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GEOGRAPHIC MARKET DEFINITION

-- Note by Mexico --

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More documents related to this discussion can be found at ww.oecd.org/daf/competition/geographic-market-definition.htm

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-- MEXICO[*] --

1. Introduction

1. The Federal Economic Competition Law (FECL) and its Regulatory Provisions do not explicitly define the concept of "relevant market", however, through the criteria contained in its provisions, it is concluded that a relevant market consists of all the products that are reasonably interchangeable or substitutable, according to the purposes for which they were made, considering the characteristics of price, use and quality.

2. The case-law[1] defines the concept of "relevant market" as the geographic area where similar products or services are offered or demanded. Following this definition, the relevant market has a twofold dimension: i) product market and ii) geographic market. In this regard, the relevant market exists when a set of products or services identical or similar are available to the consumer in an extensive enough territory, so the consumer is willing to get the product or service at some point that geographic area, over a period of time that he is willing to wait to meet his need.

3. This concept which has a triple delimitation: objective, geographical and temporal, becomes important when it is considered that in this market is where there is a risk that economic agents engage in anti-competitive practices that distort competition and economic efficiency. Thus, the definition of "relevant market" becomes only a means to determine the presence or absence of market power; however, to assess whether that market power exists, it is first necessary to identify it.

4. From the above, the case-law concludes that the basic conditions needed to define the relevant market are: i) whether the product can be substituted by another product, which requires a substitutability test; ii) distribution costs; iii) ability of consumers to obtain the product in another market; and iv) regulatory restrictions that limit consumer access to alternative sources of supply.

2. Geographic Market Definition in Mexico

5. As already mentioned, when defining a relevant market, under the criteria established in the FECL[2] and its Regulatory Provisions, the Federal Economic Competition Commission (COFECE)

[*] Contribution by the Federal Economic Competition Commission (COFECE), Mexico.

[1] Case Law: Weekly Report of the Judiciary, Federal Collegiate Circuit, Administrative Matters, Volume XXVIII, October 2008. Thesis I.4o.A. J/75, Page 2225.

[2] Article 58. For determining the relevant market, the following criteria must be considered: I. The possibilities of substituting the good or service in question for others, whether of domestic or foreign origin, considering the technological possibilities, the availability of substitutes for consumers and the time required for such substitution; II The good's distribution costs; its relevant inputs; its complementary goods and substitutes from other regions or abroad, taking into account freights, insurance, tariffs and non-tariff restrictions, the restrictions imposed by Economic Agents or their associations and the time required to supply the market from these regions; III. The costs and probabilities that users or consumers have to access other markets; IV. The federal, local or international regulatory restrictions that limit the users' or consumers' access to alternative supply sources, or the access of suppliers to alternative clients; V. Other factors provided by the Regulatory Provisions, and the technical criteria issued by the Commission to that effect.

considers several elements such as the products or services offered by economic agents in the market; identifies potential substitutes, distribution and input costs; considers costs and the likelihood of users turning into another markets or suppliers; and economic and regulatory restrictions that limit users access to alternative sources of supply. Similarly, the Commission determines the geographic dimension of such markets. The Commission also assesses the participation of the economic agents involved in the relevant markets and related markets, the existence of barriers to entry, the existence and power of its competitors, the possibility of access to input sources, as well as its recent behavior, to determine if they have substantial power in the relevant markets. Thus, this a case-by-case analysis in which all relevant factors are taken into account.

6. In order to make this analysis, in the case of concentrations, the Commission gathers evidence from the merging parties. The FECL provides that when notifying a transaction, parties must provide certain information about the main products or services that are produced or offered by them and their use in the relevant market. In addition, parties must submit a list of competitors in the market and of similar products or services available in the market. The Commission uses this information when defining the geographic dimension of a concentration.

7. As mentioned before, COFECE delineates relevant geographic markets on a case-by-case basis. However, in its latest investigations, it has been noted that, for example, the geographic scope of retail or real estate markets is mainly local, while geographic markets for manufacturing industries can be defined as national, NAFTA,[3] international or global markets, depending on trade barriers, imports, transportation and administration costs, just to mention a few.[4]

8. In recent years, COFECE has conducted more sophisticated and detailed analysis of the relevant geographic markets. For example, in a recent retail merger in the Mexican market of supermarkets and department stores,[5] the Commission defined the geographic markets using circular influence areas in which the radius was determined by consumers' travelling times. Isochrones were used for the first time in a COFECE's resolution as a tool for determining the direct competition faced by each store, known as the geographic influence zone of the department store or supermarket. In this investigation, an isochrone was defined as a geographic area defined by a circle whose radius was determined by the travelling time (by car or other means of transport) to get to a supermarket or department store.

