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Electricity Regulation 2012

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Mexico

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1 Policy and law

What is the government policy and legislative framework for the electricity sector?

Under Mexico's constitution, the generation, transmission, distribution and marketing of electric power for public service purposes is exclusively reserved to the federal government. Until 2009, this vertically integrated monopoly was controlled by two government entities: the Comisión Federal de Electricidad (CFE) and Luz y Fuerza del Centro (LyFC), but LyFC was dismantled in October 2009 in a historic decision by President Calderón, with the CFE taking control of LyFC's power generation and distribution activities. In 1992, partly as a result of chapter VI of NAFTA, the Electric Power Public Utility Law was amended to allow private participation in the generation and transmission of power, establishing six permit modes for power-related activities that are excluded from the concept of public service. Since then, the government has encouraged the participation of private developers in the electricity sector. This has been mainly driven by the absence of sufficient government funds to meet the significant increase in demand during the past decade and other considerations.

The federal government is looking to foster the participation of private companies in the electricity sector, particularly in power generation. Though its independent power production programme has proved successful (private independent power producers have a generation capacity of close to 12,000MW, a considerable portion of the growing demand), the CFE may have restrictions in continuing its programme owing to public debt ceilings affected by the programme's created contingent liabilities. Between 2010 and 2025, the increase in electricity demand is expected to entail an additional 32,050MW of generation capacity (through the installation of 43,143MW and the retirement of 11,093MW), 16,694km of transmission lines, transformation substations for 47,095MVA and a significant number of distribution lines and distribution substations. These activities require investment of approximately US$100 billion. The lack of sufficient public resources to cope with demand has become one of the leading factors supporting the need for structural reform in the electricity sector, along with the low level of competition in the market, the lack of scrutiny and transparency of the CFE rates and service conditions and the reliability and excessive costs of power for industrial processes (which affects the competitiveness of Mexican industries in a global economy).

In 2001 the need for structural reform was reiterated by the Supreme Court of Justice, which resolved a controversy between the executive branch and Mexico's Congress regarding an amendment to the Regulations of the Electric Power Utility Law, indicating, inter alia, that the constitutional grounds allowing private participation in the electricity sector should be clarified and, further, inviting Congress to consider whether the constitutional provisions regulating the electric power state monopoly have become questionable in the light of the current economic and political needs of the country. Congress has nevertheless not yet taken action on this issue.

The federal government and all of the main political parties have proposed bills for some form of structural reform. Most of the proposed bills to restructure the electricity sector coincide in a number of critical aspects:

- the creation of a wholesale energy market;
- the segregation of the national electric grid from the CFE;
- the creation of an independent system operator in charge of dispatching the system and operating the national electric grid as a common carrier; and
- increasing the authority of the Energy Regulatory Commission (CRE) as the independent regulator of the electricity sector.

President Felipe Calderón, who took office on 1 December 2006 and was minister of energy during the administration of former President Vicente Fox, has emphasised his willingness to promote a structural reform of the electricity sector, which has been favourably viewed by the industry; however, until now, his efforts in the electricity sector have focused more on the promotion of renewable energies, which was one of the key elements in the energy reform that was approved by Congress in October 2008. Along with a number of reforms to the oil and gas sector, Congress approved the Law for the Use of Renewable Energies and the Financing of the Energy Transition, which is aimed at promoting the diversification of the energy sources used to generate electricity through the use of renewable energies. Likewise, the scope of authority of the CRE was substantially increased as part of this energy reform, in order to include a number of activities in the midstream oil and gas sectors, as well as the authority to regulate a number of activities specifically related to the production, transmission, dispatch and sale of electricity generated from renewable sources. As a result, the CRE has issued a number of guidelines and directives mainly aimed at promoting renewable energies.

2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

The Mexican electricity sector is divided into two main areas: the electric power public utility service and the activities in which private participation is allowed.

The generation, transmission, distribution and sale of power for public service purposes is reserved to the federal government through the CFE. The CFE is vertically integrated and serves the whole country. The national electric system (that encompasses the generation, transmission and distribution facilities used in the provision of electric power public services) is also controlled by the CFE through its National Centre for Energy Control (CENACE). CENACE is in charge of operating the national electric system and dispatching all of the associated power output generated by the CFE and private generators interconnected with this system.

