Draft translation of the Resolution on

Concentration Indexes (April 2009).

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Friday 24, July 1998 Official Gazette

FEDERAL COMPETITION COMMISSION

RESOLUTION whereby it is publicized the calculation method to determine the concentration level present in the relevant market as well as its application criteria.

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RESOLVES

FIRST. Concentration indexes will be computed based on market shares of economic agents in the relevant market, without any other information to determine the competition degree.

Therefore they are only auxiliary for the analysis of existence of substantial power in the relevant market.

This implies they should be analyzed separately from other elements as stated in articles 13 and 18 sections II and III of the Federal Law of Economic Competition and 12 of its Rulings, such as entry barriers, competitors power, access to input sources, recent conduct of agents, access to imports, ability to set prices different to those of competitors and the existence of high costs differentials as may be faced by consumers calling upon other suppliers.

Market shares will be measured taking into account data on sales, number of customers, productive capacity or any other factor as the Commission regards convenient. The Commission shall consider in a prior way the monetary value of total sales in the relevant market, since they are more trustworthy and their interpretation more direct, without prejudice of utilizing other data such as volume, weight or any other type of measurement units more appropriate for a specific case.

Hereinafter q_i will be the share of economic agent "i" in its respective market. Computation of market share will be made in percentage points. That is if Q_i represents its sales value, and Q is the sales value of all economic agents in the market ($Q=\sum_J Q_J$), then $q_i = (Q_i/Q)*100$.

SECOND. Substantial power of an economic agent in a relevant market depends upon its size as reflected by its share q_i, as well as upon its relative size with respect to the other economic agents in the market. With the purpose of accounting for both agents' size according to their market share and agents' relative size with respect to others, the Commission will compute two indexes, as follows:

2.1. The Herfindahl (H) index will be computed, this is the result of adding up squared shares of each economic agent ($H=\sum_i q_i^2$). This index may take values between zero and ten thousand. The minimum value corresponds to a case of a highly fragmented market, in such a case the market is split into a large number of economic agents, each one with a minor size. At the other extreme, the maximum value corresponds to a case of a pure monopoly, whereby just one economic agent holds one hundred per cent of the market.

By being computed directly from shares, the H index is an average of economic agents' sizes in proportion to the market (q_i). This concentration index is referred to the size of the economic agents.

2.2. The Dominance index (ID) will also be computed. To this effect as a first step it will be computed the percentage contribution h_i of each firm to the H index as defined in the previous paragraph ($h_i = 100*q_i^2/H$). Afterwards the ID value will be computed by applying the Herfindahl formula but employing h_i contributions instead of q_i shares (that is, ($ID=\sum_i h_i^2$).

It is pointed out that ID is a concentration index referred to h_i contributions, which in turn depend on each firm size with respect to the others size. Thus, it is an index whose computation takes direct account of the relative size of some firms with respect to others. This index also takes values between zero and ten thousand for a fragmented market or a monopolized one respectively.

THIRD. To compute indexes as resulting from a concentration, it is assumed that if such a transaction takes place, agents who are not involved therein shall keep their market shares. Under such assumption, any merger in the same market always increases H. On the other hand, ID can increase or decrease according to the size of those agents being merged as compared with the size of the other agents in the market. The index decreases whenever the merging agents have a relatively small size as compared to the size of the larger agents. This reflects a case in which economic agents of small size merge and thus can compete under less unequal circumstances with one or more dominant agents in the market.

FOURTH. The Commission will consider a concentration having few probabilities of harming the competition process and free access to markets whenever a merger results in any of the following situations:

4.1. H increases by less than 75 points;

4.2. The H value is less than 2,000 points;

4.3. The ID value decreases;

4.4. The ID value is less than 2,500 points.

FIFTH. The Commission shall consider a concentration may have the effect to diminish, harm or impede competition and free access to markets, even though the resulting indexes are under the situations referred to in the previous section, whenever the involved economic agents in the merger present the following circumstances:

5.1. Have been involved in previous mergers in the same relevant market.

5.2. Due to their proprietary relationship with other agents may have privileged access to an important input, or obtain advantageous situations in distribution, retailing or advertising of the good or service in the relevant market.

5.3. Have or may have substantial power in related relevant markets.

5.4. Present a circumstance whereby at Commission's discretion may represent a concentration of market power which is not reflected in recorded shares in the relevant market and thus their effect is not captured by the concentration indexes.

Pursuant to article 49 of the Federal Law of Economic Competition Rulings the Federal Competition Commission will resolve doubts or clarifications posed by the economic agents concerning this Resolution.

SIXTH. Publication in the Federation's Official Gazette is ordered.

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