

MEXICO
CONSUMER PROTECTION POLICY, 2000

INTRODUCTION

Consumer protection in Mexico is based in two institutions: the Ministry of Economy (SE), (formerly the Ministry of Trade and Industrial Development) and the Federal Consumer Attorney's Office (PROFECO). The responsibilities and attribution of tasks of the two agencies in matters of consumer protection are set out in two basic laws, the Federal Consumer Protection Law (LFPC) and the Federal Metrology and Standardization Law (LFMN). Both laws are complemented with other regulations, principally the Mexican Official Standards (NOMs) that are issued by public authorities in terms of the LFMN.

The Ministry of Economy and PROFECO, as well as other Federal Government agencies and entities, carried out several actions in order to strengthen the protection and defense of consumers' rights, aimed to foster a new culture in consumer relationships, according to the recent changes in the marketplace. Besides, new activities were implemented related to e-commerce trends.

In the year 2000, consumer protection efforts were focused on five basic topics: Standardization of goods and services; Information and guidance to consumers; Protection of consumers' economic interest; Verification and oversight; and Procedures for complaints and redress.

It is important to underline that during 2000, both agencies took the necessary steps in order to fit some of their procedures into the ISO 9000 Quality Standards. In this field PROFECO achieved the certification of the immediate conciliation procedures.

The most relevant actions and achievements reached in 2000 are summarized below:

1. LEGAL REFORMS IN ELECTRONIC COMMERCE MATTERS

One of the most important achievements in the year 2000 was a set of legal reforms related to electronic commerce, according to both the spirit and objectives of OECD Guidelines. The reform was approved and published in the Federal Official Gazette of May 29, 2000, becoming effective on June 8, 2000.

Such reform modified four Federal Statutes.

- ❑ **Federal Civil Code**, which now recognizes the validity of the consent expressed by electronic and optical means or by any other new technology, as well as the validity of purchase contracts celebrated by those means. The Civil Code also allows the expression of the offer and its acceptance in an immediate way, without previous agreement of the parties.
- ❑ **Federal Civil Procedure Code** which now recognizes as evidence the information generated and communicated through electronic and optic means or by any other technology, the value as evidence will be determined by the security or trustiness of the method employed to transfer such information.
- ❑ **Code of Commerce**, which now provides that contracts and agreements entered by those electronic or optic means shall become binding since the moment when an acceptance of a public offer is received. It is therefore expressly stated that electronic means may now be utilized in all acts of commerce and every information generated, sent, received, filed or communicated through such electronic or optic means shall be generically denominated “data message”.
- ❑ **Federal Consumer Protection Law**, now establishes that all electronic operations between consumers and suppliers, must comply with the basic principles of LFPC, which were reformed according to the “OECD Guidelines for consumer protection in the context of electronic commerce”. Besides, a new chapter was introduced in this Law, in order to set out the consumer’s rights in the field of electronic commerce transactions.

2. STANDARDIZATION OF GOODS AND SERVICES

Mexican Official Standards (NOMs) are one of the main components of the Mexican consumer protection policy. NOMs are national mandatory rules for business establishing technical specifications on safety and/or information in the production and commercialization process of goods and services.

Under the Federal Metrology and Standardization Law, LFMN, the Ministry of Economy coordinates the Standardization Process, but it is important to remark that in the elaboration of each NOM, several actors could take part along with federal authorities, for example: consumers, industrial and commercial representatives, and educational institutions, among others.

In 2000, the Ministry of Economy issued 9 NOMs, which refer to:

- **PRODUCT SAFETY STANDARDS**

Two safety standards were issued: the first one relates to seat belts for automobiles and the second one establishes security specifications for electric products.

- **COMMERCIAL INFORMATION STANDARDS**

One standard was issued in this field; this NOM establishes the information requirements for the labeling of natural-extract vanilla products, as well as other derived products or substitutes of this product used as raw material.

- **COMMERCIAL PRACTICES STANDARDS, NOM-PC**

NOM's related to commercial practices are an essential component in the protection of consumers' interests. They establish the minimum informative elements that suppliers must provide to consumers and/or the information that model contracts used to formalize the transaction should include. In some cases, NOMs also establish that suppliers should obligatorily register contracts in PROFECO, in order to verify their accomplishment with the standard.

