



# **The Legal 500 Country Comparative Guides**

## **Mexico**

# **COMPETITION LITIGATION**

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Mexico.

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## MEXICO

# COMPETITION LITIGATION



### 1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

In Mexico, the **Constitution** (in specific, article 28) establishes the Federal Economic Competition Commission (hereinafter “**Cofece**” or “**Commission**”) and the Federal Telecommunications Institute’s resolution (“**IFT**”) (only for telecommunications and broadcasting matters) have the purpose to guarantee free competition and concurrence.

In this way, the Federal Economic Competition Law (derived from the Constitution, hereinafter “**LFCE**”) states that individuals that may have suffered damages or losses deriving from a monopolistic practice or an unlawful concentration (carried out either by only one, or several economic agents, in a specific market) have the right to file judicial actions in defense of their rights before the specialized courts in matters of economic competition, broadcasting and telecommunications, once the Commission’s resolution is final and conclusive.

The LFCE penalizes any economic agent that participates directly or indirectly in a monopolistic practice or unlawful concentration. The LFCE distinguishes monopolistic practices into “*absolute*” or horizontal conducts known as collusion, and “*relative*” or vertical conducts that may be carried out by one or more economic agents with substantial power in the relevant market with the purpose or effect of displacing or preventing the access of competitors in the market.

### 2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

Pursuant to the LFCE, the Commission’s resolution or the Federal Telecommunications Institute’s resolution (“**IFT**”) (only for telecommunications and broadcasting matters), must be final and conclusive. According to article 134 of the LFCE, the Economic Agent’s illegal

actions shall be proven with the final resolution issued under the trial-like procedure, for the effects of lodging damages claims, this means, a final and conclusive resolution issued by **Cofece** or the **IFT** determining the commission of a monopolistic practice or an unlawful concentration by certain economic agent(s).

### 3. What remedies are available to claimants in competition damages claims?

According to the Federal Civil Code, the reparation of the damage must consist, either, in the reestablishment of the previous situation when possible, or economic payment of damages. Due to the nature of the anticompetitive conducts, it is practically impossible to reestablish the previous situation, and therefore the economic payment for damages would be appropriate.

Also, the Regulatory Provisions of the **LFCE** provide that the estimation of damages will be made by **Cofece** or the **IFT** at the request of the judicial authority during the civil proceeding, but it will be the judge that hears the case who will determine in the final resolution the amount corresponding to the damages caused to the claimants.

### 4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

The measure of damages to each market will be set in the Commission’s resolution or the IFT’s resolution. Although the article 130 sets that in the final resolutions, for the imposition of fines the elements that must be considered to determine the severity of the infraction are, among others, the damage caused; indications of intention; share of the offender in the market; size of the affected market; duration of the practice or concentration; etc. However, the damages or losses that each individual may have suffered could be different to

each one. As mentioned before, normally it is an economic payment. The calculation of such damage will be made on a case-by-case basis.

Regarding joint liability, the Federal Civil Code (article 197), states that persons who have jointly caused a damage are jointly and severally liable to the victim for the reparation to which they are obliged. Also, the Federal Civil Code states that each one of the creditors or all of them together may demand from all the joint debtors or from any of them the total or partial payment of the debt. This means, the economic agent that pay the debt in full has the right to demand from the other co-debtors the part that corresponds to them.

Regarding the exceptions (e.g. for leniency applicants): although the LFCE provides a leniency program, the article 102 establishes that third parties may claim damages for civil liability in connection with the relative monopolistic practice or unlawful concentration revealed to the Commission, this means, the leniency program will be without prejudice to the actions that may be brought by affected third parties claiming damages derived from the civil liability for the execution of the relative monopolistic practice or unlawful concentration.

### 5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

The **LFCE** establishes a 10-year statute of limitations for Cofece to exercise its investigative powers that could lead to the determination of liabilities and the imposition of sanctions. Such period begins to run from the date on which the unlawful concentration took place or from the date on which the prohibited conduct ceased.

Once Cofece has issued a final resolution, the statute of limitations for the claim for damages begins to run. The Federal Civil Code provides for a general 2-year statute of limitations for damages actions, establishing certain exceptions, such as that the damage derives from the commission of a crime.

Due to a monopolistic practice is considered as a crime by the Federal Criminal Code (article 254 bis), the generic statute of limitations provided in the Federal Civil Code of 10 years would apply. An unlawful concentration is not included in the Federal Criminal Code; therefore, it is applicable the Federal Civil Code that provides for a 2-year statute of limitations for civil liability arising from unlawful acts that do not constitute crimes.

