



Relevant actions

that **strengthen**
competition 2021



Comisión
Federal de
Competencia
Económica



INTRODUCTION

Since the beginning of the COVID-19 pandemic, the Federal Economic Competition Commission (COFECE or Commission) showed its capacity for adaptation and continuity in the exercise of its attributions. In 2021, it not only reaffirmed it, but also consolidated itself as an institution before these challenges, guaranteeing the promotion and surveillance of competition in strategic economic sectors for the national development and/or with a high impact in the welfare of families.

The soundness of its processes is proven with the imposition of almost 83 million 472 thousand USD¹ in fines for conducts against competition, despite the challenges of social distancing imposed by the pandemic.

The submission of the **Relevant actions that strengthen competition in 2021** reflects our continuous commitment to favor competition conditions in priority markets for families, such as those of energy, transport, health, consumption goods, labor, financial and digital markets.

COFECE
imposed fines
close to 83 million
472 thousand USD.

1.- One thousand 700 million Mexican pesos (MXN) – using the exchange rate of 20.3660 MXN per USD (from 13 January 2022) hereinafter.



SANCTIONS

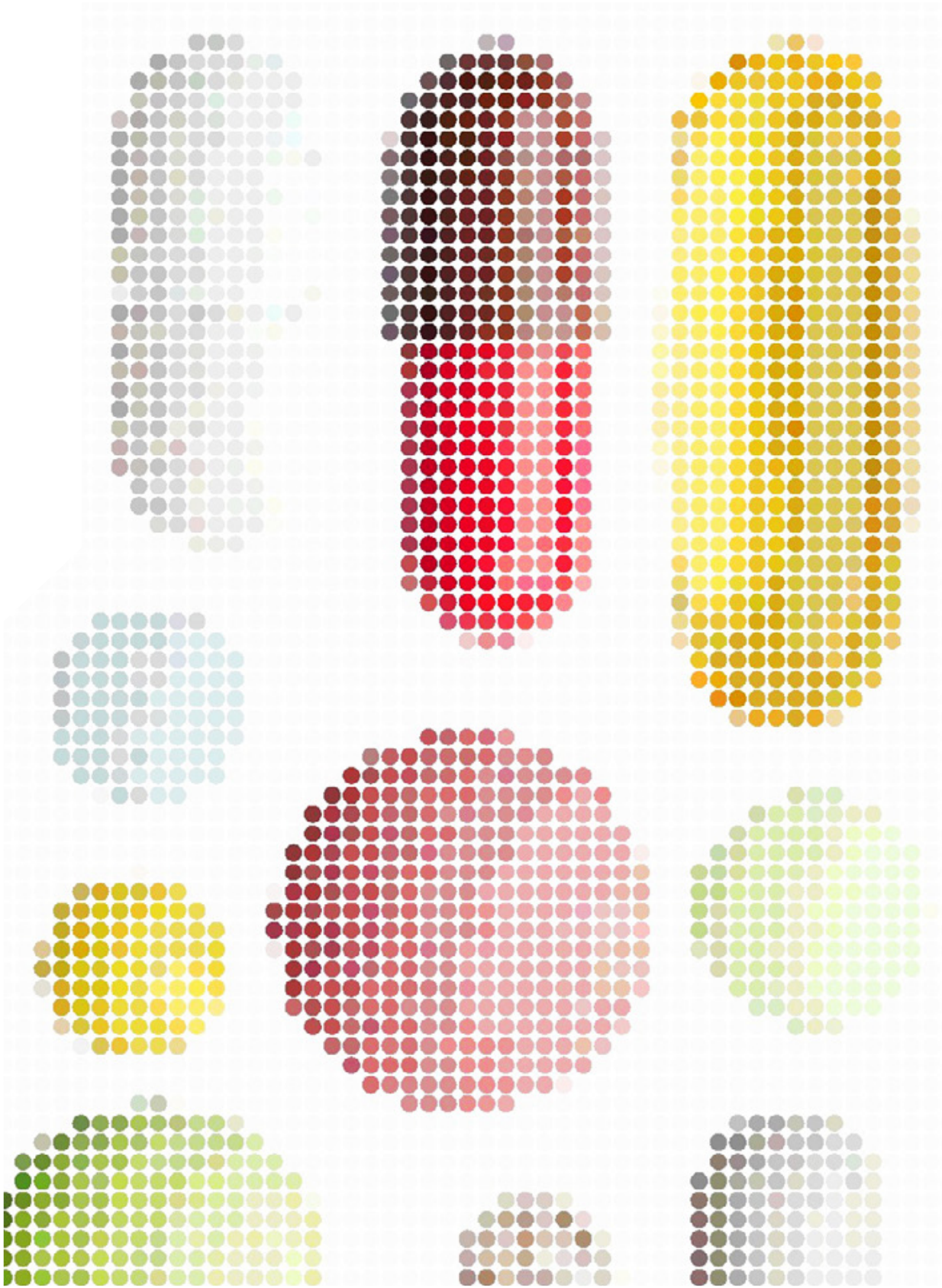


Marzam, Casa Saba, Fármacos Nacionales, Nadro, Almacén de Drogas, and 21 natural persons representatives of these companies, were sanctioned for carrying out anticompetitive agreements to restrict the supply, as well as to fix, manipulate and increase the sale prices of medicines to pharmacies.

For collaborating in said conducts the Association of Distributors of Pharmaceutical Products of the Mexican Republic (*Diprofar*) and one natural person were also fined. The fines imposed amount to approximately 44 million 362 thousand USD². In addition, for the first time the Commission disqualified the directors of the sanctioned companies who will no longer be able to serve as board members, administrators, managers, directors, executives, agents, representatives, or proxies of said companies.

The anticompetitive practices took place in one of the most relevant markets for the life of Mexicans, affecting their constitutional right to the protection of health and family income.

2.- 903 million 479 thousand Mexican pesos (MXN).



The Commission proved that ***Essity Mexico, Kimberly Clark de Mexico and Productos Internacionales Mabe***, as well as nine natural persons who acted on their behalf colluded in the sale to supermarkets and wholesale stores of baby diapers, feminine sanitary protection and incontinence products. Through meetings and emails, the companies exchanged information and agreed on price increases of the products and/or the elimination of promotions. Also, they verified compliance with the agreements, monitored the fixed prices and claimed deviations from what had been agreed. For the foregoing, they were sanctioned with a total of approximately 15 million 392 thousand USD³.

The practice affected the supply conditions in the wholesale channel, in detriment of the welfare of the final consumer and of relevant products for the health and hygiene of families.

3.- 313 million 473 thousand Mexican pesos (MXN).

The soccer clubs **América, Pachuca, Cruz Azul, Monarcas, Chivas, Santos, Tigres, Toluca, Universidad, Rayados, Necaxa, Atlante, Tijuana, Atlas, León, Querétaro and Puebla**, colluded to **avoid or inhibit competition in the market of the drafting of soccer players** by: 1) the imposition of maximum caps to female players' salaries, which further deepened the wage gap between female and male soccer players; and 2) the segmentation of the male players' market, by establishing a mechanism, known as "gentlemen pact", which prevented them from negotiating and contract themselves freely with new teams, restricting their free mobility. In this conduct, the *Mexican Soccer Federation* and 8 natural persons participated as collaborators. Fines were imposed on all of them that total approximately 8 million 720 thousand USD⁴.

4.- 177 million 585 thousand Mexican pesos.

The banks **Barclays Bank, Deutsche Bank, Santander, Banamex, Bank of America, BBVA Bancomer, J.P. Morgan** and 11 traders were sanctioned for establishing illegal agreements to sell or buy at certain price, or not trade or acquire certain governmental debt papers, conduct that affected some operations of the secondary market of government securities between 2010 and 2013. In accordance with the estimated damage, of approximately 1 million 424 thousand USD⁵, and with the law in force during the period in which the practice was carried out, fines for a total of approximately 1 million 722 thousand USD⁶ were imposed.

With this resolution the conditions that facilitate the conduction of illegal agreements in the financial sector are eliminated.