Activities in which private participation is allowed include:

- independent power production (IPP) – private power generation facilities aimed at supplying all of their capacity and power output to the CFE;
- self-supply – private power generation facilities aimed at supplying power for self-supply purposes to the holder of the relevant self-supply power generation permit and its shareholders;
- cogeneration – private power cogeneration facilities aimed at supplying power to the establishments associated with the cogeneration process and the shareholders of the cogeneration company;
- small-scale production – private power generation facilities with a capacity not exceeding 30MW, for export purposes or the supply of all the associated power output to the CFE;
- private power generation facilities with a capacity not exceeding 1MW, developed through cooperatives or non-profit associations for the supply of power to rural communities or isolated areas;
- export – private power generation facilities for the purposes of exporting all the associated power output; and
- import – the import of power for self-supply purposes.

An IPP company may also be entitled to hold other permits with respect to the same generation facility (for example, cogeneration, self-supply or export permits).

The total installed capacity in the country in 2010 was over 52,500MW, of which, approximately 87 per cent corresponds to the CFE (including IPPs supplying power to the CFE) and the rest is produced as self-supply and cogeneration. Since 1997, most of the CFE's capacity additions have been successfully installed through IPPs (with an installed generation capacity close to 12,000MW in 13 years and 965MW additional capacity currently in construction).

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

The main permit required to construct and operate generation facilities under any of the schemes in which private participation is allowed is the power generation permit granted by the CRE. In addition to the legal and technical requirements for obtaining such permits, the CFE's opinion is required as part of the CRE's permit approval process (where the former's wheeling and backup services are required).

In addition, power generation facilities require a federal environmental, safety and health impact authorisation granted by the Ministry of the Environment and Natural Resources (SEMARNAT) and if the use of national waters is involved, a concession or a permit granted by the National Waters Commission (hydroelectric projects with a generation capacity of 30MW or less that do not affect the flow or quality of water do not require a water concession). Land use and local environmental permits must also be obtained from the state and municipal authorities where the project is located.

4 Interconnection policies

What are the policies with respect to interconnection of generation to the transmission grid?

The holders of a power generation, export or import permit are allowed to either interconnect to the national electric system and use the CFE's wheeling services, which then acts as a contract carrier, or to build and operate their own transmission facilities.

The CFE is required by law to provide its wheeling services to all permit holders whenever the requested service is technically feasible under the first-come, first-served principle. The CFE's wheeling services are provided pursuant to model contracts approved by the CRE, which also approves the methodology to calculate the applicable charges. The CRE has issued model interconnection, wheeling and back-up power agreements especially crafted for permit-holders developing projects under a 'renewable energy' scheme, which entail more favourable conditions to access the transmission grid of the national electric system. Hydroelectric (with a capacity of no more than 30MW), solar and wind projects are considered renewable energy projects for these purposes. Moreover, in April 2010, the CRE issued a new methodology for the determination of the charges payable by the CFE for wheeling services provided to renewable energy projects. This new methodology is based on a 'postage stamp' scheme and has been positively received by project developers. Finally, in June 2011 the CRE published specific rules regulating the manner in which renewable energy and efficient cogeneration shall be given access to the CFE's national electric system on a 'first come, first served' basis and include the right to request the intervention of the CRE in case the CFE denies access or the cost of the grid enhancements required by the CFE is excessive.

5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

During 2010, power in Mexico was produced from these sources in the following proportions:

- 13.86 per cent steam;
- 48.69 per cent combined cycle;
- 1.65 per cent turbogas;
- 0.56 per cent internal combustion;
- 9.05 per cent dual (coal and fuel oil);
- 7.36 per cent coal;
- 13.17 per cent hydro;
- 2.64 per cent nuclear;
- 0.06 per cent wind; and
- 2.96 per cent geothermal.

For over a decade, the government has encouraged combined-cycle gas-fired power plants, making this type of technology a requirement in most of the international public tenders called by the CFE for the award of long-term contracts for the commitment of power generation capacity and the purchase and sale of associated power output. These power plants are developed by private companies under the IPP scheme. The public bidding procedures called by the CFE for the development of IPP projects (the IPP bids) have been undertaken as part of a large programme aimed at increasing Mexico's installed generation capacity. The process began in 1997, AES having the first power plant developed under this scheme. Under the IPP programme, all of the financing and risk is placed on the sponsors and payment is made to the contractor based on capacity and O&M charges having natural gas paid as a pass-through cost to the CFE.

