

New Judicial Standard on Attorney-Client Privilege in Antitrust Investigations

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On August 7, 2026, Mexico's Federal Judicial Weekly (*Semanario Judicial de la Federación*) published a new isolated judicial precedent clarifying the requirements for communications between an undertaking and its lawyers to be protected by attorney-client privilege in the context of an antitrust investigation.

The new standard builds on a 2018 precedent in which the First Specialized Collegiate Court recognized the confidentiality of attorney-client communications as essential to effective legal advice. The new precedent further develops this principle by clarifying that a lawyer's mere participation in a communication is not sufficient to trigger privilege: there must be genuine legal advice and the lawyer must provide an independent legal assessment with functional autonomy.

The underlying decision also addresses an issue of particular relevance to companies and in-house legal departments: whether an employment relationship between a lawyer and the company automatically excludes privilege. In addressing this question, the Second Specialized Collegiate Court ("**Second Court**") contrasted two international approaches: the European standard developed in *Akzo Nobel*, which links privilege in antitrust matters to the independence of external counsel, and the U.S. approach derived from *Upjohn*, which recognizes privilege for communications with in-house counsel when genuine legal advice, confidentiality and professional autonomy are present.

The Second Court did not adopt an absolute rule based on whether counsel is classified as "in-house" or "external." Instead, it held that the decisive factor is functional independence and that the assessment must be conducted on a case-by-case basis, considering the content, context and purpose of each communication.

For companies, the new standard reinforces the importance of clearly distinguishing and documenting legal advice communications from those of an operational, commercial, administrative or managerial nature. A lawyer's employment relationship with the company is relevant to this assessment, but does not, by itself, determine whether a communication is privileged.

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