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Competition Law. The useless article 7th.

Discussion Topic

This Note is personal. It does not necessarily reflect VA&BA position

0. In this Note it is argued that article 7 of the Federal Law of Economic Competition (FLEC or Competition Law) has been rendered useless by the Executive Power.
1. Competition Law contains a couple of provisions aimed to regulate the way in which the Executive Power may impose price regulations on goods or services. To such an effect there has to be an application for a resolution by the Federal Competition Commission (FCC) on conditions of effective competition in the relevant market concerning the targeted good or service.
2. The related provisions indicate:¹

Article 7. The following shall be observed when setting prices, under the provisions of article 28 of the Constitution, on the products and services necessary for the national economy or for popular consumption:

I. The Federal Executive shall be exclusively competent to determine, by decree, the goods and services for which prices shall be set, provided conditions of effective competition do not prevail in the relevant market involved. The Commission shall, by declaration, determine whether conditions of effective competition do not exist.

II. The Ministry[of Economy] shall, without prejudice to the attributions vesting in other Agencies and having first obtained the opinion from the Commission, set the prices for the goods and services determined as set forth in the preceding section, on the basis of criteria meant to prevent supply shortages.

The Ministry shall be entitled to agree upon and coordinate with producers or distributors as to the necessary actions or modalities in the above matters, striving to minimize the effects on competition and free access to markets.

¹ Translation into English by Ed. Themis 2009.

The Consumer Protection Agency, under coordination by the Ministry, shall be responsible for the inspection, oversight and the imposition of sanctions, in regard to the prices that are set as provided in this article, in accordance with the provisions of the Federal Consumer Protection Law.

...

***Article 33 Bis.** When legal or regulatory provisions expressly provide that a resolution must be issued on matters regarding effective competition, the existence of substantial power in the relevant market or other analogous matters, the Commission shall issue the relevant resolution on its own initiative, at the request of the respective authority, or upon request of the affected party. **In the case of article 7 hereof,** the Commission may only issue a resolution at the request of the President. In all cases the following procedure must be observed:*

I. In the case of a request submitted by a party or by the relevant authority, the petitioner must submit the information that allows for the determination of the relevant market and substantial power under the terms of articles 12 and 13 hereof, and also provide the grounds for the need for a resolution to be issued. The Regulations hereof shall establish the requirements to be met in submitting requests;

...

VII. Once the case file has been completed within a term not to exceed thirty days, the Plenum of the Commission shall issue the pertinent resolution, which must be notified to the competent authority and published in the publications of the Commission and the relevant data in the Official Daily of the Federal Government.

3. Not long ago, the FCC was requested to issue a resolution on conditions of effective competition concerning the sale of liquefied petroleum gas (lp gas).
4. Pursuant to formal procedures as stated in FLEC's article 33 bis the FCC has firstly to publish "relevant data" of a Preliminary Resolution in the Federation's Official Gazette (FOG) in order to receive and evaluate comments by interested parties.

Once such evaluation gets completed "relevant data" of a Final Resolution has to be published by the FCC in FOG and the Final Resolution has to be served to the requesting authority. Thereafter the corresponding authority may apply regulatory measures.

5. In the specific case of the lp gas issue the FCC published relevant data concerning a Preliminary Resolution (see FOG, August 29, 2007). We understand that later on

the competition bureau followed due procedures to arrive at a Final Resolution. Yet to this date there is not a corresponding publication in FOG. To the best of our knowledge this overdue compliance is beyond FCC's control, being such the case, the end result practically renders FLEC's article 7th useless and conveys lack of transparency in the Executive policy decisions.
