

Advocating Public Awareness of Competition: The Chilean experience

Ms Marcia Pardo
Research and Advocacy Division- FNE

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“...competition advocacy refers to those activities conducted by a competition authority related to the promotion of a competitive economic environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition...”

ICN Advocacy Working Group

Outline

1. The Chilean Competition System

- Legal framework and institutional arrangements

2. FNE - Advocating public awareness on competition

- Market Studies
- Inter-institutional Advocacy Efforts
- “Bid Rigging in Public Procurements” Project
- Seminars and events
- Information

3. Next Steps

- Ongoing & future

The Chilean Competition System

Legal framework and institutional arrangements

Competition Act (CA)

- **Legal Body:** DL N°211/1973 and its amendments
- **Goal:** To **promote and defend** free competition in markets (Art.1)
- **Scope:** “... *any act, agreement or convention, either individually or collectively, which hinders, restricts or impedes free competition, or which tends to produce such effects...*” (Art.3)
- **Entities targeted by law:** Any private or public entity could be targeted by law, without exemptions or exclusions
- **Who:** Public (FNE) and private enforcement

Legal framework and institutional arrangements

Dual system:

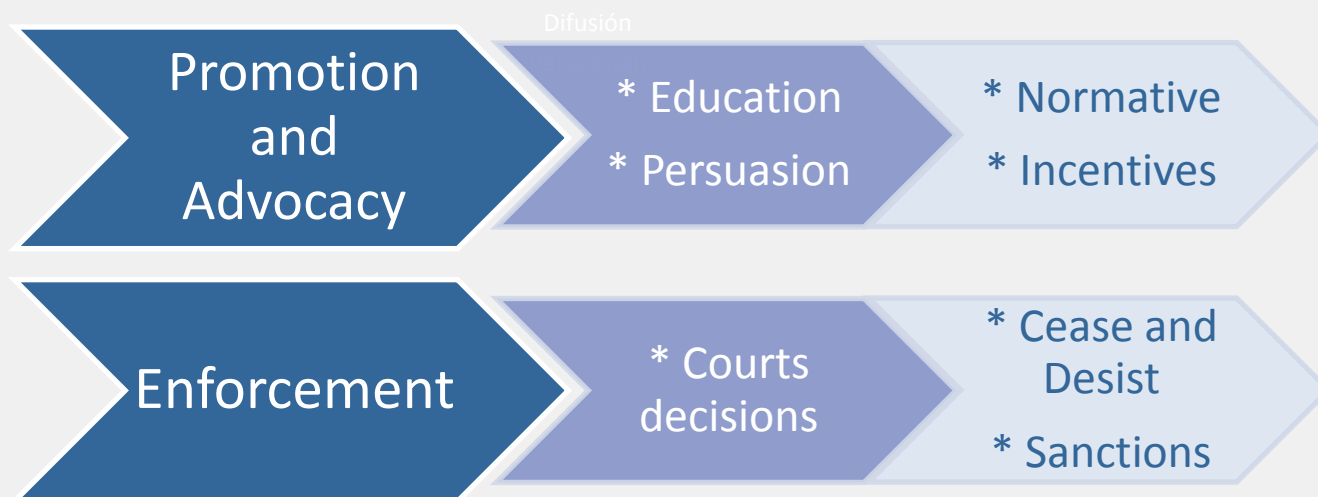
■ The Competition Agency –FNE

- Prosecution office, which can carry out investigation to enforce the law
- Provides expert reports upon request from TDLC
- Also in charge of **competition advocacy and promotion**

■ The Competition Tribunal –TDLC

- Judicial body. Its decisions may be punitive, restrictive or corrective.
- Resolves on adversarial and non-adversarial competition cases, and consultations submitted by the FNE or directly by any private or public entity
- Can recommend the President of the Republic on amendments or abrogation of laws and regulations, and the enactment of regulations, with the object of promoting competition

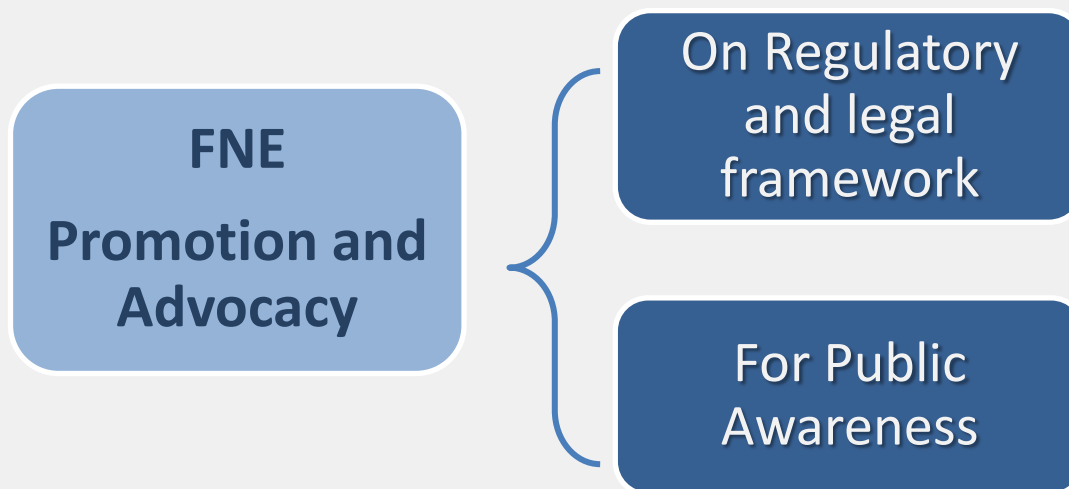
Advocacy and Enforcement: The two sides of competition policy



