

Draft

EFFECTIVE COMPETITION AND JOINT SUBSTANTIAL POWER **An amendment proposal to the Federal Law of Economic Competition**

Álvaro R. Sánchez G. and Rubén Sánchez Romero¹

I. Introduction.

1. Substantial market power and effective competition are two basic concepts for the analysis of economic competition. The purpose of this essay is to point out the difference between them as such difference implies legal and economic consequences. Although the Federal Competition Commission applies both concepts in an “analogous” way, we consider that a well defined distinction requires an amendment to the Federal Law of Economic Competition.

2. The Federal Law of Economic Competition (hereinafter LFCE from its abbreviation in Spanish or “the Law”) uses the concept of substantial market power to point at the monopolistic power of a single economic agent within a determined market. This concept has a wider meaning than the mere etymological meaning of the term monopoly. The Law regards an economic agent with substantial market power when it has the ability to unilaterally decide the price or the supply of a good (or service), without necessarily being the only producer of it; for such an effect, it is enough that none of the competitors have the capacity to establish a different price or supply that affects the decisions and expected results for the agent with substantial power.

3. The Law instructs to apply the concept of substantial market power (PSM) in two well defined settings:

- i. To determine and penalize relative monopolistic conducts;
- and
- ii. To challenge or penalize concentrations.

In contrast to PSM, the concept of effective competition has not a specific development in the Law; however, said concept establishes a direct link between the competition circumstances in a market and the application of regulatory measures within such market.

4. There are certain rulings, such as the Code of Regulations for Liquefied Petroleum Gas and the Civil Aviation Law, which entail a link between the competition analysis of a market performed by the Federal Competition Commission (CFC) and the political measures the regulatory authority of such market may establish as a consequence of CFC’s analysis.

5. The Law establishes that effective competition and PSM are analogous concepts also that the analysis to determine if there are conditions for effective competition or

¹ Álvaro R. Sánchez G., economic consultant from Valdés Abascal & Brito Anderson, S.C. Rubén Sánchez Romero, economist and international specialist.
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the presence of an agent with PSM must be carried out in the same manner. The available information up-to-date conveys the idea that the concept of effective competition as used by the CFC implies the concept of joint substantial market power.

6. Due to the imprecise way in which the LFCE tackles the concept of effective competition, evaluations have been done and conclusions have been established based on elements not contained in the Law. In this document, some examples are stated on the subject as well as a proposal for amendments to the Law to cope with the abovementioned imprecision.

7. In sections II and III, the articles from the LFCE that contain the concept of PSM and of effective competition are quoted respectively. In section IV examples of decisions related to the concept of effective competition are stated and it is indicated how, without being explicitly mentioned, the concept of joint substantial market power is associated. In section V the implications that these concepts have on the analysis of relative monopolistic practices and concentrations are mentioned. Section VI contains final considerations and section VII concludes with amendment proposals to the LFCE.

II. Substantial power

8. The concept of substantial power can be read in section I of article 13 of the Law:

“Article 13. To determine if an economic agent has substantial power in the relevant market, account should be taken of:

- I. Its participation in such market and if it can fix prices unilaterally or restrict the supply of the relevant market without the competing agents being able to, factually or potentially, counteract such power”*

This concept is reiterated in article 17 of the Law:

“Article 17. When evaluating concentrations, the Commission ought to consider as indications of the assumptions referred to in the preceding article, that the act or attempt to act:

- I. Grants or could grant to the merging agent the power to fix prices unilaterally or to substantially restrict the supply in the relevant market, without the competing agents being able to, factually or potentially, counteract such power”*

9. The Law establishes the application of the concept of substantial power to define **relative monopolistic practices**. Article 10 from the LFCE states the following:

“Article 10. Subject to proving assumptions referred to in articles 11, 12 and 13 from this Law, relative monopolistic practices are acts, contracts, agreements, procedures or combinations whose object or result be or might be to improperly displace other agents from the market; to substantially hinder their access or establish exclusive advantages in favor of one or several persons....”