In 2000 several NOM-PC were issued for the following services:

- ☐ NOM on informative requirements for funeral services

This NOM establishes the requirements of the preliminary information to be provided to consumers, and the main elements that should contain the model contracts used in this commercial practice.

According to the NOM, funeral service providers must register their contracts in PROFECO. Every single contract must contain the information of both consumer and supplier, as well as a complete and detailed description of the goods and/or services purchased by the consumer. Other conditions that should be disclosed to the consumer in the contract are the price and payment mechanisms; in credit sales, the interest rate or the procedure for its determination; and conventional penalties and warranties.

□ NOM for Consultant Services on Quality issues.

In recent years business has shown interest in getting their process certified according to Quality Standards such as ISO 9000. That situation has resulted in a growing number of consultant's offices in Mexico. The Ministry of Economy has issued a NOM aimed to avoid frauds and misleading practices conducted by unprofessional companies.

The NOM establishes the information requirements and minimum elements for model contracts. It also provides that suppliers must register at the General Direction of Standards, within 15 working days after the beginning of their activities. In order to get the registration companies should disclose their name, Number of Federal Taxation Register; address, telephone, fax and e-mail; name of their legal representative, and a summary of their experience in the field of consultant services, as well as any subsequent modification to these data.

□ NOM for sales and promotions involving contest and sweepstakes.

The NOM establishes the characteristics of commercial information that suppliers who carry out sales promotions involving contest and sweepstakes must provide to consumers and to PROFECO.

The suppliers that have the intention to carry out this kind of commercial practice should notify it previously to the PROFECO. This notification should be made at least one working day before the date in which the promotion is intended to begin.

- NOM for Consumer networks benefiting from grouped purchases of goods and services, known in Mexico as “self-financial groups”.

The LFPC recognizes a commercial practice consisting in the integration of consumers groups organized in order to purchase goods and services in a joint manner. These groups are managed by a third person (a business) who is in charge of collecting periodically the contribution or payment from members of the group. At the end of each period, generally every month, one person of the group gets the product chosen.

The NOM issued in the year 2000 strengthens the applicable regulation to such commercialization systems. Among others, this rule establishes the following provisions:

- Business or supplier must have an actuarial study elaborated by a serious accounting firm where the viability of the self-financial system is determined.
- This scheme is only to purchase goods or services, business or suppliers shall not give cash to consumers in any circumstances, except when the contract is cancelled or when at the end of the contract, there is a remaining amount of money to be distributed among all consumers.
- The operation of self-financial system is an exclusive responsibility of business or supplier, consumers should be aware that the system has no economic or financial support neither from the Federal government nor from any banking institution.
- On behalf the consumer the business must contract an insurance to cover every consumer's life in the group, or the goods purchased by this system, in order to protect the common interest of the group. The consumer must pay the insurance.
- The contract utilized by the business or supplier of this service should be registered with PROFECO.

- **HEALTH AND FOOD STANDARDS**

The Ministry of Health issued the following standards:

- ☐ NOM for sanitary requirements for processing drinking water

Two Official Standards were issued on this matter: the first one establishes the sanitary requirements for the treatment of drinking water and the germicide substances used in that process; the second one provides the specifications for the equipment necessary for such process.

- ☐ NOM for labeling of vegetable nutrients

This NOM establishes characteristics and specifications for the labels of vegetable nutriment. Some of these specifications are:

- Clear and simple information exempt of ideas that could provoke exaggeration about vegetable nutriment's real properties.
- Avoidance of the use of 'extensive terms' such as "etc.", "and others", "wide range".
- Inclusion of these mandatory texts "DO NOT STORE CLOSE TO FOOD PRODUCTS", "DO NOT RECYCLE THIS PACKAGE, DESTROY IT", "KEEP AWAY FROM CHILDREN".
- Inclusion of the logotype, trade name, physical address, and telephone of the manufacturer, of the distributor and, when applicable, of the importer.

- ☐ NOM for obesity control and treatment

This NOM aims at giving security to consumers who are under some treatment for obesity control. It is directed towards professionals, technicians and auxiliary persons with activities related to health care, as well as to all public, social and private establishments that offer services for obesity treatment and weight reduction and control. Among other requirements, the NOM establishes the following:

- All treatments must be prescribed in an individual manner, once a nutritional evaluation of each patient has been made, based on clinical indicators and laboratory tests.
- Each medicament utilized in the treatment must be medically justified and prescribed in an individual manner.

