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ROUNDTABLE ON THE ROLE OF EFFICIENCY CLAIMS IN ANTITRUST PROCEEDINGS

-- Note by the Delegation of Chile --

This note is submitted by the delegation of Chile to the Competition Committee FOR DISCUSSION under Item XII at its forthcoming meeting to be held on 24-25 October 2012.

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ROUNDTABLE ON THE ROLE OF EFFICIENCY CLAIMS IN ANTITRUST PROCEEDINGS

-- Note by Chile[*] --

1. Institutional and legal framework

1. The institutional arrangement for competition law in Chile considers both an administrative body and a judicial body. The Fiscalía Nacional Económica (hereinafter, the "FNE"; also legally translated as "National Economic Prosecutor's Office") is an independent government competition agency in charge of detection, investigation and prosecution of competition law infringements, issuing also technical reports and performing competition advocacy activities. The *Tribunal de Defensa de la Libre Competencia* (hereinafter, the "TDLC"; also legally translated as "Free Competition Defense Tribunal") is the decisional judiciary body having exclusive jurisdiction on competition law and adjudicating in both adversarial procedures (referred to infringements such as cartels or dominance abuses) and non-adversarial ones (concerning merger review, among others). The TDLC's rulings are subject to appeal before the Supreme Court.

2. The legal standard the Competition Act provides for intervention is defined as *any action, act, deed or contract that prevents, restricts or hinders free competition or tends to produce such an effect*. The Act does not contain any explicit references to economic efficiencies, neither as an element that -if harmed or threatened- justifies intervention, nor as a justification or defense legitimating restraints to competition. However, since the application of the law has become increasingly economic-effects-oriented in the last 15 years, the definition, identification and assessment of efficiencies in the FNE's administrative analysis, as well as in the case-law analysis by the TDLC are unavoidable steps, particularly, regarding mergers and abuse of dominance/vertical restraints cases.

3. The remaining part of this contribution aims at providing some insights regarding conceptual, methodological and evidentiary issues regarding efficiency claims raised by parties in competition law proceedings, particularly, in mergers and abuse of dominance/vertical restraints cases. It must be stated that both competition authorities, the FNE and the TDLC analyze efficiencies at different procedural stages. For the reason above, amongst others, each body's conclusions on efficiency claims in case analysis have not always coincided. Although this submission is a joint contribution of the FNE and the TDLC, the document identifies the relevant differences wherever necessary.

2. Conceptual issues regarding efficiency claims

2.1 Efficiency claims in merger cases

4. The FNE, when drafting its report on specific merger transactions cases which is later submitted to the TDLC, regularly evaluates efficiency claims raised by parties as potential counterweights to anticompetitive effects in merger analysis. According to FNE's reports, claimed efficiencies must have the following features: (i) to be reasonably verifiable; (ii) not attainable by alternative mechanisms less harmful or risky for competition; (iii) be able to be passed to consumers. The evidence of their existence and magnitude should be provided by the parties.

[*] Joint contribution from FNE and TDLC.

5. The TDLC has enumerated the requirements for efficiency claims to be considered, in the following terms: *In order to evaluate potential efficiencies in mergers, this Tribunal […] has required that they should be verifiable, inherent to the merger under review, i.e., not attainable within a reasonable length of time by other transactions not implying market concentration and must not be the result of anticompetitive restraints to the quantity or quality of the relevant products. Additionally, this Tribunal considers that claimed efficiencies with regards to a merger should translate, with a reasonable probability and within a reasonable time frame into reduced consumer prices or better products quality*.[1]

6. According to FNE' reports, productive efficiencies consist in reduction in marginal costs and reduction in agency costs due to the transaction. On the contrary, reductions in fixed costs are not commonly considered as counterweights to anticompetitive effects, but only in markets where dynamic elements of competition are relevant and thus where fixed costs reductions may be translated into more innovation, improvement of products, more variety, or into short-term reductions in operational production costs.