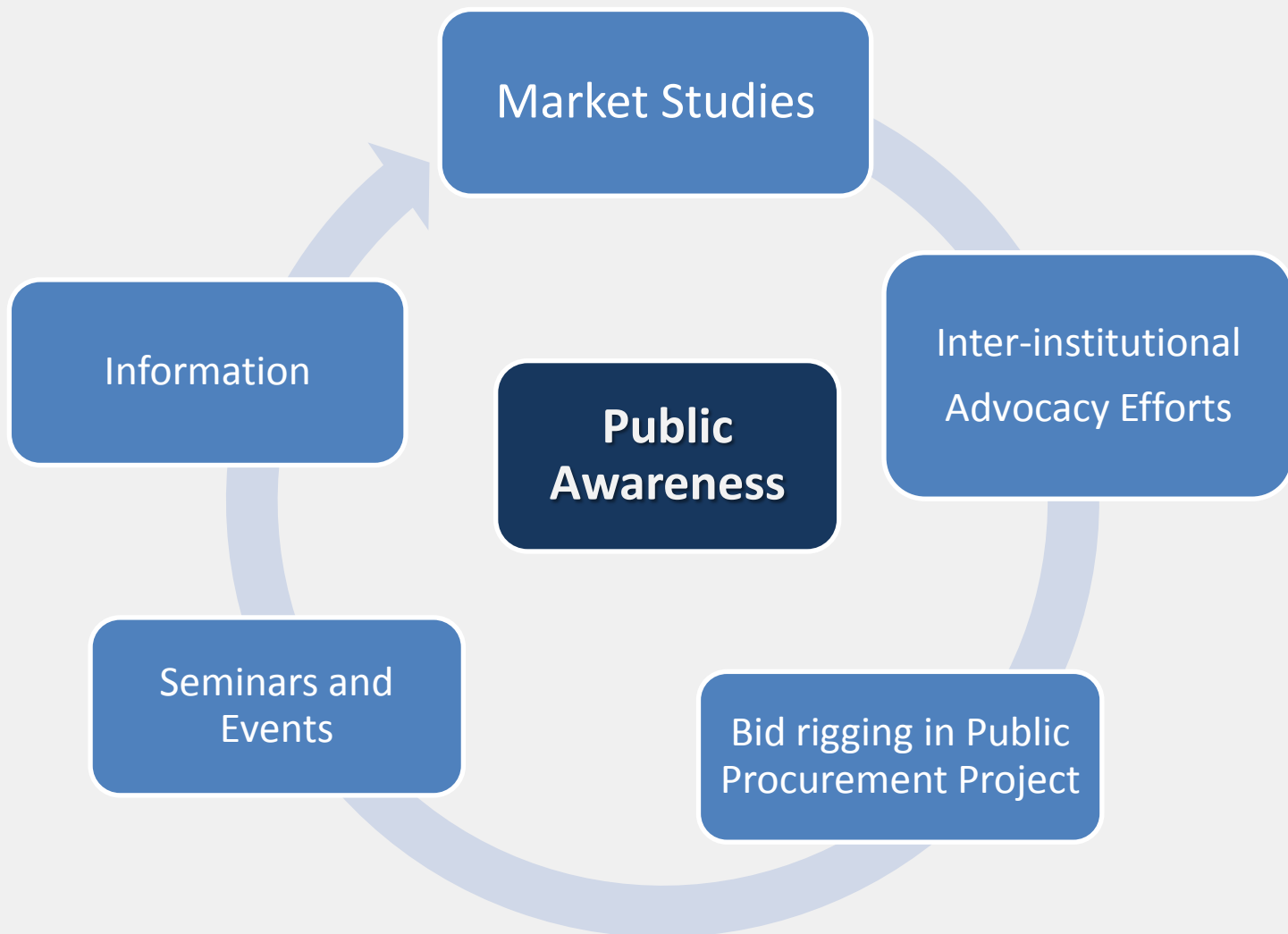
FNE - Advocating public awareness on competition

The FNE and Competition Advocacy

- **The FNE has a general legal mandate to advocate competition**
 - The law does not specify a way to do it, as in the case of the TDLC (Art. 18, No. 4, D.L. 211)
- **How does the FNE promote competition?**



How does the FNE advocate public awareness of competition?



