

# Competition & Antitrust Bimonthly Newsletter

March - April

## MARCH

### **The Federal Economic Competition Commission (“COFECE” for its acronym in Spanish) publishes study on the conditions of competition in the beef manufacturing, supply and distribution markets.**

On March 20, 2024, COFECE released an economic study analyzing the competitive conditions in the beef manufacturing, supply, and distribution markets, as well as some related markets. The study identifies problems and issues recommendations to address them.

The study defines beef markets as encompassing the manufacturing of carcass meat (dead, bled beef without skin, viscera, feet, and head), primary cuts, and meat available to final consumers. This includes various processing activities: slaughter, cutting, boning, and other value-added processes. Livestock and transportation are also key related markets.

Beef is an essential food due to its protein, vitamin and mineral content, which is necessary for growth and development, and whose consumption is substantial.

According to the National Institute of Statistics and Geography, 8% of household food expenditure is spent on beef, although not all households have the purchasing power to buy it frequently.

The study identified unjustified regulatory obstacles to competition. COFECE proposes recommendations to facilitate the entry of new economic agents aiming to increase supply, improve price and quality in benefit of consumers. It also highlighted a lack of consumer information on the sanitary status of beef. While COFECE found no evidence of excessive concentration in beef processing at the national level, it did not rule out regional or local issues that were not covered in this study.



COFECE’s main recommendations are as follows:

- Reform the Sustainable Rural Development Law, the Livestock Organizations Law and the Federal Animal Health Law to resolve federal regulatory restrictions and promote industry growth through increased competition.
- The National Regulatory Improvement Council should streamline the regulations of the 31 states to eliminate regulatory obstacles and simplify the permit process for livestock and related products at the state level, supplementing existing federal permits.
- The Secretariat of Agriculture and Rural Development should design strategies aimed to reduce the technological backwardness of the participants in the different steps of livestock manufacturing, focusing on manufacturing techniques and genetic improvement, and evaluate the impact of these strategies.
- Implement NOM-004-SAGARPA-2018 “Beef - Classification of carcasses according to their physiological maturity and marbling characteristics”, to eliminate geographic restrictions on beef movement in some states and determine a national quality standard. Homogenizing beef classification nationally will contribute to evidencing beef quality to consumers, in order to allow them to take more informed purchasing decisions.
- Develop strategies to improve technology and modernize municipal and non-Type Federal Inspection (“TIF”) slaughterhouses, enabling them to achieve certification equivalent to TIF. This will allow the entry of small cattle farmers and allow more slaughterhouses to process high quality and safe beef, allowing more people to have access to quality beef.
- Implement outreach campaigns through the Federal Consumer Protection Agency to ensure that consumers and retailers recognize the quality and safety characteristics of beef, and proper handling practices.

Through these effective rules, competition in the domestic beef market will increase and Mexican families will be able to access this product more easily and with better information.

## Joint statement of the International Competition Network on digital economy.

On March 25 and 26, 2024, representatives from over 20 competition and consumer protection authorities from various jurisdictions, including COFECE, participated in the International Competition Network (“ICN”) Technologists Forum.

The Forum, organized by the ICN and the U.S. Federal Trade Commission (“FTC”), reached several key conclusions:

- The necessity to integrate technological processes to ensure competition policy can effectively address challenges in the digital economy and continue to benefit consumers.
- Value trans-agency and intra-agency coordination, where applicable, to support meaningful oversight of the digital and technology sectors by agencies.
- The need for agencies to include technology profiles in their work teams to enhance the enforcement of competition laws through technological advancements.
- The commitment to strengthen international cooperation among agencies at the technical expert level.

This forum marked the first global meeting aimed at promoting the technological development and digital capabilities of competition authorities in response to a rapidly changing economic environment.



# APRIL

## COFECE files a complaint with Attorney General’s Office (“FGR”, for its acronym in Spanish) over alleged collusion in the sale of building coating products.

On April 4, 2024, COFECE issued a press release announcing that it had filed a complaint with the FGR, alleging that several individuals probably colluded to manipulate the sale price of building coating products used in the construction sector.

