

# FECC penalises individuals for commissioning absolute monopolistic practice in tortilla market

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### Introduction

Corn tortillas are a fundamental source of nutrition for Mexican families. Given the importance of the corn tortilla market, it has come under the scrutiny of several authorities, including the Attorney General for Consumer Protection (PROFECO) and the former Federal Competition Commission (CFC). (1) For example, in February 2016 PROFECO suspended three corn tortilla retailers from Hermosillo, Sonora, for increasing their prices to up to Ps24 (approximately \$1.3) a kilo for no justifiable reason. (2)

According to these authorities, corn tortillas are the second most important food product in Mexico. Hence, artificial price increases have a significant effect on the consumer economy. In particular, Mexican families with less income spend a greater proportion of it on corn tortillas.

### Facts

On November 12 2017 the Federal Economic Competition Commission (FECC) fined three individuals, including the Jalisco secretary for rural development, a total of Ps394,508 (approximately \$21,917) for the commission of an absolute monopolistic practice in the market for the production, distribution and marketing of corn tortillas in Jalisco state.

On February 8 2016 a corn tortilla businessman and the chair of the Governing Committee of the Industrial United Groups of Dough and Tortilla declared that production costs would affect corn tortilla prices, given the currency depreciation of the Mexican peso against the US dollar.

In this context, the Jalisco secretary for rural development met with the businessman and the chair to conclude an agreement establishing a price range of Ps9 to Ps14 for the public sale of corn tortillas. This agreement was announced by the parties during a press conference on February 11 2016. The agreement was divulged to the media, resulting in a broad increase in corn tortilla prices. For example, prices increased by 7.63% in Guadalajara (the Jalisco state capital), which reported the highest National Consumer Price Index compared with other Mexican cities. (3)

### FECC investigation

Due to the publication of this agreement, the secretary of economy filed a complaint before the FECC on February 29 2016, which led to the start of an investigation on March 16 2016. Following its investigation, the FECC concluded that the parties' practice had resulted in an overcharge of Ps0.22 a kilo between February 2016 and February 2017. (4) Consequently, given the volume of corn tortillas consumed in Jalisco, the damage to the market resulting from the practice amounted to Ps52,627,000 (approximately \$2,923,722).

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As mentioned, the secretary for rural development was involved in this case, as he had promoted, led and contributed to the commission of the practice. In this regard, the secretary acted outside the scope of his powers, as he does not have the power to manipulate – unilaterally or in collaboration with private parties or other authorities – the price of certain goods through the establishment of a price range.

### **Similar cases**

Notably, this is not the first time that the FECC has fined public officials for the commission of absolute monopolistic practices. For example, in a case investigated by the CFC (File IO-003-2010-I), the following parties came to an agreement to fix tortilla prices:

- the chair, secretary and treasurer of the Industrial Union of Dough and Tortilla of Ocosingo, Chiapas;
- the chair, secretary and treasurer of Flor de Maíz, an Ocosingo tortilla producers' group;
- the Ocosingo health coordinator; and
- the Ocosingo mayor.

The union and Flor de Maíz subsequently published the agreement in all corn tortilla establishments. Following its investigation, the CFC imposed fines of up to Ps149,249 (approximately \$8,291) on all of the parties.

In another case, the owner of a corn tortilla establishment in Tuxtla Gutierrez, Chiapas, filed a complaint before the FECC (File DE-014-2010) regarding an agreement to divide the market for selling corn tortillas through home delivery services geographically. This agreement was concluded by several economic agents – including the chairs of two associations comprising producers and sellers of corn tortillas – and the Tuxtla Gutierrez mayor. Any violation of the geographical division of the agreement would provoke the permanent revocation of the party's licence to sell corn tortillas through home delivery. The FECC imposed a total fine of Ps920,000 (approximately \$51,111) on the parties to the agreement, including the mayor.

### **Comment**

The Federal Law of Economic Competition stipulates that any individual or company that fixes prices or facilitates price fixing commits an absolute monopolistic practice. Therefore, even if a public official facilitates the coordination of price fixing between economic agents, such practice will be deemed illegal by the FECC. Conversely, the fact that a public official is involved in the commission of absolute monopolistic practices does not exclude all of the participants from being subject to law enforcement and receiving fines from the FECC.

Minimum or maximum prices can be legally established only in a regulated market, such as certain stages of the energy market supply chain. In this regard, the corn tortilla market is unregulated and governed by free competition. As a result, no authority can establish maximum or minimum prices in the market. Therefore, the sale price in any market must be determined individually by each economic agent, considering its own business strategies. In particular, the price must be an independent and individual decision taken by each economic agent. Other economic factors (such as currency depreciation) that may affect the industry as a whole must not serve as a justification for the coordination of prices between industry members.

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### **Endnotes**

(1) The CFC was disbanded and the FECC was created as an autonomous body through the amendment of the Constitution published in the *Official Gazette* on June 11 2013.

(2) See the press releases available [here](#), [here](#) and [here](#).

(3) During this period, Guadalajara's National Consumer Price Index was 2.26%, while Monterrey's was 0.05% and Mexico City's was 0.39%. The National Consumer Price Index for all of Mexico was 0.40%.

(4) The FECC's investigation ended in February 2017.

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