

Pemex fined US\$22 million for tardy audit report

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28 August 2018



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Mexico's competition enforcer has fined Pemex US\$22 million for breaching a 2016 commitment by failing to submit an audit report on time, but the state-owned oil company claims it complied with its obligations.

Yesterday, the Federal Economic Competition Commission said Pemex Transformación Industrial failed to submit an external auditor report reviewing the conditions on which Pemex sells and commercialises gasoline products to third parties. The first report was due during the first three months of 2017, but was instead delivered in March 2018 – a year past the deadline, the Mexican enforcer said.

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An annual presentation of an auditor's report was one of the commitments Pemex agreed in 2016, to end COFECE's abuse of dominance investigation into the company's commercialisation and distribution of marine diesel oil, jet fuel, liquefied petroleum gas and diesel.

Before the introduction of Mexico's 2016 oil reforms, end customers could only buy gasoline from Pemex franchisers. After the reforms, third-party companies could sell and commercialise the gasoline themselves to end customers, but still had to buy the gas from Pemex.

Pemex also agreed not to give preferential treatment to certain buyers, not to stop sales to others, to update its sales contracts and to provide data to COFECE every six months.

COFECE said the delay of the audit report prevents the agency from accessing information needed to determine whether Pemex is complying with the settlement agreement.

However, Pemex denied any wrongdoing and said it will exercise its right to challenge the decision before the courts, on the grounds that COFECE was wrong to believe the first report was due at the start of 2017.

Sending the report at the start of 2017, just four months after the commitments were signed, "contradicts the [annual] nature established by the commission itself", Pemex said.

This is not the first time COFECE has accused Pemex of violating its 2016 commitment agreement.

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Last year, the petroleum company was [fined](#) US\$20.5 million for failing to publish on its website the benefits to which consumers were entitled, and on what conditions those benefits might be suspended. COFECE also said the company failed to comply with a commitment not “to suspend first-hand sales to contractual users or commercialise oil products on a discretionary basis”, and failed to publicise all the remedies it had agreed, which was itself a breach.

Fernando Carreño, a partner at Von Wobeser y Sierra in Mexico City, said COFECE has been turning its attention recently to strict compliance and in the last two years there have been a couple of cases relating to a breach of commitments.

“This fine is a clear message from COFECE that strict compliance of commitments is top priority and companies have to be very careful in looking at strict compliance, otherwise they will face large fines,” he said.

The fine was imposed only because of the delay in submitting the report, Carreño said, but Pemex can also be fined again if it is found not to have complied with the substantive requirements of the settlement.

Luis Omar Guerrero Rodríguez at Hogan Lovells in Mexico City noted that Pemex is entitled to challenge the fine before Mexico’s specialised competition tribunal in Mexico City.

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