

COFECE investigates possible unlawful concentration in the retail market for diesel and gasoline

- *COFECE's Investigative Authority has evidence suggesting the existence of an unlawful concentration between firms in the market for the commercialization, distribution and public retailing of diesel and gasoline.*
- *Unlawful concentrations obstruct, diminish, harm or impede competition by increasing an economic agent's substantial market power; they displace, impose barriers to market entry or impede free market access or access to other competitors' essential facilities, and/or facilitate concentrating parties incur in monopolistic practices that harm consumers.*
- *This investigation, initiated on September 6, 2017, should not be interpreted as a prejudgment but as the verification of the fulfillment of the Federal Economic Competition Law by the authority.*

Mexico City, March 6, 2018.- The Federal Economic Competition Commission's (COFECE or Commission) Investigative Authority published today in the Federal Official Gazette (DOF) and on its website, the notice of initiation of investigation as a result of a complaint, to determine the probable existence of an unlawful concentration in the market for the commercialization, distribution and public retail of diesel and gasoline.

The energy reform has led gasoline and diesel retailers to search for new schemes to achieve economies of scale, which recently could have materialized in the consolidation of retailers through acquisitions, mergers, consortiums or "business partnerships". In the last year, 10% of the service stations in the country have changed their company's name.

These transactions do not necessarily result in unlawful concentrations, as they generally have the purpose of reducing costs, improving the supply of inputs, the logistics and technology employed and/or increase the supply of said fuels. They may constitute anticompetitive practices, when they: i) confer or increase an economic agent's substantial market power; ii) displace other economic agents or impede third parties' access to the market and essential facilities, and/or iii) facilitate that concentrating parties engage in monopolistic practices that harm consumers.

Considering the aforementioned, COFECE has, since 2016 recommended economic agents in the sector preventively notify any project with the purpose of association or concentration, in order to assess the possible impacts and ensure that the competition conditions prevail in said fuel markets.¹

¹ In terms of the document *The Transition to competitive retail gasoline and diesel markets*, here: <https://www.cofece.mx/cofece/ingles/attachments/article/38/DOCUMENTO-GASOLINAS-FINAL-INGLES.pdf>

COFECE may open an investigation for an unlawful concentration when: i) law mandates the notification of a transaction and parties fail to comply; ii) the information provided for the authorization is false or parties fail to comply with conditions set forth in the resolution; or iii) a year has not passed since its execution, despite not being required to notify COFECE of said transaction. In any of these cases, the Commission must have reasonable grounds or objective cause that the transaction may harm the competition process.

The investigation filed under DE-018-2017, initiated on September 6, 2017 should not be construed as a prejudgment of the responsibility of any economic agent given that neither the infringements to the legal framework have been identified nor economic agents have been deemed responsible. In case alleged responsibility is determined at the end of the investigation, the economic agents will have the opportunity to offer their defense.

If a concentration is determined unlawful, COFECE's Board of Commissioners may impose the following sanctions: order the correction or suppression of the unlawful practice; order partial or total divestiture; the termination of control or suppression of the acts thereof and a fine with up to 8% of the economic agent's income. Directors that participated directly or indirectly in the unlawful concentration will be ineligible to act on behalf of the economic agents for up to five years and will be fined with up to 200 thousand UMAs "Units of Measure and Update" (one UMA is equivalent to 80.60 pesos), among other sanctions.

The Investigative Authority has indicated that, according to the Federal Economic Competition Law, the economic agents under investigation may apply to the leniency program on one occasion to benefit from the reduction or exemption from the fines, provided evidence of the following: i) the will to suspend, suppress or correct the practice or concentration, ii) the proposed means to correct this practice is legally and economically viable and ideal to avoid the concentration or, when applicable, revoke the unlawful concentration.

[See in Spanish: What is an unlawful concentration?](#)

– 000 –

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.

