

# COFECE files a constitutional controversy against the new regulations relating to cross-participation in the Hydrocarbon Sector

Antitrust and Energy & Infrastructure, May 14, 2024

On April 16, 2024, the Federal Economic Competition Commission ("COFECE") filed a constitutional controversy ("Constitutional Controversy") before the Supreme Court of Justice of the Nation ("SCJN") against the issuance of resolution number A/047/2022 of the Energy Regulatory Commission ("CRE"), whereby the General Administrative Provisions that establish the procedure and requirements for the authorization of cross participation, the methodology for the analysis of its effects on competition, market efficiency and effective open access and, interpret for administrative purposes, the cross participation foreseen in the second and third paragraphs of article 83 of the Hydrocarbons Law (the "New Regulations") were issued, and which repeal the provisions previously in force and that were published in the Official Gazette of the Federation on March 3, 2016 under resolution number A/005/2016 (the "Previous Regulations"). For more detail on the New Regulations, access [here](#).

In the Constitutional Controversy, COFECE essentially argues that the New Regulations breach Articles 28 and 49 of the Federal Constitution by establishing a procedure, concepts, and a methodology that invade COFECE's constitutional attributions, such as the analysis of the implications in terms of economic competition of the cross-participation provided for in Article 83 of the Hydrocarbons Law ("HL"). By way of context, Article 28 created COFECE as an autonomous constitutional authority tasked with protecting competition and concurrence in the markets; and article 49 sets forth the principle of separation of powers.

COFECE's believes that CRE is invading its attributions, and through the New Regulations, it empties the content of the opinion that COFECE must issue under Article 83 of the HL for the authorization of cross-participation. Thus, COFECE adds, through the New Regulations, CRE could even issue resolutions conflicting with COFECE's opinion, eliminating the usefulness of the opinion the latter.

Within the constitutional controversy, COFECE requested, and the instructing minister in the SCJN granted, the provisional stay so that the effects and consequences of the New Regulations are suspended until the controversy is ruled, which derives in the Previous Regulations continue to apply in the processing of cross-participation authorizations presented in terms of Article 83 of the HL.

For any questions or comments regarding the Constitutional Controversy and the New Regulations, you may contact our expert teams in Antitrust and Energy and Infrastructure.

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