

Topic: Competition Law restraints the concept of Effective Competition

-this Note is written under the author's sole responsibility-

1. The Federal Law on Economic Competition (“FLEC”) states that the Federal Competition Commission (“CFC”) is empowered to determine whenever a market presents “effective competition” (ref. articles 7 and 33 bis). CFC’s determination shall be applied by regulatory authorities to decide on the imposition of price or tariff regulation.

2. The FLEC, though, does not specify what is meant by effective competition.

3. The FLEC instructs to challenge a merger whenever the merging party acquires or strengthens “substantial power in the relevant market: “psmr””.

4. The FLEC instructs to evaluate and sanction, if that is the case, a “relative monopolistic practice” (v. gr. an exclusionary practice) only whenever the economic agent executing such practice has psmr.

5. FLEC’s article 13 instructs elements to take into account in order to identify if an economic agent has psmr, and identifies such power as the capacity to unilaterally impose price o supply in the relevant market.

6. Final comments.

- i. The FLEC only allows to equate the presence of an economic agent with psmr to a lack of effective competition;
- ii. To equate effective competition to some other market conditions, such as those prevailing in an oligopolistic market, has no legal grounds;
- iii. Concepts such as “collective dominance” or “coordinated effects” or “joint dominance”, as applied by the USA or UE, have no legal support in Mexican competition law;
- iv. If CFC decides to apply the concept of effective competition to market conditions different to a psmr, then it could challenge mergers or sanction vertical exclusionary practices on bases different to those allowed by the FLEC.

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