5.- 29 million Mexican pesos.
6.- 35 million 75 thousand Mexican pesos.

COFECE **imposed a fine of approximately 11 million 686 thousand USD⁷ on *Praxair* for not complying with the commitments it assumed in 2018 to restore competition conditions in the markets of oxygen, nitrogen and argon for industrial use**, when it requested the anticipated closure of file DE-006-2014 for possible relative monopolistic practices, with the purpose or effect of unduly displacing its competitors or preventing their access to the market.

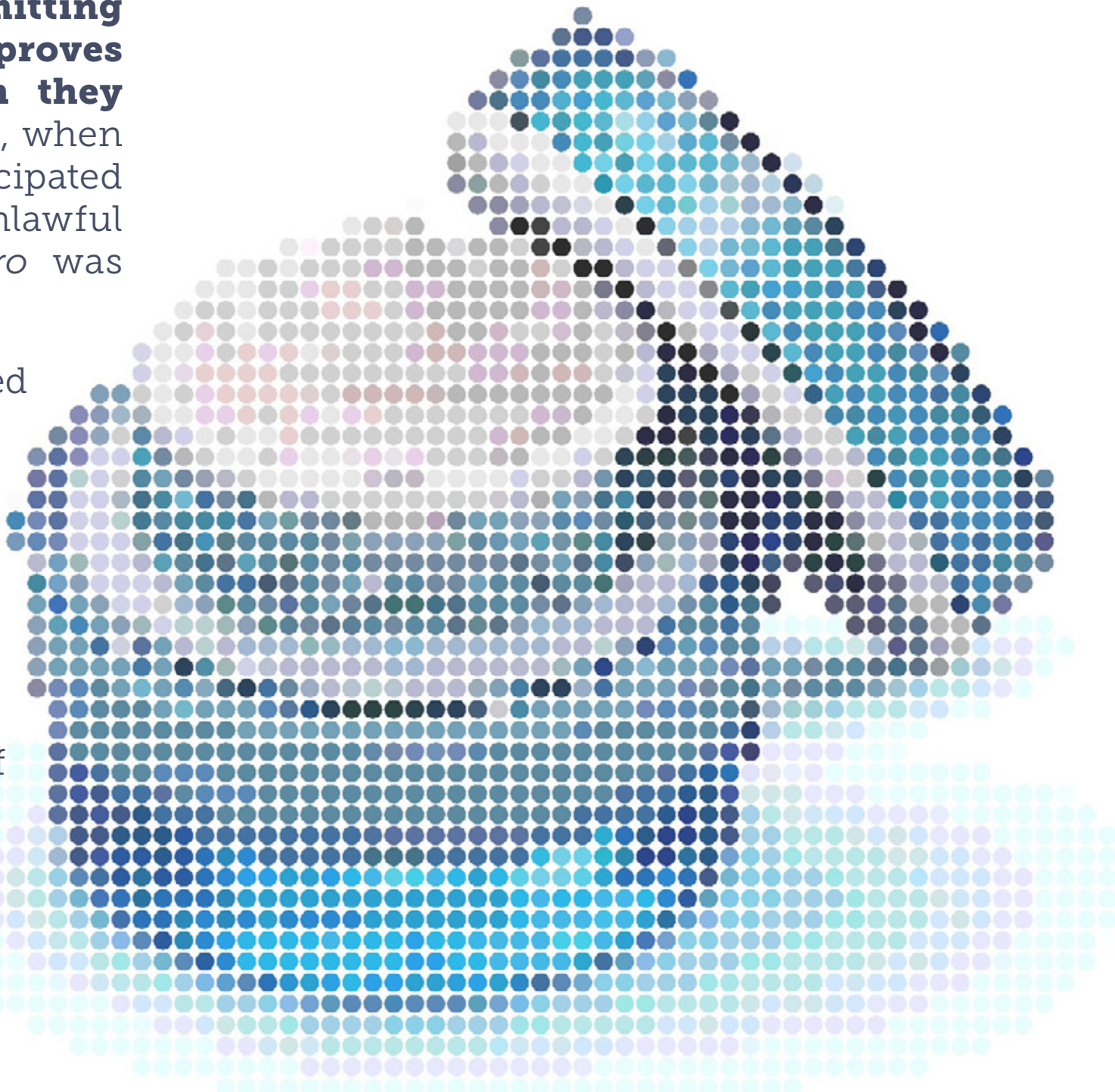
This non-compliance violated the corrective effect of the commitments by increasing the cost of its customers to change supplier and, therefore, facilitated its capacity to retain them, which induces an exclusivity, in addition to limiting the entry and/or expansion of competitors.

7.- 238 million Mexican pesos.

The Commission determined to **impose enforcement measures to *Moench Coöperatief* and Luis Doporto Alejandro for not submitting information or documentation that proves compliance with the actions to which they committed to restore competition** in 2018, when said economic agents requested the anticipated closure of the file in which a possible unlawful concentration between *Marzam* and *Nadro* was being investigated.

These fines are additional to those imposed in 2020, when said economic agents were sanctioned with approximately 1 million 517 thousand USD⁸ for not complying with the said commitments. Now, in accordance with competition law, the fines are quantified by each day that elapses until the economic agents proved that they have eliminated any direct or indirect link between both companies, either through the liquidation of the credit granted to *Moench* to finance the purchase of shares in *Marzam*, or the total divestiture of the shares in *Marzam* owned by *Moench*.

8.- 30 million 900 thousand Mexican pesos.

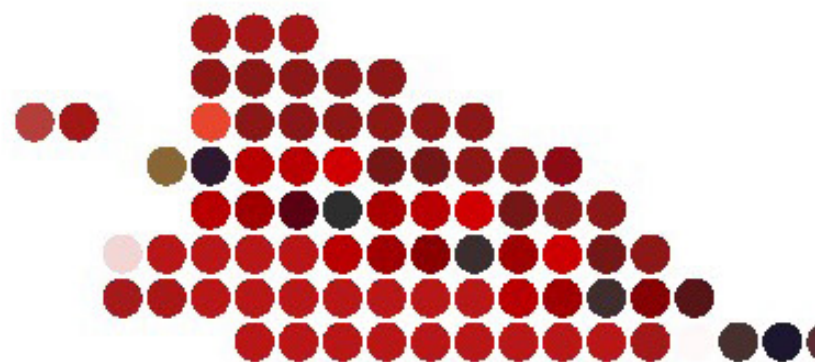


CIE, OCESA, Venta de Boletos por Computadora, ETK Boletos, Operadora de Centros de Espectáculos and Inmobiliaria de Centros de Espectáculos, a subsidiary of Grupo Corporation Interamericana de Entretenimiento (Grupo CIE), were fined a total of approximately 51 thousand USD⁹ for not complying with some of the commitments they assumed before COFECE to restore competition and free market access in the market of the ticketing service, when possible relative monopolistic practices were being investigated.

The subsidiaries of Grupo CIE failed to include the statement of non-exclusivity, provided for in the 2018 resolution in 25 contracts of ticketing service, which prevented operators and promoters from being certain that they could freely choose with whom to contract this service; action that they complied with extemporaneously.

8.- 1 million 30 thousand Mexican pesos.

Note: Once the parties have been notified about the imposed sanctions, the Law grants the right to economic agents to go before the Judicial Power of the Federation to have the legality of the actions of the Commission reviewed. Some economic agents involved in the aforementioned matters requested said review.



SPECIAL PROCEDURES



The Board of Commissioners resolved the **lack of effective competition conditions in the maritime passenger transportation, in coastal shipping, in the modality of ferries in three relevant markets in the northern zone of Quintana Roo: Cozumel, Puerto Juárez and Zona Hotelera**. These cover the routes, with origin and/or destination, the isle of Cozumel-Playa del Carmen; Isla Mujeres-Puerto Juárez or Gran Puerto, in Cancun; as well as Isla Mujeres with origin and/or destination to the docks of El Caracol, Playa Tortugas and El Embarcadero, also in Cancun.

