

Supreme Court upholds suspension of electricity policy

Category: Energy, Legal Alerts

written by Nader, Hayaux & Goebel | October 26, 2020

On October 21st, 2020, the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) upheld the suspension derived from the constitutional claim filed by the Antitrust Commission (“**COFECE**”) on June 22nd, 2020, which argued that the “*Policy of Reliability, Safety, Continuity and Quality in the National Electric System*” issued by the Ministry of Energy (the “**SENER Resolution**”) breaches fundamental competition and free market principles that are mandated by the Mexican Constitution. Therefore, the SENER Resolution will remain suspended until a final resolution is issued.

The SENER Resolution has been perceived as the most significant measure by the current Mexican federal administration to favor the Federal Electricity Commission (the “**CFE**”) as a State-owned company, so that CFE regains control of the electricity market instead of applying the free market rules set forth in the electricity laws in Mexico. It imposes new restrictions for the interconnection of renewable power plants to the electricity grid, in order to favor and prioritize the interconnection of conventional power plants owned by CFE. In addition, the SENER Resolution imposes roadblocks for the issuance of new generation permits, while strengthening the functions of the Ministry of Energy (SENER), the National Center of Energy Control (CENACE) and CFE to plan and operate the electricity grid.

Other recent developments include a resolution issued by the Energy Regulatory Commission (CRE) on October 7th, 2020 which amends previous provisions regarding legacy permits – permits granted under former legal regime – which prohibits the amendment of permits to include new load points and limits the inclusion of new offtakers to those who were included in the original expansion plan of the permit. In connection therewith, the COFECE issued a recommendation stating that such resolution must be submitted to a Regulatory Impact Analysis before the National Commission for Regulatory Improvement, before being published in the Federal Official Gazette, since the resolution has anti-competitive effects to the detriment of

private generators.

This last measure is consistent with a memorandum from the President stating that Mexico might need to change its energy policy to be able to rescue state production companies Petróleos Mexicanos (PEMEX) as CFE, going as far as to suggest a constitutional change to the energy reform is not off the table.

Suprema Corte confirma suspensión de política eléctrica

Con fecha 21 de octubre de 2020, la Suprema Corte de Justicia de la Nación confirmó la suspensión derivada de la controversia constitucional impuesta por la Comisión Federal de Competencia Económica (“la **COFECE**”) el 22 de junio de 2020. Dicha controversia constitucional argumentaba que la *“Política de Confiabilidad, Seguridad, Continuidad y Calidad en el Sistema Eléctrico Nacional”* (el **“Acuerdo SENER”**) viola principios fundamentales de competencia y libre concurrencia que están establecidos en la Constitución Política de los Estados Unidos Mexicanos. Por lo tanto, el Acuerdo SENER permanecerá suspendido hasta que se emita una resolución final en el procedimiento.

El Acuerdo SENER ha sido la muestra más significativa de cómo la política energética del actual gobierno mexicano tiene como objetivo fortalecer a la Comisión Federal de Electricidad (la **CFE**) para que domine el mercado eléctrico, en lugar de que el mercado se rija por los criterios de libre competencia contenidos en las disposiciones legales aplicables al sector eléctrico. Dicho acuerdo limita la interconexión de centrales eléctricas renovables para dar prioridad a centrales eléctricas convencionales de la CFE. Asimismo, impone barreras para la emisión de nuevos permisos de generación, al mismo tiempo que fortalece las funciones de la Secretaría de Energía, el Centro Nacional de Control Energía (CENACE) y la CFE para planear y operar la red eléctrica.

Otros acontecimientos recientes incluyen una resolución emitida por la Comisión Reguladora de Energía el 7 de octubre de 2020 por la que se modifica la regulación previa respecto de permisos legados - aquellos otorgados bajo la ahora abrogada ley - para prohibir la alta a nuevos centros de carga y limitar la inclusión de nuevos

socios autoconsumidores, para que sólo puedan incluirse aquellos que se encuentran en el plan de expansión original previsto en el permiso. Al respecto, la COFECE recomendó someter el anteproyecto a un Análisis de Impacto Regulatorio ante la Comisión Nacional Reguladora de Mejora Regulatoria, antes de ser publicado en el Diario Oficial de la Federación, por representar efectos anticompetitivos en detrimento de generadores privados.