Market Studies



- * **Market Studies:** All those activities enhancing the FNE's current knowledge on specific economic or sectoral activities
- * **Who:** Can be carried out by FNE experts or by external consultants supervised by FNE staff
- * **Goal:** To improve the FNE's understanding of how markets work (players, practices, entry barriers, among others, but also to identify the policies and practices of governmental agencies and sectoral regulators that might have adverse effects on market competition)

Market Studies

■ Recent MS by FNE

- ***Supermarket industry*** (mid 2006 / 2007) ← internal MS
- ***Private health providers*** (2008 / 2009) ← internal MS + external gathering of information (household surveys and qualitative techniques)
- ***Fishery industry*** (2009) ← internal MS
- ***Forestry industry*** (2009) ← external MS
- ***Relevant markets at Telecom industry*** (2009/2010) ← external MS
- ***Construction sector and public tenders*** (2009/2010) ← external MS
- ***Banking*** (Since Sept. 2009 up to date) ← external MS

Inter-institutional advocacy efforts

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* These aim at pervading other institutions' ordinary activities with competition principles. For instance,

- The Ministry of Economy included in its *Business Longitudinal Survey* questionnaire a module about access to markets and buyer power
- Currently, the Central Bank of Chile (an autonomous entity) is assessing its Survey of Household Finance. The FNE is suggesting to include some questions in order to measure switching costs

Bid Rigging in public procurement



Special advocacy project

- OECD + Competition Bureau (Canada) → Capacity building effort with FNE for fighting bid-rigging
- **When:** In 2008, the FNE implemented a pilot program with the concerned entities to promote best practices for the prevention and detection of bid rigging in public procurement. It is an ongoing project.

Bid Rigging in public procurement

■ Milestones

- Anti-Bid Rigging Interagency Taskforce (Since May 2008 up to date)
 - Detection Checklist to be used by procurement officials
 - “Instructions for preventing bid rigging in public procurement” issued by ChileCompra, the Public Procurement Bureau.
 - Inclusion of bid rigging questions in the certificate exams to be rendered by public procurement officials
 - Cooperation and exchange of information agreement signed between the FNE and the Nation’s Comptroller General
 - Implementation of seminars and training activities (detection and deterrence) by the FNE to concerned agencies’ staff.
 - Installing public awareness of the risk of collusion among bidders in the agendas of such agencies
 - Creation of Anti-Bid Rigging Units both in the Ministry of Public Works and the Nation’s Comptroller General

Seminars and events



* **Topics:** Seminars and speeches on the benefits of competition

* **Goal:** Creating a competition culture among different players (public agencies, SMEs, trade associations, academics)

* **Examples**

- Competition Day
- Regional seminars with trade associations
- Seminars (law & economics) with regional universities
- Training activities for more than 500 public procurement officials along the country

Information



* By promoting antitrust principles in the media, the FNE seeks to disseminate public awareness

* The media's attention to a particular case (pharmacy chains cartel) strengthened competition culture in audiences and hastened the Competition Act amendments in a fast track

FNE presenta a tribunal de libre competencia acuerdo con SMU

En una audiencia pública, la Fiscalía Nacional Económica (FNE) presentó al Tribunal de Defensa de la Libre Competencia el acuerdo que alcanzó con la SMU.

Ambito Empresarial

FNE pide al TDL Obligar a Falabella a Vender Supermercados Antes de Fusión con D

El fiscal económico Enrique Verga, en una audiencia pública, pidió al Tribunal de Defensa de la Libre Competencia que obligue a Falabella a vender sus supermercados antes de fusionarse con D.

Supermercadista va por el 100% D&S comunica a Fiscalía Económica oferta por ALVI

La supermercadista D&S, controlada hoy por Molinero y fundada por la familia Molinero, anunció su oferta por ALVI, una fiscalización que se rebajará a la oferta de compra del 65% de la supermercadista ALVI que está en manos de la familia Molinero.

PRESENTARON MEDIACIÓN EXTRAJUDICIAL EN EL TRIBUNAL DE LA COMPETENCIA Fiscal Económico: acuerdo con SMU sentará un precedente

La autoridad y la empresa acordaron que se rebajará el monto de la competencia de algunos contratos.

Jueves 26 de agosto de 2010, 5:00 AM
Empresas
trabajo en conjunto con el ministerio de agricultura
Fiscal nacional económico revela las claves de la nueva fiscalización al agro

La Segunda

Ministro Andrade dejó el gabinete para en el parlamento... También, los subsecretarios Harboe y Barrios

Andrade demandó a las tres principales cadenas de supermercados a bajar los precios.

¿Van a farmacias concertadas



Next steps

Next Steps

Ongoing issues...

- To improve the FNE's relationship with different public authorities and private actors, for their awareness of competition principles
- To upload the FNE's market studies to our website to motivate stakeholders concern for studies' findings
- A Guide for Trade Associations, forthcoming



Next steps

For the future ...

- ➔ To set up a specific Advocacy policy and organizational structure, entrusted to the Research and Advocacy Division. This implies:
 - to define the functions and its scope
 - to propose and execute an annual Plan
 - to evaluate its result.

Creating a Competition Culture

Thank you !

Contact details

- international@fne.gob.cl
- www.fne.gob.cl