

FIRM PROFILE

2014

OVERVIEW

VALDES ABASCAL ABOGADOS SC is a counseling and litigation *boutique* law firm, highly specialized in competition and antitrust law.

We have a strong academic background and long experience in constitutional, administrative and corporate law, having exercised our professional practice in both public and private sectors.

Since 1996, we have counseled and represented - especially in high profile, sophisticated and complex cases - Mexican and foreign companies which operate in a wide range of regulated and non-regulated industries, including telecommunications, television, radio, ports, airports, railways, transportation, energy, chemical, finance, supermarkets, convenience stores, pharmaceuticals, beer, soft drinks and food, among many other goods and services markets. Most of our clients are ranked among the top three in their respective industries.

We have also counseled public institutions in legislative projects for deregulation, privatizations and industrial reorganizations.

Before joining the firm, some of its members held important offices in federal government agencies, such as the Legal Counseling Office for the Chief of Staff of the Mexican President and the Federal Competition Commission.

We are committed to provide premium quality services under the strictest standards of professional ethics.

MAIN PRACTICE

Although VALDES ABASCAL ABOGADOS SC is quite competitive in various areas of law, it is primarily focused on competition and antitrust, standing out among the most experienced and specialized law firms in the country.

We have a long and deep experience in all kinds of matters and proceedings concerning competition and antitrust law, derived from our previous practice as officials of the antitrust agency and from more than 17 years of successful private practice.

Before the creation of the firm, founding partner Rafael Valdes Abascal served as the Executive Secretary of the Federal Competition Commission, where he had under his authority the areas of legal affairs, investigations, merger control and economic studies. As he was appointed just two years after the creation of the commission, he played a key role in the definition of substantive and procedural provisions contained in the competition legal framework, as well as of the criteria used for its interpretation and application.

Our deep involvement in this area, in a very early step of the competition policy and law enforcement development process, allowed us to get a strong position in a short time from the beginning of our private practice.

We have been involved - with an exceptional high rate of success - in several of the most emblematic, sophisticated and relevant cases that have taken place in Mexico since the competition law came into force.

Competition and antitrust practice in Mexico is young and the law and regulations are in a continuous process of improvement. We have been heavily involved in this process, not only participating in the definition of concepts, the designing of procedures and the drafting of law

provisions, but in the generation of criteria derived from the cases that we have attended in representation of our clients.

Aware of the dynamism of the Mexican antitrust policy and the legal framework that implements it, we are seriously committed to the study of international experience, changes in other areas of law related to competition and the various administrative and judicial precedents that are regularly generated.

Our deep knowledge, long experience and continuous preparation allow us to provide excellent services in every aspect of this law practice area.

MERGER CONTROL

Pre-merger notifications

We carefully assess if the thresholds that determine the obligation to notify the transaction in Mexico are triggered. In absence of such obligation, we analyze whether or not to make a voluntary notification, in order to eliminate any risk for the transaction to be challenged in the future.

When the obligation to notify the transaction exists or a voluntary notification is decided by our clients, we represent them before the Federal Economic Competition Commission or the Federal Telecommunications Institute in the corresponding procedures. We prepare all the documents required for filing and hold the necessary meetings with the commissioners, as well as the officials involved in the case, in order to present the arguments in favor of the transaction approval.

Some relevant and complex cases we have carried out in this kind of procedures are:

- The approval of the largest transaction that has taken place in the locomotive workshop services industry.
- The largest concentration that has been approved in the adhesives market in Mexico.
- A non-precedent alliance between retailers number 2, 3 and 4 in the market, created to counteract the dominant company's negotiation power.
- The approval of a joint venture to build and operate a liquefied natural gas receipt terminal.
- The approval of one of the largest transactions in the food processing industry.
- The largest transaction that has been approved in the retail industry.
- An important acquisition of natural gas pipelines and compression assets.
- The largest transaction that has been approved in the wood particle and fiber boards industry.

Opposition to illegal concentrations

We also provide services to economic agents who may be unduly displaced from the market or otherwise affected as a consequence of concentrations undertaken by other economic agents. Although Mexican law does not recognize affected economic agents as a party in the notification procedures, it is possible to act in a sort form of *amicus curiae* to provide the commission with information and arguments in order to object the transaction.

Some relevant cases that we have carried out in representation of affected economic agents, where the commission has objected third party transactions are:

- A pretended merger between two tequila producers.
- A pretended merger between a television broadcasting company and a radio broadcasting company.
- A pretended merger between two railroad companies.

Moreover, in two of the above cases, we achieved that federal judges instructed the commission to recognize our client's right to be a party in the notification procedure, by alleging the unconstitutionality of the corresponding law provision.

