

Competition - Mexico

Major energy reform yields competition opportunities

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Introduction

After a fast legislative process, major reform to the constitutional framework for energy matters will soon become effective. The reform drastically changes the paradigm of the past 80 years, by which most energy-related activities – referred to as 'strategic areas' in Article 28 of the Mexican Constitution – were controlled and undertaken by the state. These activities can now be carried out by private parties, including foreign investors. Accordingly, the reform will have a significant impact on competition matters, as the regulatory entry barriers to this sector have been eliminated to some extent. Secondary implementing regulations have yet to be enacted, but once in force will illustrate the full scope and reach of the reform.

Legislative background

Members of the House of Representatives and the president both submitted initiatives to amend Articles 25, 27 and 28 of the Constitution with regard to energy matters in July and August 2013, respectively. The initiatives were combined and followed the proper legislative process for constitutional amendments. Accordingly, on December 11 2013 the House of Representatives approved the amendments to the articles in question and the bill was subsequently passed to the states' parliaments. The bill was approved by a majority of the states' parliaments and was officially enacted on December 20 2013.

Strategic areas now open to competition

Many changes have been introduced by the reform. One of the most important amendments calls for the transformation of certain exclusively state-run electricity and oil-related activities into ventures in which private parties can participate. This change implies that private parties – both national and foreign – can now enter into agreements with the Mexican government under a regulation which will encourage the development of a more efficient and competitive production process.⁽¹⁾

The government can also now enter into agreements with private parties regarding the planning and control of the national electric system, as well as the public service of the transmission and supply of power.⁽²⁾

Oil exploration and extraction activities can be awarded directly to a productive enterprise or can be performed according to an agreement with the productive enterprise or private party.⁽³⁾ Productive enterprises, if awarded such activities, can also enter into agreements with private parties.

According to the fourth transitional article of the bill, oil exploration and extraction agreements can include the following arrangements:

- service agreements;
- shared profit or production agreements; and
- licence agreements.

Depending on the type of agreement signed, payment or remuneration to the parties that perform these activities can be in cash, entail a percentage of the profits or production, or involve selling the oil that has been extracted. Furthermore, according to amended Article 28 of the Constitution, these activities are not considered monopolies.

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Mexican Petroleum and the Federal Electricity Commission, which are presently decentralised public bodies, will become "productive enterprises of the State".⁽⁴⁾ These productive enterprises will compete with private enterprises in the relevant activities to obtain the agreements that are assigned by the state on the basis of efficient and competitive production.

Consequently, although the reform implies drastic changes in the structure of several markets within the energy sector, the government's most significant challenge will be to establish clear rules and proceedings through the secondary legislation that can ensure effective competition among the state productive enterprises and private agents. Such regulatory amendments are expected to be enacted within the first semester of 2014.

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Endnotes

(1) See amended Article 25 of the Constitution.

(2) Third transitional article of the bill.

(3) *Id.*

(4) *Id.*

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