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AMENDMENTS TO CHILEAN DECREE WITH FORCE OF LAW NO. 211

The Law Decree No. 211 was amended on August 30th, 2016 by Law 20,945 (the "New Law"). The following are the main amendments:

1. **Amendments on collusion**

The New Law amends the **crime of collusion** introducing the per se standard to punish hard core cartels, providing evidence of the existence of an agreement being sufficient, independently of the power of the parties in the market and the anti-competitive effects.Another innovation of the New Law is the **criminalization of collusion** punished with imprisonment that may range from three years and one day to 10 years. In the event alternative punishment may apply, it can only be requested after the convict has been imprisoned for one year.Also, **additional penalties are imposed for collusion** : **(i)** Absolute temporal disqualification of seven years and one day to 10 years to act as a director or manager in an openly-held corporation or in a corporation subject to special regulations, a State-owned company or one in which the State has an interest in, or in a trade or professional union; and **(ii)** Prohibition to enter into any type of agreement with State bodies, as well as the prohibition to be awarded any concession of the State, up to a five-year term.

Pursuant to the **leniency** , the New Law introduced criminal liability exemption for the crime of collusion to individuals who have first provided background information to the National Economic Prosecutor ("FNE" for its acronym in Spanish which stands for Fiscalía Nacional Económica). Those who provide information at a later time will be awarded a reduced punishment and will be able to access an alternative punishment without having to effectively comply with the one-year imprisonment penalty.

2. **Mandatory and ex-ante controls for concentration operations**

Concentration operations may be performed by merger, acquisition of rights that allow, either individually or collectively, to decisively influence the management of another company, any type of

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association and the acquisition of control on the assets of another company in any way. In these cases, notice shall be given to the FNE on the concentration operations where: **(i)** the total sales in Chile by economic agents that intend to concentrate are equal to or higher than the threshold established by the FNE, and **(ii)** sales which have individually been performed in Chile by at least two of the economic agents that intend to concentrate the market are equal to or higher than the threshold established by the FNE.After the operation has been informed, it cannot be closed until its timely approval by the FNE or the Antitrust Court ("TDLC" for its acronym in Spanish which stands for Tribunal de Defensa de la Libre Competencia). FNE may assess the operation within a 30-day term, when it must adopt one of the following decisions: **(i)** unconditionally approve the operation; **(ii)** approve the operation subject to the condition that all measures offered by the notifying party are complied with; or **(iii)** extend the investigation for another 90 days to gather more background information. If the FNE does not provide an answer within said term, the operation will be considered as approved. In the event the FNE decides to extend the investigation, it may: **(i)** unconditionally approve the operation; **(ii)** approve the operation subject to the condition that all measures offered by the notifying party are complied with; or **(iii)** prohibit the notified operation.Finally, a special remedy for revision may be filed before the TDLC in the event the FNE bans the operation, to which end the interested party shall have a 10-day term as of the resolution being notified.

3. **Crossed Ownerships and Interlocking**

The New Law adds as a new counter-competitive conduct that of simultaneous participation of persons in relevant executive posts or as board members in two or more competing companies (interlocking), provided the corporate group achieves annual revenues that exceed UF 100,000 (approximately USD4 million) over the prior calendar year and, 90 days having elapsed as of the end of the calendar year in which the foregoing threshold had been exceeded, such interlocking still remained in place.Likewise, the New Law incorporates the obligation of notifying the FNE, within 60 days, about the direct or indirect acquisition of more than 10% of a competing company's equity, whenever both the acquiring company and the acquired one record, separately, annual revenues on sales that exceed UF 100,000 (approximately USD4 million) over the prior calendar year.

4. **Increase in the Amounts of Fines**

The fines applied by the TDLC shall correspond to 30% of the breaching party's sales corresponding to the product line or services associated to the breach during the period for which it had taken place, or up to twice the economic benefit reported for the breach. If either the sales or the economic benefit cannot be determined, the TDLC may apply fines of up to 60,000 UTA (Unidad Tributaria Annual, Indexed Unit of Account (inflation-adjusted) used in Chile for tax and fine-application purposes. Current values may be found at: https://www.sii.cl/pagina/valores/utm/utm2016.htm).For the purposes of establishing the amount of the fine, the following shall be taken into consideration: **(i)** economic benefit that might have been attained on account of the breach, **(ii)** seriousness of the conduct, **(iii)** deterrent effect, **(iv)** whether or not there is reoccurrence (having been previously sentenced for counter-competitive behavior over the past 10 years), **(v)** economic ability of the breaching party, and **(vi)** collaboration rendered by the breaching party to the FNE before or during the inquiry.

5. **New Powers and Authorities of the FNE**

The New Law confers the FNE the following powers and authorities: **(i)** Filing criminal lawsuits; **(ii)** setting thresholds and being served/notified; **(iii)** performing studies on competitive evolution of the markets; **(iv)** recommending regulatory amendments; and **(v)** ensuring resolution compliance.

6. **Damages Compensation and Actions towards the Protection of General or Widespread Interest**

The damages compensation action applicable due to the passing by the TDLC of a final judgment may be filed before the TDLC itself. Likewise, it may be filed for pursuant to the procedure set forth in law No. 19,496 that Sets Forth Rules on the Protection of Consumer Rights for class actions before the TDLC, and in the face of breaches to said legal text.Damages compensation shall cover all damages caused during the period in which the breach had been in place.

7. **Sanctions for Those Hindering FNE Inquiries**

Those hindering FNE inquiries shall be subject to imprisonment in case of concealment of information or supply of false information in the context of an inquiry, and to fines in the event the parties under inquiry not to answer or only partially answer the information requests without any justification to such end.

8. **Exclusive Dedication and Incompatibilities of the TDLC Tribunal**

Members

TDLC have exclusive dedication, with the exception of scholarly work, to which they may destine up to 12 weekly hours.As for Deputy Justices, their post shall be incompatible with that of advisor or renderer of professional services in matters associated to free competition.