COMPETITION ADMINISTRATIVE LITIGATION

We represent our clients as complainants or defendants before both the Federal Economic Competition Commission and the Federal Telecommunications Institute in investigation and sanction proceedings related to cartel conduct, abuse of dominance, vertical restraints and illegal concentrations.

Cartel conduct (absolute monopolistic practices)

Cartel conduct is regulated in Mexico under the concept of "absolute monopolistic practices". These practices include price fixing, reduction of output, allocation of markets and bid rigging.

Representation of complainants

We counsel and represent our clients when they may be affected by possible cartel conduct of third parties.

We assess if said conduct indeed fulfills the requirements for an absolute monopolistic practice to be configured; define the lines of action for the immediate protection of our client's interests; and analyze the viability and convenience of filing a complaint.

In the latter case, we elaborate and file the complaint and represent our client along the investigation and sanction proceeding, in order to provide the authority with information and arguments aimed to prove the illegality of the conduct and the offender's responsibility.

Representation of economic agents under investigation

Our firm represents economic agents that are involved in investigation and sanction of absolute monopolistic practices proceedings, either as required cooperating parties or as alleged offenders.

In the latter case, we carefully evaluate the feasibility of our client to apply for the immunity / leniency program, by verifying if the evidence at hand is sufficient as to meet the standard set out in the law.

When applying to the immunity / leniency program is not feasible or advisable, we prepare and execute the necessary strategy to provide our client with the strongest possible defense. Our services comprehend counsel, representation and full assistance in all matters inherent to the proceeding, in order to duly attend information requirements, down raids, hearings, submission of evidence and allegations before the commissioners.

Abuse of dominance / vertical restraints (relative monopolistic practices) and illegal concentrations

Some practices qualifying in other jurisdictions as abuse of dominance and as vertical restraints, are covered by Mexican legislation under the concept of "relative monopolistic practices".

Refusal to deal, predatory pricing, exclusive dealing, tying arrangements, price squeezing, vertical allocation of markets, among others, are included in this concept.

These practices, as well as illegal concentrations not having been scrutinized by the competition authority through the pre-merger notification filing, are analyzed under the investigation and sanction proceeding.

Representation of complainants

We provide services to economic agents who have been or may be displaced from the market or otherwise affected due to relative monopolistic practices or illegal concentrations perpetrated by third parties. We carefully assess the viability and convenience of filing a complaint before the competition authority. In these cases, we elaborate and file the complaint and represent our client along the investigation and sanction proceeding, in order to provide the authority with information and arguments aimed to prove the illegality of the conduct and the offender's responsibility.

Representation of economic agents under investigation

We represent economic agents that are involved in relative monopolistic practices or illegal concentrations investigation and sanction proceedings, either as required cooperating parties or as alleged offenders.

In the latter case, concerning relative monopolistic practices, we carefully evaluate the feasibility and convenience for our clients to offer commitments and means to protect competition process, in order to seek for an anticipated termination of the proceeding.

In cases in which our clients choose not to seek for an anticipated termination, we build comprehensive defense strategies that allow them to have the strongest possible position. Our services comprehend counsel, representation and full assistance in all matters inherent to the

proceeding, in order to duly attend information requirements, down raids, hearings, submission of evidence and allegations before the commissioners.

Relevant cases

The following are some examples of relevant cases handled by our firm concerning competition administrative litigation:

- Representation of the complainant in a price squeezing case in the telecommunications market. The defendant was sanctioned with the highest fine ever imposed by the competition authority (approximately 1 billion dollars).
- Representation of the complainant in a refusal to deal case in the telecommunications market. The competition authority fined and instructed the defendant to provide interconnection services to the complainant.
- Representation of one of the defendants in a cartel case in the milk market. Our client was absolved by the competition commission.
- Representation of the defendants in a cartel case where the complainants alleged that the joint issuance of meal vouchers by three retailers was illegal. Our clients were absolved by the commission in the final decision.
- Representation of the defendant in an exclusive dealing case in the beer market. The commission absolved our client in the reconsideration appeal.
- Representation of the defendant in an exclusionary case in the snacks market. The case was closed with no responsibility for our client during the investigation proceeding. Certain commitments to protect competition process were negotiated with the commission.

- Representation of the defendant in a refusal to deal case in the telecommunications market. Our client was absolved in the final decision since the commission deemed justified the refusal to receive and terminate calls and text messages originated in the complainant's network.

PREVENTIVE MEASURES AND RISK ASSESSMENT

The firm provides counseling services to prevent violations to competition law, through the elaboration of competition law compliance and best practices programs, taking into account the specific market and our client circumstances, and we actively participate in the training and assistance of its executives and employees in the implementation of these programs.

We also provide counseling services to assess risks derived from our clients' specific strategies or business schemes. The firm has extensive experience in preventive analysis of contracts and lines of action of economic agents operating in Mexico.