9. As mentioned before, COFECE established that the catchment area of retail markets, in this case supermarkets and department stores, is local. This is because consumers are unlikely to be willing to devote much of their time or to incur in large travel expenses to get to a store. Overall, consumers frequent points-of-sale that are close to their daily activities within a limited radius, and select the store that meets their needs, considering price, quality and availability of the products.

10. In order to consider the consumers' willingness to incur in transportation costs, COFECE also carried out an analysis using isochrones (analysis of time/distance). This type of analysis allows that other characteristics that influence consumers to the stores, and therefore the decision making and choosing of department stores, such as configuration of the road network, as well as the existence of geographical barriers and traffic, are taken into account.

3 North American Free Trade Agreement. The scope of the geographic market is defined using data on exports and imports from/to its NAFTA partners: US and Canada.

4 Section III of Article 58 of the FECL provides that costs and likelihood of users or consumers to turn into other markets are elements that should be taken into consideration when determining the relevant market.

5 File CNT-021-2015. Public version of COFECE's resolution available in its website at: http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V1730/0/2289112.pdf

11. In its assessment, COFECE defined different types of zones around a retail location: geographic areas consisting of large municipalities whose population density and/or the number of cars were above the national average, in which consumers travel shorter distances to get to a store; or geographical areas in which stores serve several municipalities and number of competing stores is smaller than in other areas; or the Metropolitan Area of Mexico City, where average traveling speed in a car defines smaller radius around a retail store.

12. For the Metropolitan Area of Mexico City, the geographic scope of the relevant markets was defined to be as small as 2.5 kilometer radius. The average speed in Mexico City does not exceed 10 kilometers per hour in 6 of the 15 avenues with largest car flow, and the remaining 9, the average speed does not exceed more than 12-15 kilometers per hour at peak time (i.e. the average distance of a 10 minute ride ranges from 1.6 to 2.5 kilometers). In contrast, the average speed in the City of Monterrey is of 22.6 kilometers per hour (the average distance of a 10 minute ride is 5.7 kilometers), where the geographic scope of the market was defined as a 4.98 kilometer radius. In the rest of the country, it was defined as an 18.61 kilometer radius since consumers travel long distances to reach the nearest supermarket or department store.

13. In determining the value of the radius, COFECE used: i) traffic information where the stores are located; ii) distance travelled by 80% of loyalty-card consumers; iii) coverage of the home delivery services; and iv) decisions regarding locations of stores and price monitoring conducted by the merging parties. As in other competition authorities, this information allowed COFECE defining the relevant geographic markets, by identifying customer distribution around a given store. Regarding the use of isochrones, COFECE used Google Maps to analyze distances between stores and travel time estimates using various means of transport (car, public transport, walking or cycling), on a particular day and time.

14. Market share calculations and concentration levels[6] were made on the basis of circular areas. Isochrones analysis was only used to refine the analysis of each of the local markets with potential competitive concerns that were not eliminated using circular areas of influence.

15. Using these tools, COFECE resolved that this merger was likely to harm competition significantly in 27 relevant markets and imposed remedies to prevent anticompetitive effects caused by the merger.

16. When defining a geographic market, COFECE considers other relevant factors that affect competitive conditions of that market, such as trade barriers, import and export data, and transportation costs. The geographic market is defined according to the location of the consumers and of suppliers and the restraints to substitute the product or service in other geographic areas.

17. For example, in a recent merger investigation in the market of bond paper,[7] the Commission defined the geographic market broader than national. The geographic assessment of the market showed that a large proportion of the imports of paper come from the United States and Canada, due among other things, that transport costs are low and there are no countervailing duties or tariff barriers for most countries (except Brazil). In August 2012, a preliminary countervailing duty on imports of paper from Brazil was established. From that point, an accelerated drop in imports from that country was observed. COFECE assessed that imports in this market represent a competitive constraint for domestic producers. And in view of this evidence, the Commission designed a remedy establishing that the merging parties should refrain from requesting any trade investigation related with unfair trade practices in this market.

6 COFECE has developed Technical Criteria to measure the degree of concentration in the relevant market. These criteria are available at: https://www.cofece.mx/cofece/index.php/normateca

7 File CNT-072-2014. Public version of COFECE's resolution available in its website at: http://www.cofece.mx:8080/cfcresoluciones/docs/Concentraciones/V658/1/2044645.pdf