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Antitrust damages and Mexican Competition Law.

Discussion Topic

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This Note contains personal considerations. It does not necessarily reflect VA&BA position.

1. The Federal Law on Economic Competition (FLEC) foresees the possibility that an economic agent may sue another for causing him/her harm due to anticompetitive commercial practices.
2. Specifically the FLEC points out:
*“Article 38. Once the Commission’s resolution [Federal Competition Commission] is conclusive without further recourse, economic agents who suffered **damages and prejudices** due to the monopolistic conduct or prohibited concentration could file a motion to obtain compensation for damages and prejudices. To this effect the judicial authority may ask the Commission for its estimate of such damages and prejudices...” (Emphasis added.)*
3. To the best of my knowledge so far the Commission has never received a petition of the sort mentioned in Article 38.
4. For persons interested in economic concepts and methodologies applied to measurement of “damages and prejudices” (i.e. Direct and consequential harm) it could be useful to review some **Forensic Economics** literature (also named Litigation Economics).

Likewise analysts may consult a document prepared for the judiciary in the USA: “Reference Manual on Scientific Evidence.” Federal Judicial Center 2000. Second Edition. At:

[http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/\\$file/sciman00.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/$file/sciman00.pdf)

It may also be illustrative to look into the works being carried out by the European Union. At:

<http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html>

5. As a matter of advocacy and transparency in public policy, the **Commission could construct and publish Guidelines to measure antitrust damages.**
6. In so doing the Commission might as well identify the relationship, if any, with its mandatory evaluation of “caused damage” to assess penalties. This obligation is stated by FLEC as follows:

*“Article 36. To determine penalties the Commission should take into account infringement’s gravity, **caused damage**, signs of intentionality, defendant’s market share; size of the affected market; duration of the conduct or concentration and defendant’s recidivism or previous conducts as well as its economic strength.”
(Emphasis added.)*