Competition Assessment of Laws and Regulations in Two Sectors of the Mexican Economy

Laws and regulations are key instruments to achieving public-policy objectives, such as consumer protection and public health. When they restrict market forces more than necessary to achieve their objectives or when they impose unnecessary costs in light of their policy objectives, a comprehensive review can help identify restraints and develop alternative, less restrictive policies that still achieve government objectives.

The OECD has been working closely with Mexico to analyse competition levels in numerous sectors and provide support and training to judges specialised in competition. At the request of the Mexican government, the OECD conducted this assessment of regulatory constraints on competition in the gas sector as a follow-on project to the first Mexican Competition Assessment Review, which evaluated regulations in the medicines and meat sectors and whose final report was presented by the OECD Secretary General in January 2018. For gas, the project team identified and evaluated market regulations along the vertical supply chains in the sector, covering:

- **natural gas** and its extraction, processing, transportation, distribution to final consumers, and manufacturing of basic petrochemical products from natural gas
- **liquefied petroleum gas (LPG)** and its extraction, processing, storage, transportation and distribution to final consumers.

The project has proceeded in five stages. **Stage 1** defined the exact scope of the natural-gas and LPG sector and saw a list drawn up of the 279 pieces of sector-relevant federal legislation. In **Stage 2**, this legislation was screened using the OECD’s Competition Assessment Toolkit to identify potential competition barriers and 105 **prima facie** restrictions of competition were identified. Additionally, an economic overview of the Mexican gas sector was prepared that contained important economic indicators such as output, foreign trade and price trends. In **Stage 3**, the policymakers’ objective for each provision was investigated. An in-depth analysis was carried out qualitatively and, whenever permitted by availability of data, quantitatively. In order to reach a better understanding of lawmakers’ motivations and objectives, a number of meetings were held with officials from the relevant authorities, as well as with representatives of private associations. In **Stage 4**, draft recommendations for those provisions found to restrict competition were developed, taking into account similar provisions in comparable territories, notably EU countries and the United States. These preliminary recommendations were presented in a workshop on 16 July 2018 and then distributed for comments to the relevant Mexican authorities active in the gas sector: the Ministry of Energy (Secretaría de Energía, SENER); the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE); the National Centre for Control of Natural Gas (Centro Nacional de Control del Gas Natural, CENAGAS); the Agency for Safety, Energy and Environment (Agencia de Seguridad, Energía y Ambiente, ASEA); and the National Hydrocarbons Commission (Comisión Nacional de Hidrocarburos, CNH). In the **final stage**, recommendations were finalised taking into account the comments made by the authorities. Additionally, during the project, the OECD team organised two workshops with officials from relevant authorities to build competition-assessment capabilities in the Mexican administration and to discuss preliminary recommendations.
Key findings and main recommendations

This work has led to the identification of 105 regulatory restrictions in the 279 legal texts selected for assessment. In total, the report makes 72 specific recommendations to mitigate harm to competition.

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<th>Upstream</th>
<th>Midstream</th>
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<td>Prima facie restrictions found</td>
<td>31</td>
<td>26</td>
<td>48</td>
<td>105</td>
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<td>Recommendations made</td>
<td>20</td>
<td>17</td>
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If the particular restrictions identified and quantified during the project are lifted, the OECD has calculated an annual positive effect for the Mexican economy of between MXN 2182.8 million and MXN 3740.3 million. These figures are based upon the small number of recommendations at the midstream and downstream level that the OECD team was able to quantify. The quantification indicates minimum effects; in other words, the full effect on the Mexican economy is likely to be much larger. At the upstream level, this may lead to Mexican-produced gas replacing foreign gas, and so a reduction in imports and a boost to national production. This may also increase investment into the national infrastructure with possible long-term benefits.

The Competition Assessment project focuses on laws and regulations relevant for the sectors under analysis. Its focus is on legislation and not its enforcement. This matters because changes in regulation can only have an impact if regulation is enforced. Business environment is also important. Complementary to this analysis, there are measures of administrative burden and ease to make business, which capture these broader issues, such as the OECD’s Product Market Regulation index and the World Bank’s Ease of Doing Business index.

Upstream

Since its 2013 energy reform, the Mexican government has held two main rounds of tenders during which areas containing gas have been allocated to private companies for production. Not all areas were successfully tendered, however, and industry participants have complained that certain post-tender conditions might reduce or delay production. The OECD makes the following recommendations to facilitate production at the upstream level.

- **Allow private companies active in exploration and extraction to select their suppliers freely** instead of obliging them to hold tender procedures when the contract passes above certain financial thresholds.

- **Standardise the preconditions that CNH requires private companies and state productive enterprises to fulfil in order to participate in tenders for contracts (such as financial or technical conditions).** Furthermore, introduce a registry for pre-qualified tender participants to avoid companies having to prove compliance with the same requirements more than once. This should regularly be verified that companies still comply with conditions.

