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The Chilean Anti-cartel Experience: Accomplishments and Challenges

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Abstract We evaluate the Chilean law and enforcement record in the area of cartels. We identify the high probability of cartel detection, severe sanctions for detected cartels, and the predictability and consistency of enforcement practices as crucial factors that help enforcement agencies maximize the deterrent effect of anti-cartel law and policy. Reforms to the competition law in Chile in 2009 and 2016 have increased the probability of cartel detection by introducing more extensive investigative powers and a leniency program, have made sanctions more severe by increasing monetary fines and introducing prison sentences, and have improved the predictability of the leniency program.

Keywords Antitrust · Cartel · Competition policy · Chile · Regulation · Institutions

1 Introduction

Chile's competition regime is among the pioneers in Latin America. The first Chilean competition law was adopted in 1959. This law was replaced by a new one in 1973, which in turn was reformed in 2003, 2009, and 2016.

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The current institutional structure dates from 2003, when the Tribunal for the Defense of Free Competition (Tribunal de Defensa de la Libre Competencia, TDLC hereafter) was established as a specialized competition court to function alongside the National Economic Prosecutor's Office (Fiscalia Nacional Económica, FNE hereafter). Under this system, the FNE investigates infringements and brings cases to the TDLC, which adjudicates these and other cases brought by private parties.

The 2003 reform modernized and professionalized the Chilean competition regime, and ensured that the institutions have adequate resources for effective enforcement. Further reforms in 2009 and 2016 have focused on improving enforcement and increasing fines with respect to cartels, and the 2016 reform introduced the possibility of criminal prosecution of cartel participants. These recent reforms have ensured that the Chilean competition law is in line with recommendations of international organizations such as the Organization for Economic Cooperation and Development (OECD) and the International Competition Network, as well as international best practices.

An area that has gradually received more attention in the Chilean competition regime is enforcement against cartels. The Law for the Defense of Free Competition (Decree Law 211, 1973) prohibits cartels; nonetheless enforcement in this area had traditionally lagged behind other areas, such as abuse of dominance. This began to change in the late 2000s. The discovery of collusion among pharmacies (2008), poultry producers (2011), and tissue paper producers (2015) has caused public outrage, and motivated lawmakers to initiate reforms that strengthen Chilean anti-cartel legislation and policy, including the introduction of a leniency program, higher fines, and criminal sanctions against cartel participants.

This paper aims to analyze critically the Chilean anti-cartel law and policy. Our review of the literature in economics and law indicates that successful anti-cartel law and enforcement practices seek to maximize deterrence by maintaining a high cartel detection rate, severe sanctions against cartel participants, and predictable and consistent application of the rules (Baker 2011; Harrington and Chang 2015). We evaluate the law, the design of enforcement institutions, and the actual enforcement record in Chile in light of the debates in these literatures.

We argue that various reforms to the Chilean competition law have increased the deterrent effect of the anti-cartel regime. The 2003 and 2009 reforms increased the monetary fines that could be imposed on companies, strengthened the enforcement institutions, granted them extensive powers of investigation, and introduced a leniency program, thereby increasing the potential for cartel detection and the possibility of successful prosecution of detected cartels by allowing the FNE to collect more direct evidence.

Nonetheless, until the 2016 reform, monetary fines remained too low to deter cartelization. Simply put, collusion made sense from a business perspective (see for example Deloitte 2014, p. 17). With the introduction of sanctions on individuals, such as prison sentences and disqualification from holding directorship roles in companies, and allowing for fines up to 30% of the sales of the company or double the economic benefit obtained from collusion, the 2016 reform has raised the severity of sanctions significantly, and thus increased the deterrent effect of the system.

We argue nonetheless that various challenges remain in the implementation of the anti-cartel regime.

This paper focuses on anti-cartel policies in a single jurisdiction that has a rather unique institutional design (an investigative agency and a specialized competition tribunal), which limits the generalizability of our results and the lessons that we can draw from the Chilean case. Nonetheless, we argue that many of the challenges faced by the Chilean enforcement authorities in detecting and sanctioning cartels are similar to challenges that are faced by newer competition regimes—such as the maximum level of fines set in law being an insufficient deterrent against collusion (Aydin 2016). Thus, we argue that analysis of the Chilean case is useful in identifying such challenges and exploring how they might be resolved, and we expect our findings to be illuminating for other countries in Latin America, emerging economies, as well as other small and concentrated economies.

In the rest of the paper we first present a review of the literature in the fields of economics and law to identify the components of a successful anti-cartel law and policy. We then move on to our case study, describing how the Chilean competition legislation and enforcement institutions have evolved over time. The third section focuses on the enforcement record in the area of cartels in the period 2003–2016. We present some data on enforcement, and discuss a number of key cartel cases that came before the FNE and the TDLC. The fourth section discusses the key changes introduced by the 2016 reforms in the area of cartels, evaluating how they strengthen the combat against cartels in Chile, and identifying the aspects that may present challenges in enforcement. The fifth section concludes by highlighting the key findings of the paper and making some policy recommendations.

2 Theoretical Background

A consensus emerged in the 1990s among governments and competition authorities around the world that cartels represent one of the most potent threats to competition, and that combating them should be a top priority for competition law and its enforcement (Beaton-Wells and Ezrachi 2011, p. 4; Shaffer et al. 2015, p. 303). Many governments since then have taken steps to combat cartels more effectively: granting more extensive investigative powers to their competition authorities; introducing leniency programs; and increasing the severity of sanctions imposed on cartel participants. Around 60 countries now have leniency programs, and more than 30 have criminalized cartel conduct (Shaffer et al. 2015, p. 302).

Anti-cartel policies seek to destabilize existing cartels and deter the formation of new ones. Three factors appear crucial for an anti-cartel policy to have a strong deterrent impact: that cartel participants, actual or potential, perceive a high probability of detection; that severe sanctions follow if they are detected; and that the system functions predictably and consistently (Baker 2011, p. 35; see also OECD 1998). Various components of an anti-cartel regime therefore should be designed with these factors in mind.

These concerns are reflected, for instance, in debates about the effectiveness of leniency programs (Brenner 2009; Marvao and Spagnolo 2015; Miller 2009).

