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ROUNDTABLE ON COMPETITION AND SPORTS

Note by the delegation of Chile

This note is submitted by the delegation of Chile to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16 - 17 June 2010

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ROUNDTABLE ON COMPETITION AND SPORTS

-- Note by Chile --

1. Introduction

1. First of all we would like to underline the fact that the FNE's contribution to this roundtable will be made based on professional football only. This is due to the fact that, in Chile other sports are not as developed at a professional level as football is.

2. Second, given that no investigation has made it to the Competition Tribunal so far, and therefore judicial decisions have not been issued on the topic, we will base our answers on preliminary enquiries we have undertaken in the field.

3. In the Chilean professional football industry, it is possible to distinguish four main operators: 1) the clubs and clubs' associations; 2) the players; 3) broadcasting organisations; 4) sponsors and advertising agencies.

4. The clubs are organised into the following three club associations: Chile's National Football Federation, the umbrella organisation that represents Chile at the international level; the National Professional Football Association (ANFP); and the National Amateur Football Association (ANFA). The ANFP and the ANFA are members of Chile's National Football Federation.

5. The ANFP congregates all the Chilean professional football clubs. It organises all of the professional championships and is the only entity entitled to enter into contracts to broadcast, by any means, the matches of those championships. Moreover, the ANFP owns nearly 90 % of the "*Canal del Futbol*", company that is the sole controller of the broadcasting rights of Chile's professional football championship matches, both real time and delayed broadcasting. These rights are sold to free-to-air broadcasters and pay-television programmers.

6. Chilean football clubs have traditionally been organised as non-profit corporations. However, in view of, among other things, their higher professionalization, the growing business oriented nature of the clubs and the financial insolvency of some of them, in 2005 a law was passed which main purposes were to structure the organisation of professional sport clubs; regularise their financial condition and the remuneration of their players; and establish an external surveillance system of their functioning.¹ This law establishes that professional sport organisations may be incorporated as either public limited companies (*Sociedades Anónimas Deportivas Profesionales*) or non-profit corporations. The former must have as their sole object the organisation, production, commercialisation of and the participation in professional sport events and their ancillary activities. Currently, 16 out of the 18 professional football clubs in the first division are incorporated as public limited companies.

¹ Law N° 20019/2005 that Regulates Professional Sports' Public Limited Companies.

7. Regarding now the suggested issues to be touched upon in this contribution, and first, on the subject of **market definition**, the FNE has deemed that in Chile it clearly there exists a relevant market for professional football. Indeed, given the singularities of this industry and the way it is organised, it could be said that, for instance, regarding sports broadcasting rights, the relevant market may be narrowed down to the broadcasting rights of the Professional Football's National Championship matches. This assertion is based on the fact that, in general, different sports (and thus their broadcasting) are not seen as substitute or homogenous goods for one another by consumers, particularly if interchangeability is assessed between football and other sports, (even between one football tournament and another). According to foreign agencies' findings taken into account by the FNE in its enquiries, evidence has shown that consumers would be willing to pay more for a channel broadcasting their favourite sports, as in the case of the Professional Football's National Championship matches. Furthermore, this interest would not only be in a single match but in the entire tournament.²

8. Concerning **barriers to entry** in professional football, the statutes of the ANFP establish that the number of its associates cannot exceed 32 clubs, 16 of which will belong to the first division and 16 to the second (*Primera B*). However, the number of clubs in each division may be altered and the total number of clubs associated to the ANFP may be increased, if 4/5 of the ANFP council members so approve. In this regard, in 2003 the FNE initiated a non adversarial procedure before the *Comision Preventiva*³ about a "programmed relegation"⁴ system that the ANFP was implementing. This system allowed that for the years 2003 and 2004, no first division club would be relegated to the second division, regardless of the tournaments results, and that 4 clubs from the second division (two each year) would be promoted to the first. The FNE considered that this system would prevent competition among the clubs for it would eliminate an important economic stimulus for competing, which was the fear of relegation that entails a severe loss of profits from reduced broadcasting rights, publicity, ticket sales and others. However, the *Comision* dismissed the FNE concerns and decided that the system did not restrain competition. In this regard, given the recent developments of our competition system and the improvement the FNE's procedures have undergone, the likely effects on competition of the current promotion/relegation system may deserve a closer and more comprehensive examination by the FNE.

9. Also regarding the topic of **barriers to entry** in professional football, in relation to the broadcasting of matches, the FNE is of the view that the main entry barrier for this market is the unavailability of the broadcasting rights associated to the specific sport event, which in the case of professional football, as stated before, are entirely controlled by "*Canal del Futbol*".

10. Regarding **the nature of football federations and leagues** and whether they are subject to competition law, in Chile the former are organised as non-profit corporations and are subject to competition law, as any other legal or natural person is.⁵ On the other hand, leagues, which in Chile are called Divisions, are not legal entities, but only categories in which football teams are arranged for purposes of organising championships and the respective promotions/relegations.

² An additional factor that should be pondered is that consumers value real time broadcasting way higher than delayed broadcasting.

³ Up until 2004, when the Competition Tribunal was established, the adjudicative competition bodies were the *Comisiones Preventivas* and the *Comision Resolutiva Central*.

⁴ Descenso programado.

⁵ Article 3° of the Chilean Competition Act (DL 211 of 1973) states that: "Whoever executes or enters into any act, agreement or convention, either individually or collectively, which hinders, restricts or impedes free competition, or which tends to produce such effects, shall be penalised with the measures indicated in Article 26 hereof...."

11. As for whether teams in leagues and federations should be considered as single entities, joint ventures, or multiple, independent entities, although the FNE has never dealt with such an issue as that posed by *American Needle v. National Football League*, (Case No. 08-66), the recent decision of the U.S. Supreme Court of Justice on that case may be viewed as a desirable outcome. As the Court stated “*Although NFL teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests in licensing team trademarks are not necessarily aligned*”. It is obvious that for professional football to exist, and given the so called “peculiar economics of professional team sports”,⁶ *it is desirable to permit teams in a league to co-ordinate their activities--agreeing rules, scheduling matches and so on, in ways that would be wholly unacceptable in other industries. To this extent leagues are like joint ventures, and this analogy can help to interpret the activities of sports leagues in a number of contexts.*⁷ Having said this, and assuming as a given that teams in leagues and federations should be considered as joint ventures or independent entities, perhaps the question that should be answered is whether such arrangements are indispensable.

12. Taking as an example “*Canal del Futbol*”, ANFP’s owned sole controller of the broadcasting rights of Chile’s professional football championship matches, one could assess, for instance, whether there is a need for this company to manage the entirety of those rights on behalf of the football teams (it could be shown that in the absence of this arrangement it will not be possible to arrive at a realistic schedule and therefore matches will either not be shown or shown at times not attractive to the viewers⁸) or whether this arrangement is welfare enhancing.

⁶ Neale, "The Peculiar Economics of Professional Sport", (1964), Quarterly Journal of Economics, 78, 1, 1-14.

⁷ Szymanski, Stefan COLLECTIVE SELLING OF BROADCAST RIGHTS TO SPORTING EVENTS, 2006-07-11, I.S.L.R. 2002, 1(MAR), 3-7.

⁸ Szymanski, Stefan COLLECTIVE SELLING OF BROADCAST RIGHTS TO SPORTING EVENTS, 2006-07-11, I.S.L.R. 2002, 1(MAR), 3-7.