Finally, according to article 134 of the LFCE, the statute of limitations for lodging damages claims shall be stayed

by the decision to initiate an investigation.

### 6. Which local courts and/or tribunals deal with competition damages claims?

As mentioned before, the **LFCE** sets that, individuals that may have suffered damages or losses have the right to file judicial actions in defense of their rights before the specialized courts in of economic competition, broadcasting, and telecommunications matters.

On August 9th, 2013, following an emblematic reform on telecommunications and economic competition, the District Courts and Collegiate Tribunals Specialized in Economic Competition, Broadcasting and Telecommunications were created, these would be in charge of resolving an action on damages.

### 7. How does the court determine whether it has jurisdiction over a competition damages claim?

As mentioned before, the **LFCE** establishes that jurisdiction over competition damages claim are the specialized courts in of economic competition, broadcasting, and telecommunications matters.

Nowadays, once the claim for damages is presented, it will be assigned to one of the three District Courts Specialized in Economic Competition, Broadcasting and Telecommunications. In case that the complainants consider that Judgement of the District Courts was not made in accordance with the law, they may require a revision of the Collegiate Tribunals Specialized in Economic Competition, Broadcasting and Telecommunications.

### 8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

The LFCE, derived from the Constitution, establishes that or all particular features not provided for under this Law or the Regulatory Provisions, the Federal Code of Civil Procedure shall be applied in a supplementary manner. Also, due to economic competition is a federal matter, therefore the Federal Civil Code may be also applicable for the determination of damages.

Regarding the applicable standard of proof, to determine the damages and/or losses, the Judge must corroborate:

- i. The actual existence of the damage, which is

- presumed with the administrative resolution issued by **Cofece** or **IFT** but must still be proven by the party claiming to be affected.
- ii. The cause-effect relationship with the unlawful act.
  - iii. That the damages and losses are provable.
  - iv. That they are certain or possible; if they are pecuniary, they must be quantifiable and objective.

**9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?**

Local Courts (including the District Courts and the Collegiate Tribunals Specialized in Economic Competition, Broadcasting and Telecommunications) are not bound by the infringement decisions of competition authorities, neither domestic nor foreign.

Although the Federal Code of Civil Procedures establishes that foreign judgments will be effective and will be recognized in the Mexican territory, in everything that is not contrary to the internal public order and international treaties; the decisions of foreign competition authorities are not binding to the Local Courts.

**10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?**

According to article 134 of the LFCE, the right to claim competition damages or losses, is given once the Cofece’s resolution or IFT’s resolution is final and conclusive. The Economic Agent’s illegal actions shall be proven with the final resolution issued under the trial-like procedure, for the effects of lodging damages claims.

Although the LFCE states that the final resolution issued in the administrative proceeding, the unlawfulness of the economic agent’s actions will be considered proven for purposes of an action for indemnification, it is important to specify that Cofece’s resolution will be deemed to have been signed, once there is no way to challenge it. The Mexican Constitution states that Cofece’s resolutions may be challenged only by means of an indirect amparo proceeding; therefore, in such case, it would be necessary to wait for the resolution of such amparo proceeding to understand that Cofece’s resolution has become final.

**11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?**

Article 77 of the LFCE establishes that if the investigation provides evidence from which a presumption may be drawn suggesting that there is an impact producing damages and losses upon consumers, the statement of probable responsibility shall be handed over to the Consumer Attorney for the corresponding effects.

In this regard, the Federal Consumer Protection Law provides that when acts, facts or omissions are made that violate the rights and interests of a collective or group of consumers, the Consumer Attorney may execute a class action in accordance with the provisions of the Federal Code of Civil Procedures.

Likewise, the LFCE provides for the power of Cofece to exercise class actions also in accordance with the provisions of the Federal Code of Civil Procedures. Likewise, the possibility granted by the LFCE to persons who have suffered damages or harm as a result of a monopolistic practice or unlawful concentration to file legal actions in defense of their rights, may be done individually or collectively.