Leniency programs offer reduced fines and/or immunity from criminal prosecution for the first (few) cartel participant(s) who come forward with evidence, and thus are expected to lead cartel participants to rush to the enforcer's door to confess. In order to encourage cartel participants to come forward, however, a leniency program needs to create the right incentives (Beaton-Wells 2015; Hammond 2010). Empirical and laboratory studies suggest that severe sanctions, including high monetary fines as well as prison sentences, are key to incentivize firms and individuals to apply for leniency (Bigoni et al. 2015; Marvao and Spagnolo 2015; Stephan and Nikpay 2015).

In addition to the severity of sanctions, a credible threat of cartel detection is crucial for the effectiveness of a leniency program. Leniency programs themselves are aimed at incentivizing firms to come forward with information on cartels, and thus are important tools that increase the probability of cartel detection. Various authors, however, argue that leniency programs may be better at destabilizing dying cartels rather than active ones, and thus an over-reliance on leniency at the expense of other methods for detecting cartels may increase the rate of cartelization in the economy (Harrington and Chang 2015). Thus the suggestion for the competition authority is to try to maintain a high non-leniency detection rate (Harrington 2008; Stephan and Nikpay 2015). In order to achieve this, it is advisable to grant the competition authority strong investigative powers, and encourage the use of methods such as screening (Harrington 2008; OECD 2013).

Finally, many authors and practitioners emphasize predictability and consistency in the enforcement of leniency programs as keys to success, yet note that these are possibly the hardest goals to achieve, given that they can only be realized over time (Kovacic 2011; O'Brien 2015, p. 24). For instance, enforcers have to create transparency and certainty in the criteria for qualification for leniency, since "uncertainty in the qualification process will kill a leniency policy" (O'Brien 2015, p. 26). The EU's 2002 reform of its "decisive evidence standard" to qualify for leniency, for instance, was meant to increase the predictability of the EU's leniency program.

Similarly, certainty around the treatment of confidential information provided by leniency applicants, clarity in the functioning of the 'marker' system (which allows leniency applicants to hold their 'place in line' while they gather additional information to complete their application), and predictable treatment of subsequent applicants are all key aspects assuring the effective functioning of a leniency program (O'Brien 2015, pp. 24–29).

In the rest of the paper, we evaluate the Chilean anti-cartel legislation and its implementation record to determine the extent to which it has achieved a strong deterrent impact based on the three factors discussed in the literature. An additional factor that the recent literature emphasizes, and that we will touch on only briefly in the paper, is the degree to which anti-cartel policy has been communicated and internalized by firms, state institutions, and the public at large (Stephan 2011; Wagner-von Papp 2011). Communicating the policy to economic actors is of utmost importance especially in developing and emerging economies, where cartels—some state-sanctioned—were the norm until recently (see for example Cruz and Zarate 2009, p. 169 and González 2009, p. 198 for Chile; Jatar 1999, pp. 106–107 for Venezuela). Raising awareness among firms and their employees and encouraging them to use compliance programs are tools that can help change corporate cultures and prevent cartels in the first place (Fisse 2015; Kolasky 2002; Stucke 2011). Advocacy towards other parts of the state can be crucial for detecting and preventing bid-rigging in public procurement, and advocacy towards the society is important in building a culture where cartels are recognized as harmful and morally reproachable, and in ensuring continued political backing for strong anti-cartel policies (Parker 2011, pp. 257–258; Stephan 2011, p. 393).

3 Historical Background and Institutional Framework in Chile

Chile adopted its first competition law in 1959 (Law No. 13.305, 1959), on the recommendation of the Klein-Saks Mission: a United States consultancy that was hired by the Chilean government to help in its efforts to combat inflation (Bernedo 2013, p. 34). The law prohibited the granting of monopolies to private actors, and defined actions and agreements that limit competition as civil and criminal violations. It established the Antimonopoly Commission to investigate and sanction infringements, and to decide whether to recommend criminal cases. A law passed in 1963 increased the Commission's powers and created the position of the National Economic Prosecutor.

From 1959 to 1973, when it was replaced, the Antimonopoly Commission investigated around 120 cases (see Bernedo 2013, p. 52 for different estimates on the caseload of the Commission), and was involved in significant cases such as that concerning the legality of the nationalization of private banks by the left-wing Unidad Popular government.[1] Nonetheless, many experts suggest that the implementation of the law remained limited during this time, and that it never became a significant part of the Chilean economic and regulatory system (Agüero 2016, p. 124; Agüero and Montt 2013, p. 152; Cruz and Zarate 2009, p. 159; OECD 2010, p. 10). This can be explained by the high degree of state involvement in the Chilean economy during this time; this was a situation in which the political will to implement the competition law remained limited (Bernedo 2013, p .52), and where the Antimonopoly Commission and the National Economic Prosecutor did not have the economic and administrative resources, or autonomy from the executive to implement the law effectively (Illanes 1965 cited in Bernedo 2013, pp. 44–45).

The military junta that came to power in 1973 replaced the 1959 law. The new law (Decree Law 211) introduced new enforcement institutions without changing the substantive content of the law. It established a central preventive commission and regional preventive commissions, all with a consultative character. The preventive commissions answered questions regarding competition law, and had the power to issue orders to stop anti-competitive practices temporarily and to require the intervention of other authorities if they observed a breach of the competition law (Cruz and Zarate 2009, p. 160). The law also established a resolutive

[1] See Bernedo (2013, pp. 53–58) for a history of the bank nationalization case. While the Commission started its investigation into the case in 1971, the final decision was not issued until 1975.

commission based in Santiago that would decide on the cases that would be investigated by the National Economic Prosecutor, and impose sanctions in the case of infringements. The members of the preventive and resolutive commissions served part-time, and did not receive compensation. This system was reformed in 2003 due to demands for a more professional, modern competition regime (Agüero 2016, pp. 127–129).

The 2003 reform represents the most significant change in the Chilean competition regime, and one that brought the Chilean system into the realm of modern antitrust law. The new law replaced the preventive commissions and the resolutive commission with the Tribunal for the Defense of Free Competition: a specialized competition court that decides on competition cases brought to it by the FNE and private parties (Law No. 19.911, 2003). The Tribunal is a specialized and independent judicial organ, whose function is to prevent, correct and sanction infringements of the Chilean competition law. Its decisions can be reviewed by the Supreme Court (Bernedo 2013, p. 164).

The Tribunal is composed of three lawyers and two economists. The president and two members of the Tribunal are selected by the President of the Republic from a list of five candidates who are nominated by the Supreme Court and the Board of the Central Bank of Chile. The other two members are designated by the Board of the Central Bank. The reform maintained the FNE as the body that investigates infringements and presents cases to the Tribunal (Bernedo 2013, p. 152). It is independent of other state organs and services, but is supervised by the President of the Republic through the Ministry of Economy, Development, and Tourism. It is headed by the National Economic Prosecutor, who is appointed by the President of the Republic.

