

LAW DECREE No. 211¹

ESTABLISHES RULES FOR THE DEFENSE OF FREE COMPETITION

TITLE I General Provisions

Article 1°.- The purpose of this law is to promote and defend free competition in the markets. All affronts to competition in economic activities will be corrected, prohibited and repressed in the manner and with the sanctions established hereunder.

Article 2°.- The Competition Court (*Tribunal de Defensa de la Libre Competencia*) and the National Economic Prosecutor (*Fiscalía Nacional Económica*), within the scope of their respective authorities, will be entrusted with the enforcement of this law for the purposes of safeguarding competition in the markets.

Article 3°.- Whosoever should execute or enter into, individually or collectively, any deed, act or agreement that impedes, restricts or thwarts competition, or tends to produce such effects, will be sanctioned with the measures established in article 26 of this law, notwithstanding the application of the preventive, corrective or restrictive measures ordered with respect to such deeds, acts or agreements in each particular case.

Among others, the following deeds, acts or agreements will be deemed to impede, restrict or thwart competition, or deemed to tend to produce such effects:

- a) Concerted agreements or practices among competitors, and which consist of fixing sale or purchase prices, limiting output, assignment of market zones or quotas, affecting the outcome of tender processes, as well as concerted agreements that, conferring market power to the competitors, consist of the determination of marketing terms and conditions, or the exclusion of current or potential competitors.
- b) Abusive exploitation, by an economic agent or a group thereof, of a dominant market position, fixing purchase or sale prices, tying the sale of two or more products, assigning market zones or quotas, or imposing other similar forms of abuse.
- c) Predatory pricing or unfair competition practices deployed to obtain, maintain or increase a dominant position.
- d) The simultaneous participation of an individual as a relevant executive or director in two or more competing firms, provided that the annual income of the aforementioned firms' respective business groups exceeds one hundred thousand *unidades de fomento* from sales, services, and other activities of their line of business during the last calendar year. However, this infringement will only be deemed to have occurred if such simultaneous

¹ Law Decree No. 211, which establishes Rules for the Defense of Free Competition, was published in the Official Gazette in its Edition No. 28,733, dated December 22, 1973, and its reformulated, systematizes and coordinated version was established by Supreme Decree No. 511 of the Ministry of the Economy, Promotion and Reconstruction on October 27, 1980. It has been amended by laws: a) No. 18,118 issued on May 22, 1982; b) No. 19,336 issued on September 29, 1994; c) No. 19,610, issued on May 19, 1999; d) No. 19,806, issued on May 31, 2002; e) No. 19,911 issued on November 14, 2003; f) No. 20,088 issued on January 5, 2006, and; g) No. 20,945, which "Enhances the Competition Defense System", was published in the Official Gazette, in its Edition No. 41,546, dated August 30, 2016, the latter item henceforth referred to as the "**Reform**"

participation is still ongoing after a term of ninety calendar days has elapsed, calculated as from the end of the calendar year when the aforesaid threshold has been surpassed.²

Article 3 bis.- The measures set forth by article 26, as well as any preventive, corrective or prohibitive measures deemed necessary, may also be applied to those who:

- a) Breach the notification or reporting duty established by article 48.
- b) Fail to comply with the duty of not consummating a concentration transaction that was notified to the National Economic Prosecutor's Office, and which was suspended pursuant to article 49.
- c) Breach the measures with which a concentration transaction has been approved, as per the provisions of articles 31 bis, 54, or 57, as the case may be.
- d) Consummate a concentration transaction in violation of the resolution or ruling that has barred such transaction, as per the provisions of articles 31 bis or 57, as the case may be.
- e) Notify a concentration transaction pursuant to Title IV, and supply false information therein.³

Article 4°.- No concessions, authorizations or consents may be granted to the extent that they imply or grant monopolies for the development of certain economic activities, unless they are expressly authorized by law.

Article 4 bis.- The acquisition by a company or by an entity that belongs to its business group, of a direct or indirect shareholding that exceeds 10% of the equity, in a competing firm, taking into account both its own shareholdings as well as those managed on behalf of third parties, must be notified to the National Economic Prosecutor's Office – at the latest – within the sixty days following the consummation of such acquisition. The National Economic Prosecutor may open an investigation in respect of such acts, with the purpose of ascertaining infringements to article 4.

The notification obligation set forth in the previous subsection shall only apply when the acquiring company, or its business group, as the case may be, and the company in which a stake is being acquired, each – separately considered – have annual incomes derived from sales, services and other activities of its line of business exceeding one hundred thousand *unidades de fomento* during the last calendar year.

In the event that the notification obligation set forth under this article is breached, the measures established by article 26, as well as the preventive, corrective or prohibitive measures that are deemed necessary, may be applied.⁴

TITLE II

On the Competition Court

² By article 1, No. 1, literal a) of the Reform, in subsection two of Article 3, literal a) was replaced with the current language (**for the original text, see Note § 1**), and by Article 1 No. 1, literal b) of the Reform, literal d) was incorporated into said Article.

³ Article 3 bis was incorporated by Article 1 No. 2 of the Reform.

⁴ Article 4 bis was incorporated by Article 1 No. 3 of the Reform.

1. On its organization and operation

Article 5°.- The Competition Court is a specialized and independent jurisdictional organ, subject to the directive, correctional and economic dependence of the Supreme Court. Its purpose is to prevent, correct and sanction affronts to competition.

Article 6°.- The Competition Court will be integrated by the following persons:

- a) One attorney, who will serve as its President, appointed by the President of the Republic from a shortlist of five contenders prepared by the Supreme Court after a public tender process. This tender process will only accept applicants with renowned professional or academic backgrounds in competition matters, Commercial or Economic Law, and at least 10 years of professional experience.
- b) Four professionals with university degrees and experts in competition matters, two of which will be attorneys, and two of which will have bachelor or postgraduate degrees in economic sciences. Following a public tender process, the Council of the Central Bank (*Consejo del Banco Central*) will appoint two of these members, one from each professional field. The President of the Republic will appoint the remaining two members, one from each professional field, based on two shortlists prepared by the Council of the Central Bank for each position, also resulting from a public tender process.

The Court will have two alternate members, one of whom will be an attorney and the other will hold a bachelor or postgraduate degree in economic sciences.

Those persons that served as the National Economic Prosecutor, or any other directive position in the National Economic Prosecutor's Office, within the year preceding the public tender process opened to fill a vacant office will be ineligible for a position as a permanent or alternate member of the Court.

The President of the Republic will appoint the alternate attorney and the Council of the Central Bank will appoint the member with a bachelor or postgraduate degree in economic sciences in accordance with the proceedings indicated in literal b) above, and the same shortlists and tender processes used for the appointment of the permanent members may be used to that effect.

The tender processes mentioned in literals a) and b) above must be grounded in objective, public, transparent and non-discriminatory conditions established in a court regulation issued by the Supreme Court and in a resolution issued by the Council of the Central Bank, respectively.

If the President of the Court is absent or otherwise impeded from participating, the sessions or hearings of the Court will be presided by one of the remaining permanent members, following the order of precedence established in a court regulation issued by the Court.

The appointment of the members of the Competition Court will be rendered effective by the President of the Republic through a supreme decree issued by the Ministry of the Economy, Promotion and Reconstruction, which will also be executed by the Minister of Treasury.

The members of the Court shall serve in their office on a full-time basis during the period for which they were appointed. Consequently, they cannot provide services of any type to natural or legal persons, nor exercise in any form any other activities pertaining to the professional degree or capacity they hold.

Alternate members shall not work on a full-time basis. However, their offices shall be incompatible with acting as advisor or provider of professional services in competition matters to natural or legal persons subject to the Court's jurisdiction. An alternate member shall be deemed to have advised or provided professional services if said member receives any type of remuneration, fee or royalty from natural or legal persons that, in turn, advise or provide professional services in this connection.

Notwithstanding the preceding subsections, the office of member of the Competition Court will be compatible with teaching positions, which may be exercised for up to twelve hours per week.⁵

Article 7°.- Prior to assuming their offices, the members of the Competition Court will swear an oath or promise to safeguard the Constitution and the laws of the Republic, before the President of the Court, and the Secretary of the Court will act as a certifying officer. The President of the Court will undergo the same formality before the longest running Member of the Court, based on the order in which they were appointed, and the Secretary of the Court will act as a certifying officer. Finally, the Secretary and the rapporteurs will swear an oath or promise before the President of the Court.

The permanent and alternate members of the Competition Court will serve for six years, with the possibility of being appointed for one additional period, pursuant to the proceedings indicated in the preceding article.

Regardless, the Court will be partially renewed every two years.

The form of addressing the Court will be "Honorable", and each of its members will be referred to as a "Member".

Article 8°.- The seat of the Competition Court will be in the city of Santiago.

Article 9°.- The Court will operate permanently, setting the dates and hours for its own sessions. In any event, the Court will hold sessions, in duly constituted chambers, to entertain its cases at least three times per week.

⁵ By Article 1, No. 4, literal a) of the Reform, subsections eight, nine and ten of article 6 were replaced with the current language (for the original text, see Note § 2); additionally, subsection eleven of said article was suppressed, replacing it with subsection ten, which contains similar language, incorporating the expression "teaching" and the period after the phrase "up to twelve hours per week".

The quorum to constitute a session will be formed by at least three members, and a simple majority will adopt its resolutions. In case of a deadlock, the President of the Court will have the casting vote. In all other matters, the Court will observe the provisions of Paragraph 2, Title V, of the Organizational Code of Courts, in all applicable matters.

Article 9° bis.- The permanent and alternate members of the Competition Court will furnish a sworn statement regarding their own personal wealth, pursuant to the terms of Articles 60 B, 60 C and 60 D of Law No. 18,575, the Constitutional Organizational Law that Establishes the Foundations for the Administration of the State.

The sworn statement of personal wealth will be made before the Secretary of the Court, who will maintain custody over the statement for public consultation.

The failure to submit the sworn statement of personal wealth in due time will be sanctioned with a fine ranging from ten to thirty *unidades tributaria mensuales*. The offender's breach of this obligation will be presumed after sixty days have elapsed since the date on which the submission was required by law to be filed.

Failure to comply with the obligation to update the statement of personal wealth will be sanctioned with a fine ranging from five to fifteen *unidades tributaria mensuales*. The Competition Court will apply the sanctions mentioned in the preceding sections.

Proceedings may be instigated *ex officio* by the Court, or through a report filed by one of its Members. Once the charges have been filed, the affected Member will have the right to file a defense within ten working days. If needed, the Court may open an eight-day term for the production of evidence. All forms of evidence will be permissible, and the Court will assess them reasonably. The Court will issue its final decision within the ten working days following the last submission in these proceedings.

Notwithstanding the preceding sections, the offender will have a term of ten days, as of the notification of the decision ordering the payment of the fine, to submit the sworn statement or correct it. If the member does so, the fine will be reduced to half of the original amount.

Article 10°.- The monthly remuneration of the permanent members of the Court will be a sum equal to the monthly, gross and permanent remuneration assigned to the office of National Economic Prosecutor. The alternate members will receive a monthly sum of thirty *unidades tributaria mensuales* and, additionally, the sum of ten *unidades tributaria mensuales* for each session to which they attend and replace the corresponding permanent member, with a maximum of sixty *unidades tributaria mensuales*, whichever the number of sessions attended.

In cases of justified absences, as determined by the majority of the members of the Court, the permanent member will be subject to a discount of 50% of the sums received by the alternate member that replaced the permanent member.

Article 11°.- The members of the Court may lose their jurisdiction to hear certain matters due to ineligibility or disqualifications, by virtue of the grounds established in articles 195 and 196 of the Organizational Code of Courts.

In any event, it will be presumed, without further recourse, that the permanent or alternate member, as the case may be, is disqualified when:

- a) There is an interest held in the case by the member's spouse, civil partner, or the member's relatives up to the third degree of kinship by blood, or second degree by marriage, or by persons associated with such member by bonds of adoption, or the companies in which such persons are legal representatives, agents, directors, managers or serve in other directive offices, or when said persons directly or indirectly possess a shareholding in such companies exceeding 10%, or a shareholding that allows them to elect or cause the election of one or more administrators in such companies, or when they exert a decisive influence in the administration or management of such companies, as indicated in article 99 of Law No. 19,045 on the Securities Market, and
- b) The relevant member has advised or provided professional services to natural or legal persons who are parties or who intervene in the case, within a term of two years prior to the entry date of the case or during the investigation conducted by the National Economic Prosecutor's Office that has given rise to the case.

