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Discussion Topic.

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This is a personal opinion, does not necessarily reflect VAYBA's position.

COLLUSION IN THE RICE MARKET ?

1. On May 28th, 2008, rice producers and traders signed a “**National Rice Agreement**”, (**Agreement**) having federal government authorities as honorary witnesses.
2. The Agreement has several objectives; one of them is to reduce the negative impact of high prices to consumers. The Agreement has also several measures, in particular producers agreed to sell at a price 10% below the international ‘indifference’ price.
3. The Federal Law on Economic Competition (FLEC) establishes a **Procedure** for agreements between competitors which are not punishable by the FLEC itself:

“Article 7. – Pursuant to Article 28 of the Federal Charter for imposition of prices to goods and services necessities for the national economy or popular consumption the following rules shall apply:

I. The Executive Power shall determine by decree goods and services that can be subjected to prices, as long as there are not conditions for effective competition in the concerned relevant market. The Commission shall resolve whether there are effective competition conditions.

II. The Ministry [of Economy] without prejudice to other agencies' faculties and powers and with a previous opinion by the Commission shall fix the prices for the particular goods and services pursuant to the preceding section, based on criteria oriented to avoid scarcity.

The Ministry could agree and coordinate with producers or distributors the actions or modalities needed in this matter, minimizing the effects on competition and free access to markets.....”

In turn the appropriate **Procedure** is established in the following terms:

FLCE:

“Article 33 bis....Pursuant to Article 7 of this Law, the Commission will only be able to issue a resolution following a Federal Executive’s petition....”

I. Following a request....by the respective authority, the petitioner must file information to determine the relevant market and the substantial power in terms of articles 12 and 13 of this Law, she should also justify the need to issue the resolution....”

Articles 53-55 from the Law’s Code of Regulations single out elements that should be taken into consideration to complete the Procedure.

4. The FLEC establishes which type of agreements among competitors, that is, **Collusive Agreements**, are sanctionable:

“Article 9. Absolute monopolistic practices are contracts, arrangements, agreements or combinations between economic agents competing among themselves, whose objective or effect may be any of the following:

I. To fix, raise, arrange or manipulate the selling or buying price of goods or services in the market, or exchange information with the same purpose or effect...”

Acts referred to in this article will not produce juridical effects and the economic agents performing them will be penalized as established in this Law, without prejudice to penal responsibility that may result”.

Complementarily FLEC’s Code of Regulations states:

“Article 9.- Instructions or recommendations issued by business chambers or associations to its members with the purpose or effect to carry out conducts established in article 9th of the Law are indicia of an absolute monopolistic practice,

Conducts referred to in FLEC's article 9, section I may be inferred whenever:

I. The selling price offered in national territory by two or more competitors in goods or services viable of international exchange, is significantly higher or lower than its international reference price, except when the difference is derived from the application of taxes, shipping or distribution expenses, and

II. Two or more competitors establish the same maximum or minimum prices for a good or service or they adopt the selling or buying prices of a good or service issued by an association or business chamber or any other competitor.”

5. There is not public knowledge that the authorities have proceed according to FLEC's article 7.

6. It can be concluded that the Agreement mentioned in section number 1 constitutes a Collusive Agreement among competing economic agents. Such an Agreement should be penalized according to article 9th of the FLEC.

7. **Recommendation:** The FLEC should be modified so as the authorities can take emergency measures without abandoning the legal frame.