



Asia – Pacific
Economic Cooperation



National Economic Prosecutor's Office
CHILEAN GOVERNMENT

Chilean legal framework for combat cartels and a Cartel Case: “The Plasma War”

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Themes



I. Background

- Competition Law and Competition System
- Chilean Competition Policy and Cartels

II. A Cartel Case: The Plasma War

- The Facts
- The Investigative Process
- Results and Ruling

III. Conclusions

Background: Legal Framework



Chilean Competition Law and Competition System

- **Legal Body:** Decree Law N° 211/1973, as amended, by Law N° 19.911/12004
- **Goal:** To promote and defend the free competition in markets
- Defines the scope of the anti-competitive illicit: *"...any deed, act or contract that prevents, restricts or obstruct free competition, or that tends to produce these effects"*
- Persons targeted by law: any private or public, **without exemptions**

The Chilean Regulatory Framework



Chilean Competition Law and Competition System

- **The Competition Agency:** FNE, governmental agency that has investigative powers but no remedial ones.
- **The Competition Court:** (Court of Defense of Free Competition TDLC), replacing the old Antimonopoly Commissions. In operation from 2004 on, as part of the judiciary system. It assesses the claims and the non-contentious presentations and consultations from the competition agency or any private or public person. Has remedial powers in case of findings, being able to fine or to impose sanctions; to order to stop the offending conduct and propose the Government to modify laws and rules wherever the competition is affected.
- **The Supreme Court**

Background: Legal Framework



Chilean Competition Policy and Cartels

- **Collusion as an anti-competitive illicit:** Explicitly by Art 3rd (a), *any competitors' agreements aiming at fixing prices, limiting output or allocating markets may be subject to the sanctions established by law, if is abusing the market power conferred upon them by such agreements*
- **Rule of reason:** Agreements' current or potential effects on markets must be proved for sanctioning cartel conducts

Background: Legal Framework



Chilean Competition Policy and Cartels

- **Limited investigative powers for the agency:**
 - Main investigative tools: Interviews and testimonies. Public information or private information (affected economic agents) upon request. Not searching or dawn raids is allowed. Not telecom interception, access to communication records or wiretap either.
 - No immunity or leniency program
- **Administrative sanctions for cartels, non imprisonment**
- **Fines Up to US\$ 15 million**
- **Problem: Indirect prove or evidence v/s high standard required by the Competition Court for sanction**

Background: Legal Framework



Chilean Competition Policy and Cartels

- **Bill under Congress discussion**

To amend DL 211, increasing the agency's investigative powers and strengthen cartels combat policy:

- Allowing searching and dawn raids procedures
- Accessing to communication records and wiretap
- Leniency program (fine reduction or exemption for the first and partial reduction for others petitioners)
- Increasing fines up to US\$ 22.5 million
- Modifying the figure: 'the object or the effect'. Abrogation of the abuse of collective market power clause.

A Cartel Case: The Plasma War



The Facts

- Special technological event for electronic appliances sales was promoted by Banco de Chile to benefit their credit card holders (loyalty program). Invited the main electronic providers (brands as Sony, LG, Samsung, Panasonic, among others)
- One week before the event, Banco de Chile advertised it in the main domestic newspapers
- One day after the advertisements, the electronic providers cancelled their participation. They were threatened by Falabella and Paris, the two main department stores chains (retailers). The event was cancelled
- Banco de Chile submitted a complaint to the FNE

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The Investigative process

- Interviewing retailers and manufacturers managers:
 - **How did the manufacturers were pressured by retailers?**
 - **How is the economic dependence between the involved agents?** Market share of retailers on manufacturers sales vis-à-vis the importance of manufacturers on retailers sales
- Requesting Telecom's companies to give information about the quantity of phone calls made between:
 - Falabella and Paris
 - Falabella-Paris and manufacturers

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The Results

- About economic dependence

Electronic manufacturers sales by retailer (share in %)

Proveedor	Falabella	Paris	Falabella + Paris	Ripley
Sony	23,0	14,0	37,0	16,0
Samsung	22,1	13,9	36,0	20,0
Philips	17,0	14,0	31,0	14,0
LG	22,0	18,0	40,0	20,0
Panasonic	15,8	13,9	29,7	17,3

Retailers total sales by electronic manufacturer (share in %)

	2006 (%)	
	Falabella	Paris
LG	3,520	5,878
Samsung	2,402	3,614
Sony	3,836	4,316

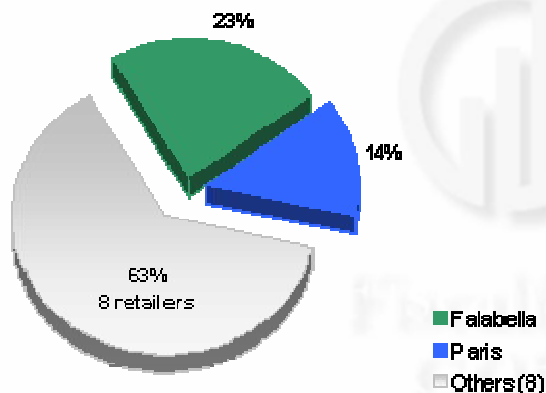
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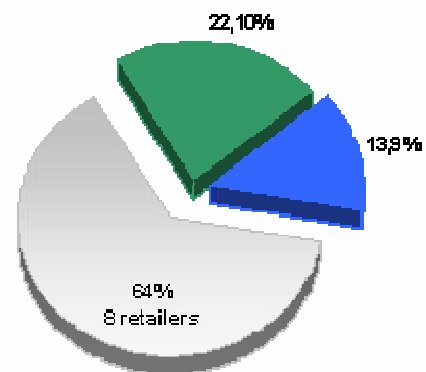
The Results