Following the quoted rule article 11 reads:

“Article 11. The practices referred to in the preceding article might be considered a violation of this Law, when:

- I. The alleged responsible has substantial power over a given relevant market; and*
- II. The practices take place in such relevant market.*

Article 12 has 4 sections that state elements that must be evaluated to define a relevant market. Article 13 contains 6 sections indicating elements to evaluate when an agent has substantial power.

It is worth noticing here that from these 6 sections, the first one, above already quoted indicates the definition of PSM itself, in other words, it will be the result or conclusion of the analysis of the competition conditions in a market that are instructed in sections 2 to 6 from such article 13.

10. Regarding **concentrations**, the Law precisely limits the application of PSM. Article 16 of LFCE rules:

“Article 16. ...The Commission will challenge and penalize those concentrations whose effect or object lessens, damages or hinders competition and the free access regarding goods or services of the same kind, similarly or substantially related.”

In article 17, section I, formerly referred to, it is stated as sufficient condition to challenge a concentration the possibility of obtaining PSM by the merging party.

III. Effective competition

11. In contrast to the identification and application of PSM, the LFCE only establishes in a generic manner the application of the concept of effective competition (CE) and refers to it as an analogous concept to PSM².

Thus, in article 7 of the LFCE a link is established between competition analysis and regulatory measures based on such analysis.

“Article 7. In terms of article 28 of the Constitution, for price determination of products and services deemed necessary for the national economy or popular consumption, the following applies:

- I. It corresponds exclusively to the Federal Executive to determine through a decree the goods and services that can be subject to prices, as long as **there are no conditions for effective competition** within the relevant market concerned. The Federal Competition Commission will determine through a statement if there are not conditions to effective competition.*
- II. The Ministry, without prejudice of the attributions corresponding to other entities and previously considering the Commission’s opinion, will set the prices corresponding to the specific goods and services*

² It is worth noticing that this document is not discussing the different forms in which the concept is found quoted in different rulings that might mean different situations, for example, “conditions of effective competition” in contrast to “effective competition”, etc.

according to the above section, based on criteria that will avoid insufficient supply” (added emphasis)

12. For other rulings concerning specifically to regulated activities, the Law states:

*“Article 33 bis. When legal or regulatory dispositions expressly aims to resolve on **effective competition issues**, existing substantial power within the relevant market or other analogical terms, the Commission by will issue ex-officio, by requirement of the respective authority or by petition of affected party the corresponding resolution. In case of article 7 of this Law, the Commission will only be able to issue a resolution at request of the Federal Executive. In all cases, it will follow this procedure:*

- I. In case the request is by a party or by a respective authority, the petitioner must file the information that will allow to determine the relevant market and the substantial power **in terms of articles 12 and 13** of this Law, as well as to promote the need to issue the resolution. The code of regulations in this Law will establish the requirements for the filing of requests.” (added emphasis)*

The Law's Code of Regulations published in the Federation's Official Gazette on October 12th, 2007, states:

“Article 55. Pursuant to article 33 bis of the Law, the following applies:

- I. The requests...must include...*
 - e) The elements that allow to determine, in terms of articles 12 and 13 of the Law, the relevant market and the substantial power of the market or **the competition conditions...**”(added emphasis)*

The LFCE clearly details the elements that the economic analysis must cover on issues of the existence of substantial power of the relevant market. On the contrary, the Law does not specify the concept of “effective competition”, neither the indicators useful for measure it.³

13. The 1992 Law originally did not contain the concept of effective competition. However, the CFC expressed in a variety of files what should be understood by “CE”.

The 2006 Law's amendments include the CE concept, nevertheless, as it has been mentioned, the manner in which it is included allows for a wide and discretionary interpretation of it.