Notwithstanding the provisions of subsections eight and nine of article 6, the permanent and alternate members of the Court will be affected by grounds for disqualification when they have advised or provided services in favor of any of the parties to a case during the year preceding the service of process of the relevant claim or the publication of the decree that orders the commencement of the proceedings established in article 31; when they have maintained labor, commercial, corporate or professional community relationships the attorneys or advisors of any other parties, or professional work in the same establishments, offices or real properties as such parties, even if such work does not imply a joint share of income, or the development of common or coordinated business activities, within the two years prior to the date in which such members are required to hear the particular matter.

Likewise, grounds for disqualification shall exist when the member has advised or provided professional services to natural or legal persons who, during the term of two years prior to the entry date of the case in question, have been counterparties to the persons indicated by literal b) of subsection two of this article, in any judicial proceeding or business negotiation, in such terms as to affect the member's impartiality.⁶

⁶ Article 1 No. 5 of the Reform, in literal a) of subsection two of Article 11, inserted, between the words "spouse" and "or," the expression "civil partner;" also, Article 1 No. 5 literal b) of the Reform, replaced letter b) of subsection second (**for the original, see Note § 3**); moreover, as per article 1 No. 5 literal c) of the Reform, in subsection three, the expressions "eighth, ninth and tenth" were replaced by "eighth and ninth;" the expression "the existence of" was replaced for "when they have maintained", and the phrase "within the two years prior to the date in which such members are required to hear the particular matter" was inserted between the word "activities" and the period; finally, subsection four was replaced with article 1 No. 5, literal d) of the Reform (**for the original language, see Nota § 4**).

The affected member may accept the invoked grounds for disqualification. If this is not the case, the Court will resolve the matter immediately, with no hearings, excluding the affected member. A fine of up to twenty *unidades tributaria mensuales* may be applied to the party that alleged the grounds for disqualification if the Court rejects them unanimously.

In cases of absence of permanent members or if they are otherwise unable to appear, such members be replaced by the alternate member corresponding to the same professional field, unless the application of this rule prevents the Court from forming the minimum quorum established in article 9.

If, due to any reason, the Court does not have a sufficient number of permanent or alternate members to form a quorum, the unavailable members will be subrogated by members of the Court of Appeals of Santiago, pursuant to the provisions of the Organizational Code of Courts.

The members of the Court will be subject to the provisions of articles 319 to 331 of the Organizational Code of Courts, with the exception of article 322.

Article 11 bis.- Notwithstanding the provisions of subsections eight and nine of article 6,⁷ the permanent and alternate members of the Court may not be administrators, managers or dependent employees of, nor may they advise or provide professional services to, natural or legal personas that have been parties to any case heard by the respective member, for a period of one year as of the date on which such member ceased to serve in his or her office, unless the final decision of a case heard by such member is pending, in which case the one-year term will be counted as from the notification of such pending decision.

Any breach of this prohibition will be sanctioned with an absolute disqualification from serving in public offices during a term of five years, in addition to a fine equivalent to the last year of remuneration received while in office. The Supreme Court will apply both sanctions at the request of any interested party.

The request mentioned in the preceding subsection will clearly and precisely state the facts that constitute the breach, attaching or offering, as the case may be, all applicable forms of evidence. If the request does not fulfill these requirements, the plenary session will disallow the request without a hearing.

If the request is declared admissible, the President of the Supreme Court will allow the accused to submit his or her defenses within the eight working days following the date of reception of the respective report, which will be delivered along with the relevant case file by the most expedite means.

Once the defenses have been submitted, or once the period established in the preceding subsection has elapsed, the President of the Supreme Court will summon the parties to a hearing for the production of evidence, appointing a member of the Court to receive it. Once these

⁷ By Article 1, No. 6 of the Reform, in article 11 bis, the phrase “the incompatibilities established in article 6” was replaced with “the provisions established in subsections eight and nine of article 6.”

proceedings have been completed, or once the relevant timeframes have elapsed without such completion, the President will order a hearing to be held before a plenary session of the Supreme Court, which will be especially summoned to that effect. The Supreme Court may only request further evidentiary measures once the hearing has been completed.

All parties may appear before the Supreme Court before the case is heard.

A decision issued by the Supreme Court allowing the sanction mentioned in this article will enable the affected party to lodge a revision appeal against the decision in which the sanctioned offender participated, when such decision affects the former party's interest.

Article 12°.- The members of the Competition Court will no longer serve in their offices in the following cases:

- a) Expiration of the statutory period of their appointment;
- b) Voluntary resignation;
- c) Removal due to notable misconduct;
- d) Sudden incapacity, meaning an incapacity that impedes the member from serving his or her office for a period of three consecutive months or 6 months within a single year.
- e) Failure to comply with subsections eight and nine of Article 6.⁸

The measures indicated in literals c), d) and e) will be rendered effective by the Supreme Court, at the request of the President of the Competition Court or two of its members, notwithstanding the disciplinary measures imposed by the Supreme Court.

The ruling ordering the destitution of a member must indicate the facts in which it is grounded and the information reviewed by the Court to arrive at its conviction.

Once the office has been vacated, if the remaining time is greater than one hundred and eighty days, a replacement must be appointed in accordance with the rules of article 6 of this law. In the case of literals b), c) and d) above, the replacement will serve his or her office during the time remaining for the original period.

Article 13°.- The Members of Staff of the Competition Court will be as follows:

Positions	Degree	No. of Positions
Attorney Secretary	4	1
Attorney Rapporteur	5	1
Attorney Rapporteur	6	1
University Degree Professional in Economics	5	1
University Degree Professional in Economics	6	1
Head of Budgets Office	14	1
First Officer	16	1

⁸ By article 1 No. 7 of the Reform, literal e) of article 12: "Incurring in any of the cases defined in subsections eight et seq. of article 6" was replaced with the following language: "Failure to comply with subsections eight and nine of article 6".

Chamber Officer	17	1
Auxilliary Staff		1
Total Staff		9

Additionally, the Court may hire temporary staff members, whenever it is necessary for the Court to operate properly, with the prior approval of the Budget Directorate (*Dirección de Presupuestos*).

Ordinary labor law will govern the Court's permanent staff. However, they will have the same remuneration scheme, dedication requirements and incompatibilities as the permanent staff of the National Economic Prosecutor's Office.

Notwithstanding the provisions of the preceding subsection, the staff that provides services for the Court will be considered public servants for the purposes of administrative probity and criminal liability.

The Attorney Secretary will be the administrative chief and direct authority of the staff, notwithstanding all other specific functions and authorities that the Court may assign or delegate to such Secretary.

The Court will issue an internal regulation that the Attorney Secretary will use to evaluate the staff every year. This evaluation may be appealed before the Court within the five working days following the notification of the assessment.

Article 14°.- The Court will appoint its staff members by calling public tender processes.

The President of the Court will process the appointment of staff members by means of a resolution delivered to the General Comptroller of the Republic exclusively for registration purposes. All resolutions pertaining to the members of the Court's staff will observe the same process.

Article 15°.- Notwithstanding the provisions of ordinary labor law, the members of the Court's staff that breach their duties and obligations may be sanctioned by the Court through any of the following disciplinary measures: reprimand, written reprimand, fine of up to one month's salary, and suspension of employment for up to one month without remuneration.

The abovementioned sanctions will be adopted by the majority of the Members of the Court present in the corresponding session.

Article 16°.- If the Secretary is absent or otherwise unable to appear, he will be subrogated by the Rapporteur with the highest degree, and in lieu of such officer, his or her immediate inferior officer. The alternate will swear the same oath as the Secretary to serve in this office, before the President of the Court.

Article 17.- The Public Sector Budget Law shall enquire on an annual basis, on a global level, into the necessary resources for the operation of the Competition Court. To this effect, the President of the Court will inform the Minister of Finance on the Court's budgetary needs within the timeframes and in accordance with the methods defined for the public sector.

The Court shall have a current account in its name from which the President and the Secretary of the Court may jointly make withdrawals.

Within the first two weeks of the month of January of each year, the President and the Secretary of the Competition Court shall give account of all expenditures before the Court.

In connection with financial, budgetary and accounting information, the Court shall be governed by the provisions of the Law on State Financial Administration.

Funds allocated to the Court by the State will be determined by means of resolution passed by the Budgetary Office.

2. On attributions and procedures

Article 18.- The Competition Court will have the following duties and powers to:

- 1) Investigate, upon request of any stakeholder or the National Economic Prosecutor, all such events that may amount to infringements of this law;
- 2) Oversee and try, at the request of any parties to or persons with a legitimate interest in actions, acts or contracts, whether existing or to be entered into in the future, other than the concentrations referred to under Title IV, or at the request of the National Economic Prosecutor, any non-adversarial matters that could violate the provisions of this law, for which purposes the Court shall be entitled to establish terms and conditions that must be fulfilled in those actions, acts or contracts;⁹
- 3) Pass general instructions in accordance with the law, which must be observed by private parties in agreements or contracts they enter into that refer to competition matters or that could be in violation of the competition laws;
- 4) Propose to the President of the Republic, through the corresponding State Minister, the amendment or derogation of legal and statutory provisions it might deem anticompetitive, as well as the passing of legal or statutory rules when that are necessary to promote competition or regulate the conduction of determined economic activities affected by anticompetitive conditions. In any event, the minister who receives the proposal must express his or her opinion regarding the same. This response will be published on the institutional website of the Court, the National Economic Prosecutor's Office and the relevant Ministry;¹⁰

⁹ By Article 1 No. 8 literal a) of the Reform Article 18 number 2) which read: "Entertain, at the request of whomsoever has legitimate interest or of the National Economic Prosecutor, all such non-adversarial matters what may infringe the provisions of this law, in respect of events, agreements or contracts already existing or to be entered into, for which purposes it may set the conditions to be fulfilled in such events, agreements or contracts" was replaced with the following wording: "Oversee and try, at the request of any parties to or persons with a legitimate interest in actions, acts or contracts, whether existing or to be entered into in the future, other than the concentrations referred to under Title IV, or at the request of the National Economic Prosecutor, any non-adversarial matters that could violate the provisions of this law, for which purposes the Court shall be entitled to establish terms and conditions that must be fulfilled in those actions, acts or contracts".

¹⁰ By Article 1 No. 8 literal b) of the Reform, in Article 18 number 4), between the expression "competitive" and the semicolon, the following sentences preceded by a dot: "In any event, the minister who receives the proposal must express his or her opinion

- 5) Upon the exclusive request of the notifying party of a concentration, conduct the special review procedure for concentrations, when such operations have been barred by the National Economic Prosecutor, pursuant to the provisions of article 57;
- 6) Issue all such court regulations that may be necessary in order to ensure the proper administration of justice, pursuant to law; and
- 7) Others set forth by laws.¹¹

Article 19.- The hearing of and decisions passed in the proceedings referred to in number 1) of the preceding article will be subject to the procedure governed by the following articles.

Article 20.- The procedure will be written, except for the hearings. The procedure will be public and commenced *ex officio* by the Court until the final judgment. The parties must be represented as provided for in article 1 of Law No. 18.120, on appearance in court.

Proceedings may commence by virtue of complaint filed by the National Economic Prosecutor or by a claim lodged by a private party; in the latter case, the claim must be immediately notified to the Prosecutor's Office. The complaint or claim must contain a clear and detailed explanation of the facts, actions or conventions that infringe this law and indicate the market or markets affected by the alleged infringement. In the event that the claim or complaint does not contain the previously mentioned indications or does not fulfill the requirements of article 254 of the Code of Civil Procedure and other applicable rules, the Court will set a three-business-day period for the claimant or the Prosecutor to remedy said omissions. Upon expiration of said term, should the omissions be not remedied, the court may issue a well-grounded ruling dismissing the complaint or claim. If the complaint or claim is declared admissible, the defendants will have a fifteen-business-day term or a longer term that may not exceed thirty days, as determined by the Court, to answer it.

The actions contemplated in this law shall have a statute of limitations of three years as from the perpetration of the anti-competitive conduct on which they are based. This statute of limitations is interrupted by any complaint submitted by the National Economic Prosecutor or lawsuit filed by a private party with the Court.

Notwithstanding the foregoing, the actions to prosecute the conducts set out in article 3) literal a) will have a statute of limitations of five years; the statute of limitations will not begin to run as long as the effects attributable to the conduct on which the action is based persist in the marketplace.