Esta última medida es consistente con el memorándum del Presidente circulado el 22 de julio de 2020. Dicho documento plantea cambiar la política energética del país para poder rescatar a las empresas estatales Petróleos Mexicanos (PEMEX) y CFE, e incluso sugiere que una reforma constitucional podría realizarse para lograr dicho objetivo.

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**Markets of online search engines,
social networks, mobile operating**

systems, cloud services and related services

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | October 26, 2020

Alerta de Competencia Económica - Mercados de servicios de búsqueda en línea, redes sociales, sistemas operativos móviles, servicios de cómputo en la nube y servicios relacionados

Investigación para determinar barreras a la competencia y/o insumos esenciales.

El 22 de octubre de 2020, el Instituto Federal de Telecomunicaciones (Instituto) informó, a través del Diario Oficial de la Federación, el inicio de una investigación por la posible existencia de barreras a la competencia y libre concurrencia o insumos esenciales en los mercados de servicios de búsqueda en línea, redes sociales, sistemas operativos móviles, servicios de cómputo en la nube y servicios relacionados.

La investigación deberá tomar un plazo de 30 a 120 días hábiles (con dos posibles extensiones del periodo de 120 días).

Cualquier persona física o moral puede presentar información o documentos ante el Instituto, por lo que si requiere información o asesoría respecto a esta investigación, contacte a nuestro equipo de competencia económica.

Antitrust Alert - Markets of online search engines, social networks, mobile operating systems, cloud services and related services

Investigation to determine the existence of barriers to competition and/or of essential inputs.

On October 22, 2020, the Federal Telecommunications Institute (Institute) reported in the Official Gazette, the beginning of an investigation to determine the probable existence of barriers to competition and free market access and/or of essential inputs, in the markets of online search engines, social networks, mobile operating systems, cloud services and related services.

The investigation should take from 30 to 120 business days (with two possible extensions of the 120-day period).

Any interested party can file information or documents with the Institute, so if you require information or advice regarding this investigation, please contact our antitrust practice group.

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Non-Residential Real Estate Market

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | October 26, 2020

Alerta de Competencia Económica - Mercado Inmobiliario No Residencial

Investigación de prácticas monopólicas absolutas en el mercado de arrendamiento de espacios inmobiliarios no residenciales en México.

El 22 de octubre de 2020, la Comisión Federal de Competencia Económica (Comisión) informó, a través del Diario Oficial de la Federación, el inicio de una investigación por la **posible comisión de prácticas monopólicas absolutas en el mercado de arrendamiento de espacios inmobiliarios no residenciales en México.**

Las multas pueden ser de hasta el 10% de los ingresos de las empresas y hasta 10 años de prisión a las personas involucradas, entre otras sanciones.

Resulta importante destacar que en marzo de este año, la Comisión previno a la Asociación de Desarrolladores Inmobiliarios, A.C.: (i) para que evitara posibles conductas monopólicas entre competidores del mercado de desarrolladores inmobiliarios; y (ii) la exhortó a fomentar que sus afiliados tomen sus decisiones de manera estrictamente individual y conforme a sus propias estrategias de negocios, cuando otorguen descuentos a sus locatarios.

Cualquier persona puede presentar información o documentos ante la Comisión, por lo que si requiere información o asesoría respecto a esta investigación, contacte a nuestro equipo de competencia económica.

Antitrust Alert - Non-Residential Real Estate Market

Cartel investigation in the market of non-residential real estate leasing in Mexico.

On October 22, 2020, the Mexican Antitrust Commission (Commission) reported in the Official Gazette, the initiation of an investigation regarding a **potential cartel in the market of non-residential real estate leasing in Mexico.**

Fines can be up to 10% of the companies' income and up to 10 years imprisonment for the individuals involved, among other penalties.

Please note that in March 2020, the Commission admonished the Association of Real Estate Developers (Asociación de Desarrolladores Inmobiliarios, A.C.): (i) to avoid anticompetitive conducts among competitors in the real estate developers market; and (ii) to encourage its members to make decisions individually and according to their own business strategies when applying discounts to their lessees.

Any interested party can file information or documents with the Commission, so if you require information or advice regarding this investigation, please contact our antitrust practice group.