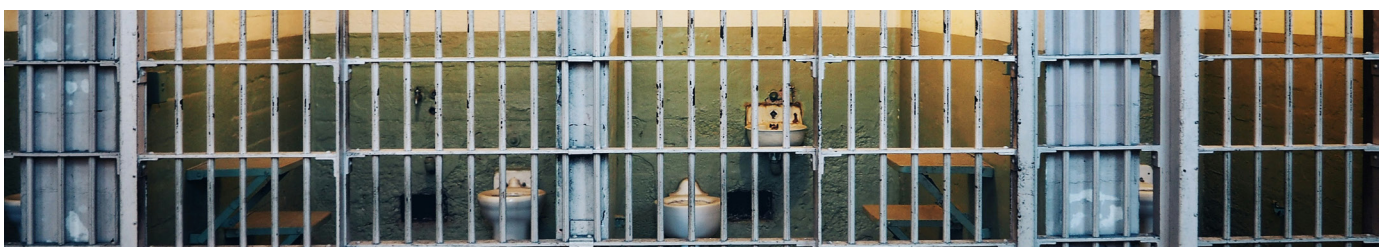
Pursuant article 254 bis of the Federal Criminal Code, collusive conducts constitute a crime and may be punished with a penalty of five to ten years of imprisonment. Under this article and the Federal Economic Competition Law (“FECL”), COFECE, through the Investigative Authority (“IA”), has the power to file complaints with the FGR regarding probable collusive conducts, enabling the criminal prosecution of those involved.

Once the IA files a complaint (upon issuing the Statement of Probable Responsibility), the Federal Public Prosecutor’s Office will evaluate the alleged facts and, if warranted, initiate a criminal investigation based on the IA’s findings. If the investigation is substantiated, the FGR may request the Judiciary to exercise criminal action. The Judiciary will then determine through a trial whether criminal liability exists. Therefore, the IA’s filing of this complaint does not constitute any prejudgment by COFECE.

The authority for the IA to file complaints regarding collusive conducts was established in 2011. COFECE has previously filed such complaints only twice, making this the third attempt to initiate a criminal proceeding for the execution of a collusive agreement.

To date, no arrest warrants have been issued for the individuals involved in the first two complaints. Consequently, no criminal action has been taken against the accused economic agents.

Finally, and independently of the criminal proceeding, COFECE indicated that it is currently conducting a trial-like proceeding. In this proceeding, the individuals have already been summoned and are submitting evidence and allegations in their defense. At the conclusion of the trial-like proceeding, COFECE’s Board of Commissioners will determine whether there is administrative liability and, if so, will impose the corresponding sanctions.



## COFECE investigates the possible execution of collusive conducts in the federal freight transportation market.

On April 9, 2024, COFECE’s IA published in the Federal Official Gazette the initiation of the ex-officio investigation, processed under file number IO-002-2023, for the possible execution of collusive conducts in the federal freight trucking market in Mexico.

In the press release, the IA reported that it found evidence suggesting that federal trucking providers may have colluded to avoid competition with each other at the expense of consumers.

COFECE pointed out that the cargo transportation is fundamental for the development of industry and commerce, given its role in ensuring that products and inputs reach consumers in the best conditions. According to the Ministry of Infrastructure, Communications and Transportation, freight trucking is the most used transportation mode, moving 56.8% of the country’s cargo in 2022. Its importance is further amplified by the trend of nearshoring, where companies are relocating to Mexico.

If the existence of collusive conduct is proven, the responsible economic agents could be sanctioned with fines of up to 10% of their income.

On the other hand, individuals who participate in the execution of these conducts could: (i) be sanctioned with imprisonment for up to 10 years under the Federal Criminal Code; and (ii) be sanctioned with up to 5 years of disqualification to act as an officer of the company and with economic fines.

As part of its investigative tools, COFECE may request information in writing, conduct dawn-raids, and summon individuals to attend hearings. The economic agents requested to cooperate in terms of the FECL are obligated to provide the information requested by the authority.

The notice of this investigation opens the possibility for any economic agent related to the market under investigation to participate in the investigation and provide the elements it deems convenient.



## The Federal Telecommunications Institute (“IFT”, for its acronym in Spanish) imposes specific obligations on Megacable for its substantial power in 9 markets of the Restricted Television and Audio Service.

On April 11, 2024, the IFT issued a press release announcing that the IFT’s Board of Commissioners approved a resolution (“Resolution”) which establishes specific obligations to Megacable, as an Economic Agent with Substantial Market Power in 9 markets for the supply of the Television and Audio Restricted Service (“STAR”, for its acronym in Spanish).