Additionally, the fines imposed for the purposes of sanctioning anticompetitive conducts will be time-barred in two years as from the date on which the judging imposing the fine

regarding the same. This response will be published on the institutional website of the Court, the National Economic Prosecutor's Office and the relevant Ministry", and the final expression "and" was eliminated.

¹¹ By Article 1 No. 8 literal c) of the Reform, between the old numbers 4) and 5) of Article 18 current numbers 5) and 6) were introduced, with the consequent modification in the numeration of said Article, whereby old number 5) became current number 7).

becomes final and binding. This statute of limitations is interrupted by any precautionary or compulsive measures ordered by the Court, the National Economic Prosecutor or private parties.

The statute of limitations of actions and fines imposed to punish¹² anticompetitive conducts are not suspended in favor of any person.

Notwithstanding the general rules, any civil actions derived from anticompetitive conduct will have a four-year statute of limitations, which will run from the date on which the relevant judgment becomes final and binding.

Article 21.- The complaint or claim, with its respective ruling declaring it admissible, may be personally served by a process server, who shall deliver a faithful copy of the ruling and the relevant background information. The Court may order that only a summary of such documents be served.

Any complaints or claims lodged against a foreign company on grounds of violations of this law may be served upon the subsidiaries or agencies in Chile of said foreign company, and any limitation established in the respective bylaws of said subsidiaries or agencies in this regard shall be null and void.¹³

The ruling that opens the period for the submission of evidence shall be served by substituted service. After 30 days as from the issuance of such rulings without the same having been served, the Court shall proceed to serve it in accordance with paragraph four.

Final judgments shall be served personally or by substituted service.

All other rulings will be notified by any secure means that the parties might agree upon and, in lieu thereof, through the daily list of rulings. If the parties choose electronic means for notification purposes, service of rulings ought to be made by advanced electronic signature.

In addition to the Secretary of the Court all such people appointed by the President will also have the powers to act as attestor.

Article 22.- Upon expiration of the term set out in article 20, regardless of whether the stakeholders file any submissions, the Court may call upon the parties to reach a settlement.

If deemed irrelevant or having failed such an attempt of reaching a settlement, the Court shall open a 20-business-day period for the submission of evidence. In case of settlement, the Court shall proceed to approve it, provided the same is not anticompetitive. The appeal referred to in article 27 may be lodged against the ruling that approves the settlement by any person with legal standing to sue which are not a party to the settlement.

¹² By Article 1 No. 9 of the Reform, between paragraphs five and six of Article 20, the expressions “measures implemented to prevent, remedy or sanction” were replaced with “fines imposed to sanction”.

¹³ By Article 1 No. 10 of the Reform a new paragraph two was included in article 21, for which reason the old paragraph two became the current paragraph three, and so on and so forth.

The means of proof set out in article 341 of the Code of Civil Procedure and any information that in the opinion of the Court is suitable for the clarification of the relevant facts will be admissible. The Court may order at any stage of the proceedings, including after the main hearing, all such probatory steps it may deem fit to clarify such facts that remain obscure and questionable.

The parties that wish avail of depositions shall submit a list of witnesses within the fifth business day as from the date on which the ruling which opens the period for the submission of evidence becomes final. At any rate, only depositions of three witnesses from each party will be allowed for each factum probandum, unless the court, in view of well-grounded motion raised at the time of submission of the list of witnesses, decides to enlarge such number. Articles 358, 360 number 2), 373, 374, 376, 377 and 378 of the Code of Civil Procedure shall not apply to the witnesses.

Inspections on the part of the Court, depositions and statements shall be carried out and given before a person appointed by the Court in each case, who may make all such enquiries he may deem convenient, prevent the statements or questions of the parties from addressing irrelevant or inadmissible issues, and decide upon any raised objections.

An extraordinary term for the submission of evidence may be decreed for the purposes of incorporating evidence outside the Metropolitan Region of Santiago, whenever the Competition Court declares that there are justified reasons for the foregoing.

These procedures may be conducted through the relevant district judge, who shall ensure the faithfulness of the same and their expedite completion, via any suitable means.¹⁴

Any other probatory steps shall be taken before the clerk the Court may appoint in each case.

The Court may record all the hearings that may be held, by any means ensuring the record's integrity.

Exhibits may be submitted up to 10 days before the main hearing. At the request of any of the parties, the Court may declare the reserved or confidential character in respect of third parties alien to the proceedings and even parties to the proceedings of all such instruments containing formulas, strategies, commercial secrets or any other element the disclosure of which may significantly affect the competitive performance of the holder. Reserved and confidential instruments by virtue of article 39 literal a) paragraph two shall be always submitted as such by the National Economic Prosecutor's Office and the Court shall keep such instruments reserved and confidential.

Notwithstanding the foregoing, *ex officio* or at the request of any party, at any stage of the proceedings and even as ancillary step to obtain additional evidence, the Court may order any of the parties to prepare a 'public' version of the instrument, so the other parties can examine,

¹⁴ By Article 1 No. 11 of the Reform paragraph five of Article 22 was replaced with new paragraphs five and six (see original in Note §5), for which reason old paragraph six became current paragraph seven and so on and so forth.

object or challenge it. If the referred public version does not qualify as sufficient documentation to decide upon the case, the Court may *ex officio*, by means of well-founded ruling, cancel the confidential or reserved character of said instrument, making the same available to the other parties.

The Court shall assess the evidence in accordance with logical and reasonable rules of evaluation and procedure.

Article 23.- Upon expiration of the period for the submission of evidence, the Court will pass a ruling stating that fact, and proceed to set a date and time for the main hearing. The Court shall hear the parties' arguments when they request so.

Article 24.- Matters that are ancillary to the core of the dispute, unless otherwise provided for in the following article, shall be settled outright; alternatively, the Court may settle such issues in the final judgment.

Article 25.- The Court, *ex officio* or at the request of any party, may order at any stage of the proceedings and even prior to their commencement, for as long as it may deem fit, all such measures for interim relief that may be necessary to prevent the negative effects of the conducts submitted for its decision, and to safeguard the public order. These measures shall be ordered giving the relevant parties a three-day term to raise objections, and should there be ancillary matters to resolve, they shall be entertained separately according to the general rules.

Any ordered measure will be essentially provisory and may be amended or cancelled at any stage of the proceedings. To order the implementation of a measure, the petitioner shall submit background information from which it is possible to infer at least a severe presumption of the claimed right or the denounced events. The Court, when it deems it necessary, may request a collateral from the petitioner to cover any damages that may arise.

The ruling upholding or overruling a measure for interim relief shall be serve by means of certified letter, unless the Court, on solid grounds order its service by means of substituted service.

However, such measures may be implemented before their service upon the person against which they are ordered, provided that there are severe reasons for this and the Court so decides. In this case, if the measure is not notified within five days, they will be rendered without effect. The Court may extend this term on solid grounds.

Notwithstanding the provisions of the preceding paragraphs, the provisions of Title IV and V of Book II of the Code of Civil Procedure shall not apply to prejudicial measures and measures for interim relief, except for the provisions of articles 273, 274, 275, 276, 277, 278, 284, 285, 286, 294, 296 and 297 of said body of law, as applicable.

Article 26.- Final judgments shall be reasoned, listing the factual, legal and economic arguments on which they are based. Dissenting opinions, if any, shall be included therein.

Judgments shall be issued within forty-five days of the moment on which the dispute is ready to be decided upon.

In the final judgment the Court may order:

- a) The amendment or termination of agreements, contracts, conventions, systems or arrangements that violate the provisions of this law;
- b) The amendment or dissolution of companies, corporations and other private legal entities which might have intervened in such agreements, contracts, conventions, systems or arrangements referred to in the preceding literal;
- c) The imposition of fines for amounts up to thirty percent of the sales of the offender within the product or service line associated with the infringement during the period in which the infringement was being perpetrated, or up to the double of the economic benefit received as a result of the infringement. In the event that it is not possible to determine the sales nor the economic benefit gained by the offender, the Court shall be authorized to impose fines for a maximum amount equivalent to sixty thousand *unidades tributarias anuales*. Fines may be levied on the relevant legal person, its directors, administrators and all persons that intervened in the performance of the respective act. The fines levied on natural persons may not be paid by the legal entity for which he or she perform duties or by the shareholders or partners thereof. Moreover, they may not be paid by any other entity pertaining to the same business group under the terms stated in article 96 of Law No. 18,045 on Stock Markets, nor by the shareholders or partners thereof. In the case of fines levied on legal persons, payment thereof will be jointly made by its directors, administrators and those persons that benefited from the respective act, as long as they participated in the performance of the same.

The following circumstances shall be taken into consideration for the purposes of determining the fines: the economic benefit obtained as a result of the infringement, if any; the seriousness of the conduct, the deterrent effect, the recidivist character of the perpetrator due to having been previously found guilty of anticompetitive violations during the last ten years, the economic capacity of the offender, and the collaboration that the latter has provided to the National Economic Prosecutor's Office prior to or during the investigation.¹⁵

¹⁵ By Article 1 No. 12 literal a) of the Reform, the following amendments were introduced in Article 26 literal c): the sentence "twenty-thousand *unidades tributarias mensuales*, and when sanctioning harmful behavior set out in Article 3 literal a), up to an amount equivalent to third thousand *unidades tributarias mensuales*" was replaced with: "up to thirty percent of the sales of the offender within the product or service line associated with the infringement during the period in which the infringement was being perpetrated, or up to the double of the economic benefit received as a result of the infringement."; the sentence: "In the event that it is not possible to determine the sales nor the economic benefit gained by the offender, the Court shall be authorized to impose fines for a maximum amount equivalent to sixty thousand *unidades tributarias anuales*" was included before the expression: "fines may"; the expression: "Stock Market Law" was replaced with "Law No. 18,045 on Stock Markets"; and paragraph two: "The following circumstances shall be taken into consideration for the purposes of determining the fines: the economic benefit obtained as a result of the infringement; the seriousness of the conduct, the recidivist character of the perpetrator and, for the purposes of reducing the fine, the collaboration the infringer has provided to the National Economic Prosecutor's Office prior to or during the investigation" was replaced with: "The following circumstances shall be taken into consideration for the purposes of determining the fines: the economic benefit obtained as a result of the infringement, if any; the seriousness of the conduct, the deterrent effect, the recidivist character of the perpetrator due to having been previously found guilty of anticompetitive violations during the last ten years, the economic capacity of the offender, and the collaboration that the latter has provided to the National Economic Prosecutor's Office prior to or during the investigation."

d) Regarding the conducts set out in letter a) of article 3, the Court may also impose the prohibition of contracting – under any title – with bodies of the State’s centralized or decentralized administration, with autonomous bodies or with institutions, bodies, companies or services to which the State provides contributions, with Congress and the Judicial Branch, as well as the prohibition of being awarded any concession granted by the State, for a maximum term of five years as from the date on which the Court’s decision become final and binding;

e) Regarding the conduct indicated in letter a) of article 3 bis, the Court may impose a fine of up to twenty *unidades tributarias anuales* for each day of delay, as from the day on which the concentration is consummated.

The imposition of fines under this article will be compatible with the criminal penalties established in this law and with the determination of damages envisaged by article 30.

Article 27.- Reconsideration appeals may be lodged against the rulings issued by the Competition Court, except for the final judgment; said appeals may be decided upon outright or following the procedure to settle ancillary matters.

Appeals to be entertained by the Supreme Court may be only lodged against the final judgments which impose any of the measures set out in article 26, or which acquits the defendants in this connection. Said remedy must be fully grounded, and may be lodged by the National Economic Prosecutor or any of the parties with the Competition Court within ten business days as from the date of notification of the judgment. This term may be extended depending on the affected party’s domicile, if other than that wherein the Court is located, in accordance with the chart referred to in article 259 of the Code of Civil Procedure.

The remedy shall not require the parties to make formal appearance before the court. The remedy shall be heard with preference over other matters, and its hearing may not be suspended on the grounds of article 165 No. 5 of the Code of Civil Procedure.

Filing the remedy shall not suspend the enforcement of the judgment, except for the payment of fines, in respect of which the provisions below apply. However, at the request of any party, by means of grounded ruling, the Chamber hearing the remedy may fully or partially suspend the effects of the judgment.

Article 28.- The Competition Court shall be the entity called upon to enforce the rulings passed in its proceedings. To this effect, it shall have all the attributions inherent to a Court of Justice.

Fines imposed by the Competition Court shall be paid within ten business days of the date on which the respective decision becomes final and binding.

Upon expiration of the relevant deadline, should the fine be not paid, the Court shall *ex officio* or at the request of any party proceed to issue a warrant in accordance with article 543 of the Code of Civil Procedure.