At the outset, the IPP bids were purely 'output contracts', where the developer was barred from aggregating loads and building oversized plants. The developers were not able to take advantage of economies of scale, normally with minimum flexibility regarding the supply of natural gas. The contracts awarded under the IPP bids required the construction and operation of combined-cycle gas-fired power plants to be built and operated at a site predetermined by the CFE, with the gas supply prearranged by the CFE with Pemex-Gas y Petroquímica Básica (PGPB), one of the operating subsidiaries of PEMEX, a sister company of the CFE.

After various consultations, the CFE revised the structure of the IPP bids and now bidders are allowed to:

- aggregate loads and propose the construction of an oversized plant; and
- choose the site and, in some instances, the interconnection points, subject to certain conditions.

The IPP bids have been successful so far not only because of the number and diversity of reputable power companies participating in such international tenders, but also because of the rates and competitiveness of the offers. All of the payments under the contracts awarded are being financed by resources of the federal government. Key issues affecting IPPs for combined cycle power plants, however, include the lack of infrastructure to supply natural gas to the power plants under development; the increasing scarcity of natural gas in Mexico and the inconsistency between the terms of the natural gas supply services offered by PGPB and the fuel supply terms required to make these projects suitable for project finance purposes. As a result, liquid natural gas (LNG) supply has become an important part of the supply of natural gas in Mexico and the CFE has included long-term supply arrangements with LNG suppliers as part of its fuel supply strategy. The CFE has become the largest shipper and consumer of natural gas in Mexico and is the anchor tenant of three LNG regasification terminals already operational in Ensenada (Sempra), Altamira (Shell, Mitsui and Total) and Manzanillo (Mitsui, Samsung and Korea Gas).

In 2008, the Law for the Use of Renewable Energies and the Financing of the Energy Transition (the Renewable Energies Law) was enacted, precisely to regulate and promote power generation based on renewable energy sources, and in September 2009 the implementing regulations of the Renewable Energies Law were published. Following the global need to reduce the emission of greenhouse gases and global warming, the Renewable Energies Law is aimed at strengthening the competitiveness of the Mexican energy sector, reducing the use of fossil fuels and promoting the use of renewable energy. Moreover, as part of the CFE's programme to encourage the development of renewable energy projects in Mexico, in 2009 and 2010 it awarded four long-term power purchase agreements to private independent power producers developing wind power projects in Oaxaca, each with a generation capacity of 100MW. PEMEX, on the other hand, has initiated a programme to develop cogeneration power plants where private sponsors will construct, own and operate the facilities and PEMEX will provide fuel and purchase steam and power output under long-term service contracts awarded through international bidding processes. The first of these contracts was awarded in August 2009 to the Spanish group Abengoa/Abener and the project has a power generation capacity of 300MW.

On the other hand, the Mexican authorities have developed and implemented the mechanisms necessary to allow renewable energy projects in Mexico to qualify for the obtaining of certified emission reductions under the Kyoto–Bonn–Marrakech Protocol and eventually participate in the emissions trading market.

Cogeneration and renewable energy projects are, on the other hand, normally able to obtain financing from regional development institutions and multilateral agencies.

6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

Government policy with respect to climate change is mainly focused on, and related to, the incorporation of renewable energy sources on a larger scale. As a result, the federal government is promoting the development of renewable energy projects anchored by long-term power purchase agreements awarded through public bidding processes to sell power to the CFE, which in turn is used to provide electric power utility services. To the extent that the final cost of this power is higher than the cost of power generated from non-renewable sources, it is possible that the CFE's rates may be subject to increase; however, one may also foresee the possibility of having subsidies or other mechanisms to prevent these types of increases in the rates offered to power consumers.

7 Government policy

Does government policy encourage or discourage development of new nuclear power plants? How?

The generation of nuclear power is exclusively reserved to the Mexican state, through the CFE and, therefore, no private nuclear power plants are allowed in Mexico. Mexico has only one nuclear power plant, with an installed capacity of 1,365MW, which is currently being modernised in order to increase its generation capacity to 1,463MW.

