

March 2010

FCC's STATISTICS ON CARTELS AND
EXCLUSIONARY CONDUCTS/VERTICAL RESTRAINTS

Discussion topic

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This Note is personal. It does not necessarily reflect VA&BA position

0. In this Note some statistics on procedures related to monopolistic practices are provided. The figures give rough hints on the Federal Competition Commission (FCC) larger **analytical experience** on practices such as **price fixing, raising rivals' costs and refusal to deal as compared to other conducts.**
1. Whenever FCC starts officially an investigation on commercial practices which could be illegal pursuant to any of four sections of article 9 (absolute monopolistic practices, i.e., cartels) or any of eleven sections of article 10 (relative monopolistic practices, i.e., exclusionary conducts or vertical restraints for short) of the Federal Law of Economic Competition (FLEC), it has to publish so in the Federation's Official Gazette (FOG).
2. Based on FOG's publications, figures show that:

Period, yrs./ # of Practices	Absolute Monopolistic	Relative Monopolistic	Total
2000-2004	47	159	206
2005-2009	52	58	110
Total	99	217	316

3. During 2000-2004 the largest number (29) of investigations on cartels concerned section **I (price fixing)** of article 9; whilst the two largest numbers (41 and 28) of investigations on exclusionary conducts dealt with sections **XI (raising rivals' costs**, formerly included within a generic section VII) and **V (refusal to deal)** of article 10.

4. During 2005-2009 the largest number (22) of investigations on absolute practices referred to section **I** of article 9; whilst the largest number (14) of investigations on exclusionary or vertical restraints addressed section **V** of article 10. It is noticed that section **XI** of article 10 was applied in 6 cases.
5. For the whole ten-year period, price fixing concerned 52% of total absolute monopolistic cases; on the other hand, raising rivals' costs took 22% and refusals to deal covered 19% of total relative monopolistic cases.
6. All other sections of both article 9 and article 10 trail far behind.
7. For a quick reference the statue is transcribed hereunder (Ed. Themis, 2009).

Article 9. A contract, agreement, arrangement or combination between economic agents which compete with each other is an absolute monopolistic practice when its purpose or effect is any of the following:

- I. To fix, increase, agree upon or manipulate the price at which goods or services are offered for sale or at which there is demand to purchase them in the market; or to exchange information for the same purpose or having the same effect;**
- II. To establish the obligation not to produce, process, distribute, market or [to establish] the obligation to acquire only a restricted or limited amount of goods or the rendering or transaction of a restricted or limited number, volume or frequency of services;
- III. To divide, distribute, assign or impose portions or segments, whether of specific or specifiable clientele, suppliers, periods of time, or space(s), of an existing or potential market;
- IV. To establish, coordinate or agree upon bids, or to agree to refrain from participating in competitive bidding, auctions, licitations, or clearance sales;

The acts referred to in this Article shall be null and void and have no legal effect, and economic agents committing any thereof shall warrant the sanctions established hereunder, without prejudice of such penal liabilities as may result therefrom.

Article 10. If existence of any of the circumstances provided for in articles 11, 12 and 13, hereof is evidenced, the acts, contracts, agreements, procedures or combinations the purpose or effect of which is or may be to unduly displace other agents from, or substantially preclude their access to, the market, or to create exclusive advantages in favor of one or several persons are considered to be relative monopolistic practices in the following cases:

- I. As between economic agents which do not compete with each other, the fixing, imposition or establishment of exclusive arrangements for the marketing or distribution of goods or services, by virtue of subject, geographic location or for specific periods of time, including any division, distribution or allocation of clients or suppliers; and also the imposition of any obligation not to manufacture or distribute goods or not to render services for a specific or specifiable period;
- II. The imposition of the price or other conditions to be observed by a distributor or supplier upon the sale or distribution of goods or the rendering of services;
- III. Any sale or other transaction made subject to a condition to purchase, acquire, sell or provide another good or an additional service, which is normally different or distinguishable, or on the basis of reciprocity;

- IV. Any sale, purchase or transaction made subject to the condition of refraining from using, acquiring, selling, marketing or providing the goods or services produced, processed, distributed or marketed by a third party;
- V. Any unilateral action consisting in refusing to sell, market or provide to specific persons available goods or services that are normally offered to third parties;**
- VI. Any concert between or invitation to several economic agents with a view to exerting pressure upon an economic agent or in order not to sell, market to or acquire goods or services to or from said economic agent in order to dissuade him from any specific course of conduct or to apply reprisals or force him to act in a specific manner;
- VII. The systematic sale of goods or services at prices below their aggregate median cost or their occasional sale below their variable median cost, when there are grounds to presume that these losses shall be offset by future price increases, as provided in the Regulations to this Law;

When involving goods or services produced jointly or divisible for marketing, their aggregate median cost and their variable median cost shall be distributed among all sub-products or co-products, under the terms of the Regulations to this Law;
- VIII. The granting of discounts or incentives on the part of producers or suppliers to the acquiring parties subject to the condition not to use, acquire, sell, market or provide the goods or services produced, processed, distributed or marketed by a third party, or the purchase or transaction subject to the condition not to sell, market or provide a third party the goods or services that are the object of the sale or transaction;
- IX. The use of the profits obtained by an economic agent from the sale, marketing or provision of a good or service to finance losses incurred as a result of the sale, marketing or provision of another good or service;
- X. The establishment of different prices or sale or purchasing conditions for different buyers or sellers under like conditions; and
- XI. The action of one or more economic agents, whose direct or indirect purpose or effect is that of increasing costs or hampering the production process or reducing demand faced by competitors.**