Article 29.- The provisions of Books I and II of the Code of Civil Procedure shall apply in lieu of the procedure explained in the preceding articles, in all matters that are not incompatible therewith.

Article 30.- Claim for damages arising from a final decision issued by the Competition Court shall be lodged with said Court and processed pursuant to the rules of summary procedure set forth in Title XI of Book Three of the Code of Civil Procedure. Any rulings issued in this procedure – except for the final judgment – may be subject to reconsideration appeals only, which may be processed as an ancillary issue or decided immediately. The final judgment on this matter shall be subject to appeal to be entertained by the Supreme Court.

When issuing a decision on the claim for damages, the Competition Court shall ground its decision on the facts established in its final judgment which serve as the foundation of the claim. The Court shall assess the evidence in accordance with the rules of sound judgment.

The compensation of damages shall cover all damages provoked during the period when the infringement was in place.

The compensation of damages derived from the agreements sanctioned under Title V of this law shall be processed pursuant to the provisions of this article and, in respect of the same, no civil actions may be filed in the relevant criminal proceedings.¹⁶

Article 31.- The exercise of the attributions to which article 18 numbers 2), 3) and 4)¹⁷ refer, as well as the elaboration of reports commissioned by the Court by virtue of special legal provisions, shall be subject to the following procedure:

1) The decree which orders the commencement of the procedure shall be published in the Official Gazette and on the Court's website, and shall be *ex officio* served upon the National Economic Prosecutor's Office, any directly involved authorities and all such economic operators which in the Court's opinion are linked to the matter, so all of them within a term no shorter than fifteen business days, may submit any type of information, in conjunction with those having legitimate interest.

With regard to matters related to specific zones, the notification may be also practiced by means of publication in local newspapers.

The Court shall always procure the conditions necessary for all of the intervening parties to have access to the file.

2) Upon expiration of the abovementioned term, whomsoever has entered into or executed, or intend to enter into or execute the consulted agreements or contracts may assess the

¹⁶ By Article 1 No. 13 of the Reform, Article 30 was replaced with the current wording (see original in Note §6).

¹⁷ By Article 1 No. 14 of the Reform, the expressions: "numbers 2) and 3)" were replaced with "numbers 2), 3) and 4)" in Article 31.

recommendations made by the National Economic Prosecutor's Office at the stage of submission of information and communicate in writing to the Court their agreement therewith.

3) Upon expiration of the term referred to in number 1), the Court shall summon a public hearing to be held within a term no shorter than fifteen days nor higher than thirty days of the relevant notification. Said notification shall be practiced by means of publication in the Official Gazette and on the Court's website, so all those who submitted information may express their opinion.

If the communication referenced in numeral 2 is sent, the Court shall have a fifteen-day term to summon to a public hearing, counted as of the date in which the communication is received and that will be held in accordance with the provisions of the preceding paragraph.

4) The Court may dismiss the report if the authorities, bodies or persons referenced in the preceding numbers fail to provide information within the terms set forth by it.

5) The Court, either *ex officio* or at the request of the interested party, shall be authorized to compile and receive the information that it deems appropriate.

The resolutions or reports that are issued by the Courts in connection with the matters referenced in this article may be subject to a reconsideration appeal. Final resolutions, whether they establish conditions or not, may only be challenged through the complaint appeal referenced by article 27. Said appeal must be duly grounded and may be lodged by the consulting parties, the National Economic Prosecutor and any of the third parties that provide information in accordance with number 1.

Article 31 bis.- The exercise of the attribution set forth in number 5) of article 18 shall be subject to the procedure detailed in the following subsections.

Once the remedy established by the final subsection of article 57 has been filed, the Competition Court shall order the National Economic Prosecutor to submit the case file containing the investigation in which the appealed resolution has been issued, and issue a summons for a public hearing in which the appealing party, the National Economic Prosecutor and any other party who has contributed information to the investigation as per subsection two of article 55, will be entitled to appear. The public hearing shall be held within a term of sixty days, as from the reception of the case file.

The Court shall issue a decision, either confirming or revoking the challenged resolution, based on the information included in the investigation case file and on the arguments issued by the parties that participated in the hearing mentioned in the previous subsection, along with any other information collected *ex officio* or upon the request of a party. The Court must issue said decision within a term of sixty days as from the date when the referenced hearing is held.

If the decision revokes the appealed resolution, the Court – in the same decision – can approve the concentration, either unconditionally or subject to the last measures offered by the notifying party pursuant to the provisions of subsection three of article 53. Additionally, the

Court may approve the transaction subject to the condition of complying with other measures it may deem adequate and sufficient.

No remedies or recourses whatsoever may be filed against the decision issued by the Court as per this article, unless the decision has subjected the approval of the transaction to the condition of complying with measures different from those contained in the last proposal submitted by the parties pursuant to subsection three of article 53. In this last case, both the parties and the National Economic Prosecutor will be authorized to file the complaint appeal detailed by article 27.¹⁸

Article 32°.- The acts or agreements executed or signed in accordance with the decisions of the Competition Court, or in accordance with the resolutions of the National Economic Prosecutor's Office, in the case of concentration transactions, shall not entail any liability whatsoever in this regard, unless that the same Court subsequently, and on the basis of new factual information, deems that they undermine competition, which may take place from the moment in which the resolution that establishes such qualification is notified or published, as applicable.

In any event, neither the members that were involved in the issuance of the decision, nor the National Economic Prosecutor, as the case may be, shall be deemed disqualified in any new decisions that may eventually take place.¹⁹

TITLE III

On the National Economic Prosecutor's Office

Article 33°.- The National Economic Prosecutor's Office shall be a public decentralized service, with its own legal identity and patrimony, independent from any other body or service, subject to the oversight of the President of the Republic through the Ministry of the Economy, Development and Reconstruction.

The National Economic Prosecutor's Office shall be seated in Santiago. It shall be led by an public servant identified as the National Economic Prosecutor, who shall be appointed by the President of the Republic through the high-ranking public officer selection process envisaged in paragraph 3rd of Title VI of Law No. 19.882. He/She shall last four years in his/her office, and shall be eligible for reappointment one single time.

The National Economic Prosecutor shall cease in its duties in accordance with the following events:

¹⁸ Article 31 bis was added by Article 1 No. 15 of the Reform.

¹⁹ By literal a) of Article 1, No. 16 of the Reform, in subsection first of Article 32, the phrase “, or in accordance with the resolutions of the National Economic Prosecutors Office for the case of concentration operations’ between the expression “Competition” and “shall not entail”; and by literal b) of Article 1 No. 16 of the Reform, subsection second: “In any case, the Judges that participate in the decision shall not be deemed disqualified to issue a new opinion.” was replaced with the following text: “In any case, neither judges that participate in the decision or the National Economic Prosecutor, as applicable, shall be deemed disqualified for the new procedures that eventually take place.”.

- a) Termination of the legal term set forth in his/her appointment.
- b) Voluntary resignation accepted by the President of the Republic.
- c) Removal due to gross negligence in the exercise of his/her duties.
- d) Disability.

The removal, in the events detailed in literals c) and d), shall be ordered by the President of the Republic, with the favorable report of the Supreme Court, at the request of the Ministry of the Economy, Development and Reconstruction. The favorable report shall be issued by the Supreme Court in a plenary session, specially summoned for such purposes, and shall have the approving vote of the majority of its members in office.

The National Economic Prosecutor shall exercise the superior authority of the agency he/she will represent it both in and out court.

Notwithstanding the general requirements to enter Public Service, the Prosecutor shall certify that he/she holds the degree of attorney at law along with ten years of professional practice or a three-year seniority in the service.

Article 34.- The National Economic Prosecutor shall be authorized to appoint Deputy Prosecutors to act in any territorial scope when the specialty, complexity or urgency of an investigation merits it.

The Deputy Prosecutors shall have the attributions delegated to them by the National Prosecutor.

Article 35°.- As of the first day after the publication of this law, the following shall be the staffing for the National Economic Prosecutor's Office:

	Degrees	Nos. in Positions
Directors based on Exclusive Trust:		
National Economic Prosecutor	1	1
Sub-Prosecutor	3	1
Department Head	3	4
Department Head	4	4
Administrative Career positions:		

Section Head	10	1
Section Head	11	2
Subtotal		13
Professionals:		
Professional	4	4
Professional	5	4
Professional	6	4
Professional	7	3
Professional	8	2
Subtotal		17
Enforcers		
Enforcer	9	1
Enforcer	10	2
Enforcer	11	1
Enforcer	12	1
Enforcer	13	1
Subtotal		7
Technical Specialists:		
Technical Specialist	14	1
Technical Specialist	15	1
Subtotal		2
Administrative Assistants:		
Administrative Assistant		
Administrative Assistant	16	1
Administrative Assistant	17	1
Administrative Assistant	18	2
Subtotal	19	2
		6
Assistants:		
Assistant	19	1
Assistant	20	2
Assistant	21	2
Subtotal		5
Total Staff		50

In addition to the general requirements set forth by law No. 18,834 to enter Public Service, the following requirements are set forth for the staff positions specified below:

Directors: National Sub-Prosecutor: Attorney at Law degree and a minimum professional experience of 5 years or 3 years of experience or specialization in areas that are related to the duties that shall be held in the Prosecutor's Office.

Department Head: Degree as Attorney at Law, Civil or Commercial Engineer, Auditing Accountant or Public Administrator, granted by a State-owned or State-acknowledged University or Professional Institute, and a minimum professional experience of 3 years.

Section Head: Degree for a major with at least 8 semesters of duration granted by a State-owned or State-acknowledged University or Professional Institute, and at least 3 years of experience in State Administration.

Professionals: Degree of Attorney at Law, Engineer, Accountant, Auditor or Public Manager, granted by a State-owned or State-acknowledged University or Professional Institute, or other professionals with university degrees with post graduate studies in economic sciences extending for at least two semesters, granted by State-owned or State-acknowledged Universities, including foreign Universities. In any case, a minimum professional experience of 3 years shall be mandatorily required.

Enforcers: Degree of Public Administrator, Auditing Accountant or any other degree extending for at least 8 semesters, granted by a State-owned or State-acknowledged University or Professional Institute.

Specialists: Technical Specialist Degree specialized in economy, finance, IT or statistics, granted by a State-owned or State-acknowledged Higher Education Institution; or the degree of Accountant granted by any of the abovementioned institutions or by a State-owned or State-acknowledged Technical Professional Trade School.

Administrative Staff: High School Diploma or Equivalent.

Assistants: Approval of Primary or Elementary Education.

Article 36°.- The staff of the National Economic Prosecutor's Office and that which is appointed to render services under contract, shall be governed by the provisions of this law and, alternatively, by the applicable regulations of Title I of law decree No. 3,551 of 1981, and the Administrative Statute approved by law No. 18,834 and its amendments.

The staff Admission Panel of the National Economic Prosecutor's Office shall be chaired of the Sub-Prosecutor and comprised of the two most senior Department Heads as well as a representative elected by the staff.

Article 37°.- The remunerations scheme for the National Economic Prosecutor's Office's staff will be the same as the scheme applied to Enforcement Institutions.

The allowance set forth in article 17 of Law No. 18,091, substituted by article 10 of Law No. 19,301, shall be applied to the Prosecutor's Office in-house and contracted staff and shall be set forth in the manner epitomized in said provision. In this regard, the National Economic Prosecutor shall inform the Ministry of Finance on a yearly basis.

The National Economic Prosecutor's Office staff and contracted personnel shall be eligible to receive performance bonuses charged to this allowance, which shall be ruled by the following provisions:

a) Bonuses shall be paid to 25% of the staff that comprise, or are assimilated to, Directors, Professional or Regulator positions and that exhibited the best performance during the preceding year.

b) The result of the qualifications obtained by the staff members, in accordance with the provisions that rule this matter, shall be considered in this regard.

c) The sums that are paid in connection with these bonuses may not exceed one quarter of the percentages set forth every year in accordance with the provisions of subsection second of article 17 of Law No. 18,091, and shall be established in said administrative act. The same supreme decree shall establish the percentage applicable to the staff that was not subjected to qualification due to their involvement in the qualification process, which shall not be considered for the purposes of the limit set forth in literal a) of this subsection;

d) The sums that are established in accordance with the preceding literal, added to those that must be paid in connection with the allowance set forth in article 17 of Law No. 18,091, may not, in any case, exceed the maximum percentage or proportion established in subsection second of said provision.

e) The employees benefited by the bonus shall only be entitled to receive it during the twelve months following the termination of the corresponding qualification process;

f) The bonus shall be paid to the employees in office on the payment date, in four quarterly installments. The sum paid in each installment shall be the amount accumulated in the corresponding quarter, and

g) For tax purposes, it shall be deemed that the sum paid in each installment has been accrued in equal parts on each month of the corresponding calendar quarter.