While no commitments or formal announcements have been made, the Mexican government has indicated in a number of official documents that it is currently evaluating the possibility of increasing the generation of nuclear power as one of the strategies to reduce greenhouse gas emissions; however, following the events in Japan of March 2011, the Mexican government has indicated that all plans regarding nuclear power plants in Mexico are being revisited.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Obtaining a power generation or import permit from the CRE entails the authorisation to construct and operate the necessary power transmission lines to implement the project. Normally, the environmental and municipal authorisations obtained in connection with a power generation facility also include the authorisation to construct the relevant power transmission lines, unless the extension of such lines entails crossing lands, lakes, rivers or other infrastructure facilities under the jurisdiction of other governmental agencies or bodies, in which case rights of way and crossing permits must be obtained.

The transmission lines constructed by power generation, export or import permit-holders may only be used to transmit the power generated or imported by such permit-holders, who are not allowed to provide transmission services to third parties.

9 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

At the moment, the only common carrier allowed to provide transmission services in Mexico is the CFE, under certain restrictive conditions. Only the holders of a power generation, export or import permit have access to the CFE's transmission services, subject to the technical viability of the requested wheeling services. For such purposes, an interconnection agreement and a transmission services agreement is entered into between the CFE and the relevant permit-holder pursuant to the model agreements approved by the CRE.

During 2006, the Ministry of Energy, the CRE and the CFE held – for the first time ever – an open season for the allocation and reservation of transmission capacity in the CFE's transmission grid. This open-season process (which is not required by law) was used to allocate, in a transparent and efficient fashion, the limited available capacity of the CFE's transmission services in the state of Oaxaca, among the multiple private developers intending to install wind power generation facilities in the area. Inasmuch as transmission capacity to accommodate power generated by private developers becomes insufficient, it is likely that this sort of procedure will continue to be used to allocate the available capacity.

In August 2011, the CRE published a new invitation to participate in four open season procedures for the reservation of transmission capacity in specific areas of the country. The transmission to be allocated through these four open seasons is intended to serve wind power projects located in the states of Oaxaca, Tamaulipas and Baja California and hydroelectric projects in the state of Puebla.

10 Government incentives

Are there any government incentives to encourage expansion of the transmission grid?

There are no government incentives to encourage the expansion of the transmission grid since the grid is exclusively controlled by the government through the CFE and CENACE. However, the CRE is making efforts to anchor grid expansion through open season procedures for the reservation of transmission capacity, where participants wishing to reserve capacity are required to financially guarantee their commitments with respect to the reserves capacity they have requested.

11 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The methodologies to determine the rates payable for the power transmission services that the CFE provide through the national electric grid are approved and supervised by the CRE. These methodologies were designed to promote an efficient use of the national electric grid and permit the CFE to recover adequate costs incurred in the provision of the services requested by power generation permit-holders, considering the overall impact that the requested services have on the grid. As one of the mechanisms to promote renewable energy projects, in April 2010, the CRE issued a new and different methodology specifically applicable to projects based on renewable energy sources and efficient cogeneration projects. This new methodology is aimed at complying with the principles established by the federal government through the National Development Plan, the Energy Sector Program and other energy policy instruments, to promote efficiency and the use of clean technologies in the generation of power. The new methodology is based on a 'postage stamp' scheme for the determination of the applicable charges and indicates that wheeling charges shall be calculated in accordance with the voltage levels as follows: high voltage, 0.03037 pesos/kWh; medium voltage, 0.03037 pesos/kWh; and low voltage, 1.06074 pesos/kWh (the peso amounts are those published in April 2010 and are subject to monthly inflation adjustments). In February 2011, the CRE published the efficiency parameters to be complied with in order to qualify as an efficient power cogeneration project.

Under the general methodology applicable to non-renewable energy projects, the applicable service rates include a fixed charge and a variable charge for the use of the national electric grid and other administration charges.

12 Entities responsible for assuring reliability

Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

CENACE is entrusted by law with the dispatch and control of the transmission grid pursuant to the dispatch regulations. CENACE is not independent, but part of the CFE. There are few rules governing reliability of the transmission services and power supply in general (most of the transmission grid is used by the CFE).

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

Under Mexican law, no private power distribution networks are allowed, except in the case of self-supply and cogeneration projects in which the permit-holder has been formed as a self-supply company aimed at generating and distributing power to its shareholders. There is no limit to the number of shareholders that can form part of a self-supply company. This scheme is not considered a utility service.