7. As to dynamic efficiencies, the FNE has considered in its reports that they can have an indirect mitigation role regarding anticompetitive effects. For instance, a merged entity could be in position of increasing prices but at the same time generating an efficient firm structure able to create new and better products. In such a case, according to the FNE's Draft of the New Version of the Internal Guide for the Analysis of Horizontal Merger Transactions, the FNE would perform a qualitative assessment of both expected effects.[2]

8. The TDLC has admitted dynamic efficiencies in VTR/Metropolis in the following terms: *Technological elements play a fundamental role in framing the structure of the telecommunications sector […] the constant development of new technologies, and particularly their convergence, generate very dynamic conditions in markets, opening the possibility of competition. […] This Tribunal is convinced that in the mid-term, technological dynamism in this sector will eliminate that dominance in the paid TV, increasing competition in the whole telecommunications sector*.[3]

9. The TDLC by and large shares the FNE's conception regarding productive efficiencies; however, the dissenting vote in Shell/Terpel held that reduction in fixed costs may also result in effects on prices, and thus fixed cost reductions should also be considered as merger efficiencies when they translate into reduction in prices.[4]

2.2 Efficiency claims in abuse of dominance/vertical restraints cases

10. The role of efficiency claims in adversarial proceedings is to counterweight the theory of harm supporting the alleged infringement. From a legal point of view, the assessment of efficiency claims is inherently associated with the qualification of the legality/illegality of the conduct under analysis.

11. In exclusionary cases, the FNE identifies a harm to competition when rivals' costs are raised or markets are foreclosed. As to vertical restraints, these practices may be identified as vehicles for

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1 TDLC's Decision No. 39/2012 (*Shell/Terpel*) (Rc. 10.2.); available at: http://www.fne.gob.cl/wp-content/uploads/2012/08/reso_39_2012.pdf

2 FNE's Draft of the New Version of the Internal Guide for the Analysis of Horizontal Merger Transactions; available at: http://www.fne.gob.cl/english/wp-content/uploads/2012/08/Guide-for-Analysis-of-Merger-Transaction.pdf

3 TDLC's Decision No. 1/2004 (*VTR/Metrópolis)* (Rc. 7 and 10); available at: http://www.fne.gob.cl/wp-content/uploads/2011/05/reso_0001_2004.pdf

4 Dissenting vote, Rc. 31 and ff., in TDLC's Decision No. 39/2012 (*Shell/Terpel*) , *supra*, footnote 1.

facilitating coordination among competitors. Thus, the FNE confronts its theory of harm with the claimed efficiencies the restrain allegedly has in order to determine the strategy it will follow for enforcing the law or otherwise trying to resolve the dispute.

12. The TDLC identifies and assesses claimed efficiencies as part of an adversarial proceeding in which one of its major tasks is to determine whether the claimed efficiencies of the restraints are able to counterweight the theory of harm invoked by the FNE or by a private plaintiff. This analysis is crucial in TDLC's qualification of the legality/illegality of the conduct because, at the end of the day, a wrongful conduct should have an actual or potential inefficient outcome in the market, according to an economic-effects-oriented approach to competition law.

13. Productive efficiencies in terms of reduction in variable costs and reduction in agency costs are the most commonly kind of claimed efficiencies. However in some conduct cases, particularly in price discrimination cases, allocative efficiency is usually part of the arguments raised by the defendant.

3. Methodological issues

3.1 Efficiency claims in merger cases

14. As mentioned above, productive efficiencies are associated mainly with reductions in marginal costs due to transaction's synergies, plant specialization, reductions in costs of capital, achievement of scale economies –when they are not attainable in other ways within a reasonable time horizon, scope economies, density economies and whatever productive advantage associated with the joint operation of merging parties and with the reduction in operational costs. Savings in fixed costs, such as elimination of duplications, are considered only if relevant competitive variables in the industry support the assumption that these savings will be passed to consumers in a short length of time, for instance, by an increase in R&D investments, improvements in quality, more product variety or reductions in operational costs due to improvements in productive processes.

15. The above criteria for considering efficiency claims by the FNE are reflected in some cases detailed below for illustrative purposes.

3.1.1 SMU/Supermercados del Sur

16. SMU is the third supermarket chain in the country. In September 2011, SMU celebrated a merger with the fourth chain, Supermercados del Sur (SDS). After closing the transaction SMU submitted a consultation before the TDLC proposing several engagements for mitigating the competitive risks raised by the transaction. In addition, SMU claimed that the transaction produced efficiencies counterweighing in part the anticompetitive effects.

17. Claimed efficiencies by SMU included personnel reduction in the back office (e.g. by the suppression of duplicated departments), savings in marketing due to the unification of brands, and savings in freights and logistics due to scale economies in products distribution.

