

## ***Cryoinfra, Infra and Praxair Mexico must comply with commitments to restore competition in the markets for oxygen, nitrogen and argon***

- *The companies were probed for their probable responsibility of relative monopolistic practices by conditioning the sale of their products to an exclusivity clause.*
- *The economic agents requested the early closure of the file in return for commitments to restore competition and free market access.*
- *Compliance with the commitments will be verified by COFECE through diverse monitoring measures.*

**Mexico City, May 29, 2018.-** *Cryoinfra, Infra and Praxair Mexico* committed to restore competition and free market access in the market for the distribution of oxygen, nitrogen and argon bulk industrial grade through a set of commitments the Federal Economic Competition Commission (COFECE or Commission) deemed suitable and viable. Therewith, the investigation procedure was concluded.

In April 2014, the Investigative Authority initiated a probe resulting from report (under file DE-006-2014) for relative monopolistic practices (unilateral conducts) in the market for gases delivered via tanks and stored in cryogenic containers on site at customer's location, which are used in a variety of industries including steel, glass, plastic, ceramic, mining, hydrocarbon, poultry, agriculture, textile, cement, metallurgic, pharmaceutical, chemical, construction and water treatment.

The investigation preliminarily provided evidence that firms had substantial power and probably carried out anticompetitive practices. The Commission found exclusivity clauses which could constitute conducts sanctioned by the Federal Economic Competition Law (FECL). Some of these are:

- The consumer should exclusively acquire from these companies, the totality of product they required.



- Any additional volume contracted, at the customer's location or off site, in the same container or different, should be acquired with said suppliers.
- The contract was renewed automatically, which included fixed-terms and high penalties for early termination.

During the *Cryoinfra*, *Infra* and *Praxair Mexico* proceedings, the companies exercised their right to present commitments to restore competition for the early closure of the file, as stipulated in the FECL in force at the time the investigation was initiated. COFECE deemed the proposed commitments as suitable and economically viable. Among the commitments acquired by these companies are:

- i) Elimination of exclusivity of the supply of gases sold.
- ii) Limit exclusivity to the use of the cryogenic tank and infrastructure which firms invested in. This would allow competitors to install tanks on the same property, thus exclusivity is not extended to the totality of the customer's factory or their buyer's facilities.
- iii) Limit the automatic renewal of supply contracts to one year with the possibility of customer interruption of the contractual relation. In case of early termination, penalization shall be for amounts that will allow competitors to contend each contract.
- iv) All commitments will be eligible and applicable in the universe of contracts (current and new) among these companies and their customers.

COFECE's Board of Commissioners established of set of measures to monitor compliance of the commitments, among which are:

- *Cryoinfra*, *Infra* and *Praxair Mexico* must publish on their website and in national newspapers the commitments for their customers' benefit.
- Provide customers with an electronic mail and telephone number should they wish to modify their contracts.
- Provide COFECE with an initial list of contracts in force to verify compliance of the commitments made.



Should the firms fail to comply with the commitments, they may be sanctioned with fines of up to 8% of their income.

[What is a relative monopolistic practice? \(See infographic in Spanish\)](#)

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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.*

