

The SCJN upholds Cofece's sanction in litigation against Aeroméxico

Mexico City, February 13, 2025. The Second Chamber of the Supreme Court of Justice of the Nation (SCJN, per its initials in Spanish) confirmed the validity of the investigative powers of the Federal Economic Competition Commission (Cofece), putting an end to more than 5 years of litigation in which Aeroméxico filed several appeals and challenges against a fine of 88 million pesos imposed by Cofece in 2019 for colluding to manipulate the prices of its plane tickets on various routes, affecting more than 3 million passengers. Yesterday, the Second Chamber ultimately upheld the sanction imposed by Cofece.

As in many other cases, much of the evidence that supported the case against Aeroméxico was obtained through dawn raids, one of the main investigative tools available to Cofece. These raids allow access to the offices of the offending companies to collect key physical and electronic evidence for the investigation, which otherwise could be destroyed. In this case, Cofece conducted a dawn raid and found emails between airline executives who, using nicknames, codes, and false email addresses to conceal the illegal agreement, conspired to manipulate the price of plane tickets.

Aeroméxico challenged Cofece's sanction before the SCJN, arguing that this type of emails constitutes "private communications" and, therefore, cannot be obtained or used as evidence by Cofece. However, yesterday, the Second Chamber of the Court validated the constitutionality of Cofece's actions and confirmed **that this type of information is not covered by the protection of private communications and can be used by the State to investigate and sanction monopolistic conducts that affect Mexican consumers**, especially considering that these are communications between companies or their personnel related to business activities.

As in many other countries, a key component **for Mexico to have a strong competition policy that generates tangible benefits for consumers** is that the competition authority is able to conduct dawn raids and obtain electronic evidence, as offending companies often strive to keep hidden agreements to manipulate prices and carry out monopolistic practices. **Without these powers, there is no way to detect or sanction such harmful behaviors for the population.**

The SCJN's decision establishes a precedent so that illegal agreements among competitors to manipulate prices to the detriment of the population do not go unpunished. One of the fundamental pillars of a robust competition policy is to investigate and sanction these types of agreements, which contributes to having competitive markets to foster a fairer and more inclusive economy.

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