Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

17-Oct-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)26
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHILE

-- 2015 --

29-30 November 2016

This report is submitted by Chile to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 November 2016.

JT03402904

English - Or. English

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. In August, 2016, a legal reform concerning the Chilean Competition Law came into force. This reform encompasses substantial changes such as introducing criminal sanctions and providing for a per se illegality rule for hard-core cartels, it incorporates a new system for the assessment of horizontal mergers and increases fines against anti-competitive conducts as it entails a flexible cap hinging on the revenues or economic benefit obtained from the infringement. Moreover, the legal reform provides that the TDLC will decide on follow-on action pursuing damages arising from anti-competitive conducts –private enforcement.

2. With regard to anti-competitive practices, enforcement has been focused more on collusion and coordinated conducts during the last year. In particular, the FNE filed two complaints that involved leniency applications and dawn raids during its investigation. It is relevant to stress that for the first time, during a trial before the TDLC, one of the companies accused of operating a hard-core cartel is alleging that the other defendant coerced it to fix prices and allocate market shares. If the TDLC finds that there was coercion, it can withdraw the immunity granted to the first company that came forward to the FNE within the leniency policy.

3. With regard to mergers, submissions increased during the last year. Actually, nine voluntary filings were submitted before the FNE whereas only two had been submitted during 2014-2015.

4. Finally, it is interesting that the Competition Tribunal filed a claim before the Constitutional Court alleging that the Criminal Prosecutor could not have access to confidential evidence and leniency material. The Constitutional Court upheld the TDLC position.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

5. On August 30, 2016, the Law No. 20,945 on the Improvement of the Competition Law Regime ("**2016 Legal Reform**" or "**Law No. 20,945**") was published and thus, became into force. The 2016 Legal Reform introduced several changes on the existing competition regime, and it will have a substantial impact on the Chilean Competition Law System.

6. In particular, the 2016 Legal Reform introduces substantial modifications, such as the following: i) increases the applicable fines and introduces new administrative sanctions against cartels; ii) considers hard-core cartels as a criminal offence, as well as it incorporates a *per se* illegality rule regarding them; iii) establishes a mandatory merger control regime; iv) empowers the FNE to request information to private undertakings for the execution of market studies; v) introduces the concept of interlocking as a breach of competition law; vi) requires to notify the FNE of any minority interests; vii) strengthens the leniency policy; viii) empowers the Competition Tribunal to determine compensation of damages arising from anti-competitive infringements (private enforcement); and, ix) imposes administrative sanctions for infringements to the duty of colaboration with the FNE during its investigations.

7. Regarding fines, it is noteworthy that the 2016 Legal Reform increases them in proportion to the illegal gains obtained, or in accordance to annual sales, thus strengthening the deterrence effect on cartel prosecution and other anticompetitive conducts in general. The fine's upper threshold will account for 30% of the offender's sales during the corresponding period in which the infringement was executed or the double of the illegal gains were obtained. Furthermore, a new sanction against collusive conducts was incorporated, which is the prohibition to enter into agreements with the Public Administration, the National

Congress and the Judiciary as well as State-owned companies. Additionally, it prohibits an undertaking to be awarded any public bidding were the Government is involved, for a period of up to five years.

8. Regarding cartel prosecution, Law No. 20,945 establishes cartel infringement as criminal offence. This implies that executives that are found guilty can be sanctioned with imprisonment up to 10 years. Moreover, the 2016 Legal Reform provides for a new sanction on individuals, prohibiting them to act as director or manager of stock corporations, State-owned enterprises or trade as well as professional associations, for a maximum period of ten years. The criminal cartel prosecution can only be initiated by a complaint filed by the FNE. Additionally, Law No. 20,945 recognises the *per se* rule with respect to hardcore cartels.

9. Regarding merger control, the voluntary regime was replaced by a mandatory one, where it will be an obligation to notify certain mergers to the FNE, if the operation exceeds specific thresholds –to be determined by the FNE. The 2016 Legal Reform establishes a two-phase review procedure conducted by the FNE, subject to fixed legal terms: a Phase I for the review and clearance of unproblematic mergers; and a Phase II, for the assessment of concentrations requiring an in-depth review due to their complexity and/or likelihood of anti-competitive effects. A blocking merger decision may be appealed before the TDLC. The proposal's merger assessment standard is the "*substantial reduction of competition*".

