

Teleseminar on
Promoting competition principles among law makers



The FNE's challenges

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March/28, 2011

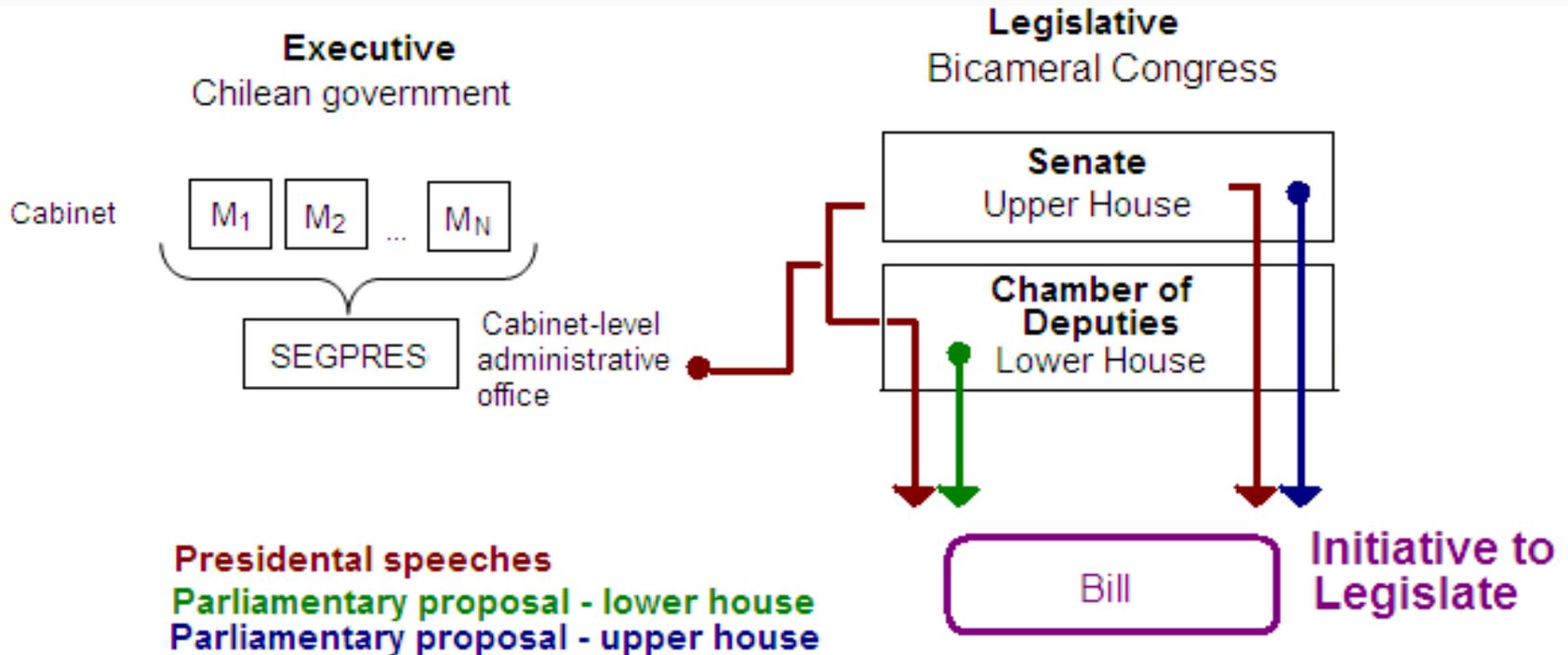
Background

- Competition Act (“Decree 211”) states as objectives both the *defence* of competition in markets and the *advocacy* of competition
- Defence is thoroughly provided for in the Law
 - Traditionally, the FNE’s role has been centred on defence
- There are no clear provisions on how to advocate competition
 - The FNE has “to figure out” how to carry out advocacy among policy makers

Chilean legislative process (in a nutshell)

- Chile is a presidential regime, with strong separation of powers
- As most countries, Chile follows a *civil law system*.
 - Main source of law is (codified) legislation — especially constitutions, statutes and (to a much lesser extent) custom
- Generally speaking, the process of passing an statute may commence in two ways
 - The Executive Power send a bill to the Congress for its consideration and enactment (the so-called “Presidential speeches)
 - Any congressman presents its own bill to the Congress for its consideration and enactment (the so-called “Parliamentary proposals”)
- However, statutes affecting specific matters must be initiated by Presidential speech

Chilean legislative process (in a nutshell)



The dilemma:

Where should the FNE focus its advocacy efforts?

Advocacy so far (... not so good)



It has been focused on the Congress

Upon the Congress' request, the FNE assess competition issues on bills

In high impact cases, the National Economic Prosecutor (head of the agency) appears before Congress to describe the FNE's position:

- *Pharmacy chains* (cartel case, 2010-11)
- *Soprole/Nestlé* (merger, dairy products industry, 2011)

The trade-off (1) – The *ex-ante* option

Focus on Presidential speeches *before* they are sent to the Congress?

PROS

- Opportunity to act “from the scratch”
- Full access to the information which serves the base for the bill
- “The invisible hand” – possibility of persuading lawmakers before the bill goes to the Congress

CONS

- Loss of agency’s independence (?)
- If persuasion is not successful: “politically incorrect” to present same concerns to the Congress

Should the FNE’s opinions on drafts be made publicly available?

The trade-off (2) – The ex-post option

Focus on bills once they are discussed in the Congress?

PROS

- Agency's independence is not undermined
- Broader awareness of competition concerns (?)
- More chances that competition concerns are dealt with in the final product

CONS

- Less information
- Modifications in the Congress can be substantial, but the fundamentals are normally laid out by the Executive

Should the FNE's opinions on drafts be made publicly available?