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Spectrum auction 21 vs Competition Law

Discussion topic

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

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0. Spectrum auction 21 (Sa21) result certainly does not help to leveling the playing field in the markets for mobile telecom services and thus it could hardly be explained in terms of the Federal Law of Economic Competition.
1. Federal Law of Economic Competition (FLEC) mandates the Federal Competition Commission (Cofeco) to evaluate cases such as the Sa21 pursuant to articles 33 bis 1, 17 and 18. This translates into an economic evaluation of a “concentration”.
2. Economic analysis of a concentration between economic agents calls for the delimitation of a relevant market (article 12; article 18, I); identification of an economic agent with substantial market power in the relevant market (article 13; article 18, II); evaluation of effects on related markets (article 18, III and IV); and efficiencies (article 18, V).
3. Cofeco issued the results of its evaluations of Sa21 (1.7 GHz) and Sa20 (1.9 GHz), therein one may observe the conclusion that the both segments of spectrum were closed substitutes and thus belonged to the same relevant market. Given such conclusion then it was considered a good policy measure to set up a joint spectrum cap.
4. The joint spectrum cap seems to be oriented to prevent any single economic agent from anticompetitive hoarding of spectrum and thus level the playing field in the related markets of mobile telecom services.
5. Analysis of article 12 allows to conclude that a relevant market should include two products or two services which are closed substitutes because they offer the same functionality, they are available timely and with sufficiency, and their prices are not much different to each other (say 5-10%, or so).
6. The resulting prices of two substitutes as Sa21 and Sa20 concluded with such a wide difference of each other that either they are not close substitutes as claimed, or the

auctioneer made a poor job, or there are reasons beyond FLEC's reach justifying the authorities' acceptance of such results.

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