



INTER-AMERICAN DEVELOPMENT BANK



**LATIN AMERICAN COMPETITION FORUM  
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**-- Session III: The Role of Economic Analysis in Judicial Decisions --**

**Note by Mexico**

**1. What is the role of the courts in your country, i. e. do the courts make enforcement decisions on cases brought by the competition agency, or do they only review the legitimacy of administrative decisions taken by the competition agency?**

Under the Constitution of the United States of Mexico, the judicial organs which make up the Federal Judicial Power (the District Courts and the Collegiate Circuit Courts) have the power, *inter alia*, to hear “amparo” (protection) cases (a constitutional check) brought by economic agents against administrative decisions taken by the Federal Competition Commission (Commission or CFC). In this regard, their role consists of reviewing the legality and constitutionality of decisions taken by the CFC.

**2. Is your judicial system inquisitorial or adversarial?**

It is inquisitorial

**3. Are your courts able to construct economic arguments independently from the submissions made by the parties – e.g. by using court-appointed consultants? If so, how do the courts define the mandate of such consultants?**

The judicial organs which make up the Federal Judicial Power have the power to build economic arguments. They may do so on their own initiative (through the internal staff of the court or tribunal) or by hearing expert evidence (which is provided by one of the parties and which brings to the dispute expert technical opinions based on the art or science in which the designated person is an expert). Experts of the parties and an expert designated by the judicial authority take part in these hearings. The court hearing the dispute has full freedom to judge the value of the evidence.

**4. What are your actual experiences as a competition authority with presenting complex economic theories or sophisticated economic evidence to courts? Which techniques proved most effective: use of external economic consultants or internal staff? Written or oral pleadings?**

Recently, the Federal Judicial Power confirmed the existence and defined the meaning and scope of the principle of lifting the corporate veil which allowed the Commission to prosecute a monopoly practice operated by an economic group.

This decision was of supreme importance for the work of the CFC since it could not fully exercise its powers in economic matters under the old school view of legal personality when economic agents could shield themselves behind this personality and use companies as “screens” to hide conduct contrary to the Federal Economic Competition Act. This principle, sometimes described as “discounting corporate legal personality” is one of the most effective tools for dispensing with the legal fiction of corporate personality which is sometimes abused by economic agents.

Finally, it should be emphasised that in hearings of “amparo” cases instigated by the judicial powers of the Federal Judicial Power, the Commission’s own staff are responsible for transmitting to the judges, magistrates and ministers (in writing or orally) the economic arguments which support the decisions of the CFC.

**5. In your country, are the issues different when a case is brought before an appellate judge (higher court) as opposed to a judge who is responsible for making factual findings (lower court)?**

The lower courts analyse the legality and constitutionality of the acts challenged by the Commission. On conclusion of the legal proceedings, they give the appropriate judgement in law. The party that feels aggrieved by the decision concerned then has the possibility of appealing to a higher legal authority and that authority will consider whether the judgement was given in accordance with the law and may uphold it or set it aside.

**6. Should economic experts be sitting in higher / lower courts with the judges dealing with antitrust cases?**

As indicated above, economic experts take part in legal proceedings when the parties so request and the judicial authority allows that evidence.

**7. Is it practical to have specialised courts reviewing antitrust cases which can build up the necessary economic experience to deal with this area of law?**

Mexico does not have specialised courts for antitrust cases. The existence of such a judicial body would undoubtedly involve a special study of the technical questions that arise in relation to economic competition and would result in prompt and objective delivery of justice in this type of case.