10. Regarding market studies, the FNE might conduct market research and require information from private undertakings and public entities for such effects. These new powers also allow the FNE to make legislative recommendations, which will help on the fulfilment of the FNE's functions.

11. Regarding the concept of interlocking, Law No. 20,945 establishes that the nomination of directors or relevant executives of one firm as directors of the board of a competitor is considered as a conduct that could affect, restrict, or tend to hinder free competition. There is a minimum threshold that triggers this prohibition.[1]

12. Regarding the information of minority interests, Law No. 20,945 establishes the obligation for companies to inform the FNE of any minority interests that exceed 10% of the competitors' ownership, even if those interests are not sufficient to exert control over the competitor. This shall also apply to acquisitions already materialized before Law No. 20,945 became into force.

13. Regarding the leniency policy, the 2016 Legal Reform provides that total immunity will be granted from criminal sanctions which would otherwise have been imposed if an individual is the first to submit a succesful application before the FNE. Moreover, according to Law No. 20,945, only the second applicant -either corporate or individual- can obtain a reduction of fines of 50% and a mitigating circumstance in the criminal sanction that would otherwise have been imposed.

14. Regarding compensation of damages, so far, civil courts have been responsible in Chile for deciding on follow-on actions pursuing damages. The 2016 Legal Reform modifies this regime and now empowers the Competition Tribunal to decide on these actions. This change entails several challenges in order to rigurously quantify the harm and define the limits and scope of 'compensable' injuries. Furthermore, the Competition Tribunal will decide on class actions seeking compensation of damages, according to the Consumer Protection Law procedure, where consumers representing collective interests have standing to file a complaint.

1 Firms that have revenues for more than approximately USD$4 million approximately during the last calendar year. Please note that this report uses the average exchange rate for August 2016, published by the Central Bank of Chile, USD $1 = CLP 659.00.

15. Finally, regarding administrative sanctions for infringements to the duty of colaboration with the FNE during its investigations, there are two types. Firstly, administrative sanctions when the information requirement conducted by the FNE is not submitted as the requirement was made. These offences are the following: (i) to hide or to submit false or misleading information (arrest warrant), and, (ii) partial or complete refusal to submit information (fines). Secondly, administrative sanctions for refusing to appear before the FNE to be interviewed (fines).

1.2 Other relevant measures, including new guidelines

16. On October 20, 2015 the FNE started a public consultation of the new "Internal Guidelines on Leniency in Collusion Cases". The new version has not been published yet, but it is expected to be released before the end of 2016. The new version considers the changes on leniency introduced by the 2016 Legal Reform, and it will replace the 2009 Leniency Guidelines.

1.3 Government proposals for new legislation

17. In addition to the 2016 Legal Reform, no other proposals have been proposed during 2016.

2. Enforcement of competition laws and policies

2.1 Actions against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of FNE:

18. Please note that the activities mentioned in this Section are explained in more detail infra in Section 2.1.5.

- Tissue paper cartel

  On October 27, 2015, the FNE filed a complaint against two pulp and paper companies -CMPC and SCA -formerly PISA- for fixing prices and allocating market shares of tissue paper products. The FNE requested a total fine exemption for CMPC –as the first that came forward within the leniency programme- and USD$17 millions for SCA –second applicant of the leniency programme.

  The probationary period is taking place. The process is expected to extend, at least, until the end of 2016. It is relevant to note that for the first time, one of the defendants is alleging that the other - beneficiary of immunity arising from the leniency programme-, coerced the former in order to operate the cartel. According to the Chilean Competition Law, if the TDLC finds that there was coercion, it can declare the immunity as void.

- Complaint before the TDLC aganinst LATAM (airline) for not fulfilling the Ruling that authorized the Lan and TAM merger in 2011

  On August 28, 2012, the FNE started an investigation in order to monitor compliance with the remedy imposed by the TDLC in its Ruling No. 37/2011 in order to approve the merger of former Lan Airlines S.A. and Tam Linhas Aéreas S.A. into LATAM. During the investigation, the FNE detected that LATAM maintained six code-sharing agreements and, moreover, it had celebrated another four similar agreements, without obtaining previous authorization from the TDLC, as it was required.