- It is forbidden to prescribe standardised treatments for all patients as well as to provide secret or fractional drugs.
 - All professionals working in centers for obesity control must bear a physician degree, a nutritionist degree, or a psychologist bachelor's degree. The general practitioners must have a document to prove that they have followed a program of instruction on nutrition. In the case of specialized physicians, they must have the authorization corresponding to that specialization. The technical personnel must have a qualification granted by the educational authorities on nursery or medical care, clinical laboratory or nutrition.
- NOM for Good Practices for the elaboration of medicines.

An important component of social welfare and development is the health care, which is associated to the consumer safety. The Ministry of Health issued a NOM to establish the minimum requirements that manufacturers should fulfil when processing raw material for drugs or medicines.

This NOM refers to the quality of these products and defines Good Practices for Manufacturing and establishes the requirements to be met regarding the personnel, equipment, installations, documentation and materials control in every stage of the manufacturing process.

The full text of each NOMs referred to in this report can be consulted in the Mexican Catalogue of Standards of the Ministry of Economy, available in Spanish at:

http://www.economia.gob.mx/normas/Catalogo_de_normas/catalogo_de_normas.html

3. INFORMATION AND GUIDANCE TO CONSUMER

• DIFFUSION OF NOMS ON COMMERCIAL PRACTICES

Other essential component of consumer protection policy is the development of programmes and activities designed to assist consumers and to provide them with guidance and information in order to promote a new “consumer culture” and to prevent deceptive or fraudulent schemes. One of the main objectives of these programmes is to avoid disadvantaged or mistaken purchasing decisions which can impair consumers’ rights and economic interests.

Recent work has resulted in an increased participation of consumers, who have become more interested in their rights and in their enforcement. Nowadays, more consumers look around for better purchase options, comparing prices and qualities, and search for complaint and redress.

The results obtained in 2000, in terms of information, orientation and assistance to consumers, are the following:

- **DIFFUSION OF COMMERCIAL PRACTICES STANDARDS (NOM)**

In order to look for supplier's compliance with the NOM applying to commercial practices, the Ministry of Economy has put those NOM on its Web site and has explained in detail the procedure for standards development. Additionally, a special section in the Consumer Magazine named "The Standard is to comply" (La norma es cumplir) gives consumers orientation about the content and characteristics of those standards.

The Ministry of Economy carries out seminars and other events to promote the NOMs and jointly with PROFECO gives advise to consumers through the distribution of informative material and brochures.

- **CONSUMERS TELEPHONE (52 5) 568 87 22, 52 11 16 14 AND
TOLL FREE 01 800 903 13 00**

The consumer's telephone, an important response center for the consumer, is broadly diffused and well- known practically to the whole population. By this means, PROFECO provides orientation and counseling to those consumers requesting the service. In the year 2000, approximately 8,620 consultations were handled per working day, with a total of 2,068,811 consultations for the whole year. More than 90% of them were requests of information and counseling (2,054,073) and the rest were complaints (14,738).

- **DECEPTIVE OR ABUSIVE ADVERTISING.**

One of the basic principles in consumer relations refers to the protection against the deceptive and abusive advertising, and the coercive methods in the commercialization of goods and services. On this matter, PROFECO carried out a narrow surveillance to verify that the advertisements in the mass media fulfilled what is stipulated in the Federal Consumer Protection Law.

In year 2000, PROFECO analyzed 300 commercial advertisements and 38,065 advertisements of audio text services; PROFECO began 957 procedures as regards deceptive and comparative advertising and audio text services, achieving during that period the modification of 455 advertisements.

- **LABORATORY STUDIES**

The research conducted in the PROFECO's laboratory supports the consumer in the consolidation of an informed approach regarding the consumption acts and prevents possible damages to consumer's health. Moreover, these studies provide reliable information that allows companies to improve the quality of their products and to foster their competitiveness.