The Commission found that users have no other options to move between the islands and the coastal zone without incurring additional costs, that there are two companies, *Magna* and *Winjet*, with a high market share, which can freely and unilaterally set their fares, as well as restrict supply, since they choose the schedules and itineraries they wish to provide and could even stop doing so for 6 months without having their permit revoked. This is due to the existence of regulatory, economic and structural barriers that limit the entry of potential participants.



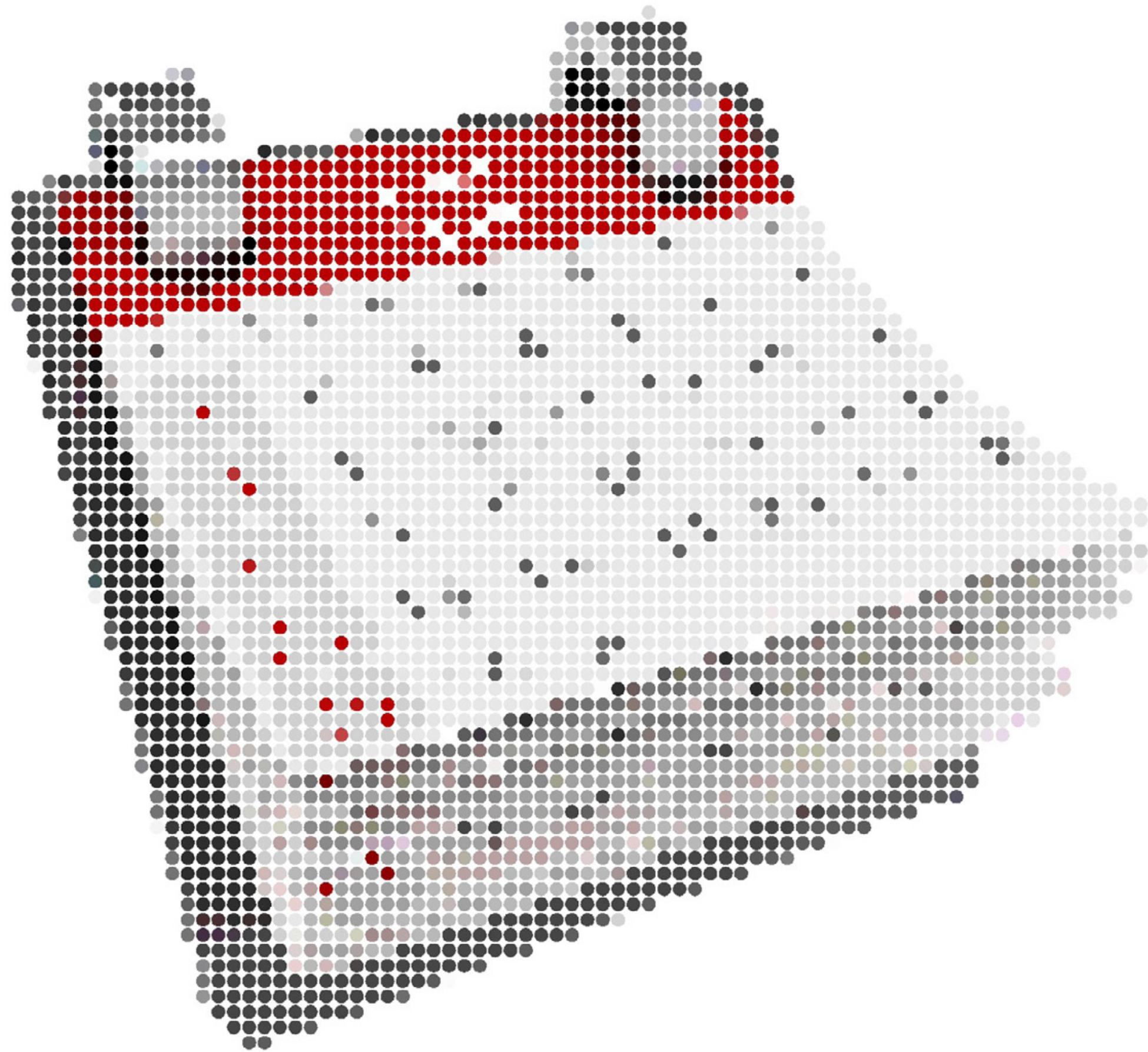
The Investigative Authority of COFECE preliminarily established **the lack of effective competition conditions in 213 of the 220 geographic markets defined for the distribution of LP gas to end users through distribution plants and tank trucks** (pipes). Among the elements that could be limiting competition are: high market concentrations, entry barriers to the market, both regulatory and economic, and the existence of commission agents, clandestine groups and pseudo-unions that could be preventing the entry of other participants. A noteworthy fact is that between 2016 and 2021 the average gross profit margin at the national level for distributors increased 145 percent.

According to the current regulation, if the Board of Commissioners confirms the absence of effective competition conditions, the Energy Regulatory Commission (CRE) may trigger a regulatory process to establish the compensations, prices and tariffs in the distribution of fuel to the final consumer.

Note: Once the preliminary opinions on these matters have been issued and made public, the interested economic agents may present the statements and allegations they consider pertinent, so that the Board of Commissioners of the Commission issues the final resolution of this case.



NOTIFICATION OF STATEMENTS OF PROBABILITY RESPONSIBILITY



Several companies and natural persons were notified of a statement of probable responsibility for their **possible responsibility in the conduction of illegal agreements to manipulate prices or allocate the market of the distribution and commercialization of LP gas** in the country.

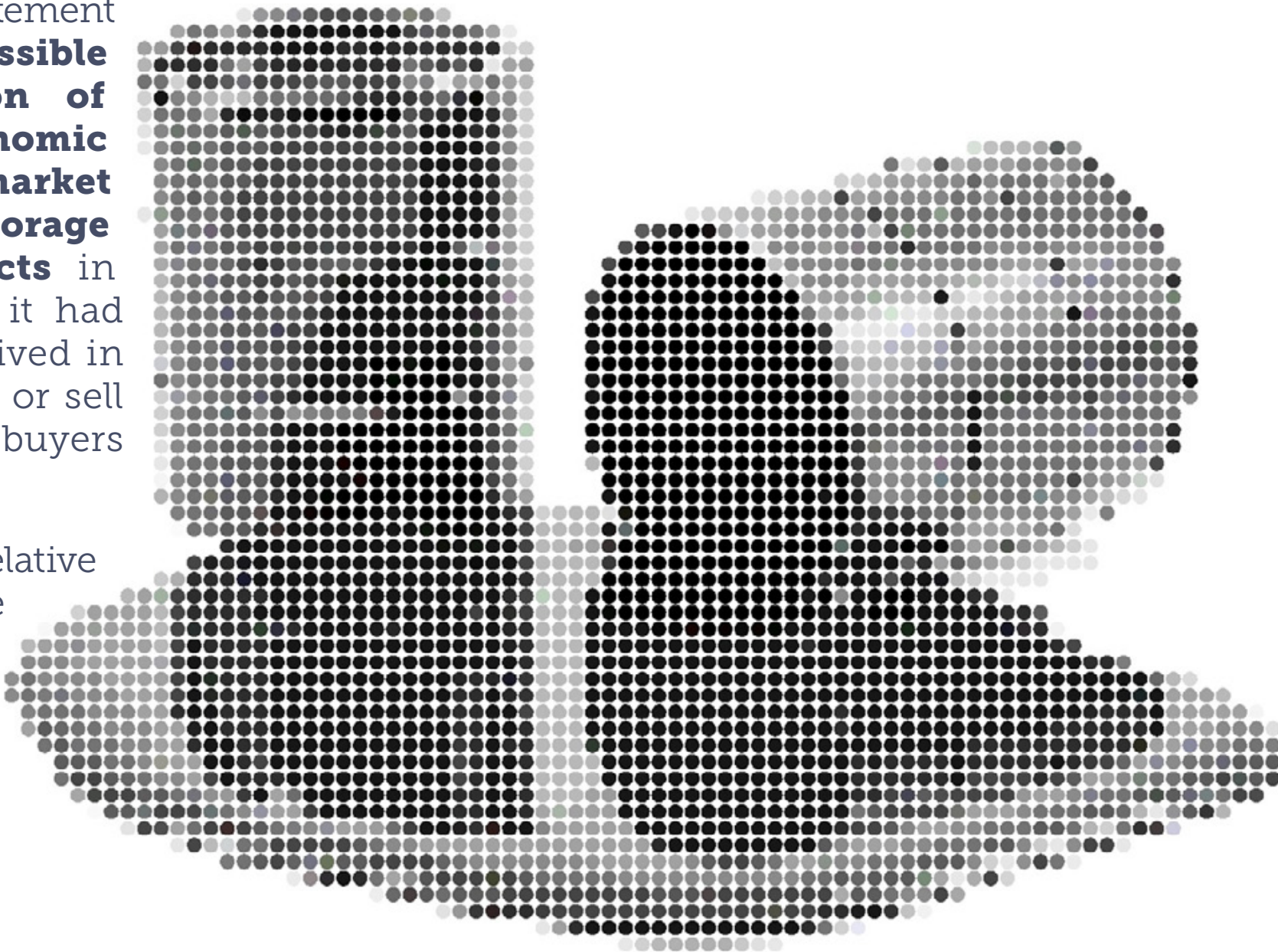
This investigation is the most extensive that the Investigative Authority of COFECE has carried out, since it implied the analysis of conducts carried out by several participants in multiple federative entities.

