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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Chile

-- 2017 --

27-28 November 2018

This report is submitted by Chile to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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1. Executive Summary

1. This report summarizes recent developments in competition law, policy and enforcement in Chile. It also briefly refers to the main precedents related to competition law enforcement, to competition advocacy activities as well as other developments that occurred during 2017.

2. The Fiscalía Nacional Económica (hereinafter, “the FNE”) is an independent government competition agency whose main roles are to detect, investigate and bring cases against antitrust violations, to issue technical reports and studies, and to undertake competition advocacy. From 2016, is responsible for the preventive mergers control. The Tribunal de Defensa de la Libre Competencia (hereinafter, “the Competition Tribunal”, or “the TDLC”) is the independent judicial body with exclusive and excluding jurisdiction to decide antitrust claims, including the resolution of adversarial matters (e.g., complaints brought by the FNE or private parties regarding collusion and abuse of dominance) as well as non-adversarial matters. Decisions and resolutions issued by the TDLC can be challenged before the Supreme Court. The competition law is Decree Law No. 211 and its subsequent modifications.

3. During the period covered by this report, important enforcement matters were resolved, and new ones initiated.

4. On cartels, the Competition Tribunal issued its judgment on the tissue cartel case in December 2017. In a unanimous ruling, the Tribunal declared that the two accused companies celebrated and executed an agreement with the objective to assign market shares between them and fix prices of their products since 2000 until, at least, 2011, affecting the wholesale commercialization of toilet paper, paper napkins, tissues and other related products, in the supermarket channel. Both companies obtained benefits from the leniency programme and thus, one was exempted from the fine payment and the other one obtained a reduction of 30% (fined with USD 17,100,000 aprox).

5. Regarding new cases, the FNE filed a complaint before the TDLC accusing two laboratories of colluding, agreeing on a mechanism to allocate contracts in two specific public bidding processes. The FNE also filed a complaint before the TDLC accusing 111 surgeons and the trade association in which they participate for fixing prices for surgeries and medical appointments. Both cases are still pending before the TDLC.

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

2.1. Summary of new legal provisions of competition law and related legislation

6. Since the last legal reform (Law 20.945), which was enacted in August 2016 and explained in detail in the previous annual report, there are no new legal provisions on the competition law system in Chile.

2.2. Other relevant measures, including new guidelines

7. In May, the TDLC published a judicial provision that sets a formal guidance regarding access to file and confidentiality for information contained therein. According to this provision, in order to claim confidentiality, the parties in a trial have to fulfill four requirements: (i) indicate the nature of the information that should be protected; (ii)

point out the titleholder of that information; (iii) indicate the specific part of the document that contains the information that should be protected; and (iv) give the factual, legal and economic arguments that support the confidentiality claim. For the latter requirement, the provision presumes the confidentiality of some information such as costs and margins provided that it is five years old.

8. Also, during this year, the FNE published five relevant guidelines. Three, published in June of 2017, are related to the new merger regime. These guidelines, named “Remedies Guidelines”, “Competition Guidelines” and “Threshold Guidelines” refer to relevant areas of the merger system and are vital public information of how the system works, giving private entities certainty about how the agency will evaluate mergers. These guidelines were published, after a public consultation procedure, where comments were received from various experts including local law firms, the Chilean Bar Association (*Colegio de Abogados*), the American Bar Association, the International Bar Association, and the Federal Trade Commission.

9. The other two guidelines relate to cartels and market studies. In regards to cartels, in March 2017, the agency published a new version of the leniency guidelines, in Spanish and in English, whereas in relation to market studies, the guideline which explains what market studies are and how they are conducted was published in May 2017.

2.3. Government proposals for new legislation

10. In addition to Law 20.945, no other proposals have been submitted to the National Congress during 2017 or 2018.

3. Enforcement of competition laws and policies

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

3.1.1. Summary of activities of:

FNE

11. Please note that the activities mentioned in this Section are explained in more detail *infra* in Section 2.1.2.

Intravenous drug cartel

12. On July 7, 2017, the FNE filed a complaint against two pharma companies - Baxter and Sanderson- accusing them of operating a cartel with the purpose of rigging bids by agreeing on a reference price in their bids. The cartel was formed for two particular tenders. The FNE requested fines for USD\$ 340,000 approximately. The judicial process is still ongoing.

Breach of extrajudicial agreement

13. On September 9, 2017, the FNE filed a complaint to the TDLC against the companies of storage and management of physical files, Storbox S.A. and Iron Mountain Chile S.A. for having breached an extrajudicial agreement signed with the FNE in March 2013 to end an investigation initiated by the FNE regarding certain contractual practices

executed by them that, in the opinion of this agency, created restrictions in competition. The FNE requested fines for USD\$ 920.000 approximately. The judicial process ended on May 10, 2018 with a settlement agreement that forces the parties to pay USD\$ 350.000 approximately.

