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TDLC RECHAZA DEMANDA CONTRA MASISA

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Chile's Competition Tribunal announced last Wednesday that it has rejected a predatory pricing complaint against two furniture manufacturers, as the companies lack a high enough market share to be considered dominant.

Furniture company Metalurgica Silcosil made the complaint to the specialist tribunal, which is a division of Chile's competition watchdog, against rivals Masisa and Masisa Componentes. The two companies respectively manufacture ready to assemble furniture and wooden furniture components.

In its March 2015 complaint, Silcosil claimed the two Masisa companies had engaged in predatory pricing and margin squeezing, and copied Silcosil's intellectual property. Silcosil said the behaviour took place across Chile and had had significant effects on both its business and consumers throughout the country.

Silcosil said the Masisa companies could afford to sell its products at a 30 per cent discount because it could make up the revenue from sales through its component business, which sells to consumers and other businesses including Silcosil. Silcosil claimed the behaviour has already cost it 8.8 million pesos (US$13,300).

The court split the decision into two separate markets. The upstream market consisted of the production and marketing of furniture components. The downstream market was for the design and manufacture of ready to assemble furniture.

In the downstream market, the court ruled that Masisa had too low a market share to be considered dominant, and therefore could not be engaged in illegal predatory pricing.

In the upstream market, the court also decided Masisa Componentes was not a dominant company. It ruled that Masisa's market share had fallen in recent years, and that boards from different producers were substitutable for the company's products.

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The tribunal did not go into the substance of the case, instead relying on the small market share to make its decision – although one dissenting judge ruled the companies did have a high enough market share for this to be considered an antitrust case.

Ricardo Riesco at Philippi Prietocarrizosa Ferrero DU & Uría (Chile) said the judgment showed how difficult is was to successfully bring private litigation against predatory pricing and margin squeezes.

Riesco said that without the backing of Chile's competition enforcer, the National Economic Prosecutor, "most of these lawsuits are like jumping into a pool you do not know for sure has water in it."

Julio Pellegrini Vial at Pellegrini & Cia, who acted for Silcosil, said the company will probably appeal against the ruling appeal.

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Pellegrini & Cia

Partners Julio Pellegrini Vial and Pedro Rencoret in Santiago assisted by Diego Ramos

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