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## High Court Rulings Reinforce Government's Right to Protect Public Interest

by LADB Staff

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In two decisions in late October, Mexico's high court (Suprema Corte de Justicia de la Nacion, SCJN) issued rulings against Mexican subsidiaries of Coca-Cola and Ford, reinforcing the right of the Mexican government to protect the public interest. In the case of Coca-Cola, the high court upheld a ruling from the anti-trust agency Comision Federal de Competencia (CFC) that eight bottling companies affiliated with the US-based multinational company had engaged in monopolistic practices. The court also ruled that Ford Motor Co. must return more than 657 million pesos (US\$61 million) in taxes that were erroneously refunded to the company in 1997.

### *SCJN upholds action against Coca-Cola*

The court's ruling in the Coca-Cola case upholds the right of the CFC to enforce Mexico's anti-monopoly laws. The eight bottling companies, which include Propimex, Embotelladora la Victoria, The Coca-Cola Export Corp., Yoli de Acapulco, Industria Refresquera Penínsular, Embotelladora Zapopan, Coca-Cola Femsa, and Panamco Bajio, had filed legal action against the CFC after the commission imposed fines against the Coca-Cola affiliates for engaging in practices that stifled competition from other bottling companies, namely Pepsico and Big Cola.

In their lawsuit, the eight companies were seeking the return of 94 million pesos (US\$8.8 million) in fines levied by the CFC. In their decision, the five SCJN judges who handled the case cited Article 28 of the Mexican Constitution, which, in combination with the Ley Federal de Competencia, seeks to prevent, detect, and sanction any monopolistic practices in order to protect the interest of the public.

The judges rejected arguments from the plaintiffs that the law is not clear on the definition of monopolistic practices. "Legislators established sufficient criteria to allow a clear interpretation [of the anti-monopoly law]," the justices said.

While the SCJN ruling applies to soft drinks and bottled water, Coca-Cola continues to expand its presence in other areas of the Mexican beverage market. In mid-October, Coca-Cola Co. and its bottling subsidiary Coca-Cola Femsa formed a new company to acquire Jugos del Valle, one of Mexico's leading manufacturers of fruit juice.

The transaction, worth about US\$370 million, has already received approval from the CFC. "This transaction increases the presence of the Coca-Cola Co. and Coca-Cola Femsa in the segment of noncarbonated drinks in Latin America," officials said.

### *Court ruling forces Ford to return erroneous tax refund*

In a separate decision, the SCJN ruled that Ford Motor Co. must return 657 million pesos (US\$61 million) to the Mexican government in income taxes (impuesto sobre la renta, ISR) improperly refunded in 1997.

The ruling is significant because it upholds the government's right to correct any administrative errors if these mistakes run counter to the public interest. The Secretaria de Hacienda y Credito Publico (SHCP) had been trying to recover the funds for years after discovering that the Servicio de Administracion Tributaria (SAT) had erroneously made the refunds to Ford. \

In 2001, a federal tax court (Tribunal Federal de Justicia Fiscal y Administrativa) ruled in favor of the government, but Ford filed several appeals to that ruling, which eventually reached the high court. In its decision, the SCJN accepted the government's administrative maneuver to file a lawsuit against itself. "This type of judgment allows the government to correct administrative errors when the public interest is involved," the SCJN said.

Ford Mexico officials said the company would respect the high court's decision, but also noted its good record as a taxpayer. "We have always paid our taxes in an appropriate manner," officials told the Spanish news service EFE. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Oct. 31, reported at 10.64 pesos per US\$1.00]

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