

## May 2021 Competition Currents: Mexico

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The Federal Economic Competition Commission (COFECE) has taken two strong positions against recent amendments to laws in the energy sector.

### COFECE challenges amendments to Electricity Industry Law

On April 22, 2021, COFECE filed a constitutional controversy before the Supreme Court of Justice of Mexico against an amendment of the Electricity Industry Law, arguing the amendment would affect COFECE's powers by preventing it from guaranteeing competition in the electricity industry. COFECE indicated that under the current constitutional framework, it is essential that certain requirements exist so that the electricity markets can operate under competitive conditions. These requests are: i) the possibility of open and non-discriminatory access for any generator in the electricity networks; ii) that energy dispatch is governed by objective and efficiency criteria, and iii) that the operator – National Energy Control Center – and the regulator – Energy Regulatory Commission – operate independently and impartially, without favoring or granting undue advantages to any participant.

COFECE takes the position that the amendments to the law:

- Do not respect the rule of open and non-discriminatory access to distribution and transmission networks.
- Eliminate the criteria of economic dispatch of power plants, granting undue advantages in favor of the Federal Electricity Commission (CFE).

- Dilute the rule of open access to networks, enabling denials of access without legitimate justification.
- Allow basic service providers, specifically the CFE, to acquire energy through non-competitive methods, indefinitely expanding the legacy regime, which was meant to be temporary.

## **COFECE challenges amendments to Hydrocarbons Law**

On April 13, 2021, COFECE sent a letter to Mexico's Congress regarding the amendments to the Hydrocarbons Law. COFECE stated that the amendments would negatively affect the competition process for the value chain of hydrocarbons, petroleum, and petrochemicals. In a public opinion, COFECE said that the amendments would:

- Discourage entry of companies and reduce supply by distorting permits regulation, since it grants wide discretion to the Ministry of Energy and the Energy Regulatory Commission to temporarily suspend permits they consider imminent dangers to "national security, energy security or for the national economy" without defining these concepts or providing criteria for their clear application.
- Generate uncertainty by changing from an automatic approval to a presumptive rejection of a permit when the authority does not resolve a request expeditiously.
- Reduce the number of competitors by establishing prior verification of storage capacity prior to granting permits. Requiring this verification prior to the granting permits generates a harmful cycle between the lack of said capacity due to the non-existence of permits, resulting in a lack of infrastructure, thus discouraging investments in this area

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