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## Antitrust Class Actions in Mexico: Emerging Trends and Legal Implications

After more than a decade since their introduction to the Mexican legal framework, Mexico's Federal Antitrust Commission (COFECE) filed its first-class action lawsuit against three companies and an association in the pharmaceutical distribution market. The defendants were initially found guilty in 2021 of participating in a cartel that manipulated prices and restricted the supply of medications in the country. The class action lawsuit seeks 2,316 billion Mexican pesos (approximately 115 million US dollars) in compensation for damages.

COFECE's claim, not publicly available at the time of this publication, appears to pursue a "diffuse" class action aimed at protecting indivisible rights that affect the general public or a broad group rather than focusing on individual claims. Their approach does not define a specific class of affected consumers. Instead, COFECE requests that the defendants pay damages to Mexico's public health federal agency, IMSS-Bienestar, "*...so that they are used for addressing the health of Mexicans and benefit the sector harmed by the anticompetitive practice.*"<sup>1</sup>

With this action, COFECE aims to establish a precedent in Mexico, where anticompetitive practices are penalized not only with fines but also with compensatory damages.

While consumer protection class actions are gaining traction in Mexico, and there are a few ongoing antitrust class actions, it raises the question: why did it take COFECE so long to initiate an antitrust class action? Below, we explore some of the procedural hurdles that may be at play in the answer.

This briefing examines the context, legal framework, key procedural aspects, and implications of antitrust class actions in Mexico.

### I. Legal Framework

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The legal foundation for antitrust class actions in Mexico primarily lies in the Mexican Antitrust Statute (LFCE) and the Federal Code of Civil Procedures (CFPC).

Under the CFPC, only certain parties have standing to file class actions in Mexico, including:

- Groups of at least 30 individuals with common claims, represented by one person,
- Government agencies like COFECE, the Federal Consumer Protection Agency (PROFECO), environmental protection agencies, and the financial services consumer protection agency,
- Nonprofit organizations (asociaciones civiles sin fines de lucro) aligned with the lawsuit's interests,
- Mexico's Federal General Prosecutor.

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<sup>1</sup> See Cofece's press release: [https://www.cofece.mx/wp-content/uploads/2024/10/Cofece-044-2024\\_ENG.pdf](https://www.cofece.mx/wp-content/uploads/2024/10/Cofece-044-2024_ENG.pdf)

The CFPC outlines specific procedural requirements for initiating a class action, including class certification and defendant challenges. In antitrust cases, two essential points are:

1. The class action must be based on harm caused by anticompetitive practices or unlawful mergers, as determined by COFECE in a final and non-appealable ruling; and
2. The lawsuit must be filed within the statute of limitations, generally three years and six months from the date of the last damage-causing event.

## II. Types of Class Actions

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Mexico recognizes three types of class actions:

### 1. Diffuse Class Actions

Protects indivisible rights and interests whose holder is an indeterminate community. Relief benefits all members of the group equally, not focusing on individual damages and without there necessarily being any legal link between the affected community and the defendant. This type of class action does not allow affected consumers to join the action or receive an individual payment; it is the type of action brought by COFECE.

### 2. Strict Sense Class Actions

Protects the rights of groups of 30 or more individuals sharing common circumstances arising from a common legal link existing by law between the class members and the defendant(s). Relief may include both injunctive relief and individual compensation. Non-members of the original class can join during the trial and up to 18 months after the judgment (or settlement agreement, if any) has become final to seek compensation.

### 3. Individual Homogenous Actions

Protects contractual rights for 30 or more individuals with similar claims from the same contract. Relief may include injunctive relief or contract enforcement. Individuals who were not initially involved in the case may join during the trial and up to 18 months after the judgment (or settlement agreement, if any) has become final to seek compensation.

## III. Procedural Hurdles in Mexican Antitrust Class Actions

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COFECE has ten years to investigate anticompetitive conduct under the LFCE. During the first six months, investigations remain confidential, with dawn raids conducted during this time. However, the CFPC sets a three-and-a-half-year statute of limitations for class actions. This potentially creates a statutory conflict that Mexican courts may need to resolve.

Additionally, Mexico's civil law framework limits damages to direct damages and lost profits, excluding broader categories like consequential or indirect damages, which are often essential in antitrust cases. This constraint can make it challenging for plaintiffs to establish a clear link between the infringing behavior and the financial harm each affected class member suffered.

With recoverable damages limited to direct losses and lost profits, potential plaintiffs and their legal representatives can find class actions less attractive, reducing financial incentives to undertake complex, resource-intensive litigation.

## IV. Conclusion

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Antitrust class actions in Mexico are evolving, with COFECE's recent move in the pharmaceutical distribution sector marking a potential turning point in antitrust class litigation, along with the announcement of another class action claim to be filed by Cofece before the end of the year.<sup>2</sup> Although class actions in Mexico face significant procedural and substantive challenges, they represent a promising tool for enforcing consumer rights and promoting market competition. As Mexico's legal framework continues to adapt to address these complexities, businesses must stay informed and prepared for the heightened risks and obligations associated with collective redress.

Moreover, from a policy perspective, class actions in antitrust cases should aim to deter future violations and not only compensate victims. COFECE's first case is not looking to compensate victims of the anticompetitive conduct (the actual clients of the pharmaceutical distributors) but rather collecting damages to benefit the public health sector. Without a statutory amendment allowing broader damages claims, class actions in Mexico have a limited deterrent effect, reducing their role in promoting compliance with antitrust laws.

At **Pérez-Llorca México**, we bring together extensive experience in antitrust class actions across Europe and in consumer protection and environmental class actions in Mexico.

Our team of seasoned professionals is well-versed in navigating the complexities of antitrust and class action litigation, offering strategic guidance to companies operating in these jurisdictions. With the evolving landscape of class actions in Mexico, we are uniquely positioned to provide insightful and effective counsel, ensuring our clients are well-prepared to address and mitigate potential legal challenges in this emerging area.

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<sup>2</sup> See: <https://diario.mx/nacional/2024/nov/04/alista-cofece-mas-acciones-colectivas-1039756.html> (only available in Spanish)

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