

# District Court deems energy policy as unconstitutional in its entirety

Energy– February 23<sup>th</sup>, 2021

Through a ruling dated December 21, 2020, the Second District Court in Administrative Matters specialized in Antitrust, Radio and Telecommunications declared as unconstitutional in its entirety, the Policy for the Reliability, Security, Continuity and Quality in the National Electricity Grid (the "Policy") that was issued by the Ministry of Energy on May 15, 2020. The ruling was issued in connection with an *amparo* action, a type of individual constitutional review proceeding.

The above, notwithstanding that on February 3, 2021, when ruling on the constitutional claim filed by Mexico's Antitrust Commission against the Policy, the Supreme Court determined to invalidate most of the Policy's provisions, but to confirm the constitutionality of a few of the provisions that were challenged. To read our client alert on such ruling, see [here](#).

In its ruling, the District Court rendered the Policy null and void in its entirety. In first place, the District Court deemed that the formalities required under law for the issuance of the Policy were not fulfilled; this, due to the fact that the regulatory improvement process applicable to the issuance of regulation by administrative bodies (as is the Ministry of Energy) was not followed. Moreover, the District Court determined that the Policy violates the principles of free competition and concurrence.

While in principle, rulings issued in *amparo* proceedings have particular effects (they only benefit the plaintiff), this ruling was issued with general effects. As a result, the ruling prevents the implementation of the Policy in an absolute manner and for the benefit of all industry participants. The District Court set forth that if the *amparo* were granted only for the benefit of the plaintiff, it could cause precisely the negative adverse effects that it seeks to avoid: it would result, not only in the granting of competitive advantages to the plaintiffs over other participants, but also, it could create market distortions, affecting competition and the development of the sector, as well as impacting final users.

The ruling is now final. Notwithstanding that the Ministry of Energy filed a motion of appeal against it with the Second Circuit Court in Administrative Matters specialized in Antitrust, Radio and Telecommunications,

through a Resolution published on February 18, 2021, such Circuit Court resolved to dismiss the motion of appeal because it was filed extemporaneously.

As a result of the foregoing, within a 10 business days term and through a publication in the Official Gazette of the Federation, the Ministry of Energy must make known to all the participants of the Wholesale Electricity Market that the Policy has been rendered null and void. Industry participants and other entities that have initiated *amparo* claims against the Policy should analyze how this ruling affects their individual proceedings.

**For any additional information, do not hesitate to contact our expert team, who can be of assistance:**

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