The Federal Code of Civil Procedures regulates class actions, as it follows:

- The defense and protection of collective rights and interests will be exercised before Federal Courts and may only be promoted in matters of consumer relations of goods or services, public or private, and environment.
- Collective actions proceed to protect individual rights and interests of collective incidence, understood as those of a divisible nature whose ownership corresponds to individuals who are members of a collectivity of persons, determinable, related by legal circumstances.
- The statute of limitations to file a class action is 3 years.
- The legal standing to file a class action is held only by:
  - i. The Federal Attorney’s Office for Consumer Protection, the Federal Attorney’s Office for Environmental Protection, the National Commission for the Protection and Defense of Users of Financial Services and the Federal Competition Commission.
  - ii. The common representative of the community

- made up of at least thirty members.
- iii. Non-profit civil associations with at least one year of incorporation and whose purpose is the defense of the rights that are the subject matter of the action.
  - iv. The Attorney General of the Republic.
    - The following are requirements for standing in the cause of action, for specific cases of economic competition:
      - i. That it is about acts that have harmed the consumer due to the existence of undue concentrations or monopolistic practices, declared existing by a firm resolution issued by the Cofece.
      - ii. It must deal with common issues of fact or law among the members of the collective.
      - iii. Have at least 30 members of the collectivity.
      - iv. There is a coincidence between the object of the action brought and the harm suffered.
      - v. The subject matter of the Litis has not been subject to *res judicata*.
      - vi. The statute of limitations has not expired.
    - The Judge must verify that the requirements are met, issuing a certification. Once the action has been certified, a determination will be made regarding the claim and if it is admitted, the proceeding will proceed.
    - Regarding the sentence, the Judge may order the reparation of the damage consisting in the performance of one or more actions or refrain from performing them, as well as to cover the damages individually to the members of the group. Each member of the group will be able to promote the incident of liquidation in which they will have to prove the damage suffered, for which they will have a term of one year from the date the sentence becomes enforceable.

**12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?**

The law does not provide for any specific defense applicable to damages generated by anticompetitive conduct; therefore, in the claim for such damages, the plaintiff will have the burden of proving that there is a relationship between the conduct sanctioned by the **Cofece** or the **IFT** and the suffered damage or loss claimed, and the defendant will have the burden of proving that there is no such causal relationship, or that it is not of the magnitude alleged by the plaintiff.

The affected party must also prove, usually through an economic and/or accounting expert evidence, the real existence of the damages, and in the same way quantify their amount, for which it needs documentary evidence, market research, business projections, among others.

**13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?**

The expert evidence is permitted in competition litigation, the Federal Code of Civil Procedures, supplementary to the LFCE, recognizes expert opinions as evidence.

Pursuant to the Regulatory Provisions to the LFCE, the judicial authority will make a request for an estimate of damages to Cofece or the IFT (if applicable), who will process it in accordance with the formal opinion procedure set forth in the LFCE.

However, expert evidence is permitted insofar as it is used to determine the actualization of damages as well as the possible quantification thereof. Normally, each party may appoint its experts, but also the judge has the power to appoint an official expert. Usually, economic and/or accounting expert evidence is offered.

Regarding to the procedure: The party that wants to submit the expert evidence must ask it within a 10 days-period of the legal term with the corresponding questionnaire to be submitted by the expert, as well as appointing an expert on its behalf and proposing a third-party expert. The Judge shall grant the other parties a period to add questions to the questionnaire, to appoint their expert and to state whether they agree with the proposed third-party expert. If they do not agree on the third-party expert, the court may have the decision on who is going to be the third-party expert.

Each expert will render his opinion and once the file is ready to issue a decision, the court has the broadest freedom to analyze the rendered evidence, to determine the value and to set the final resolution. Specifically, the value of the expert evidence will be left to the prudent appreciation of the Court.

**14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?**

Regarding whom is the decision-maker at trial, as stated above, the District Judges will be in charge of resolving the trial.

Regarding how evidence is dealt with, the legal tradition adopted in Mexico comes from the civil law, with a more written approach, and there are no figures such as the Discovery or the jury trial system.

**Claim for damages:** In the case of an individual claim, the plaintiff will file its claim before the specialized District Court, in which it will state the facts constituting its action and its evidence. On the other hand, the defendant must state and prove the exceptions it considers pertinent to the action sued.

Essentially, the procedure consists of the following phases:

- i. Presentation of claim and evidence by the plaintiff.
- ii. Admission of the claim and summons to the defendant.
- iii. Summons to the defendant.
- iv. Answer to the claim by the defendant, stating its exceptions and defenses. The defenses may be either procedural or substantive.
- v. Resolution of the defenses filed by the defendant.
- vi. Opening of the evidentiary term in which each one of the proofs will be presented.
- vii. Final hearing in which written arguments will be made.
- viii. Judgement.
- ix. Execution of the Judgement.