18. In order to verify whether the claimed efficiencies complied with the FNE requirements[5], the FNE requested additional information to SMU, to be submitted under confidentiality, explaining details of the claimed efficiencies.

5 *Supra* ¶4.

19. The FNE reviewed and assessed the information provided by the company and concluded that only a small percentage of alleged savings satisfied the requirement of being reasonably verifiable. Amongst the verifiable savings, most of them consisted in fixed costs and, besides, the competitive structure of the supermarket industry, according to the FNE, did not provide guarantees that these savings were able to be passed to consumers.

20. As part of its conclusions, the FNE admitted as counterweight to the merger's anticompetitive risks only those efficiencies associated with reductions in operational costs due to improvements in distribution systems, efficiencies which magnitude was significantly inferior to the anticompetitive risks identified.[6]

21. TDLC's decision on this case is still pending.

3.1.2 Shell/Terpel

22. In November 2011, Terpel Chile (which parent company in Colombia had been took over by the major Chilean actor, Copec) submitted a consultation before the TDLC regarding whether Shell could be the acquirer of its assets. In the market of liquid fuels sold in gas stations, Shell was the second company in the market with a 15% market share, behind Copec holding a 60%. Terpel Chile was the fourth actor with a 9,4% market share.

23. In its submission, the company claimed several efficiencies produced by the proposed transaction, including the optimization of the logistic network for fuel distribution, transportation and storage, a more efficient use of advertising budget, the introduction of technological developments in marketing techniques, and the acquisition of a minimum efficient scale in the demand of refined product which would allow the company to make imports directly and independently.

24. The FNE's analysis concluded that the claimed efficiencies related to fuel storage and transportation complied with the requirements, in the sense that they were feasible (although not completely verifiable), strictly inherent to the transaction, and able to be passed to consumers. Thus, the FNE admitted these efficiencies as partial counterweights to the anticompetitive risks associated with the transaction. Regarding anticompetitive risks not counterweighted nor mitigated by the accepted efficiencies, the FNE requested to the TDLC several mitigation remedies including the divestment of several assets.[7]

25. In a 3 to 2 divided decision on this case, the TDLC disagreed with the FNE analysis, did not admit any of the claimed efficiencies and did not authorize the transaction considering that there were no mitigation remedies able to mitigate the significant anticompetitive risks raised by the transaction.[8] TDLC's decision considered crucial that efficiencies were able to be passed to consumers with a significant probability, and thus, the efficiencies effectively pressing prices downward were those consisting in marginal costs savings. The majority held that claimed marginal costs savings, in some cases, had not been sufficiently proved and, in others, the savings were not strictly inherent to the transaction but achievable without the transaction. Thus, the efficiency claims were dismissed.[9]

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6 FNE's report, submitted to the TDLC on December 10th, 2011; available at: http://www.fne.gob.cl/wp-content/uploads/2011/12/inf_tdlc_009_2011.pdf

7 FNE's report, submitted to the TDLC on December 20th, 2011; available at: http://www.fne.gob.cl/wp-content/uploads/2011/12/inf_tdlc_010_2011.pdf

8 TDLC's Decision No. 39/2012 (*Shell/Terpel*); available at: http://www.fne.gob.cl/wp-content/uploads/2012/08/reso_39_2012.pdf

9 For the dissenting vote, on the contrary, claimed efficiencies would allow the creation of a viable competitive entity able to compete effectively with Copec in the short-term. Disagreement with the

26. The company challenged TDLC's decision and the final decision on the case is still pending before the Supreme Court.

3.1.3 Nestlé/Soprole

27. In November 2010 the two major buyers of crude milk companies and main actors in the selling of dairy products, Nestlé and Soprole, submitted a consultation before the TDLC regarding a Joint Venture for the joint production of several dairy products. Both companies represented jointly the 58% of the processed crude milk in Chile.

28. The companies claimed several productive and dynamic efficiencies associated with the Joint Venture.

29. Productive efficiencies were associated mainly with avoiding duplications in corporate marketing investment, production lines, distribution forces and human resources in marketing, manufacture, logistics and back office departments.