14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

Access to the CFE's distribution grid would be afforded to power generation or import permit-holders as part of their transmission services (see question 9).

15 Rates and terms for distribution services

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

Distribution services are provided by the CFE through the national electric grid as part of its transmission services. The applicable rates are regulated by the CRE, through the methodologies issued to determine the rates for the CFE's transmission services.

Regulation of electricity utilities – sales of power

16 Approval to sell power

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

Only the CFE is allowed to sell power as a utility service. Cogeneration and self-supply power generation permit-holders, on the other hand, are allowed to supply power to their shareholders or co-owners in exchange for compensation. Under this premise, self-supply and cogeneration power plants have been developed in which the 'customers' are required to hold a nominal participation in the power generation or self-supply company, in order to become authorised offtakers entitled to receive and use part of the facility's power output. Cogeneration and self-supply power generation are activities subject to permission granted by the CRE.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

Tariffs for the electric power public utility services provided by the CFE are settled by the Ministry of Finance and Public Credit, with the participation of the Ministry of Energy (Sener) and the Ministry of Economy, based on the proposals made by the CFE. The terms and conditions under which such a service shall be provided are regulated in the Electric Power Public Utility Law and its Regulations. In addition, certain terms and conditions for the provision of the electric power public utility service are approved by the Ministry of Economy.

The supply of power by the holders of cogeneration and self-supply power generation permits to their shareholders is not regulated and, thus, the terms, conditions and price for such supply of power may be freely negotiated and agreed by the parties.

18 Rates for wholesale of power

Who determines the rates for sales of wholesale power and what standard does that entity apply?

The market for sales of wholesale power in Mexico is basically limited to sales of power from IPPs to the CFE, wholesale power sales with respect to excess power generated by other power generation permit-holders and wholesale power sales by or to the CFE for imported or exported power.

The rates for the power sold by IPPs to the CFE are not regulated; these rates are the ones offered by the relevant IPP in the bidding process that resulted in the award of the relevant power purchase agreement. The rates for the sale of excess power generated by permit-holders to the CFE are determined based on the methodology approved by the CRE and are based on a percentage (between 85 and 95 per cent) of the CFE's short-term cost of power. Power sales between the CFE and foreign entities for imported or exported power, on the other hand, are not regulated, but this type of transaction is subject to approval by the Ministry of Energy (see question 30).

19 Public service obligations

To what extent are electricity utilities that sell power subject to public service obligations?

As previously mentioned, there are no private electricity utilities in Mexico. The CFE is the only electricity utility in the country. They are subject to limited public service obligations and thus required to provide power supply services to anyone requesting them, unless the service is not technically viable or such utility companies do not have the economic resources to provide the requested services. When additional facilities are required to provide a requested service, an agreement shall be entered into between the party requesting the service and the CFE, as the case may be, in order to cover the cost of such facilities. The terms under which the cost of any required additional facilities may be covered is regulated under the Regulations of the Electric Power Utility Law for Contributions.

Regulatory authorities

20 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

The CRE, Sener and the Ministry of Finance and Public Credit determine the regulatory policy with respect to the electricity sector. However, as a result of the Energy Reform, a number of consultative councils have been created, with the participation of representatives of multiple sectors, to opine on and participate in the determination of regulatory policies affecting the electricity sector.

21 Scope of authority

What is the scope of each regulator's authority?

The main powers given to the CRE are:

- the granting and enforcement of permits for the generation, import and export of power by private parties;
- the approval of the terms and conditions of the CFE's interconnection, wheeling and backup supply services;
- the issuance of the methodology for the calculation of the considerations payable for the CFE's wheeling services as common carriers; and
- the regulation of the terms and conditions in which power generated by renewable energy sources may be developed and delivered to the national electric grid and sold to the CFE.

Sener is in charge of the national energy policy and is the government agency under whose supervision the CFE operates. Although the minister of energy is the chairperson of the CFE's and PEMEX's board of directors, the minister does not have sufficient leverage to regulate and control CFE and PEMEX.

The role of the Ministry of Finance and Public Credit, on the other hand, is critical as it is the government agency authorised to fix the CFE's tariffs for the power supply public service, and it is the agency that authorises and controls the budgets of the CFE and PEMEX.