Once the sentence has been issued, any of the parties may file an appeal, the purpose of which is for a higher court to confirm, revoke or modify the sentence.

Once the appeal period has passed without the appeal being filed or the appeal has confirmed the judgment, it will be considered as a final judgment and the execution of the judgment may proceed.

The amount corresponding to the damages and prejudices generated to the plaintiff will be established in a liquid manner in the execution of the judgment.

It is worth mentioning that the appeal may be filed against the final judgment, but also against multiple resolutions during the proceeding, which means that the same may be extended for a longer period.

It is also relevant to point out, without delving into the subject because it is not the object of this article, that in Mexico there is the amparo, whose specific function is

the protection of the human rights of the parties, so that an amparo lawsuit will be admissible during the proceeding to the extent that the parties consider that they have suffered the violation of a certain right. The Amparo lawsuit may be filed by any of the parties, and will be heard in all its instances, and may result in the suspension of the proceeding, and even in the modification of procedural resolutions and of the final resolution itself.

**Class action:** The representative of the collective shall file the claim indicating, in addition to the facts on which the claim is based, the accreditation of legal standing in the cause and in the process described in numeral 11. The Judge shall certify compliance with the procedural requirements and shall proceed to decide on the admission.

Once the lawsuit is admitted, the members of the affected community may join the action. After the admission, a prior hearing and conciliation will be held to seek a mutually agreed solution, with the assistance of the experts deemed appropriate.

If no agreement is reached, the trial will be opened to evidence, once the evidence has been presented, final arguments will be made by the parties and the sentence will be issued.

The judge is empowered to use the evidence he/she considers pertinent to better resolve the case, among which he/she may make use of evidentiary means such as expert evidence.

In this procedure it is also possible to file appeals against various resolutions in the procedure and against the final resolution. It is also possible to file an amparo proceeding, as has already been explained in this section.

Regarding what are the rules on cross-examination: The Judge will have the evidence offered by the parties. However, he may request an official expert to clarify certain controversial points in the expert opinions. If expert evidence is offered, the parties will have the right to ask questions in writing to the opposing expert, which could be considered as a cross-examination.

### 15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

In Mexico, the procedure for claiming damages begins directly with a lawsuit that initiates the corresponding trial, whether it is an individual claim or a class action,

the latter of which includes a conciliation stage, as mentioned in the previous section.

Regarding the duration of this type of proceedings, it is relevant to point out that in Mexico we do not have enough precedents to have a clear estimate of the time that a claim for damages derived from anticompetitive behavior could take. There are two important factors that could delay the resolution of a claim of this nature, the first is the possibility of filing several appeals within the same proceeding, and the second is the workload currently faced by the Courts and Tribunals specialized in this matter.

As mentioned in other sections, there is the possibility of filing an appeal, the purpose of which is that the higher court confirms, revokes, or modifies the sentence or resolution issued by the judge. Such appeal may be filed in parallel to the proceeding or may order the suspension of the proceeding, depending on the subject matter of the appeal.

It should be noted again that in addition to the remedies provided by law, in Mexico we have the Amparo as the institution in charge of protecting the human rights of all persons, therefore, there is the possibility for any of the parties to file an amparo lawsuit when they feel their human rights have been violated, and on the condition that it is appropriate in accordance with the respective Amparo Law. Such lawsuit has its own instances and the possibility of suspending the original lawsuit, as well as the possibility of determining in its resolution the modification of any resolution within the proceeding, including the final judgment.

#### **16. Do leniency recipients receive any benefit in the damages litigation context?**

No, as stated in the answer to item 4, in the procedure for waiver and reduction of the amount of fines provided by the LFCE only in cases of vertical practices and unlawful concentrations, it states that this benefit will be without prejudice to any actions that may be brought by affected third parties claiming damages arising from civil liability for the conduct of the relative monopolistic practice or unlawful concentration disclosed to Cofece.

#### **17. How does the court approach the assessment of loss in competition damages cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?**

As mentioned in paragraph 13, the Judge may request an estimate of damages from Cofece or the IFT, who will process it according to the formal opinion procedure set forth in the LFCE; in addition, the Judge may evaluate the opinions of the experts to elucidate the assessment of loss in competition damages cases.

