

COFECE-046-2020

COFECE recommends not issuing the draft that modifies the Agreement to obtain import and export permits for hydrocarbons and oil products

- *If issued, the draft would seriously hinder competition and free market access in the sale of oil products and would affect the possibility for consumers to access wider choices for supply and the best possible prices.*
- *Since PEMEX only faces competition in the sale of gasolines through imports, it is necessary that the regulation does not hinder obtaining permits and that the Sener guarantees expedite and non-discriminatory granting of said permits.*
- *COFECE recommends to the Ministry of Economy not issuing the Draft project in the proposed terms, and exhorts the Conamer to notify COFECE of Draft projects that have an impact on competition.*

Mexico City, December 21, 2020.- The Mexican Federal Economic Competition (COFECE or Commission) submitted an opinion to the ministries of Energy (Sener, as per its initials in Spanish) and of Economy (SE, as per its initials in Spanish) on the *Draft Agreement that establishes the goods whose import and export is subject to regulation of the Ministry of Energy*, with the aim of regulating imports and exports of oil products, hydrocarbons and petrochemicals.

In accordance to the Draft, among other aspects, this agreement:

- **Removes import permits with validity of 20 years and substitutes them for permits valid for only 5 years, reducing incentives to invest in infrastructure for transport and storage**, and reaffirming in the medium term, the dominant position of PEMEX in commercialization;
- Without justification, **grants Sener with ample discretion** to adjust volumes for import and export of oil products and petrochemicals contemplated in the permit;
- **Establishes *negativa ficta (refusal by default)* for the permit procedure**, with which the authority could deny permits without the need to respond nor justify or explain to the applicant on the reasons for not granting the permit;
- **Establishes unclear and burdensome requirements for the application for permits and grants ample discretion to Sener for the repeal and expiration.** For example, in five-year import permits, it requires that the contractual commitments have a duration of at least a similar period and that it contributes to the development or expansion of infrastructure for storage and/or transport, furthermore it must also



demonstrate that the supply in the Mexican territory will not be impacted, which is extremely complicated for a private party;

- **Distorts the administrative figure of the permit**, as it makes it a public policy instrument to control the energy balance, foster compliance with tax and customs obligations, as well as to avoid fraud and smuggling.

In this sense, if approved under the proposed terms, it would seriously hinder competition and free access in the market for the sale of oil products, as it could complicate and make it more expensive to obtain import permits for gasolines, affecting the possibility of consumers to access more supply options and the best possible prices.

PEMEX is the only company that produces oil products in the Mexican territory, so in the market for the sale of gasolines (retailers) it only faces competition from imports of other companies. Therefore, for competition to exist in this market, it is essential that the associated regulation does not obstruct or unjustifiably hinder the obtaining, use and renewal of the permits necessary to import these products, and that Sener guarantees its expedite and non-discriminatory granting.

To avoid the former, as well as to maintain and foster competition conditions in the sale of hydrocarbons and oil products that benefit consumers with greater supply and the best possible prices, the Board of COFECE recommends the Ministry of Economy not issuing the *Draft project* in the terms it was proposed.

Furthermore, it urged Conamer to notify the Commission under the terms of the General Law of Regulatory Improvement and the COFECE-Conamer Agreement on all Draft projects that have an impact on competition and free market access for their pertinent analysis. Lastly, it submitted this opinion to heads of the institutions members of the Foreign Trade Commission, so that they are aware of the identified risks, since the *Draft project* must be voted and discussed by this body before its publication.

[Read the Opinion OPN-011-2020 \(in Spanish\)](#)

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MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, COFECE seeks better conditions for consumers, greater output and better services and a “level playing field” for companies.

