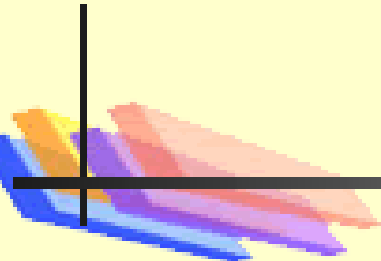


FEATURES OF THE CHILEAN COMPETITION LAW: CREATION OF THE NEW COMPETITION TRIBUNAL



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BACKGROUND


- 1959: Law N° 13.305: “Rules to promote industrial and commercial competition” which established, among other matters, a Commission to resolve competition issues.
- 1963: Law N° 15.142. The position of the National Economic Prosecutor was created with the mission to prosecute and investigate anti-competitive conduct, acting on behalf of the general interest.

These entities investigated few cases because a central planned economy was established.



BACKGROUND

- 1973: Military Coup, new economic orientation:
 - Market economy.
 - Privatization process.
 - Liberalization of prices.
 - Unilateral tariffs reduction.
 - Opening to foreign trade
- Together with these new orientations, the Military Government improved the system of competition enforcement (Decree Law N° 211)



DECREE LAW N° 211 (December 22, 1973)

1. Tripartite System

- Preventive Commissions: to respond to consultations regarding competition issues.
- Antitrust Commission: judicial body to resolve competition conflicts.
- National Economic Prosecutor's Office: to investigate and discipline anti-competitive behaviors.

2. One of the foundations of the Chilean Economic Order.

3. Punishes anti-competitive conducts with criminal and administrative sanctions.


4. Objective of the competition law is not defined.

5. It considers examples of anti-competitive conducts.




NEW CONTEXT IN CHILE (SINCE 1973)

- Increased participation of private sector in public utilities.
- Increased number of mergers and businesses alliances at local and world-wide level.
- Globalization.
- Concentration of the markets




NEW REFORM (LAW N° 19.911): CREATION OF THE NEW COMPETITION TRIBUNAL

- Special Competition Court replaces Preventive and Antitrust Commissions:
 - Mixed integration: 3 lawyers and 2 economists with 4 substitutes (2 lawyers and 2 economists).
 - Appointed through a public process before the Supreme Court and the Central Bank.
 - Terms of six years.
 - Unremovable except by specific causes and legally sentenced by the Supreme Court.
 - Remunerated.
 - Assigned budget and professional support.




NEW REFORM (LAW N° 19.911): CREATION OF THE NEW COMPETITION TRIBUNAL

- Main procedural modifications:
 - The Court will be able to act upon request based of private parties or of the National Economic Prosecutor.
 - Along with the contentious procedure, the legal reform establishes a new non-contentious procedure for issues like mergers and acquisitions.
 - The right to appeal before the Supreme Court is extended.
 - The statute of limitations is clarified.




NEW REFORM (LAW N° 19.911): CREATION OF THE NEW COMPETITION TRIBUNAL

- Powers of the Court:
 - Maintains the faculties of the Antitrust Commission:
 - To resolve conflicts,
 - To issue general rules, and
 - To propose to the President of the Republic the modification, approval or expiration of laws.
 - Maintains the main faculty of the Preventive Commissions:
 - To resolve non-contentious issues, specially related to consultations (mergers, acquisitions, future conducts or contracts).



NEW REFORM (LAW N° 19.911): CREATION OF THE NEW COMPETITION TRIBUNAL

- Object and scope of application of the law:
 - Article 1° : to promote and defend free competition in markets.
 - On the original bill: competition is a mean to develop and to preserve the right to participate in economic activities, to promote efficiency and, in this way, consumer welfare.
 - Article 3°: Whoever executes or celebrates, individual or collectively, any act or convention that prevents, restricts or obstructs competition, or that tends to produce these effects.
 - Improvement of the examples: collusive agreements and abuses of dominant position.



NEW REFORM (LAW N° 19.911): CREATION OF THE NEW COMPETITION TRIBUNAL

- Sanctions and investigative powers:
 - The same established in the former law, with the following modifications:
 - Abolishment of criminal imprisonment of sanctioned individuals.
 - Substantial increase of the amount of fines: from a limit of approximately US \$ 460,000 to US\$ 11,000,000
 - Improvement of the investigative powers of the National Economic Prosecutor's Office (depositions, international cooperation agreements)