

Cofece sanctions agreement that limited competition in the industrial gas equipment market

- *Several people agreed, without legal justification, to a clause so that some of them would not enter the market, reducing the supply.*

Mexico City, September 19, 2023.- The Board of Commissioners of the Federal Economic Competition Commission (Cofece or Commission) sanctioned, for a total of 2 million 601 thousand 244 pesos, *Equipos para Gas, S.A. de C.V. (EGSA), Gas Tecnología y Equipos, S.A.P.I. de C.V. (Gastek)* and three natural persons, one of them acting on behalf of a legal entity, for having committed an absolute monopolistic practice, by agreeing in a contract a clause so that some of these individuals would not enter the market of equipment for industrial gases. In this way, the sanctioned parties agreed to restrict the supply of goods and services required for the integration, installation, maintenance and commercialization of equipment, accessories and spare parts for the use of industrial gases, including LP gas. This type of agreement is detrimental to those who use a certain good or service, since it reduces consumers' options.

The Federal Economic Competition Law (LFCE) allows, when a concentration is carried out (for example a sale of shares), the seller and the buyer agree on clauses to protect the value of the business acquired by the buyer. For example, they can agree that the seller will not be able to enter the same market for a certain time, since it knows how the market works, who the customers are or where the suppliers are, and this would make the buyer's entry too difficult. Such clauses are called "non-compete clauses" and are permitted when they are defined in terms of the persons, products, geographic areas and time periods to which they will apply. However, if they are not closely related to the concentration they intend to protect, and their terms are not strictly necessary to achieve that purpose, they are considered illegal.

In this case, it was determined that the agreement to limit competition could not be considered as part of the sale of shares between the parties (that is, a concentration) since it was not directly or closely linked to the concentration, nor was it indispensable or proportional to its execution; therefore, it could not be analyzed as a non-competition clause allowed by the LFCE, but rather as an absolute monopolistic practice. Thus, it was determined that, in reality, it was an arrangement between two groups of competitors to reduce supply, since by such agreement one of these groups was obliged not to enter the market.

The agreement between EGSA and Gastek delayed Gastek's access to the market. The Commission observed that, during the conduct, EGSA offered a smaller quantity of goods and obtained a higher profit margin. At the conclusion of the agreement, the supply of goods in the market increased, and EGSA's profit margin decreased.

In this regard, the Commission reiterates its willingness to resolve any queries or doubts that may arise regarding the terms in which a clause or agreement that limits competition will be considered as part of a concentration or when it will be considered illegal. The sanctioned economic agents have the right to challenge this resolution by means of an indirect *amparo* trial before the Federal Judiciary.

- 000 -

MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission safeguards competition and free market access. With its work, it seeks better conditions for consumers, that more higher quality services are offered and that there is a "level-playing-field" for companies.