



**Asia-Pacific  
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## **Recent Developments of Competition Policy and Law in Chile**

Purpose: Information  
Submitted by: Chile



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# RECENT DEVELOPMENTS OF COMPETITION POLICY AND LAW IN CHILE

FISCALIA  
NACIONAL  
ECONOMICA



JORGE GRUNBERG  
LITIGATION DIVISION  
FISCALÍA NACIONAL ECONÓMICA

JAKARTA, FEBRUARY 4, 2013

FISCALIA  
NACIONAL  
ECONOMICA

# INSTITUTIONAL STRUCTURE

## INSTITUTIONAL STRUCTURE

**1. FISCALÍA NACIONAL ECONÓMICA** (National Economic Prosecution Office or FNE): Independent competition agency whose main role is to detect, investigate and bring cases against antitrust violations, produce technical reports, and develop activities advocating competition.

**2. TRIBUNAL DE DEFENSA DE LA LIBRE COMPETENCIA** (Competition Tribunal or TDLC): Independent judicial body. It has exclusive jurisdiction in matters of antitrust law, and resolves adversarial matters (e.g., FNE's complaints and complaints filed by private parties) as well as non-adversarial matters (e.g., consultations in the context of pre-emptive merger control).

**3. SUPREME COURT:** Decisions issued by the Competition Tribunal can be challenged before the Supreme Court.



## CHANGES TO COMPETITION LAW & POLICY

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- No legal provisions were enacted during last year.
- Presidential Commission on Competition Law and Policy – Report (July 2012) recommended amendments on sanctions, leniency, and merger control.
- FNE Advocacy Material on Competition and the Public Sector (June 2012).
- FNE Advocacy Material on Compliance Programs (June 2012).
- New FNE Merger Guidelines (October 2012).



## ENFORCEMENT OF COMPETITION LAW AND POLICY



# 1. ENFORCEMENT OF CARTEL REGULATIONS

## 1. ENFORCEMENT OF CARTEL REGULATIONS

- **The Pharmacy Case:** A landmark in the enforcement of cartel regulations.
  - Record of fines imposed against defendants in a cartel case: US\$ 20 million against each defendant that was found liable.
  - Triggered deep changes in cartel regulation (information-gathering powers and leniency program were adopted) and competition culture.
  - In September 2012, the Supreme Court affirmed TDLC's decision of January 2012.

## 1. ENFORCEMENT OF CARTEL REGULATIONS

- **The Poultry Case:** Largest cartel case in history.
  - December 2011, first time that the FNE files a complaint based on evidence gathered through raids and seizures, powers provided by the 2009 amendment to the Competition Act.
  - The FNE has requested fines for US\$ 30 million against each producer and US\$ 20 million against the Trade Association, besides the dissolution of the latter.
  - Complex litigation before specialized and non-specialized courts.
  - The case is currently pending before the TDLC.

## 1. ENFORCEMENT OF CARTEL REGULATIONS

- **The Compressors Case:** Enforcing the leniency program, international co-operation, and confirmation of the effects-based doctrine.
  - First time that the leniency program was used.
  - In June 2012, the TDLC found the defendants liable, and fined Whirlpool in US\$ 10 million. Tecumseh do Brasil Ltda. was exempted from fines.
  - The case is currently pending before the Supreme Court.



## 2. ENFORCEMENT OF MERGER REGULATIONS

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- **The LAN/TAM Merger:** Enforcement of Merger Regulations in the context of an international transaction.
  - Prevalence of efficiencies over unilateral and coordination risks.
  - In September 2011, the TDLC cleared the merger with several structural and behavioral remedies.
  - In April 2012, the Supreme Court dismissed the challenges against the TDLC's decision, and acknowledged that the TDLC has broad powers to impose remedies in the context of merger review.

## 2. ENFORCEMENT OF MERGER REGULATIONS

- **The Cinemundo/Hoyts Merger:** The FNE challenged a closed merger for the first time.
  - In June 2012, the FNE filed a complaint and requested fines and divestitures.
  - The FNE developed the case based on the substantive standards contemplated in the New Merger Guidelines of 2012.
  - In January 2013, the TDLC approved a settlement between the FNE and defendants – Cinemundo/Hoyts committed to divest cinemas complex in markets affected by the transaction.

## Creating a Competition Culture



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