The following quotes some paragraphs from documents in which CFC states what CE is meant, previous to the amendments. Subsequently, a paragraph is transcribed from the only document that we know of has been elaborated after the amendments.

³ An analysis on the differences in such concepts can be seen in OECD, *Indicators for the assessment of telecommunications competition*. Working party on telecommunications and information services policies. DSTI/ICCP/TISP(2001)6/FINAL. January 17th, 2003.

Before LFCE's amendments⁴ of June 28th, 2006:

- i. " ...for the purposes of the present resolution, this Commission considers the absence of reasonable conditions of competition is equivalent to a situation in which an agent with substantial power in the relevant market prevails"⁵
- ii. "...the procedure over conditions of effective competition is directed to determine the viability of the competition process and the free access from the structure and the functioning of the markets"⁶
- iii. "...All these restrictions [competitors' market shares, their ability to fix prices, without counteraction, controlling sources of supplies and, in general the existence of entry barriers], or some of these, belong to structural situations which affect the efficient functioning of the markets and, therefore, are equivalent to unreasonable competition situations or to nonexistent conditions of effective competition. The ability to fix prices without other economic agents being able to counteract is found both in monopolistic markets and in oligopolistic markets where there are few competitors."⁷
- iv. "...In other words and as an example, it is worth noticing that nonexistent competition conditions in oligopolistic markets obey to their own structure, characterized by few competitors, by establishing situations that produce interdependent conducts and by price parallelism, thus, without any of the participants can or may benefit by counteracting it. Only in exceptional cases of monopoly, absence of effective competition is correlated with the substantial power of the monopolist."⁸

After the amendments to the LFCE:

- v. "...The absence of competition conditions is equivalent to situations in which the economic agent with substantial power over the relevant market prevails and/or in which the prices and quantities offered by the participants in the relevant market, with high concentration levels and entry barriers, are or can be determined by prices' decisions and/or quantities supplied by other economic agents. In this way, the Commission's Plenum has concluded that to determine the possible existence of substantial power or the absence of conditions for effective competition in a specific market, account should be taken of articles 12 and 13 from the LFCE as well as 9°, 10, 11, and 12 from RLFCE [code of regulations]."⁹

⁴ Federation's Official Gazette, 28.06.06

⁵ Mexico City's Airport Group/ Communications and Transportation Department.- Exp. AD-45-99. CFC. *Economic Competition Gazette*, Year 3, no. 7, May- August 2000, p.326.

⁶ Declaration of nonexistence of effective competition conditions in the distribution market of liquefied petroleum gas- Exp. DC-02-2001. CFC. *Economic Competition Gazette*, Year 6, no. 16, May- August 2003, p. 287

⁷ Ibidem, p. 290

⁸ Ibidem, p. 293

⁹ Preliminary Judgment on the possible nonexistence of effective competition conditions in the relevant markets of sale of liquefied petroleum to franchisees, sale of liquefied petroleum gas to final consumers, transportation service by tanker truck, semi-trucks, oil tanker and pipelines. Exp.DC-01-2007, 08.13.07, p.9. referred to CFC's webpage www.cfc.gob.mx

IV. Effective competition and Joint substantial power

14. The CFC establishes market situations without effective competition, comparing them to situations in which a group of economic agents holds jointly substantial power. This concept is put forward by some competition authorities trying to impose regulations or sanctions to prevent or punish the abuse of such joint power. The following points out to some aspects which are important to consider in the analogy presented by the CFC on both terms: PSM and CE.

- i. According to the CFC the PSM's concept is narrower than the CE's. Therefore each one must have its own methodological analysis. However, the LFCE does not contain a specification for the CE cases different to those comparables to PSM;
- ii. The clearest analogy that can be established between both terms is when it is decided that there are not conditions for a CE if an economic agent with PSM exists;
- iii. |In contrast, even when the actions of the agents in oligopolistic markets can bring about results equivalent to those produced if there is only one agent with PSM, the LFCE does not foresee that the competition process can be affected;
- iv. The CFC states that a market cannot be efficient if it has an oligopolistic structure. **According to CFC's argumentation an oligopolistic market might allow that a group of competitors have joint substantial power of the market.**

It is pointed out that in said Preliminary Judgment there is argumentation based on the Rulings of the Law prevailing up to 08.13.07; however, such Rulings were modified on 10.12.07.

