



Chile's electric sector under the regulatory magnifying glass

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Chile's Competition Monitoring Unit, an arm of the Electric Coordinator, is only a year old, but in that time its Advisor to the Coordinator **has opened seven examinations for possible anti-competitive practices.**

One of those investigations has been turned over to the National Economic Prosecutor's Office (FNE) for action under its legal authority.

The regulators

The Competition Monitoring Unit is in charge of searching for "actions that could constitute an attack on competition" according to Law Number 20.936 (Law of Electrical Transmission), monitoring compliance with competition law in the electricity sector.

It should be borne in mind that the role of the Electric Coordinator is not to level charges or try cases. Its duty is to uncover and report possible competition breaches to the FNE. It is the FNE that proceeds on the basis of the evidence. When an infraction has occurred, the Tribunal for the Defense of Free Competition (TDLC) examines the charges and determines potential sanctions.

The FNEs process takes place in the following stages:

1. Analysis of the **admissibility** of the report.
2. Once the complaint has been admitted, an **investigation** of the alleged act is opened, during which various diligences may be carried out, such as requiring more information or economic reports.
3. As a **result of the investigation**, the FNE takes one of the following courses: (a) initiating proceedings before the TDLC, such as an injunction or a request for a legal opinion; (b) concluding an out-of-court agreement with the offender; or (c) shelving the investigation.

Potential sanctions

Possible sanctions are varied and include:

- A fine of 30 percent of the offender's sales, and when this cannot be calculated, a fine of approximately US\$51 million.
- Dissolution of implicated companies, corporations, and entities.
- Prohibition of celebrating state contracts, such as concessions, for a period of five years from the final judgment.
- Barring of the offenders from certain positions, such as director or manager of an open corporation, state company, or trade or professional association.

Collusion or agreements between competitors can be criminally sanctioned; prison sentences in such cases range from three to ten years if criminal prosecution is later initiated.

Considering the assertive work around competition law by the Competition Monitoring Unit of the Electric Coordinator, **it is particularly important that companies engaged in Chile's electricity sector have proper training on risky behavior and breaches of competition law**, leading to the undertaking of measures to avoid anti-competitive actions that can later be sanctioned.

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