

Cofece-030-2022

Due to a lack of appointment of Commissioners, Cofece suspends the timeframe to resolve the procedure on barriers to competition in the national market for jet fuel

- *The Federal Economic Competition Law specifies that to resolve this type of procedure, the affirmative vote of at least five commissioners is required. Currently, only 4 of 7 commissioners are in office.*
- *Articles 28 and 89, section III, of the Political Constitution of the United Mexican States establish that it is the responsibility of the head of the Executive Power to propose to the Senate of the Republic the persons who will fill the vacancies in the Board of Commissioners of Cofece, for their ratification.*
- *In order for Cofece to fully exercise its mandate, it is essential that the Head of the Executive makes said nominations, from the lists he has received from the Evaluation Committee.*

Mexico City, September 26, 2022.- The Board of the Federal Economic Competition Commission (Cofece or Commission) was forced to suspend the timeframe to resolve the procedure on barriers to competition in the national market of jet fuels, which includes production, import, storage, transport, distribution, commercialization, retail and related services (file number IEBC-002-2019).

In March of this year, the Investigative Authority of Cofece issued the Preliminary Opinion (DP, per its initials in Spanish), through which it concluded that there were elements to preliminarily determine the lack of effective competition conditions in said market, so it proposed corrective measures to eliminate the barriers to competition identified. This DP was notified to various economic agents and public authorities. Thereafter, once the second stage of the procedure was substantiated and the offered evidence was processed, the file was considered completed in September, so the Board of Commissioners had to issue a resolution within a maximum timeframe of 60 days, in accordance with section VII of Article 94 of the Federal Economic Competition Law (LFCE, per its initials in Spanish).

To resolve this type of procedure, the LFCE establishes that the vote in favor of at least five commissioners is required. However, due to the omission of Federal Executive to propose

the missing commissioners to the Senate, currently the governing body of Cofece has only four of the seven commissioners who, by constitutional mandate, must comprise it.

Being legally unable to resolve this file, the Board of Commissioners suspended the timeframe to issue the resolution until the minimum number of required commissioners is available, so that the resolution of this file can be submitted for a vote. It is important to remember that when a market operates without effective competition conditions, it harms both consumers as well as economic agents that participate therein. The suspension prevents the Board of Commissioners from assessing said conditions and, if needed, from imposing corrective measures that protect the public interest.

Articles 28 and 29 section III, of the Political Constitution of the United Mexican States establish that it is the responsibility of the head of the Federal Executive to propose for ratification to the Senate of the Republic, the persons who will occupy the vacancies of the Board of Commissioners of Cofece, who must select from the three lists that the Evaluation Committee submitted in November 2020, as well as in March and November 2021. The candidates to fill the vacancies are experts on economic competition who passed a technical knowledge exam and underwent a rigorous evaluation process.

It is worth indicating that in December 2021, Cofece filed a constitutional controversy before the Supreme Court of Justice of the Nation for the omission by the head of the Federal Executive to propose to the Senate the persons who will occupy two vacancies of commissioners. For the institution it is essential that its governing body operates as provided for in the Constitution in such a way that it can fully exercise all its powers.

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*The Federal Economic Competition Commission safeguards competition and free market access.
Through its work, it seeks better conditions for consumers, that more services
are supplied with higher quality and that there is a “level-playing-field” for companies*