

COFECE issues opinion on SENER's strategy to optimize transportation capacity in SISTRANGAS.

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On July 14, 2022, the Federal Economic Competition Commission ("COFECE") issued an opinion (the "Opinion") on the "Supply Guarantee Strategy for the optimization of capacity in the National Integrated Natural Gas Transportation and Storage System" (the "Strategy")¹ contained in the official letter number SENER.100/195/2022 issued by the Ministry of Energy ("SENER") on June 14, 2022 (the "SENER Directive"), which was notified by the National Center of Natural Gas Control ("CENAGAS") to the users of the National Integrated Natural Gas Transportation and Storage System ("SISTRANGAS") on June 15, 2022.

For context, to implement the Strategy, by means of the SENER Directive, SENER ordered CRE and CENAGAS to undertake certain measures for the allocation of transportation capacity in SISTRANGAS, which favor state-owned companies, aiming at prioritizing in certain points of import the transportation of natural gas whenever the Federal Electricity Commission of Electricity ("CFE") has capacity in the upstream pipeline or of natural gas acquired from CFE or Petróleos Mexicanos ("PEMEX").

As per the Opinion, the Strategy violates the principles of competition and free market access established in the Mexican Constitution, as well as the principles of open and non-discriminatory access set forth in the Hydrocarbons Act ("LH"). This, since it unduly conditions the use of the natural gas transportation infrastructure, causing anticompetitive effects and artificially benefitting PEMEX, CFE, their subsidiaries and/or affiliates.

¹ The client alert prepared by our Firm about the Strategy may be accessed in the [following link](#)

Specifically, the Strategy's characteristics that COFECE deems harmful to competition are the following:

- (i) It compels the users of SISTRANGAS and any party interested in receiving natural gas transportation services to evidence that they procure natural gas from CFE and/or PEMEX;
- (ii) It establishes that, in certain receipt points mentioned in the Strategy in which CFE has reserved capacity, the execution of agreements with CFE shall prevail;
- (iii) It requires CENAGAS to require its shippers to reserve natural gas transportation capacity in the upstream pipelines with CFE and/or PEMEX;
- (iv) It orders CENAGAS to authorize natural gas transportation service applications subject to the fulfillment of the abovementioned requirements; and
- (v) It orders CRE to modify CENAGAS' general terms and conditions of service, as required to properly reflect the Strategy.

Pursuant to the Opinion, these elements of the Strategy are contrary to the legal and institutional framework currently in force and would seriously affect the competition and free market access conditions in the natural gas market, harming users of SISTRANGAS and end-users.

Specifically, the Opinion mentions that the Strategy would generate the following anticompetitive effects in connection with the natural gas market:

- (i) Impede the efficient use of SISTRANGAS' infrastructure by preventing (a) the management of available capacity pursuant to the market devices set forth in the LH, and (b) access to the capacity by the users who decide not to enter into agreements with PEMEX or CFE.
- (ii) Create exclusive advantages for CFE and PEMEX in the commercialization of natural gas, restricting access of new competitors and voiding the other participants' ability to compete by eliminating the possibility of the participants to contract with any supplier they prefer (including foreign suppliers). This would artificially guarantee the demand for CFE's and PEMEX's services to import natural gas, regardless of the price and terms imposed by such companies.

(iii) Other negative effects on the efficiency of markets, including (a) possible natural gas price increases for end-users and shortages; and (b) distortions in the energy markets since they greatly depend on supply of natural gas.

COFECE recommends that the Strategy is not implemented by SENER, CRE and CENAGAS, and urges these authorities to comply with the principles of free market access and competition established in the legal framework currently in force, including the principles of open and non-discriminatory access to SISTRANGAS.

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