

COFECE requests the Federal Executive Branch submit an action of unconstitutionality against Coahuila's state law that establishes minimum distance requirements between gasoline service stations

- *The local Congress and state government of Coahuila approved and published amendments to the State Law for Human Settlements and Urban Development, that could violate the right of free trade, as well as the principles of free competition, protected by Articles 5 and 28 of the Constitution.*
- *Promoting competition in the retail fuel market is key as both, the number of service stations and competitive pressure between them, directly affect profit margins and prices.*
- *State regulations in Baja California, Chihuahua, Mexico City, Colima, Hidalgo, Michoacan, Nuevo Leon, San Luis Potosi, Sinaloa, Sonora and Veracruz also impose minimum distances between service stations.*

Mexico City, February 16, 2017.- The Mexican Federal Economic Competition Commission (COFECE) requested the Legal Advisor of the Federal Executive Branch to submit before the Supreme Court of Justice of the Nation (SCJN) a request to initiate a review of the constitutionality of the reform, already approved and enacted, of the Law for Human Settlements and Urban Development in the State of Coahuila, which imposes minimum distance requirements between service stations, restricting their establishment. This is the first time that COFECE uses this power, which aims at promoting pro-competitive regulatory frameworks.

COFECE's request is substantiated on the possible breach of Articles 5 and 28 of the Constitution. On previous occasions, the SCJN has determined that provisions establishing distance requirements between businesses of the same type are unconstitutional. Additionally, the Supreme Court has claimed that the process of free competition is a matter of social interest and public order, and government bodies should privilege it over any private interest.

The amendments could prevent, without valid justification, the establishment of service stations in certain geographical areas, guaranteeing higher profit margins for the incumbents and reducing supply choices which might represent better conditions of quality and price for consumers. The number of service stations and the competitive pressure

among them in a locality or geographic area, directly impact profit margins and, consequently, final retail prices of gasoline paid by consumers.

In September 2015, COFECE recommended to the Governor of the state of Coahuila not to enact the reform approved by the State Congress, as it grants exclusivity to service stations already established in certain zones, by prohibiting the establishment of new businesses within a 1.5 km-radius in urban areas and of 10 km-radius in rural areas. In 2015, the State Executive returned the draft Decree to the local legislature to review it, in light of the opinion of this Commission, however it was approved in its original terms. For this reason, COFECE now requests a review of the constitutionality of this law.

It should be stressed that similar barriers to fuel retailing are found in state regulations in Baja California, Chihuahua, Mexico City, Colima, Hidalgo, Michoacan, Nuevo Leon, San Luis Potosi, Sinaloa, Sonora and Veracruz. In these cases, COFECE cannot request the filing of appeals of unconstitutionality as these regulatory restrictions have been in force for some time. This, however, does not exempt state governments and congresses from their responsibilities to contribute to a successful transition towards open and competitive market of fuels, to the benefit of consumer.

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