Considering that, on June 10, 2015, the FNE filed a complaint against LATAM for a breach of one of the remedies imposed in the merger clearance, that forced the Company to rescind certain codeshare agreements with airlines that do not belong to Oneworld Alliance in routes that connect Chile with Europe or North America.

On December 22, 2015, the TDLC approved a settlement between the FNE and LATAM, whereby the scope of the remedy was clarified and LATAM agreed to rescind specific codeshare agreements.

- Complaint before the TDLC against the main supermarket chains in Chile alleging a cartel for the purposes of fixing a minimum retail price in the chicken market

  On January 6, 2016, the FNE filed a complaint before the TDLC accusing supermarkets chains Cencosud, SMU and Walmart of agreeing in a minimum retail price for chicken meat, at least between 2008 and 2011. The FNE requested the application of the maximum fines as permitted by law (USD$17 million aproximately).

  The probationary period is taking place. The process is expected to continue at the TDLC during 2016.

- Complaint before the TDLC against G.D. Searle (Pfizer's subsidiary) accusing an abuse of dominant position

  On January 8, 2016, the FNE filed a complaint accusing G.D. Searle LLC ("**GD Searle**") – Pharmaceutical company and Pfizer's subsidiary- of creating entry barriers to the market of medicines based on the active ingredient called *Celecoxib*, where Pfizer competes with *Celebra*. According with the accusation, GD Searle had instrumentally used its patent right, by requering a second patent to protect a *Celecoxib*'s pharmaceutical composition -GD Searle had a first patent to protect the *Celecoxib* as active ingredient-, which artificially extend the protection of the first patent. Considering the foregoing, the FNE accuses GD Searle of preventing or delaying the entrance of competitors that manufacture the medicine based on that active ingredient.

  The FNE requested the application of the maximun fine as permitted by law at that time for abuse of dominance conducts (USD$ 17 millions aproximately).

  The judicial process is still ongoing; the probationary period is taking place.

- Complaint before the TDLC against two pharmaceutical companies for rigging bids in public tenders for the procurement of ampoules

  On August 3, 2016, the FNE filed a complaint against Biosano and Fresenius Kabi Chile (subsidiary of the pharma company Sanderson) accusing them of operating a cartel with the purpose of allocating tenders by agreeing on a reference price in their bids. The cartel extended for 10 years. The FNE requested the application of fines (USD$ 15,5 million aproximately). The judicial process is still ongoing.

- Settlement between the FNE and open television channels regarding the association between them to facilitate the digitalization of their television signal

  The FNE followed an investigation against the main broadcasting companies in Chile regarding a horizontal cooperation agreement. In particular, it was announced that they would jointly

implement the digitalization of their signals. During the investigation, some competitive risks were identified by the FNE. Finally, the broadcasting companies and the FNE settled an extrajudicial agreement establishing certain remedies.

The companies undertook to provide nondiscriminatory conditions for the access of satellite capacity to third parties that comply with the technical and financial terms.

The Competition Tribunal approved the settlement on January 28, 2016.

2.1.2 Summary of activities of the Competition Tribunal

19. During the period covered by this report, twenty new adversarial cases were initiated before the TDLC.[2] Seventeen (85%) were related to unilateral conduct whereas the remaining three (15%) referred to collusion.

20. The TDLC issued seven decisions in adversarial cases during the period covered by this report: two in 2015 (one in September and another one in December), and the remaining five through August 2016. These cases stem from claims filed by the FNE, as well as from complaints filed by private parties. Two out of these seven rulings were condemnatory, while the average length of these proceedings was 502 days (approximately 1 year and 4 months).

21. Six out of the seven decisions were challenged before the Supreme Court. One of them has been confirmed by the Supreme Court, while the other five are still under review.

22. Out of two condemnatory decisions issued during the period covered by this report, one concerns collusion and the other one relates to the non-compliance of a condition imposed by the Tribunal in a merger case.