The institutional structure that was established by the 2003 reform in Chile—whereby a specialized enforcement agency must bring formal complaints before a specialized competition tribunal—has the advantage of separating the investigative and adjudicative functions, and thus assuring that due process is respected in competition cases (Trebilcock and Iacobucci 2002, pp. 372–373). It also has an advantage over the institutional design in which the investigative agency brings complaints to regular courts, in assuring that the tribunal adjudicating the competition cases has sufficient expertise in competition law and economics (Trebilcock and Iacobucci 2002, p. 373). Nonetheless, in other contexts it has been noted that a design along the model that has been adopted by Chile tends towards judicialization in practice (Ibid., p. 374), and thus forgoes administrative efficiency, which is a benefit of models in which investigative and adjudicative functions are carried out by a single agency.

The 2003 reform also made some substantive changes to the law: With the reform, the Chilean competition law for the first time explicitly established the objective of competition law as promoting and defending free competition in the markets. Moreover, Article 3 of the reformed law defined anticompetitive conduct in much more concrete terms than before, following the advice of peer review conducted by the OECD in 2003 (2004, 2010, p. 50). These include: (a) tacit or explicit agreements or concerted practices among competitors to fix prices, limit production, assign market zones or quotas, exclude competitors or rig bids; (b) abuse of a dominant position;

and (c) predatory practices or unfair competition that is carried out with the objective of reaching, maintaining, or increasing a dominant position.

The reform also eliminated criminal sanctions for infringements of the competition law. Although a small number of cases had been criminally prosecuted under the previous system, none of them had resulted in conviction; the reason was the high standards of proof in criminal proceedings (Bernedo 2013, pp. 46, 164).

To ensure that sanctions remained as a deterrent, the cap on monetary fines (collected by the Treasury) was raised to approximately US$10 million.[2] The 2003 reform also allowed for the possibility for affected consumers, the National Consumer Protection Agency (Servicio Nacional del Consumidor), or consumer associations to bring cases to ordinary civil courts to claim compensatory damages in competition cases, which, if awarded frequently by the courts, would add to the deterrent effect of the fines.

The reforms that were adopted in 2003 have led to more vigorous enforcement of the Chilean competition law. With institutions that are more independent, more professional, and command more resources, the number of cases and the level of fines have both increased (OECD 2010, p. 50). In the 29 years between 1974 and 2002, a total of almost US$1 million in fines was imposed in 73 cases in which the Resolutive Commission found infringements, whereas in the 12 years from 2004 to 2015, the TDLC imposed US$105.3 million in fines in the 63 cases in which it found infringements (FNE 2015a; OECD 2010, p. 71; TDLC 2017a).

Nonetheless, enforcement in the area of cartels remained among the aspects needing greater emphasis (OECD 2010, p. 52). In particular, experts suggested that the FNE needed stronger investigative powers and possibly a leniency program in order to detect and prosecute cartels successfully, since a significant number of the collusion cases that it presented were thrown out by the TDLC or the Supreme Court for lack of direct evidence (Cruz and Zarate 2009; González 2009).

Chilean anti-cartel enforcement showed signs of change towards the late 2000s with the imposition of a substantial fine in the flat panel television collusion case, and the affirmation of the fine by the Supreme Court (OECD 2010, p. 52). In 2008, the discovery of a price-fixing cartel among pharmacies caused uproar among the public, and led to the legislative process that resulted in a reform of the competition law (Agüero 2016, p. 130).

The 2009 reform did not change the basic structure created in 2003, but it gave two important tools to the FNE in its fight against cartels (Law No. 20.361, 2009): The first was the ability to make dawn raids, intercept and record telephone conversations, requisition computers and other documents, and, in general, use procedures to search for evidence that were previously only available for criminal prosecution. The second was the introduction of the long overdue leniency program.[3]

[2] The cap on fines is expressed in the law as 20,000 Annual Tax Units (Unidad Tributaria Anual), and is thereby automatically adjusted to inflation.

[3] In practice, leniency was already used in the pharmacies cartel case in 2009, as the FNE made an out-of-court settlement with the first company that came forward with information on collusion.

These tools are thought to be complements: On the one hand, with the introduction of the leniency program, cartel participants are offered the possibility of cheating on the cartel and cooperating with the FNE in exchange for the elimination of fines. On the other hand, with increased investigative powers for the FNE, the possibility of detecting a non-cooperating cartel is increased. Additionally, the 2009 reform raised the severity of sanctions by increasing the cap on fines that can be imposed in competition cases, which thereby allowed the Tribunal to apply up to US$24 million in fines.[4]

Another case of collusion uncovered in 2011—the poultry producers case—likewise spurred public outrage, and led to the creation of a presidential advisory committee for competition matters, which evaluated the possibility of criminal charges in cartel cases and other legal changes to strengthen anti-cartel policy (Agüero 2016, p. 131; Comisión Asesora Presidencial para la Defensa de la Libre Competencia 2012). In the subsequent presidential elections, the two main candidates promised stronger competition policy in their campaigns; and once in office, the government of Michelle Bachelet initiated a legislative process to reform the competition law (Agüero 2016, pp. 131–132). The discovery of collusion among producers of tissue paper in 2015, and among supermarkets in 2016, put increased pressure on lawmakers, who finally adopted a law (Law No. 20.945, 2016) that further reformed Chile's anti-cartel policy.[5]

The 2016 law introduces various sanctions on individuals who take part in cartels: It reintroduces criminal sanctions, and disqualifies those convicted of collusion from taking public office, or directorship roles in companies, and in trade and professional associations. The National Economic Prosecutor decides whether to present a criminal case to the Public Prosecutor in a cartel case, and is obliged to do so in cases where competition has been "gravely" affected. However, it may only present the case to the Public Prosecutor after the TDLC has made its decision condemning the cartel (Articles 62–65 of Decree Law 211).

With respect to monetary fines on companies, the 2016 reform eliminates the previous fixed caps on fines, and instead allows the TDLC to impose a fine of up to 30% of the total sales of the company in the line of product in which collusion occurred, or twice the profits collected by the company due to collusion. If the TDLC cannot calculate either of these, it can impose a monetary fine of up to US$48 million.