This appreciation is contrary to what is established in article 13 from LFCE which prescribes the evaluation that must be done to determine “if **an** economic agent has substantial power in the relevant market”, that is, the LFCE only allows to conclude that one agent, a not many, have substantial power in the relevant market. *[Lic. David Hurtado has made the observation that article 28 of the Constitution Act provides that undue concentrations in one or several “hands” should be punished severely];*

- v. In this sense it is worth mentioning that an oligopolistic market can offer similar prices to those of a market with a large number of competitors and even there are situations in which a market with a lesser number of competitors can offer lower prices than a market with more competitors. (i.e., Due to a better use of scale economies on the supply or network effects on the demand side). Therefore, it is needed to carry out an economic analysis allowing for the existence of an absolute monopolistic practice (i.e. a cartel), in order to determine if the situation can or cannot be regarded as an indicator that the competition process is not being affected;
- vi. Additionally, it is pointed out the CFC argumentation has not clearly identified the characteristics an efficient market must have (i.e. minimal cost production or prices equal to marginal costs, etc.);
- vii. Before the June 28th, 2006 LFCE’s amendments, the concept of effective competition was not included in the Law. However, the CFC in view of other regulations issued its own resolutions applying this concept but lacking adequate normative and analytical grounds;
- viii. The CE concept was included in the 2006 LFCE’s amendments. It was incorporated in a very general manner allowing a discretionary broad margin of interpretation;
- ix. Article 2 from the LFCE could be conveyed to complement the analysis of competition conditions in a market, since it aims to avoid “other restrictions on the functioning of goods and services markets”. However, neither these aspects are specified by the Law thus keeping the evaluation discretionary.¹⁰

It is worth noticing, incidentally, that when the authority compares the concept of effective competition with that of joint substantial power, it is done with a preventive character. That is for a situation with certain probability of taking place and therefore it justifies the actions of the regulatory authority to limit or hinder the market failure. Additionally the CFC is obliged to penalize tacit or explicit collusive conducts pursuant to article 9 of the Law, which states:

“Article 9. Absolute monopolistic practices are: contracts, agreements, arrangements or combinations among competitors, whose **purpose or effect is:**

- I. To set.... prices...

¹⁰ “Article 2°. The purpose of this Law is to protect the competition process and the free access through the prevention and abolition of monopolies, monopolistic practices **and others restrictions to the efficient functioning of goods and services markets.**” (added emphasis)

- II. To establish the obligation of not producing, processing, distributing, marketing or acquiring but only a restricted amount...
- III. To divide, distribute, assign or impose portions or segments of a market..." (Bold words added)

15. Effective competition or analogous terms that involve a relationship of the competition authority with the regulatory authority of the specific market, are registered in different rulings.

For a quick glimpse articles 5 and 7 of the Code of regulations on Liquefied Petroleum Gas, RGLP); article 43 of the Civil Aviation Law; article 53-A of the Civil Aviation Regulation and articles 67 and 69 of the Airports Law are quoted (emphasis added):

-Article 5, RGLP

*"the Ministry is enabled to regulate terms and conditions to which the activities of Transport, Storage and Distribution shall be subject to. It corresponds to the Commission (CRE Comisión Reguladora de Energía) to approve the terms and conditions to which the "First Hand Sales" shall be subject of, **unless effective competition conditions exist according to the Federal Competition Commission.** It corresponds to the Commission the approval of terms and conditions to which the activities of Transport and Distribution through Pipelines (...)*

