

BILLS TO ESTABLISH MAXIMUM PRICES FOR FOOD AND CONSTRUCTION MATERIALS FOR HOUSING IS PRESENTED IN CONGRESS

On May 25, deputies Karim Bianchi, Boris Barrera, Jaime Naranjo, Alexis Sepúlveda and Pedro Velásquez presented a bill that seeks to assign to the Chilean Competition Court (Tribunal de Defensa de la Libre Competencia – “TDLC”) the authority to set maximum consumer prices for food and housing repair related-products, in the event of a constitutional state of exception. Also, on May 26, Senators Carlos Bianchi, Loreto Carvajal and Álvaro Elizalde presented an almost identical project. Currently, both projects are in their first constitutional process before the specialized chambers of Congress.

According to the bills, these new laws are a response to the price increases in the cost of families’ basic needs during the Covid-19 pandemic. There has been an increase in the price of 51 of the 76 products that are considered basic needs, while in the last 12 months, local prices have registered an accumulated variation of 3.4%.

Specifically, both projects seek to incorporate within the attributions and duties of the TDLC the power to issue, after the constitutional state of exception of catastrophe due to public calamity has been declared, the general instructions necessary to set the maximum consumer prices of food, and materials for maintenance and housing repair, that are part of the National Statistics Agency (Instituto Nacional de Estadísticas) goods and services list.

Furthermore, on July 13, 2021, the Supreme Court issued reports on these bills. In particular, the highest Court makes a series of observations to both bills, which in general are related to a series of shortcomings both at the content and procedural level in the mentioned bills:

- The initiatives do not refer to any relationship between the price increase and anti-competitive practices or the presence of an imperfect market, so they are not consistent with the purposes of the

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

TDLC, which are, “to prevent, correct and punish attacks to the markets’ competition”.

Therefore, it would be an attribution that is not properly jurisdictional, but rather a matter of public policy, whose content should be established by law.

- On the other hand, it should be noted that from the economic regulation standpoint, setting maximum prices has been questioned, considering it may generate a shortage of the products subject to the measure.
- It is also noted that the bill does not refer to the other hypothesis of constitutional states of exception, nor to the application in specific territorial areas.
- Finally, it is observed that if a reform of this type is insisted upon, the proposal should also regulate a procedure for its enactment and appeal.

Authors: Lorena Pavic; José Pardo; Raimundo Gálvez