With respect to damages, the 2016 law identifies the TDLC as the entity that determines the amount of damages to be awarded in cartel cases, and to whom, whereas previously civil courts decided on damages. With respect to leniency, the law protects the first leniency applicant from criminal prosecution and allows for reduced monetary fines, and for the second applicant, it provides a reduction in fines, and up to one degree of reduction in prison sentence.

4 The cap on fines is expressed as 30,000 Annual Tax Units in the law.

5 The Law No. 20.945 also introduced a pre-merger notification requirement for the first time in Chile.

4 Chilean Anti-cartel Policy (2003–2016): Accomplishments and Challenges

The reform introduced in 2003 modernized the institutions in charge of competition in Chile, bringing many of the international best practices to the country. In this section, we consider the implementation of the law, together with a significant reform introduced in 2009, and the results that were obtained in the area of cartels. In Table 1 we present the details of the whole set of cartel cases brought by the FNE or private parties to the TDLC during the period 2004–2017.

Several important conclusions can be drawn from the table:

1. The FNE has a limited prosecution capacity. In 14 years, 30 cartel cases were brought by the FNE to the TDLC: on average two per year, with most of them resulting in conviction. The average number of cartel prosecutions in Chile is lower than that of a number of other countries with similarly sized economies, such as Czech Republic (5.7 prosecutions per year on average in the past 10 years) and Israel (4.1 prosecutions per year on average in the last 10 years).[6] It is important to note that these competition agencies command larger budgetary and personnel resources than the FNE.
2. The FNE's average for cartel prosecutions is higher than another similarly sized economy, Singapore, whose Competition Commission has prosecuted on average 1.1 cases per year for the past 10 years, though the Commission commands fewer resources and half the personnel compared to the FNE.
3. These comparative figures show that the FNE has limited prosecution capacity given the resources it has, and thus case selection by the FNE is important. Its limited capacity to prosecute cartels creates at least two potential issues.

    A. The opportunity cost for the FNE of prosecuting a "small" cartel is very large. Therefore, the FNE faces a difficult dilemma: It can either forget about small cases (which goes against the mandate of justice at all levels) or spend significant resources on cases that create very little market distortion.
    B. It creates strong incentives to prosecute cases that are more likely to be won. In particular, it gives incentives to rely excessively on the leniency program, since leniency applications are more likely to provide direct evidence of cartel activities, and increase the FNE's prospect for successful prosecution in courts.

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[6] Calculated on the basis of data collected by the authors from the annual reports of the Czech Office for the Protection of Competition (http://www.uohs.cz/en/information-centre/annual-reports.html), Israel Antitrust Authority (http://www.antitrust.gov.il/eng/subject/178.aspx), Competition Commission of Singapore (https://www.ccs.gov.sg/media-and-publications/publications/in-house-publications/annual-reports), their annual reports to the OECD (http://www.oecd.org/daf/competition/annualreportsbycompetitionagencies.htm) and personal communication with these agencies (Personal communication with the Czech Office for the Protection of Competition, December 18, 2017; Personal communication with the Competition Commission of Singapore, December 13, 2017). The Czech Republic, Israel, and Singapore were selected for comparison because their GDPs—at US$183.6 billion, US$189 billion, and US$170.7 billion respectively in 2016—are comparable to that of Chile at US$181.7 billion (World Bank 2017).

Table 1 Collusion cases in the Chilean competition regime (2004–2017). *Source:* Information collected by the authors from www.fne.cl and www.tdlc.cl

Year case brought to the TDLC	Year case decided at the highest court	Name	Leniency	Fine demanded by the FNE (thousands of USD)	Fine decreed by TDLC (thousands of USD)	Fine decreed by Supreme Court (thousands of USD)	Sector
2005	2006	Ultramar y Otros	No	428	286	0	Transport
2005	2007	Air Liquide Chile S.A. y Otros	No	7834	2106	0	Health
2005	2008	ISAPRE ING S.A. y Otros	No	32,917	0	0	Health and Social Security
2006[a]	2008	FNE and Banco Chile contra Falabella y Paris S.A.	No	Unspecified	9367	7025	Retail
2006	2008	AM Patagonia S.A y Otros	No	3026	66	66	Health
2007	2009	MK Asfaltos Moldeables Chile S.A. y Otros	No	491	0	0	Construction
2007	2009	Asociacion Gremial de Buses Interbus y Otros	No	105	45	22	Transport
2007	2010	Transportes Central y Otros	No	793	66	154	Transport
2008[b]	2009	Hasbun Selume contra COPEC S.A. y Otros	No	0	0	No appeal	Fuel
2008	2010	Bertonati Vehiculos Especiales Ltda. y Otros	No	8144	0	No appeal	Vehicles
2008	2013	ACHAP A.G. y Otros	No	> 4113	146	146	Other

Table 1 (continued)

Year case brought to the TDLC	Year case decided at the highest court	Name	Leniency	Fine demanded by the FNE (thousands of USD)	Fine decreed by TDLC (thousands of USD)	Fine decreed by Supreme Court (thousands of USD)	Sector
2008	2012	Farmacias Ahumada S.A. y Otros	No[c]	49,357	32,905	32,905	Pharmaceutical
2009	2011	AGMITAL	No	79	39	39	Transport
2009	2012	Corporación de Radio Valparaiso y Otros	No	8275	503	503	Telecom
2009	2012	Abercrombie & Kent y Otros	No	7904	0	197	Other
2009[b]	2010	Asociación Gremial de Trabajadores del Mar Independientes de Punta Choros	No	–	–	–	Food and Drink
2010	2013	Tecumseh do Brasil Ltda. y Otro	Yes	13,088	9162	4362	Other
2011[b]	2012	SS Técnicos Motrices S.A. contra Denham y Cía. Ltda. y Otros	No	–	–	–	Vehicles
2011	2011	Soc Agrícola Comercial y Ganadera Palo Santo Ltda. y Otros	No	114	28	No appeal	Transport
2011	2014	Empresa de Transportes Rurales Ltda. y Otros	No	39,922	3471	No appeal	Transport
2011	2015	Servicios Pullman Bus Costa Central S.A. y Otros	Yes	6653	1644	1644	Transport

Table 1 (continued)

