

## **COFECE warns of possible risks in matters of competition and free market access derived from the *Agreement* on projects and works of the Government of Mexico considered of public interest and national security**

- *The Agreement could generate an asymmetric regulatory regime in function of who conducts the projects and works that, in accordance with it, are considered of public interest and national security, which could imply preferential treatment to the detriment of competition.*
- *That the projects referred to in an undetermined manner in said Agreement are considered of public interest and national security should not be interpreted as a cause for exception to the public tender in the framework of the acquisitions and public works regulation in the public procurement related to them.*

**Mexico City, November 24, 2021.-** The Federal Economic Competition Commission (COFECE) warns of possible risks in matters of competition and free market access derived from the *Acuerdo por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de México considerados de interés público y seguridad nacional, así como prioritarios y estratégicos para el desarrollo nacional* [Agreement by which the agencies and entities of the Federal Public Administration are instructed to carry out the actions indicated, in relation to projects and works of the Government of Mexico considered of public interest and national security, as well as priority and strategic for national development] (Agreement) published in the Federal Official Gazette on November 22 of this year.

The *Agreement* grants preferential treatment to a wide range of projects in charge of the Federal Government that, in accordance with it, qualify as of public interest and national security. The foregoing, as it instructs to the agencies and entities of the Public Federal Administration —inconsistently with the applicable laws in diverse matters — to grant them a provisional authorization of 12 months in relation to the statements, permits or licenses needed for their conduction in a maximum timeframe of 5 business days, and in the case of not being issued, it establishes as a consequence the *afirmativa ficta*, without this in all cases being fully justified in considerations of risk to national security or public interest. This could grant asymmetric and preferential treatment with respect to public and private



projects, regarding the fulfillment of procedures and requirements established according to risks.

In addition, it should be noted that the fact that, according to the *Agreement*, a project is declared of public interest and national security, does not imply that the related procurements fit as an exception to the tender according to Articles 41, sections II and IV of the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público [Law on Acquisitions, Leases and Services of the Public Sector] and 42, sections II and IV of the Ley de Obras Públicas y Servicios Relacionados con las mismas [Public Works and Related Services Law]. In any case, the use of the public tender should be privileged with the aim that it is possible for the State to obtain the best procurement conditions. The exceptions must respond to specific and delimited cases, where there is a clear rationality of danger, risk or alteration to the public security in accordance with the applicable regulation.

COFECE reaffirms its commitment to remain vigilant of public or private acts that may affect the conditions of competition in the harm of the efficient functioning of the markets and to the detriment of consumer welfare.

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***A BETTER MEXICO IS EVERYONE'S COMPETENCE***

*The Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to the people's welfare and the efficient functioning of the markets. Through its work, it seeks better conditions for consumers, that more services are offered with higher quality and that there is a "level playing field" for companies.*

