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Discussion topic.

Collusion and relevant market.

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1. The Federal Commission on Economic Competition (Cofece) as a general practice carries on investigations on collusive practices without resorting to the methodology of market definition as established by the Federal Law on Economic Competition (FLEC). FLEC does not impose an obligation to apply such methodology, although it does not prohibit its application.
2. In practice Cofece determines the existence of competition among economic agents with a reference to their common activities or statements made by them during the probe recognizing other economic agents as competitors.
3. Recently a judicial decision overturned a Cofece's decision regarding collusive practices in the chicken market (production, distribution, retailing) for human consumption.¹
4. Cofece's analysis focused on supposed arrangements of price-fixing among chicken producers which translated into price-fixing at the retail level.
5. The judicial decision underlined producers and retailers were independent to each other and acted in different links of the productive chain. Producers had no activities as retailers. Thus the analytical and evidentiary construction by Cofece did not have supporting grounds.

¹ Cofece's investigation started in December 2009, in May 2018 the judicial decision took place. Ref. Judicial decision: "Ciudad de México; acuerdo del Segundo Tribunal Colegiado de Circuito en Materia Administrativa Especializado en Competencia Económica, Radiodifusión y Telecomunicaciones, con residencia en la Ciudad de México y jurisdicción en toda la República, correspondiente a la sesión de treinta y uno de mayo de dos mil dieciocho." Available at: http://sise.cjf.gob.mx/SVP/word1.aspx?arch=1305/13050000189547630037037.docx_1&sec=F%C3%A9lix_Froyl%C3%A1n_%C3%81vila_Gonz%C3%A1lez&svp=1

6. To my understanding, the judicial decision calls for a more precise delimitation of relevant markets by the competition authority whenever a supposed collusive practice takes place.

ARSG