30. As to productive efficiencies, the FNE concluded in its report that claimed costs reductions were in most part verifiable and inherent to the transaction. Although, regarding the requirement of transferability to consumers, the FNE differentiated between reduction in fixed costs and reduction in variable costs, being the latter the only costs likely to be passed to consumers. Thus, the FNE accepted as counterweights to anticompetitive risks only the efficiencies associated with costs reductions in the marketing, manufacture and logistics departments, which were considered variable costs.

31. As to dynamic efficiencies, the companies claimed that the Joint Venture would allow them to reach a critical mass of consumers that would make profitable the introduction in Chile of innovations Nestlé subsidiaries have developed in other countries and, additionally, complementarities of both companies would allow them to increase processing plants' production and returns, and hence turn projects allowing them to broadening product variety into viable projects.

32. The FNE's analysis on claimed dynamic efficiencies dismissed the allegation that the Joint Venture would facilitate the introduction of innovative developments because the FNE understood that once the sunk cost associated to the innovation take place, its transference to other countries could be made at a low marginal cost, and thus, requiring a critical scale to motivate the innovation transfer was not considered determinant for the transfer to take place. Regarding the complementarities alleged as allowing improvements in production processes, the FNE considered that incentives for innovation and for productive improvements were rather supported in the intensity of competition between Nestlé and Soprole, which would be reduced by the Joint Venture. Thus, the FNE relied more on the intensity of competition rather than on companies' commitments with the authority to ensure that improvements in production processes and innovation will take place, particularly since it was clear that those efficiencies were attainable without the Joint Venture.[10]

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treatment of efficiencies by the majority included a different view on the standard for considering them verifiable and the kind of efficiencies that may be considered as counterweights. As to this last point, the minority vote expresses that savings increasing producer surplus are a fundamental incentive allowing the producer to define its competitive strategy and thus, fixed costs savings effectively affect investment decisions and market prices. In the long-term, the dissent continues, all costs are variable costs and thus a reduction in incremental or avoidable fixed costs would have an impact on prices.

10 FNE's report, submitted to the TDLC on March 4th, 2011; available at: http://www.fne.gob.cl/wp-content/uploads/2011/06/itlc_0002_2011.pdf

33. The companies aborted the Joint Venture and withdrew their submission before the issuing of the TDLC's decision on the case.

3.2 Efficiency claims in abuse of dominance/vertical restraints cases

34. Claimed efficiencies in conduct cases are determinant for the qualification of the legality/illegality of the conduct. From an economic-effects-oriented approach to competition law a wrongful conduct should at least have the potential effect of an inefficient outcome in the market and thus, at least in theory, efficiencies gained by the restraint could outweigh the harm to competition caused by the same restraint.

35. Some cases are presented below to illustrate how the analysis proceeds in conduct cases.

3.2.1 FNE's complaint against CCU

36. In March 2008, the FNE submitted a complaint against the major beer producer, CCU, possessing 83% market share of the national beer market.

37. CCU implemented a vertical restraint consisting in exclusivity arrangements with hotels, restaurants, bars, clubs and other equivalent distributors in the channel 'immediate consumption', causing an exclusionary effect with regards to potential competitors in the market. CCU reinforced the practice by requiring from the distributors the exclusivity in beer promotional and advertising activities in the premises where the arrangements were in force. The FNE accused CCU had incurred in an exclusionary abuse of dominance.

38. CCU responded the complaint claiming that exclusivity arrangements had been celebrated with a small part of its customers, and that the arrangements were part of a marketing campaign aimed at advertising its products, and thus a service provided by the customers to CCU for which CCU paid a price. Thus, considering that the arrangements involved only a small part of its customers, CCU claimed that the arrangements had and advertising and promotional purpose and not an exclusionary effect.

39. The FNE discarded the argument raised by CCU because the strategy, although including only part of its customers, was oriented towards premises in uptown quarters, which were the target market for the feasible potential competitors, craft brewers.

40. The FNE and CCU settled the case and the settlement was approved by the TDLC. As part of the settlement, CCU made several commitments aimed at limiting exclusionary risks of the arrangements and refraining from reintroducing a similar policy in the future. In the settlement the FNE evaluates exclusivity arrangements from the point of view of its anticompetitive exclusionary effects, and hence dismissed the advertising and promotional purpose alleged by the defendant. The FNE evaluates exclusivity arrangements stating that they *may be justified when the scope of the vertical restraint is strictly limited to its object, and never when the purpose of the restraint is to prevent, hinder or restraint the exhibition or sales of alternative products or services.*[11]

3.2.2 FNE's complaint against CCF

41. In June 2008, the FNE submitted a complaint against Compañía Chilena de Fósforos ("CCF"), the dominant company in the industry of matches, possessing a consistent market share over 80%.

