

COFECE-012-2021

COFECE files a constitutional controversy against the *Decree that reforms several provisions of the Electric Industry Law*

Mexico City, April 22, 2021.- The Federal Economic Competition Commission (COFECE or Commission) filed a constitutional controversy before the Supreme Court of Justice of the Nation (SCJN, per its initials in Spanish) against the *Decree by which several provisions of the Electric Industry Law are reformed and supplemented (Decree)*, as it considered that part of its content is against Articles 25, 27 and 28 of the Constitution, which order a competition regime in the markets for the generation and supply of electricity. The former, to the detriment of COFECE's sphere of competence by preventing it to guarantee competition and free market access in this sector.

Under the constitutional scheme in force it is fundamental that there are certain conditions so that the markets of generation and supply can operate in competition conditions. These are: i) the possibility of open and non-unduly discriminatory access for any generator to the electric transmission and distribution grids; ii) that the energy dispatch is ruled by objective and efficiency criteria, and iii) that the operator –the National Center for Energy Control– and the regulator –the Energy Regulatory Commission– operate in an independent and impartial manner, without favoring nor granting undue advantages to any participant.

However, the challenged *Decree*, among other things:

- Breaks the rule of open and non-discriminatory access to the distribution and transmission grids, which reduces the capacity to compete of certain generators and sellers.
- Eliminates the economic dispatch criterion of power plants, granting undue advantages in favor of *Comisión Federal de Electricidad* (CFE per its acronym in Spanish) and nullifying the capacity to compete of other agents in the generation link.



- Dilutes the rule of open access to the grids, enabling refusals of access to this essential input in the absence of legitimate impediments or justifications to this end.
- Allows suppliers of the basic service, basically CFE, the acquisition of energy through non competed methods, extending indefinitely the inherited regime, which was originally transitory.

In the opinion of this authority the measures contained in the Decree are contrary to the Constitution and eliminate the conditions required for the existence of a competition dynamic in the electricity sector, which would translate into a disturbance of the electricity supply conditions, as well as into harm to consumers and the economy in general.

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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.