Article 38.- The National Economic Prosecutor's Office's in-house and contracted staff shall be exclusively dedicated to the performance of the duties they hold in the Service, which shall be incompatible with any other State Administration duty, with the exception of those set forth in literal a) of article 81 of law No. 18,834. They may not render services as dependent workers, nor exercise activities comprised within the professional or technical qualities or credentials that they hold, for natural or legal persons that could be subjected to the Service's actions.

Article 39.- The National Economic Prosecutor, in exercise of his/her attributions, shall be independent of all the authorities and courts before which it performs his/her duties. Consequently, it shall be authorized to defend the interests entrusted to him/her in the manner that he/she discretionally deems are in compliance with the law.

The National Economic Prosecutor shall hold the following attributions and duties:

a) Instruct the investigations that he/she deems admissible to ascertain the infringements to this law, communicating the commencement of said investigations to the affected party. With notice to the President of the Competition Court, the National Directorate of Chile's Investigatory Police (*Dirección General de la Policía de Investigaciones de Chile*) shall place at the disposition of the National Economic Prosecutor the staff that the latter may require to comply with the duties envisaged in this literal or to perform the specific procedures that he/she may request with this same purpose.

The National Economic Prosecutor, with notice to the Chairman of the Competition Court, may order that the investigations conducted *ex officio* or as a result of complaints, be kept confidential.

Moreover, the National Economic Prosecutor, either *ex officio* or at the request of the interested party, may order that certain portions of the case file be declared reserved or confidential, provided that the objective of the confidential treatment is to protect the identity of those who have issued depositions or provided information in accordance with article 39 bis, or if such information contains commercial formulas, strategies or trade secrets or any other element whose disclosure could significantly affect the competitive performance of their holder, or safeguard the effectiveness of the Prosecutor's Office's investigation.

The foregoing is notwithstanding the application, within the context of an ongoing procedure and with a court resolution, of the provisions of the eight subsection of article 22, or that the court orders the granting of copies of portions of the file that have not been added to the

proceedings, suppressing in them all references that could reveal the identity or protected object mentioned above.

The National Economic Prosecutor, with the authorization of the Competition Court, shall be entitled to order that the affected party will not be notified of the commencement of an investigation.

In all other cases, the affected parties shall have access to the investigation being conducted against them, notwithstanding any portions thereof that have been declared restricted or confidential, pursuant to the terms of this literal and article 42.²⁰

b) Appear as a party, representing the collective economic interest, before the Competition Court and all courts of justice, with the duties and attributions bestowed to him/her in such capacity.²¹

The National Economic Prosecutor, either acting directly or through a delegate, shall be authorized to defend or challenge the Competition Court's rulings before the Supreme Court.

The National Economic Prosecutor shall be entitled to take over the investigations conducted by the Deputy Prosecutors as well as the charges pressed by them, exercising their prosecution duties before the Competition Court or dismissing the same, through a reasoned report filed before the latter;

c) Request the Competition Court to exercise any of its attributions as well as the application of preventive measures in connection with the investigations that the Prosecutor is conducting;

d) Safeguard the enforcement of its own resolutions in the matters set out by Title IV of this law, as well as the enforcement of any rulings and decisions issued by the Competition Court or the courts of justice in the matters referenced by this law;²²

e) Issue the reports requested by the Competition Court in the cases in which the National Economic Prosecutor does not appear as a litigating party;

f) To request the collaboration of any employee of the public bodies or services, municipalities or the companies, entities or corporations in which the State or its companies, entities or corporations, or municipalities, have made contributions, are represented or hold shares, all of which shall be bound to provide such collaboration and, moreover, to provide the information included in their files and that the National Economic Prosecutor may require, when said files are classified as secret or confidential, in accordance with the current legislation, and in this latter case they shall require the Court's prior authorization.

²⁰ Article 1, No. 17, literal a) of the Reform, substituted in article 39 literal a), the semicolon after the word "Competition" for a period, and added the current final paragraph.

²¹ Article 1, No. 17, literal b) of the Reform, suppressed in Article 39 literal b), the expression "With the exception of criminal investigations and proceedings of such nature" between the word "quality" and the period.

²² Article 1, No. 17, literal c) of the Reform, replaced Article 39, literal d) (**see the original under note § 7**).

g) Request any office, service or entity mentioned in the preceding literal to provide the factual information that it deems necessary for the investigations, reports or complaints that it is currently conducting or in which it is bound to intervene.

The National Economic Prosecutor shall also be entitled to compile and conduct, through the corresponding employees, the examination of any documentation, accounting information and other elements that it deems necessary;

h) To request the information and records that it may deem necessary from private parties within the context of the investigations that it is conducting. The natural persons and the representatives who are required by the National Economic Prosecutor to submit records or information the submittal of which would damage their interests or those of third parties, may request that the Competition Court completely or partially render the same without effect.

This request must be duly reasoned and submitted to the National Economic Prosecutor's Office within a term of five days as of the notification of the request, the effects of which shall be suspended as of the moment in which the corresponding presentation is submitted.

The Competition Court shall review and decide such request in its upcoming session, with a verbal or written report from the National Economic Prosecutor, and its decision may not be challenged by any remedy or appeal whatsoever.

Any party who, with the purpose of hindering, diverting, or eluding the authority of the National Economic Prosecutor's Office, conceals information that has been requested by the latter, or submits false information, shall be penalized with minor imprisonment, in its minimum to medium degree. In order to apply such penalties, the National Economic Prosecutor shall forward the relevant information to the Public Prosecutor. This notification shall be considered a criminal report, for the purposes of article 53 of the Criminal Procedures Code.

Any party who is bound to respond to the information requests issued by the National Economic Prosecutor, who unjustifiably fails to respond or only partially responds to such requests, will be penalized with a fine in fiscal benefit of up to two *unidades tributarias anuales* for each day of delay, pursuant to the procedure established in article 39 ter, notwithstanding the provisions of the first subsection of article 42;²³

i) To execute and undersign all types of acts and contracts over real properties and chattels and over tangible and intangible assets that comprise the Service's patrimony, even those that allow to transfer ownership and settle in connection with rights, actions and liabilities, whether such rights are contractual or non-contractual;

The transaction referenced in the preceding subsection shall be approved by resolution issued by the Ministry of Finance, when the corresponding amounts exceed two thousand *unidades de fomento*.

²³ Article 1, No. 17, literal a) of the Reform, substituted in article 39 literal h) the semicolon after the expression "some" for a period, also adding paragraphs four and five.

j) Summon to submit their verbal or written depositions, or a statement by any other means that guarantees the integrity of the same, ratified upon completion by the same person who has issued it, any and all representatives, managers, advisors and dependents or entities or persons that could have knowledge of the facts, acts or agreements that are subject to investigations and any other person that may have perpetrated or executed with them acts or agreements, regardless of their nature, in connection with any event whose acknowledgement is deemed necessary for the compliance of its duties.

Any party who unjustifiably fails to appear to submit its deposition, despite having been previously summoned in accordance with this literal, shall be penalized with a fine for fiscal benefit ranging between one *unidad tributaria mensual* to one *unidad tributaria anual*, pursuant to the procedure established by article 39 ter, notwithstanding the provisions of the first subsection of article 42;²⁴

k) Request the State's technical bodies to provide the reports that are deemed necessary to hire the services of expert witnesses or technical experts;

l) To execute agreements or memorandums of understanding with other public services or universities, regarding matters of reciprocal cooperation. Moreover, execute agreements with agencies or other foreign bodies that have the purpose of promoting or defending competition in economic activities.

m) To agree with other public services and State bodies the electronic transfer of information that is not subject to confidential or reserved treatment in accordance with the law, in order to facilitate the compliance with its attributions. Additionally, and with the prior reasoned decision of the National Economic Prosecutor, it shall be authorized to agree on the electronic interconnection with private bodies or institutions. Likewise, it shall be authorized to agree this interconnection with foreign public bodies or international organizations with which it has executed agreements or memorandums of understanding;

n) In serious qualified cases regarding investigations intended to certify the conducts described under literal a) of article 3, request, through a reasoned petition and with the prior approval of the Competition Court, that the corresponding Judge of the Appeal Court of Santiago on call authorize that the Police or Investigative Police (*Carabineros de Chile* and *Policía de Investigaciones*) conduct the following procedures under the orders of an employee of the National Economic Prosecutor's Office:

n.1) Enter public or private premises and, if necessary, raid and break into them;

n.2) Register and seize all types of objects and documents that could corroborate the existence of the infringement;

²⁴ Article 1, No. 17, literal a) of the Reform, added in article 39 literal) the following amendments: after the expressions "in writing" the phrase "by any other means that guarantees the integrity of the same, ratified upon completion thereof by the same person who has issued it" was added; after the term "duties" the semicolon was replaced with a period, and the final paragraph was added.

n.3) Authorize the interception of all types of communications, and

n.4) Order any company that renders communications services to provide copies and records of communications transmitted or received by such company.

The circumstance of having participated in the abovementioned approval shall not represent grounds for disqualification for the judges of the Competition Court to subsequently participate in the procedure.

To grant the authorization referenced in the first paragraph, the Appeal Court Judge shall verify the existence of precise and serious information regarding the existence of collusive practices, compiled by the Prosecutor's Office prior to the request for authorization of the attributions set forth in this literal. In the authorization, it shall precisely specify the measures, the hours during which they may be conducted and the persons that shall be affected by said measures.

The exercise of the powers granted in the first paragraph shall be subject to the requirements and formalities set forth under articles 205; 207; 208; 209, subsections first, second and third, although the forwarding of the information to the regional prosecutor for the purposes of this last subsection shall not apply; 210; 212 through 214, and 216 through 225, except for the third subsection of article 222, of the Criminal Procedures Code. Notwithstanding the foregoing, the Prosecutor's Office shall not be authorized to intercept communications between the investigated party and those persons who, due to their status, profession, or legal function – such as a lawyer, physician or confessor – have a duty of maintaining the secrets confided to them.

For the purposes of this law, the expressions “prosecutor” or “Public Prosecutor” referenced in the relevant provisions of the Criminal Procedure Code, shall be deemed made to the “National Economic Prosecutor.” The references to “judge” or “supervisory judge” shall be deemed to have been made in reference to the Judge of the Court of Appeals indicated in the first paragraph of this literal; allusions to “oral trial” shall be deemed to have been made in reference to “procedure” and those made to the “accused” shall be deemed made to the “affected party.

If the Prosecutor's Office fails to comply with any of the requirements or formalities detailed under paragraph four, the affected parties may file a complaint before the Judge of the Court of Appeals referenced in the first paragraph, who shall issue a ruling immediately, in a single hearing, without any trial formalities, and after hearing both parties.

Once the complaint has been admitted for processing, the respective hearing shall be held on the fifth business day. The hearing must be attended by the affected parties and by the National Economic Prosecutor's Office, duly represented, with all of the background information or evidence to support their respective standpoints. The complaint must be lodged within a term of ten calendar days, as from the date when it becomes evident or it is proven that the person who has filed the complaint became aware of or had to become aware of the flaw or defect on which the complaint is based. The affected parties must file the complaint in a single act that must include all breaches pertaining to the same investigative procedure or act. As a measure for an improved ruling, the Judge of the Court of Appeals may *ex officio* or upon the request of a

party, decree any measures deemed convenient. The Judge's decision may be appealed before the Court of Appeals of Santiago, within five days. The appeal shall be entertained with preference over other matters, without the grounds for suspension of its hearing set forth in No. 5 of article 165 of the Civil Procedure Code applying in its regard. No further recourse will be available against the decision that rules on the appeal.

The results of the proceedings set forth in the first paragraph cannot be used as a form of evidence in the procedure conducted before the courts²⁵ when their use or exercise has occurred in cases other than those set forth by the law or when the requirements established for their admissibility have not been fulfilled, provided that this has been duly declared in the manner set forth in the previous paragraph by the Judge of the Court of Appeals indicated therein.

The information obtained as a result of exercising the powers contained in this literal may not be used by the Prosecutor's Office in any other investigation, except if they are granted by a new judicial authorization;

ñ) To execute out of court settlement agreements with the economic agents involved in its investigations, with the purpose of protecting competition in the markets.