- **PUBLICATIONS**

- ❑ **The Guide Who is Who in Prices** offers consumers price options for goods and services in different commercial establishments, allowing the consumer to identify the best price. In the year 2000, 1,560,000 copies of this guide were distributed in 6 geographical areas of the country. The information is also available through the consumer's telephone (525 568 87 22) and in the touch finger sensitive screens located at the consumer information counters installed in strategic places with important consumers affluence.
- ❑ **The Consumer Magazine**, a monthly PROFECO publication that informs, among others: i) results of investigations and products quality tests; ii) price comparisons; and, iii) other topics of interest to the consumer. In the year 2000, 720,000 copies were distributed at a price to the public of \$15.00 pesos each one (approximately 1.36 dollars). The Magazine has had an outstanding acceptance in the last 6 years, increasing its sales by 3000%.
- ❑ **Brochures, fliers, booklets, posters.** During the year 2000, PROFECO published and distributed more than 4 millions of this type of printed materials, containing information on several topics of interest to the consumers.

- **PROGRAMS OF RADIO AND TELEVISION**

- ❑ During the year 2000, PROFECO produced and broadcasted :
 - **52 TV programs and 52 Radio** programs in order to diffuse quality tests, domestic technologies and other matters, as well as general information of interest to consumers.
 - **7 special programs:** 3 by Edusat Network (Mexican Satellite System that manages educational channels), 3 by a Labour Organization ("Congreso del Trabajo") and 1 regarding the verification of armored cars Profeco-Pemex Irapuato.
 - **12 radio spots and 12 of television** in order to promote the sale of the Consumer's Magazine and 8 promotional regarding PROFECO actions in seasons like Lent, Beginning of the new school year; End of year and Christmas Holidays.

- **WEB PAGES**

The Ministry of Economy and PROFECO update constantly their respective Web pages: <http://www.economia.gob.mx> and <http://www.profeco.gob.mx>

The web page of the Ministry of Economy includes a section denominated “First Contact”. This is the users' initial approach to the activities carried out by that Ministry and its coordinated sector, including PROFECO. This service is also provided by telephone through the toll-free number 01-800-410-2000.

- **CONSUMERS ORGANIZATIONS**

PROFECO coordinates the creation and organization of consumers groups to whom preventive and informative actions are oriented. The groups are organized in their own communities, in accordance with their common interests or characteristic (age, gender, consumption preferences, etc.).

The number of consumer organizations increased during the year 2000 (5,918 at the beginning of the year compared to 6,560 at end of it). The consumers' organizations are the privileged channel for preventive actions undertaken by PROFECO regarding the orientation and information to consumers taking into account variables such as social condition, geographical aspects, traditions, life expectations, economic level, as well as age, gender and consumption preferences.

- **PROGRAM “WHO IS WHO IN PRICES” AND “WHO IS WHO IN MONEY DELIVERY FROM USA”**

During the year 2000, the Program “Who is Who in Prices” allowed the diffusion of price information to the population concerning 3,000 basic products in 24 of the most important cities in the country.

The program “Who is Who in the Money Delivery” derived from the above mentioned one and it is operated by PROFECO in coordination with the Mexican Consulates in the cities of Dallas, Chicago, Houston, Los Angeles, Miami and New York, within the United States of America. The program assists the Mexican citizens working in the United States who periodically send money to their relatives in the Mexican Republic. Its objective is to provide information regarding the services and rates applicable to the money transfer services provided by the main firms in the United States.

3. PROTECTION OF THE CONSUMER’S ECONOMIC INTERESTS

The Federal Government carries out a number of activities aimed to ensure an appropriate level of supply of basic products in the marketplace at accessible and competitive prices.

- **SEASONAL PROGRAMS**

One of the main activities to increase the population's purchasing power consists in the implementation of supply programs in high-demand seasonal periods. Through these programs agreements are made with producers' representatives in order to guarantee the supply of products at affordable prices.

In this task, the Ministry of Economy is in charge of the coordination of the agreements with producers, manufacturers and organized commerce, while PROFECO offers orientation and education to consumers and monitors implementation of the agreements to ensure that consumers are protected against abuses.

