

## **COFECE's preliminary opinion finds that there are no conditions for effective competition in interconnection services between rail networks**

- *COFECE's Investigative Authority has determined that the companies Grupo Mexico, Kansas City Southern Mexico and Ferrovial can fix prices, restrict the supply and foreclose access to their respective networks through the interconnection services to other concessionaires.*
- *The lack of effective competition conditions results in the increase of fees, excessive freight transportation times, higher logistic costs and interconnection services being underused, which impacts the rest of the economy.*
- *The Railway Transport Regulatory Agency, created in 2016 as part of the Railway Service Regulatory Law reform is entitled to establish new running or trackage rights and fee guidelines if this preliminary opinion is confirmed.*

**Mexico City, March 15, 2017.-** The Investigative Authority of the Mexican Federal Competition Commission (COFECE) has determined that there are no conditions for effective competition in interconnection services in the way of trackage rights between rail networks used for freight transportation administered by *Grupo Mexico, Kansas City Southern Mexico* and *Ferrovial*. The three companies control 72.3% of the total railways in the country.

The above was established in the Authority's preliminary opinion on the investigation carried out in accordance to article 96 of the Federal Economic Competition Law (FECL) and article 36 of the Railway Service Regulatory Law.

Trackage rights are agreements between railroad concessioners in which the owner of the concession grants another concessioner some use of their tracks in exchange of a payment. These running rights are necessary to provide continuity to the national rail network and generate competition in its routes.

According to the investigation, the two economic agents with market power are *Grupo Mexico*, which owns concessionary companies *Ferromex* and *Ferrosur*; and *Kansas City Southern Mexico*. Both companies own 75% of *Ferrovial's* shares. This third player is

subject to the interests of the two majority shareholders, being at the same time owners and main clients.

The investigation revealed that these companies can fix the interconnection rates, as they alone can determine the fees to charge for the use of the tracks under their control without other competitors being able to negotiate such payment, and without the use of any cost methodology. Therefore, the costs are fully transferred to the user.

They can also restrict the access to their rail networks and the provision of transportation services on their routes. This situation gives rise to the dominant incentive to restrict the use of the tracks to other concessionaires, to obtain greater profits as they are the only ones that use the tracks to offer public rail freight services. Proof of this is that since 1995, only once, the concessionaires have agreed trackage rights because of a reciprocal exchange with limited access to their respective tracks.

Due to the nature of the sector, the ability to fix prices and restrict supply is inevitable, unless the Railway Transport Regulatory Agency determines trackage rights to continuously operate the system and thus ensure an adequate interconnection to move a greater quantity of products in a more efficient way throughout the country.

Per the same investigation, the lack of effective competition in interconnection services results in a railway system with low connectivity between networks under concession, high non-cost associated tariffs, as well as non-compliance with terms agreed between providers and users of the services, causing serious problems such as:

- 1. Increases in fees paid by the users.** If the cargo requires using a small section of the track owned by a different concessionaire from the one contracted at the point of origin, the fee in that section may increase by an average of 8.3 times compared to the rest of the route.
- 2. Additional payments for services.** Users are forced to pay additional services such as renting locomotives to mobilize the cargo that is waiting to be transported by the concessionaire. Failure to comply with the schedules of interconnection services between concessionaires causes delays in routes and lack of locomotives and wagons to transport the cargo.
- 3. Disruption of other economic activities.** Non-compliance by concessionaires of delivery times leads to delays in industries or businesses that rely on inputs moved

by railways. For example, users of two or more concessionaires of this transport system have received their cargo up to a week late, implying production stoppages.

- 4. Increase in logistics costs.** The uncertainty, both in time and costs of the rail transport service increases the incentive to contract other less efficient means of transportation such as the loading at ports or road freight transportation, as well as additional payments for delays in ship loading and unloading.

It is now for the Economic agents with an interest in the procedure, that is concessionaires and users of the service, to present before the COFECE their statements and allegations on this investigation. Subsequently, COFECE's Board of Commissioners will issue a final resolution of the case.

If the findings on the Investigative Authority's Preliminary Opinion are confirmed, the Railway Transport Regulatory Agency will be responsible for establishing the required regulations and measures to ensure competition conditions in the railway system, indicating new trackage rights and fees guidelines.

The aforementioned procedure is possible due to the reform of the Railway Service Regulatory Law recently passed by the Federal Government. This reform also created the Railway Transport Regulatory Agency and gave the agency the power to grant trackage rights, in case COFECE determines there are no conditions for effective competition.

In the presentation of the Preliminary Opinion, Carlos Mena, head of COFECE's Investigative Authority, stated that "it is urgent to implement mechanisms to improve the rail transport service in the country."

"Without effective competition in the transport sector, our country cannot hope to become a full logistics platform for domestic and international trade, which would condemn us to low economic growth and the persistence of inequality between regions".

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### ***MORE COMPETITION FOR A STRONGER MEXICO***

*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through this, it contributes to consumer welfare and the efficient functioning of the markets. Through its work it seeks better conditions for consumers, greater output and better services and a "level playing field" for companies.*