Regarding the “umbrella effects”, it is clarified that the LFCE states that those who have suffered damages because of a monopolistic practice, or an unlawful concentration may file a lawsuit in defense of their rights. The LFCE penalizes those economic agents that have been part of the cartel or those that have cooperated with it, so it does not contemplate the case of economic agents that have taken advantage of the “umbrella effects”. Umbrella effects have not been recognized by any judicial criterion, but this does not imply that they cannot be tried in the event of having solid elements that prove that these agents have also generated, directly or indirectly, the damage to the claimant. Basically, these are the challenges presented in Mexican law with respect to this issue.

There is no methodology favored by the court, as mentioned above, a case-by-case analysis is made, but always in accordance with the principles of law and other applicable legislation.

Regarding how interest is calculated, it is clarified that there are no general criteria on how interest should be calculated, however, these can be described in the estimate of damages to Cofece or the IFT, and in the opinions of the experts.

#### **18. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?**

Yes, as we pointed out in the answer to numeral 4, the Civil Code provides that persons who have jointly caused a damage are jointly and severally liable to the victim for the reparation to which they are obliged. The Civil Code states that the debtor who pays the debt in full has the right to demand from the other debtors the part that corresponds to them.

In the administrative proceeding before Cofece or IFT, a fine is imposed on the economic agents considering the general damage that the conduct caused to the market and individualizing such fine with respect to the degree of participation of each economic agent. In the case of a claim for damages, the party claiming that the anticompetitive conduct sanctioned by Cofece or the IFT caused damage and/or harm must prove the link

between such conduct and the damage alleged, and the liability must be determined in proportion to the participation of the economic agent in the damage caused.

**19. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?**

The Federal Code of Civil Procedures provides for the dismissal of the claim in those cases in which the plaintiff is warned to correct any deficiency for not complying with the requirements set forth in the same Code and does not do so within the corresponding term, or because the claims are unfounded, frivolous, or reckless.

A competition damages claim can be disposed without a trial, when the parties are seeking an agreement in which they make reciprocal concessions, in an agreement of this nature, commonly the defendant will offer the payment of an indemnity and the plaintiff will accept it by offering to withdraw the claim for damages filed. For example, the Federal Code of Civil Procedures states that, in the case of class actions, once the class action lawsuit is admitted, the judge will immediately set a date and time for a preliminary hearing and conciliation. If the parties do not reach any agreement in the preliminary hearing and conciliation, the judge will proceed to open the trial. The parties may reach an agreement to terminate the trial before the judgment.

**20. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?**

As mentioned in paragraphs 11 and 14, in the class action procedure there is a conciliation instance in which an agreement between the parties will be sought, and if this is not achieved, the lawsuit will continue with the trial.

On the other hand, since it is a civil claim, the parties have the possibility of seeking an agreement in which they make reciprocal concessions. In an agreement of this nature, commonly the defendant will offer the payment of an indemnity and the plaintiff will accept it by offering to withdraw the claim for damages filed. Even the settlement agreement can be presented before the Judge and request that it be elevated to the level of a judgment.

Regarding the question *Can such settlements include*

*parties outside of the jurisdiction?* It should be mentioned that the Federal Civil Code (Articles 2073 and 2074) establishes that the payment must be made to the creditor himself or to his legitimate representative, however, the payment made to a third party will extinguish the obligation, if so stipulated or consented to by the creditor, and in the cases in which the law expressly determines it. In other words, the payment of settlements could include parties outside of the jurisdiction.

**21. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?**

Confidential or proprietary information is protected by the Constitution and many other laws, also by the LFCE and its Regulatory Provisions, thus, the information disclosed during the court process will only be accessible to the parties of the file, the files are not public.

Within the proceeding, the parties may also request that certain information provided be kept confidential, justifying the reason for their request. In addition, every judge is obliged to protect the rights of confidentiality and protection of personal data provided for in the Federal Law of Transparency and Access to Public Information.

The rules for disclosure of documents (including documents from the competition authority file or from other third parties: Exceptionally, documents classified as reserved may be declassified when: the causes that gave rise to its classification are extinguished; the classification term expires; there is a resolution of a competent authority that determines that there is a public interest cause that prevails over the confidentiality of the information; the Transparency Committee considers the declassification pertinent; and the information is related to serious human rights violations or crimes against humanity.

Are there any exceptions (e.g., on grounds of privilege or confidentiality, or in respect of leniency or settlement materials): In addition to the above, the LFCE states that the identity of the Economic Agent and the individuals who intend to avail themselves of the benefits of the



immunity program will be kept confidential.

**22. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?**

Pursuant to the Federal Code of Civil Procedure, the losing party must reimburse the other party for the costs of the proceeding. A party is considered to lose when the court accepts, in whole or in part, the claims of the opposing party.

