COFECE-027-2020

The implementation of regulation in gasoline markets should incentivize competition in order to reduce its final price to the public: COFECE

- The Commission issued an opinion where it proposes that SENER, SE, CRE and CONAMER adopt measures to increase competition in the gasoline markets.
- The retail sales margin of service stations increased from 1.23 to 1.72 pesos per liter on average between January 2018 and May 2020. A greater number of participants would produce a reduction in this margin, to the benefit of consumers.

Mexico City, July 13, 2020.- The Board of Commissioners of the Mexican Federal Economic Competition Commission (COFECE or Commission) issued an opinion addressed to the Ministry of Energy (SENER, as per its initials in Spanish) and the Energy Regulatory Commission (CRE) with recommendations in order that the regulations for obtaining new permits – for both, the importation and public retail of gasolines in services stations (gas stations), as well as for the modification and transfers of these permits – are applied in an expedite and non-discriminatory manner. Furthermore, it recommended to the Ministry of Economy (SE, as per its initials in Spanish) to promptly issue a guideline to eliminate regulatory obstacles for the installation and operation of more gas stations at a local level.

In the analysis carried out during the drafting of this opinion, the Commission found that:

- **In Mexico, intense competition in the wholesale market is not observed.** PEMEX remains to be the main provider as it supplies 87% of the gasoline consumed in the country. This reflects, in part, the insufficient storage and transportation infrastructure, and the lack of incentives for its development given to the uncertainty that exists regarding obtaining and maintaining import and public retail permits.
- **The granting of import permits should not be unduly limited or hampered.** It is important to remember that the nature of a permit regime is not to limit the number of permits, but rather to merely subject participation in an activity to certain safety requirements. Since November 2018, SENER has only granted one-year permits and has not issued new 20-years import permits. Likewise, since February 2019, those interested in obtaining one-year import permits must indicate the means by which they are going to import and the physical location of the storage facilities or equipment. This requirement was not initially set forth in the regulation and makes it difficult for new entrants, precisely because the infrastructure is being built.

The lack of storage capacity of private parties, as a consequence of the lack of import permits that encourage it, and the lack of these permits together with the absence of infrastructure to support them, delays both the development of a competed wholesale market and the development of a secondary market for storage capacity because, even if there were unused capacity, there would be no economic agents with permits available to contract it.

- **The timeframes for the resolution of applications for permits for public retail have doubled, and there are more than 200 cases without resolution.** Before January 31, 2019 (the date when the governing body of the CRE lost its *quorum*), the average timeframe for the issuance of a gasoline retail permit was practically the same for all applicants, 21 working days. In contrast, since the loss of *quorum*, the number of days for resolving a permit is, on average, of 75 days, and with differences depending on the brands of gasoline retailed. That is to say, of 66 days to resolve on permits associated with the PEMEX brand, and of 84 days for other brands. Additionally, there are at least 229 applications from brands other than PEMEX, received between March 2019 and April 2020, which have not been resolved and the reasons for this are unknown.
- **The authorizations for the transfer of permits are not resolved expeditiously, which makes it difficult for more brands to enter the Mexican market.** Given that the main way in which several brands have concurred in the market for public retail of gasolines is through the transfer of a service station from a private party to another, a figure foreseen in article 53 of the Hydrocarbons Law, and that a period of 90 natural days is stablished for resolving such applications, if once this timeframe has expired and the corresponding resolution has not been issued, a default affirmative certificate must be granted to the interested party.
- **Finally, there are regulatory obstacles for the installation and operation of gas stations in state and municipal regulations, which limit competition between them to reduce their margins.** A study by the Bank of Mexico shows that, if there were more market participants, the reduction in gasolines prices derived from the decrease in international oil prices could be greater for the benefit of final consumers.[1] During the last months, COFECE has been a part to the working group coordinated by the National Commission for Regulatory Improvement, (CONAMER, as per its initials in Spanish), convened with the aim of issuing a guideline for state and municipal

[1] Banco de México (2019), *Influencia de la competencia en los márgenes de venta de las gasolineras y los precios al consumidor*, Informe trimestral enero-marzo 2019. Available in Spanish at: https://www.banxico.org.mx/publicaciones-y-prensa/informes-trimestrales/recuadros/%7B12B0481F-DA8C-BE4B-61E0-205B262BAA17%7D.pdf

governments to eliminate said regulations, which will remain to be promoted by this authority and for which approval by the National Council of Regulatory Improvement is encouraged.

With the aim to promote the most competitive prices possible for fuels, COFECE recommends:

i. Eliminate the requirement of verification of means of transport and storage for one-year import permits, and ensure that the granting of 20-years import permits is expedite, avoiding the interpretation as cause for revocation or expiration that these have not been used due to delays in infrastructure investment projects.

ii. Ensure that the regulation related to the processing and resolution of applications for new retail permits, transfers or updates is applied in a neutral and expedite manner; and that in no instance the authority discriminates on the basis of associated brands or sources of supply.

iii. Transparent and timely publication of the information regarding the number of applications for permits or transfers for the retail of oil products submitted to the CRE, in their procedural stage and status, in order to know the cases where the 90-day deadline foreseen in article 53 of the Hydrocarbons Law has expired.

iv. Issue, as soon as possible, a CONAMER guideline for state governments to eliminate unjustified regulatory obstacles that hamper the establishment of new service

Read COFECE's opinion (in Spanish)

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MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission safeguards competition and free market access. Through this, it contributes to the people's well-being and the efficient functioning of the markets. Through its work it seeks better conditions for consumers, that more services are offered with greater quality and that there is a "level playing field" for businesses.