

## Competition in the Energy Sector: Recent Developments in Latin America

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## Introduction

The energy sector has been under the careful watch of policymakers and competition authorities. It is an industry with particular characteristics that justify a special degree of attention, including the importance of guaranteeing a reliable energy supply, as well as environmental considerations, non-storability (in most energy markets), homogeneity, and inelasticity of consumer demand. The OECD has discussed some of these issues in past years, which provides useful insight to assess the challenges and possible solutions related to competition issues in the energy sector.<sup>2</sup>

Governments around the world have joined in a global effort to achieve net-zero emissions by 2050, which will require substantial investments and a transformation of the traditional energy business model. The International Energy Agency (IEA) believes that a new energy economy is emerging.<sup>3</sup> This is understandable when considering that the energy sector is responsible for 73% of global greenhouse gas emissions, representing energy demand in electricity, transport, and for industry. The main sources of such emissions in the energy sector are fossil fuels, such as coal, natural gas, and oil.<sup>4</sup>

The emergence of electric cars is a concrete illustration of this energy transformation: sales reached a record of 3 million units in 2020, up 40% from 2019 despite the COVID-19 crisis that reduced overall car sales by 16%. Certain scenarios predict that electric cars will account

for over 60% of new car sales by 2030, compared to only 4.6% in 2020.<sup>5</sup> The sales in Latin America are also rising with an average yearly increase of around 75% in 2021.<sup>6</sup>

The transformation of the energy sector towards a “greener” future is not the first big shift occurring in this industry. Many countries liberalised their energy markets during the last few decades. Traditionally, such markets were regulated by strict legal frameworks, in which a monopolist incumbent (usually State-controlled) operated the entire energy market infrastructure. In these processes, competition authorities helped to shape regulation for new entrants, and to ensure the supply of energy at the lowest possible price.

In Latin America, competition authorities had relevant experiences dealing with the energy sector following liberalisation. Common actions include advocacy initiatives related to pro-competitive reforms and the design of public auctions, in addition to enforcement actions particularly those related to abuse of dominance cases. In the following section we explore some developments on these fronts looking at examples from Mexico, Colombia, Brazil and Peru recently shared within the activities of the OECD Regional Centre for Competition in Latin America.<sup>7</sup>

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<sup>2</sup> OECD (2021), *Environmental Considerations in Competition Enforcement*; OECD (2020), *Sustainability and competition*; OECD (2017), *Radical Innovation in the Electricity Sector*; OECD (2007), *Energy Security and Competition Policy*. All available at: <https://www.oecd.org/competition/roundtables.htm>.

*Electric Vehicles*, available at [www.iea.org/reports/electric-vehicles](http://www.iea.org/reports/electric-vehicles).

<sup>3</sup> IEA (2021), *A new energy economy is emerging*, available at: <https://www.iea.org/reports/world-energy-outlook-2021/a-new-energy-economy-is-emerging>.

<sup>4</sup> Hannah Ritchie, Max Roser and Pablo Rosado (2020), *CO<sub>2</sub> and Greenhouse Gas Emissions*, available at: <https://ourworldindata.org/emissions-by-sector>.

<sup>5</sup> IEA (2021), *Electric Vehicles*, available at [www.iea.org/reports/electric-vehicles](http://www.iea.org/reports/electric-vehicles).

<sup>6</sup> Global Fleet (2021), available at [www.globalfleet.com/en/safety-environment/latin-america/analysis/electric-vehicles-sales-latin-america-2021-and-beyond](http://www.globalfleet.com/en/safety-environment/latin-america/analysis/electric-vehicles-sales-latin-america-2021-and-beyond).

<sup>7</sup> For further information about the OECD Regional Center for Competition including its newsletters and agenda of the next capacity building activities, see here: [www.oecd.org/competition/oecd-regional-centre-for-competition-in-latin-america.htm](http://www.oecd.org/competition/oecd-regional-centre-for-competition-in-latin-america.htm).

## Advocacy initiatives

On the advocacy front, recent experiences from Mexico and Colombia illustrate the role that competition authorities can play in moving towards a green energy transition.

In 2021, Mexico's Federal Economic Competition Commission (COFECE) issued a public report to improve regulations concerning Clean Energy Certificates (*Certificados de Energía Limpia* – CEL), which is an instrument that provides incentives for generating electricity with clean technologies under the framework of the Electricity Industry Law and the Energy Transition Law. The World Bank and the International Competition Network (ICN) have commended COFECE for its advocacy actions to preserve competition in the national electrical industry, which includes work related to the promotion of alternative sources of energy including solar and wind power.