LP gas is the most widely used domestic fuel in the country, 76% of Mexican families consume it, hence the increases in its prices generate a greater damage in the poorest households. These allocate 3.5 times more of their spending on this energy source than families with greater resources.



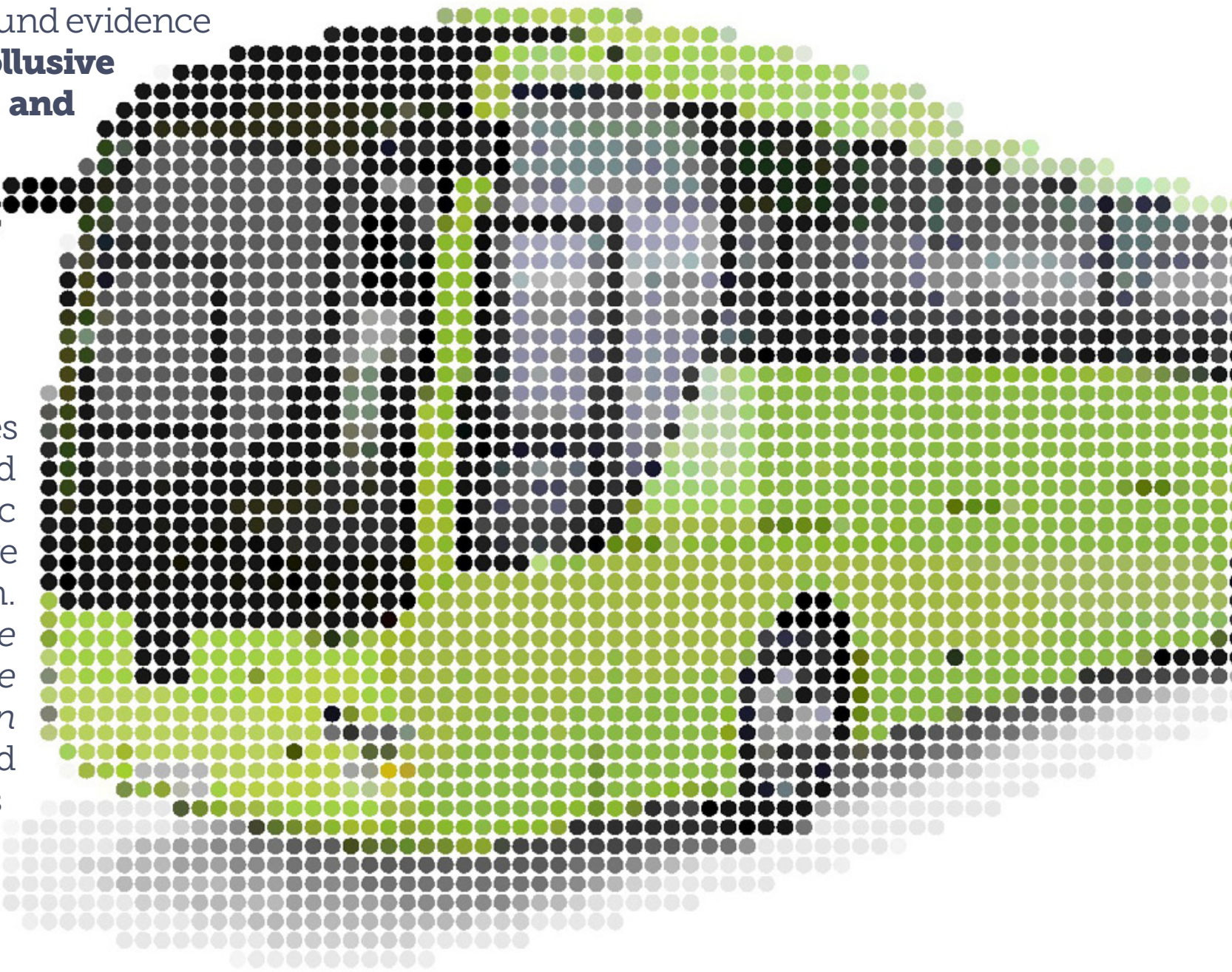
An economic agent was notified of a statement of probable responsibility for its **possible responsibility in the conduction of practices against the Federal Economic Competition Law (LFCE) in the market of the commercialization, storage and transportation of oil products** in Mexico and related services, since it had knowledge of facts that possibly derived in the establishment of different prices or sell or purchase conditions for different buyers or sellers in equivalent conditions.

This is a conduct identified as a relative monopolistic practice, whose purpose or effect may be to unduly displace other economic agents, substantially impede their access or establish exclusive advantages in favor of one or several of them.



The Investigative Authority of COFECE found evidence of the **probable participation in collusive agreements between 18 companies and 31 natural persons to fix prices and segment routes in the market of the service of passenger land transport** in the Center, Center-South, South-Southeast regions and the state of Tamaulipas.

The service of land transport facilitates the connectivity of our country and positively impacts in the economic development of other productive activities and sectors, such as tourism. In accordance with the *Estudio de competencia en el autotransporte federal de pasajeros* [Competition study in the federal passenger transport] conducted by COFECE, published in 2019, this means of transport mobilized 96% of the passengers in the country.



