COFECE-019-2021

COFECE fines *Praxair* for failure to comply with commitments made to restore competition in the markets of industrial oxygen, nitrogen and argon

- *In 2018, during the trial-like procedure for possible relative monopolistic practices, Praxair offered commitments with the aim of restoring competition conditions in these markets.*
- *These commitments were systematically breached, therefore the Board of Commissioners of COFECE imposed a fine of 237 million 876 thousand Mexican pesos.*

Mexico City, June 1, 2021.- The Board of Commissioners of the Federal Economic Competition Commission (COFECE or Commission) imposed a fine for 237 million 876 thousand Mexican pesos to *Praxair México* (*Praxair*) for repeatedly and extensively failing to comply with commitments it undertook before this authority to restore competition in the markets of oxygen, nitrogen and liquid industrial argon distributed and commercialized in bulk, commitments which were established after it requested the early termination of file DE-006-2014 and accumulated for possible relative monopolistic practices.

In April 2014, the Investigative Authority initiated an inquiry procedure based on a complaint regarding facts that possibly implied acts, contracts or agreements of *Praxair* with the purpose or effect of unduly displacing or preventing their access to the market. Specifically, the markets in which the probable anticompetitive conducts were investigated were those of distribution and commercialization of oxygen, nitrogen and industrial liquid argon in bulk through cryogenic pipes unloaded in a cryogenic container at the customer's address, with a regional geographical dimension.

These gases serve as inputs in the production of other goods and are used in various industries, for example, aerospace, aviation, automotive, food, chemical, oil and gas, metallurgy, pharmaceutical and biotechnology, refining, water treatment and/or welding and metal production.

Making use of the instrument provided for in the Federal Economic Competition Law[1] of 1992 (LFCE), in May 2018 *Praxair* requested the early closing of the trial-like procedure, in exchange, it presented before the Board of Commissioners several commitments to suppress the investigated conduct and restore the process of competition and free market access. In this regard, the Board of Commissioners determined to accept said commitments.

However, it was proven that the economic agent failed to comply in a generalized manner and on several occasions with several of the commitments assumed. Thus, *Praxair* violated both the verification process, and the corrective effect of the commitments it assumed to restore competition, by increasing its client's cost to switch provider and, therefore, facilitating its capacity to retain them, which induces an exclusivity; in addition, limits the competitors' entry and/or expansion.

In general, *Praxair* failed to comply with the obligations of the commitment resolution by: (i) failing to amend a customer's contract to include the commitments, despite its request to do so, (ii) failing to submit or extemporaneously submitting information related to the verification process (lists of contracts, acknowledgements of communications); (iii) failing to include in the stipulation in favor of third parties the obligation to modify the automatic renewal conditions for automatic without modifying the initial mandatory term of Praxair's contracts and agreements; (iv) not modifying diverse supply contracts in the established term; and (v) entering into amending contracts and agreements in which: (a) it was omitted to limit the preferential supply for those facilities on which *Praxair* invested; (b) the initial mandatory term was modified; (c) the address to conduct the preferential supply was not identified; (d) an automatic extension was established to the validity for a period similar to the original, except with a months' advance notice; (e) neither the renewal conditions nor the consequences for early termination were adjusted to those indicated in the resolution of commitments, and/or (f) it was omitted to make the investment amounts transparent in the terms thereby established.

Due to the foregoing, the Board of Commissioners declared the breach of a part of the commitments acquired by *Praxair* and, consequently, imposed on it a fine of 237 million 876 thousand Mexican pesos. In addition, a 45-working-days term beginning on the day of notification of this resolution was granted so that compliance with all the acquired

[1] This matter was processed in accordance with the Federal Economic Competition Law of 1992, last updated on April 2012.

commitments is proved. In the contrary case, it can be imposed with fines as enforcement measures equivalent of up to 1,500 thousand times the daily value of the Unit of Measurement and Update (UMA) for each day that passes without compliance with what was ordered.

The Law grants the sanctioned economic agents the right to appear before the Federal Judicial Power so the legality of COFECE's actions is reviewed.

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MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, COFECE seeks better conditions for consumers, greater output and better services and a "level playing field" for companies.