

FIRST SUCCESSFUL LENIENCY CASE

Chile Supreme Court backs Whirlpool conviction

Tom Webb

Chile's highest court has upheld an antitrust court ruling against Whirlpool in the country's first successful leniency case, but reduced by half the fine imposed by the country's Competition Tribunal.

The Competition Tribunal found electrical appliance manufacturer Whirlpool's subsidiary Embraco in Brazil conspired to inflate refrigerator compressor prices between 2004 and 2008. The company was fined US\$10 million last year. Leniency applicant Tecumseh Do Brazil was exempted from fines.

The Supreme Court dismissed Whirlpool's appeal. It specifically rejected Whirlpool's argument that Chilean tribunals did not have jurisdiction to rule on international cartels which affected the Chilean market.

In reducing the fine, it said: "The deterrent and retributive functions that this penalty has are fully satisfied [by] the reasonable reduction in the amount imposed by the judgment on appeal."

Jaime Barahona of the National Economic Prosecutor's Office (FNE), which filed its Competition Tribunal lawsuit against Whirlpool in July 2010, says: "The Supreme Court ruling is very clear on the jurisdictional issue. The argument that Chilean tribunals have no jurisdiction to assess and rule on international cartels affecting the Chilean market was rejected.

Francisco Agüero, of Agüero Law in Santiago, notes the court also rejected Whirlpool's arguments relating to double jeopardy. Follow-on private lawsuits could follow, he says, as the decision stated the price rises caused by the cartel.

"We're very pleased with the outcome," says Barahona. "It's a sign that the leniency programme is working. Tecumseh's application was

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the first in Chile since the 2009 reforms which created the leniency programme.”

Leniency activity isn't limited to this case, Barahona tells Latin Lawyer's sister title GCR. One more leniency application has led to proceedings currently before the Competition Tribunal.

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