About economic dependence

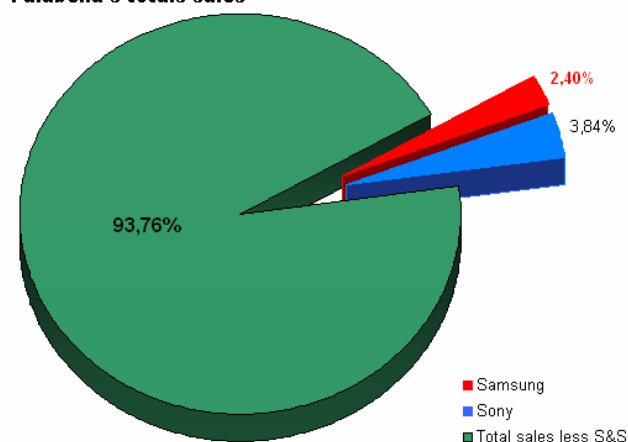
Sony electronics



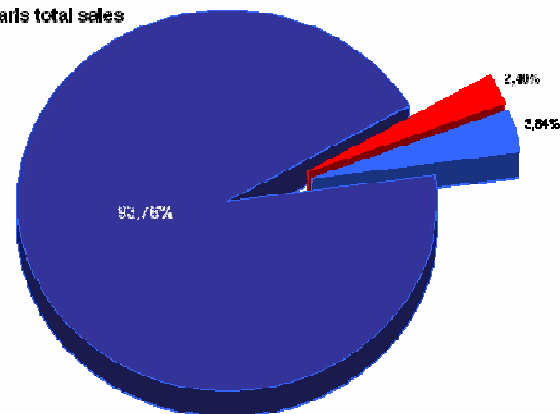
Samsung electronics



Falabella's totals sales



Paris total sales



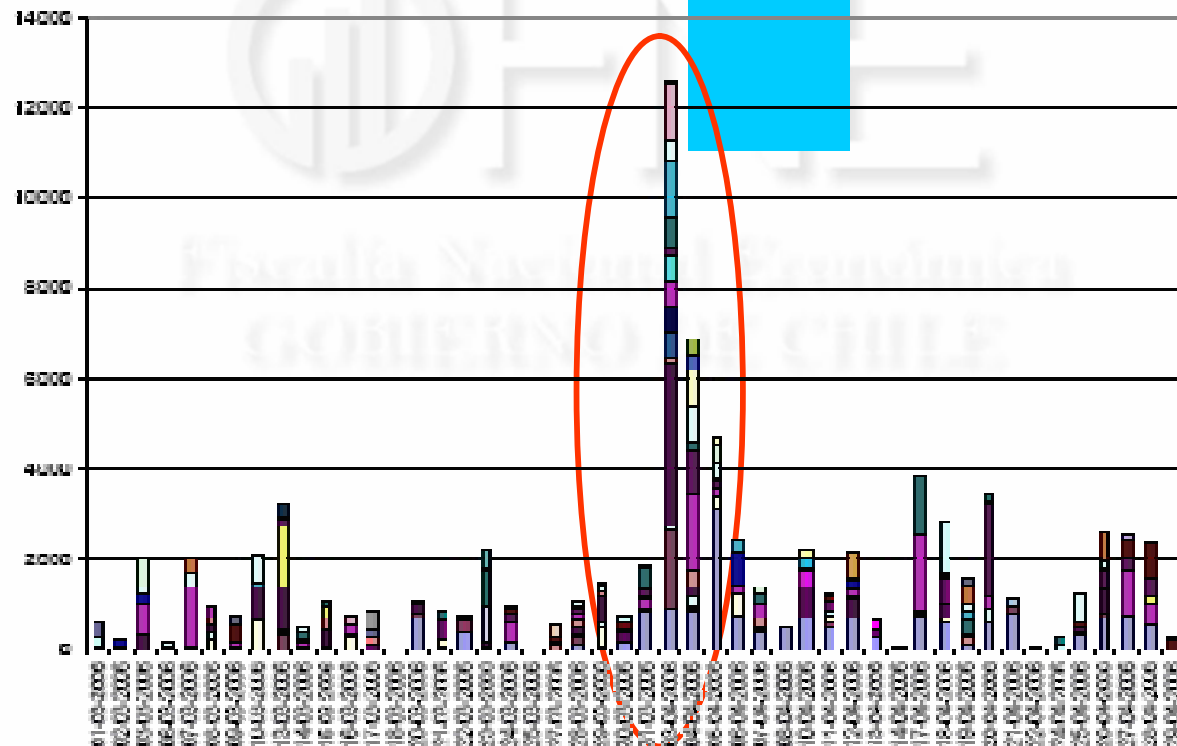
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The Results