The Court shall take notice of the agreement in a single hearing, without trial formalities, summoned especially for these purposes, within a term of five business days as from the date when the information is received, during which term the Court may hear the arguments of the parties appearing in the agreement, as well as the opinions of any parties with a legitimate interest. The National Consumer Service (*SERNAC*) and consumer associations incorporated under Law No. 19,496 shall be presumed to have said legitimate interest. The Court shall approve or reject the agreement within a term of fifteen business days, as from the date of the hearing. These resolutions, once they have become final, shall be binding for the parties appearing in the agreement and the only remedy against them shall be the reconsideration appeal;²⁶

o) Set the thresholds and receive the notifications referred to in article 48, submitting them to the procedure of Title IV hereof;

p) Conduct research on the evolution of competition in the markets, in which case it may exercise the powers set out in literals f), g), h), j), k), l) and m) of this article, and make recommendations to State entities and economic agents.

In connection with the powers set out in literals h) and l) of this article, natural persons and representatives of legal persons the interests of whom/which the National Economic

²⁵ Article 1, No. 17, literal f) of the Reform, enacted the following amendments to Article 39, literal n: the expression "of Santiago" was added after the phrase "corresponding Judge of the Appeals Court"; a new seventh paragraph was inserted, and thus the subsequent paragraphs became paragraphs eighth and ninth; and, in the new paragraph eighth, the expression "the Court" was replaced by "the courts."

²⁶ Article 1, No. 17, literal g) of the Reform, enacted the following amendments to Article 39, literal ñ): following the expression "agreement" and prior to the period, the following phrase was inserted: "as well as the opinions of any parties with a legitimate interest. The National Consumer Service (*SERNAC*) and consumer associations incorporated under Law No. 19,496 shall be presumed to have said legitimate interest."; and the expression "and" was replaced by a semicolon.

Prosecutor could adversely affect, may request from the Competition Court the total or partial annulment of the respective complaint pursuant to paragraphs two and three of literal h);

q) Propose to the President of the Republic, on solid grounds, through the applicable State Minister, all such amendments or repeals of legal provisions or regulations deemed detrimental to competition, as well as the enactment of legal provisions and regulations that may be necessary to promote competition or govern the conduction of certain economic activities that may be under anticompetitive conditions. This type of proposals shall be always based on an investigation or survey into the competitive evolution of the markets;

r) File criminal claims to prosecute the crimes set out in articles 64 ad 39 bis, paragraph six;

s) Issue instructions for the execution of the powers and performance of the duties to which this article refers; and

t) Any others set forth by the law.²⁷

Article 39 bis.- Whosoever engages in any of the conducts set out in article 3 literal a) may be exempted from the penalty of dissolution contemplated in article 26 literal b), and be exempted from the fine referred to in literal c) of said article (or obtain a fine reduction), as the case may be, if it submits to the National Economic Prosecutor's Office proof of the conduct and/or information allowing to identify the responsible parties.²⁸

In order to be authorized to obtain one of these benefits, the person engaging in²⁹ the conduct must fulfill the following requirements:

1.- Supply precise, truthful and verifiable information that constitutes an effective contribution for the establishment of sufficient evidentiary elements with which to justify the filing of a complaint before the Court;

2.- Refrain from disclosing the application for these benefits until the Prosecutor's Office has filed the complaint or ordered the complaint records to be sealed, except if the Prosecutor's Office expressly authorizes any such disclosure; and³⁰

3.- Cease any participation in the conduct in question immediately after the submission of the application for benefits.

In order to be eligible for the exemption from dissolution or fine, as the case may be, in addition to the requirements indicated in the previous paragraph, the person engaging in³¹ the

²⁷ Article 1, No. 17, literal h) of the Reform, inserted new literals o), p), q), r) and s) into Article 39, with the current literal o) becoming literal t).

²⁸ Article 1, No. 18, literal a) of the Reform, replaced the first subsection of Article 39 bis for its current wording (**for the original, see Note § 8**).

²⁹ Article 1, No. 18, literal b) of the Reform, replaced the expression "the perpetrator of" for the words "the person engaging in," in the second subsection of Article 39 bis.

³⁰ Article 1 No. 18, literal c) of the Reform, replaced Article 39 bis No. 2, for its current wording (**for the original, see Note § 9**).

³¹ Article 1 No. 18, literal d) of the Reform, replaced, in the third subsection of Article 39 bis, the phrase "In order to be eligible to the fine exemption, in addition to complying with the requirements set out in the previous subsection, the perpetrator of," for

conduct must also be the first party to contribute the information to the Prosecutor's Office, from amongst the group of parties responsible for the accused conduct.

To qualify for a fine reduction, in addition to fulfilling the requirements detailed in paragraph two, the person engaging in the conduct must provide additional information to that submitted by whomsoever first supplied the information to the Prosecutor's Office under this article. In any event, the reduction of the fine the Prosecutor proposes in the complaint shall only be applicable to the second party submitting information and cannot be higher than 50% of the fine that would have been proposed otherwise.

In the complaint, the Prosecutor will identify each person engaging in the conduct that fulfilled the requirements to qualify for any of the benefits referred to in paragraph one. If the Court finds that the conduct has been proven, it cannot impose the dissolution or levy a fine upon any person identified as beneficiary of an exemption, nor a fine higher than that proposed by the Prosecutor in respect of whomsoever is individualized as the beneficiary of a fine reduction, except if, during the proceedings, it is proven that said beneficiary was the organizer of the illicit conduct, coercing the others to participate therein.³²

Any party alleging the existence of the conduct foreseen in literal a) of article 3 with the purpose of damaging other economic agents by applying to the benefits of this article, knowingly based on false or fraudulent information, shall be penalized with minor imprisonment in its maximum degree.³³

Investigations of events constituting crimes may only be commenced by virtue of a criminal claim filed by the National Economic Prosecutor's Office. In this connection, the provisions of article 166 of the Criminal Procedure Code shall not apply.

Applications for any of the benefits envisaged in this article shall constitute an essential fact or disclosure, as per the meaning of article 10, paragraph second of Law No. 18,045 on the Securities Market, in respect of such entities listed in the Registry of Securities to which said law refers. Both the existence of such application and its contents shall be considered confidential information or facts, within the meaning of paragraph three of the same article.

Under no case may this benefit or reduction regime apply to the compensation of damages that may be awarded.³⁴

Article 39 ter.- To impose any fine pursuant to article 39 literals h) and j) and determine its amount, or conversely, to decide not to impose the fine, the National Economic Prosecutor shall request the Court to summon the offender to a hearing to be held on the fifth day after its notification. The offender may submit its defenses in this hearing, and based on the Prosecutor's

the phrase In order to be eligible for the exemption from dissolution or fine, as the case may be, in addition to the requirements indicated in the previous paragraph, the person engaging in.”

³² Article 1 No. 18, literals e) and f) of the Reform, replaced subsections fourth and fifth of Article 39 bis, for its current wording (for the original, see Note § 10).

³³ Article 1 No. 18, literal g) of the Reform, replaced, in the sixth subsection of Article 39 bis, the phrase “pursuant to the provisions of Article 210 of the Criminal Code,” for the phrase “with minor imprisonment in its maximum degree.”

³⁴ Article 1 No. 18, literal h) of the Reform added the current subsections seventh, eighth and ninth to Article 39 bis.

Office's request and the offender's defenses (or lack thereof), the Court may allow or dismiss the National Economic Prosecutor's request, and if applicable, it may define the amount of the fine during the same hearing. Only reconsideration appeals may be lodged against the Tribunal's ruling, which remedy must be lodged during the same hearing. Article 28 applies to the manner in which these rulings are enforced. A duly served offender's failure to attend a hearing will neither affect the validity of the hearing, nor the resolutions issued therein.

The fact that any of the judges of the Competition Court concur to the decision within the context of this proceeding shall not prevent them from entertaining a prospective follow-up procedure.³⁵

Article 40.- Whenever deemed necessary, the National Economic Prosecutor shall be entitled to assume – directly or through a delegate – the representation of the Prosecutor's Office in any process and, likewise, to intervene, in any given instance, proceeding or act before the courts of law, or before any administrative or municipal authority.

In its filings and proceedings before the Competition Court and the courts of law, the Prosecutor's Office shall be exempted from any taxes imposed by the laws, and the attorneys acting on its behalf shall be entitled to personally appear before the Higher Courts.

Article 41.- The Prosecutor's Office must receive and investigate, as applicable, the reports filed by private parties regarding any acts that could constitute a breach of the provisions of this law, notwithstanding the duty to forward to the relevant authorities any such reports that must be entertained by other bodies in light of their nature. In order to decide whether the filed reports must be investigated or dismissed, the Prosecutor's Office may request – within a term of 60 days after receiving the relevant report – additional information from private parties, also being entitled to summon to a deposition any person who may have knowledge about the reported fact. The aforementioned delivery of information and deposition shall always be voluntary, and the National Economic Prosecutor's Office may not apply the penalty set out in the first subsection of article 42 while it has not formally opened an investigation.

Article 42.- Any persons who obstruct the investigations ordered by the National Economic Prosecutor's Office within the scope of its functions, may be penalized with arrests, which may last for a maximum term of 15 days.

The warrant for any such arrest shall be issued by the district judge with competent jurisdiction for criminal matters as per the general rules, upon the request of the National Economic Prosecutor, with the prior authorization granted by the Competition Court.

All officials of and other persons that supply services to the National Economic Prosecutor's Office shall be bound to maintain the confidentiality over all information, data, or material that they may become aware of as a result or on occasion of exercising their functions, particularly those obtained as a consequence of the powers indicated in literals a), g), h), n), o),

³⁵ Article 39 ter was added by Article 1 No. 19 of the Reform.

p) and q) of article 39,³⁶ and in article 41. Notwithstanding the foregoing, any such information may be used for the performance of the functions of the National Economic Prosecutor's Office and for lodging actions before the Competition Court or the courts of law.

The infringement of this prohibition shall be punished with the penalties set forth in articles 246, 247 and 247 bis of the Criminal Code, as well as with the disciplinary sanctions that may be administratively applied due to the same infraction. Likewise, the rules of governmental and State liability set forth in law No. 19,880, in DFL No. 29 of year 2005, issued by the Ministry of Finance, which establishes the consolidated, coordinated and systematized text of Law No. 18,834 on Administrative Statute and in law No. 18,575 on General Foundations of State Administration, shall also apply.

Article 43.- All advisors or consultants that provide services at a per fee basis to the National Economic Prosecutor's Office or the Competition Court, shall be deemed to be included in the provision of article 260 of the Criminal Code.

Article 44.- The National Economic Prosecutor's Office shall be financed with the following resources, which shall be added to its wealth and managed pursuant to the Law on the Financial Administration of the State, approved by law decree No. 1263 of year 1975 and its amendments:

- a) The contribution set out annually in the Nation's Budget Law;
- b) The expenses and other sums it may be awarded in the proceedings in which it participates;
- c) The income set forth in the advisory or research agreements, or other agreements of any other nature, that it may execute with universities and other education or research entities, whether public or private, national or foreign;
- d) The duties payable for any certificates and copies of documents it may issue; and
- e) The goods and income of any other nature it may receive, under any title.

Article 45.- The submissions by private parties addressed to the National Economic Prosecutor's Office may be entered via the respective Regional Intendent's Offices (*Intendencias Regionales*) or the Provincial Governor's Offices (*Gobernaciones Provinciales*), whenever the petitioner's domicile is located outside the city where the National Economic Prosecutor's Office is located. If the submissions must be filed within a given term, they shall be deemed as filed since the filing date before the respective Regional Intendent's Office or Provincial Governor's Office.

The Intendent, or the Governor, as the case may be, shall appoint a Ministerial Regional Secretary (*Secretario Regional Ministerial*), a chief of service, or a lawyer within its department, as applicable, for the reception and issuance of such communications within a term of twenty-four hours after their reception, to the National Economic Prosecutor's Office.

³⁶ Article 1 No. 20 of the Reform enacted the following amendments to Article 42: the expression "by" was changed for the expression "by the" in the second subsection; and, in the third subsection, the expression "(a), g), h) and n) of Article 39" for the phrase "(a), g), h), n), o), p) and q) of Article 39."

TITLE IV³⁷

On Concentrations

Article 46.- Concentrations notified to the National Economic Prosecutor's Office shall be subject to the provisions of this Title.