23. The main decisions issued by the TDLC during the relevant period are the following:

- Infringement of remedies imposed to a merger between retailers (Ruling No.147/2015)

  In December, 2015, the Competition Tribunal partially accepted a lawsuit filed by the FNE against SMU S.A. ("SMU"), alleging the infringement of remedies previsously imposed to the merger between SMU and Supermercados del Sur ("SdS") in 2012.

  The Tribunal found that SMU knowingly did not comply with two structural remedies. Firstly, the divestiture of certain stores, three distribution centers operated by SdS, and a commercial brand acquired by SMU. Consequently, SMU was fined for this infringement with 5% of the relevant sales, which amounts to circa USD$415,000. Secondly, divestiture of SMU´s share in another retailer Supermercados Montserrat. SMU was fined for this infringement with 4% of the relevant sales, which amounts to circa USD$1,5 million.

  Finally, regarding the third accusation concerning the infringement of a behavioural remedy – obligation to equalize prices to those prevailing in the nearest location where sufficient competitive conditions existed- the TDLC acquitted SMU. In this regard, the Competition Tribunal stated that the methodology used by the defendant was appropriate.

2 Docket No. C 296-15 to C 315-16.

Judges Tapia and Arancibia issued a dissenting opinion, stating that they would have declared that SMU had not complied with the behavioural remedy. Moreover, Judge Tapia stated that the fines imposed to SMU did not generate a sufficient deterrent effect, advocating 15% of the relevant sales in each case -instead of 5% and 4% as imposed by the majority opinion.

- Cartel among asphaltic products companies – allocation of customers and bid rigging (Ruling No.148/2015)

  The Competition Tribunal found that several companies selling asphaltic products -Asfaltos Chilenos S.A. ("ACH"), Dynal Industrial S.A. ("Dynal"), Empresa Nacional de Energía Enex S.A. ("ENEX") and Química Latinoamericana S.A. ("QLA")- had operated agreements to allocate specific contracts for the provision of asphaltic products used in road works and projects. In particular, the TDLC held that they had coordinated to allocate certain projects within public bidding processes.

  The Tribunal fined ACH with approximately USD$ 1,3 million, Dynal with USD$587,000 and QLA with USD$1,5 million. ENEX was exempted from paying the fines as beneficiary of the leniency programme. In addition, all four defendants were ordered to implement an antitrust compliance programme, in accordance to the FNE's guidelines.

  Judges Menchaca and Domper included a dissenting opinion expressing their disagreement with the obligation to implement a compliance programme, whereas Judges Saavedra and Tapia expressly stated they would have incorporated additional elements to the compliance programme.

- Exclusionary abuse of a dominant position - melamine chipboard panels and design, manufacture and commercialization of 'ready to assemble' furniture (Ruling No.151/2016)

  In June, 2016, the Competition Tribunal dismissed a lawsuit filed by Metalúrgica Silcosil Limitada ("Silcosil") against Masisa S.A. ("Masisa") and Masisa Componentes SpA ("Componentes") which were accused of predatory pricing, margin squeeze, cross-subsidy and unfair competition practices. The TDLC ruled out that the defendants had a dominant position in the relevant markets and thus, concluded that they were unable to incur in an abuse.

  In the judgment, the Competition Tribunal stated that the controversy concerned two relevant markets: the production and commercialization of melamine chipboard panels (upstream); and the design, manufacture and commercialization of "ready to assemble" furniture made from the aforementioned panels (downstream).

  Regarding the margin squeeze accusation, the Competition Tribunal held that there was no dominant position in the upstream market because the panels from the different manufacturers were substitutes, Masisa's market share had decreased significantly over the last years, and the imports of this input set forth a "cap" that limited the maximum prices that can be charged in the market. Finally, the Tribunal stated that the cross subsidy does not constitute a stand alone infringement to competition.

  Judge Saavedra concurred to the decision, but stated that Masisa's lack of dominance in the upstream market casted doubts, so further analysis of the margin squeeze conduct was required. However, he concluded that anyway, such conduct did not have an anticompetitive effect in the market.