DECLARATIONS OF DOMINANT POSITION AND NON-COMPETITION CONDITIONS

Our services include the representation of economic agents before the Federal Economic Competition Commission and the Federal Telecommunications Institute, in procedures aimed to declare dominant position or non-competition conditions in regulated markets (railways, telecommunications, ports, airports, etc.). These procedures have the purpose of enabling the corresponding sector authority to impose specific regulations.

REGULATORY PROCEDURES

We offer representation services for economic agents requiring the favorable opinion from the competition authority in order to obtain concessions or licenses to operate in regulated industries, as well as to transfer them to other economic agents.

JUDICIAL LITIGATION

The firm provides its clients representation before the specialized on competition and telecommunications federal judges and circuit courts, as well as the Supreme Court, in order to challenge adverse decisions taken by the administrative competition authorities (Federal Economic Competition Commission and Federal Telecommunications Institute), when such decisions are based on unconstitutional provisions or are taken in undue application or misinterpretation of the law.

We also provide representation before said federal courts to interested third parties, when they have been favored by the administrative competition authorities' decisions and they are challenged by other economic agents.

We offer counseling and representation services in trials involving damage claims derived from monopolistic practices or illegal concentrations. Although the incidence of these cases has been low, it is expected greater procedural activity in this area as a consequence of the competition policy and law enforcement strengthening, derived from the latest constitutional and legislation amendments.

Our deep and long experience in competition and antitrust law gives us a broad knowledge of the theoretical and practical issues related to absolute monopolistic practices, which involve criminal liability since the law amendment of May 2011. Our firm has seriously studied the implications of the criminalization of these practices, which, together with our strategic alliances with the best criminal law firms in the country, makes us the best choice for counseling and representation in this kind of matters.

PARTNERS

Rafael Valdes-Abascal

He obtained his law degree from the Universidad Panamericana Law School.

He started his professional practice in 1987 at Santamarina y Steta SC, where he worked in the corporate law area.

He joined the federal government in 1990, where he served as legal counsel to the Undersecretary of Planning of the Ministry of Agriculture and Water Resources.

In mid-1994, he joined the campaign of Ernesto Zedillo as advisor to the presidential candidate and, in December 1994, he was appointed as the head of the Legal Counseling Office for the Chief of Staff of the Mexican President.

In 1995, Rafael Valdes-Abascal was appointed as the Executive Secretary of the Federal Competition Commission, where he had under his authority the areas of legal affairs, investigations, merger control and economic studies.

In 1996, he left the public sector to found his own law firm, then Valdes Abascal y Brito Anderson SC.

He is head professor of competition and antitrust at the Universidad Panamericana Law School, where he has been a member of its Academic Council. He has also acted as invited professor at the Instituto Tecnológico Autónomo de México (ITAM) and the Universidad Iberoamericana.

He has collaborated in diverse publications and participated as speaker in several seminars and conferences.

Rafael Valdes-Abascal has been elected as head of the Antitrust Committee of the Business Lawyers National Bar Association (ANADE) for the 2011-2012 and 2013-2014 periods.

For several years, he has been invited by the Mexican competition commission as non-governmental advisor to the International Competition Network (ICN).

He is ranked as leading lawyer on competition and antitrust in Mexico by Chambers & Partners, The Legal 500, Who's Who Legal, Best Lawyers, Legal Media Group's Expert Guides, among other organizations.

Jose Angel Santiago-Abrego

He obtained his law degree from the Instituto Tecnológico Autónomo de México (ITAM). He received special mention by defending his thesis "The repair of the damages for the victims to violations of physical integrity in the Article 1915 of the Civil Code for the Federal District." He also studied the Diploma "Tort and Property of the State", ITAM's program that is part of the Masters in damages, from the University of Girona. His Master title is scheduled for 2014.

He became partner of Valdes Abascal Abogados SC in January 2013.

Prior to joining the firm, Jose Angel Santiago-Abrego served as deputy director in the General Direction for Tender and Privatization Proceedings of the Federal Competition Commission, where he attended regulated industries' issues and drafted a project for an antitrust judicial trial.

He also served as deputy director and as director for legislation and consultation in the General Direction of Legal Affairs of the Executive Secretariat of the Mexican Security System, where he drafted the constitutional amendment which established the single police command in each Mexican state, and regulated diverse issues regarding federal budget on security matters.

He is a contractor to the University of Houston Law Center for the research on the second edition of Mexican Law (Zamora, Cossío, et. al., 2004). He has taught *amparo* for the Mexican National Institute on Criminal Science.

He is a member of the Business Lawyers National Bar Association (ANADE).

RANKINGS

Valdes Abascal Abogados SC has been recognized as a leading law firm on competition and antitrust by several organizations, among which stand out the following:

- Chambers & Partners
- The Legal 500
- Who's Who Legal
- Global Competition Review
- Legal Media Group's Expert Guides