

# RITCH

## M U E L L E R

### **COFECE closes investigation on concentration in the market of diesel and gasoline**

Due to the lack of sufficient evidence, the Federal Commission for Economic Competition (“COFECE” or the “Commission”) has proceeded to the early closing of case file DE-018-2017, consisting in an investigation on the alleged implementation of an illegal concentration in the market for the commercialization, distribution and sale to the public of diesel and gasoline (the “Relevant Market”).

On December 16, 2015, Unegas, an association of petrol stations, held an extraordinary shareholders' meeting, whereby its shareholders decided to increase the company's fixed and variable capital stock and to issue new shares, which were subscribed by new shareholders who are also owners, managers or representatives of various gasoline and diesel retail stations (the “Transaction”).

On June 1, 2017, competing petrol station chain Gasmart filed a complaint before COFECE pointing to the implementation of an allegedly illegal concentration by Unegas, derived from the Transaction. COFECE started an investigation on these allegations on September, 6, 2017.

In a decision by COFECE's Plenary Session dated 17 October 2019, the Commission resolved that there were no elements to determine the existence of an illegal concentration due to the following reasons:

1. Since its constitution and until its dissolution, Unegas did not perform any commercial activity referring to the import, commercialization, storage, transportation, distribution or sale to the public of gasoline and diesel;
2. Due to the lack of Unegas' participation in the Relevant Market, the transaction did not confer the company market power that would have facilitated an abuse of dominance;
3. Since the diesel and gasoline purchases continued to be made individually by the shareholders, the transaction did not have the purpose or the effect of establishing barriers to entry or foreclosing actual or potential competitors; and
4. The early dissolution and liquidation of Unegas meant that it will neither acquire market power in the future nor will it be able to carry out any anti-competitive conduct.

COFECE also analyzed whether the Transaction triggered the thresholds that make the Commission's clearance mandatory, concluding that the Transaction was below the statutory thresholds and, therefore, Unegas did not require COFECE's authorization to implement the Transaction.

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Should you require additional information or legal advice on antitrust and competition law-related matters, do not hesitate to contact Octavio Olivo Villa ([oolivo@ritch.com.mx](mailto:oolivo@ritch.com.mx)), James E. Ritch ([jritch@ritch.com.mx](mailto:jritch@ritch.com.mx)), José Miguel Ortiz Otero ([jmortiz@ritch.com.mx](mailto:jmortiz@ritch.com.mx)) or Marta Loubet Mezquita ([mloubet@ritch.com.mx](mailto:mloubet@ritch.com.mx)), members of the antitrust and economic competition team at Ritch Mueller.

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