

Company & Commercial - Colombia

Examining the legacy of Superintendent de la Calle

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Introduction

At the end of 2012 Superintendent of Industry and Commerce José Miguel de la Calle announced his retirement from this role. De la Calle had occupied the position for two years. During that period he saw several important goals achieved by the Superintendence of Industry and Commerce, including:

- issuing the new Consumer Protection Law;
- dealing with cases related to false or misleading advertising;
- actively investigating unfair practices in the mobile phone industry; and
- exercising the authority's competition advocacy obligations in many sectors of the economy.

New Consumer Protection Law

The previous consumer protection legislation was issued in 1982. The law was based on sound principles, but did not allow for the imposition of fines or strict measures on producers and distributors of goods and services which broke their promises to consumers.

The superintendence actively participated in the preparation of the new Consumer Protection Law, which was approved as Law 1480/2011 and entered into force in April 2012. The law gives the superintendence a modern tool through which to protect consumers' rights. Highlights of the law include the following:

- All products and services must comply with conditions of quality, suitability and safety in order to be sold in Colombia.
- The law creates default warranties for new and used products. It is possible to sell used products 'as is', but the consumer must be duly informed.
- Manufacturers face liability for defective products.
- Consumers are protected against false or misleading advertising.
- New e-commerce consumer regulations are in force.
- New contractual regulations are in force - including in relation to standard-form contracts, abusive clauses, long-distance sales and financial services - in order to ensure that consumers' rights are protected.
- The law grants the superintendence the power to impose administrative fines of up to 2,000 times the minimum monthly wage (approximately \$500,000). Consumers can also seek damages judicially before the superintendence.

The law has already proved effective and favourable to consumers. In 2010 the superintendence received more than 39,000 complaints from consumers, a figure that had increased to more than 50,000 by 2012.

The creation of a virtual platform for the reporting of complaints has seen great results and almost 40% of such complaints have been resolved through this tool. Under the previous law, a consumer protection investigation could take more than five years; it now takes around nine months.

As the superintendence is located in Bogota, in order to achieve nationwide consumer protection, the law authorised mayors to apply and enforce the administrative functions relating to consumer protection in their cities.

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The law also created the National Consumer Protection Network, comprising national authorities in charge of protecting consumers, such as the superintendence. This network supports the rights of consumers, advises other governmental authorities and educates officials.

The superintendence also participates in international forums, conferences and networks, such as the International Consumer Protection and Enforcement Network, of which Colombia is a member. All of these efforts are important in order for Colombia to join the Organisation for Economic Cooperation and Development.

Investigations into misleading advertising and mobile phone industry

The superintendence fined several companies that had used false or misleading advertising and actively investigated consumer complaints regarding the mobile phone industry.

De la Calle revealed that the superintendence considers more than 2,000 cases each year relating to misleading advertising, and that the competent authorities will regulate and condemn 'miracle' products that promise great results that do not exist. Such investigations serve as a warning to producers and distributors that their products should deliver what they promise. Under the new Consumer Protection Law, the media can also be responsible for the false content of advertisements that they allow in their publications. This provision presents some key dilemmas for the advertising industry – the law has increased its responsibilities in this area.

The superintendence has also been active in investigating the mobile phone industry. Although Colombia has a population of under 50 million, there are more than 51 million mobile phones with an active operator. The number of consumers is very high and each year there are thousands of complaints about bad service. The information sent by mobile phone companies to the superintendence states that 19,000 complaints are made every three months; however, the superintendence suspects that this figure is nearer to 16 million.

In addition, Colombia is on the verge of entering the age of 4G technology. The Ministry of Communications must award the radio spectrum needed to provide such service through a public bid. In this case, the superintendence is exercising only its competition advocacy capacity; it has issued an opinion on the characteristics of the bid and has recommended that new entrants (and thus new competition) be allowed to join the industry.

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