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Antitrust Practice Group Newsletter



COFECE urges the CRE to respect the process to establish LP gas price cap regulation

Through an Emergency Guideline published July 28, 2021, in the Official Gazette of the Federation (the "Guideline"), the Ministry of Energy urged the Energy Regulatory Commission ("CRE") to issue, within a term of no more than 3 days, the emergency regulation to guarantee that Mexican families can acquire liquefied petroleum gas ("LP Gas") affordably.

In compliance with the Directive, on July 29, 2021, the CRE published in the Official Gazette of the Federation the "AGREEMENT No. A/024/2021 of the Energy Regulatory Commission that establishes the regulation of maximum prices of liquefied gas sold to the final user, in compliance with the Emergency Directive for the welfare of the consumer of liquefied petroleum gas, issued by the Ministry of Energy, in order to protect the interests of final users", ("Maximum Price of LP Gas Regulation"). It came into force on July 29, 2021.

In accordance with the Maximum Price of LP Gas Regulation, its purpose is to mitigate the increases in LP Gas prices to final users and reduce the impact on the prices that LP Gas consumers pay for said hydrocarbon, derived from a continuity in concentration and simulated competition in LP Gas distribution activities.

The Maximum Price of LP Gas Regulation includes a methodology that sets maximum prices to the final consumer of LP Gas, whose validity will be 6 months

from its publication and may be updated by the CRE in accordance with the monitoring of prices and the conditions of the LP Gas market.

This regulation of maximum prices must be observed by all permit holders who sales LP Gas to final users or, otherwise, they may be sanctioned with the revocation of their permit in terms of article 56, section III of the Hydrocarbons Law.

Faced with the Maximum Price of LP Gas Regulation, the Federal Economic Competition Commission ("COFECE") issued a statement noting that the exhortation to the CRE contained in the Guideline is contrary to certain provisions and therefore, invites the CRE to respect the procedure established in article 82 of the Hydrocarbons Law and 77 of the Regulation of Activities to those referred to in Title Three of Hydrocarbons Law, which indicate, on one hand, that to regulate LP gas prices, a "declaration of absence of competitive conditions" is required by COFECE as a necessary condition prior to issuing price regulations, while on the other hand, they establish that the distribution not linked to LP Gas pipelines should not be subject to price regulation unless otherwise is previously determined by COFECE.

COFECE's encouragement is given in a context in which maximum prices can only be regulated in markets where there are no competitive conditions. Otherwise, the

setting of maximum prices may impact the respective market with consequences divergent to those sought by the Maximum Price of LP Gas Regulation, such as the shortage of this hydrocarbon and economic effects on the participants in the applicable market. In addition, setting an artificial maximum price for LP Gas could generate losses for the relevant market participants.

It is worth remembering that COFECE itself has carried out investigations for possible anticompetitive conduct in the LP Gas market, has proposed recommendations to promote competition in said market, and has even opened an investigation to determine whether there are effective competitive conditions.

Some participants of the LP Gas industry have expressed their concern regarding this regulation regarding the consequences that this could have in terms of economic competition in the Mexican Market. Said participants have argued that the main distributor of LP Gas in Mexico is PEMEX, by far, and that the recent increases in the price of LP Gas are the product of the impact of international prices and the high dependence of Mexico on the LP Gas imports.

It should be remembered that the Maximum Price of LP Gas Regulation was approved without having the respective procedure of regulatory impact analysis,

impact on competition analysis and public consultation of the participants in the LP Gas market, which puts at risk technical aspects and quality of regulation which is against the Regulatory Improvement General Law.

Our experts in economic competition and administrative litigation have extensive experience supporting clients that are being affected by government actions in economic competition matters such as the Maximum Price of LP Gas Regulation. Our advice is based on the processing of national and international defense proceedings, so we are at your service to assist you in relation to the legal alternatives that best protect your commercial interests.

This newsletter was prepared by Guillermo Villaseñor-Tadeo (gvillasenor@sanchezdevanny.com), Alfonso López-Lajud (alopez@sanchezdevanny.com), José Antonio Postigo-Uribe (japostigo@sanchezdevanny.com); Gerardo Prado-Hernández (gph@sanchezdevanny.com), Mauricio A. León-Alvarado (mleon@sanchezdevanny.com), José Miguel Ortiz-Otero (miguel.ortiz@sanchezdevanny.com), Tania Elizabeth Trejo-Galvez (tetrejo@sanchezdevanny.com), Biuludani Altamirano-Magaña (biuludani.altamirano@sanchezdevanny.com) and Paulina Doen-Castillo (paulina.doen@sanchezdevanny.com).

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Contact

Cristina Sánchez-Vebber
csv@sanchezdevanny.com

José Antonio Postigo-Uribe
japostigo@sanchezdevanny.com

Mexico City:

Av. Paseo de las Palmas #525 Piso 6
Col. Lomas de Chapultepec, 11000
Ciudad de México
T. +52 (55) 5029 8500

Monterrey:

José Clemente Orozco #335 Piso 4
Despacho 401 Col. Valle Oriente, 66269
San Pedro Garza García N.L.
T. +52 (81) 8153 3900

Querétaro:

Av. Antea #1090, Piso 2 Int 206
Col. Jurica, 76100
Querétaro, Qro.
T. +52 (442) 296 6400



www.sanchezdevanny.com

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