

02.07.07

TOPIC:

**REQUEST TO THE FEDERAL COMPETITION COMMISSION (“CFC”) ON
MERGER ANALYSIS AND EFFECTIVE COMPETITION.**

I. On merger analysis.

1. First issue.

The Federal Law on Economic Competition, as amended in June 28, 2006, establishes:

“Article 18. In order to decide whether to challenge or sanction a merger pursuant to this Law, the Commission should consider the following items:

...

III. The merger effects both on the relevant market regarding other competitors and purchasers of the good or service, and on other related markets and economic agents.”

Comments.

- i. It would be very useful both for the authority as well as for economic agents to have clearly defined parameters or references to understand and assess the importance of the concept of “related markets and economic agents”.
- ii. Thus, how much “related” are the links in a productive chain?, common shareholders in different undertakings?, common clients for services or goods?, etc.
- iii. Lack of such parameters conveys the risk of discretionary action by the authority.

II. On effective competition.

2. Second issue.

The Federal Law on Economic Competition, as amended in June 28, 2006, establishes:

“Article 33 bis. When legal or code rulings instruct precisely to obtain a resolution on issues regarding effective competition, presence of substantial power in the relevant market or other analog concepts, the Commission shall produce the corresponding resolution ex-officio, or in response to request by the corresponding authority, or in response to affected party...

...

Comments.

- i. The CFC could avoid unnecessary confusion or misinterpretations if it sets the parameters to identify whether the concept of effective competition is equivalent or not to the concept of substantial power in the relevant market.
- ii. If the concept of effective competition is not a synonym of substantial power in the relevant market, then the CFC should establish the elements, procedures and thresholds to identify when there is not effective competition in a relevant market
- iii. The lack of guidance as to what constitutes effective competition leaves the authority with powers to take wide discretionary decisions.