Year case brought to the TDLC	Year case decided at the highest court	Name	Leniency	Fine demanded by the FNE (thousands of USD)	Fine decreed by TDLC (thousands of USD)	Fine decreed by Supreme Court (thousands of USD)	Sector
2011	2015	Servicios Pullman Bus Costa Central S.A. y Otros (2)	No	5322	104	104	Transport
2011	2015	Agrícola Agrosuper S.A. y Otros	No	104,558	68,437	70,339	Food and Drink
2012	2015	Sociedad de Transportes Línea Uno Collico S.A. y Otros	No	1172	119	830	Transport
2013	2015	Casther y Otros	No	1172	87	167	Transport
2013	2016	Asociación Gremial de Ginecólogos Obstetras	No	849	87	87	Health
2013[b]	2014	Sindicato Trabajadores Indep. Artesanales de Pichilemu	No	1628	1.95	No appeal	Food and Drink
2014	2016	Asfaltos Chilenos S.A. y Otros	Yes	10,164	3657	763.45	Construction
2015	–	CCNI S.A. y Otras	Yes	72,389	In process	-	Transport
2015	–	CMPC Tissue S.A. y Otra	Yes	16,086	18,300	In process	Other
2016	–	CENCOSUD S.A y Otras	No	68,700	In process	-	Food and Drink
2016	–	Fresenius y Otros	Yes	17,000	In process	-	Health

Table 1 (continued)

Year case brought to the TDLC	Year case decided at the highest court	Name	Leniency	Fine demanded by the FNE (thousands of USD)	Fine decreed by TDLC (thousands of USD)	Fine decreed by Supreme Court (thousands of USD)	Sector
2017	–	Industrial y Comercial Baxter Chile Ltda. y Otra	No	323.2	In process	-	Health
2017	2017	Asociación Gremial Cirujanos V Región	No	800	–	-	Health

[a]Case brought by a private party and the FNE to the TDLC

[b]Case brought by a private party to the TDLC

[c]A settlement with the FNE (approved by TDLC) allowed one of the firms to obtain leniency even though leniency did not yet exist in the Chilean system

4. There is a huge dispersion in the size of prosecuted cartels and the amount of fines imposed. In fact, three cases explain more than 80% of the total fines imposed. These three cartels (pharmacies, poultry, and tissue paper) also generated most of the estimated damages, and could be seen as the only consequential ones in the period. Combined with the previous point, this raises alarm, since it gives the impression that the FNE does not have sufficient resources to prosecute cartels of this size at the rate that it should.
5. The leniency program—which was formally launched in 2009—has become very important. Just before the 2009 reform was passed, an out-of-court settlement in the pharmacies case involved a firm's getting a reduced fine in exchange for information. Once the law was passed, the leniency program was officially launched and became the main weapon in the FNE's arsenal.
6. The 2009 reform had important effects on cartel prosecution: an increase in the total amount of fines collected. It is quite clear that the 2003 law was a success, and that the 2009 reform built on that success. From 2004 to 2009, fines were imposed in nine of the 16 cases that were prosecuted, resulting in fines totaling US$41 million. From 2010 to 2017, 18 cases of collusion were brought to the TDLC; of these, 13 have already been concluded (at the court of highest instance), and fines totaling US$81.7 million were imposed in 11 of these cases.

In short, more cases have been prosecuted, usually successfully, and fines have been imposed regularly.

There were, however, still issues to resolve after the 2009 reform: The main one was the cap on the size of fines written in law (Comisión Asesora Presidencial para la Defensa de la Libre Competencia 2012; Lianos et al. 2014; OECD 2010). There were at least three recent cases where the caps meant that the fines that were imposed on the colluding firms were clearly insufficient, given the size and duration of the cartel.

The experts' estimates of extra profits earned by these three cartels show how binding the caps were. In the pharmacies case, estimates started at US$47 million extra profits for the cartel, while in the poultry case lower estimates indicated US$192 million, US$72 million, and US$24 million for the firms involved. In the tissue paper case, lower estimates of the extra profits were US$197 million and US$33 million.

These amounts—coupled with the fact that the probability that cartels are caught and successfully prosecuted is less than one—suggest that a cap of about US$20 million is clearly insufficient as a deterrent.[7]

Now we review the three landmark cartel cases that were prosecuted in the 2004–2017 period. These cases account for more than 80% of the total fines that were imposed by the FNE, and they have shaped both jurisprudence and public opinion on the issue of cartels.

[7] See also the discussion in Lianos et al. (2014, pp. 82–84, 86–87) for a discussion of illicit gains versus the fines imposed in the pharmacies and poultry producers cases.

4.1 Pharmacies (2008)

This was the first major case to be detected and prosecuted by the Chilean competition regime. In 2008, the FNE found significant evidence that the three main drugstore chains were colluding on a set of about 200 drugs, and they were doing so through their upstream sellers. Confronted with evidence, one of the chains (FASA) agreed to cooperate: FASA helped the FNE prove its claims in exchange for not paying a fine. It is important to remark that FASA agreed to cooperate before the leniency program was introduced, so this was an out-of-court settlement.

The two other firms accused by the FNE challenged the agreement, and much of the trial hinged on whether this evidence could be used to prove the existence of the cartel. The TDLC and the Supreme Court approved of the procedure, leading to the conviction of the cartel (Agüero and Montt 2013, p. 154). For the first time in the history of Chilean competition law, the firms—the two firms that did not cooperate—were sentenced to the maximum level of fines that were allowed by the law, totaling almost US$33 million.

Even so, these fines were correctly perceived as being too low to deter collusive behavior. As will be discussed below, profits from cartelization were much higher, and criminal prosecution could not be added to the monetary fines.

The basic features of the cartel were quite standard, and comparison to later cases shows the simplicity of the price-fixing mechanisms that were being used at the time. Pharmacies used laboratories as coordinators of the agreement. Laboratories told each pharmacy when to proceed with a price increase and the suggested amount. Price increases were slow and steady, to avoid problems with public opinion. When a pharmacy acted as a leader—for example, increasing prices on a Monday—the others were supposed to follow within the same week.

The economic analysis of the case was centered on the existence of a price increase due to collusion, with economic analysis submitted by 17 economists, 12 of them having a Ph.D. Using econometric techniques (mean tests before and after the collusive agreement, discontinuity design regression), Nuñez et al. (2010) established the existence of a statistically significant price increase, and this was used heavily by the TDLC to establish its final verdict. Another relevant discussion was about the rationality of the collusive agreement, and the possibility of this not being anticompetitive.

The main thesis that was presented by pharmacies was that they were reverting to normal prices after a price war that, with prices below marginal cost, had decimated the industry before the cartel agreement. There were also concerns about the rationality of the laboratories' behavior, since they had nothing to gain by helping retailers to increase prices and therefore decrease total demand.