En caso de requerir más información sobre la alerta de Competencia Económica - Mercado Inmobiliario No Residencial, comuníquese con sus contactos habituales en Nader, Hayaux y Goebel, o con [Alejandro Mendiola D.](mailto:amendiola@nhg.com.mx) +52 (55) 4170 3024 **amendiola@nhg.com.mx.**

If you require further information on the Antitrust alert - Non-Residential Real Estate Market, please contact your usual contacts in Nader, Hayaux & Goebel, or [Alejandro Mendiola D.](mailto:amendiola@nhg.com.mx) +52 (55) 4170 3024 **amendiola@nhg.com.mx.**

The 10th edition of The Projects and Construction Review 2020

Category: Project Finance, Publications, Real Estate
written by Nader, Hayaux & Goebel | October 26, 2020

We are delighted to announce that the 10th edition of *The Projects and Construction Law Review* was recently published, providing an overview of the Mexican market by Partners [Vanessa Franyutti](#) and [Santiago Medina](#).

Please download the complete document here: [Projects and Construction Review 2020_10th edition](#)

The 8th edition of The Insurance and Reinsurance Law Review

Category: Insurance and Reinsurance, Publications
written by Nader, Hayaux & Goebel | October 26, 2020

We are delighted to announce that the 8th edition of *The Insurance and Reinsurance Law Review* was recently published. With the contribution of our Partner Yves Hayaux-du-Tilly.

Up until June of this year, the insurance market M&A market was active. After a brief pause, we start to see activity resuming and expect to continue seeing further consolidation, growth or a combination of both in the current market players in

Mexico. In particular, we expect health insurance to be a key driver of growth in the insurance industry in the years to come.

We have been leading the Mexican market working with reinsurance and insurance companies as well as brokers in developing parametric insurance products for catastrophic risks...

We are pleased that the regulators have taken a flexible approach to parametric products. It is a matter of time for parametric insurance to replace traditional P&C in catastrophic risks. The pace for this change will be determined by the education of both, consumers and regulators on these type of products.

“While it is a priority for regulators to protect customers and expand insurance protection to the general population, there will be also more intervention of the state in the development of insurance solutions and risk management mechanisms to ensure protection of vulnerable groups, and proper management of catastrophic risks by federal and state governments and state-owned companies.”

“Insurance can be a key instrument for social development. In this sense, innovation and customer protection must be a priority for regulators and the market as a whole.”

“The regulators are aware of the potential of insurtech to give access to vulnerable groups to the benefits of insurance products. Unfortunately, the regulatory regime in effect has become a hurdle rather than an incentive for the development of insurtech products and projects...”

Regulation must not be immune to certain degree of reasonable risk in order to allow new and innovative technology to flourish. For the continuing development of the insurance sector, the regulator must acknowledge and embrace new technologies and understand the uncertain nature of start-ups. In times characterized by overregulation, broad-mindedness is a challenge.

Please download the complete document here: [The Insurance and Reinsurance Law Review - 8th Edition](#)

Nuevas reglas de inversión de las Afores en el mercado mexicano

Category: Capital Markets, Legal Alerts

written by Nader, Hayaux & Goebel | October 26, 2020

El 7 de septiembre, la Comisión Nacional del Sistema de Ahorro para el Retiro publicó modificaciones y adiciones a las disposiciones de carácter general en materia financiera de los sistemas de ahorro para el retiro, conocida como Circular Única Financiera.

El objetivo es regular de forma más clara los criterios que deben cumplir ciertos valores en los que invierten las Afores, incluyendo FIBRAs, FIBRA-Es, CKDs, CERPIs y SPACs, entre otros.

[Consulta el resumen de modificaciones a la CUF aquí.](#)

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Uncertainty in financial markets and its effects on hostile takeovers

in Mexico

Category: Mergers and Acquisitions, Publications, Securities and Capital Markets
written by Nader, Hayaux & Goebel | October 26, 2020

The International Bar Association latest Corporate and M&A Law Committee eBulletin published an article written by our partner Ana Paula Telleria and associate Jenny Ferrón.

Learn more about the effects and opportunities of uncertainty in Mexico's financial markets on the hostile takeovers.

“As the price of shares and other types of securities declines, and the uncertainty in financial markets in Mexico continues, Mexican issuers are experiencing decreases in their market capitalisation compared to their book value. This lays the ground for hostile takeovers of public companies.”

“A comprehensive analysis of defense mechanisms in place within a target, which includes their validity vis-à-vis compliance with applicable regulation, must be exhausted before any takeover strategy is determined and put into action. Some takeover strategies may even include prior discussions with relevant investors and the issuers' board as allies to surpass hurdles built into the issuer as poison pills.”

