

Cofece-032-2022

Cofece investigates public procurement procedures for the acquisition, leasing, maintenance services and managed services of information and communication technologies

- *The Investigate Authority has indications of the possible realization of conducts that could constitute absolute monopolistic practices, specifically the coordination of bids in tenders and the exchange of information.*
- *Public procurement is a priority topic for Cofece, given that taxpayer's resources are used and must be allocated in a competitive framework to maximize their purchasing power under the best conditions.*
- *The investigation focuses on public procurement procedures for the acquisition of information and communication technologies (including hardware and software), and the associated maintenance services.*

Mexico City, October 12, 2022.- The Investigative Authority of the Federal Economic Competition Commission (Cofece or Commission) published today, on its website,¹ the notice of initiation of the ex officio investigation for the possible realization of absolute monopolistic practices in the market of public procurement procedures related to the acquisition, leasing, maintenance services and managed services of information and communication technologies in the national territory.

The investigation covers the purchase and/or leasing procedures of products such as desktop and laptop computers, televisions, photocopiers, computer cameras, storage equipment and related products, in the national territory. Additionally, the investigation includes the contracting or purchase of information and communication technologies such as transmission services, software licensing, internet servers, as well as maintenance services and managed services related to information technologies; therefore, any procedure of government contracting through public procurement in the investigated market would be susceptible to be part of this investigation.

¹ "On October 2 of the current year the notice of initiation was delivered to the Federal Official Gazette for its respective publication".



This inquiry is relevant because all governmental authorities, regardless of its level of government and powers, require information and communication technologies for the exercise of its activities, especially in the context of the Covid-19 pandemic, in which many authorities had to implement remote work due to health restrictions.

The absolute monopolistic practices object of this investigation are contracts, agreements, arrangements or combinations between competing economic agents, whose object of effect is the manipulation of prices, restriction or constraint of supply or demand, division or segmentation of markets, arrangement or coordination of bids in tenders, as well as the exchange of information between them to carry out any of the previous conducts.

According to the Commission's 2022-2025 Strategic Plan, public procurement is a priority topic, given that taxpayers' resources are used and must be allocated effectively and within a framework of competition so that they maximize their purchasing power in the best terms for the public service. In accordance with the Guidelines for Fighting Bid Rigging in Public Procurement of the Organisation for Economic Co-operation and Development, the acquiring authorities lose up to 20% of their resources when there is a collusive agreement among participants in procurement procedures.

This investigation, identified with file number IO-001-2022, shall not be understood as a prejudgment on the responsibility of any economic agent, since so far no violations to the regulation on economic competition have been identified, nor the subject(s) who, if applicable, would be considered as probable responsible at the end of this investigation.

The timeframe for this inquiry is up to 120 business days, counted from March 31, 2022, date of initiation of the investigation, which may be extended for an equal term up to four times. If at the end of the investigation no elements are found that presume the realization of said anticompetitive practice, the Board of Commissioners could resolve its closure. In case there are grounds that presume an infringement of the Law, those who result probable responsible will be called to a trial-like procedure to present their defense.

In accordance with the Federal Economic Competition Law, if an absolute monopolistic practice is proved, economic agents could be fined with up to 10% of their income. Also, those who have collaborated, facilitated or induced the realization of these practices could be financially sanctioned. Natural persons that could have participated in the celebration, execution or the ordering of this type of agreements between competitors, could be sanctioned with prison for up to 10 years in accordance with the Federal Criminal Code.



Nonetheless, it is important to mention that those who have participated in this type of conducts, can adhere to the benefits of the Immunity and Reduction of Sanctions Program offered by the Commission.

Extract of the initiation agreement (in Spanish)

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The Federal Economic Competition Commission safeguards competition and free market access.

Through its work, it seeks better conditions for consumers, that more services are supplied with higher quality and that there is a “level-playing-field” for companies

