



Fax: (+ 41 22) 9170247  
Telephone: (+ 41 22) 917 1330  
E-mail: ebru.gokce@unctad.org

Palais des Nations  
CH-1211 Genève 10

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### **The Impact of Cartels on the Poor**

The Intergovernmental Group of Experts on Competition Law and Policy (IGE) will hold a round table at its thirteenth session in July 2013 in Geneva to discuss, amongst other issues, “the impact of cartels on the poor”. In this context, UNCTAD is preparing a background document on the subject matter in order to contribute to the deliberations during the IGE meeting.

Cartels lead to unreasonably high prices for consumers that cannot be justified by any other factor than the collusion amongst competitors in a given market. Depending on the type of product or service market, cartels may have a more adverse impact on the poor than others, or mainly target the poor. For instance, a petrol cartel affects all the households, but probably a more devastating effect on low-income households.

High prices caused by cartels could hurt not only consumers but also small and medium sized enterprises (SMEs), which use the cartelized goods as an input for their businesses. Cartels may prevent or limit access to a specific market thereby reducing the chances of survival in or entry into markets of SMEs. This point is found to be especially relevant in terms of its impact on employment for low income households. Therefore, the UNCTAD background note will look into this issue from the perspective of both final consumers and SMEs.

In addition it will elaborate on the prioritization strategies or policies of competition authorities in handling cartel cases. The note will provide case examples of not only cartels but also other anti-competitive practices that have had a greater impact on the poor.

The present request is addressed to certain jurisdictions including Brazil, Chile, Greece, India, Indonesia, Republic of Korea, Mexico, Russian Federation, Serbia, South Africa, Turkey, United Republic of Tanzania, Vietnam, Zambia and Zimbabwe, which have a good record of experience in competition law enforcement which could provide guidance to other developing countries in this area.

The purpose of this request for contributions is to seek relevant information, examples and cases based on experiences of the mentioned jurisdictions, which will be used in the UNCTAD background note for the IGE. In this context, we would appreciate receiving your contributions by **21 December 2012**. The relevance and utility of the background note in

provoking a good discussion will substantially depend on your contributions. In this regard, we prepared a set of questions and requested information to provide guidance on your contribution. We would like to kindly request you to submit us the following:

1. Provide some competition case examples (cartels or other) between 2006 and 2012 from your jurisdiction in sectors which are most likely to affect the poor (ex: bakeries, rice, chicken, water etc.) from the perspective of either consumers or SMEs.

Pharmacies case (finished);  
 Chicken case (ongoing);  
 Voissnet II case (finished);  
 Buses cases (ongoing);

2. Provide cases where your authority or Government took some advocacy or regulatory measures to open a certain market to more competition and where such measures successfully promoted competition, decreased prices or facilitated the entry of SMEs to the market.

Number portability in telephony

3. Please provide a one-page description of the case(s), which includes the following information:
  - a. Product description
  - b. Type of anti-competitive practice
  - c. How was the case initiated, whether ex officio or upon a complaint?
  - d. If it was a cartel case, was a surcharge calculated during the investigation?
  - e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.

<p>Pharmacies case (finished)</p>	<p>Main dates:                  Conduct duration: December 2007 – March 2008                  FNE’s complaint: December 2008                  Settlement with one defendant: April 2009                  TDLC’s Ruling: January 2012                  Supreme Court’s Ruling: September 2012</p> <p>Description:                  In December 2008 the FNE filed a complaint against the 3 main retail pharmacies Farmacias Ahumada, Cruz Verde and Salcobrand accusing them of concerted action resulting in the price increases of around 200 drugs between December 2007 and March 2008.                  In April 2009, a settlement between the FNE and Farmacias Ahumada was reached, according to which Farmacias Ahumada agreed to pay USD\$ 1 m. the settlement was approved by the TDLC and the Supreme Court. This was the first cartel settlement ever agreed in Chile. The confession by Farmacias Ahumada generated a high impact in the public opinion, and collusion among competitors became a hot topic.                  In January 2012 the TDLC issued a unanimous condemnatory ruling against the two remaining pharmacies chains.                  TDLC’s ruling was the product of a long proceeding involving complex litigation, in</p>
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	<p>which the parties submitted and presented documents, witnesses, e-mails, expert and legal opinions. The FNE was thus able to prove that competition had been harmed due to the concerted action of the defendants. The ruling, containing a detailed analysis of the grounding facts, was conclusive in establishing that the price increases of drugs had been the result of the concerted actions of the defendants. Cruz Verde and Salcobrand were each fined in USD\$ 20 m. approx., the maximum fines applicable according to the Competition Act, on the basis of the seriousness of the conduct displayed and the extension of the harm caused, affecting almost the whole supply of a significant number of consumers in the country. The overall amount of fines imposed by this ruling is higher than the sum of all fines applied by the TDLC and the Supreme Court since 2004, the year of the creation of the TDLC.</p> <p>In September 2012 the Supreme Court issued a unanimous ruling upholding TDLC's decision. In an extended decision, the Supreme Court provides insights in several subjects of competition.</p>
a. Product description	206 drugs
b. Type of anti-competitive practice	Price-fixing cartel
c. How was the case initiated, whether ex officio or upon a complaint?	There was a complaint regarding a specific drug, but the investigation initiated by the FNE broadened its scope and covered a higher number of drugs.
d. If it was a cartel case, was a surcharge calculated during the investigation?	Yes
e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.	Yes
f. Links to relevant information on this case	<p><a href="http://www.fne.gob.cl/english/2012/09/11/supreme-court-upholds-tdlcs-ruling-against-cruz-verde-and-salcobrand-pharmacies-imposing-the-highest-ever-fines-for-collusion/#more-1216">http://www.fne.gob.cl/english/2012/09/11/supreme-court-upholds-tdlcs-ruling-against-cruz-verde-and-salcobrand-pharmacies-imposing-the-highest-ever-fines-for-collusion/#more-1216</a></p> <p><a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=1829">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=1829</a></p>

