

The Supreme Court's ruling by no means implies that, under the current regulatory framework, PEMEX can deny the entrance of transporters to its facilities or condition the sale of fuels to the contracting of any service

- *In 2013, the extinct competition authority sanctioned the state---owned company for tying the sale of gasoline to the contracting of fuel transportation services with PEMEX's equipment and personnel.*
- *According to the Supreme Court, prior to the energy reform, this constituted a "strategic area" reserved exclusively for the Nation.*
- *Under the current legal framework, PEMEX is obliged not to make conditional the sale of fuel on the contracting of any additional service, including fuel transportation from refineries or storage terminals to service stations.*
- *COFECE will be vigilant to ensure competition in these markets.*

Mexico City, January 25, 2017.- The Federal Economic Competition Commission (COFECE or Commission) will abide by the decision of the Second Chamber of the Supreme Court of Justice of the Nation (SCJN), which resolved to grant an *amparo* to *Petróleos Mexicanos* (PEMEX) and *PEMEX Refinación*, overruling a decision of the extinct Federal Competition Commission (COFECO).

At the time, COFECO proved that PEMEX was conditioning the sale of gasoline and diesel on the contracting of fuel transportation services from the Storage and Distribution Terminals (TAR) to the service stations, with tank---trucks and equipment operated by the syndicated personnel of the then state---owned enterprise. For this reason, COFECO imposed a fine of 653.2 million pesos, in August of 2013.

This Wednesday, the Supreme Court ruled that the transportation of fuels from TARs to service stations was a strategic area reserved to the Nation, in accordance with the legal framework in effect prior to the energy reform, and therefore it was decided to render invalid the sanctions imposed on PEMEX. The Supreme Court's decision was taken based on

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today's abrogated Law Regulating Article 27 of the Constitution in the Oil sector and its Regulations. The legal framework in force following the energy reform ended the PEMEX monopoly over the oil and gas industry and, among other things, allowed the retailers to purchase PEMEX gasoline and diesel from TARs or even at refineries, and to transport the fuel with their own means or through third parties to service stations. That is, PEMEX cannot deny the entry of transport permit-holders to storage terminals, nor condition the sale of PEMEX fuels on the contracting of any logistics or value-added services (including transportation) or to the existence of franchise agreements.

To this end, since last October, the Energy Regulatory Commission (CRE) ordered PEMEX to terminate its supply contracts signed with service stations across the country, and replace these with the new authorized contracts for first-hand sales or commercialization, so all owners of service stations can, in full freedom, only purchase the fuel from PEMEX or add different value-added services, including storage and/or transportation. To comply with this order, PEMEX has 9 months from the referred month.

The CRE, in the exercise of its powers, has to complete the aforementioned process and verify the compliance with the corresponding regulation, which implies enforcing the obligation imposed on PEMEX to allow access to its facilities and grant non-discriminatory treatment to purchasers. If PEMEX requires protocols and safety procedures so that transport permit-holders, in the form of tank-trucks and semi-trailer, can access PEMEX refineries or TARs to collect the purchased fuels, these procedures should be issued as soon as possible for the CRE to approve them and to be publicized.

COFECE will be vigilant and, if necessary, initiate the corresponding investigations when there are indications of relative monopolistic practices, including tying and bundling, refusals to deal, discrimination between buyers, or denial, restriction of access or discriminatory access to an essential input. It should be noted that the ruling of the Supreme Court, having resolved on an abrogated regime, does not limit or condition the exercise of the COFECE's powers in the gasoline market in the country.

The transition from a monopolistic model to one operating under an open and competitive scheme will require work on multiple fronts to attract new investments, generate infrastructure and facilitate the participation of economic agents, other than PEMEX, throughout the production chain. In particular, the possibility of purchasing at PEMEX facilities and freely transport the fuel to the service stations or distribution centers,

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depending on the needs of each buyer, will be key to guarantee competitive fuel retail prices.

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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 markets. Through its work, COFECE seeks better conditions for consumers, greater output, better services and a “level playing field” for businesses.

