

## Cofece's Preliminary Opinion identifies barriers to competition along the value chain of jet fuel in Mexico

- *Barriers to competition inhibit innovation, investment, access to infrastructure and increase costs, which prevents the entry of new participants in this market.*
- *Jet fuel is the main input for the air transport of passengers and goods, more competition could favorably impact prices.*
- *Air carriers face high prices due to the lack of suppliers in the value chain.*
- *Shall the Preliminary Opinion be confirmed, the Board of Commissioners may issue recommendations to the relevant authorities so that, within the framework of their powers, they eliminate the identified barriers.*

**Mexico City, March 31, 2022.-** The Investigative Authority (AI) of the Federal Economic Competition Commission (Cofece of Commission) concluded, preliminarily, the lack of effective competition conditions in various links of the value chain of jet fuel in Mexico. The foregoing, due to the probable existence of barriers that prevent the entry and growth of participants in this market.

Jet fuel is the main input for air transport, as it represents between 25% and 30% of the operating expenses of airlines, according to the Mexican Stock Exchange. Therefore, it is important that there are conditions to favor this means of transport for the transfer of passengers and goods.

The AI preliminarily determined the lack of effective competition conditions in the following markets:

- **Primary commercialization** which is carried out by producers and/or importers of the fuel and whose clients are secondary sellers of the market of jet fuel at the national level. In this market, *Pemex Transformación Industrial (Pemex TRI)* holds a participation of 98%.



- **External storage** (outside airports) is a service mainly hired by primary sellers to deliver jet fuel to airport terminals. In this market, with a regional scope, few competitors are identified and *Pemex Logística* is the main storekeeper.
- **Secondary commercialization** is carried out at the national level by sellers that do not produce or import jet fuel. It implies purchase and sale, and management of services directly related to airlines. In this market, *Aeropuertos y Servicios Auxiliares (ASA)* and *Worldwide Fuel Services (WFS)* have 93% participation.
- **Internal storage** (inside airports), is a service hired by secondary sellers to supply air carriers. In these markets, *ASA* is the sole provider of the service in various air terminals at the national level.
- **Retail** is a service that consists in the final delivery of the jet fuel to the wing of the aircraft. *ASA* is also the sole provider of the service at multiple airports.

The AI analyzed the conditions in each one of these markets and preliminarily determined that competition conditions do not exist in any of them, by considering their high concentration, which translates into few participants that have the capability to restrict the supply and/or set prices.

In this context, in the Preliminary Opinion also identified the possible existence of the following barriers to competition:

- a) The permit regime to import jet fuel imposes unjustified and difficult to meet requirements, in addition to the broad discretion from the Ministry of Energy (SENER per its acronym in Spanish) for their granting. For example, to apply for an import permit, a potential provider must have contracts with clients and providers. This favors the established economic agents, since a client will hardly sign a contract with a provider that does not have the necessary permits.
- b) There is scarce infrastructure for external storage and its access is limited, due to:
  - i) the majority of the external storage terminals are controlled by *Pemex Logística* and committed to itself in its role of seller, moreover it does not publish its available capacity, therefore it only provides the service to *Pemex TRI*; ii) most of the capacity is committed to a small number of sellers, among them *Pemex TRI*;



and iii) there is committed storage capacity that is not being used and could be made available to third parties.

- c) ASA has not concluded the process established by the Energy Regulatory Commission (CRE, per its initials in Spanish) in 2019 of functional, operational and accounting separation between its activities for commercialization and internal storage, a situation that grants it with advantages over its current and potential competitors in the secondary commercialization. Additionally, the airports' concession titles maintain ASA's exclusivity in jet fuel storage and retail, which artificially limits the entry of other participants to these markets.
- d) Most of the external storage capacity in the country is hired or reserved by *Pemex TRI*, which does not allow other primary sellers have access to it and generate efficient generation channels, therefore limiting the entry and expansion of competitors in the import and commercialization of jet fuel.

by virtue of the foregoing, the Investigative Authority identified, preliminarily, that said barriers generate the following anticompetitive effects:

1. Air carriers face **high prices due to the lack of suppliers** that generate competitive pressure in the links of the value chain. The entry of new primary sellers meant new supply sources and lower prices by around 6%; however, these new sellers exited the market due to the barriers they faced.
2. **Lack of incentives to the entry** for new importers due to unjustified requirements for the granting of permits.
3. **Affectation in the quality of the services** provided by ASA, which materializes in the long waiting times related to applications for internal storage capacity. This generates inefficiency, as well as lack of transparency in its services and clarity in its fares. The foregoing, derived from its vertical integration in the last links in which it has a high participation.
4. **The lack of access to external storage capacity** hinders the developments of efficient distribution channels, the expansion of the services that sellers and importers can offer in the national territory, as well as the access of potential holders of fuel import permits to the market.



To eliminate these barriers to competition and free market access, the Preliminary Opinion raises a series of recommendations to various authorities so that, within their competence, they carry out the following actions:

1. SENER is **recommended** to eliminate, among others, the following requirements from the permits' regime of jet fuel import: i) the obligation to prove that the potential importer has contractual relations with providers or clients, ii) the obligation to prove import volumes, as well as the imposition of limits to import volumes; and iii) discretion in the granting of said permits. In addition, the granting of import permits with longer validity is recommended.
2. The Energy Regulatory Commission (CRE) is **recommended** to: i) review and verify the contractual terms between *Pemex's* subsidiaries associated to the external storage and primary commercialization, with the objective of corroborating that they adhere to the terms and conditions or open access, approved by the it; ii) implement stricter regulation on external storage that allows greater access to the storage capacity; and iii) establish the necessary regulation that limits the maximum participation that *Pemex TRI* may have for reserving the capacity at External Storage installations, based on Article 83 of the Hydrocarbons Law.
3. The Ministry of Finance and Public Credit (SHCP, per its initials in Spanish) and the Ministry of Public Administration (SFP, per its initials in Spanish), are **recommended** to review the *ASA's* organic statute with the objective of allowing this entity's organic restructuring and functional, operational and accounting separation. Once the previous point is fulfilled, *ASA* must implement the necessary actions to achieve this objective.
4. The Ministry of Infrastructure, Communications and Transportation (SICT, per its initials in Spanish) is **recommended** to modify the Titles of Concessions granted to various airports, with the objective of eliminating *ASA's* exclusivity clauses for the provision of internal storage and fuel retail services.

If the sense of the Preliminary Opinion is confirmed and the recommendations proposed by the AI are implemented, benefits are expected to materialize in a greater entry of competitors to the markets related to the jet fuel value chain, as well as better prices for the final consumer.



The AI's inquiry (IEBC-002-2019) began on October 31, 2019 and the extract of the Preliminary Opinion was published in the Federal Official Gazette (DOF, per its initials in Spanish) on March 30, 2022. From this moment, economic agents with an interest in this procedure may present the statements and arguments they deem appropriate, in order for the Board of the Commission to issue the final resolution to this case.

[Read the public version of the Preliminary Investigative Opinion \(in Spanish\)](#)

– 000 –

**MORE COMPETITION FOR A STRONGER MEXICO**

*The Mexican Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to the people's welfare and the efficient functioning of the markets. Through its work, it seeks better conditions for consumers, that more services are offered with higher quality and that there is "level playing field" for companies.*

