

Mexico's powerful trust buster also drives anti-corruption battle

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Mexico's antitrust authority, COFECE, has come a long way since the legislative reform starting in 2006. Greater investigative powers, such as a leniency program, the power to conduct surprise raids, and higher maximum fines for competition infringements, together with the creation of antitrust-specialized courts, have consolidated COFECE's mandate as an independent regulator responsible for enforcing competition law in the country.

The gradual strengthening of the Mexican competition regime has had tangible results: a growing number of cartels are being investigated in economic sectors as varied as pension funds administration services, sugar and medical supplies, among others, and higher fines have been imposed (up to the amount of around \$60 million in the pension fund administration case). Since legislative reforms in 2014, the Mexican competition enforcement system has expanded dramatically, with fines increasing by 64 percent.

While COFECE doesn't have jurisdiction for anti-corruption matters, its focus is increasingly on bid rigging in public procurement, acknowledging that the complex design and regulatory requirements of public tenders in Mexico help trigger a negative feed-back loop between corruption and anticompetitive conducts. Indeed, abnormal profits are generated when public servants favor certain participants or give them undue advantages through the use of privileged information in exchange for bribes.

This in turn facilitates collusion, generating a vicious cycle between corruption and lack of competition. Moreover, when a company wins a public procurement tender through acts of corruption, it is unduly increasing its market power, which can revert in the medium and long term in higher prices and lower quality for customers.

COFECE calculates that 78 percent of the contracts between the Mexican government and private parties are made under a direct award scheme, and the government overpays by around 30 percent due to corruption and lack of competition in public procurement processes.

Apart from proposing a more active *ex ante* role in public tenders (with proposals to the Mexican government such as requiring COFECE participation in tenders of more than one billion pesos, creating a General Law of Public Procurement adhering to international standards, and limiting direct award procedures), COFECE has deployed its investigative powers in a number of landmark cases in public procurement markets, such as the case of Mexico's national health system (IMSS) supply of insulin, where the bid rigging involved an agreement between the companies in order to coordinate public procurement bid proposals with the aim of allocating contracts, leading to an artificial increase in insulin prices. This was detected through economic analysis of the results of tenders.

Some private companies are resisting the overreach of COFECE's investigative practices and want to establish boundaries of professional secrets, along the lines of attorney-client privilege in the U.S. system.

Following a ruling by the antitrust specialized courts in November 2018 that established the corrupting effect of privileged information used by COFECE to build a case, COFECE issued draft guidelines on the handling of privileged information. The guidelines were subject to a public review that ended in January 2019.

COFECE has also been spearheading the adoption of compliance programs by companies and will likely continue to be a key institution in the evolution of anticorruption efforts in Mexico.

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