

## **Some terms of the reform to the *Hydrocarbons Law* would affect competition in this industry, which would increase the price paid by families and companies for final products**

- *If approved, the Initiative will generate legal uncertainty for the participants of the hydrocarbons and petroleum products chain and would enable spaces for an artificial and unjustified restriction of the supply of their products and services, in detriment of Mexican consumers.*
- *COFECE recognizes as legitimate the efforts of the Federal Government to fight the smuggling of hydrocarbons and petroleum products, therefore this Opinion do not rule on the legal modification to revoke the permits for that specific cause.*

**Mexico City, April 12, 2021.-** If approved on its terms, the *Initiative with a draft decree by which the Hydrocarbons Law is reformed and supplemented (Initiative)*, the process of competition and free market access of the value chain of hydrocarbons, petroleum products and petrochemicals would be negatively affected, which would result in a decrease of the supply of goods and services in offered in the industry, with the consequent increase in the prices paid by Mexican families and companies. Therefore, the Mexican Federal Economic Competition Commission (COFECE or Commission) sent to the Congress of the Union an opinion in which recommends not approving in the proposed terms said *Initiative*.

The constitutional framework in force establishes a competition regime in the value chain of hydrocarbons, petroleum products and petrochemicals, inside of the production, import, transport, storage, distribution, and public retail activities. For *Petróleos Mexicanos (Pemex)*, other State-owned productive companies and private parties can participate in said activities permits are required – which must be granted in an expedite and non-discriminatory manner–, whose objective is the fulfillment of reasonable requirements related to security, operational capacity or infrastructure, among others. In no case, the permits regime must restrict access to those interested that comply with the applicable requirements.

The proposed reform:

- Would discourage the entry and reduce the supply by distorting the permits regime**, as it empowers and grants broad discretion to the Ministry of Energy



(Sener, per its acronym in Spanish) and to the Energy Regulatory Commission (CRE, per its acronym in Spanish) to temporally suspend permits in case they consider of imminent danger for “*national security, the energy security or for the national economy*”. However, these concepts are neither defined nor they establish criteria for their clear application.

- ii) **Would create uncertainty by modifying from *afirmativa to negativa ficta* in the resolution of the requests for the cession of permits**, which would reduce the authority’s incentives to resolve them in an expedite way, and initially impedes economic agents from knowing the reasons to deny them.
- iii) **Would reduce the number of competitors and the supply by establishing the verification of certain storage capacity required by Sener for the granting of permits**. While having sufficient storage capacity is necessary for the existence of competition in the production chain of fuels, requiring its verification previous to the granting of the permit creates a vicious circle between the lack of said capacity due to the nonexistence of permits, and the lack of these before the scarcity of infrastructure, discouraging investments in this item. Also, the *Initiative* allows the **revocation of permits in force which, by the entry into force of the proposed reform, do not comply with the requirement, which would constitute a violation to the acquired rights and an unjustified restriction to the supply**.

For these reasons, the Commission recommended the Congress of the Union to not approve on its terms this *Initiative*.

On the other hand, COFECE recognizes as legitimate the efforts of the Federal Government for fighting the smuggling of hydrocarbons and petroleum products, therefore this Opinion does not rule about the legal modification that foresees to revoke the permits for this specific cause.

[Read the complete opinion \(in Spanish\)](#)

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### ***A BETTER MEXICO IS EVERYBODY’S COMPETENCE***

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.

