

Unclassified

DAF/COMP/LACF(2014)10

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

27-Aug-2014

English - Or. English

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

LATIN AMERICAN COMPETITION FORUM

Session III - Advocacy: Mainstreaming competition policy into the overall economic policy and government actions in Latin American and the Caribbean

-- Contribution from Chile (TDLC) --

16-17 September 2014, Montevideo, Uruguay

The attached document from Chile (TDLC) is circulated to the Latin American Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 16-17 September 2014 in Uruguay.

Contact: Mario Umaña, Senior Trade and Competition Specialist, Inter-American Development Bank
Tel: +1 (202) 623-3256; Email: mariou@iadb.org.

JT03361346

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/LACF(2014)10
Unclassified

English - Or. English

LATIN AMERICAN COMPETITION FORUM



16-17 September 2014 • Montevideo • Uruguay

Session III - Advocacy: Mainstreaming competition policy into the overall economic policy and government actions in Latin American and the Caribbean

INCORPORATING THE FREE MARKET PERSPECTIVE INTO ECONOMIC POLICY AND GOVERNMENT ACTIONS. THE CASE OF CHILE

-- CONTRIBUTION FROM CHILE (TDLC*) --

1. Competition policy has acquired increasing importance in the design and development of public economic policies in Chile over the past 20 years. To begin with, refinement of the Competition Law (Decree with force of Law N° 211) has been a significant objective in the political programs of presidential candidates in recent elections. This was reflected in legal reforms in 2003 and 2009, which led to substantial transformations in Chile's institutional system and granted a series of powers to the competition defense body—la National Economic Attorney (*Fiscalía Nacional Económica, FNE*)—to enable it to prosecute and investigate cases of economic collusion.

2. In addition, the strengthening of competition policy took on new significance at the end of 2011 with the creation of a Presidential Commission of Experts, designated by the then President, which analysed those areas still susceptible to improvement. Currently the government of President Michelle Bachelet is drawing up a bill that will incorporate the key conclusions of the final report prepared by this Commission in order to further amend legislation in the area of monitoring economic concentration operations and sanctions for cartels.

3. Meanwhile, competition policy has also made itself felt in other laws and economic regulations as a central pillar in the development of certain economic sectors. Thus for example the General Law on Telecommunications establishes that free and healthy competition among firms in the sector is key to the development of this industry. Similarly, the General Law on Ports obliges state port companies to consult the Court for the Protection of Free Competition (*Tribunal de Defensa de la Libre Competencia, TDLC*) regarding the bidding rules for the berthing facilities they wish to lease to third parties, in order for it to issue a report setting out the competitive conditions to be followed by the tender process. Likewise, the

* Tribunal de Defensa de la Libre Competencia (Competition Tribunal).

Law on Industrial Property assigns a key role to the TDLC by conferring it jurisdiction to decide cases of non-voluntary granting of patent licenses.

4. Notwithstanding the above, promotion of the benefits of the competition policy in public economic policies is still not a clearly-identifiable priority for the free market authorities.

5. Part of the above may be explained by the lack of explicit legal recognition of the function of promoting the policy of competition. Following the 2003 reform the promotion of free competition was explicitly established as a function to be carried out by both the FNE and TDLC. Regardless of this, both institutions were already engaged in activities to promote competition and possessed certain powers in this area. In the case of the Court, it was also conferred the power of proposing to the president, by way of the corresponding minister, the amendment or repeal of such legislation or regulations as it believed to run contrary to free competition, as well as to issue legal or regulatory provisions when considered necessary to foster competition or regulate the pursuance of certain economic activities that are provided in non-competitive conditions.

6. In this context, it may be noted that in recent years and in an embryonic and unsystematic way, both the FNE and the TDLC have been focusing part of their efforts on developing this work to promote the policy of competition, with some significant contributions in certain areas.

7. In the case of the TDLC, the contribution to promoting the policy of competition in different economic policies has been directly achieved (i) through exercise of the power described in point 5; (ii) by issuing general guidelines, and; (iii) by incorporating recommendations, preventative guidance and conditions into the rulings and resolutions issued by the Court in the contentious and non-contentious cases it is asked to hear.