<b>Chicken case (ongoing)</b>	<p>Main dates: Alleged Conduct duration: last 10 years FNE's complaint: December 2011</p> <p>Description: In December 2011, the FNE filed a complaint before the TDLC, accusing the three main poultry companies in Chile (Agrosuper, Ariztía and Don Pollo) of cartelization. The accusation claims that the cartel was implemented and monitored by the Poultry Trade Association (APA – Asociación de Productores Avícolas de Chile A.G.). In its complaint, the FNE claims that the agreement between the aforementioned</p>
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	<p>companies (who concentrate approximately the 92% of the national production), overseen by and coordinated through the Trade Association, aimed to reduce the production of poultry meat, controlling the quantity of meat offered in the national market and assigning market shares to the involved parties. In the APA meetings, firm's executives allegedly discussed projections and defined production shares to each company, which have been stable during time. In fact, continues the FNE, since 2006 these companies have not exceeded the quantity defined by the APA, freezing the increase in the production of poultry meat.</p> <p>Taking into account the seriousness of their actions, the duration of the conduct, the market power the agreement conferred to the companies involved and the allegedly essential nature of the product affected, the FNE requested the imposition of the maximum fines established in the Act to each company cartelized – that is, 30.000 UTA (around USD\$ 30 m.). Additionally, the FNE asked for both a fine of 20.000 UTA and the dissolution of the Trade Association, due to its central role in coordinating and maintaining the cartel.</p> <p>This is the major cartel complaint after the pharmacies case. Besides the seriousness of the conducts, the significance of this case is that for the first time the FNE submits evidence gathered through the use of the new raids and seizures powers provided by the 2009 reform to the Competition Act. Due to the use of these powers, defendants have raised a number of allegations against the way in which the FNE administered the documentation seized. These actions of defendants have delayed the pending proceeding before the TDLC.</p>
a. Product description	Chicken meat
b. Type of anti-competitive practice	Output restriction cartel
c. How was the case initiated, whether ex officio or upon a complaint?	Ex officio
d. If it was a cartel case, was a surcharge calculated during the investigation?	Yes
e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.	Yes
f. Links to relevant information on this case	<a href="http://www.fne.gob.cl/english/2011/12/01/the-fne-files-suit-for-collusion-in-the-production-and-marketing-of-poultry-meats-in-the-country/#more-52">http://www.fne.gob.cl/english/2011/12/01/the-fne-files-suit-for-collusion-in-the-production-and-marketing-of-poultry-meats-in-the-country/#more-52</a> <a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2947&amp;GUID=">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2947&amp;GUID=</a>

Voissnet II case (finished)	<p>Main Dates:  Conduct duration: 2006 – 2010  Private complaint: July 2007 &amp; August 2008  TDLC's Ruling: March 2010  Supreme Court's Ruling: January 2011</p>
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	<p>Description:</p> <p>Voissnet S.A. (VoIP), an IP telephony services company filed a complaint against Compañía de Telecomunicaciones de Chile S.A. (TCH) for contractually conditioning the sale of broadband services to the hiring of telephone services, commercially bundling into this package deal a determined number of voice traffic minutes, with negative implicit prices.</p> <p>The TDLC established that this conduct was contrary to competition, apt to exclude competitors in the telephony market and sentenced the latter to pay a fine of approximately USD\$ 5 million.</p> <p>Furthermore, it ordered TCH to also market separately each of the services integrally offered in its packaged services. Consequently, and as long as TCH is dominant in broadband services, it cannot bundle them with any other product or services, thus forced to maintain a naked offer of broadband. Additionally, the defendant must set prices for its packaged deals that do not restrict competition and must be higher, at least, than the separate sale price of the integrating product or service of greater value.</p> <p>The SC rejected the complaint recourse filed against the TDLC's decision, confirming the latter's decision.</p>
a. Product description	Broadband / Fixed telephony
b. Type of anti-competitive practice	Tying / Bundled Discounts
c. How was the case initiated, whether ex officio or upon a complaint?	Private plaintiff
d. If it was a cartel case, was a surcharge calculated during the investigation?	Was an exclusionary abuse
e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.	No
f. Links to relevant information on this case	<a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2324&amp;GUID=">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2324&amp;GUID=</a> <a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?GUID=&amp;ID=560">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?GUID=&amp;ID=560</a>

