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ANTITRUST COURT AUTHORIZES ACQUISITION OF NUTRABIEN BY GRUPO BIMBO

Chilean court overturns block on Nutrabien deal

Julie Jackson

Chile's competition court has overruled a decision by the country's antitrust watchdog that would have blocked the proposed sale of confectionery company Nutrabien by food and beverage manufacturer Compañía de las Cervecerías Unidas.

The Tribunal for the Defence of Free Competition on 27 November voted three-to-two to grant a motion for special review, and conditionally approved the sale of Nutrabien to Mexican baked goods company Ideal, a subsidiary of Grupo Bimbo.

This was the specialist tribunal's first ruling to overturn a decision by the National Economic Prosecutor's Office since Chile's Competition Act was amended in June 2017. The new amendments include permitting parties to request a special review by the tribunal as a form of recourse when a transaction is blocked by the competition authority – which Compañía de las Cervecerías Unidas did in May.

The tribunal conditioned approval for the deal on setting maximum sales price levels for Nutrabien products for three years and maintaining current quality and innovation levels.

Judge Enrique Vergara Vial said in his order that the competition authority used a flawed methodology to conclude that the deal would significantly lower competition in Chile's food products market.

The agency's methodological report, which conducted an analysis that quantified the parties' market share in both the supermarket and small store markets, did not take into consideration different sale periods, Judge Vial said. His order noted that both of the surveys conducted by the competition watchdog were conducted from 28 November to 14 December and from 2 to 18 November 2017, which failed to consider the differing level of seasonal sales.

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Judges Eduardo Saavedra Parra and Javier Tapia Canales dissented from the order. They argued that the tribunal should not have granted review, because the new competition act states that the courts should not interfere with a decision by an administrative authority based on disagreement with the decision's substance.

The competition authority's decision to block the deal was legal and reasonable, the dissenting judges said.

In a statement on 27 November, the National Economic Prosecutor's Office defended its decision to block the deal with the arguments of the dissenters. It noted that Judges Parra and Canales found no evidence of any procedural impropriety by the agency.

Juan Cristobal Gumucio, a partner at Cariola Díez Pérez-Cotapos, told Latin Lawyer's sister publication Global Competition Review that the competition tribunal's judgment is very important "to define the scope of the special review recourse set out in the new legislation".

"The decision was split 3-2 and the ruling states that the [tribunal] is entitled to review the facts and apply the law in a similar fashion as if it were an appeal," Gumucio noted.

Carlos Mena Labarthe, a partner at Creel, García-Cuéllar, Aiza y Enriquez SC in Mexico, said: "It is an important precedent for Chile and the region because part of the analysis had to do with how much weight an authority can give to some polls it conducted to define the market power and possible harm."

The tribunal made a good decision that will help Bimbo grow in the region and further demonstrates that big is not necessarily bad, Mena Labarthe said. His firm has Bimbo as a client in other matters.

"It shows how a good tribunal can be specialised and knowledgeable enough to analyse the substance of the decision. We need more tribunals like that in the region," he said.

Compañía de las Cervecerías Unidas and Ideal Grupo Bimbo did not respond Global Competition Review's request for comment.

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