Article 47.- A concentration shall be deemed to be any event, agreement or contract, or a combination thereof, the effect of which is that two or more economic agents not forming part of a same corporate group and previously independent from each other, cease to be independent in any respect by following any of the ways detailed below:

- a) Merging, regardless of the type of corporate organization of the merging entities or the entity resulting from the merger.
- b) Acquiring, one or more of them, directly or indirectly, an interest that allows them, individually or jointly, to exert a material influence on the other's administration;
- c) Entering into agreements, under any modality, to form an independent economic agent, different than them, that may carry out activities in a continuous way;
- d) Acquiring, one or more of them, control over the other's assets under any title.

For the purposes of this Title, an economic agent shall be deemed to be any entity or part thereof, whatever its corporate type or even without legal existence, which may offer or demand goods or services. A group of tangible or intangible assets, which is capable of offering or demanding goods or services, shall also be considered as an economic agent.

Article 48.- Concentrations producing their effects in Chile and meeting the following criteria shall be notified to the National Economic Prosecutor's Office, prior to their consummation:

- a) If the sales in Chile of the economic agents that intend to merge, during the fiscal year prior to that in which the notification is made, reach or exceed the threshold set by a resolution of the National Economic Prosecutor.
- b) If in Chile, separately, at least two of the economic agents that intend to merge have had, during the fiscal year prior to that in which the notification is made, sales that reach or exceed the threshold set by a resolution of the National Economic Prosecutor.

For the purposes of this article, sales volume shall be calculated as follows:

- i. For the cases contemplated in article 47 literals a) and c), the sales in Chile of the economic agents merging or becoming associated, as well as those of their respective corporate groups, shall be added up.

³⁷ Title IV was added by Article 1 No. 21 of the Reform.

- ii. For the cases contemplated in article 47 literal b), the sales in Chile of the economic agent obtaining a decisive influence will be added to those of its corporate group and the acquired economic agents.
- iii. For the cases contemplated in article 47 literal d), the sales in Chile of the acquiring economic agents, of their respective corporate groups, and those arising from the acquired assets, shall be added up.

For the purposes of this article, taxes shall be discounted from the sales, as well as all sales between economic agents belonging to the same corporate group, those arising outside the ordinary course of business of the relevant economic agents, and others determined in a resolution passed by the National Economic Prosecutor's Office, in the manner indicated therein.

Economic agents that are a party to the concentration are bound to practice the notification to which this article refers. Third parties that are not a party to the concentration cannot practice the notification.

The notification must include any information necessary to identify the relevant concentration and the economic agents that are a party thereto, as well as their corporate groups: information allowing to assess the potential anticompetitive risks that may arise from the concentration; a statement from the parties indicating that they intend to consummate the concentration being notified in good faith, and all such other information listed in a regulation passed by the Ministry of the Economy, Development and Tourism.

The parties notifying the concentration shall make available to the National Economic Prosecutor's Office all such facts, agreements and contracts that alter in any manner whatsoever the background information, estimates, forecasts or conclusions they might have previously provided, as soon as they become aware of such events, agreements or contracts. If the alteration informed by the notifying parties to the National Economic Prosecutor's Office is significant, the National Economic Prosecutor shall pass a resolution acknowledging such fact, and from that point on, any procedural terms shall be counted as if such resolution constituted a new notification.

The regulation may contemplate a simplified notification system requiring the notifying party to submit a lesser amount of background information for certain transactions or certain categories of concentrations.

Concentrations that do not reach or exceed the thresholds referred to in literals a) and b) of this article may be voluntarily notified by the economic agents that intend to merge. Voluntary notifications shall be subject to the same rules applicable to the mandatory notifications, provided that the transaction has not been consummated at the time of the notification.

When the concentrations referred to in the preceding paragraph are not voluntarily notified to the National Economic Prosecutor, the latter will be authorized to initiate all such

investigations he/she may deem fit in accordance with article 39 literal a), within one year as from the consummation of the relevant concentration.

If the thresholds referred to in literals a) and b) of this article are adjusted, the new thresholds shall become effective 90 days after publication in the Official Gazette.

Article 49.- The economic agents that intend to merge may not consummate the relevant concentrations they have notified to the National Economic Prosecutor's Office; these concentrations shall be deemed suspended as of their notification and until the decision that terminates the relevant proceedings has become final and binding.

Article 50.- Once it receives a notification of a concentration, the National Economic Prosecutor's Office shall take notice of it and proceed to assess it as follows.

Once a concentration is notified in accordance with article 48, the National Economic Prosecutor's Office shall have ten days to determine whether the notification is complete. The notification will be complete to the extent that it fulfills all the requirements established by this law and its regulation.

In cases of complete notifications, the National Economic Prosecutor shall initiate an investigation and communicate the decision to the notifying party. If the Prosecutor fails to practice such communication within the term established in the preceding paragraph, the investigation shall commence *ipso iure* on the next day following the expiration of such term.

In cases of incomplete notifications, the National Economic Prosecutor shall communicate such circumstance to the notifying party within the term set out in paragraph two. The communication shall identify the mistakes or omissions detected in the notification. The notifying party shall have ten days to remediate the mistakes or omissions detected by the Prosecutor in its communication. If the notifying party does not remediate its mistakes or omissions within the referred term, the notification shall be deemed not submitted. If the mistakes or omissions are remediated within the relevant timeframe, it shall be understood that there is a new notification for the purposes of this article.

Article 51.- The resolution ordering the initiation of the investigation will be published, and the notifying parties' information will receive confidential treatment.

Article 52.- During the course of the investigations commenced in accordance with the preceding article, the National Economic Prosecutor may exercise the powers set out in article 39 literals f), g), h), j), k), l) and m).

Article 53.- The notifying party may at any time request the National Economic Prosecutor to provide information regarding the course of the investigation, and shall be entitled to be informed, prior to the passing of any of the resolutions contemplated in articles 54 to 57, about the anticompetitive risks posed by the concentration based on the background information of the investigation.

The notifying party shall always have the right to be heard, and may express to the National Economic Prosecutor its opinion on the notified concentration, on the information submitted to the investigation by third parties, on the investigation itself, and on the information that may be submitted in accordance with the preceding paragraph. The notifying party may propose any investigative proceedings it may deem fit.

In addition, for the purposes of article 54 literal b) and article 57 literal b), the notifying party shall be always entitled to propose to the National Economic Prosecutor all such measures it may find conducive to mitigate any anticompetitive risks that may arise from the notified concentration. Said measures must be proposed in writing and under no circumstance will they constitute an acknowledgement of the existence of the risks whose mitigation is intended.

With the purpose of determining if the measures offered by the notifying parties address the competitive risks posed by the concentration as well as its possible effects over the market, the National Economic Prosecutor's Office shall be entitled to communicate such risks to interested third parties.

Article 54.- Within the term of thirty days following the date when the investigation referenced in article 50 has been initiated, the National Economic Prosecutor's Office shall:

- a) Approve the notified transaction unconditionally, if it arrives at the conviction that such transaction does not substantially reduce competition;
- b) Approve the notified transaction, subject to the condition that the measures offered by the notifying party must be performed, if it arrives at the conviction that by observing such measures the transaction does not substantially reduce competition, or
- c) Extend the investigation for a maximum term of ninety additional days, through a duly reasoned decision, when it considers that the notified transaction's unconditional materialization or implementation, subject to the measures offered by the notifying party, respectively, could substantially reduce competition.

The National Economic Prosecutor's Office shall be understood to have approved the corresponding operation if it fails to choose any of the abovementioned three options within the established term. The authorization shall be considered granted in the terms offered by the notifying party, including the measures it may have proposed.

Article 55.- The resolutions issued in accordance with the provisions of the preceding article shall be communicated to the notifying party within the same term established for their issuance. Additionally, the National Economic Prosecutor's Office shall publish a resolution or a public version of the same on its institutional website.

Regarding the resolutions envisaged in literal c) of the preceding article, the National Economic Prosecutor's Office shall communicate its issuance and attach its text, or the public version of the same, to the directly involved authorities and the economic agents that may have an interest in the transaction. Those that received said communication, as well as any third party

interested in the concentration, including suppliers, competitors, clients or consumers, shall be entitled to contribute information to the investigation within the term of twenty days following the publication of the resolution ordering its extension, on the institutional website.

The file shall be public as from the publication referenced in the preceding subsection. The foregoing is notwithstanding the fact that the National Economic Prosecutor's Office can order, either *ex officio* or at the request of the interested party, that certain parts of the file be deemed private or confidential in accordance with the provisions of article 39, paragraph third, literal a). Those requesting the privacy or confidentiality of the submitted information shall attach public versions of the same. When the National Economic Prosecutor's Office orders *ex officio* the privacy or confidentiality of information, it may request that the contributor provide public versions of the same.

Article 56.- Once the investigation has been extended in accordance with the provisions of literal c) of article 54, the National Economic Prosecutor's Office shall be entitled to exercise the attributions envisaged in article 52.

Article 57.- Within the term established in the resolution that orders the extension of the investigation, the National Economic Prosecutor's Office shall:

- a) Approve the notified transaction unconditionally, if it arrives at the conviction that the transaction does not substantially reduce competition;
- b) To approve the notified transaction, subject to the condition that the measures offered by the notifying party must be performed, if it arrives at the conviction that by observing such measures the transaction does not substantially reduce competition, or
- c) To prohibit the notified transaction, when it considers that it does substantially reduce competition.

If the National Economic Prosecutor's Office fails to make one of the abovementioned three decisions within the term set forth in the resolution for the extension of the investigation, it shall be deemed that the operation has been approved. The authorization shall be deemed granted in accordance with the terms offered by the notifying party, including the measures proposed by the latter.

The notifying party may challenge the National Economic Prosecutor's Office's resolution that prohibits an operation by lodging a duly grounded reconsideration appeal before the Competition Court within a term of ten days as from the date of notification of said resolution.

Article 58.- Through a duly grounded resolution, the National Economic Prosecutor's Office shall be entitled to archive of the investigative file, thus terminating the procedure referenced in this Title, regardless of its status, when the notifying party has withdrawn or abandoned its notification.

The notifying party shall be understood to have withdrawn its notification when it communicates this course of action in writing to the National Economic Prosecutor's Office.

A notification shall be deemed abandoned when, on two or more occasions during the course of the investigation, the notifying party fails to promptly and duly reply to the information requests issued by the National Economic Prosecutor's Office, in accordance with the law, or when on two or more occasions the notifying party or its legal representatives have failed to appear to a deposition to which they were summoned in accordance with the law.

Article 59.- The terms established in this Title shall be counted as working days, understanding as such days that are not Saturdays, Sundays or holidays.

Article 60.- The terms established in the first subsection of article 54 and the first subsection of article 57 shall not be suspended, with the exception of the cases envisaged in this article.

The National Economic Prosecutor's Office and the notifying party can mutually agree to suspend, on a single occasion, each term referenced in the preceding subsection. The first term may be suspended up to thirty days, and the second for up to sixty days. These suspension agreements must be recorded in writing.

Moreover, the terms mentioned in the first subsection shall be suspended when the notifying party offers measures in accordance with the provisions of subsection third of article 53. The term envisaged in subsection first of article 54 or the one established in subsection first of article 57 shall be suspended for a maximum term of 10 or 15 days, respectively.

Article 61.- The communications, requests and notifications issued to the notifying parties within the context of the procedure set forth in this Title may be carried out via email or any other suitable electronic means.

Moreover, the communications, requests and notifications made within the context of the procedure referenced in this Title may be conducted by officials of the National Economic Prosecutor's Office appointed to perform such duty by the National Economic Prosecutor's Office in a resolution issued for such purposes.

TITLE V³⁸ **On Criminal Sanctions**

Article 62.- Any party that executes or orders the execution, performance or organization of an agreement involving two or more competitors, to fix sale or purchase prices for goods or services in one or more markets; restrict output or supply; divide, assign or distribute market zones or quotas; or affect the result of tender processes conducted by public companies, private

³⁸ Title V was added by Article 1, No. 22 of the Reform.

companies that render public services, or public bodies, shall be punished with the penalty of minor imprisonment in its maximum degree to major imprisonment in its minimum degree.

Additionally, any such offender shall be punished with the temporary absolute disqualification, in its maximum degree, to exercise the position of director or manager of a publicly traded corporation or a corporation subjected to special provisions, the position of director or manager of State-owned companies or companies in which the State holds a stake, and the position of director or manager of a trade or professional association.

To determine the penalties established in both preceding subsections, the court shall not consider the provisions of articles 67 to 69 of the Criminal Code, nor the special rules for the determination of penalties established in other laws, and instead, it shall apply the following rules:

1. If there are no extenuating or aggravating circumstances in the conduct, the court shall be entitled to cover the entire extent of the penalty established by the law when applying said penalty.

