
THE SUPREME COURT OF JUSTICE DECIDES ON BID RIGGING IN SOCIAL SECURITY PUBLIC TENDERS CASE

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- *The Mexican Supreme Court of Justice confirmed that Baxter, Fresenius, Eli Lilly and Pisa laboratories engaged in absolute monopolistic practices between 2003 and 2006 with regard to the public procurement of human insulin and intravenous solutions carried out by the Mexican Institute of Social Security (IMSS).*
- *The Supreme Court Ruling acknowledges COFECE's economic analysis as valid indirect proof to detect cases of collusion.*

Mexico City, April 8th 2015, - The Mexican Supreme Court of Justice (SCJ) confirmed the legality of a resolution issued by the extinct Federal Competition Commission in 2010, against pharmaceutical enterprises Baxter, Fresenius, Eli Lilly and Pisa for engaging in absolute monopolistic practices. The practice involved collusive agreements in public tender processes undertaken by the Mexican Institute of Social Security (IMSS) between 2003 and 2006 for two medicine groups: i) human insulin; and ii) electrolyte and intravenous solutions (which includes injectable water, sodium chloride, sodium chloride and glucose, glucose and Hartmann solution).

The SCJ decision not only validates the investigation that demonstrates that the anticompetitive practice took place, but also confirms the legitimacy of economic analysis as indirect proof for detecting anticompetitive practices. This constitute an investigative tool of great value for the Competition Authority.

The bid rigging involved an agreement between the companies in order to establish, concert, and coordinate public procurement bid proposals with the aim of allocating contracts. This was detected through economic analysis of the results of tenders carried out between 2003 and 2006. The bid rigging led to an artificial increase in insulin and electrolyte and intravenous solution prices.

Certain market circumstances aided coordination between competitors. Some of these include: homogeneity of the tendered goods, the tender calls' frequency, the awarding of multiple contracts, acquisition decentralization, and the exchange of information between the companies involved.

Furthermore, the Supreme Court decision states that the fines imposed on the companies that took part in the bid rigging, which amount to USD \$11.3 million¹, must be modified (or recalculated). The Federal Economic Competition Commission (COFECE) will comply with this decision with full respect to the SCJ.

To estimate the damages that the practice caused the IMSS, COFECE undertook an [Ex-Post Evaluation](#) in line with best international practices. Its results suggest that, during the referred period, IMSS paid an average surcharge of 2.9% in its acquisition of intra-venous solutions and

¹ Approximate calculation based on the Mexican Central Bank's published average exchange rate for 2014: \$13.30 MXN/USD.

57.6% for human insulin. This is equivalent to approximately USD \$46.8 million ² (2014 prices). These resources would have allowed IMSS to acquire, for example, 722 ambulances or 2, 168 incubators.

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² Approximate calculation based on the Mexican Central Bank's published average exchange rate for 2014: \$13.30 MXN/USD.