8. Despite the power it was granted in 2003 to propose to the president, by way of the corresponding minister, the promulgation, amendment or repeal of legislation or regulation to foster free competition, the TDLC has only begun to make more frequent use of this power in recent years. To date it has opened 10 cases with recommendations in this field, and has drawn up 14 recommendations for the executive in a number of areas.

9. One of the most significant experiences has been in relation to the fishing industry, concerning the system for accessing fishing resources. In this case, the TDLC concluded that in order to achieve a market balance that is compatible with efficient allocation of fishing resources, it was essential to maintain and refine an efficient system of individual catch quotas as a proportion of a maximum total catch, assuming the overall quota is established at a level below the available yield estimated by economic agents. Analysing the existing regulations, it determined that there remained distortions in relation to the productive efficiency of the fishing industry that affected free competition, such as the transaction costs relating to exchanges of ownership and the use of fishing quotas which, in the Court's opinion, tended to lead to losses in productive efficiency. In this way it proposed and recommended a series of regulatory amendments to improve the operation of the fishing quota exchange market.

10. Another significant case concerned the provision of telecommunications services to properties subject to joint ownership. A key component in the problems of competition faced by owners of apartment buildings or housing blocks seeking to change telecommunications service providers lay in a series of property and municipal regulations that hindered competition between telecommunications firms once the building had been constructed. The efforts of the Court in this case focused on identifying these regulatory hurdles, and proposing changes that allow or facilitate competition in each condominium.

11. Currently, the Court is directing its attention to possible recommendations in the markets relating to inventory credit, LPG tanks, use of subterranean infrastructure and the acquisition of means of payment services platform. It is worth noting that in the latter two cases the initiative to examine possible legal or regulatory reforms emerged from the Court itself, demonstrating a growing awareness of including competition policy among its priorities.

12. However, it should be noted that these recommendations—as their name implies—are not binding on the government. The successful cases of the Fishing Law and the problems relating to telecommunications in apartment buildings arose in very specific circumstances, since in both cases there were legislative processes underway that facilitated the incorporation of the Court's recommendations. The probability of the government taking into account future recommendations of the Court to improve competition in different markets will depend on a number of factors, including the public awareness and significance of the issue, its urgency, the actions taken by interest groups in favor of or against the recommendation, and, of course, the representations made by the FNE to the government.

13. In addition to this power to issue regulatory recommendations, the TDLC possesses an important tool for fostering free competition in markets by issuing general guidelines. These are actual regulations for general application that are directly applied and should be followed by all economic agents participating in the market in question.

14. Thus, in the markets for the collection, transport and disposal of solid domestic waste, the TDLC issued a general guideline aimed at regulating how municipal authorities carry out the tender process in order to allocate this service as competitively as possible. The interesting thing about this initiative is that the principles that emerged from these guidelines have subsequently been applied to other tender processes.

15. Likewise, the TDLC issued general guidelines for the retail market of mobile phone plans— both prepaid and postpaid. The Court warned of risks to free competition arising from the difference in tariffs imposed by mobile phone companies depending on the destination network of calls; that is, calls that were directed to the same network (“on-net”) and calls that are directed to another operator's network (“off-net”). In particular, the difference between on-net and off-net tariffs was much higher than the interconnection charge—established by the regulator—and had no basis in economic efficiency. The TDLC concluded that this price difference has the effect of excluding and hindering the development of competitors, and tends to increase the market power of established companies. In order to mitigate these effects, the Court set out guidelines preventing mobile phone companies from selling plans with differing prices for on-net and off-net calls, or from providing a different number of minutes (in the case of minute-based plans) depending on whether they are used for calls to the same or a different network.

16. Finally, the Competition Law empowers the TDLC to issue preventative, corrective or prohibitive measures in relation to the contentious cases it hears, and to establish conditions in non-contentious cases. Regardless of the fact that the recipients of the rulings and judgments are party to a given case and not the executive or legislative power, the preventative, corrective or prohibitive measures and the conditions are frequently aimed at fostering competition or regulating the pursuance of certain economic activities that are provided in non-competitive conditions.

17. In short, although the TDLC has no defined policy for encouraging the incorporation of the free market perspective into different public policies, this not being one of its purposes, it is possible to observe a series of contributions made in this regard, both directly and indirectly, which have led to improvements in the conditions of competition in various sectors of Chile's economy.