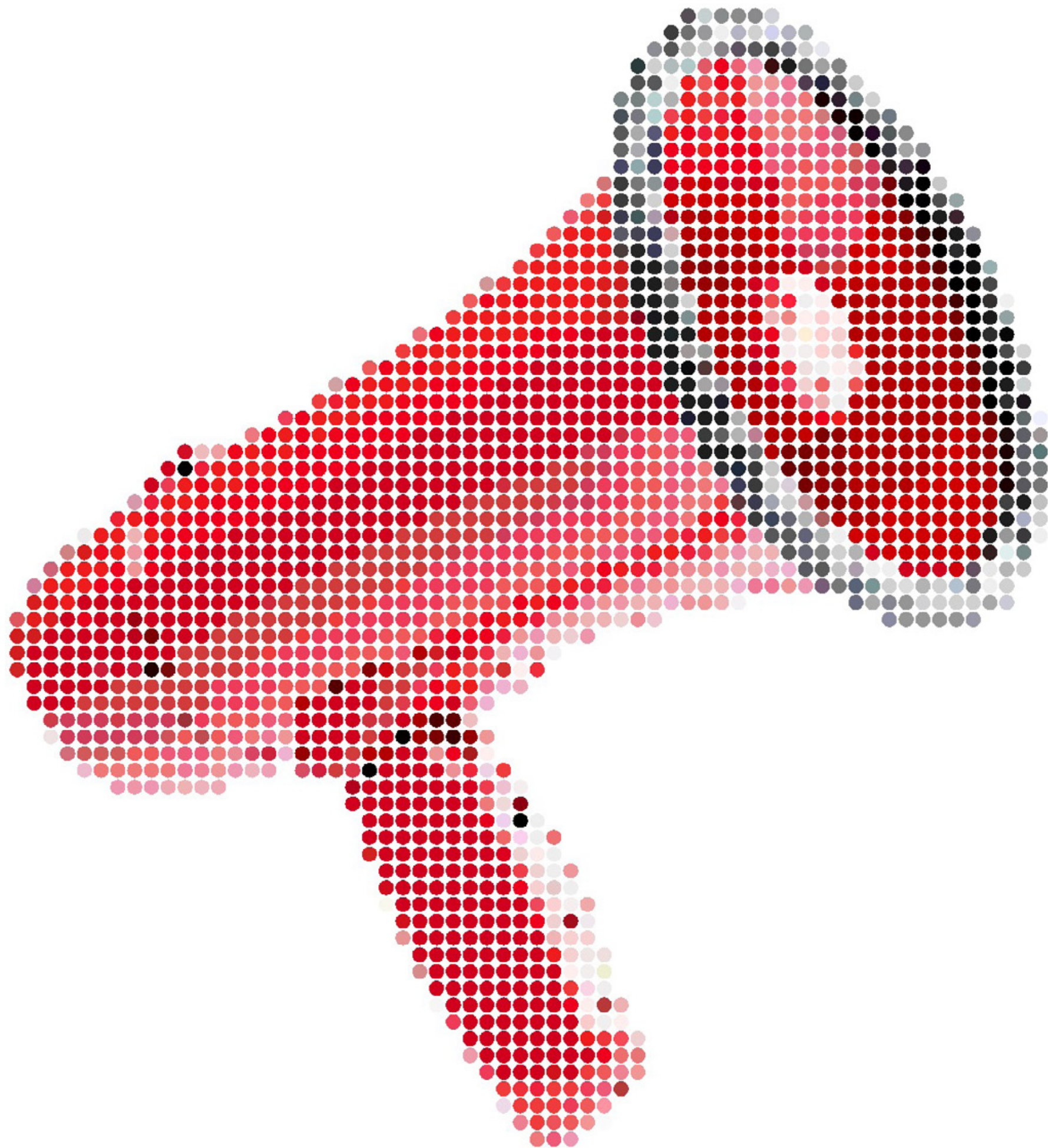
An economic agent was notified of statement of probable responsibility for presumably **abusing its power in the market of access for the provision of the federal land passenger transport at service at the Mexico City international airport** and related services. The Investigative Authority indicated in its statement of probable responsibility that it had knowledge of facts that could lead to a relative monopolistic practice known as refusal of deal, this is refusing to sell, commercialize or provide to certain persons certain goods or services available and normally offered to third parties.

A possible lack of competition in the investigated market could have the effect of limiting the choices of travelers, reflected in higher fares and lower quality conditions in the transportation service to or from the airport from these terminals.

Note: With the notification of these statements of probable responsibility, the economic agents indicated for their probable responsibility in the described conducts may present their defense in the respective trial-like procedures.



COMPETITION ADVOCACY



Relevant actions that strengthen competition 2021

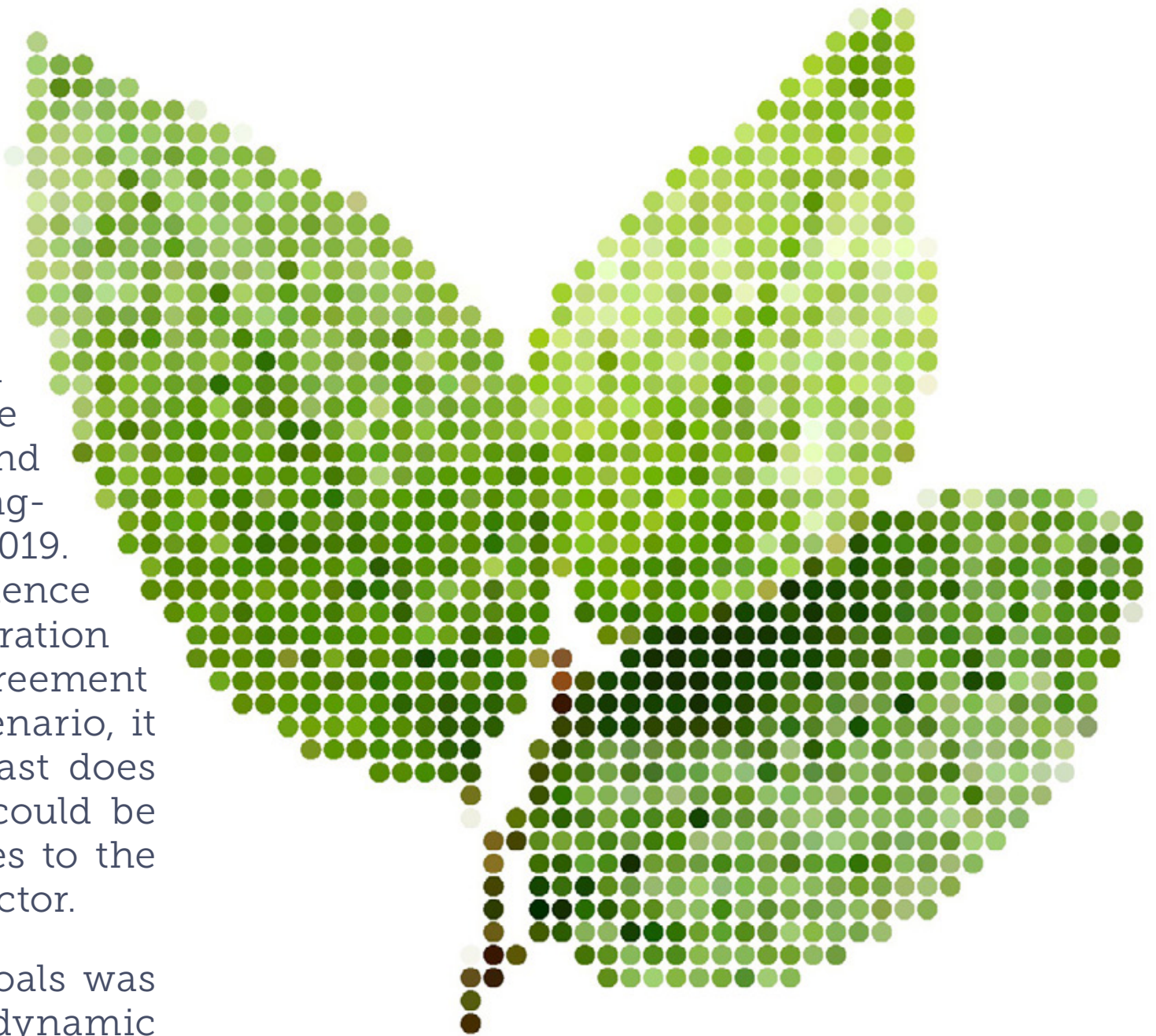
The Commission submitted to the Congress of the Union an opinion **recommending not to approve in its proposed terms the initiative to reform the Electricity Industry Law** (approved in March 2021), as it could severely affect the process of competition and free market access in the generation and commercialization links of electric power, since it: 1) eliminates the cheapest electricity dispatch rule to artificially benefit CFE, to the detriment of other generators, 2) unjustifiably restricts open access to transmission and distribution networks, 3) allows CFE to acquire electricity through non-competitive methods, eliminating the need to carry out auctions, and 4) confers broad discretion to the CRE in order to decide on the granting (or not) of permits to operate as generator or supplier.



