

November 2010

Collusion behind financial restructures

Discussion topic

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

0. A coordinated or collusive decision taken by bank creditors to restructure debts of an economic agent can be framed as a collusive practice.

1. Federal Law of Economic Competition (FLEC) establishes:

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;¹

(...)

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.

2. A “typical” financial restructure (herein focus on banks as creditors) is usually triggered whenever a (large) debtor faces repayment difficulties. Creditors generally act in a coordinated way to establish new credit terms to their offered “credit services”, these latter originally granted thru bilateral negotiations creditor-debtor.

¹ Equivalent to practices prohibited under article 101 of the Treaty on the Functioning of the European Union, and Section I of the Sherman Act in the U.S.

3. Applicable new terms to credit services coordinately designed generally involve a new “price” (i.e., interest rate and commissions), adjustments to the unpaid and due balance, as well as a new repayment schedule of capital and interests. It should be noted that firms originally shop and get bank credits in a market for such services.
4. Banks are institutions competing with each other in the relevant market of “credit services”. A precise market delimitation will have to be made pursuant to FLEC’s article 12.
5. Coordinated behavior by creditors fall within FLEC’s article 9 section I, transcribed above. In particular whenever such acts are performed out of a formal process as regulated by the Bankruptcy Law (Ley de Concursos Mercantiles).
6. Opposed to such argument are those identifying a financial restructure as an act diverse of a regular act of commerce. Were this the case then such restructure does not fall within competition legislation. [View held by Stephan Tribukait, Lucía Ojeda, Lili Abascal].