<b>Buses cases (ongoing)</b>	<p>Dates:</p> <p>FNE's complaint: June 2011</p> <p>Decription:</p> <p>In June 2011, the FNE filed before the TDLC two complaints concerning severe and serious agreements made between competitors in various markets for public passenger ground transportation services offered by private companies.</p> <p>In one of the cases, the FNE accused 4 companies of having mounted coordinated</p>
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	<p>actions aiming to block competitors from accessing various terminals in the northern region of the country, by means of hoarding terminal offices in important cities, thus making the offer of renting ticket booths within inexistent, barring access to new participants to these terminals, an indispensable input to provide interurban ground transportation services. The FNE requested the imposition of fines totaling approximately USD\$ 41.5 million and compulsory prior consultation proceedings regarding new terminal acquisitions or concentration operations. In the other case, the FNE accused two companies and one individual of adopting and implementing in a coordinated fashion a series of acts and conventions aimed at fixing public tariffs and determining the distribution of bus frequencies for the offer of public passenger ground transportation services on specific routes to and from Santiago. The FNE requested the imposition of fines totaling approximately USD\$ 7 million for one of the companies and the individual under investigation, exempting the other company from any fine in light of its application for leniency.</p> <p>This last case demonstrates that local companies are also beginning to favorably view the benefit of fine exemption contemplated in the leniency program.</p> <p>Additionally, it is noteworthy to mention that in the investigation from which both cases ensued, the FNE used its powers to intercept wire communications, which was authorized by the TDLC and the respective Appellate Court, and direct evidence was gathered from these offenses.</p> <p>Both cases are currently ongoing before the TDLC.</p>
a. Product description	Transportation services
b. Type of anti-competitive practice	Price-fixing and frequencies arrangements cartel, boycott against new entrant
c. How was the case initiated, whether ex officio or upon a complaint?	Ex officio
d. If it was a cartel case, was a surcharge calculated during the investigation?	Yes
e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.	Yes
f. Links to relevant information on this case	<a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2882&amp;GUID=">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2882&amp;GUID=</a> <a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2747&amp;GUID=">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=2747&amp;GUID=</a>

<b>Number portability in telephony</b>	Dates: Telecom Regulator's Consultation: January 2008 TDLC's report: January 2009
a. Product description	Mobile and fixed telephony
b. Type of anti-	Pro-competitive regulation recommendation (introducing number portability)

competitive practice	
c. How was the case initiated, whether ex officio or upon a complaint?	Consultation by the Telecom Regulator
d. If it was a cartel case, was a surcharge calculated during the investigation?	It was a non-adversarial proceeding
e. Was an analysis on the impact of the anti-competitive practice on consumers/poor carried out? If so, please send us the analysis report or detailed information on the analysis.	No. The portability was introduced by the telecom regulator during 2012 and subsequent switching of companies by consumers and reductions in consumer prices have been reported.
f. Links to relevant information on this case	<a href="http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=1383">http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?ID=1383</a> <a href="http://www.subtel.cl">www.subtel.cl</a>

4. Along with the short description, if any, please provide us with relevant materials on the cases, such as your authority’s decisions, a supplementary report or market study or other relevant information. If you have already written material prepared for other occasions in this area, please refer us to these sources or attach them to your response.

Links to relevant information on the cases are included in the charts above (section 3).

5. Please describe how your authority prioritizes the competition complaints/cases it handles. Is the “impact on the poor of the potential anti-competitive practice” a factor in the prioritization of such a case? Or does your authority rather prioritize cases that are more likely to improve its image and provide visibility in the media? Is there a scheme, or criteria (such as visibility of the case, size of the market, impact on the low income households etc.) to guide the authority in the prioritization of the cases it will handle?

The FNE establishes priorities for the cases it opens and the management of them based on the type of conduct –prioritizing cartel enforcement- or the impact of the conduct on certain markets sensitive to a wide range of consumers. It does not consider visibility in its decisions. These criteria are publicly informed as to the type

of conducts to be overseen, in particular, through a public presentation of the Annual Report. The process for establishing these priorities is internal and does not have a formality.

Please send your contributions by **21 December 2012** to Ms. Ebru Gökçe (E-mail: [ebru.gokce@unctad.org](mailto:ebru.gokce@unctad.org), Tel: +4122-917 1330) and Mr. Sangmin Song (E-mail: [sangmin.song@unctad.org](mailto:sangmin.song@unctad.org), Tel: +4122-917 5708).