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Working Party No. 3 on Co-operation and Enforcement

GEOGRAPHIC MARKET DEFINITION

-- Note by Mexico --

28-29 November 2016

This document reproduces a written contribution from Mexico (IFT) submitted for Item 3 of the 124th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 28-29 November 2016.

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. In Mexico, the purpose of the geographic market definition is to assess the scope of the area where an economic agent could have substantial market power (known in other jurisdictions as “dominance”). Such area includes the location of all the agents that exercise a competitive constraint on the product under study. An incorrect definition of the geographic market could mislead the authority into excluding providers or customers that exercise a real restriction on competition, and bias the decision to authorize a merger or to impose a fine under an abuse of dominance procedure.

2. The geographic market definition is applied by the Mexican antitrust authorities—the Federal Economic Competition Commission (COFECE) and the Federal Telecommunications Institute (IFT)—¹ as part of the definition of relevant markets under four procedures:

- i) assessment of mergers under the provisions of article 63 of the Federal Economic Competition Law (FECL);²
- ii) abuse of dominance claims or illegal mergers according to articles 54 and 62 of the FECL;
- iii) special procedures to determine the existence of essential supplies or barriers to competition, established in article 94 of the FECL; and
- iv) special procedures to assess competition conditions and economic agents with substantial market power pursuant article 94 of the FECL.

3. Moreover, according to the Constitutional Reform published in 11 June 2013 and the Federal Telecommunications and Broadcasting Law (FTBL),³ issued on July 2014, the IFT is also the regulatory agency in the telecommunications and broadcasting sectors. In this regard, the IFT is the authority in charge of reviewing and authorizing the licensing and the transfer of spectrum licensing rights, among other regulatory procedures in the telecommunications and broadcasting sectors. These regulatory procedures are analyzed as mergers and it is necessary to define a geographic market.

* Contribution by Instituto Federal de Telecomunicaciones (Federal Institute of Telecommunications, IFT Mexico)

¹ As part of the amendments stated by the Constitutional Reform of Telecommunications published in the Federal Official Gazette (DOF) on June 11, 2013, the IFT was established as the competition authority in telecommunication and broadcasting sectors, while the COFECE remain as the competition authority for the rest of the economic activity in Mexico. For more information, see:

http://www.dof.gob.mx/nota_detalle.php?codigo=5301941&fecha=11/06/2013

Available in English at:

http://www.sct.gob.mx/fileadmin/GITS/Traducci%C3%B3n_Ingl%C3%A9s_Reforma_Const_Telecom.pdf

Available in French at:

http://www.sct.gob.mx/fileadmin/GITS/Traducci%C3%B3n_Frances_Reforma_Const_Telecom.pdf

² Published in the DOF on May 23, 2014, available in Spanish at:

<http://www.diputados.gob.mx/LeyesBiblio/pdf/LFCE.pdf> and in English at:

https://www.cofece.mx/cofece/images/Documentos_Micrositios/Federal_Economic_Competition_Law.pdf

³ Available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFTR_090616.pdf and in English at: http://www.sct.gob.mx/fileadmin/Comunicaciones/LFTR_english.pdf

4. In order to provide a clear understanding of the criteria that the authority follows to evaluate mergers in the telecommunications and broadcasting sectors, the IFT is preparing a Merger Guidelines document expected to be issued to public consultation at the end of 2016.⁴ These guidelines will include, among other instruments, the main analytical tools and techniques, as well as the methodologies used in geographic market definition.

2. Legal Framework, Tools and Practice

5. The FECL and the Regulatory Provisions of the FECL⁵ establish that in the definition of relevant markets, it is necessary to take into account two main aspects. The first, is focused on the geographic area in which a conduct is performed or has consequences. The second concept, is about the definition of the goods or services affected by the practice, based on the criteria of substitution.

6. In this regard, article 5 of the Regulatory Provisions of the FECL states that in the analysis of relevant markets it is necessary to determine the geographic area in which the relevant products are offered and demanded, and if in this area, trade between consumers and providers is possible without significant costs.

7. Under the same article 5 of the Regulatory Provisions, Mexican competition authorities can determine relevant markets at international, regional, national or even local scopes, on a case by case analysis.