4.2 Poultry Producers (2011)

This was the only major case that was decided without cooperation by one of the firms, and it established an important precedent. The FNE accused the three major poultry producers of fixing quantities that were sold to downstream sellers (supermarkets). The FNE said that the three poultry firms did so through their trade association; the FNE found clear evidence of the "guidance" that was given regularly to producers.

The main arguments for the defense were twofold: (1) It could not be shown that the firms followed the advice of the trade association; and (2) the suggested quotas were far from any profit-maximization agreement that they could have chosen.

The first argument was disregarded by the TDLC, which claimed that over longer time intervals the firms could be described as respecting the quotas. More important, the TDLC disregarded the second issue: The TDLC established that it was enough that the firms agreed on something, and that this agreement was followed (TDLC 2014). The three firms were fined a total of US$70.3 million.

Here, the economic analysis was concentrated on the quotas that were chosen by the cartel, its economic rationality, and the obedience of the colluding firms. Other characteristics of the industry—such as its high concentration in three producers, the strong dependence on big retailers, the low substitutability of poultry with other protein sources, and the possibility of international imports—were analyzed, but did not play a major role in the final verdict of the TDLC.

Interestingly, the econometric techniques that were used were based on some non-trivial consequences of economic models. Three basic facts were found to lead to inconclusive tests by Montero et al. (2013), using discontinuity design regression:

1. Given annual quotas, firms should frontload their production, since they are more sensitive to cost shocks.
2. The Christmas demand shock should alter prices before and after that date.
3. A sudden supply shock (such as the burning of a major plant in San Vicente) should affect prices.

As we mentioned before, these arguments were not considered decisive by the TDLC, which established that the existence of an agreement is enough to conclude that there was a cartel.

The reports that were presented by the FNE and the defense to the TDLC involved 24 professionals, with 12 having a Ph.D. in economics.

4.3 Tissue Paper (2015)

In 2015, the FNE received a leniency application from CMPC: a firm that accounts for approximately 75% of the sales in the Chilean tissue paper market. As a result of its investigation and the evidence submitted by CMPC, the FNE brought a case to the TDLC that accused the two firms that controlled the market for tissue paper in Chile—CMPC, and SCA—of having fixed market quotas through a sophisticated monitoring structure from 2000 until at least the end of 2011. The FNE argued that the firms communicated often, even weekly, and did so in ways so as to hide their activities, such as using fake e-mail accounts that were created solely for the purpose of communicating with each other (FNE 2015b, p. 5).

According to the FNE, after the discovery of a number of other cartels in the Chilean economy in 2008, the firms stopped using fake e-mail accounts and switched to "burner phones" (i.e., inexpensive, temporary cell phones) and personal delivery of price increase schemes—colloquially called "wedding invitations" by those involved—to managers' homes (FNE 2015b, p. 7). This indicates that firms have taken note of previously prosecuted cartel cases, and the level of sophistication of cartels has risen.

The second firm that was involved in the cartel—SCA—also applied for leniency. Whereas CMPC received full exemption from fines as the first to apply for leniency, the SCA was granted a reduction and was sentenced to pay US$18.3 million in December 2017. It is also important to note that the FNE decided not to prosecute a related cartel involving the producers of diapers.

The economic analysis here was less relevant (as proved by the participation of only 7 professionals, 2 of them were Ph.D.s), since proof of the existence of a cartel was massive. Moreover, the market share of the cartel (97% and only two firms) made cartelization simple and effective. The main argument that was presented by SCA (the smaller firm, with about one-fourth of the market) was that the cartel was not really an agreement between the two firms, but instead was imposed on SCA by CMPC. The TDLC's sentence disregarded this argument, and imposed the maximum fine on SCA (which was reduced to USD$18.3 million for having applied for leniency) and confirmed a complete exemption from fines for CMPC as the first leniency applicant (TDLC 2017b).

Interestingly, there was important work on determining the level of extra profits obtained by the cartel. In a thorough analysis, which considered different methodologies, Olivares and Montoya (2016) obtained a range of estimates between US$220 million and US$450 million for the whole cartel. From a technical point of view, it is important to remark that they used both a reduced-form approach (before and after analysis) and structural methods to estimate a counterfactual where firms instead competed.

5 The 2016 Reform of Chilean Anti-cartel Legislation, and Remaining Challenges

The latest reform of the Chilean competition law—which was passed in August 2016—tried to address the main concerns with the old law: That law was good enough to convict colluding firms, but not harsh enough in the punishment that followed. The fines that were imposed under the previous law were generally considered low, and were seen both as unfair and as unable to deter collusive behavior in the future. Moreover, the latest cases prosecuted by the FNE had been large—both in the amount of profits involved and in the public commotion they created—which increased the public outcry about what was perceived as insufficient punishment.

The reform sought to increase the deterrent impact of sanctions in two ways: On the one hand, it eliminated the fixed cap on fines that existed in the previous law, and allowed the TDLC to impose fines as a percentage of sales or extra profits gained by the firm due to collusion, which potentially would lead to much higher fines. On the other hand, it introduced the possibility of criminally prosecuting individuals who are involved in the collusive behavior of firms: managers, members of the board, etc. Finally, the reform addressed the public outcry that was generated by the latest cartels: The reform streamlined the procedure for awarding damages to citizens or firms that are affected by a cartel.

While the rationale behind all of these changes is quite clear, some time will be needed to take stock of their effectiveness. No major cases have been decided under the reformed law, and therefore some of its actual implications are still unclear. It is well known, for example, that penal prosecution is sometimes less effective than legislators envision, due to the more stringent standards of proof in criminal trials and the unwillingness of the judiciary to hand out prison sentences in white-collar crimes (Low and Halladay 2011; Massey and Cooke 2011). Moreover, leniency programs must be adapted to be effective, and harsh individual penalties could interfere with the incentives to cooperate. Finally, calculating and awarding damages have inherent difficulties, and can be complicated to implement in practice.

Below, we analyze the main changes that were introduced with the law and establish the key questions that remain relative to the law's implementation and effectiveness.

5.1 Increased Fines

As we have seen in the previous section, caps on monetary fines that were established in the Chilean competition law were quite limited in the case of big cartels, and were correctly perceived as unable to deter collusive behavior by big firms. To address the problem, the new law gives two options to the TDLC in order to calculate fines:

1. 30% of sales; or
2. 200% of the extra profits that were obtained through collusive behavior.

