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Collective dominance in the Mexican

Federal Law of Economic Competition, 2nd part

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Discussion topic

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0. The proposed amendments to the Federal Law of Economic Competition (FLEC) generate an imbalanced ground for the analysis of concentrations. Nowadays articles 13, I and 17, I are congruent between them, yet article 13, I will be modified substantially whilst article 17, I will remain as it is.
1. Current FLEC's Articles 16, 17, I and 18, II read:

Article 16. ...

The Commission shall impeach and sanction all concentrations the purpose or effect of which is to diminish, damage or restrict competition and free access to markets in respect of goods or services which are identical or similar to or substantially related with each other.

Article 17. *In the Commission's investigation of concentrations, it shall consider as an indication that an act of the nature described above has taken place, that any such act or attempt:*

- I. *Confers or may confer to the merging or acquiring party or to the economic agent resulting from such concentration the power unilaterally to fix prices or substantially to restrict the supply or provision of the relevant market without competing agents being actually or potentially capable of counteracting such power...*

Article 18. *In order to determine whether a concentration may be disputed or sanctioned hereunder, the Commission must give consideration to the following: ...*

- II. *Identification of the economic agents that supply the market concerned, analysis of their power in said relevant market in terms of article 13 hereof, and the degree of concentration therein;*

2. Thus article 17, I establishes a clear-cut definition of “single” substantial power in a relevant market, which practically replicates what article 13, I states.
3. In contrast the proposed new article 13, I states a definition of “single or collective” substantial power in a relevant market, whilst article 17, I will not be modified accordingly. See the first part of this Note at the same VA&BA web address:
http://www.vb.com.mx/index_english.html
4. Thus, if the analysis leads the Competition Commission to conclude that a proposed concentration will create an economic agent with no single substantial power, but will take place within an environment prone to “collective” substantial power it might deny its authorization to such a concentration. This type of decision will certainly rest on slippery grounds.
