



**FIFTH MEETING OF THE LATIN AMERICAN COMPETITION FORUM
(20 September)**

-- SESSION I --

**ROUNDTABLE ON COMPETITION AND PUBLIC PROCUREMENT
IN LATIN AMERICA**

Submission of Mexico

1. Introduction

This note summarizes Mexico's experience in public procurement contracts with special emphasis on the pharmaceutical sector. Section 2 outlines the regulatory framework for these contracts and identifies competition concerns derived from this regulation. Section 3 summarizes some bid rigging cases investigated by the Federal Competition Commission (CFC) in the health sector, and presents the outcomes of some public auctions in the pharmaceutical sector that may bring up competition concerns. Section 4 summarizes important advocacy efforts undertaken by the CFC to increase competition in the allocation of public expenditures on pharmaceuticals. Finally, section 5 contains some concluding remarks.

2. Public expenditures on pharmaceuticals

Public expenditures on pharmaceuticals in Mexico during 2006 are estimated at US\$2.3 billion, which represents 0.3% of the GDP. The great majority of these expenditures are allocated through public auctions called by the two main public health institutions: Mexican Institute for Social Security (IMSS), which provides health care services to employees (and their families) of the formal private sector; and the Institute for the Security and Social Services of State Employees (ISSSTE), which provides health care services to government employees (and their families). The following table presents the public health institutions shares of total public expenditures on pharmaceuticals.

Public expenditures on pharmaceuticals, 2006

Total expenditures	US\$2.3 billion
Institution	Share
IMSS	76.3%
ISSSTE	18.5%
Others*	5.2%
Total	100.0%

* Mainly health services provided at the state level

2.1 Regulatory framework

Public expenditures on pharmaceuticals, as well as other public expenditures on goods and services, are regulated by the Law of Public Sector Acquisitions, Leasing and Services (Acquisition Law or AL), its Regulations (ALR), and associated provisions under free trade agreements (FTAs).

The AL establishes that, as a general rule, public expenditures in pharmaceuticals must be allocated through public auctions and that all providers must face similar terms and conditions.¹

The AL and its Regulations set out the following general auction rules:

- x *Lowest-price sealed-bid auctions.* Bids are secret and contracts are awarded to the lowest bids.²
- x *Multiple provision.* Contracts may be granted to two or more bidders if their bids do not differ by more than 5% with respect to the lowest bid. The winning bidder would be awarded a 50% share or more of the contract and the other participants would be granted shares previously specified in the auction rules.
- x *Joint bids.* Two or more persons or firms may offer joint bids without needing to incorporate into a single firm.
- x *Reference prices.* Government entities may set a maximum price, as a reference for bidders to offer discount percentages.
- x *Prohibition of price bids below costs.* Entities calling auctions must verify that prices offered are not below costs, and may dismiss tenders on insolvency grounds.
- x *Domestic auctions.* Most public procurement contracts are reserved for Mexican nationals and goods with a minimum domestic content of 50 percent.
- x *International auctions.* This type of auctions may only be called if: mandated under FTAs (except for reserves); domestic supply is not available in terms of quality, quantity or at convenient prices; no participants turned out or qualified in a previous domestic auction; and if it is so stated in foreign financing contracts granted to the federal government. In these auctions, economic proposals of domestic products are granted a 10% preferential margin, while bids of handicapped (or firms that employ them) are also favored.
- x *Reserves.* Under FTAs provisions, the Mexican government has the right to except a maximum amount of public expenditures from *international auctions*. In the case of pharmaceuticals the government decided to exercise these reserves. In 2007, for example, the IMSS is expected to exempt US\$195 million of expenditures on generic pharmaceuticals from international auctions.

2.2 Competition concerns arising from procurement regulations

The CFC has issued several opinions concerning particular features of the regulatory framework that foster collusive conduct, as explained below.

- x The multiple provision feature limits price competition and lays the groundwork for agreements (implicit or explicit) on market sharing. In extreme cases, bids are identical

1 Under special circumstances, contracts may be directly conferred or granted by contest through invitation to at least three persons.

2 In the procurement of services, multiple criteria may be used (e.g. price and quality), by applying an index where price has a 50% weight.