The affected markets are:

- State of Mexico: (1) San Mateo Atenco; and (2) Zinacantepec.
- Guanajuato: (3) Leon.
- Jalisco: (4) Guadalajara; and (5) Tonalá.
- Puebla: (6) Cuautlancingo; and (7) San Pedro Cholula.
- Querétaro: (8) Corregidora; and (9) El Marqués.

The obligations imposed are intended to encourage greater competition by removing barriers to entry for other competitors and the establishment of measures in favor of end users who contract the services.

The Resolution is based on two main axes:

### 1. Implementation of a STAR Wholesale Resale Service.

Through a reference offer, Megacable shall provide a Wholesale STAR Resale Service to STAR licensees and/or authorized licensees under non-discriminatory conditions in the 9 relevant markets defined by the IFT. This will reduce barriers to entry for competitors that cannot enter the STAR provision due to the high costs involved in the deployment of infrastructure.

### 2. Protection of STAR end-users.

Megacable is obligated to: (i) limit the mandatory terms for contracting the service; (ii) maintain the prices originally offered during the term of the contract; (iii) inform the user promptly, in case that better conditions in the packages, by price or by service, are offered; (iv) ensure maximum publicity to the STAR rates in packages or individually; among other obligations.

The purpose of these obligations is to ensure that Megacable does not use its competitive advantage to restrict the freedom of users to change supplier and that users have enough information to take informed decisions based on their needs regarding STAR services.



## COFECE imposed fines of more than 1.5 million pesos due to carrying out a merger under different terms than those previously authorized.



On April 19, 2024, COFECE issued a press release announcing that COFECE's Board of Commissioners imposed a fine of \$1,545,000.00 to Gebr. Knauf KG, a company engaged in the manufacture of construction materials and gypsum boards, as well as to two individuals for executing a merger under different terms from those originally authorized by COFECE.

As background, on February 16, 2023, the economic agents notified COFECE their intention to carry out a merger, processed under file number CNT-025-2023. On June 22, 2023, in a meeting of the COFECE's Board of Commissioners, the merger was authorized under the notified terms. According to the public version of the resolution, the notified transaction did not include a non-compete clause.

However, COFECE later discovered that the economic agents had incorporated a non-compete clause into the transaction, which was not disclosed in the original merger notification. In this regard, it was impossible for COFECE to analyze its effects on the market or on consumers.

On February 1, 2024, COFECE initiated a compliance verification incident, processed under file number VCN-001-2024, concerning the gypsum extraction market of the mine located in Santa Rosalia, Mulege, Baja California Sur, Mexico.

## Other Jurisdictions

### The FTC announces rule banning non-compete clauses on employees.

On April 23, 2024, the FTC issued a rule banning clauses that force employees of companies to not compete. This rule will become effective in the United States 120 days after its publication in the Federal Register. Once in force, non-compete clauses will be unenforceable for all employees except senior executives. Employers must notify affected workers that non-compete clauses will no longer be enforced against them.

While non-competes may still apply to senior executives (those earning a salary above USD \$151,164.00 per year and holding policy-making positions), employers will be prohibited from entering into new non-compete agreements, even with senior executives.

Non-competes are designed to protect a company's intangible assets, such as knowledge and human capital. However, the FTC has determined that non-compete or non-solicitation clauses imposed on workers constitute a violation of Section 5 of the FTC Act as an unfair method of competition. These clauses have restricted workers' freedom to change jobs or start new businesses in the same industry by forcing them to bear significant costs, such as moving to a lower-paying industry, relocating, or leaving the workforce entirely or partially.

The ban aims to protect U.S. workers' freedom to switch jobs, start new businesses, or bring novel ideas to market. The FTC expects this measure to positively impact innovation, encourage the creation of new businesses, improve working conditions, increase job formation, and boost innovation.





In addition, the FTC noted that there are other alternatives for employers to protect companies' intangible assets without imposing non-compete clauses in their contracts. These alternatives include trade secret laws and non-disclosure agreements ("NDAs") that safeguard confidential information, property of companies. Additionally, employers can also retain their workers by offering better wages and working conditions.

It is important to note that this rule will only be enforceable in the United States of America and will not be mandatory in Mexico. However, in Mexico, this new standard could have an impact on future analysis of non-compete clauses imposed on Mexican workers, as there is currently no legal provision prohibiting such clauses.

Sincerely,

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