2.1.3 Summary of activities of the Supreme Court

24. On October 29, 2015, the Hon. Supreme Court of Chile upheld a decision issued by the TDLC in a collusion case in which the FNE had accused the three main production and commercialization companies of poultry meat in Chile. Moreover, the Hon. Suprem Court toughened the sanction against the Poultry Producers Trade Association ("**APA**") by confirming its dissolution and setting a fine of USD$1,6 million. It is interesting that the Supreme Court acknowledged that collusion can be a continous infringement and thus, statute of limitations is calculated as of the cartel ceases its operation. This discussion plays a relevant role to determine the applicable law in this case. The reason is that collusive conducts that started under the former law, but that continue after the 2016 Legal Reform became into force, are subject to the new fines provided thereof.

25. On December 29, 2015, the Hon. Supreme Court of Chile upheld a decision issued by the TDLC in a collusion case in which the FNE had accused the bus companies of urban transport in the city of Valdivia -located in the South of Chile-, and its trade association. However, the Supreme Court raised the fines that had been determined by the TDLC (from approximately USD$ 99,000 to USD$694,000).

26. On January 7, 2016, the Hon. Supreme Court of Chile upheld a decision issued by the TDLC in a collusion case in which the FNE had accused the Trade Association of Obstetric Gynecologists of the rural area of Ñuble -a southern province of Chile- as well as 25 gynecologists. According to the complaint, the Association had fixed minimum prices for standard maternity procedures, causing direct harm to privately insured patients. Additionally, the Supreme Court ordered the dissolution of the Trade Association.

27. On April 20, 2016, the Hon. Supreme Court of Chile admitted an appeal submitted by a Consumers Association –*Corporación Nacional de Consumidores y Usuarios de Chile*- challenging a ruling issued by the TDLC. The TDLC had decided that the Consumers Association did not have legal standing to file a claim accusing the incumbent mobile telecommunication companies of strategic use and hoarding of the spectrum. Moreover, the TDLC held that the complainant had not evidenced how the conduct could affect consumers. The Supreme Court argued that Consumers Associations act on behalf of the final users´ collective interests and therefore, it found that it did have legal standing and a legitimate interest to file a complaint concerning exclusionary abuses of dominant position. Hence, the Hon. Supreme Court ordered the TDLC to assess the complaint filed by the Consumers Association.

2.1.4 Summary of activities of Other Courts: Constitutional Court

28. In November, 2015, the Competition Tribunal filed a complaint before the Constitutional Court alleging that the Criminal Prosecutor could not have access to information that had been previously declared confidential during a competition trial.

29. In particular, this dispute arose out of the *Tissue Paper Cartel* trial referred *supra*. The Criminal Prosecutor requested the Competition Tribunal to disclose the leniency material submitted by the FNE in order to support its criminal investigation. However, the Competition Tribunal only disclosed the public versions of the leniency material to the Criminal authority.

30. In this context, the Criminal Prosecutor filed a complaint before an Appeals Court arguing that it had sufficient authority to compel the Competition Tribunal to disclose the confidential version of the leniency material. While this appeal was pending, the Competition Tribunal filed an action before the Constitutional Court.

31. In January 2016, the Constitutional Court issued its decision and upheld the Competition Tribunal´s position. It concluded that leniency material and evidence that is considered confidential by the

Competition Tribunal during a trial cannot be disclosed to other authorities or third parties because otherwise, it would undermine the effectiveness of the leniency programme.

2.1.5 Description of significant cases, including those with international implications

- Tissue paper cartel

  As indicated supra, a complaint was filed by the FNE in October, 2015, claiming that CMPC and SCA reached an agreement that allowed them to sustain a long lasting cartel from 2000 until at least December 2011, afectting the sale of toilet paper, paper towels, napkins and facial tissues to supermarkets, drugstores and wholesalers in Chile.

  The defendants account for nearly 90% of the Chilean tissue paper market, while their yearly sales amount to around USD$400 million.

  During the investigation at the FNE, which started ex-officio in December 2014, both CMPC and SCA applied for leniency. The companies supplied statements from the main executives involved in the conduct as well as relevant data regarding the structure and operative of the cartel. Additionally, in September 2015, the FNE conducted a dawn raid at SCA's headquarters, collecting valuable evidence for the case.

  After verifying the fulfilment of legal requirements, the FNE requested the TDLC full fine exemption to the first applicant – CMPC – and a fine of around USD$15,5 million to SCA. This amount represents a reduction from the legal cap since SCA´s application was the second.

