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Related markets in Competition Law.

Comments on collective power in Boicot.

Comments on relevant markets in Collusive behavior.

By C. Brambilla, JA Chávez, and AR Sánchez G.

Discussion topic

This Note is personal. It does not necessarily reflect Gidari (Chávez) or VA&BA (Brambilla, Sánchez) position.

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0. In this Note a proposal is made to identify a “related market” (RM) pursuant to the Federal law of Economic Competition (FLEC or Competition Law). It is suggested that such type of market should be identified according to FLEC’s articles 12 and 13.

As the Note develops some comments are made regarding the concept of joint substantial power as applied to boicot situations; and the need to identify a “relevant market” in collusions analysis.

In section I it is shown how Competition Law makes reference to RM without defining it. In Section II MR is linked to concentrations analysis; in section III MR is linked to relative monopolistic practices (i.e., exclusionary conducts); in section IV it is shown that MR is unnecessary for the analysis of collusive conducts; in section V some final remarks are made.

I. INTRODUCTION

1. FLEC’s articles 16 and 18 state the way concentrations should be analyzed. They make reference to goods or services substantially related or related markets, respectively. Nevertheless neither Competition Law nor its Code of Regulations delve into such concepts or how to delimit them.
2. The first paragraph of FLEC’s article 10 refers to situation affecting competition process as a result of trade practices as stated in all sections of such article. This latter is not specific on such conducts should necessarily occur in the relevant market. In practice competition effects of a conduct should be studied in the

relevant market and if necessary in “other” market. It is then suggested that such “other” market could be understood as a “related” market.

3. Thus as FLEC considers explicitly or implicitly a RM the concept deserves to be properly defined in order to provide with certainty the way it is applied by the authority in analysis of concentrations and (relative) monopolistic practices.

II. CONCENTRATIONS

4. A proposed concentration between economic agents, independent from each other in economic and legal terms, should take place pursuant to FLEC’s articles 16, 17, and 18.

- Relevant market.

A fundamental step in the analysis consists on identifying the “relevant market” wherein the involved parties participate. This is done pursuant to FLEC’s articles 18, I and 12.

- Substantial market power.

The next step requires an evaluation of competition conditions in such relevant market, pursuant to FLEC’s articles 18, II and 13.

- Related markets

The analysis is complemented with possible effects on competition conditions regarding the **relevant market and related markets, according to FLEC’s articles 18, III and IV.**

5. Current statute does not specify what a related market is. The Supreme Court of Justice considers that even though Competition Law does not make a definition of related market or of goods and services substantially related, it is possible to establish a link whenever a product has relevance for another product in a non-accidental situation.

6. Therefore it is suggested that a market is related to a relevant market whenever:

- i. It belongs to another link of the same “productive” chain of the relevant market;

- ii. It does not belong to another link but commercial practices in the relevant market have substantial effects in competition conditions of the related one. To this effect “substantial” should mean that as a result of the concentration the acquiring firm strengthens or achieves market power in the relevant market and/or in the RM.
7. A fundamental suggestion then follows: a MR should be analyzed pursuant to articles 12 and 13 of Competition Law.

III. RELATIVE MONOPOLISTIC PRACTICES

8. Pursuant to FLEC’s article 10 commercial practices (i.e., exclusionary) are illegal as long as their purpose or effect is to displace unduly other economic agents from the market [it does not specify which market, relevant or related or both], thwart substantially their access or to grant exclusive advantages favoring a group over some other.
9. In practice for each case competition analysis requires to evaluate whether the conduct involves one or more markets related to the relevant market. See Bibliography at the end of this Note.
10. FLEC’s article 10 has eleven sections referring to different conduct whose effects can take place in the relevant market and/or in some other RM.
11. Boicot. Out of such sections is worth mentioning that section VI refers to Boicot. The Competition Commission has resolved several cases considering substantial market power of several agents who act collectively. This consideration is highly controversial as the FLEC does not allow for such concept. The actual term considered by Competition Law refers only to individual market power (ref., article 13, I).

Apart from Boicot, the Federal Competition Commission has applied the concept of joint substantial power in some other cases. See References at the end of this Note.

IV. ABSOLUTE MONOPOLISTIC PRACTICES

12. Collusive practices are deemed illegal per se pursuant to FLEC’s article 9.
13. The first paragraph of such article refers though as a prerequisite to prove that a conduct is carried out by economic agents who compete with each other.

14. Thus, even though such article does not specify a definition of relevant market:

it is strongly suggested that for most situations (e.gr., sections I, II and III of article 9) the authority should follow –as a methodological support- the steps dictated to define a relevant market in FLEC’s article 12 in order to identify with precision those agents who actually compete with each other. There have been several cases where this lack of methodology finds “competitors” even though such agents would hardly be regarded competitors under an article 12 methodology. For a recent case, see FCC’s resolution on collusive cargo truckers, available at: http://www.cfc.gob.mx/docs/pdf/resolucionde1532008_vpub.pdf

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