8. To that end, article 58 of the FECL provides specific instructions to define the geographic scope of the markets, as listed below:

- i) **Costs of distribution.** This concept includes costs associated with distribution of the relevant good or service, as well as its complements and substitutes. Among these costs the LFCE considers freights, insurance, duties, costs caused by the importation of goods and products, restraints established by the economic agents or their associations, and time required to supply the markets.
- ii) **Costs for the consumers.** It refers to costs paid by consumers to trade in other geographic markets. This includes an analysis of the probability for the consumers to actually trade in those markets.
- iii) **Legal restraints.** It refers to regulatory frameworks which may imply barriers for consumers or suppliers to trade at local, national, regional or international scopes.

3. Investigation challenges

9. Since its establishment in 2013, the IFT has not had major difficulties getting information from foreign economic agents during the study of the geographic markets under merger files or abuse of dominance claims. In the case of mergers, several files have been submitted by the international holdings of the merging parties in Mexico, and in most of the cases the companies have presented all the information and documents as requested by the authority, because of their interests to close the transactions.

⁴ For more information, see: <http://www.ift.org.mx/sites/default/files/pat-2016-acc.pdf>

⁵ Published in the DOF on 12 January 2015, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5378340&fecha=12/01/2015

10. On the other hand, in abuse of dominance cases the markets defined by the IFT so far have been always national or local, so it has not been necessary to ask for information to economic agents from outside Mexico's jurisdiction. It is important to emphasize that even in cases where the markets are defined as national or local, sometimes the authority needs international data or information in order to study the structure and nature of the markets. But in those cases, the IFT has found very useful to search for public, tested and confirmed information, published by foreign antitrust or sectorial authorities.

2. Relevant Cases

2.1 Fixed Satellite Services

11. On September, 2013, Eutelsat, S.A. and other economic agents filed a merger application seeking authorization to acquire the stock of Satmex, a provider of satellite services in Mexico. In this case, the market of satellite services was defined at a national scope, for two main reasons. First, the economic agents interested in providing satellite services must have coverage in the country where they expect to compete, in this case Mexico. Second, Mexican law—before, under article 11, clause III of the repealed Federal Telecommunications Law,⁶ and now article 92 of the FTBL— states that to provide satellite services it is necessary to obtain a concession (licence) granted by the Mexican government.⁷

2.2 Commercial Radio Services

12. On August, 2013, Radiodifusora XEATAK-AM, S.A. de C.V. —a company focused in the provision of commercial radio services, filed a request to receive from Información Radiofónica, S.A., the licence or concession title to provide the service of commercial radio in Tapachula, Chiapas, Mexico. Although the application was not submitted under the provisions of the FECL, under article 26 of the repealed Federal Law of Radio and Television⁸, there was still an obligation to receive a favourable opinion from the antitrust authority regarding the accumulation of radio spectrum as part of the procedure to transfer concession titles. This procedure includes the analysis of the geographic market definition.

13. In this case, the IFT established as the geographic market the municipality of Tapachula, Chiapas, where the transferred station provides its services according to the concession title. This definition includes the radio stations located in Tapachula, but also those stations located in other municipalities if their area of service established in their concession titles includes Tapachula, as explained below.

14. The market was defined at a local scope mainly because:

- to provide radio services in each municipality, a concession title granted by the Mexican government is required
- local companies that sell advertising services in radio representing the earnings of broadcasters seek to announce their services in the municipality where the business is located
- concession titles state that radio stations can only provide their services in the “area of service” which includes the principal municipality (in this case, Tapachula) and other municipalities in the scope of 60 decibels.⁹

⁶ Published on the Official Gazette on June 7, 1995, available at:
http://www.diputados.gob.mx/LeyesBiblio/abro/lftel/LFTel_abro.pdf

⁷ File E-IFT/DGCCC/CNC/0002/2013, available at:
<http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/pift27111320versionpublicahoja.pdf>

⁸ Published on the official Gazette on 19 January 1960, available at:
http://www.sct.gob.mx/fileadmin/_migrated/content_uploads/Ley_Federal_de_Radio_y_Televisi3n.pdf

⁹ File IFT/UC/OCC/0007/2013, available at:
http://apps.ift.org.mx/publicdata/versionpublicapift18031591_2.pdf