If the TDLC considers it impossible to compute any of this, it could impose a fine of up to US$48 million:[8] twice as much as the cap on fines that existed under the previous system. The new system, then, leaves significant space for the TDLC to impose fines that are real deterrents. While a fine that is based on sales punishes industries with high or low margins differently, and the literature (e.g., Bageri et al. 2013; Katsoulacos and Ulph 2013) has shown that it can have distortionary effects, it has the advantage of simplicity. When dealing with multiproduct firms (as is almost always the case), the disagreement about the actual level of sales is minimal when compared to the disagreement over actual profits obtained through collusive behavior. The latter leaves room for extensive arguments between experts on the side of the prosecutor and of the firms, which decreases the predictability and the deterrent effect of the system.

[8] Conversion done according to the 2016 exchange rate.

Moreover, an estimation of extra profits by a cartel requires a demand estimation, in order to gauge the effects of a price increase on the quantity that is sold. Even with advanced structural techniques, demand estimation is far from an exact science. Just to emphasize this point, Olivares and Montoya (2016) found extra profits that ranged between US$196.9 million and US$366 million for CMPC, and between US$33.4 million and US$91.9 million for SCA in the tissue paper case. Note that these very divergent estimates come from a single report, and not from antagonistic positions in litigation.

Furthermore, we find the possibility of the TDLC's imposing an arbitrary fine of US$48 million to each firm problematic and still highly insufficient for moderately big cartels, if the TDLC considers itself unable to establish either sales or profits. The existence of such an option in the law gives cartels an undesirable possibility for their defense strategy, and it is unclear why the legislators chose to keep this option open. In the past, the TDLC has been able to establish sales and/or estimate profits, and we do not see any reason for providing this US$48 million alternative. In the wrong hands—admittedly, a very far cry from the actual situation– it could be a tool used to let firms off lightly.

Still, the changes represent a significant increase in expected fines. As an example, consider the three biggest cartels that were convicted in the period 2004–2017, and assume that the TDLC uses double the amount of extra profits as the method to calculate the fines:

1. For Pharmacies, the FNE estimated the extra profits to amount to more than US$47 m (FNE 2008, p. 38). Under the old system, the fine totaled US$58.6 million (if the firm that cooperated had also paid the full fine), whereas under the new law the firms would have paid US$94 million in fines.
2. For Poultry Producers, the TDLC estimated that a price increase of only 3% (in the lower range of typical cartel behavior) implied extra profits of US$192 million for Agrosuper, US$72 million for Ariztía, and close to US$24 million for Don Pollo (TDLC 2014). The firms paid a fine of US$70.3 million under the old law, and would have paid US$576 million under the new law.
3. For Tissue Paper producers, Montoya and Olivares (2016) estimated extra profits between US$196.9 million and US$366 million for CMPC, and between US$ 33.4 million and US$91.9 million for SCA. If the TDLC imposed the maximum fine allowed under the old law on both firms, the firms would pay US$48.5 million in total. Under the new law, the potential fine would be between US$460 and US$915 million.

In the future, it will be crucial to know how often the TDLC bases its fines on actual sales, and how often it relies on profit estimation. Moreover, for deterrence and transparency purposes, it is crucial to understand the criteria that are used by the TDLC to choose sales or profits to set fines. Last, but not least, is the possibility of choosing neither of these options, and imposing an arbitrary fine of US$48 million. Hopefully, the TDLC would not give up on the possibility of estimating sales (or profits) and resort to this last option, but this remains to be seen.

5.2 Criminal Prosecution

By far the most controversial part of the 2016 reform was the possibility of criminally prosecuting board members, managers, and other executives who help organize or maintain a cartel. The new law introduces prison sentences between three and 10 years, in addition to the inability to work as a board member or manager in publicly traded companies, government institutions, or trade associations.

Since competition and criminal cases involve quite different standards of proof, procedural rules and judges, the law completely separates the prosecution of competition cases by the TDLC from criminal prosecution. In the latter, the case will be prosecuted by the Public Prosecutor and the judges will belong to regular criminal courts.

To avoid conflicting schedules for the competition and criminal cases, and for the criminal investigation not to interfere with the former, the following system was established:

1. The FNE investigates the competition case and presents it to the TDLC. Private parties can also bring cases to the TDLC. The TDLC establishes whether the infraction took place and determines the fines. Then:
2. The National Economic Prosecutor (the head of the FNE) determines if the case should be criminally prosecuted, and recommends (or fails to recommend) a criminal case. If so:
3. The National Prosecutor takes charge of the criminal case.

The first thing to note is that the competition and criminal cases are carried out sequentially, not simultaneously. The second is that the National Economic Prosecutor holds a significant amount of power for the criminal prosecution. In fact, only he can request criminal prosecution, although he will not be the one in charge of carrying it out. The only constraint that the law establishes for this decision is that if the case is "grave," the National Economic Prosecutor must start the criminal prosecution.

It is unclear, up to now, how this last constraint will play out in practice. One possibility is that political pressure could make the National Economic Prosecutor simply start penal prosecution in all cases. Another possibility is that the wording of the TDLC sentence (or the Supreme Court sentence if there is an appeal) could force the hand of the National Economic Prosecutor, making the decision for him. In that case the decision would, in practice, belong to the courts and not to the FNE.

Since criminal prosecution involves harsh penalties at the individual level, it was necessary also to reform the leniency program: allowing it to protect individuals and not only firms. The reform establishes that the first person who contributes significant information would be exempt from both prison sentences and fines, while the second would get an automatic reduction of the prison term and a 50% fine reduction.

An important remaining issue is the handling of sensitive information: If criminal prosecution is initiated, all of the information that is used in the civil investigation—which is already in the hands of the TDLC—is given to the National Prosecutor. But it is unclear what will happen with information that was collected by the FNE and not used in the investigation, which could include sensitive commercial information that is obtained through a leniency application. If such information is misused, or becomes public due to procedural issues, it would be very detrimental to the future of the leniency program, since firms would be much more reluctant to cooperate with the investigation.

A related situation occurred in 2016 in the tissue paper case when the National Prosecutor's Office requested confidential information that the firms had provided to the FNE in their leniency applications. This request occurred before criminal sanctions were introduced with the 2016 reform, and the prosecutor's office was using Article 285 of the Chilean criminal code to try to prosecute the individuals who were involved in the collusion. The TDLC denied the request for information, and a court of appeals confirmed that the TDLC was not required to hand over confidential information that was provided in the context of a leniency application to the prosecutor's office (Lalli 2016). Therefore, the courts already sided with the FNE and TDLC with respect to the confidentiality of the information that was provided to the FNE in a leniency application, and thus protected the leniency program.

