

COFECE amends recommendations to foster competition in gasoline and diesel markets

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Introduction

Following the 2013 constitutional energy amendment, the Mexican energy market became a competitive market that allowed private investment. In addition, the Hydrocarbon Law, which was issued in January 2015, allows third parties which are unrelated to the state-owned enterprise Petroleos Mexicanos (Pemex) to sell gasoline and diesel. In light of these developments, in 2016 the Mexican Federal Economic Competition Commission (COFECE) issued a series of recommendations aimed at fostering competition in the gasoline and diesel markets.⁽¹⁾

On 1 December 2018 Andrés Manuel López Obrador was sworn in as president. In January 2019 the new government implemented several measures to counter and reduce gasoline and diesel theft, including:

- increased vigilance and security;
- the shutting down of major pipelines; and
- greater use of alternative means of transport.

This generated fuel shortages in some of Mexico's main cities, which lasted for several weeks.

To address these issues, the COFECE recently issued a follow-up to its 2016 recommendations, which responds to the new administration's concerns and sets out amended recommendations to increase competition in the gasoline and diesel markets.⁽²⁾

Concerns

The COFECE's follow-up document identifies a number of additional concerns:

- Although 75 brands participate in the gasoline retail market in addition to Pemex – through its subsidiary Pemex Transformación Industrial (PTRI) – still supplies 94% of the country's gasoline.
- Pemex – through its subsidiary Pemex Logística – controls most of the market's storage and transport infrastructure.
- PTRI's commercial strategies and competitive advantages (as granted by Pemex Logística) may hinder competition from private parties.
- Infrastructure advancements are insufficient to cope with the national market's demands.
- Retail prices of gasoline and diesel have not decreased in the same way as international prices.
- The rebates that Pemex grants customers might not be reflected in retail prices.
- Few new service stations have been established since Mexico transitioned to a competitive market.

Recommendations

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In light of the above, the COFECE issued new recommendations for a number of authorities.

Congress

Congress should consider modifying the Pemex Law and the Hydrocarbon Law in order to make Pemex Logística an independent operator of Pemex's storage and transport infrastructure.

Further, Congress should modify Article 83 of the Hydrocarbon Law to require the COFECE to authorise cross-ownership of entities that:

- provide fuel transportation via railways; or
- are involved in the storage or marketing of gasoline and diesel.

Ministry of Treasury and Public Credit

The Ministry of Treasury and Public Credit should offer incentives to states that promote:

- investment in infrastructure;
- the installation of new service stations; and
- the elimination of artificial barriers to entry.

Energy Regulatory Commission

The Energy Regulatory Commission (CRE) should:

- ensure that PTRI complies with the price volatility mitigation regulations and impose all applicable penalties in case of non-compliance;
- strengthen PTRI's asymmetric regulation in order to eliminate discretionary discounts or rebates;
- require PTRI to provide periodic reports on its wholesale gasoline income;
- publish PTRI's discount policy;
- request financial and contractual information for each of Pemex's subsidiaries and affiliates;
- establish, alongside Pemex Logística, clear and objective criteria to assign storage and transport capacity through open season procedures;
- publish information on the pricing margins of service stations in each region to allow:
 - individuals to identify investment opportunities; and
 - authorities to detect possible obstacles in the establishment of such stations; and
- require Pemex to publish all necessary conditions for a franchisee to terminate a franchise contract and the applicable penalties.

Other authorities

The COFECE has recommended the creation of a working group of federal government entities, including:

- the Ministry of Communications and Transport;
- the Ministry of Energy;
- the National Hydrocarbons Commission;
- the CRE; and
- the Security, Energy and Environment Agency.

This group would be tasked with:

- monitoring the development of logistics systems (eg, ports, pipelines and storage facilities) and;
- easing the procedures required to obtain permits.

Further, the COFECE has recommended that the National Council for Regulatory Improvement encourage the issuance of guidelines on the establishment of service stations.

Comment

Through these additional recommendations, the COFECE is seeking to further protect and guarantee

through these additional recommendations, are considered leading to market protection and guarantee competition and free access in the gasoline and diesel markets by avoiding or eliminating obstacles posed by the market's regulation and structure. As competition considerations are essential to ensure the market's correct functioning and transition, all authorities to which recommendations have been directed should take them into consideration.

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Endnotes

(1) "The Transition to Competitive Retail Gasoline and Diesel Markets".

(2) Available [here](#).

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