

Competition Policy and Law in Chile

Recent cases and new powers for the Competition Agency

An overview

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Summary

- Competition authorities
- Powers of the competition authorities
- Main recent cases
- Chief challenges for the Competition Agency
- Would-be modifications to the competition statute
- Conclusion

Competition authorities

- **The Competition Agency (“FNE”)**
(investigative only, no remedial powers)
- **The Competition Court (“TDLC”)**
(assesses the claims and the non-controversial presentations from the competition agency, private and public persons; has remedial powers in case of findings)
- **The Supreme Court**
(reviews not just the due process but also the merits of the decisions of the Competition Court)

Competition authorities

- **The Chairman of the Agency:**
“National Economic Prosecutor”, who remains in office while trusted upon by the President of the Republic
- **The Competition Court:**
5 members: 3 lawyers, 2 economists
Appointed for 6 years in non-exclusive terms,
following a public selection process in which the Central Bank, the Supreme Court and the President of the Republic concur to the appointments.

The powers of the competition authorities

- **The Competition Agency**
- Limited investigative powers
- Evidence based mainly in documents willingly forwarded by incumbent firms, defendants and witnesses, and on expert reports
- Penal punishment only if obstruction to the investigation procedure is proven.
- Searches, raids and inspections are not possible due to lack of enforcement powers in case of refusal

The powers of the competition authorities

- **The Competition Court**

1) Decision and remedial powers in cases of violation of free competition statute (non ex – officio powers) / Controversial procedure

2) Decision and remedial powers in non contentious matters that might involve an actual or potential violation of the law / Non-controversial procedure

3) To propose amendments or abrogation of laws and by laws, and enactment of regulations, in competition matters

4) To issue general instructions (quite seldom)

The powers of the competition authorities

- **The Competition Court**
Remedial Powers

- a) In adversarial procedures:

- To fine firms and managers up to 15 millions USD
- To amend or terminate acts, contracts, agreements, systems or arrangements violating the competition law
- To rule the amendment or dissolution of partnerships, corporations or other private entities that committed those acts
- Other corrective or restrictive measures that may be decreed

- b) In non adversarial procedures:

- To set the conditions to be met by the facts, acts or contracts considered in the procedure
- Other corrective or restrictive measures that may be decreed

Recent Important Cases

- **Oxygen producers**
- The Competition Agency sued oxygen producer companies.
- Concerted bidding for a contract with the public organ in charge of oxygen purchases for public hospitals.
- The Competition Court (divided) condemned the companies and applied different fines to them, totaling US\$ 2.3 million.
- For the minority vote, evidence was insufficient to condemn the companies.
- The Supreme Court agreed and revoked the Sentence of the Competition Court, not crediting the collusive conduct.

Recent Important Cases

- **Internet telephony**
- The Competition Agency prosecuted Telefónica, the telephone monopoly (in local telephony).
- Telefónica had prevented its customers on Internet services from providing IP (Internet Protocol) telephony.
- The Competition Court ruled out Telefónica's restriction in contracts outstanding, instructed it not to repeat the offence and fined it with of US\$ 1.1 million.
- Sentence confirmed by the Supreme Court, that reduced the fine to US\$ 420,000 on the grounds that telecommunication regulations were unclear.

Recent Important Cases

- **Punta Lobos (salt market)**
- The Competition Agency brought a case against Punta Lobos, the largest salt producer in Chile.
- Punta Lobos was charged with setting artificial barriers to entry by delaying the opening of a sea port for salt boarding, in order to hold its dominant position in the domestic market of the product.
- The Competition Court punished the firm with a fine of US\$ 380.000 and ordered it to give notice of any operation increasing the concentration in harbour services for salt boarding.
- The company made no claims to the Supreme Court.

Recent Important Cases

- **Lan Airlines and Lan Cargo**
- The Competition Agency sued Lan Airlines and Lan Cargo, the largest airlines in Chile.
- These were charged with exploiting their dominant position in international cargo to Punta Arenas, south of Chile, with anticompetitive effects in the related market of cargo warehousing there.
- The Competition Court fined each firm with US\$ 115,000 and ordered them to reset their cargo tariffs from/to Punta Arenas, along with several measures to favor competition in each city where they operate.
- Moreover, the Court asked for the National Customs' regulations to be modified so to favour competition among warehousing companies.
- Pending decision by the Supreme Court.

Recent Important Cases

- **Private health insurers**

- The Competition Agency prosecuted five of the largest private health insurers in Chile, for collusion and concerted practices to diminish benefits in their contracts with their customers.
- The Competition Court did not manage to form conviction, although admitted that parallel actions by the companies might betray agreements among them.
- It concluded that evidence was insufficient to credit the agreement among the companies and (divided) rejected the suing.
- Minority votes considered that an enough degree of proof had been aduced to credit the collusive conduct.
- Pending decision by the Supreme Court.

Main challenges for the competition agency

- **Evidence before the Courts**

- In different cases the Competition Court and the Supreme Court have deemed that the evidence submitted by the Competition Agency was insufficient to prove the anticompetitive conduct (in particular, collusion and concerted practices).
- This has forced the Competition Agency to increase efforts in order to forward sufficient evidence in its enquires, which in turn are to be even more thorough, diligent and prolonged.
- The FNE has asked for enhanced investigative and detection powers.

Discussion of modifications to the competition law

- **New powers for the Competition Agency**
 - Currently discussed in Parliament
 - Leniency program
 - Wiretapping
 - Compulsory inspections
 - Increased fines

Conclusion

Important advances to reprimand anticompetitive conducts, collusion in particular.

- Significant achievements in recent sentences by the Competition Court, that has pronounced its verdict against companies charged with concerted conducts.
- Still a pending task, however, before the Supreme Court.
- Expectations of future modification of the competition statute, enhancing investigative powers of the Competition Agency.

- For further information:

www.tdlc.cl

Web Site of the Chilean Competition Court
Tribunal de Defensa de la Libre Competencia

www.fne.cl

Web Site of the National Economic Prosecutor's Office
Fiscalía Nacional Económica

THANK YOU

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