



cofece

Comisión
Federal de
Competencia
Económica

The intersection between cartel enforcement and the fight against corruption

ICN Cartel Workshop 2016

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1. INTRODUCTION



RELATIONSHIP BETWEEN COMPETITION AND ANTICORRUPTION

Competition is a condition of the economic markets. The efforts to fight a cartel is a priority world-wide since they generate an average overprice of 30%.



Corruption is related to the abuse of power in exchange of obtaining an illegal rent. Corruption is a world-spread problem, from which no country is exempted.



Corrupt practices can either facilitate or difficult the entry to a market and the ability to compete within that market.



Collusion and corruption yet have mutually reinforcing effect. Thus, they are best viewed as concomitant threats to the integrity of public procurement.



COLUSIÓN & CORRUPCIÓN

Círculo vicioso en las compras públicas

LICITACIÓN PÚBLICA

FUNCIONARIO X



Para mejorar la movilidad, vamos a construir un nuevo puente.



COLUSIÓN

CONSTRUCTOR A



Déjame ésta y tú te quedas con la próxima, y así le vendemos más caro.

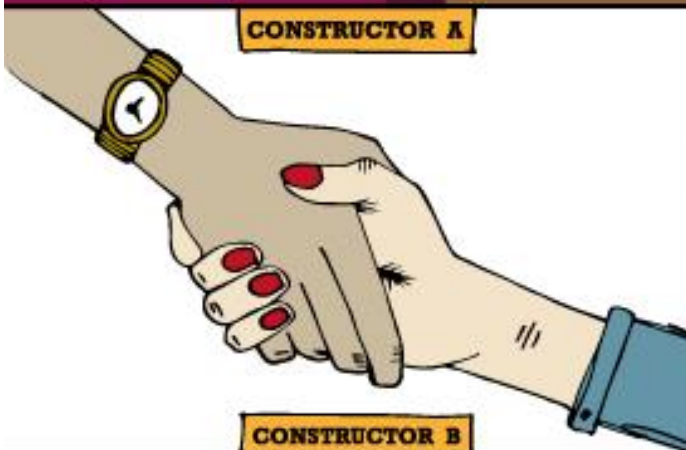
Y así no competimos... ¡TRATO HECHO!



CONSTRUCTOR B

Gobierno de Tal Poblado

CONSTRUCTOR A



CORRUPCIÓN



FUNCIONARIO X

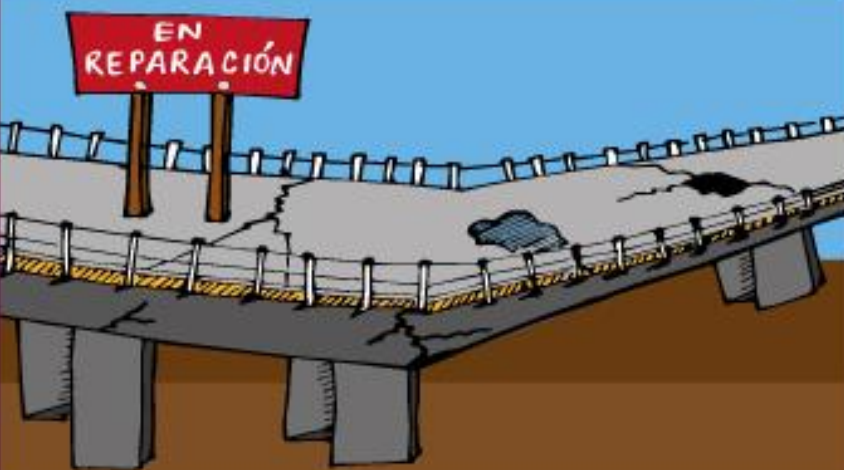


CONSTRUCTOR A

CONSTRUCTOR B



COMPRA PÚBLICA INEFICIENTE



COLUSIÓN & CORRUPCIÓN

Se cierra el círculo vicioso y volvemos a empezar...

FUNCIONARIO X



Para mejorar la movilidad, vamos a **REPARAR** el puente.



Gobierno de Tal Poblado

Para conocer sobre compras públicas competidas contacta a la COFECE

- facebook/cofece
- @cofecemx
- www.cofece.mx



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2. FRAMEWORK



FEDERAL ECONOMIC COMPETITION LAW (FECL) TIMELINE

1992 - The first “Federal Economic Competition Law” was enacted and it created the Federal Competition Commission (CFC).