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[11] The settlement between FNE and CCU, approved by the TDLC in July 23th, 2008, is available here: http://www.fne.gob.cl/wp-content/uploads/2012/03/CCU-2008.pdf

42. FNE's complaint reproached CCF of agreeing exclusivity contracts and introducing non-linear price incentives with retailers that had an exclusionary effect on potential competitors, as well as other exclusionary practices.

43. As to exclusivity contracts and non-linear price incentives, the FNE dismissed any efficiency justifications for these vertical restraints. Indeed, CCF had submitted an economic report arguing that these vertical restraints had augmented efficiency in the market, an argument elaborated as follows: (i) CCF had made major investments in brand building and development, particularly investing in improving products' precision and safety; (ii) CCF's competitors have developed products and brands that aim at associating their image to CCF's; (iii) If CCF's matches attract some consumers as a result of said investments, rivals and distributors have incentives for selling alternative matches and hence earn the additional margin generated due to smaller investments in brand development and reputation made by alternative matches; (iv) Thus, CCF's vertical restraints were an effective mechanism for protecting CCF's investments.

44. When adjudicating in this case, the TDLC dismissed the efficiency claim raised by CCF in the following terms: *For this Tribunal, in cases not directly nor indirectly associated with a previous exclusivity, a purpose of preventing the entry of new competitors had existed too; because in the market context described above and due to the dominant position of CCF, there is no evidence in this case making possible to presume the existence of scale economies or efficiencies for justifying the system of discounts and capable of explaining why different discounts were agreed with each distributor. The above mentioned, for this Tribunal, demonstrates that CCF designed a 'specific suit for each distributor', which may be explained only by the purpose of rising artificial barriers preventing the entry of new competitors and no evidence submitted in the case allows to hold that they are justified in conditions being general, uniform and objective or in costs conditions*.[12]

3.2.3 FNE's investigation on the exclusivity contract between Nestlé and Keylogistics

45. Case No. 1604-2009, filed with no further action. In 2009 the FNE investigated a complaint submitted by a small producer of crafted ice creams, 'Lecherías Loncomilla', which reproached an exclusivity arrangement agreed between ice cream producer Nestlé and logistics company Keylogistic. According to Loncomilla's complaint, the exclusivity arrangement prevented Loncomilla to transport and distribute its products by an efficient mechanism.

46. During its investigation, the FNE confirmed the existence of the arrangement as well as the existence of advantages in distribution costs, experience and applied knowledge of Keylogistics relatively to its competitors in the logistics of ice cream distribution to supermarkets.

47. The FNE determined that the above advantages had been acquired by Keylogistics as the product of know-how transference from Nestlé. In fact, Keylogistics had begun ice cream distribution to supermarkets in 2005 when hired by Nestlé and was financed and monitored by Nestlé in the implementation of the logistic system.

48. Thus, the inclusion by Nestlé in the first distribution contract of a covenant forbidding Keylogistics to supply logistic services to Nestlé's rivals using investments and experience provided by Nestlé was considered as legitimate by the FNE.

12 TDLC, Ruling No. 90/2009 Rc. 152°; available here: http://www.fne.gob.cl/wp-content/uploads/2011/03/sent_0090_2009.pdf

49. However, in FNE's resolution closing the investigation with no further action[13], the FNE expresses that, by and large, a transference of the kind of know-how involved in this case did not justify agreeing on exclusivity terms forever. Thus, such an exclusivity arrangement should be limited in time and be strictly restrained, specific and proportional to the purposed protection. The arrangement's object cannot restrain or limit competition in the market.

50. Since the exclusivity covenant was contained only in the first distribution contract between Nestlé and Keylogistics which expired in August 2009 and that it was not included in the new contract, the FNE decided not to submit a complaint against Nestlé before the TDLC, although it warned on the effective end of the exclusivity.

3.2.4 FNE's complaint against Cámara de Comercio

51. As mentioned above, in some conduct cases, particularly in price discrimination cases, efficiencies claims have been supported in the absence of harm to allocative efficiency.