In the document ***Transición hacia mercados competidos de energía: Los Certificados de Energías Limpias en la industria eléctrica mexicana***

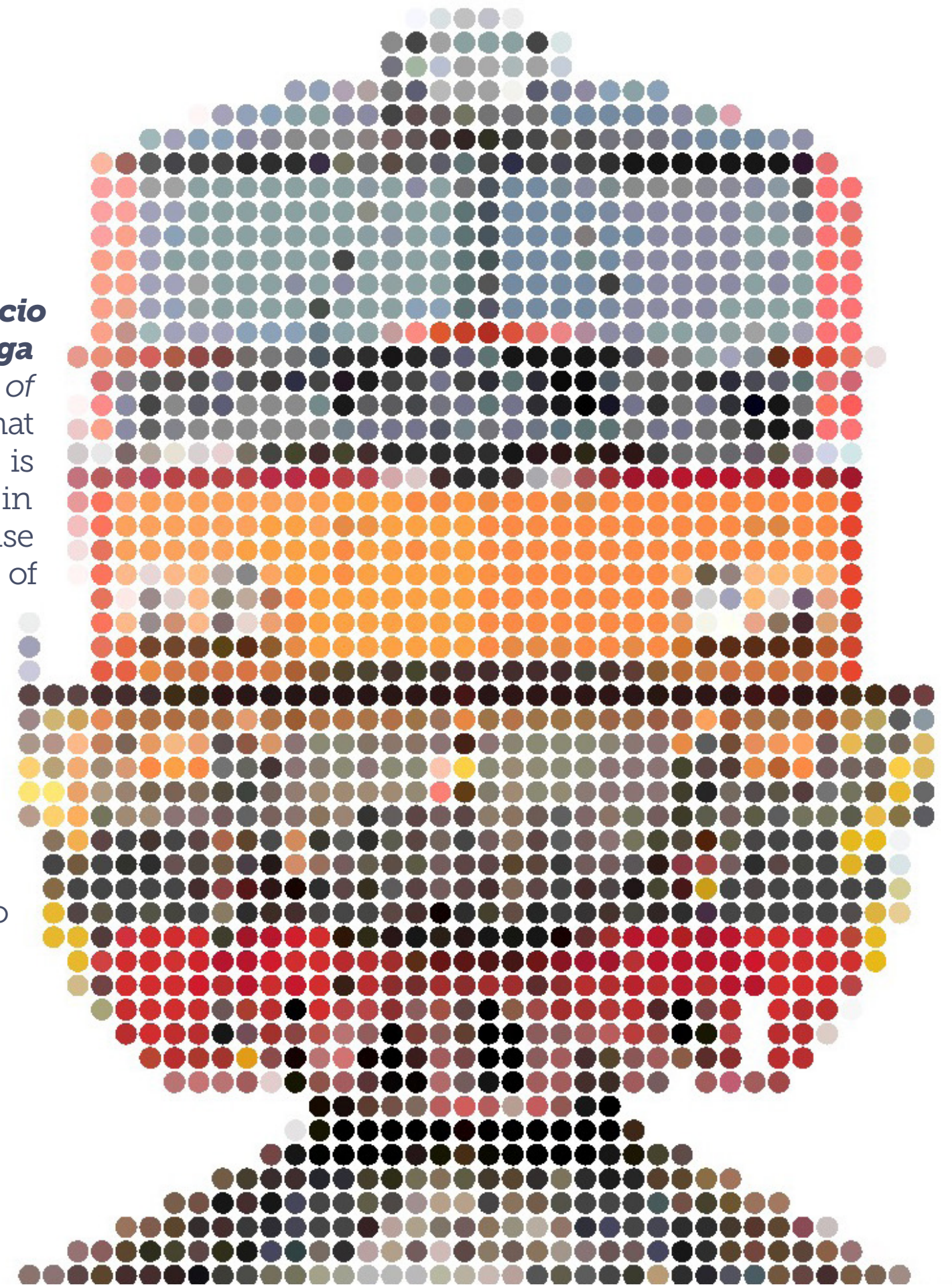
[Transition towards competed energy markets: The Clean Energy Certificates in the Mexican electricity industry] the Commission found that in the electricity market there is: 1) difficulty for the entry of more participants in the electricity supply (commercialization), 2) delay in the granting of generation permits, 3) lack of expansion of the transmission and distribution networks, and 4) cancelation, without justification, of long-term electricity and CEL auctions since 2019. The foregoing would have as a consequence the non-compliance of the 35% clean generation committed by Mexico in the Paris Agreement for 2024 since, even in a conservative scenario, it would barely reach the 29.8%. This forecast does not consider the additional impact that could be caused on this goal by the recent changes to the regulation and policies of the electricity sector.

The fulfillment of the clean generation goals was anchored to the existence of a competition dynamic in electricity generation as a means to produce it in an efficient manner and at the lowest possible social costs, including the environmental ones. However, said competition has been hindered.



In ***Estudio de competencia en el servicio público de transporte ferroviario de carga*** [Study of competition in the public service of rail freight transport] it is concluded that competition in the Mexican Railway System is scarce and that the railroad network operates in a disarticulated manner. These conditions cause the service's low efficiency to the detriment of the country's competitiveness.

The document suggests that when the current concessions expire it will be necessary to reconfigure the network with a more equitable design to enable it to operate in an articulated manner and promote greater competition. Meanwhile, in the short-term regulatory changes are needed to promote a more efficient railway service.