2006 – New scheme of sanctions based on the international practices and creation of the Leniency Program.

2013 –Federal Economic Competition Commission(COFECE) as a Constitutionally Autonomous Organism.

2011 – Increase caps on sanctions, cartel agreements as a crime and power to conduct unannounced inspections.



ANTICORRUPTION FRAMEWORK IN MEXICO TIMELINE

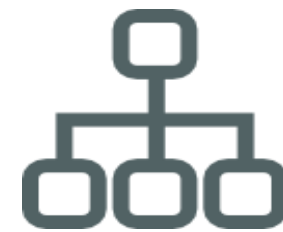
PREVIOUS SYSTEM

Different authorities had to tackle the different fronts of corruption, with no coordination among them. The **Ministry of Public Service** (Internal Affairs) was the institution in charge of the investigating and prosecuting corruption. The main legislation dealing with anticorruption was the **Federal Anticorruption Law in Public Procurement**.



CURRENT SYSTEM

The **National Anticorruption System** was designed in 2015. The purpose of creating a new system is to conduct anticorruption enforcement under a National Anticorruption Policy.



ENFORCEMENT AGENCIES- TRIPARTITE SYSTEM

Competition

- ✓ Investigative Authority- Authority of Investigative Authority of COFECE.
- ✓ Authority substantiating the process: COFECE's Technical Secretariat.
- ✓ Deliberating authority: The Board of Commissioners.

Anticorruption

- ✓ Investigative Authority
- ✓ Authority substantiating the process.
- ✓ Deliberating authority: OIC, Courts

Note. The authority depends on the infringement and who committed it.



JUDICIAL AUTHORITY

Competition

- ✓ Specialized District Courts and Circuit Courts responsible for reviewing the decisions issued by the Board of Commissioners of COFECE

Anticorruption

- ✓ Federal Court of Administrative Justice has a specialized High Court with autonomy to review decisions regarding administrative infringements.



SANCTIONS

Collusion

- Suppression of practice.
- Fines as much as 10% of annual income of a company.
- Fines and ineligibility to hold a directive position for private individuals.
- Fines for individuals or companies who helped or facilitated to engage in a monopolistic practice
- Five to ten years of imprisonment.

Anticorruption

- Suspension, destitution or ineligibility to hold public office for public officers.
- Ineligibility to be part of public tenders (individuals/companies) and suspension of activities or dissolution (company)
- Economic sanctions for public officers, individuals, and companies.
- Two to fourteen years of imprisonment for individuals who engage in corruption practices



LENIENCY PROGRAM

Collusion

- **Who?** Private persons and companies.
- **Scope of immunity** - Total reduction to 1st applicant and benefits to subsequent applicants.
- No distinction of benefits if the leniency application is submitted during the investigation.
- **Criminal immunity** - Yes

Anticorruption

- **Who?** Private persons and companies.
- **Scope of immunity** – Reduction of fine to 1st applicant and reduced benefits to subsequent applicants
- Reduced benefits if the application is submitted during the investigation.
- **Criminal immunity** - No



**SIMILARITIES BETWEEN THE
COMPETITION AND ANTICORRUPTION
LEGISLATIVE FRAMEWORKS**



SIMILARITIES

➤ Type of conducts



➤ Leniency Programs



➤ Tripartite System



➤ Specialized Courts



3. BUILDING CASES



BUILDING CASES

Increase cooperation with anticorruption agencies with the implementation of the new Anticorruption System.



Tackle corruption and collusion in the design and award of public procurement to create benefits to increase efficiency as the entrance of more competitors promotes competition and deters collusion



Align the incentives to fight corruption and collusion, as both types of infringement are in detriment of the public procurement process and the use of public resources.



4. CONCLUSION



CHALLENGES

Need for more communication between the Competition Authority and our Anticorruption counterparts in cases where possible corruption infringements might have been committed.



Look beyond public tenders, and analyze other areas where corruption and anticompetitive practices meet in order to tackle them.



AREAS OF COOPERATION TOWARDS THE FUTURE

The Head of the Ministry of Internal Affairs and COFECE committed to create channels of communication between the Agencies to strengthen the collaboration.

Improving
the public
bidding
processes

Provide
training to
public officers
involved in
the design
and award of
the biddings

Promote
transparent
and
competitive
processes

Avoid the
infringement
of the
competition
laws

Fight
corruption



Thank you!

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