- Complaint before the TDLC against the main supermarket chains in the country of cartel fot the purposes of fixing a minimum retail price on chicken market

  On January 6, 2016, the FNE filed a complaint before the TDLC accusing main supermarkets chains of taking part in a collusive agreement by fixing the minimum retail price for chicken meat, at least between 2008 and 2011. The complaint indicates that the supermarkets adhered to a coordinated scheme that limited their freedom to set retail prices for chicken meat below the product's wholesale price. During the investigation, evidence to support the case was seized in a dawn raid.

- Complaint before the TDLC against G.D. Searle (Pfizer's subsidiarie) of abuse of dominant position

  The FNE started an investigation in 2015 regarding exclusionary practices executed by GD Searle. More specifically, GD Searle restricted market entry by artificially extending the first patent of Celecoxib (main active ingredient of Pfizer's drug Celebra) using "product hopping", a practice which aims to extend the exclusive rights to a commercial drug by making non-clinical changes to its makeup and applying for a new patent (second patent). During the application for the second patent, the defendant also omitted to submit relevant background to the IP Agency in Chile, which would be considered as reason for declaring the second patent obtained, as invalid. Consequently, GD Searle achieved to extent the patent protection until 2029.

  The investigation found evidence that GD Searle adopted an exclusionary strategy towards its rivals once it obtained the second patent by sending warning letters and calling drug company executives to remind them of the patent. Furthermore, GD Searle sued generic drug maker

Synthon Chile in civil court for patent infringement and unfair competition, in a case that is still ongoing.

Medicines produced with Celecoxib are used as anti-inflammatory and anti-rheumatic in the treatment of different diseases, as rheumatoid arthritis and the management of acute and chronic pain in adults. Celebra is one of the most selling drugs in Chile, and its sales represent a large porcentage of Pfizer's sales in Chile (aproximately US$20 million per year). The FNE requested the application of maximun fine permitted by law for abuse of dominance conducts, considering the relevance of the medicine and the impact on the health market in Chile.

As it was said before, the probationary period is taking place, and the judicial process is expected to continue during 2016.

- Complaint before the TDLC against two pharmaceutical companies (Biosano and Fresenius Kabi Chile/Sanderson) for rigging bids in public tenders for the procurement of ampoules

  The FNE launched an investigation in 2012 after suspected violations were referred by other public agencies. During the investigation, evidence to support the case was seized in several dawn raids and wiretapping. Also, one of the accused companies applied to leniency.

  Biosano is a local pharmaceutical company with experience in the local market for injectable drugs. Fresenius Kabi Chile and Sanderson are local subsidiaries of Fresenius, a global healthcare company based in Germany. The accused companies are the only local producers of ampoules.

  The two pharmaceutical companies allocated tenders by agreeing on a reference price of their offers. This mechanism allowed them, for at least 10 years, to decide beforehand who would win drug-supply contracts, for which they would otherwise have competed. These tenders were called by the National Public Health Procurement Office (CENABAST).

  The FNE requested fines of USD$16,7 million for Sanderson, and USD$1,9 million for Fresenius Kabi. Meanwhile, no fines were requested for Biosano, the leniency applicant. Currently, the process is still ongoing before the TDLC.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

32. In the period between August 2015 and August 2016, three merger submissions were filed before the TDLC, and nineteen merger investigations had been initiated by the FNE. Considering the FNE's investigations, eight of them were started *ex officio*, two were triggered by a previous report of third parties, and nine were voluntarily notified by the merging parties.

33. It is noteworthy that the number of voluntary notified mergers increased with respect to the Annual Report 2015. Indeed, in 2015, only two mergers were voluntary notified, while in 2016, there were nine. It has to be said, this increase shows the major confidence of companies in the FNE's merger control analysis. Additionally, several international mergers are included within these nine mergers voluntarily notified; for example, the merger between Fedex and TNT Express N.V., the merger between NV Bekaert S.A. and Ontario Teacher's Pension Plan Board, and the acquisition of SABMiller PLC by Anheuser-Busch In Bev SA/VN.