However, this case points to the need for more cooperation and clarification of the relationship between the FNE and TDLC on the one hand and the National Prosecutor's Office on the other. The international experience demonstrates that when two different agencies handle the civil and criminal cases, cooperation and trust between them is crucial (Beaton-Wells 2011, pp. 188–90).

The way that criminal prosecution will interact with the leniency program is another major question: Having tougher penalties would, ceteris paribus, increase the effectiveness of leniency programs. This, however, can be undermined by the FNE's selection of cases. Political pressure to be able to achieve criminal convictions could lead the FNE to try to meet the higher standards of proof needed for criminal prosecution. This, together with the FNE's limited prosecution capacity, could lead to an increased reliance on the use of leniency programs, limiting the prosecution of cases where only suspicion based on economic behavior exists.[9]

As has been pointed out by Harrington (2008), leniency programs can be helpful in detecting and dismantling weaker cartels, but could make strong cartels even more stable. This could be the case if the FNE relies on leniency so much that strong cartels can be certain that—as long as they do not cooperate—they will not be prosecuted.

Finally, international experience shows that in practice judges might be reluctant to hand down effective prison sentences for white-collar crimes (see, e.g., Low and Halladay 2011 for Canada; Massey and Cooke 2011 for Ireland). This is reinforced by the fact that Chile is a small country, where elites have a high level of cohesion. Recently judges decided not to hand down prison sentences in the biggest case of corporate fraud in Chilean history (Corte de Apelaciones de Santiago

[9] Stephan and Nikpay (2015) report that, in the EU, cases that rely on leniency programs have increased to 75% of all cases.

2012). If criminal prosecution, with its high standards of proof, does not resonate with judges, it will be a moot point, with no real bite, and therefore will have no effect on deterrence.

5.3 Compensatory Damages

Since the 2003 reform, the Chilean competition law allows consumers to claim damages in civil courts for infringements of competition law. Under this law, any individual consumer who is damaged by illicit action, the National Consumer Protection Agency, or any consumer association could bring an action in ordinary civil courts; however, in practice such cases have been rare.

The 2016 reform designates the TDLC as the entity in charge of determining both the amount and the beneficiaries of awards. It leaves quite a lot of discretionary power to the TDLC, which can establish:

1. The damages, which in turn determine the total compensation amount;
2. The beneficiaries (firms and natural persons); and
3. The conditions that the beneficiaries must fulfill to qualify for damages.

The law does not establish, for example, if indirect consumers can be compensated, or guidelines for the prerequisites that consumers must satisfy in order to obtain compensation. All of this is left to the TDLC to establish through its guidelines and decisions.

It is reasonable for the TDLC to be the institution in charge of deciding damages claims rather than ordinary civil courts, which are not specialized in competition. Moreover, the TDLC will already have all the relevant information of the case at hand.

However, the law leaves some crucial definitions unsettled: The main one, in our opinion, concerns who can be awarded damages: direct consumers, or all consumers. In order to avoid multiple litigations, as has been the case in the United States,[10] it is important that the TDLC establishes both the amount and the groups to be awarded damages, and does so on a consistent basis.

It should be noted that damages are not a substitute for fines, and that the deterrent effect of the anti-cartel regime should be based on fines and not on damages (Lianos et al. 2014, pp. 45–46). In particular, damages are difficult to claim, due to the legal problems that are associated with establishing that a person or firm was actually a consumer. Connor and Lande (2014) show that—due in part to the impossibility for consumers of establishing that they made a purchase—the median of damages that have been awarded in cartel cases in the United States since 1990 has been only 37% of single damages, rather than the treble damages that the law provides for.

[10] At the federal level, indirect consumers are excluded a priori, since *Illinois Brick* (*Illinois Brick v. Illinois* 1977); but the possibility of compensating them in state courts has led to multiple litigations for the same cartel.

6 Conclusion

The Chilean anti-cartel experience—at least since 2003—has been quite successful. The main institutions—the FNE and the TDLC—have repeatedly shown their independence from political power, as well as their professionalism and expertise. Cartels have been repeatedly and successfully prosecuted; public opinion is fully conscious of the need for anti-cartel prosecution; and the system has not experienced any breakdown in almost 15 years of existence. Over time, the investigative capacities of the FNE have been strengthened: in particular, with the 2009 reform. In addition, fines have become larger, easier to calculate, and complemented with individual criminal prosecution since 2016. Finally, the leniency program has been implemented with success since 2009, which enhanced the successful prosecution of at least two large cartels.

Together with these accomplishments, it is possible to identify some of the challenges that lie ahead: The FNE has a limited capacity for prosecution, which could lead to an excessive reliance on leniency programs. The implementation of effective criminal prosecution will not be easy, and it is already apparent that cartels are becoming more sophisticated in their collusive strategies. The TDLC was only recently—in 2016—designated as the institution that is responsible for deciding on the amount and recipients of damages to consumers in cartel cases, and the implementation of the law will determine whether this will be more effective than leaving damages awards to ordinary civil courts.

Besides addressing the concrete challenges that we identify in the paper, we suggest that the FNE and the TDLC take a more proactive role in the enforcement of anti-cartel policies. Until now, these bodies have put only limited emphasis on the adoption of compliance programs by firms, and have not intensively engaged in competition advocacy towards other state organs and the public at large.

The comparative literature identifies an emphasis on well-designed and implemented compliance programs as increasingly important complements to more established anti-cartel policies such as leniency programs (Fisse 2015; Murphy 2015). Competition advocacy likewise can play an important part in the combat against cartels. Advocacy towards other parts of the state can help with (among other things) the detection of bid rigging in public procurement (Lewis 2015, p. 214).[11] Competition advocacy towards the public at large, on the other hand, helps raise awareness of the issue, and maintains public support for the competition regime. A more pro-active effort on these fronts would help strengthen the Chilean regime.

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[11] It is interesting to note that in a recent bid rigging case that was brought by the FNE to the TDLC (FNE 2017) in which two pharmaceutical laboratories are accused of colluding to raise prices of sodium chloride saline solution in public tenders, the FNE started its investigation after it received complaints from two public entities: the Public Comptroller, and the Ministry of Health.

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