52. In a price discrimination case in 2007, FNE's complaint against *Cámara de Comercio*, the latter was accused of abusing its dominant position, by charging excessive prices to individuals interested in being removed from the commercial information database that the defendant has to maintain according to a legal mandate. In this case the TDLC noted that the price structure applied by the defendant discriminated by the amount of the debt that should be informed as fulfilled, charging higher prices for clearing higher debts from the database. However, even though the price structure was considered not based on costs, the TDLC held that the pricing mechanism increased the volume of transactions, thus increasing the quality of the information provided to the financial system -compared to a flat price, for example. Therefore, in this case, price discrimination was considered not to be against competition law, given the described allocative efficiency considerations.[14]

4. Evidentiary issues

53. Both the FNE and the TDLC understand that merging parties and defendants in conduct cases have the burden of proving the existence of efficiencies and their magnitude according to their claims, as well as the other requirements efficiencies must fulfill in order to be considered.

54. Evidentiary issues regarding efficiency claims are associated with the requirement of being verifiable. Compliance with this requirement has been developed by TDLC's case law.

55. In Decision No. 24/2008 on the D&S/Falabella merger case, the TDLC held that "*the only estimations of efficiencies were presented, and even prepared by the parties of the proposed merger. Therefore, the Tribunal cannot consider them as having any more value than any other declaration of the party that presents it*".[15]

56. In Decision No. 37/2011 on the Lan/Tam merger case, the TDLC held something similar: *"...the parties of a proposed merger should justify the source, type and probable extent of such efficiencies. This requires that the alleged efficiencies are to be verifiable enough, in the sense that their logic and*

13 FNE's, filing resolution, November 10th, 2011; available here: http://www.fne.gob.cl/wp-content/uploads/2011/12/arch_028_2011.pdf

14 TDLC's, June 27th, 2007, Ruling No. 56/2007; available here: http://www.fne.gob.cl/wp-content/uploads/2011/03/sent_0056_2007.pdf

15 TDLC's Decision No. 24/2008; available here: http://www.fne.gob.cl/wp-content/uploads/2011/03/reso_0024_2008.pdf

consistency should be replicable, and from that logic might be deduced a reasonable probability that such efficiency will occur. This is to say, alleged efficiencies should not be mere conjectures or speculations, but they should be reasonable enough and they should be justified on arguments or objective data. This requires knowing, ideally, not only the model used to estimate the expected values of the efficiencies, in case it proceeds, but also the different assumptions supporting the prediction method. Only in such way, the estimated values could be verified: first, replicating them, and then evaluating the reasonability degree of the estimations presented".[16] In this case the TDLC held that, although most of the claimed efficiencies had a reasonably high probability to occur, it was not possible to replicate the estimations of the parties, and thus, should be dismissed.

57. As to conduct infringement cases, the FNE or the corresponding private plaintiff have a significant burden of proof regarding the elements of the infringement, particularly, the charge of proving actual or potential effects on competition the infringement produced. However, once the FNE has established a *prima facie* case and the defendant claims efficiencies in regard to the conduct under analysis, the burden of convincingly proving the existence and magnitude of the claimed efficiencies to the TDLC bears on the defendant who claimed the efficiencies. Thus, it is not a burden of the FNE to prove the contrary, i.e. the inexistence or irrelevance of the claimed efficiencies in order to maintain the illegal character of the infringement.

58. The Supreme Court held the criteria above in the following terms: *The defendant's reasoning is not correct […] in the sense that the challenged ruling had incurred in an inversion in the burden of proof rules, because the justification of an infringement should be proven by the party arguing that justification. Thus the TDLC is right when holds that no efficiency, scale economies or costs economies motivations have been proven –despite having been claimed since the response to the complaint in order to argue that the contractual arrangements are justified by the competition law. Consequently, it is not correct to argue that the ruling under challenge forces the defendant to prove the legality of its conduct, on the contrary, it is the defendant himself who is arguing a justificatory element with regards to a conduct proved prima facie illegal and due to this he puts himself in the procedural position of proving the claimed excuse*.[17]

16 TDLC's Decision No. 37/2011; available here: http://www.fne.gob.cl/wp-content/uploads/2011/11/Reso_37_2011.pdf

17 Supreme Court, June 2nd, Docket No. 277-2010, Ruling on complaint recourse against TDLC, December 14th, 2009, Ruling No. 90/2009, (*FNE vs. CCF*)