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Organisation de Coopération et de Développement Economiques  
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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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## **OECD Global Forum on Competition**

### **CONTRIBUTION FROM CHILE**

*This note is submitted by Chile as a background material for the second meeting of the Global Forum on Competition to be held on 14 and 15 February 2002.*

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## **I. - EXPERIENCES OF AND NEEDS FOR CAPACITY BUILDING OR TECHNICAL ASSISTANCE**

To address this issue we will follow the questionnaire sent by the OECD, and will try to provide as much information in the clearest way possible.

### **1. Topics addressed in technical assistance and general aspects**

In our experience, we have not found any topics that could be qualified as not useful for building our technical capacity. Although some topics are more interesting, considering that they could be under present investigation and there is immediate concern over them, all topics, approaches and analyses are considered useful for the FNE's objectives.

For example, participating in the case-study based seminars organised by the OECD has been an excellent opportunity to realise that many issues and cases are very similar in different countries and have raised the same concerns when they are addressed by the competition agency. Regardless of the fact that some topics have already been seen by the agency, the opportunity to explain our procedures, analyses and outcomes generates a kind of "peer" scrutiny that results in impartial opinions which evaluate the agency's work.

For the other part, analysing issues that have not been addressed before by our agency, provides us with tools and overviews that help us gain knowledge for future cases that will probably have to be addressed.

Nevertheless, it is very important to consider the level of development of each countries' competition policies, in order to provide consistent and useful assistance in technical matters. Many countries in Latin American have still not enacted competition laws; others have years of enforcement, and there are countries that are implementing their new statues and structuring their antitrust institutions.

In this line of thought, there are some topics that are limited to problems that new agencies or countries who do not have agencies or legislation need to address. In these topics, countries like Chile can have an important opinion and can provide technical assistance on these matters.

It is important to explain that the FNE is organised as a specialised agency that deals exclusively with antitrust enforcement. Our law came to force in October 1973, but we have antitrust statutes since late 1950's. We do not enforce consumer protection statues like many Latin American authorities.

### **2. Forms of assistance**

We had the chance to participate in case-study seminars and conferences throughout the years 1999 to 2001.

The case study system has been a great experience, and stands upon a recognised high level of capacity, expertise and understanding of the OECD officials and experts who develop these programs. The study of real cases seen by other agencies, that may be in course of investigation or terminated with final judgements, provide us with excellent tools for analyses. This system generates an active participation and new relevant questions are put forward by participants.

Regarding internships, our experience is as providers of technical assistance. Officials from Costa Rica have visited the FNE for short terms and completed a program that included presentations by our experts and the analysis of current cases. Our objective is to provide an outlook of our law, the procedures involved and the ways to approach different anticompetitive activities.

Our experience is that case-study based seminars are more useful if many countries participate with their own views. The discussions that arise and the different standpoints provide key elements that help the participants gain technical experience.

Considering our last experiences in short internships, single country participation provides a unique opportunity for officers of both parties to interact and discuss everyday concerns and also to deal with complex inquiries. These programs have been an excellent experience for both parties and we will try to develop others. We are in preliminary talks with competition authorities from Panama in this matter.

### **3. Skills of the assistance provider**

From our view, as recipients of assistance, the expertise of the providers is of great importance. The ability to analyse cases that are presented summarily and to give certain key elements to the resolution of the problems is of great importance.

Nevertheless, and from a point of view of assistance providers, for us the sole presence of officials or experts from a foreign agency or other country, which interact with the personnel, provides an opportunity to exchange viewpoints and to express freely opinions between peers. This instance is of great importance for it helps reach a global view of the work done by the agency.

Chile is participating in the Free Trade Agreement of the Americas negotiations (FTAA-ALCA). In that forum, the delegations have established in almost all rounds of negotiations a session for technical assistance, although it is not part of the formal negotiations.

This has been a great experience, specially for countries that do not have competition laws, and has proved that not necessarily great expertise is needed to provide assistance and generate case-based discussions.

### **4. Our needs for technical assistance.**

Our agency has powers to enforce competition law in many fields, including regulated markets that were part of the privatisation process in Chile. This reflects the vast areas that are addressed in our investigations.

The FNE has an experience of nearly 30 years in competition enforcement. It is a prestigious government institution with a clear technical profile. Our Antitrust Commissions, which are independent bodies, also have a great tradition of enforcement and its decisions have positively influenced many markets and established many "bright lines" for competitors to guide their activities.

Nevertheless, competition issues become every day more complex. New markets and businesses arise and international trade creates continuous upheavals in the marketplace.

The analysis of activities that constitute new forms of abuse of dominant position is a topic that is important for us to address. Our institutional structure does not consider mandatory or compulsory merger

control nor the review of acquisitions and take over operations, but we've conducted investigations that analysed concentration processes.

It is important for us to enhance our technical capacities to investigate the activities developed by firms which hold a high market share and may engage in abuses of its position.

Also, due to the fact that some mergers and acquisitions are investigated, our agency needs to learn from the different approaches to merger analysis.