Update and trends

As a result of the Energy Reform Law enacted in 2008, renewable energy projects are becoming a reality in Mexico; however, in the process, access to the grid of the national electric system has proven to be an important issue. Inadequate dispatch rules and the absence of incentives for the CFE to expand its grid have given a hard time to project developers, who are sometimes required to bear substantial costs to access the grid. The CRE is making efforts to ease the situation through the issuance of clearer access rules and the promotion of open season procedures allowing to aggregate the loads of those wishing to reserve capacity in the CFE's grid and make expansions economically feasible for all participants. The successful results of the first open season may already be seen in the expansion of the CFE's grid to serve wind power projects in the state of Oaxaca; four other open seasons procedures are now in process. No doubt, these are good steps towards a more diverse and modern electricity sector in Mexico.

22 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The CRE was created by administrative action, but was later fortified by the promulgation of the Law of the Energy Regulatory Commission, enacted by Congress in 1995. The CRE is considered to be a quasi-independent agency of Sener. It is a commission with revolving membership of five commissioners appointed by the president upon the recommendation of Sener.

In general terms, the CRE's resolutions, directives, norms and permits are independent and do not require the supervision or approval of a third party. Unfortunately, the CRE is not completely independent from political influence and does not have sufficient authority to regulate and control the CFE and PEMEX, the two governmental energy monopolies. As a result of the energy reform, the scope of authority of the CRE was expanded to include midstream and downstream activities dealing with liquids and petro-chemicals and a number of matters related to the interconnection of renewable energy power facilities to the national electric grid and the sale of renewable energy power to the CFE. However, the CRE still needs to be further fortified by making the agency more independent. In order to do so, proposals have been made whereby the appointment of commissioners would be previously approved by the senate; the removal of commissioners would only be possible for 'just cause' as established by law; budgetary independence would be given to the CRE; and the CRE will have the authority to approve CFE tariffs and service conditions.

23 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

CRE decisions are challengeable through a reconsideration procedure that is resolved by the CRE itself and, as a result of such legal action, the CRE may overturn or modify its previous decision. Alternatively, any resolution issued by the CRE may be challenged before the Federal Tribunal of Tax and Administrative Justice, which may resolve to annul the original challenged decision.

Furthermore, under Mexican law any act or omission by any government authority may be subject to judicial review through an amparo proceeding. This is a special type of court proceeding wherein any person or entity in Mexico (national or foreign) may ask for judicial review in respect of acts or omissions of the government in violation of the petitioner's 'bill of rights'. An amparo proceeding is a combination of the common law injunction and writs of certiorari, mandamus and habeas corpus. In this type of amparo proceeding, the petitioner typically requests an injunction against certain governmental acts, or a mandamus (a request to the court to command the defendants, namely, the government agencies involved in the challenged act) to redress the government acts in question, because such acts were performed in violation of the petitioner's bill of rights (normally, due process of law violations).

Acquisition and merger control – competition

24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

An acquisition of private generation or transmission facilities that entails the direct transfer of the assets and the relevant power generation or import permit requires the approval of the CRE and, if the transaction surpasses the monetary thresholds established under the Federal Law of Economic Competition to qualify as a reportable transaction, the approval of the Federal Competition Commission (CFC).

If there is no direct transfer of assets or permits, normally there are no changes to the control rules specifically applicable to businesses in the electricity sector in Mexico; thus, the main authorisation required for a change in control performed at a mezzanine level (that is, a change in control implemented through the acquisition of a participation in the company holding the relevant permit and owning the assets) would be the CFC's approval, which is applicable to all economic activities in general. In addition, if the change in control entails the acquisition by a foreign investor of 49 per cent or more of a company's capital previously held by Mexican investors and the company's assets exceed the thresholds annually established by the Foreign Investment Commission, then prior approval of the Commission will also be required.

25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

The approval by the CRE to transfer power generation or transmission assets and the related power generation or import permit is aimed at ensuring that the new permit-holder meets all the requirements established under the Electric Power Public Utility Law from a legal and technical perspective, rather than an analysis of the antitrust or competitive aspects of the transaction. Accordingly, the procedure is similar in essence to that undertaken to grant a power generation or import permit, in which the CRE evaluates compliance with the applicable legal requirements to hold the requested permit, the technical qualifications of the facilities' operator in order to assure safety and conformity with the power supply schemes in which private participation is permitted. These processes may take approximately three months.