The most important programs are:

- ❑ **Lent:** Supply of seafood products is guaranteed; special prices are offered and information is provided on the most affordable fish species.
- ❑ **Beginning of the new school cycle:** By virtue of this program special prices and promotions in products and school material are offered between the end of June and the beginning of September. This program is complemented with a campaign that PROFECO carries out in order to educate the population as for the acquisition and recycling of these products.
- ❑ **End of year's Season: Christmas –New Year and the Epiphany:** This program offers orientation to consumers about the appropriate use of their Christmas bonus. Additionally, agreements with suppliers are made in order to offer to consumers toys promotions in Christmas-New Year and the Epiphany.
- ❑ **Holiday Season:** This program, carried-out in coordination with other federal agencies, includes a wide informative campaign on the best tourist options and destinations in the country. Information is provided to the population through the tourist information desks strategically placed in the main tourist centers of Mexico. It is implemented during the vacations periods of Holy Week, Summer and End of year.
 - ❑ Issues solved within the programs: 287,055
 - ❑ Recovered amount for consumers: \$21,693,422.00 (around 2.2 million USD)

- **REGISTRATION OF MODEL AGREEMENTS**

With the aim to offer transparency and legal certainty to consumers in their commercial contracts with suppliers of goods and services, the Federal Consumer Protection Law establishes through a NOM (Mexican Official Standard), that certain types of contracts are subject to obligatory registration when they contain unfair or unequitable clauses which may impair consumers' rights

To that end PROFECO administers a Public Register which is also open to those suppliers wishing to voluntarily register their contracts in order to provide greater legal certainty to consumers.

The registration with PROFECO is free of charge and suppliers can obtain advice on how to make their contracts; model contracts exist for different commercial branches. The formats of the model agreements registered according to the applicable standards will be labeled "Registered in PROFECO with the number._____", which shows the compliance with the applicable law or standard or and it is a good reference about the supplier.

According to several Mexican official standards, the model agreements can be classified into two: agreements whose registration is mandatory and those whose registration is voluntary. Among the first ones are those regulating the following services:

- Time-sharing
- Dry cleaner's
- Sale and purchase of furniture
- Sale and purchase and consignment of second hand vehicles
- Repair and maintenance of automobiles
- Leasing of vehicles
- Truck transport
- Self-financing
- Services of photographic laboratory and video recording
- Sale and purchase of construction materials
- Repairs and maintenance of properties (real state) and other goods
- Social events
- Commercialization of graduation packages
- Skill programs and technical training
- Funeral services

During the year 2000, 4,241 model agreements were registered; more than 83% (3,525) required mandatory registration; for the remaining contracts (716) registration was of voluntary nature.

The office that administers the Model Agreements Registration allows both PROFECO and consumers to verify the historical behavior of each registered company.

4. OVERSIGHT AND VERIFICATION.

The verification and surveillance functions that PROFECO carries out cover three main areas:

- i) Commercial behavior. The actions are directed towards the behavior of the suppliers;
- ii) Metrology. Legal aspect that guarantees the accuracy in the measurable commercial transactions;
- iii) Mexican Official Norms (NOMs, Mexican Official Standards). Presently, PROFECO verifies 109 NOMs on the following aspects:
 - Commercial Practices · (21)
 - Commercial Information (32)
 - Security (25)
 - Energy and thermal Efficiency (9)
 - Metrology (23)

In this context, during the year 2000, PROFECO carried out 260,364 verification visits to establishments where goods are produced, distributed and commercialized and where services are provided. Through the above mentioned visits, by means of random sampling, 105 million products were verified as follows:

- 14,906,269 alcoholic beverages
- 22,027,321 of materials and inputs for house construction, repair and maintenance
- 3,013,862 electric and electronic appliances (devices)
- 43,649,243 products within the Program New School Cycle
- 14,420,243 products related to the Program Christmas-New Year and the Epiphany
- 8,380,147 products of the Program of Lent and Holy Week Vacations

Additionally, 231,926 measurement instruments were verified and gauged. Such instruments are weighting appliances-mechanical scales of performance non-automatic with low, medium and high measurement scope; measuring pumps for gasoline and other liquid fuels; positive displacement for L.P. Gas in liquid state; rigid instruments to measure length; filling instruments; batches; tank prover; electrical recording clock and high capacity flow meters.