-Article 7, RGLP

*"It corresponds to the Ministry, within the scope of its attributions to establish through a Guidelines price regulations and applicable rates Transportation, Storage and Distribution activities, **in the relevant markets where the Federal Competition Commission determines the absence of conditions of effective competition.***

It corresponds to the Commission, within the scope of its attributions, to establish through Guidelines the natural Gas price, subject to "first hand sale", as well as the regulation for the Storage and Transportation services are required for natural Gas delivery, object of such sale. In addition, it corresponds to the Commission, to establish through Board of Directors, the regulation of tariffs for Transportation services through Pipelines and Distribution through Pipelines.

The regulations referred to in the previous paragraph will be applicable, unless there are effective competition conditions according to the Federal Competition Commission (...)"

-Article 43, Civil Aviation Law:

"When the Ministry ex-officio, or at affected party's request, considers that it does not exist effective competition among the different concessionaires or permissionaires, it shall request the Federal Competition Commission opinion so, in its case, the Ministry of Communications and Transportations (SCT) (Secretaría de Comunicaciones y Transportes) will sets the basis for tariff regulation. Such regulation shall only be maintained while the conditions that caused it subsist.

In the regulation, the Ministry could establish specific tariffs for providing services, as well as the adjustment mechanisms and periods of enforcement.

*The concessionaries and permissionaires, subject to such regulation could request to the **Federal Competition Commission to express an opinion on the application and permanence of such conditions.***

-Article 53-A, Civil Aviation Ruling:

*“The Federal Competition Commission, during the during the proceedings referred to in the article 50 of the Law’s Code of Regulations and **when it considers that the lack of conditions of effective competition** could affect the public interest, it might request to the Ministry [SCT], as a preventive measure to protect the competition process and free access in the national aerial market, to set the bases for tariff regulation to the concessionaires (...)*”

-Article 67, Airports Law:

*“The Ministry can establish bases for tariffs and prices regulation... related to the contracts that the concessionaires sign with the complementary service providers when **reasonable competition conditions do not exist according to the Federal Competition Commission opinion.***”

-Article 68, Airports Law:

*“When the Ministry ex officio or at an affected party’s request, considers that the complementary services **do not reflect adequate conditions of competition, it will request the Federal Competition Commission’s opinion**, in order to, in its case, establish regulatory tariffs or prices.”*

From the aforementioned rulings it follows the importance for regulatory authorities as well as for the entities that could be subject to specific regulation, to be able to have a clearer and more precise analogy between the terms CE and PSM.¹¹

V. Relative monopolistic practices and Concentrations.

16. To consider the “lack of effective competition” or analogical terms as a situation where there is an oligopolistic market structure whose characteristics lead to an interdependent behavior or “conscious parallelism” in such a way that the price or supply in the market is what would result if only an agent holds substantial power, entails innovative implications for the analysis of relative practices and concentrations as carried out so far.

17. Relative monopolistic practices according to article 10 of the Law are considered as such only if the agent who carries them out has “individual” substantial power in a relevant market. Therefore if it is to keep consistency in the analysis of market competition conditions, the Law should also establish the possibility of penalizing cases in which various agents have substantial power as a group.

¹¹ It is worth quoting the case of the Federal Telecommunications Law, which foresees the authorities coordination following LFCE:

“Article 63. The Ministry will be authorized to establish to a public telecommunications network concessionaire, who has **substantial power in the relevant market** according to the Federal Law of Economic Competence, specific obligations related to tariffs, service quality and information.

The regulatory tariff applied will be such that the tariff for each service, capacity or function, including those for interconnection, will at least allow to recover, the long term average incremental cost” (added emphasis).

18. On the other hand, so far the challenge of a concentration is fundamentally based in the conclusion that the merger may cause the emergence (or to consolidate the presence) of an agent with substantial power in the relevant market pursuant to LFCE's, article 17, section I.

