



Regional Competition Center for Latin America presents: Sector study on telecommunications

Martin Cave
Deputy Chair, Competition Commission

One of the main objectives of the Regional Competition Center for Latin America (or CRCAL by its acronym in Spanish) is to enhance competition agencies' technical capacities. The CRCAL also aims at generating guidelines and sector studies based on best international practice and proven methodologies that may serve the decision making process of competition regulators in the region.

With these objectives in mind, and with the World Bank's support, the CRCAL commissioned the development of sector studies for three strategic markets in the region: telecommunications, supermarkets, and airlines. These industries have presented important challenges to competition agencies in most Latin American countries.

One important issue that arises in undertaking a sectoral study for various countries is that the final product cannot be taken as a blueprint, but rather as a general guidance that provides a framework but requires some customization to fit each country's needs. In fact CRCAL's commissioned sector studies seek to outline common anticompetitive conducts which more commonly arise within a specific market while also explaining why those behaviors are more likely to lead to opening investigations by competition authorities. In short, these studies do not aim at deeply analyzing any specific jurisdiction or country, but rather they depict the nature of the evidence that may be required to determine if the law has been broken, provide economic principles underlying the analysis of market conditions and suggest some instruments employed by competition authorities to level the playing field. These studies also present a set of possible remedies based on best international practices that agencies may have at their disposal. Altogether, these documents will be a useful tool for agencies to use as a starting point in conducting market inquiries.

The CRCAL's sector study on telecommunications was the first of its kind. It was presented last September during the Center's first workshop held in Santo Domingo, Dominican Republic. The development of this study entitled "Strengthening competition policy in Latin American countries: the application of competition law in the telecommunications sector" was lead by UK's Deputy Chair of the Competition Commission, Martin Cave.[*]

The introductory chapter describes the telecommunications market and some of its intrinsic characteristics. For example, the fact that the introduction of mobile

networks has changed the competitive dynamic of telecommunications, since the incumbent fixed network monopoly normally has to coexist now with new mobile networks. The second chapter analyzes the relationship between competition law and sector-specific legislation-often applied simultaneously in the sector-. The third chapter goes over the use of two basic tools in most competition analyses: market definition and the assessment of market power.

Chapter 3 underscores some of the elements that need to be accounted for in the analysis of the telecommunications sector, such as retail or wholesale markets, difference in services' functionality; license regimes, price dispersion or supply conditions as possible elements to determine relevant markets. The study also presents some recurring issues that appear in this sector including distinctions between fixed and mobile, voice and data retail markets, call termination markets, outgoing calls and origination services, spectrum markets, among others. The chapter provides examples of potential questions that can be posed when undertaking a market definition analysis and considering market power.

These introductory chapters are followed by an analysis of seven competition issues [1] where recent experience suggests authorities are more likely to open investigations or that will lead to more complaints being filed. Each anticompetitive practice includes some of the most illustrative cases in Latin American jurisdictions or from other regions whenever they serve to add clarity. The document also stresses the importance of understanding the relationship between the competition agency and the sector-specific regulator since each entity may be endowed with powers that can facilitate or complicate cooperation and/or coordination when overseeing the sector.

The study notes important differences in competition law and in sector-specific regulation among countries, which lead to diverse approaches in dealing with exclusionary conducts such as excessive pricing or margin squeeze. It also shows that there is much common ground to develop similar methodologies for competition analysis and to share experiences in the implementation of successful remedies to improve competition conditions in this sector. Finally, there is a brief analysis of some aspects of merger control in this sector.

The CRCAL expects this document to be an important reference for all its members at the time of conducting market investigations into the telecom sector. It

will become available for Latin American countries and the public in the coming months, once the webpage of the CRCAL is operational.

** Martin Cave is a regulatory economist specializing in competition law and in the network industries, including airports, broadcasting, energy, posts, railways, telecommunications and water. He has published extensively in these fields, and has held professorial positions at Warwick Business School, University of Warwick, UK, and the Department of Economics, Brunel University, UK. In 2010/11, Professor Cave held the BP Centennial Chair at the London School of Economics, based in the Department of Law. He is now Visiting Professor at Imperial College Business School and Deputy Chair of the Competition Commission since January 2012.*

[1] Excessive or exploitative pricing, refusal to deal, price or non-price discrimination, predatory pricing, margin squeeze, collusive behavior, network sharing.

Column edited by Alain De Remes La Brely (Banco Interamericano de Desarrollo)

Email: direccioncrc@cfc.gob.mx