

CHILEAN COMPETITION AGENCY FILES FIRST INTERLOCKING LAWSUIT

On December 27, 2021, the Chilean Competition Agency, Fiscalía Nacional Económica (“FNE”), filed the first lawsuit with the Chilean Competition Court, Tribunal de Defensa de la Libre Competencia (“TDLC”), for an infringement of the horizontal interlocking prohibition established in Law Decree No. 211 of 1973 (“DL 211”).

Horizontal interlocking consists of the simultaneous participation of the same person in the positions of director or key executive in two or more competing companies, and it is prohibited in Chile as of the entry into force of article 3(d) of DL 211, on February 26, 2017. The prohibition applies only if the corporate group to which each of the competing companies belongs has annual revenues exceeding 100,000 UF (approx. USD 3.6 million) in the last calendar year.

The lawsuit, states that the same individual has simultaneously held the positions of director and/or key executive of a bank and of other two parent companies of conglomerates that, according to the FNE, would be competitors in the supply of several products and services, either by themselves or together with their respective subsidiaries. In particular, the accused interlocking conduct would affect the following markets: (a) banking, (b) securities brokerage and other services offered by stockbrokers, (c) issuing of life and credit life insurance, and (d) insurance intermediation.

To support its accusation, the FNE maintains that each of the accused companies and their respective subsidiaries form one and the same undertaking, stressing that the concept of undertaking, 'for competition law [...] is not identified with that of company or legal person [...] it being possible, therefore, for an undertaking to be made up of a set of various entities [...] What is relevant is the establishment of an economic unit, an essentially functional definition and which has nothing to do with the legal form'. Therefore, the FNE understands that DL 211 bans not only direct interlocking, but also indirect interlocking, i.e., when the interlocking occurs between the parents of two competing entities, or between one entity

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and the parent of its competitor.

It will be interesting to review the arguments of the defendants and how the TDLC will resolve the case, due to the precedent that may generate.