However, the aforementioned "CE" interpretation allows the conclusion that a **concentration could be challenged even if an economic agent with substantial power in the relevant market does not result from the merger transaction.**

The challenge would derive from an isolated application of section III, article 17:

"Article 17. When evaluating concentrations, the Commission ought to consider as indications of the assumptions in the previous article that the act or attempt to act:

- I. *Grants or may grant to the merging, the acquiring or to the economic agent resulting from the concentration, the power to unilaterally fix prices or to substantially restrict the supply in the relevant market, without the competing agents being able to, factually or potentially, counteract such power;*
- II. *Has or may have as objective to wrongfully displace other economic agents, or to hinder their access to the relevant market; and*
- III. *Has as objective or as result to substantially facilitate participants in such act or attempt the exercise of monopolistic practices referred to in chapter two from this Law"*

The foundation to challenge a concentration is derived from the possibility that such operation will affect the oligopolistic market conditions in such a way as that a group of a few economic agents may interact generating a result in prices or supply, similarly to the one resulting from the existence of an agent with PSM.

VI. Final Considerations

19. The CFC has decided that there are not effective competition conditions within a market if the presence of an economic agent with PSM is identified. It also considers that there are not conditions for effective competition, in a market with few competitors, important entry barriers and other factors that may lead to a collusive market. This last scenario, although the CFC does not categorize it as such, concerns a market situation in which there is collective dominance or joint substantial power. It is noted, however, that the PSM concept contained in the LFCE concerns to an individual PSM, while a joint or collective CE concept is not contained within such ruling.

In order to include what is meant by “joint substantial power or collective dominance”¹² it is suggested first to start with the effective competition concept that the CFC itself employs in the file DC-01-2007 referred to in subsection v, section III above.

20. To compare the lack of CE with the presence of a group of economic agents who have “joint substantial power” within a market does not seem to have foundation in the LFCE. The analysis instructed by article 13 from the Law to identify substantial power is precise as it refers to one agent and not to several¹³.

21. Complementarily it would be convenient for the CFC to identify more precisely what must be understood as efficient functioning of a market and which are the efficiencies that should be taken into account, especially in oligopolistic market situations¹⁴.

22. The application of a concept like CE is highly important since the existence or absence of conditions for CE can be translated into the imposition of regulatory measures. Also, the development and application of such concept has implications in the analysis and decisions of the CFC on cases of relative monopolistic practices and concentrations.

VI. Proposed amendments to the text of the LFCE.

¹² For a theoretical approach on this concept, as well as its application in the legislation in the European Community, refer to Motta, M. *Competition Policy. Theory and Practice*. Cambridge University Press. U:S:A: 8th edition, 2007. Pp. 250-52, 271-73, 279-86.

¹³ On this subject, it is useful to quote the declarations on effective competition and collective substantial power:

“In respect of each of these relevant markets, NRAs will assess whether the competition is effective. A finding that effective competition exists on a relevant is equivalent to a finding that no operator enjoys a single or joint dominant position on that market. Therefore, for the purpose of applying the new regulatory framework, **effective competition means that there is no undertaking in the relevant market which holds alone or together with other undertakings a single collective dominant position**. When NRAs conclude that a relevant market is not effectively competitive, they will designate undertakings with SMP on that market, and will either impose appropriate specific obligations, or maintain or amend such obligation where they already exist, in accordance with Article 16(4) of the Framework Directive (...)”

“Under Article 82 of the EC Treaty and Article 54 of the EEA Agreement a dominant position can be held by one or more undertakings (“collective dominance”). Article 14(2) of the Framework Directive also provides that **an undertaking may enjoy SMP, that is, may be in a dominant position, either individually or jointly with others** (...)”

“The expression “one or more undertakings” in Article 82 of the EC Treaty and Article 54 of the EEA Agreement implies that a **dominant position may be held by two or more economic entities which are legally and economically independent of each other** (...)”