- **When choosing farmout partners, allow SPEs (including PEMEX) to decide when to start a tender procedure and how run the process; it should, however, be supervised by CNH.**

- **Study the possibility of regulating access to PEMEX’s natural-gas processing facilities for a limited time period** and give gas exploration companies a right to have their gas processed in PEMEX facilities under fair and non-discriminatory conditions.

- **Be aware that requiring companies to use national content will make natural-gas exploration and production more expensive and that the obligation to use national-content clauses should be accompanied by knowledge transfer, so that local companies become more competitive both in the Mexican and the international markets.** Clarify the methodology for companies to easily calculate and measure the national content they must use during the exploration and extraction of hydrocarbons.
Midstream

The OECD makes the following recommendations to facilitate production at the midstream level.

- **Establish a department within a federal agency to facilitate midstream and downstream business for natural-gas and LPG companies at a municipal level and help them obtain municipal permits more easily.** This department would work within the limits of Article 115 of the Mexican Constitution and respect municipalities’ autonomy. Its tasks might include suggesting models of permit applications (modelos de solicitudes de permiso) to municipal authorities; signing collaboration agreements (convenios de colaboración) with municipal authorities or states; advising applicants on how to best deal with municipal authorities; publishing an annual report about the situation of LPG companies at the local level; holding capacity-building workshops with municipal officials; and acting as amicus curiae in legal cases about municipal permits that have been unfairly denied.

- **Study the possibility of granting municipalities incentives (e.g. regular payments, contributions to infrastructure building) for natural gas sold in or transported across their territories to motivate them to support the construction of new natural-gas pipelines; this could help natural-gas companies better compete for end customers.**

- The 2013 energy reform changed the legal status of PEMEX and established “asymmetrical regulation”, meaning that the former state monopoly is subjected to greater regulatory restraint than other participants in the gas industry for such a time as deemed necessary to rebalance its dominant market position. **CRE should publish regular (for example, annual) reports about the status of all upstream and midstream markets in which PEMEX is subject to asymmetrical regulation.** In these reports, CRE should explain the criteria on which its evaluation is based for each market and the changes still needed for asymmetrical regulation to be lifted.

- **Establish that final decisions on compensation for any land used for the construction of new natural-gas pipelines should be made by government authorities.** Grant a federal authority the power to set compensation for landowners on whose land a natural-gas pipeline is to be built rather than it being determined in bilateral negotiations.

- **Establish that an authorisation instead of a rejection should be granted by default (afirmativa ficta) if a request for a change of land use for the construction of a natural-gas pipeline is not answered within the established timeframe and if the timeframe was not interrupted, because, for example, the application was incomplete and did not include all the required facts.** In cases where an authorisation granted by default leads to unforeseen negative (e.g. environmental) consequences, SEMARNAT should be able to challenge or withdraw the authorisation within a limited time period.

- **Allow notaries (in addition to local judges) to validate contracts between gas companies and landowners.**

- **Eliminate the duty of gas companies to report the same set of facts to two authorities.** For example, negotiations between gas companies and owners of land currently need to be reported both to SENER or SEDATU, while accidents linked to natural gas must be reported to ASEA and CRE.
Downstream

The OECD makes the following recommendations to facilitate production at the downstream level.

- **Increase competition between distributors of LPG cylinders.** Specifically, issue regulations for the exchange of branded cylinders; standard deposits for exchanges; the creation of cylinder-exchange centres; requiring distributors of branded cylinders to accept competitors' branded cylinders; and preventing distributors of branded cylinders from holding competitors' cylinders.

- **Introduce a tool that enables residential consumers to compare the aggregated prices of LPG and natural gas in their area in order to increase competition between the two types of gas.**

- **Reassess safety conditions for partial filling of cylinders (known as **pigteleo**).**

- **Introduce a one-stop shop (**ventanilla única**) for companies for procedures such as applying for permits and authorisations related to ASEA, CRE and CNH, and possibly also SENER and SAT.**

- **Require CRE to publish an annual report with statistics on the average time needed to issue different types of permits.**

- **Issue guidelines for determining the duration of LPG and natural-gas-related permits (i.e. for transport, storage, distribution, commercialisation and sales to the public) depending on the specific activity in order to give more transparency to market participants.**

- **Issue guidelines for co-ordinated inspection visits by CRE and ASEA, and establish an interagency body between CRE and ASEA to help co-ordinate visits.**

### Competition Assessment Reviews and the OECD Competition Assessment Toolkit

OECD Competition Assessment Reviews present an analysis of regulatory restrictions on competition in the countries reviewed and make specific policy recommendations for reform.

These reviews help governments eliminate barriers to competition while identifying less restrictive measures that still achieve government policy objectives.

Using the OECD Competition Assessment Toolkit to structure the analysis, the regulations in sectors identified as targets for reform – such as construction, gas, media, liberal professions, pharmaceuticals, retailing, tourism and transport – are systematically reviewed one by one for any restriction to competition.

The resulting recommendations allow governments to introduce more competition into the economy and foster long-lasting growth.

Mexico (2018), Portugal (2018), Greece (2017, 2013) and Romania (2016) have already undergone similar reviews.

Access all reviews and the toolkit at [oe.cd/cat](http://oe.cd/cat)