The verification and surveillance actions are carried out through:

I. National Programs of Calibration.

II. Specific Programs.

- Measurement instruments
- Alcoholic beverages
- Materials for house construction, repair and maintenance

- GLP
- Gasoline
- Tourist areas
- Electric and electronic appliances (devices)

III. SEASONAL PROGRAMS

- Lent
- Holy Week
- Children's Day
- Mother's Day
- All Saint's Day
- New School Year
- End of Year and the Epiphany

IV. Emergency Programs, including those related to natural disasters.

V. Special Programs, including the Program PEMEX-PROFECO and the National Program of GLP

• **PEMEX-PROFECO PROGRAM**

A special branch of the verification and surveillance program that PROFECO carries out refers to the inspection of gasoline stations. In the year 2000, 3,673 establishments were visited, implying the verification of 55,586 dispatch fuel hoses and ensuring a correct equivalence between the quantity, quality and price paid. During the visits, the operation and calibration of the devices with deviations was conducted and those representing risks for consumers, caused by mechanical, electric or hydraulic flaws, were immobilized.

Also, in the same year, 48 calibration skids, 550 filling instruments and 5,037 armored cars (road tankers) were verified. Likewise, 212 armored cars (road tankers), were re-calibrated; the operation of 13 skids was suspended and the service of 57 filling instruments was canceled.

• **NATIONAL PROGRAM REGARDING LIQUEFIED PETROLEUM GAS (GAS LP)**

Another special program that PROFECO carries out is the one related to the liquefied petroleum gas (GLP). Regarding the commercialization of portable vessel and stationary gas, during year 2000 7,986 operatives were carried out at national level, allowing the verification of 16,016 distributing tanks vehicles and armored cars (road tankers). Those actions allowed to offer the consumer, through preventive measures and administrative sanctions, the correct supply at the stationary tanks, the claimed net content of the portable recipients and the offered price.

5. PROCEDURES FOR COMPLAINTS AND REDRESS.

According to the Federal Consumer Protection Law the consumers must have i) access to administrative instances, ii) means for the defense of their rights and iii) mechanisms for solving disputes between suppliers and consumers. In the year 2000, the settlements mechanisms were modernized and speeded up, reaching the following results:

- **CONCILIATION.**

Conciliation continued to be the best way to solve most of the matters brought to PROFECO. The conciliatory procedure has a maximum duration of 30 working days. However, there is also an immediate conciliation procedure by telephone, with a maximum duration of 5 days.

The original goal of recovery of \$936,769 thousands of pesos (approximately USA \$93, 676,900) in favor of the consumers was overcome by the reached goal of \$1,055 250 thousands pesos (approximately USA \$105,525,000) representing 12.6% of improvement.

- **ARBITRATION.**

Arbitration is another procedure established by the Federal Consumer Protection Law in order to solve consumer controversies, although it has been less used than conciliation. During the period informed 474 issues were solved by means of institutional arbitration.

To promote the use of this procedure, the Ministry of Economy and PROFECO continued to promote arbitration as an alternative mean to solve problems arising in the consumer relations especially in those cases not solved by conciliation.

Both institutions have promoted institutional arbitration offered by PROFECO, as well as the independent arbitration offered by the arbitrators inscribed on the List established by the Ministry of Economy. This list includes 114 arbitrators, mostly lawyers, besides specialists on dry cleaner's services, automobiles mechanics, industrial design and architecture, among others. The arbitrators are selected through a procedure including practical and theoretical examinations. As part of the activities promoting an arbitration culture in the consumer relations, in November, 2000, the Ministry of Economy, in coordination with PROFECO, carried out at the Latin American University of Mexico City, the seminar "Arbitration in the settlement of consumption controversies", with the participation of outstanding specialists.

The diffusion actions also include the visits to the federal delegations of both institutions, as well as chats to consumers and suppliers designed to promote arbitration.

7. INTERNATIONAL COOPERATION

As regards international issues, the Ministry of Economy as well as PROFECO, in coordination with the Ministry of Foreign Affairs of Mexico, participated in several international actions related to the protection of the consumers. In this sense, opinions and comments were expressed on the projects developed by international organisms such as the OECD, Consumers International, ISO-COPOLCO, IMSN, among others.

Likewise, both institutions kept in contact with authorities and organizations of other countries such as: NACAA, FTC, Consumers Product Safety Commission (CPSC), exchanging information and experiences as regards consumer protection mainly in areas related to the coordination and mutual support regarding the non-compliance towards consumers.