- About the Phone Calls: Parallel conduct

Frequency of phone calls from Falabella / Paris to electronic providers



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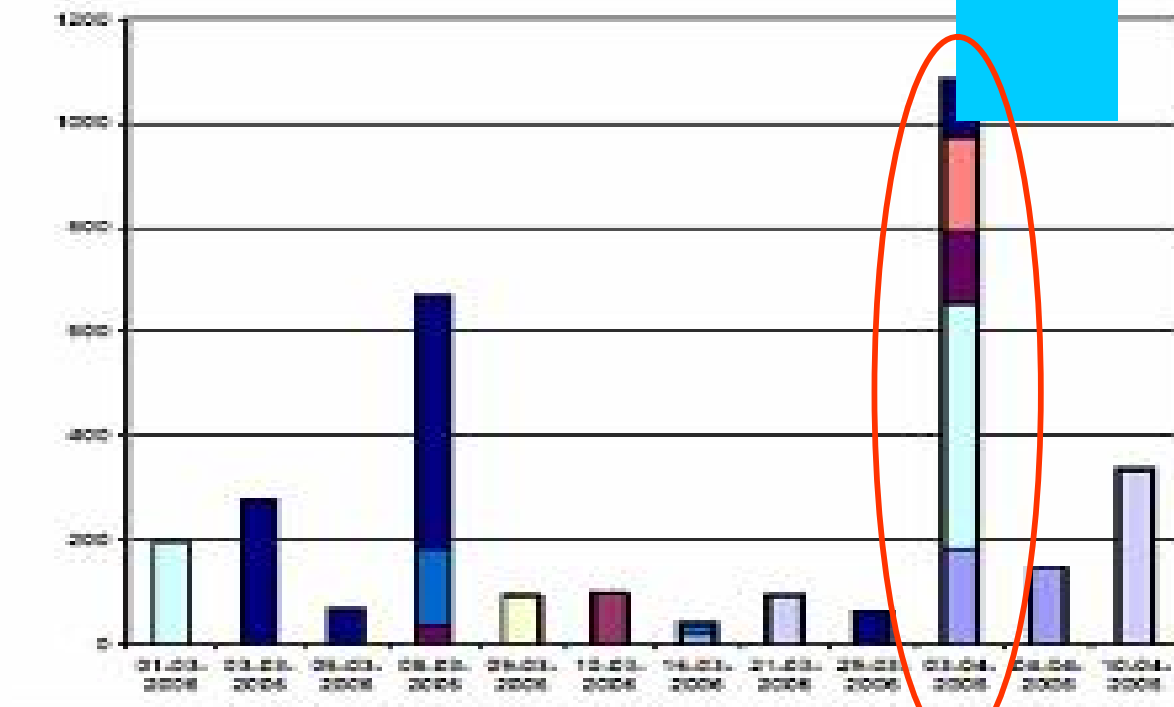


The Results

- About the Phone Calls: Plus

Falabella and Paris

Phone calls duration by senders-receivers (in min.)



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The Agreement's Effects

Concerted boycott was harmful

- **For Consumers**

They couldn't have the benefit of buying electronic products using twelve monthly installments and extra discounts

- **For Market Competition**

Retailers built a strategic barrier for the development of a new competitor for both credit and electrical household appliances markets

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The Ruling

- **The agency**

Submitted a lawsuit to the Competition Court. The anti-competitive conducts identified were Abuse of Market Power (dominant position) and Collusion.

The prove was done under the Parallelism Plus Theory

- **The Competition Court**

Sentence No. 63 issued by the Court in April 2008 condemned Falabella and Paris. It concluded that manufacturers refused participating in the event because of economic dependence, they couldn't stop selling products for Falabella & Paris.

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The Ruling

- **Fines:**

 - Historical fines

 - Falabella US\$ 8 MM – US\$ 5 MM

- **Criteria:**

 - Economical benefits obtained by the offenders
 - Seriousness of the conduct (exclusion and collusion)
 - Recidivism (Falabella & Paris were sanctioned in 2004 for create entry barriers in credit markets)
 - Falabella's leadership.

- **Supreme Court (appellative instance):** Confirmed Sentence issued by the TDLC, but reduced the fine in 25%.

Conclusion



- Cartels are the most harmful anticompetitive conduct
- An effective policy against cartels must consider high sanctions but also a strength agency with adequate investigative powers to prosecute them. Leniency programs had shown be useful for this.
- Chile is updating its anti-cartels policy introducing new tools for being more effective in finding proves.
- While the FNE is in charge of restrictive investigative powers, finding direct prove is not possible, but indirect evidence could be enough to prosecute successfully cartels when Parallelism Plus Theory is used (its depends on the plus quality).



Thanks for your attention

Further information

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