The costs of the proceeding consist of the amount which, in the opinion of the court and in accordance with the tariff provisions, the successful party should have paid or should have paid, excluding the cost of all acts and forms of defense considered superfluous. Any unnecessary expenses shall be borne by the party who has incurred them.

In the event that several parties are considered as losers, the court shall distribute the burden of costs among all of them proportionally, the amount of which shall also be distributed proportionally among the successful parties.

In the specific case of class actions, the Federal Code of Civil Procedures establishes that each party will assume its expenses and costs derived from the class action, as well as the fees of its representatives, which are capped at the following amounts:

- i. Up to 20% if the amount of the main lot does not exceed 200 thousand times the “Unidad de Medida y Actualizacion (Unit of Measure and Actualization - UMA), which for this year (2022) its equivalent to \$96.22 Mexican pesos per day.
- ii. If the liquid amount of the main lot exceeds 200 thousand but is less than 2 million times the UMA, it will be up to 20% on the first 200 thousand and up to 10% on the excess.
- iii. If the liquid amount of the main lot exceeds 2 million times the UMA, they will be of up to 11% over the first 2 million and up to 3% over the excess.

Finally, it is important to note that if the parties reach an agreement prior to the issuance of a judgment, such settlement agreement must provide for costs and expenses.

**23. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party’s costs? Are lawyers permitted to act on a contingency or conditional fee basis?**

The figure of a third-party funder provided for in other countries or in institutions such as arbitration, is not foreseen as such in a claim for damages arising from anticompetitive conduct. However, each party is free to seek financing to promote its action, but such relationship with a third party will be totally independent of the litigation.

The only way for a third party to participate in the litigation would be through an assignment of litigation rights. The Federal Civil Code provides for the possibility for the creditor of a right to enter into an agreement for the assignment of litigation rights that includes the transfer of the rights of the relationship that is the subject matter of the dispute and consequently of the procedural position of the assignor.

Regarding the fees of the lawyers representing both plaintiffs and defendants, there is no regulation per se, so it will depend on the agreement between lawyer-client, which will allow establishing a fee basis by hours, by stages, or by success, among other options.

**24. What, in your opinion, are the main obstacles to litigating competition damages claims?**

We consider that the main obstacles in litigation for damages derived from the sanction for anticompetitive conduct can be identified in two aspects:

The first, in reference to the merits of the dispute, as stated in the content of this document the Specialized Judge will request Cofece an estimate of damages. However, due to the very nature of the conducts, it is complex for the Commission to make an accurate calculation of the damage generated to the market by the sanctioned conducts; therefore, we believe that such difficulty will also be reflected in the calculation of the specific damages that could be claimed by any party affected by the sanctioned practices.

The same problem will be faced by any expert witness presented by the parties during the litigation, since due to the nature of the conducts it becomes complicated to individualize possible damages.

On the other hand, in Mexico there have been few cases

in which individuals who consider themselves harmed by anticompetitive conduct have filed a claim for damages, and therefore, there are few precedents and criteria applicable to such claims. It is a matter that, although it has already begun to be seen in the country, it has yet to permeate completely.

Second, in reference to procedural issues, as mentioned in this document, the judicial bodies in charge of processing a claim for damages derived from anticompetitive behavior are the Courts Specialized in the matter; however, due to several reforms implemented by the current Mexican government in the last two years (in the areas of competition, energy, telecommunications, among others), such Courts have a significant work overload, which has been reflected in the resolution times of the proceedings.

As it has been pointed out, since it is necessary to have a firm resolution from the Cofece to claim damages, and since it is necessary to have firm resolutions (prior to a possible amparo trial), the time required to obtain a favorable and enforceable judgment is too long, and the affected party may be worn out in litigation costs and invested time.

**25. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?**

As discussed in the previous section, claims for damages arising from anti-competitive conduct sanctioned by the Cofece or IFT are relatively new in Mexico, so in our opinion, in the following years there could be an increase in the number of claims filed in this regard, once the idea has permeated.

We also believe that with the progress of such claims, companies and individuals will become more aware of the importance of preventing any anti-competitive behavior, and in that sense, of having adequate compliance policies, since in addition to the administrative sanctions that could be imposed by Cofece or IFT, they are also exposed to a significant sanction in terms of damages.

In other words, as such action gains strength in the following years, we will find more precedents in this regard, a greater specialization of the Judges in this type of matters and a greater initiative on the part of the Economic Agents to avoid litigation of this nature.

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