Competition Tribunal

14. During the period covered by this report, 23 new adversarial cases were initiated before the TDLC. Eight cases were related to unilateral conduct, one referred to infringement of remedies previously settled with the FNE, eight referred to Public Administration acts that undermine competition, three referred to collusion and the remaining three referred to unfair competition. Moreover, one settlement was reached between the FNE and the defendants during ongoing trials.

15. The TDLC issued five decisions or rulings in adversarial cases during the period covered by this report. These cases stem from claims filed by the FNE, as well as from complaints filed by private parties. Four of these five rulings acquitted the defendants. The average length of these proceedings was 785 days.

16. Four out of the five decisions were challenged before the Supreme Court and they are still under review.

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

Abuse of a dominant position and infringement of remedies previously imposed by the Supreme Court – telecom (Ruling No. 156/2017):

18. The Competition Tribunal dismissed the lawsuit filed by three Mobile Virtual Network Operator (“MVNOs”) against incumbent mobile operators telecommunication companies -Claro Chile S.A (“Claro”), Entel PCS Telecomunicaciones S.A (“Entel”) and Telefónica Móviles Chile S.A. (“Telefónica”). The MVNOs alleged that the defendants had abused their dominant position by margin squeeze, price discrimination and refusal to supply and further, they had infringed a remedy previously imposed to them by a decision issued by the Supreme Court. In particular, this remedy entailed that the incumbent mobile operators granted open access to their mobile network to MVNOs, on the basis of general, uniform and non-discriminatory criteria.

19. The Tribunal concluded that, according to the evidence rendered during the trial: (i) the defendants had complied with the remedy by offering wholesale access to the MVNOs; (ii) refusal to supply could not be demonstrated because the conditions were not fulfilled; (iii) wholesale access granted to MVNOs did allow entry to the market by efficient competitors and thereby, margin squeeze was ruled out, and; (iv) the terms and conditions contained in the wholesale access were not discriminatory.

Tissue cartel (Ruling No. 160/2017):

20. The Competition Tribunal accepted an FNE complaint against two companies that participate in the tissue market: CMPC Tissue and SCA. Both companies obtained leniency benefits, being CMPC exempted from the fine whereas SCA obtained a reduction of 30%. The decision established that these companies celebrated and executed an agreement aimed to assign market shares between them and fix prices of their products since 2000 until, at least, 2011, affecting the wholesale commercialization of toilet paper, paper napkins, tissues and other related products, in the supermarket channel in Chile.

21. The Competition Tribunal imposed the maximum fine asked by FNE against SCA, of USD 17,100,000 aprox. On the other hand, it was not proved that CMPC Tissue coerced SCA to participate in the agreement, so it was exempted from the fine payment, in accordance to the leniency benefit. In addition it was ordered that both companies implement an antitrust compliance program.

22. Regarding the standard of proof, there the judgment provided a divided opinion: the majority stated that for collusion, the conduct shall be demonstrated in conclusive and clear terms (standard previously acknowledged by the Supreme Court). In contrast, the minority stated that cartels shall accomplish a balance of probabilities standard, the one applied in civil matters.

Supreme Court

Postal Service Monopoly

23. In June, 2016, the Competition Tribunal dismissed a lawsuit filed by a private postal services company (WSP Servicios Postales S.A.) against the Public Health's Superintendency. In particular, the TDLC concluded that the Superintendency did not infringe the antitrust law when it gave the handling of certified mail –premium service- to the state-owned enterprise “Correos de Chile”. The TDLC argued that the legislator gave the monopoly of the certificate mail to Correos de Chile. The Supreme Court revoked the TDLC decision in October 2017 and established that the entry of other competitors is not forbidden in this market.

3.1.2. Description of significant cases, including those with international implications

24. Please refer to section 2.1.

3.2. Mergers and acquisitions

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

25. The new regime that includes mandatory merger control notification started operating in June 2017. Previously, notifications to the FNE were voluntary. Taking the aforementioned into account, the FNE received 29 merger notifications between the 1st of June and the 31st of December of 2017, and 3 merger filings where received under the voluntary procedure between the 1st of January and the 31st of May of 2017. During this period, 29 mergers were cleared without remedies and 3 with.

3.2.2. Summary of significant/ongoing cases

Merger of BSA with Holcim Chile

26. The case involved the acquisition by Hormigones Bicentenario S.A. (BSA), a cement and concrete company (the fourth in the Chilean market), of the controlling interest of HolChile S.A. (part of the HolcimLafarge group) in Polpaico S.A., the largest actor in the cement and concrete market in Chile. After various rounds of negotiation the agency agreed with the parties, on May 30 of 2017, a series of structural and behavioural remedies in order to approve the merger. These remedies included the divestiture of seven

concrete plants and that their operation is managed and monitored by a trustee. The agreement was approved by the TDLC on June 29 of 2017.

