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Discussion topic.

“Commercial” concentrations and collusion.

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1. The Federal Commission on Economic Competition (“Cofece”) issued an “Opinion” regarding airlines alliances.¹ Thereby Cofece establishes that certain commercial deals between independent economic agents could be regarded as concentration pursuant to Federal Law of Economic Competition (“LFCE”), article 61:

“Pursuant to article 61 of LFCE “[...] **it is understood as a concentration** a merger, control acquisition **or any act whereby get united** firms, associations, shares, social parts, trusts or assets in general as carried out among competitors, suppliers, customers or any other economic agents” ... Under this view an alliance between national and foreign airlines could qualify as a concentration if it implies a combination or joint use of assets or resources according to the referred to definition. (Opinion p. 2).

2. That is to say, according to Cofece a concentration may arise from a commercial transaction which does not necessarily involve transference of assets or capital stock, as it is most commonly understood. We could call such transactions **“commercial concentrations”**.

3. LFCE considers **collusive acts or conducts** in article 53:

“Article 53. Absolute monopolistic practices are regarded **illicit, including contracts, agreements, arrangements or combinations between Economic Agents who compete with each other**, having as object or effect any of the following:

- I. To fix, increase, harmonize or manipulate the selling or purchasing prices of goods or services supplied or demanded in markets;
- II. To establish the obligation of not producing, processing, distributing, trading or acquiring but a restricted or limited amount of goods or to offer or trade a restricted or limited number, volume or frequency of services;
- III. To divide, distribute, assign or impose fractions or segments of a current or potential market of goods and services, through customers, suppliers, schedules or spaces determined or determinable;
- IV. To establish, harmonize or coordinate bids or to refrain from bids, contests, auctions ...;

¹ Ref. Acuerdo No. CFCE-275-2014 at <http://www.cofece.mx:8080/cfcresoluciones/docs/Mercados%20Regulados/V5/12/1861454.pdf>

- V. To exchange information with some of the objects or effects referred to in preceding sections.
...

4. QUESTIONS TO BE ANSWERED:

Let's say that two competitors arrive to a commercial deal which could be regarded as a concentration with the object or effect to act somehow jointly in the market, should that "commercial concentration" be analyzed as such or should be analyzed as a collusive act?²

² Previous issues that should be clarified are: i. What type of commercial deals are concentrations?; ii. How to apply filing monetary thresholds to such a deal?