34. Chile had a voluntary merger control regime until August 30, 2016, when the 2016 Legal Reform introduced a new mandatory regime for horizontal mergers applicable above certain thresholds. Nonetheless, there is a six month vacancy period for the complete implementation of the new regime. In the meantime, the voluntary regime will continue in force, as it was during the period informed in this Annual Report.

2.2.2 Summary of significant/ongoing cases

- General Electric and AB Electrolux

  In September 2015 the FNE signed a settlement regarding remedies agreed for the acquisition of the home appliances business of General Electric by AB Electrolux. According to the FNE, the operation would cause loss of rivalry due to the subsequent acquiring of minority interests of General Electric to Electrolux's competitor in the Chilean market, Mabe.

  The settlement which was cleared by the Competition Tribunal, included a Chinese wall between Mabe and Electrolux as well as a waiver of the statutory right to veto certain board decisions. Moreover, since the remedies would be applied beyond Chilean boundaries, the settlement included a monitoring trustee, who would aid the FNE in the task of monitoring the compliance with the commitments.

- Acquisition of Hotel Sheraton and San Cristobal by a private investment fund

  In October 2015, the FNE filed a non-adversarial proceeding before the TDLC so that the latter assessed the acquisition of Hotel Sheraton and San Cristóbal by a private investment fund which had previously acquired three other luxury hotels in Santiago. The TDLC approved the transaction without remedies.

- Dow Chemical Co. ("**Dow**") and DuPont Co. ("**DuPont**")

  An investigation was initiated by the FNE ex officio in December, 2015. This merger is currently being assessed in other jurisdictions, such as Australia, Brazil, United States, European Union, Canada, Japan, among others.

  Dow manufactures products based on technology which are presented in electronic, coverings, and agriculture markets. On the other hand, DuPont is the incumbent regarding products related to nutrition, agriculture, and industrial solutions. The two companies have presence in Chile in several markets: agricultural products, biotecnology, construction, electronic, communication, renewable energy, infraestructure, nutrition, gas, petrol, among others.

  The investigation is still ongoing, and it is expected to continue during the whole 2016.

- Joint Bussiness Agreements between Bristish Airways PLC, Iberia Líneas Aéreas de España S.A. and LATAM Airlines Group S.A., and Joint Venture between American Airlines, Inc. and LATAM Airlines Group S.A.

  In January 2016, two Joint Business Agreements ("JBAs") were voluntarily notified to the FNE, and two investigations were initiated with the purpose of analysing risks, efficiencies and potential mitigation measures, as normally it is done in merger control. It is noteworthy that each JBA will include the common organization of principal functions and decisions of the parties, as

fare/price, frequency, capacity, and type of plane which will be used. Also, there will be distribution of revenues between the parties of the JBAs.

The JBA between British Airways, Iberia and LATAM includes Europe-South America routes, and intermediate and connecting routes between them; this JBA is being assessed by the European Commission. Also, the JBA between American Airlines and LATAM includes North America-South America routes, and intermediate and connecting routes between them. The US Department of Transport in the United States granted antitrust immunity to the JBAs executed with American Airlines, Inc. Finally, the Brazilian Competition Authority (CADE) is also analysing these agreements.

In August 5, 2016, a trade association of Chilean tourism companies ("ACHET") submitted a consultation (non-adversarial proceeding) before the TDLC regarding both JBAs. The FNE will inform within that proceeding; the FNE's investigations are still ongoing, since the data and information collected on them will be useful for preparing the report. The deadline to submit this report expires in October 2016. The proceeding before the TDLC is still ongoing.

3. The role of competition authorities in the formulation and implementation of other policies,

35. In February, 2015, the FNE requested the TDLC to assess the regulation concerning the Law on Stock Markets and make recommendations to boost competition. It is noteworthy that the TDLC can issue recommendations to the President of Chile, suggesting to amend a law or administrative regulation where they violate competition.

36. The TDLC's recommendation addressed the main concerns submitted by the FNE. In particular, the TDLC recommended: (i) an obligatory system of inter-connection, with binding and automatic match between the Chilean stock exchange entities; (ii) to impose a 10% cap regarding the ownership of the stock exchange entities; and (iii) that the requirements applicable to stock brokers –that do not hold shares of the stock erxchange- are transparent, objetive, and non-discriminatory so they do not entail a barrier to entry to acty as broker.

