount of medicines to

certain pharmacies, according to their accounts payable to the distributors. This conduct was conducted, at least, between January 2008 and December 2016.

The previous two conducts, each one sanctioned independently, restricted the supply to pharmacies and disturbed the conditions of availability, access and purchase of medicines to the detriment of consumers.

**Limited discounts.** Distributors compete for clients (pharmacies) through discounts on the *pharmacy price*, which is suggested by the manufacturer or laboratory; the greater the discount offered to pharmacies, the greater the probability to attain more clients and, therefore, reaching a greater market participation. However, *Almacén de Drogas, Casa Saba, Fanasa, Marzam* and *Nadro* colluded to standardize a list of products on which they established a maximum number of discounts (limited discounts) that had to be observed by all these agents. For its part, the *Diprofar* received the lists provided by each distributor to subsequently integrate and send them for comparison and observations. This prevented distributors from competing for customers (pharmacies) discounts offered on the *pharmacy price*.

**3.66 conduct:** *Almacén de Drogas, Casa Saba, Fanasa, Marzam* and *Nadro* participated in this practice to increase in a coordinated manner in 3.66% the *pharmacy price* for different medicines. This conduct was carried out from February to August 2013.

**Quadrants conduct:** In this conduct directors of *Marzam, Nadro, Fanasa* and *Casa Saba* executed a mechanism that allowed distributors to collude to standardize prices of sale to pharmacies in a staggered manner, to coordinately improve their profit margins without losing market participation. The purpose of this conduct was to prevent retail customers from immediately noticing the coordinated price increase for medicines sold by the distributors.

The last three conducts mentioned were part of a single monopolistic practice whose object was to gradually perfect the objective of fixing, raising, agreeing or manipulating the prices of diverse medicines distributed in the national territory.

All these conducts influenced the distribution (sale of distributors to retailers, such as pharmacies) and medicine commercialization (sale to the public), illegally imposing supply restrictions on the retail channel, as well as increases and manipulations to those products' prices. The foregoing generated a harm to Mexican families, particularly to those with lower incomes, who spend approximately 24 thousand million pesos on the purchase of prescription medicines, over-the-counter medicines and healing supplies<sup>1</sup>. It is estimated that the sanctioned conducts caused a harm to the Mexicans' purse of 2 thousand 359 million Mexican pesos.

---

<sup>1</sup> Source: Encuesta Nacional de Ingresos y Gastos de los Hogares de 2014 [National Household Income and Expenditure Survey 2014]

In accordance with the foregoing, the Board of Commissioners of COFECE determined to sanction *Marzam*, *Casa Saba*, *Fanasa*, *Nadro* and *Almacén de Drogas* and 21 natural persons for their participation in absolute monopolistic practices, as well as *Diprofar* and one natural person for their collaboration, with fines for a total 903 million 479 thousand Mexican pesos. These fines are the maximum that can be imposed in relation to the economic capacity of those sanctioned and the competition law in force at the moment of the conducts.

In addition, 10 of the natural persons who acted on behalf/representation of some of the sanctioned companies, during the validity of the current Federal Economic Competition Law, were disqualified from serving as advisors, administrators, directors, managers, executives, agents, representatives or proxies of said companies, in terms that range from 6 months to 4 years. When assessing the intent, intentionality and time during which each person took part in this conduct that gravely affected a market particularly sensitive for families, the Board of Commissioners determined to impose this type of sanction for the first time, which was incorporated into the competition law in 2014 and, pursuant the legal framework, must be executed immediately even in the presence of *amparos* to be resolved.

Once the parties have been notified, the Law grants the sanctioned economic agents and persons the right to appear before the Federal Judicial Power to review the legality of the COFECE's actions

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

– 000 –

#### **MORE COMPETITION FOR A STRONGER MEXICO**

*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.*