Merger of AT&T with Time Warner

27. In Chile, this transaction originated a vertical agreement between the wholesale provision of pay-TV channels by Time Warner, as a content provider, and the retail provision of pay-TV services by AT&T. The FNE detected serious risks for competition in this market and the merging parties proposed remedies designed to safeguard the confidentiality of sensitive information and an arbitration mechanism to resolve controversies. Finally, the merger was approved on September 4, 2017, 3 months after the FNE received the mandatory notification.

Merger of Dow Chemical Co. and E.I. Du Pont de Nemours and Company

28. This merger of companies that participate in the production and commercialization of chemical products in the agricultural, hydrocarbons and ethylene derivatives sector was cleared with remedies on July 14, 2017. The FNE found serious risks for competition in this market and the parties offered structural remedies, specifically, divestments such as the sale of assets, business units and production facilities.

4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

4.1. FNE

4.1.1. Baby food regulatory recommendation

29. An investigation started on the baby food market and found that an old health regulation, which established the nutritional content of this kind of food, was creating a virtual monopoly for Nestle. Most international producers of baby food have set formulas and usually do not adjust them unless the market is significant in size. This nutritional regulation established in Chile was very outdated and thus most producers were not complying with it, except for Nestle, which was the virtual monopolist in Chile with 95% of the market, and was willing to change its international formula for this market. This created a problem in the local market, as prices were high in relation to comparable markets which had more competition. The FNE thus recommended to the Administration to review and change the regulation and thereby, allow more competition in the market.

4.2. TDLC

4.2.1. Recommendation to improve regulation regarding payment card market

30. The Competition Tribunal issued a recommendation addressed to the President of the Republic, in order to improve the regulation related to the payment market through debit or credit cards. The Recommendation encompasses the interchange fee, prohibition of the NAWI rule (no acquiring without issuing), prohibition for banks issuing cards to act as acquiring and further, the TDLC recommended to amend the regulation and approach it from the cards network perspective instead of cards issuers' view, differentiating the acquiring and issuance services from the operation.

The Chilean Treasury submitted an opinion regarding the Recommendation and is willing to enhance the regulation. Actually, the Central Bank of Chile in 2017 amended some technical regulation with respect to the financial market and specifically, related to the operation of credit cards (*sección J, compendio de normas financieras*).

5. Resources of competition authorities

5.1. The FNE:

5.1.1. Resources overall (current numbers and change over previous year):

Annual budget (in your currency and USD):

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

Table 1.

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
2017	6,575,860,000	9,813,544

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

Note: Change USD 18/10/2018: 670,08 (Banco Central de Chile)

Number of employees (person-years):

Table 2.

Staff	2012	2013	2014	2015	2016	2017
Economists	18	20	20	20	19	31
Lawyers	40	36	42	39	42	47
Other professionals	20	20	19	23	22	21
Support staff	13	14	15	10	11	13
All staff	91	90	96	92	94	112

Human resources (person-years) applied to:

Table 3.

	2013	2014	2015	2016	2017
Enforcement against anticompetitive practices	36	45	33	33	39
Merger review and enforcement	9	8	11	13	22
Advocacy efforts	9	8	11	11	13
Litigation	13	12	18	18	15

Period covered by the above information:

32. The budget for the FNE refers to the period of January to December of each year. Staff as of January of each year, except for 2017 at December.

5.2. TDLC

5.2.1. Resources overall (current numbers and changes over the previous year):

Annual budget (in your currency and US\$)

Table 4.

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
2017	1,849,141,000	2,759,582

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

Number of members (including staff members + judges)

Table 5.

	Staff members + judges
2013	21
2014	21
2015	22
2016	23
2017	23

Informing separately for each year:

Table 6.

	2014	2015	2016	2017
Economists	6	6	6	6
Lawyers	8	8	9	9
Support staff	7	8	8	8
All staff	21	22	23	23

Period covered by the above information:

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

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

34. The power of the FNE to develop market studies was granted in 2016 in the last amendment of the Competition Act and a specific market studies division of the FNE was created in 2017.

35. In other advocacy actions, on December 2017, during the celebration of the competition day, the FNE published a book that collects the most relevant law reports that the institution has requested since 2010. Under the title "Reflections on Competition Law", 21 documents were gathered, with the aim of promoting the debate on these matters. Also, along with the launch of its new website, the FNE released three animated videos that detail the most relevant aspects of the new merger control procedure, the leniency program and what are the abuse of dominance or monopolisation practices.