

## Antitrust Practice Group Newsletter



### Latest news regarding Antitrust and Energy matters in Mexico

In the last few years, the Mexican Federal Economic Competition Commission ("COFECE" as per its acronym in Spanish) has been following the different activities of the energy sector in Mexico, which is one of the eight priority sectors identified by COFECE in its 2022-2025 Strategic Plan, due to which COFECE has participated in antitrust related matters pertaining to such sector.

Highly relevant cases have arisen recently, involving various energy authorities and COFECE, such as the following two cases:

#### 1. Constitutional Claim number 55/2021

Last year, COFECE filed a Constitutional Claim against the resolution RES/133/2021, by means of which the Energy Regulatory Commission ("CRE" as per its acronym in Spanish) denied the authorization regarding cross-participation, requested by an agent to carry out its operations, who already had a favorable opinion issued by COFECE, under the terms of article 83 of the Hydrocarbons Law.

In a session held on April 6, 2022, by the First Chamber of the National Supreme Court of Justice ("SCJN" as per its acronym in Spanish), the five Constitutional Ministers determined unanimously the invalidity of such resolution.

Within the final ruling, the SCJN concluded that,

although the CRE is the body that regulates and operates the energy sector, the COFECE has reserved for itself, at the constitutional level, the exercise of the powers of prevention, investigation and sanction in antitrust matters, except for the telecommunications and radio broadcasting sector.

Likewise, the final ruling states that the CRE could not initiate procedures of this nature without first having the favorable opinion of COFECE.

Finally, it is important to mention that, although the SCJN declared the invalidity of the Resolution number RES/133/2021, this did not derive from an analysis of the mandatory nature of COFECE's favorable opinion, which would have meant an important precedent for the sector. On the contrary, this ruling derived exclusively from the fact that COFECE and CRE did not have the same level of information when issuing their resolutions.

#### 2. Investigation of Relative Monopolistic Practices

On May 17, the National Energy Control Center ("CENACE" as per its acronym in Spanish) published a notice regarding the request for information, announced by COFECE under file DE-027-2020.

In such file, COFECE is currently performing an investigation for the possible commission of relative

monopolistic practices in the “*generation, wholesale trade and supply of electricity and associated products, as well as services and activities related to such markets in national territory*”, which was initiated due to a complaint filed before such antitrust authority.

The information and documents requested by COFECE from the CENACE, include the following: i) a list of the requests for the connection and interconnection to the SEN filed before each one of the offices of CENACE; ii) copy of the installation studies performed regarding each request, as well as a description of the process to perform such and the names of the authorities involved; iii) the files of all the instructions issued by the CENACE to the transporters and distributors to execute connection or interconnection agreements and to perform the interconnection to power plants and/or the connection to load center, even requiring them to specify the reasons why some of those agreements have not materialized; and iv) the entirety of the electric coverage agreements entered into by CENACE with the market participants.

It is worth mentioning that, if the commission of relative monopolistic practices is found, COFECE could levy a fine equivalent to 8% of the income of the economic agents involved, and order them to cease the corresponding conduct.

Our antitrust and administrative litigation team has extensive experience supporting clients involved in antitrust proceedings and administrative litigation. We remain at your service to assist you in relation to the legal alternatives that may best protect your commercial interests.

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