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On vertical restraints.

How do we put together articles 10 and 11 of Competition Law?

Discussion topic

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

0. With respect to the Federal Law on Economic Competition (FLEC), hereinafter it is argued that “market” referred to in article 10 is coherent with the “relevant market” referred to in article 11, only insofar as the first one is understood to be either the “relevant market” itself or a “market related” to the relevant market. A related market should be understood as one located in the same “productive chain” as the “relevant market”.

1. According to FLEC:

*Article 10. If existence of any of the circumstances provided for in articles 11, 12 and 13, hereof is evidenced, the acts, contracts, agreements, procedures or combinations the purpose or effect of which is or may be to unduly displace other agents from, or substantially preclude their access to, **the market**, or to create exclusive advantages in favor of one or several persons are considered to be relative monopolistic practices in the following cases:*

...

Article 11. For any of the practices described above to be deemed a violation hereof, the following shall require to be evidenced:

*I. That the person presumably responsible thereof possess substantial power over the **relevant market**;*

*II. That any such practices have been followed in respect of goods or services corresponding to the **relevant market** concerned.*

2. In terms of economic analysis within the FLEC’s framework, article 10 refers to “vertical restraints”. That is to commercial conducts taking place in the different links of a “productive chain”. This latter may be –although not always- comprised

of three markets: “production”, “distribution” (wholesale), and “commercialization” (retail).

3. An economic agent who has substantial power in say the relevant market of production of a given good may perform anticompetitive commercial conducts to unduly affect its “competitors” in the same relevant market of production of that good.
4. However, the agent with such substantial power may also affect its competitors thus defined if she performs acts either in the related market concerning distribution (wholesale) or in the related market concerning commercialization (retail) of the same good.
5. Presumption of acts as described in preceding paragraphs 3 and 4 can trigger investigations pursuant to FLEC’s article 10.
6. Notice that the above criterion precludes the application of FLEC as to relative monopolistic practices by an economic agent against another one, whenever each one concurs in markets of different “productive chains”.
7. The proposed criterion questions the applicability of an analysis based on LFCE’s article 10 concepts to complaints by fixed-voice telecoms against certain “anticompetitive” commercial conducts of mobile-voice telecoms. (See the document by the Federal Competition Commission, OPN-003-2005 at http://www.cfc.gob.mx/images/stories/resoluciones/extractos_de_resoluciones/opiniones/2005-04-20_EQLLP.pdf).