2. For the case of the penalty set forth in the first subsection, if there is one or more extenuating circumstance and no aggravating circumstances, the court shall apply the penalty in its inferior degree. If there is one or more aggravating circumstance and no extenuating circumstances, it shall apply the penalty in its greater degree.

3. For the case of the penalty set forth in the second subsection, if there is one or more extenuating circumstance and no aggravating circumstances, the court shall apply the penalty in its inferior degree. If there is one or more aggravating circumstance and no extenuating circumstances, it shall apply the penalty in its greater degree. In such cases, in order to determine the minimum and maximum degree of the penalty, its duration shall be divided in two: the upper half shall represent the maximum and the lower half the minimum.

4. If there are both extenuating and aggravating circumstances, a rational compensation shall be made in order to apply the penalty, measuring the value of both of them as well as considering the extension of the damage caused by the crime.

5. The court shall not be entitled to impose a penalty that exceeds or is inferior to the range established by the law, unless the circumstances set forth in articles 51 to 54 of the Criminal Code are verified.

The provisions set forth in Law No. 18,216 shall be applicable in accordance with the general rules. However, the application of the corresponding alternative penalty shall be suspended for one year, time during which the convicted persons shall effectively comply with the imprisonment penalty to which they were sentenced.

Article 63.- The persons that have been the first to contribute information to the National Economic Prosecutor's Office in accordance with article 39 bis shall be exempted of criminal liability for the crime sanctioned in article 62. The National Economic Prosecutor's Office's

complaint shall identify the persons exempted from criminal liability, which situation shall be declared by the Competition Court.

The persons identified in the preceding subsection shall submit to the Public Prosecutor and the competent court the same information that they previously provided to the National Economic Prosecutor's Office, and they shall submit their deposition as witnesses in the manner set forth in article 191 of the Criminal Procedures Code, which deposition shall be included in the oral trial as envisaged in article 331 of said Code.

A legally summoned witness shall be deprived of the criminal liability exemption established in this article if he or she fails to appear without justified cause or refuses to ratify the deposition that it has submitted before the National Economic Prosecutor's Office, and such circumstance is declared by the competent supervisory judge at the request of the Public Prosecutor, or if he or she incurs in any of the conducts set forth in articles 206 to 269 bis of the Criminal Code. The respective penalty shall be materially accumulated to the corresponding extent in accordance with article 62. The resolution of the supervisory judge that denies the criminal liability exemption may be challenged through an appeal, which shall be granted in both effects.

In accordance with the provisions of subsection third of article 62, the established penalty shall be reduced in one degree regarding the persons that have contributed additional information to the National Economic Prosecutor's Office in accordance with the fourth subsection of article 39 bis. The National Economic Prosecutor's Office's complaint shall identify the beneficiaries of the penalty reduction, which situation will be declared by the Competition Court.

The provisions of the fourth subsection of article 62 shall not be applied regarding the persons mentioned in the preceding subsection when said persons appear before the Public Prosecutor and the court of competent jurisdiction and ratify the deposition that they submitted to the National Economic Prosecutor's Office, unless the latter's complaint solely and mutually involves two competitors and one of said competitors is entitled to the fine exemption benefit declared by the Competition Court in accordance with article 39 bis.

Article 64.- The investigation of the facts described in the first subsection of article 62 may only be initiated through a criminal claim filed by the National Economic Prosecutor's Office, which shall be entitled to lodge the same once the existence of the agreement has been established through a final decision issued by the Competition Court, and no other criminal report or criminal claim shall be admissible in this connection. The provisions set forth in article 166 of the Criminal Procedures Code shall not be applied in this regard.

The National Economic Prosecutor's Office shall lodge a criminal claim in connection with facts that considerably hinder competition in the markets.

The National Economic Prosecutor's Office shall issue a justified decision when, despite the fulfillment of the requirements set forth in subsection first, it decides to refrain from submitting a criminal claim in connection with the events described in subsection first of article 62.

The filing of the criminal claim or the decision to refrain from submitting it shall take place within a six-month term, counted as from the date when the definitive decision rendered by the Competition Court has become final and binding.

In its criminal claim, the National Economic Prosecutor's Office shall state that it holds the judicial authorization to apply one or more of the measures referenced in numerals n.1 to n.4 of literal n) of article 39, as well as the fact of having conducted, or refrained from conducting, said procedures. The Public Prosecutor shall be entitled to request that the Competition Court revoke the confidentiality or privacy established with regards to portions of the file, in order for them to be used in the criminal procedure.

For the purpose of their incorporation to the criminal procedure, it shall be understood that the copies of the records, evidence and other information that have been compiled by the National Economic Prosecutor's Office, in the procedures conducted with the authorization of a judge of the Court of Appeals, comply with the provisions of article 9 of the Criminal Procedure Code.

Article 65.- The criminal action for the prosecution of the crime addressed in article 62 shall expire in a statutory period of ten years, as from the date when the definitive ruling issued by the Competition Court is final and binding.

TRANSITORY PROVISIONS OF LAW NO. 20,045, REGARDING DL NO. 211

Article One.- This law shall come into force and effect once it has been published in the Official Gazette, except for the amendment set out in numeral 21 of article 1, which enacts into law Title IV, On Concentrations. Said Title, along with numeral 2, literal c) of numeral 8 as to the addition of a numeral 5) in article 18, literal b) of numeral 12 as to the addition of a literal e) in article 26, numerals 15 and 16 and literal c) of numeral 17, all of article 1, shall be effective as from the first day of the sixth month following the date of publication in the Official Gazette of the resolution that establishes the thresholds set out in literals a) and b) of article 48, contained in numeral 21 of article 1.

Notwithstanding the provisions of the preceding subsection, in the case of concentrations submitted to the consideration of the Competition Court or of the Supreme Court, prior to the effectiveness of Title IV, On Concentrations, and of the other rules pertaining to the same referenced in the previous subsection, said courts shall continue their processing and decide on them based on the laws which were in force and effect at the beginning of the respective procedure.

The amendment established in literal b) of number 1 of article 1, which adds a literal d) to article 3, shall come into force and effect after one hundred and eighty days have elapsed as from this law's publication date.

Article Two.- The President of the Republic, within a term of ninety days, as from the publication date of this law, via one or more decrees issued through the Ministry of the Economy, Development and Tourism, shall issue the regulation referenced in Title IV incorporated to DFL No. 1 of year 2004, issued by the Ministry of the Economy, Development and Reconstruction, which establishes the consolidated, coordinated and systematized text of law decree No. 211, of year 1973.

Within the same term indicated in the previous subsection, the National Economic Prosecutor must issue the resolution that establishes the thresholds set out in literals a) and b) of article 48, which this law incorporates to the referred statute.

Article Three.- Whosoever is exercising the position of member of the Competition Court as of the time when this law comes into force and effect, shall be released from the application of the provisions of subsection eight of article 6.

Article Four.- The shareholdings held by a company or by any entity belonging to its business group in the equity of competing firms as referenced in article 4 bis, existing as of the time when this law comes into force and effect, shall be disclosed to the National Economic Prosecutor's Office within the term of one hundred and eighty days, as from the date when this law is published in the Official Gazette.

In the event of a breach of the disclosure obligation established in this article, the measures established by article 26 of DFL No. 1 of year 2004, issued by the Ministry of Economy, Development and Reconstruction, which establishes the consolidated, coordinated and

systematized text of law decree No. 211 of year 1973, as well as the preventive, corrective or prohibitive measures that are deemed necessary, may be applied.

The actions to prosecute violations to article 3 of DFL No. 1 of year 2004, of the Ministry of Economy, Development and Reconstruction, which establishes the consolidated, coordinated and systematized text of law decree No. 211 of year 1973, shall expire within the term of three years, as of the date when the National Economic Prosecutor's Office is notified.

Article Five.- The amendments enacted by this law to article 30 of DFL No. 1 of year 2004, issued by the Ministry of Economy, Development and Reconstruction, which establishes the consolidated, coordinated and systematized text of law decree No. 211 of year 1973, as well as the amendments enacted by article 51 of law No. 19,496, which establishes rules for the protection of consumer rights, shall not apply to the cases that have already been initiated as of the date of publication of this law; rather, such cases shall continue to be entertained by the courts with competent jurisdiction as of the date when such cases began, and shall continue to be processes pursuant to the terms of these articles as of that same date, until the respective final decision is rendered.

For these purposes, cases that have already been initiated shall be deemed to be those in which the service of process of the claim has occurred at least in respect of one of the defendants prior to the publication of this law.

Article Six.- The increased fiscal expenditure derived from the application of this law during its first budgetary year in force and effect shall be financed from the budget of the National Economic Prosecutor's Office and, if any more funds were to be required, the expenditure shall be charged to the resources assigned in the budget item labeled Public Treasury, of the Budget Law of the Public Sector.

NOTES

§ 1.	<p>a) Explicit or tacit agreements between competitors, or concerted practices between them, which grant them market power and which consist in fixing sales or purchase prices, or other commercialization conditions, limiting production, assigning market zones or quotas, excluding competitors or affecting the outcome of tender processes.</p>
§ 2.	<p>The position of member of the Court is incompatible with the capacity of:</p> <ul style="list-style-type: none">a) Public official;b) Administrator, manager, subordinated employee of publicly traded corporations or of companies governed by the rules of said corporations, as well as their parent companies, subsidiaries, or related companies.c) Advisor or supplier of professional services in matters pertaining to competition, in respect of natural or legal persons subject to the competent jurisdiction of the Court, it being considered that the relevant member advises or supplies professional services if said member receives any type of remuneration, fee or royalty from natural or legal persons that advise or supply professional services in such matters. <p style="text-align: center;">Alternate members shall only be affected by the incompatibility grounds indicated in literal c) above.</p>
§ 3.	<p>b) Advises or supplies professional services to natural or legal persons that are parties in such case, or has done so in the two years prior to the case's entry date or during the investigation conducted by the National Economic Prosecutor's Office that has given rise to the case.</p>
§ 4.	<p>Likewise, it shall be grounds for recusal that the judge advises or supplies professional services to natural or legal persons who hold – or have held during the two years prior to the entry date of the case in question –the position counterparty to the persons referenced in literal b) of subsection two of this article, in any judicial procedure or commercial negotiation, in such way as to affect the judge's impartiality.</p>
§ 5.	<p>The evidentiary proceedings that must be conducted outside the territory of the Metropolitan Region of Santiago may be conducted through the relevant district judge, guaranteeing their faithfulness and quick issuance by any apt means.</p>
§ 6.	<p>The action for the compensation of damages that may apply on occasion of the issuance by the Competition Court of a final, non-appealable decision, shall be lodged before the civil court of competent jurisdiction, pursuant to the general rules, and processed as per the rules of the summary procedure, established in Book III of Title XI of the Civil Procedure Code.</p>

	The civil court of competent jurisdiction, when ruling on the compensation of damages, shall base its ruling on the conducts, facts and legal qualification of the same, established by the decision of the Competition Court, issued on occasion of the application of this law.
§ 7.	d) Enforce the performance of rulings, decisions, judgments and instructions issued by the Competition Court or the courts of law, in the matters referenced under this law;
§ 8.	Whosoever should carry out a conduct set forth in literal a) of article 3, may apply to a reduction or exemption of the fine, when said person contributes to the National Economic Prosecutor's Office information that leads to proving said conduct and defining the responsible parties for the same.
§ 9.	2) Refrain from disclosing the application for these benefits until the Prosecutor's Office has lodged the complaint or ordered the request's background information to be archived;
§ 10.	<p>In order to be eligible for a fine reduction, in addition to complying with the requirements set forth in subsection second, the perpetrator of the conduct must supply additional information to those supplied by the party who first contributed information to the Prosecutor's Office under this article. In any event, the fine reduction requested by the Prosecutor in the complaint cannot exceed 50% of the highest fine requested for the other perpetrators of the conduct who are not eligible for the application of the benefits of this article.</p> <p>In its complaint, the Prosecutor shall identify each perpetrator of the conduct that fulfilled the requirements to be eligible to the exemption or reduction of fines benefit. If the Court deems that the conduct has been proven, no fine may be imposed to the party identified as eligible of an exemption, nor any fine higher than that requested by the Prosecutor applied to the party identified as eligible for a reduction of the same, unless it is demonstrated – during the proceedings – that said eligible party organized the unlawful conduct by coercing the others to participate therein.</p>