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CROSS-SHAREHOLDINGS AND INTERLOCKING

Law N° 20,945 (the "Law"), published on August 30, 2016, amended law decree number 211 (the "DL 211") which regulates anti-competitive practices in Chile. Two of the most significant changes that are introduced by the new antitrust law include defining the interlocking of directors and relevant executives as anticompetitive conduct, and the obligation to report the direct or indirect acquisition of more than 10% of a competitor.

1 *Interlocking*

The Law adds a new letter d) to the catalog of conducts in article 3 of DL 211, including as *a new anticompetitive conduct* the simultaneous participation of a person *in relevant executive positions* or as director in two or more companies that compete against each other, provided that the business group of each one of the companies has an annual income that exceeds approx. USD3.9 million during the last calendar year.

A company is given 90 days from the end of the year in which the income threshold is surpassed to regularize the interlocking situation. If the term expires and the simultaneous participation in the positions remains, then the infraction will be deemed committed.

This provision has a 180 day period of vacancy from the day of publication (August 30, 2016), after which it will enter into force.

This provision is expected to generate debate as to the meaning of "competitor" and "relevant executive positions".

2 *Cross-shareholdings*

In the new article 4° bis of the DL 211, the Law adds the *obligation to notify the national economic prosecutor (FNE)* about the direct or indirect acquisition of more than 10% of the capital of a *competing company by a company or by an entity of the business group*, provided that both the acquiring and the acquired companies have, separately, annual incomes for sales that exceed approx. USD3.9 million during the last calendar year.

For the purposes of calculating the percentage of participation, both the shares that are owned directly by the company as well as those managed by third parties will be considered.

If the conditions indicated above are met, the acquisition *must be reported to the FNE* within *60 days* of the closing of the transaction.

Shareholders with existing investments in competitors must report their holdings to the FNE within 180 days of the publication of the Law (August 30, 2016).

This is an unprecedented provision that is expected to generate a robust debate as to when the FNE should intervene and challenge this type of cross-ownership between competitors.

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

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