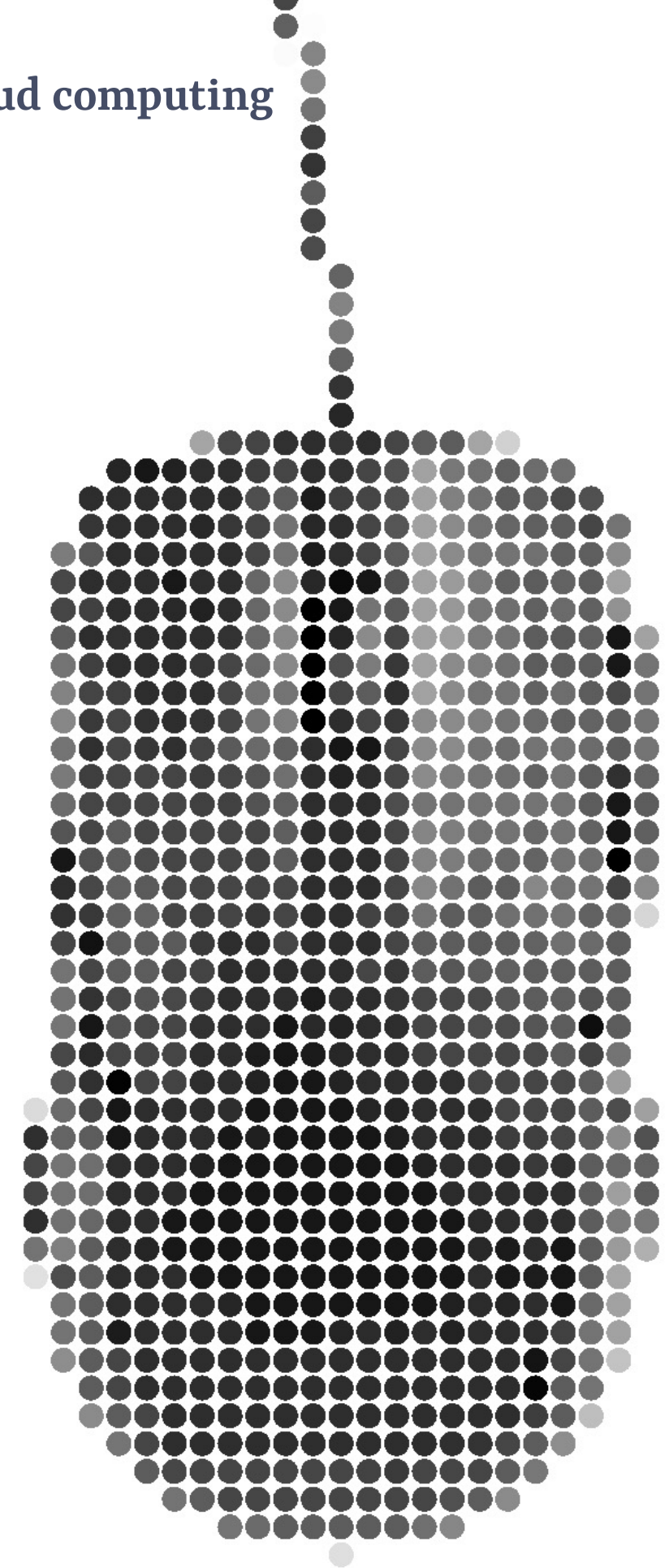


DETERMINATIONS OF THE JUDICIAL POWER



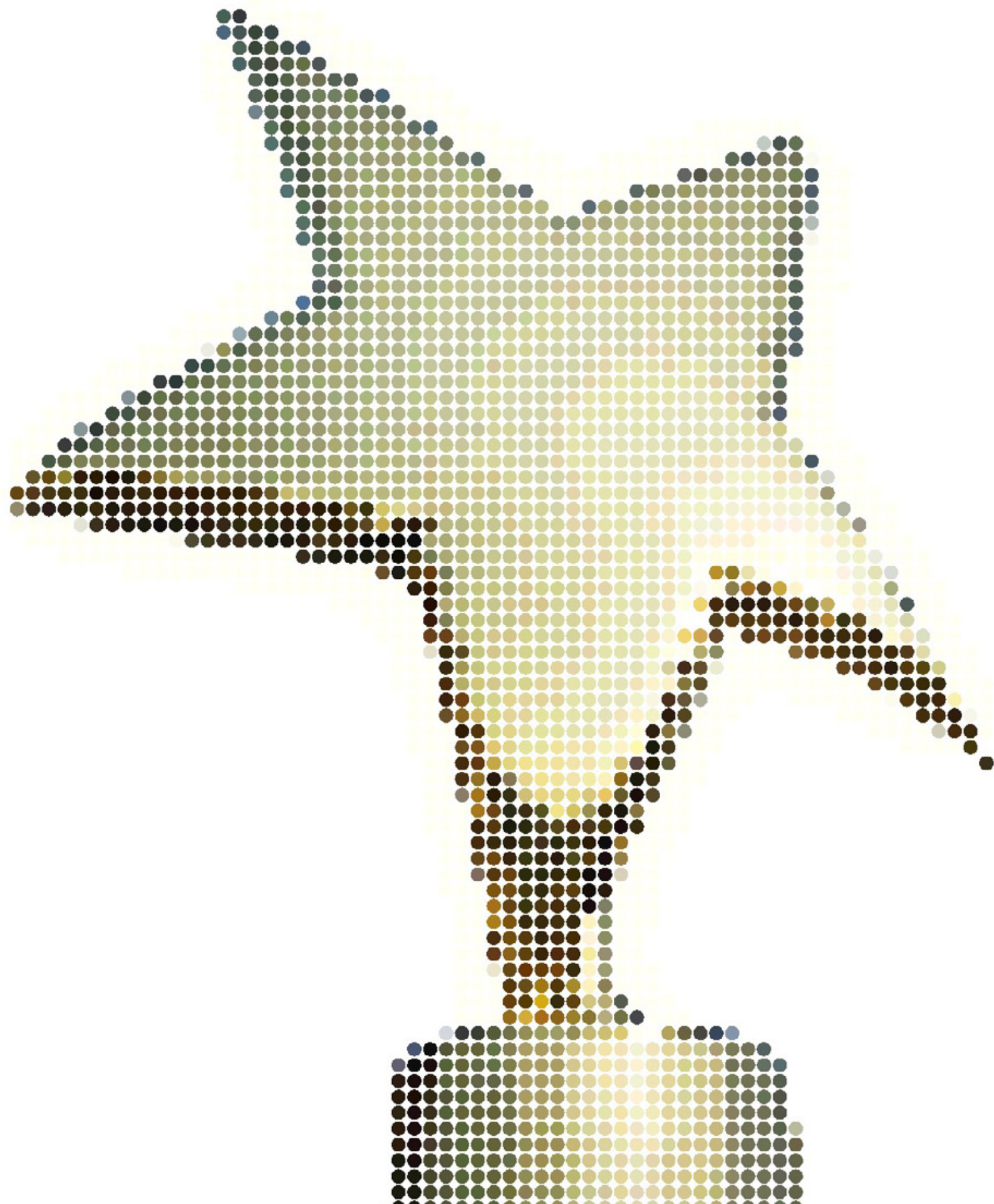
The First Collegiate Circuit Tribunal in Administrative Matters Specialized in Economic Competition, Broadcasting and Telecommunications determined that **the Commission is competent to hear on matters in the markets of online search, social networks and cloud computing services**, which were part of an investigation initiated by the Federal Telecommunications Institute (IFT) for possible barriers to competition and essential facilities (that also included mobile operating systems). After considering that the IFT could be invading its sphere, COFECE requested the Judicial Power of the Federation to resolve the conflict of jurisdiction between both authorities.

This determination grants greater legal certainty to COFECE, the IFT and the economic agents that participate in economic activities related with the digital environment, regarding the authority that should know about these markets.





