

FECC focuses on pharmaceutical sector

December 08 2016 | Contributed by [SAI Consultores SC](#)

Introduction

2016 activities

Ongoing activities

Comment

Introduction

Shortly after its establishment in 2013, the Federal Economic Competition Commission (FECC) drafted its strategic plan for 2014 to 2017. The plan established the criteria for determining where the FECC should focus its attention in regards to enhancing competition.⁽¹⁾ The FECC also issued a public consultation document⁽²⁾ seeking feedback regarding which sectors should be prioritised based on the previously defined criteria. The results of this public consultation indicated that the pharmaceutical sector should be a priority for the FECC, particularly regarding the sale of medicines to public health institutions and these institutions' IP rights. As such, the strategic plan acknowledged that there is a lack of competition in the pharmaceutical sector, which has led to a 33% to 46% reduction in households that can afford to buy pharmaceutical products.

The FECC has also recognised the pharmaceutical sector's importance to the national economy⁽³⁾ and the expenditure of Mexican households⁽⁴⁾ and government institutions.⁽⁵⁾ Further, the FECC has identified that the accumulated growth of the medicine consumer price index is 10.7% higher than the national consumer price index.

2016 activities

In light of the above, in 2016 the FECC launched a series of activities relating to the pharmaceutical sector.

Investigation into monopolistic practices in diagnostics and blood bank market

In March 2016 the FECC investigative authority initiated an investigation into possible absolute monopolistic practices by the public health system regarding integral services of the laboratory diagnostics and blood bank market.

This investigation was initiated shortly after the Mexican Social Security Institute (IMSS) submitted a complaint to the FECC. According to an IMSS press release, the complaint was based on an agreement between service providers to divide the regions and services of ongoing IMSS tender proceedings between themselves, which had come to the IMSS's attention.

Tender guidelines

In May 2016 the FECC issued a manual with recommendations to promote competition in public tender processes. Although the manual is general in scope, it includes multiple examples of public tenders issued by the national health system.

Study on medicines with overdue patents

In July 2016 the FECC plenum approved the initiation of a study on medicines with overdue patents. In particular, the study's aim is to understand why there is only one supplier in Mexico for medicines with overdue patents purchased by the public health system through direct assignments. The study aims to issue recommendations and proposals to:

AUTHORS

[Lucía Ojeda Cárdenas](#)



[Mariana Carrion](#)



- enhance competition;
- reduce inefficiencies; and
- correct possible market failures.

Investigation into monopolistic practices regarding medicines

In October 2016 the FECC investigative authority initiated an *ex officio* investigation into possible absolute monopolistic practices regarding the production, distribution and commercialisation of medicines in Mexico.

Part of the investigation is believed to involve a possible collusive agreement between Marzam and Nadro, the two largest medicine distributors in Mexico. In mid-2015 the FECC authorised the acquisition of Marzam by Moench Coöperatief (although the Panama Papers released in April 2016 indicate that Nadro may have been secretly involved with Moench Coöperatief through a series of corporate arrangements, which were not disclosed to the FECC when reviewing the merger).⁽⁶⁾ Nonetheless, the investigation's scope goes beyond possible collusion between distributors and may also involve laboratories and pharmacies.

Ongoing activities

In addition to the above activities initiated in 2016, the FECC is also active in other ongoing proceedings relating to the pharmaceutical sector.

Investigation into monopolistic practices regarding latex products

In March 2014 the FECC investigative authority initiated an investigation into possible absolute monopolistic practices by the public health system regarding the production, distribution and commercialisation of latex products.⁽⁷⁾

The investigation concluded in October 2016. If the FECC found sufficient evidence of absolute monopolistic practices during its investigation, it has 60 business days to:

- issue a probable responsibility dictum against the economic agents that it believes were involved; and
- initiate trial-like proceedings against them.

Investigation into monopolistic practices regarding polyethylene curing

In September 2014 the FECC investigative authority initiated an investigation into possible absolute monopolistic practices by the public health system regarding polyethylene curing materials.

In September 2016 the FECC agreed to extend the investigation by 120 business days. The investigation will now conclude in April 2017.

Investigation into monopolistic practices regarding latex gloves

In March 2015 the FECC investigative authority initiated an investigation into possible absolute monopolistic practices by the public health system regarding the production, distribution and commercialisation of latex gloves for surgery and exploration.⁽⁸⁾

The investigation concluded in August 2016, after which the FECC issued a probable responsibility dictum against certain agents and initiated trial-like proceedings against them.

Comment

The pharmaceutical sector is clearly of significant importance to the FECC. The results of the above proceedings and their impact on consumer benefits remain to be seen.

For further information on this topic please contact [Lucia Ojeda Cardenas](#) or [Mariana Carrión Valencia](#) at SAI Consultores SC by telephone (+52 55 59 85 6618) or email (loc@sai.com.mx or mvc@sai.com.mx). The SAI Consultores website can be accessed at www.sai.com.mx.

Endnotes

(1) The first version of this draft included the following criteria:

- the extent of the sector's contribution to national gross domestic product (GDP);
- general consumption;
- the transversal impact of intermediary goods and services which serve as inputs for the production of final consumption goods or services;
- the sector's effect on the finances of low income households; and
- regulations or governmental practices which may create barriers to competition.

Based on the public consultation results, the FECC included an additional criterion: whether the sector's characteristics could facilitate or increase the risk of monopolistic practices.

(2) Participants in the public consultation included companies from different sectors, universities, civil organisations, law firms and general citizens.

(3) In 2015 the pharmaceutical sector represented 2.7% of Mexico's GDP.

(4) In 2014 42% of healthcare expenditure corresponded to the purchase of medicines and first-aid materials for low income consumers.

(5) The federal government's expenditure on medicines and pharmaceutical products is more than Ps50 billion – 15% of the total expenditure for public health.

(6) According to the Panama Papers, the money used to acquire Marzam's capital was provided by Marina Matarazzo, the wife of Nadro owner Pablo Escandón Cusi.

(7) In March 2015, given the diversity of information and the economic agents involved, the FECC split the investigation into two: one for latex condoms and one for latex gloves.

(8) See above.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).