EFTA Surveillance Authority guidelines of July 14 of 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications networks and services referred to in Annex XI of the Agreement on the European Economic Area. *OJ C 101, 4.27.2006*. pp. 1-29

¹⁴ See Shapiro, C. “Theories of Oligopoly Behavior” in Schmalensee, R. and Willig, R. (eds.) *Handbook of Industrial Organization*, Vol. 1, North-Holland. Holland. 5th Edition, 1998. Pp. 329-414. Posner, R.A. *Antitrust Law*. The University of Chicago Press. U.S.A. 2nd edition, 2001. Pp. 49-189. Estavillo, M.E. “The Economic Efficiency within the Amendments to the LFCE and its Implications for the Economic Analysis” in Roldán X., J. and C. Mena L. (eds), *Economic Competition. Studies of Law, Economy and Politics*, Porrúa Publishing House – Instituto Tecnológico Autónomo de México, Mexico. 2007. Pp. 71-90.

23. In order to include the evaluation of the concept of “substantial collective power” in the analysis of effective competition in the LFCE for establishing a more precise analogy between the concepts CE and PSM, it would be necessary to modify articles 13, 17 and 33 bis.

Proposed amendments follow.

i. Article 13 from LFCE reads:

“Article 13. To determine if an economic agent has substantial power in the relevant market, it must be considered:

- I. Its participation in the market and if it can determine prices unilaterally or restrict the supply in the relevant market without the competing agents being able to, factually or potentially, counteract such power”*

An amendment is proposed so it will read:

*“Article 13. To determine if an economic agent has substantial power, **or a group of economic agents have joint substantial power** in the relevant market, it must be considered:*

- I. Its participation in the market and if **the agent or the group of agents, as the case may be**, can determine prices unilaterally or restrict the supply in the relevant market without the competing agents being able to, factually or potentially, counteract such power”.*

ii. Article 17 reads:

“Article 17. When evaluating concentrations, the Commission ought to consider as indications of the assumptions in the previous article that the act or intended act:

- I. Grants or may grant merging agent the power to unilaterally fix prices or to substantially restrict the supply in the relevant market, without the competing agents being able to, factually or potentially, counteract such power;*
- II. Has or may have as objective to wrongfully displace other economic agents, or to hinder their access to the relevant market; and*
- III. Has as objective or as result to substantially facilitate to participants in such act or intended act the exercise of monopolistic practices referred to in chapter two from this Law”*

An amendment is proposed so it will read:

“Article 17. While evaluating concentrations, the Commission ought to consider as indications of the assumptions in the previous article that the act or intended act:

- I. *Grants or may grant to the merging, the acquiring or to the economic agent resulting from the concentration, the power to unilaterally fix prices or to substantially restrict the supply in the relevant market, without the competing agents being able to, factually or potentially, counteract such power; **and***
- II. *Has or may have as objective to wrongfully displace other economic agents, or to hinder their access to the relevant market; **or***
- III. *Has as objective or as result to substantially facilitate participants in such act or intended act the exercise of monopolistic practices referred to in chapter two from this Law”*

iii. Article 33 bis reads:

*“Article 33 bis. When legal or regulatory dispositions expressly aim to resolve on **effective competition issues**, existing substantial power within the relevant market or other analogical terms, the Commission will issue ex-officio, by requirement of the respective authority or by petition of affected party the corresponding resolution. In case of article 7 of this Law, the Commission will only be able to issue a resolution at request of the Federal Executive. In all cases, it will follow this procedure:*

An amendment is proposed so it will read:

*“Article 13 bis. When legal or regulatory dispositions expressly aim to resolve on effective competition issues, existing substantial power, **individual or collective**, within the relevant market or other analogical terms, the Commission will issue ex-officio, by requirement of the respective authority or by petition of affected party the corresponding resolution. In case of article 7 of this Law, the Commission will only be able to issue a resolution at request of the Federal Executive. In all cases, it will follow this procedure:...*

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