



Asia – Pacific
Economic Cooperation



National Economic Prosecutor's Bureau
Government of Chile

Competition and Consumer
Protection Policy
When, how and why they interact

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Themes



- I. Legal framework and institutional arrangements**
 - Competition Law - FNE
 - Consumer Protection Act - SERNAC
- II. Competition and Consumer Protection Policies: Interactions in practice**
- III. Case study: Falabella - D&S merge consultation**
- IV. Concluding remarks**



Competition Law (CL)

- **Legal Body:** DL N° 211/1973, as amended by Law N° 19.911/12004 (recently amended)
- **Goal:** To promote and defend the free competition in markets
 - Orientation toward market efficiency, consumer's welfare is not expressly mentioned
- **Scope:** “...any deed, act or contract that prevents, restricts or obstruct free competition, or that tends to produce these effects” (Art.3)
- **How:** Rule of reason, non per se treatment for any conduct
- **Persons targeted by law:** any private or public, without exemptions
- **Who:** Public and private enforcement of the Law



Chilean Competition System (since 2004)

- **The Competition Agency – FNE**
 - Part of the Executive branch
 - Prosecution office, which can carry out investigations procedures for enforce the law
 - Provide technical support to TDLC
 - In charge of competition advocacy and promotion

- **The Competition Tribunal –TDLC**
 - Judicial body subject to the Supreme Court of Justice
 - Mixed composition (3 lawyers, 2 economists)
 - In charge of hear and resolve about adversarial and non-adversarial competition cases and consultations submitted by the FNE or by any private or public entity
 - Its decisions may be punitive, restrictive or corrective.



Chilean Consumer Protection System

- **Legal Body:**
Consumer Protection Act (CPA), Law N° 19.496/1997 (amended in 2004 and bill under discussion)
- **Goal:** *"regulate the relations between suppliers and consumers"* (Art. I)
- **Scope:** To inform, educate and defend Chilean consumers' rights
- **Persons protected by law:** *"consumer"* as the ultimate consumer of goods and services purchased
- **Who enforce the CPA:** National Consumer Service
 - SERNAC, taking actions in Courts
 - SERNAC cannot sanction malpractices

Interaction between Competition Law and CPA

Legally protected interests



DL No. 211 (CL)

"promote and defend the free market competition"

Protect competition at all stages of the economic activity

Competitive markets allow economies to achieve economic and allocative efficiency. Both consumers and firms' surplus are maximised, i.e., total economic welfare is maximum.

Law No. 19496 (CPA)

"regulate the relations between suppliers and consumers"

Protect consumers

Competition and Consumer Protection Policies: Interactions in practice



1st Level

- Interaction and coordination for logistic issues

2nd Level

- Interaction on substantive matters for enforcement
Competition Law and/or Consumer Protection Act

3rd Level

- Interaction between competition and consumer
rights protection for advocacy

Competition and Consumer Protection Policies: Interactions in practice



■ Interaction and coordination for logistic issues

- FNE: centralised headquarter
- SERNAC: decentralised presence
- Agreement for Inter-institutional Cooperation → SERNAC regional offices may receive submissions addressed to the FNE
- FNE has delivered training workshops on competition policy to SERNAC's regional officers to enable them to adequately inform the consulting community

Competition and Consumer Protection Policies: Interactions in practice



Interaction on substantive matters for enforcement Competition Law and/or Consumer Protection Act

- Misleading advertisement treatment
- Ex. unfair competition complaint submitted to the TDLC by *Nestlé* against *Masterfood* (pet food market)
- TDLC rejected → A violation against DL211 Art. 3 c) required both, an unfair competition practice and that this practice be conducted in order to attain, keep or increase a dominant position.
- Consumers benefit from low prices
- Competitors could be harmed by non-fair low prices charged by a dominant firm
- Decreasing prices could be hiding predatory pricing or margin squeeze conduct, with exclusionary effects on the supplier side of the market
- Consumers could be harmed in the long term with abusive practices by the strength dominant firm (exploitative)

Competition and Consumer Protection Policies: Interactions in practice



- **Interaction for advocacy issues**
 - The FNE develops market studies for improving its knowledge of how different markets work and for competition advocacy on them
 - The SERNAC divulges updated information of the functioning of several markets in order to provide the consumer with a better knowledge of the characteristics of commercialised good and services
 - There are some experience of joint-studies between FNE & SERNAC –ex., Banking, Private Health Providers- which results are useful for contributing to advocacy both in competition as in consumer rights issues

Case study: Falabella - D&S merge consultation



Facts

- Falabella and D&S, the main Chilean retail companies, agreed on a merger (May, 2007)
- The merged undertaking would become the second largest firm traded on the local stock market.
- Estimated annual sales: US\$ 8 billion
- The undertakings requested approval to the TDLC (voluntary merger consultation / non-adversarial case)

Case study: Falabella - D&S merge consultation



FNE's presentation

- The FNE focused its presentation on the definition of the relevant involved markets (*inter alia*, supermarkets, retail-credit), its characteristics and the risks for free competition that the eventual merge would entail, concluding with a suggestion of remedies to countervail such risks, in case the operation were to be approved
- Supermarket: Sale of Falabella' supermarkets to a third party, which would likely become a third strong competitor.
- Retail-credit cards: Prohibiting some conducts by the proposed merger, such as forbidding the unilateral refusal of third party credit cards or alternative means of payment, or the marketing of certain products or services in more favourable terms

Case study: Falabella - D&S merge consultation



SERNAC's presentation

- It began with an overview of consumer opinions on the retail market, based on surveys prepared by the agency on a regular basis and internal statistics on the number and characteristics of complaints.
- They reflected that, for instance
 - Only a 25% of the surveyed people believed that companies were interested in solving their problems;
 - 1 out of 5 consumers claimed that Department Stores had made charges to their bills without their consent
 - 90% of consumers argued that Department Stores' bills could not be understood
- Examples exposed by SERNAC were symptoms of problems faced by consumers in retail and credit card markets, which were expected to grow if the operation were to go on.

Case study: Falabella - D&S merge consultation



Results and ruling

- The final decision was issued in January 2008.
- The TDLC prohibited the merger between Falabella and D&S
- This was the first time that the TDLC had refused to approve a transaction submitted for consultation.
- It rejected the parties' claim
- The TDLC concluded that there was insufficient evidence to support the parties' claims of pro-competitive efficiencies because they did not show how they would be passed on to consumers. The TDLC also established that it would be impossible to mitigate the anticompetitive effects of the merger by imposing any conditions.

Concluding Remarks



- Competition Policy \neq Consumer Protection Policy, but related
 - Non competitive markets \rightarrow Injured consumers (*facing higher prices and/or other potential infringements to consumer's rights*)
 - Violations of consumers' rights are many times (not always!) indicative of behavioural or structural problems in competition
- The proper functioning of markets benefits the society as a whole, including consumers
 - **More and deeper competition** \rightarrow *more innovation, more supply, a wider spectrum of consumer choices, better products and a decrease in prices*

Concluding Remarks



- From Chilean experience:
 - Specialised agencies → Individual strengths
 - Cooperation and good communication practices → Synergies
 - Scopes of interaction → Several

For instance:

- Logistic: Enhance regional community access to information about competition and increasing their accesibility for addressing submissions to FNE
- Complementary positions for competition enforcement
- Updated markets information (Ex.: gas stations, supermarkets, etc.)
- Coordinated initiatives in advocacy (Ex.: banking, private health providers, etc.)



Thanks for your attention

Further information

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