In 2019, the Colombian Superintendence of Industry and Commerce (SIC) also developed an advocacy initiative in the energy sector which relates to renewable energy auctions in Colombia. The purpose of the tenders was to diversify the energy matrix through the inclusion of generation technologies using non-conventional renewable energy sources (NCRE),<sup>8</sup> exploiting Colombia's unexplored solar and wind energy potential. The energy regulator proposed an auction design, which benefited from the recommendations of SIC, in particular to increase competition in tenders. For instance, SIC recommended to arrange a set of subsequent tenders (instead of a single tender) in order to enable the participation of companies that were still preparing to enter the market and would only be able to provide renewable energy sources after the initial date indicated in the first auction model based. As a result of joint efforts by the energy regulator and SIC, the country was able to carry out a competitive auction that is expected to multiply by 40% the current capacity for generating electricity using clean

sources such as solar and wind, with significant lower costs for final users.

## Enforcement actions

The main enforcement actions in the energy sector in Latin America concern abuse of dominance cases. Although not related to clean energy, these enforcement actions also illustrate the role competition authorities may play in assessing the particularities of the energy sector and ensuring competitive markets.

In 2019, the Brazilian Administrative Council for Economic Defence (CADE) entered into a key commitment agreement with the state-controlled enterprise Petrobras concerning alleged abuse of dominance in the Brazilian markets for natural gas and refinement of crude oil, in particular related to pricing policy and complaints that it was favouring its own subsidiary companies. As part of their commitment, Petrobras offered to sell eight oil refineries and related infrastructure in order to eliminate vertical integration. By stimulating the entry of new players in this market, CADE expects to promote lower prices and greater incentives for private investment. The divestment package represents approximately 50% of the Brazilian state's refining capacity.

In 2021, the Peruvian National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI) fined two electricity distribution companies (Ensa and Seal) for abusing their dominant position. The cases started from a complaint made by Atria, one of the country's energy generators, which competes with the distribution companies since it also sells electricity to end-users. In Peru, there are three categories of electricity users: (i) users subject to regulated prices, (ii) users subject to free prices, and (iii) users whose demand varies between 200kW and 2500 kW who may choose to continue as regulated users or switch to free prices (generally affecting small

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<sup>8</sup> Law n° 697/2014 defines NCRE as energy sources available worldwide that are environmentally sustainable, but which in the country are only marginally used and are not widely commercialised. In Colombia, this would include solar energy, wind energy, energy derived from biomass, and geothermal energy (Eras, et al.: "A look to the Electricity Generation from Non-Conventional Renewable Energy Sources in Colombia", *International Journal of Energy Economics and Policy*, vol. 9, 2018. Available at: [www.researchgate.net/publication/329488095](http://www.researchgate.net/publication/329488095).

and medium-sized enterprises). The abusive conduct relates to the third category of users, since Ensa and Seal were applying discriminatory conditions to end-users who switched to the free prices regime and bought directly from one of the energy generators. The regulation imposes a prior notice of one year to switch regimes, in addition to certain requirements such the installation of proper equipment to measure energy inputs and guaranteeing a certain level of safety. However, distributors Ensa and Seal were only enforcing this regulation for end-users who changed regime and switched to a competitor energy provider, but not for those that changed regime and kept doing business with them. For this reason, INDECOPI sanctioned both distributors for abusing of their dominant position. It also issued recommendations to improve the current regulation and reduce the chance of further similar abuses.

## **Conclusions**

The world is seeing the increasing role of renewable energies, which will require large investments and new regulatory frameworks. In this context, competition authorities have a role to play in advocating for the benefits of competition before governments and regulators, as seen in the advocacy experiences of Mexico and Colombia. Enforcement experiences will ensure that competition authorities are well aware of the specifics of the energy sector, as seen in recent cases in Brazil and Peru. Competition authorities will need to scrutinize potential collusion, assess the role of disruptors, and investigate behaviours that may lead to the exclusion of new firms and new business models, in addition to mergers that could involve incumbents and new players alike. For this purpose, international cooperation – including at the regional level in Latin America – will remain a key instrument for assessing and tackling these challenges.