There is another aspect that is very important for us. It is necessary to gain knowledge through technical assistance of the different law statues that deal with the criminal enforcement of certain conducts. Our agency finds an important issue to address the possible limitations or the eventual substitution of criminal measures or sanctions, which are contemplated in our law, with other measures. It is important to take account of the benefits and the negative effects of these changes.

In that sense, comparative studies on competition law, presented or provided as technical assistance activities, is a field that the FNE finds very useful in order to acquire knowledge of foreign experiences and improve our institutions.

## ANNEX A

**QUESTIONNAIRE TO INVITEES ON INTERNATIONAL CO-OPERATION  
IN CARTEL AND MERGER INVESTIGATIONS**

This questionnaire covers the period from 1 January 2000 to the present.

If you are unable to provide all of the information requested, either because it would impose too great a burden or because of confidentiality constraints, please provide as much as reasonably possible.

1. Provide a copy of each formal co-operation agreement between your country or your competition agency and a foreign country or competition agency relating to competition investigations or cases.

**A: We are attaching copy of the Memorandum of Understanding between the Fiscalía Nacional Económica and the Competition Bureau of Canada, signed on the 17<sup>th</sup> of December, 2001.**

2. Describe your country's laws or regulations that relate to or affect your agency's ability to exchange information or co-operate with a foreign competition agency.

**A: The Decree Law 211 (DL 211) does not consider any prescription regarding this matter. The Head of the FNE, the National Economic Prosecutor has the faculty to conduct independently his duties and in that sense, is able to sign agreements and other commitments regarding international co-operation and exchange of information.**

**Regarding the exchange of information: The FNE can declare, by virtue of its own powers or due to a request of a party, the confidentiality of certain documents and information. This will affect the possibility to exchange confidential information.**

**Nevertheless, our investigations are public and the parties have full access to them, unless they are declared reserved. The President of the Competition Tribunal must be notified of the confidentiality given to the procedure; and if it also implies that the affected party is not notified of the procedure, then an explicit authorisation by the Tribunal is needed. (arts. 27, letter a), and 30 A, DL 211)**

### **Cartels**

3. If your agency issued one or more formal requests to a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):

**A: Our agency has not requested information in this respect. Nevertheless, in one case involving operations overseas, not related with cartels, we requested information but the agency (non competition agency) although agreed to sending the data, also warned us that it could only be provided through formal co-operation procedures between competition agencies, making an exemption in this case.**

4. If your agency received one or more formal requests from a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests (you need not identify specific cases):

**A: Our agency has not received request in this sense.**

5. Please describe any other instances of co-operation with a foreign competition agency in a hard core cartel investigation or case not described above, such as meetings, telephone or email communications, including, if possible, the co-operating country or countries, the nature of the co-operation and the importance or significance of the co-operation to your agency.

**A: Our agency has not been involved in these kinds of co-operation activities.**

**Nevertheless, regarding non-cartel investigations, during meetings with officials of foreign agencies had to opportunity to request and also provides information regarding the conduction of certain cases and their results. This has also been done by telephone. This information has been of great importance for our enforcement work.**

6. State the number of instances in which a hard core cartel investigation or case could have benefited from information or co-operation from a foreign competition agency but your agency did not request such assistance because you knew that it could not or would not be granted. Describe the type of assistance that would have been useful and the impact of its unavailability on your enforcement effort.

**A: Our agency does not have information regarding this matter.**

### **Mergers**

7. Identify each merger that your agency reviewed that, to your knowledge, was also reviewed by the competition agency of another country.

**A:**

- **The Coca Cola Company and Cadbury Schweppes (brand name acquisition)**
- **Central Hispano S.A. – Santander S.A. (local effects in financial markets)**
- **Nestle – Fonterra (strategic alliance)**

8. For each investigation or proceeding involving a merger in which there was communication between your competition agency and the competition agency of another country during the course of the investigation or proceeding, please state or describe:

**A: Our agency does not have experience on this matter.**

**We do not have a mandatory or compulsory merger control mechanism. Our merger investigations are initiated in specific cases in which the FNE or the Commissions consider that the operations may affect competition.**

9. Describe any instances in a merger case or investigation

a. in which your agency sought the assistance of a foreign competition agency but it was denied;  
**A: Our agency does not have any experience in this matter.**

b. in which your agency sought a waiver of confidentiality restraint from one or more of the merging parties but it was denied.

**A: In a merger case, our Commissions, not the FNE, requested confidential information from parties, and they complied, but the confidentiality was preserved throughout the procedure with respect to third parties.**

**In general terms, parties reveal information to the FNE and the confidentiality is kept with respect to third parties. In only very few cases have parties sought relief from the Competition Tribunal in order to deny the FNE access to data (special recourse or remedy – art. 27, letter h), DL 211). All these cases were rejected by the Tribunal and the FNE was authorised to obtain the information.**

10. Describe any investigation or proceeding involving a merger that would have benefited from co-operation with a foreign competition agency but your agency did not pursue such co-operation because you knew that it would not be possible. Describe the type of co-operation that would have been useful and the impact of its unavailability on your enforcement effort.

**A: Our agency has no experience in this matter.**