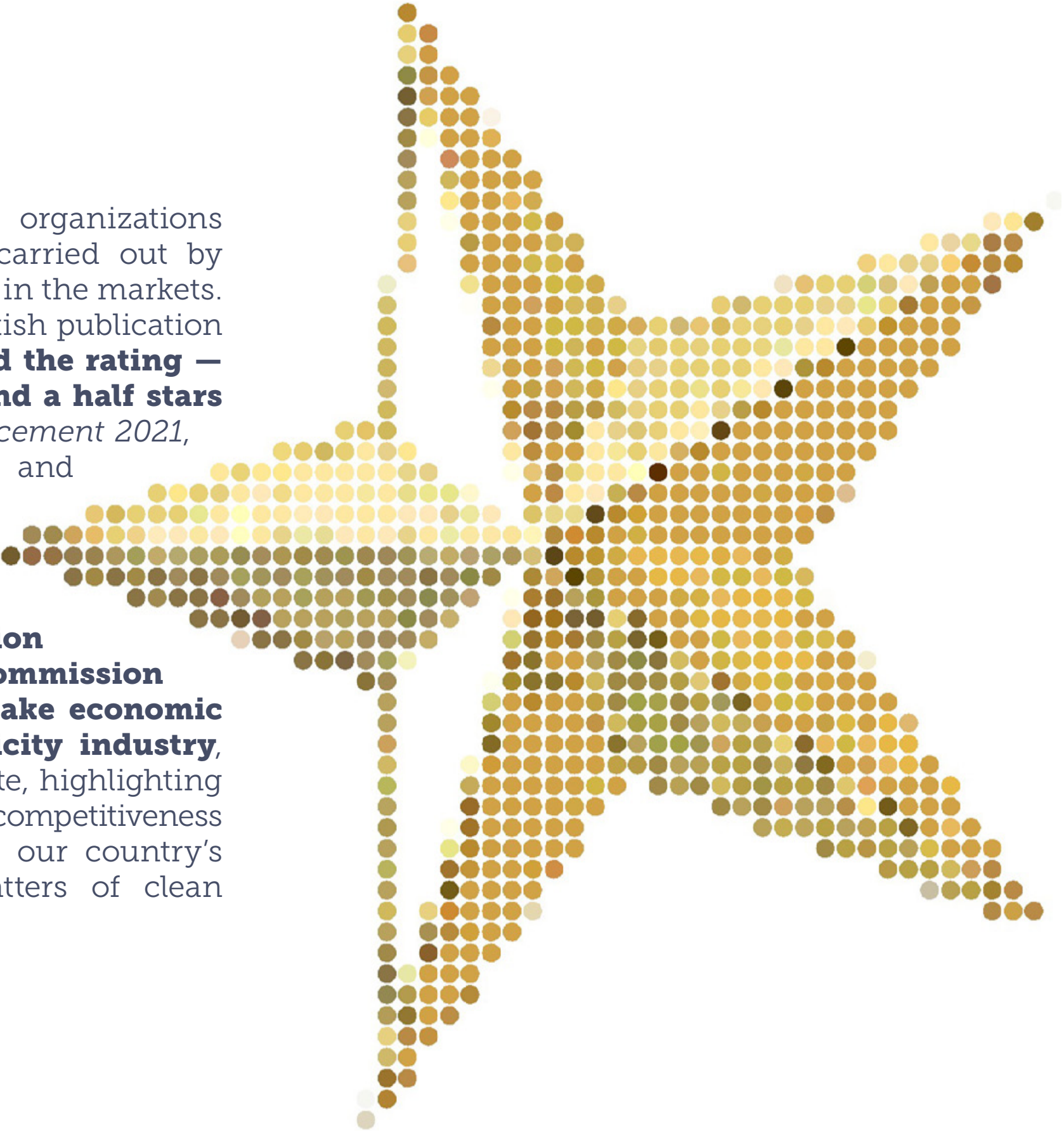
INTERNATIONAL AWARDS



Relevant actions that strengthen competition 2021

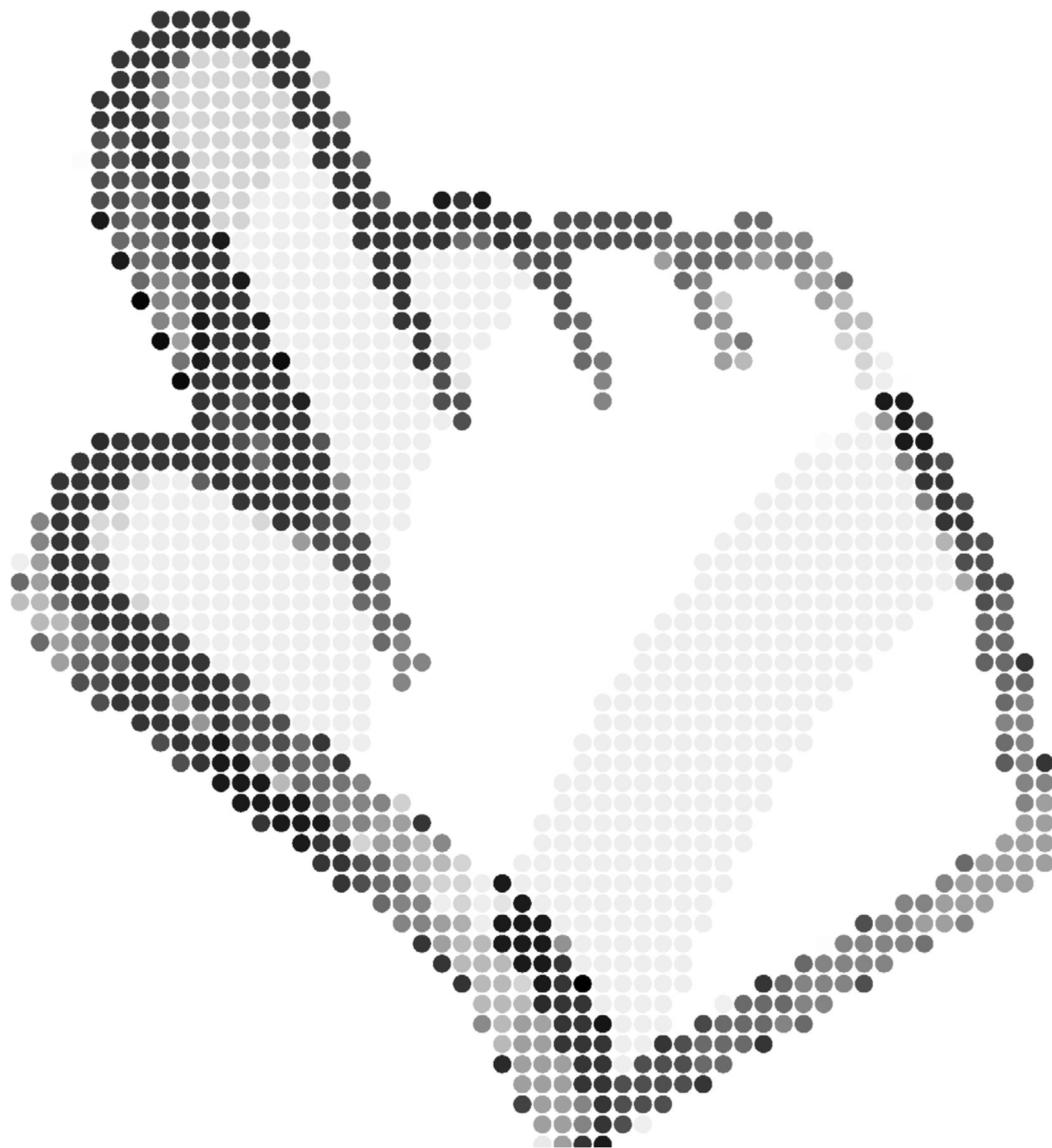
This year prominent international organizations recognized the work and actions carried out by COFECE to make competition prevail in the markets. On the one hand, the specialized British publication **Global Competition Review** ratified the rating — **with consistent trend— of three and a half stars** (of a total of five) in the *Rating Enforcement 2021*, which measures the performance and effectiveness of the world’s most important antitrust agencies.

For its part, **the World Bank and the International Competition Network (ICN) awarded the Commission for the actions implemented to make economic competition prevail in the electricity industry**, in line with its constitutional mandate, highlighting that these measures affect Mexico’s competitiveness and contribute to the fulfillment of our country’s international commitments on matters of clean energy generation.





LINKS GUIDE



Links guide

1. Collusion in the market for the distribution of medicines to pharmacies.
<https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-022-2021ENG.pdf>
2. Sanction for agreements to increase prices in baby diapers, products for feminine sanitary protection and incontinence.
https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-029-2021_ENG.pdf
3. Anticompetitive agreement in the market for women and male soccer players' draft.
https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021_ENG.pdf
4. Sanction to banks for illegal agreements in the market for government debt securities
https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-001-2021_English.pdf
5. Fine to *Praxair* for failing to comply with commitments to restore competition in the market for industrial gases.
https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-019-2021_ENG.pdf
6. Fines as enforcement measures to *Moench Coöperatief* and Luis Doporto for not complying with commitments to restore competition.
<https://www.cofece.mx/reporte-mensual-julio-2021/#nota2> (in Spanish)
7. *Grupo CIE* fails to comply with commitments undertaken to restore competition in the market for ticketing services.
<https://www.cofece.mx/reporte-mensual-agosto-2021/#nota2> (in Spanish)
8. Preliminary determination of lack of competition in ferries of Quintana Roo.
https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-004-2021_ENG.pdf
9. Possible lack of competition in LP gas distribution.
https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-018-2021_ENG.pdf
10. Absolute monopolistic practices in the market for the distribution and commercialization of LP gas.
https://www.cofece.mx/wp-content/uploads/2021/03/COFECE-008-2021_ENG.pdf
11. Relative monopolistic practice in the commercialization, storage and transport of oil products.
https://www.cofece.mx/wp-content/uploads/2021/08/COFECE-023-2021_ENG.pdf
12. Collusion in the market for land passenger transport.
<https://www.cofece.mx/wp-content/uploads/2021/03/COFECE-009-2021-ENG.pdf>
13. Abuse of market power in the access to the provision of the federal land passenger transportation service at the Mexico City airport.
https://www.cofece.mx/wp-content/uploads/2021/04/COFECE-013-2021_ENG.pdf

Links guide

- 14. COFECE recommended not to approve the reform to the electricity industry law.
https://www.cofece.mx/wp-content/uploads/2021/02/COFECE-006-2021_ENG.pdf
- 15. Document Transition towards competed energy markets: The Clean Energy Certificates in the Mexican electricity industry.
https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-016-2021_ENG.pdf
- 16. Document *Study of competition in the public service of rail freight transport*.
https://www.cofece.mx/wp-content/uploads/2021/05/COFECE-017-2021_ENG.pdf
- 17. COFECE- IFT jurisdictional conflict on digital markets.
https://www.cofece.mx/wp-content/uploads/2021/06/COFECE-020-2021_ENG.pdf
- 18. GCR ratifies the 3 and a half stars rating for COFECE.
<https://www.cofece.mx/reporte-mensual-septiembre-2021/#nota1> (in Spanish)
- 19. World Bank and the International Competition Network award COFECE for its actions in the electricity sector.
https://www.cofece.mx/wp-content/uploads/2021/10/COFECE-030-2021_ENG.pdf

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