The CFC's review of a reportable transaction is, on the other hand, aimed at analysing the possible anti-competitive effects that the transaction may have in the relevant market. Obtaining CFC approval entails the filing of a data-intensive pre-merger notification report to be analysed by the CFC, which normally requests the production and filing of additional information and documentation. Based on its analysis of the transaction, the CFC may approve the transaction as described in the pre-merger notification report, approve the transaction subject to compliance with certain conditions, or prohibit the transaction. Based on the waiting periods that may be imposed by the CFC, the process may take up to nine months in complex cases; however, these types of authorisations are normally obtained in approximately two to four months.

26 Prevention and prosecution of anti-competitive practices

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

The CFC is the Mexican federal agency empowered to prevent and prosecute anti-competitive practices in all economic sectors, including the electricity sector. The CFC may impose sanctions on the economic agents involved upon determining the existence of a punishable conduct (such as tie-in requirements, bid rigging or other sorts of monopolistic practices) that causes harm to other economic agents vertically or horizontally located.

Since its creation in 1993, the CFC has been gradually developing an understanding of the energy sector and the important role the federal agency has to play in enforcing antitrust laws and regulations in a market that, by its very nature, is monopolistic, particularly with regard to the unparalleled situation of the Mexican energy industry, with two vertically integrated monopolies controlled by the government: PEMEX, in the oil, gas and basic petrochemicals sectors; and the CFE, in the electricity sector.

27 Determination of anti-competitive conduct

What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

As in other jurisdictions, Mexican law establishes a list of conduct considered to be anti-competitive per se. Under a 'rule of reason' analysis, however, the CFC is empowered to prosecute and punish any anti-competitive or manipulative conduct aimed at or having the effect of damaging or impeding the competition process or free concurrence in the production, processing, distribution and marketing of products or services in the relevant market, provided the party undertaking such conduct is proven to have substantial power over the relevant market.

28 Preclusion and remedy of anti-competitive practices

What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

The main tool is the imposition of substantial fines by the CFC. Also, the CFC may require the relevant economic agent to cease any anti-competitive practice and even order the divestment of assets. Once such sanctions have been conclusively established by the CFC, the relevant injured party may use such resolution for a prima facie case for the payment of actual damages and lost profits before a Mexican court.

End-users, on the other hand, are entitled to cumulatively pursue a claim before the Federal Consumer Protection Agency if the CFE's power supply services violate the Federal Law of Consumer Protection.

International

29 Acquisitions by foreign companies

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

There are no special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies except for the CFE, in which direct private participation (national or foreign) is legally barred, since these two entities are exclusively controlled by the federal government.

30 Cross-border electricity supply

What rules apply to cross-border electricity supply, especially interconnection issues?

There are no cross-border fees applicable to cross-border electricity supply. The export and import of power by private parties, as previously mentioned, requires a permit granted by the CRE. Power import permits allow the importer to use the imported power exclusively for self-supply purposes and thus imported power may not be sold or marketed. Power importers, on the other hand, are allowed to interconnect with the national electric system and use the CFE's wheeling services, subject to the technical feasibility of the project, the execution of the relevant contracts pursuant to the models approved by the CRE and the payment of the corresponding wheeling rates.

The CFE, on the other hand, is allowed to import, export and make border-crossing exchanges of energy, subject to approval by Sener. Pursuant to the Electric Power Public Utility Law, Sener shall approve the importation of power by the CFE only if it is convenient from a technical or economic perspective, or if the cost of importing power is lower than the cost of obtaining such power in the country. Power exports by the CFE may be approved by Sener only in cases in which the national consumption of power is not affected and the exportation is technically and economically convenient and in cases in which benefit from natural resources shared by Mexico and a neighbouring country is involved.

In addition, the import or export of power requires a special permit granted by the Ministry of Finance and Public Credit in connection with the metering facilities that must be used to measure the imported or exported power.

Transactions between affiliates

31 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

Even at the time when LyFC existed, there were no restrictions on transactions between electric utilities. Currently, the CFE is the only electric utility in the country and does not have affiliates.

32 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Not applicable.

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