

The Federal Economic Competition Commission subjects the purchase of Iberdrola's generation plants to the fulfillment of commitments.

Energy and Antitrust, February 20, 2024

On February 15, 2024, the Federal Economic Competition Commission ("COFECE") informed through a press release that it conditioned the closing of the transaction consisting of the acquisition by Mexico Infrastructure Partners FF, S.A.P.I. de C.V. ("MIP") and Fondo Nacional de Infraestructura ("FONADIN") of certain powers plants owned by Iberdrola Generación México, S.A. de C.V. and its subsidiaries ("Iberdrola") (the "Transaction"), to certain commitments to allow the closing.

On April 2023 the Mexican Government announced the acquisition of 12 combined cycle power plants and one wind farm owned by Iberdrola, of which, 10 operate under the independent power producer modality, two under the self-supply modality and one under the new regime's generation modality, and that have a total generation capacity of 8,500 MW (the "Power Plants").

The Transaction would be carried out through a trust managed by MIP, where the trustee would own the equity in Iberdrola's target entities, FONADIN would be the beneficiary, and the purchase price would be funded by FONADIN, through the contracting of a facility with development banks. Additionally, it was intended that the operation and maintenance of the Power Plants would be commissioned to certain subsidiaries of the Federal Electricity Commission ("CFE").

With the Transaction, the Mexican Government sought to handover control over the Power Plants to CFE aiming that the state-owned enterprise would increase from generating 39% to 60% the electricity in Mexico and recover its role as dominant agent.

The conditions imposed by COFECE to authorize the closing of the Transaction oblige the purchasers to: (i) operate the plants independently, and (ii) avoid exchanging sensitive or strategic information.

For the Power Plants to operate independently in the market, the parties must:

- i. Within a period of 24 months, limit the participation of FONADIN and its related parties in the capital stock of Iberdrola's companies to 51%;

- ii. Set forth controls and mechanisms so that decisions regarding the management of Power Plants can only be adopted through qualified votes or with the mandatory intervention of institutional investors or independent members.
- iii. Set forth controls and mechanisms to ensure that the individuals in charge of the operation of the Power Plants act independently and without conflict of interest.

To prevent buyers from exchanging sensitive or strategic information between competitors, they shall:

- i. Appoint an independent compliance officer.
- ii. Managers and persons in charge of the operation of the power plants must abstain from holding positions in any other competitor, and those who have been public servants within the last four years may not be appointed in these positions.

These conditions are valid for 10 years and will be constantly verified by COFECE. Non-compliance may be penalized with fines equivalent to up to 10% of income or the equivalent of 180 thousand units of measure of update in force in Mexico City (108.57 Mexican pesos per day).

If you have any questions or comments, please do not hesitate to contact our Antitrust and Energy and Infrastructure teams.

Contact Us:

Francisco Fuentes

Partner | ffuentes@macf.com.mx
Antitrust

Horacio M. de Uriarte

Partner | hdeuriarte@macf.com.mx
Energy

Patricio Trad

Partner | ptrad@macf.com.mx
Energy

Martín Sánchez

Partner | msanchez@macf.com.mx
Energy

Eugenio Macouzet

Partner | emacouzet@macf.com.mx
Energy

Carlos Orcí

Partner | corci@macf.com.mx
Antitrust

Aisha Calderón

Associate | acalderon@macf.com.mx
Energy

Lorena Galicia

Associate | lggalicia@macf.com.mx
Antitrust

+52 (55) 5201 7400

For further information, visit:

www.macf.com.mx