4. Resources of competition authorities

4.1 Resources overall:

4.1.1 Annual budget:

37. The annual budget assigned to the FNE is shown in the table below:

Year	Chilean Pesos	USD
2012	4,220,158,000	6,403,882
2013	4,507,826,000	6,840,404
2014*	4,675,937,000	7,095,504
2015	7,070,663,000	10,729,382
2016	5,816,708,000	8,826,568

*Includes only operational budget. The total budget for 2014 is around USD 11,237,281 and includes the change of headquarters of the FNE.

38. The annual budget assigned to the TDLC is shown in the table below:

Year	Chilean Pesos	USD
2013	1,228,933,000	1,864,845
2014*	1,434,228,420	2,176,371
2015	1,729,560,000	2,624,522
2016	1,795,283,000	2,724,253

*Includes only operational budget. The total budget for 2014 is around USD 3,334,517 and includes the change of headquarters of the TDLC.

4.1.2 Number of employees (person-years):

FNE	2012	2013	2014	2015	2016
Economists	18	20	20	20	19
Lawyers	40	36	42	39	42
Other professionals	20	20	19	23	22
Support staff	13	14	15	10	11
All staff	91	90	96	92	94

TDLC	2014	2015	2016
Economists	6	6	6
Lawyers	8	8	9
Support staff	7	8	8
All staff	21	22	23

4.2 Human resources (person-years)

FNE	2013	2014	2015	2016
Enforcement against anticompetitive practices	36	45	33	33
Merger review and enforcement	9	8	11	13
Advocacy efforts	9	8	11	11
Litigation	13	12	18	18

TDLC	Staff members + judges
2013	21
2014	21
2015	22
2016	23

4.3 Period covered by the above information:

39. The budget for the FNE refers to the period of January to December of each year. Staff as of January of each year.

40. The budget for the TDLC refers to the period of January to December of each year. Staff as of January 1st of each year.

5. Summaries of or references to new reports and studies on competition policy issues

5.1 Study regarding Licensing of Intellectual Property and Extension for Delays of the Industrial Property Agency in Chile, and its effects on competition law

41. In January, 2016, the FNE issued a report cuestioning the granting of Licenses Term Extension for administrative delays regarding, at least, twelve drugs belonging to nine Pharmaceutical companies.

42. In 2007, the Intellectual Property regime in Chile was modified by introducing the License Term Extension for administrative delays. Previously, in 2005, the protection period given for a patent had been modified: from 15 years since the registration's date was granted to 20 years since the date of the submission of the patent's application. Naturally, the License Term Extension for administrative delays should be applied only to those patents guarantee since the date of the submission. However, as the 2007 legal modification was not clear about the exclusive application of the new regime, several licenses have been improperly extended. Indeed, the FNE identified twelve medications marketed by nine Pharmaceutical companies in this situation. Among these medications were found *Xarelto* (Bayer), Zyvox (Pfizer) y *Sandostatin* (Novartis). After the improper License Term Extension granted, the initial license

protection of 15 or 20 years, depending on the protection regime, was extended to 25,5 years on average, establising a barrier to entry.

43. The FNE stated that a special interpretative law was needed, where the application of the Intellectual Property License Term Extension for administrative delays would be specified.

5.2 Compilation of FNE's investigations regarding competition law issues in the Chilean health market between 2013 and 2016

44. In February, 2016, the FNE issued a document including actions and investigations regarding the health market conducted by the FNE between 2013 and 2016. The document contains a description of diverse issues regarding supply and financing of health benefits, services and interventions, as well as the production, distribution and dispensing of medicines and health products. The Annexes of this document contain a summary of every action and investigation of the analysed period.

45. The FNE reiterated recommendations previously made in various investigations and studies: a) Private Health Insurance Companies should maintain private heatlh care schemes under equivalent conditions to all health care institution regardless of their ownership, specially if these Private Heatlh Insurance Companies have an interest on some of them (vertical integration); b) CENABAST should improve public bidding conditions for acquiring medicines and health products for the Public Health System in order to avoid discrimination among proponents; and, c) the implementation to promote the dispensing of OTC (over the counter) medicines in retailers and pharmacies shelves to promote and sell more generic drugs.