

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS**

-- Chile (TDLC) --

**27 October 2015**

*This document reproduces a written contribution from Chile (TDCL) submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.*

*More documents related to this discussion can be found at:  
[www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm](http://www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm)*

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-- Chile (TDLC) --

1. In Chile, the only cartel case involving intermediate goods that has been presented to the TDLC was referred to the market for compressors in Chile. Compressors are an essential input in the manufacturing of refrigeration appliances that are sold to Chilean consumers. Therefore, taking into account the hypothetical scenarios presented in the contribution request, Chile was “Country C” in this case.

2. The case was submitted before the TDLC in July 2010<sup>1</sup> against the companies Tecumseh do Brasil Ltda. and Whirlpool S.A. This is the first complaint filed by the FNE with information provided by a company that obtained the benefit of fine exemption incorporated by the 2009 amendments to the Competition Act. In its complaint, the FNE argued that both companies breached the law by adopting and implementing a series of worldwide agreements aimed at artificially increasing the price of low wattage hermetic compressors, which were marketed in the Chilean market, among other countries. The FNE requested the TDLC to declare the existence of said agreement, to order its immediate cessation, to impose Whirlpool a fine of approximately USD\$ 15 million and to exempt Tecumseh from any fine in light of the leniency benefit.

3. In June 2012, the TDLC ruled unanimously against Whirlpool and Tecumseh for engaging in a collusive agreement. Since Tecumseh was the first company that met the legal requirement to be exempted from fines, according to the leniency provision, the TDLC’s ruling applied this provision for the first time, recognizing the fines exemption granted by the FNE. At the same time, the TDLC fined Whirlpool in approximately USD\$ 10 m.<sup>2</sup>

4. In its ruling, the TDLC stated that the Chilean competition law is applicable to conducts that have harmed competition in Chilean markets, irrespective of where the conducts have been performed, in Chile or abroad. The case presented international aspects, due to which the FNE, particularly during the period the investigation was carried out, had to seek international cooperation from various international agencies that had background information regarding the case. The TDLC’s decision was challenged before the Supreme Court.

5. The case was brought before the Supreme Court by Whirlpool, who claimed lack of jurisdiction, *res judicata* and *ne bis in idem*. On September 2013, the Chilean Supreme Court upheld the TDLC’s decision<sup>3</sup>. In its ruling, the Supreme Court rejected Whirlpool’s claim of lack of jurisdiction because the cartel was carried out outside of Chile, arguing that: “*the purpose of the rules established in Decree Law No. 211 is to protect competition in Chile, it is clear that our courts do have jurisdiction to consider those attempts against these norms that have produced effects in Chile or that have the ability to do so, wherever they are carried out or held*”. Moreover, the judgment stated that having accepted Whirlpool’s argument “*would imply that such unlawful conduct, which also would have materialized in Chile, would be excluded from control and punishment by the country’s courts*”.

6. The ruling also rejected the claims relating to *res judicata* and *ne bis in idem*, considering that in this case “no foreign jurisdiction has considered or punished the events that occurred in Chile, which have affected the domestic market”.

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<sup>1</sup> FNE’s complaint is available at: [http://www.fne.gob.cl/wp-content/uploads/2012/02/requ\\_002\\_2010.pdf](http://www.fne.gob.cl/wp-content/uploads/2012/02/requ_002_2010.pdf)

<sup>2</sup> TDLC’s Ruling No. 122 is available at: [http://www.tdlc.cl/DocumentosMultiples/Sentencia\\_122\\_2012.pdf](http://www.tdlc.cl/DocumentosMultiples/Sentencia_122_2012.pdf)

<sup>3</sup> The Supreme Court’s Ruling is available at: [http://www.tdlc.cl/DocumentosMultiples/Sentencia\\_122\\_Corte\\_Suprema.pdf](http://www.tdlc.cl/DocumentosMultiples/Sentencia_122_Corte_Suprema.pdf)

7. The Supreme Court imposed a USD 4.6 million fine on Whirlpool SA, thus lowering the original fine of USD 9.7 million.

8. In summary, in accordance to Chilean case law, a collusive agreement can be investigated, judged and punished in Chile as long as it has produced effects in Chile, regardless of the decisions of other jurisdictions.