[Click here to read the complete article.](#)

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Cartels Chambers Global Practice Guide: Mexico Chapter 2020

Category: Antitrust, Publications, Uncategorized

written by Nader, Hayaux & Goebel | October 26, 2020

Learn more about how Mexican competition authorities investigate cartels and the sanctions they can impose in the latest edition of Chambers & Partners' Global Practice Guide on Cartels (2020), written by our Partner [Alejandro Mendiola](#) and Associate [Daniella Ramirez Aguilar](#).

Nader, Hayaux & Goebel's competition team offers a comprehensive analysis of the evolving legal and procedural framework for cartel enforcement, sanctions remedies, and private civil litigation involving alleged cartels, as well as additional comments on the impact of the COVID-19 pandemic.

You can read the full [Cartels Chambers&Partners_Mexico2020](#)

GTDT: Telecoms & Media 2020

Category: Publications, Telecoms

written by Nader, Hayaux & Goebel | October 26, 2020

Find out the latest trends in the Mexican market for Telecoms & Media 2020, published in the last [Lexology Getting The Deal Through](#) publication.

Written by [Partner Julián Garza](#) and [Associate Paulina Bracamontes](#)

- Mexico is very close to deploying 5G, the spectrum with greater capacity, massive connectivity and ultra-high reliability. This will allow for smart cities, real time industrial applications and autonomous driving of vehicles. In addition, they will be safer networks, consume less energy and ease

financial technology.

- In regard to the universal services obligations in telecommunications matter, the Federal Electricity Commission "CFE" created a non-profit program in order to provide services including internet, increasing network coverage and broadband to those areas determined of priority by the Ministry. This has been a topic of importance for several years in order to provide these services to rural communities, in order to achieve a certain level of equality in the matter. This subsidiary "CFE Telecomunicaciones e Internet para todos" has reached its goal of 50 per cent coverage several months prior to the predicted date.
- The creation of "CFE Telecomunicaciones e Internet para todos" was in response to President Andrés Manuel López Obrador's cancellation of the public bidding for Red Troncal since it needed to be modified in accordance to the Mexican Government's vision of providing equal access and use of information and knowledge technologies to those in poverty. The services that should have been provided by Red Troncal will now be provided by "CFE Telecomunicaciones e Internet para todos", and are currently providing non-profit internet services to 40 million people.

To read the full article click here [2020 Telecoms & Media Mexico](#)

Instituciones de Seguros - Régimen de Excepción Temporal en

Obligaciones PLD

Category: Firm news, Insurance and Reinsurance
written by Nader, Hayaux & Goebel | October 26, 2020

El 3 de julio de 2020, la Secretaría de Hacienda y Crédito Público publicó en el Diario Oficial de la Federación un acuerdo por el que se adiciona la Disposición Décima Segunda Transitoria a las Disposiciones de carácter general a que se refiere el artículo 140 de la Ley General de Instituciones y Sociedades Mutualistas de Seguros, con el objeto de establecer temporalmente ciertas excepciones a la obligación a cargo de las Instituciones de Seguros de completar los expedientes de sus clientes al momento en que ocurra un siniestro bajo las pólizas de seguro contratadas.

El régimen de excepción es una respuesta por parte de la autoridad a un problema práctico ocasionado por la crisis derivada del COVID-19, en virtud de que los clientes o beneficiarios, al momento de ocurrir un siniestro, no han podido proporcionar la información requerida por las Instituciones de Seguros para completar su expediente de identificación. Esto ha generado retrasos en la atención a los asegurados o beneficiarios o una imposibilidad por parte de las Instituciones de Seguros de cumplir con las Disposiciones.

Es por esto que la nueva Disposición Transitoria permite, por un plazo de seis meses (del 4 de julio de 2020 y al 3 de enero de 2021), que las Instituciones de Seguros puedan pagar el siniestro sin que tengan que recabar la información adicional de sus clientes o beneficiarios que exige dichas Disposiciones (en particular las Disposiciones Cuarta, Sexta y Séptima), siempre y cuando, la Institución de Seguros pague la indemnización mediante transferencia bancaria o por cheque nominativo al cliente o beneficiario.

En caso de requerir más información en relación a este tema, comuníquese con sus contactos habituales en Nader, Hayaux & Goebel, o con [Yves Hayaux-du-Tilly Laborde](mailto:yhayaux@nhg.com.mx) +52 (55) 4170 3078 yhayaux@nhg.com.mx o [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3035 lperez@nhg.com.mx.