# Chile ❖

Chile is the Southernmost nation of Latin America and one of the longest and narrowest countries in the world. It lies between the Andes mountains to the east and the Pacific Ocean to the west and borders Peru to the north, Bolivia to the northeast, Argentina to the east, and the Drake Passage in the far south.

Since the restoration of democracy, Chile has served as a model for other developing nations and the East European countries that are attempting to make a similar transition to democratic government and free-market economy.

Chile has increasingly assumed regional and international leadership roles befitting its status as a stable and democratic nation.

| PROFILE | |
|---|---|
| Population: | 17.40 million*** |
| GDP (Current US$): | 248.60 billion** |
| Per Capita Income: (Current US$) | 14,413 (Atlas Method)**<br>17,380 (at PPP.)** |
| Surface Area: | 756.6 thousand sq. km |
| Life Expectancy: | 79.1 years** |
| Literacy (%): | 99 (of ages 15 and above)** |
| HDI Rank: | 44** |

*Sources:*
- World Development Indicators Database, World Bank, 2011
- Human Development Report Statistics, UNDP, 2011

(**) For the year 2011
(***) For the year 2012

**Economy**

Chile is a market-oriented economy characterised by a high level of foreign trade and a reputation for strong financial institutions and sound policies that have given it the strongest sovereign bond rating in South America. Exports account for more than one-third of GDP, with commodities making up some three-quarters of total exports.

Chile is the world's leading producer of copper and has bounced back from the effects of a major earthquake in early 2010. An innovative, countercyclical fiscal policy accumulates surpluses when copper prices are high and operates in deficit only when prices and economic activity are low. Exports of minerals, wood, fruit, seafood, and wine drive GDP growth.

As of December 31, 2012, sovereign wealth funds - kept mostly outside the country and separate from Central Bank reserves - amounted to more than US$20.9bn. Chile used these funds to finance fiscal stimulus packages during the 2009 economic downturn. In May 2010 Chile signed the OECD Convention, becoming the first South American country to join the OECD.

Chile has 22 trade agreements covering 60 countries including agreements with the European Union, Mercosur, China, India, South Korea, and Mexico. Chile has joined the United States and nine other countries in negotiating the Trans-Pacific-Partnership trade agreement. In 2012, foreign direct investment inflows reached US$28.2bn, an increase of 63 percent over the previous record set in 2011.

**Competition Evolution and Environment**

State intervention into Chile's economy became widespread following the 1925 adoption of a Constitution that greatly increased the power of the executive. The Government's promotion of and engagement in preferred forms of economic activity became more pronounced in 1931, when the worldwide economic depression led to a short-lived takeover of Chile's Government by socialist-leaning military leaders. Over the next two decades, the state pursued policies of import-substitution industrialisation through various means. The policies created closer links between government and big business, and together with high tariffs they isolated Chile from international markets. By the end of the 1950s, the policies of the past were seen as having run their course, but there was no consensus on what new course to take.

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Over the last 30 years, Chile has been a quiet pioneer in the field of competition law and policy in South America and among developing countries. In the application of competition policy principles in some infrastructure sectors, Chile and its competition institutions have been in the forefront. In Chile, the main focus has been a successful breaking of vertical restrains and collusive practices.

Competition policy in Chile was based on the Anti-monopoly law, which was first enacted in 1959, a year after an international mission recommended abandoning price controls, enacting a competition law, and managing customs tariffs when prices rose too much. Since 1959, Chile has had regulations in support of free competition.

The law prohibited the Government from granting monopolies to private parties and legislated those acts or agreements as civil (administrative) and criminal violations. The Law was enforced by a Commission whose members were a Supreme Court Judge, the Superintendent of Corporations, Insurance and Stocks Markets and the Superintendent of Banking.

The Commission could investigate cases, decide whether to recommend criminal cases, issue rulings in non-criminal cases as well as general rules, and decide whether a monopoly concession could be issued. Four years later, in 1963, the position of the National Economic Prosecutor was created by Law No. 15.142, with the mission to prosecute and investigate anticompetitive conducts, acting on public interest.

Since Chile's Government fixed the prices of many products and services throughout this period of 1952-1972, it was doubtful that the 1959 Competition Law would ever play a major role in preventing enterprises from restricting output and charging monopoly prices.

In 1973, the new Government shifted the economy. The military government in the same year gave a new economic orientation to the country, based on free market principles. The features of this new orientation were the privatisation process, liberalisation of prices, unilateral tariff reduction and the opening of the economy to foreign trade.

Further, owing to several drawbacks in the 1959 competition law, it was reformulated as the '*Law for the Defence of Free Competition'* and was adopted in December 1973 as part of a programme to roll back the previous Government's steps towards a Government-owned and planned economy.

Together with these new orientations, the military government improved the system of competition enforcement with the Decree Law No. 211, just two months after the coup. And a new enforcement agency was in place two weeks later. The new law was and is substantively similar to its predecessor; however, it created a new institutional system that remains in place. So, it was pretty clear that competition was going to play a central role in the economic system of that Government.

Amendments adopted in 2009 and 2011 have strengthened enforcement further. Among others, the changes authorise a leniency programme to detect and prevent cartels, add investigation powers and increase the penalties for infringement.

**Competition Law and Policy**

Latin American countries view competition policy as an essential step in establishing a free market system. Over the past thirty years, Chile has quietly become one of Latin America's pioneers in competition policy. In 1973, Chile enacted a competition act which sought to assist the government in liberalising trade and deregulating the market. Thirty years later, Chile enacted a new competition law that replaced the out-of-date competition commissions with a specialised tribunal court whose sole focus was to hear competition disputes. While this change significantly improved the effectiveness of the competition system, enforcement authorities and the specialised court continued to struggle with a persistent problem: the failure to successfully prosecute collusion cases. Efforts to address this continuing problem led to the enactment of Chile's amendment to the competition law on April 15, 2009. Primarily focusing on the inability to deter collusive conduct, the act sets forth two key mechanisms that assist in detecting and proving collusion: dawn raids and a leniency programme.

Recent amendments to the competition law adopted in 2011 regulate relations between suppliers and consumers, prohibits the infringements against consumers and provides the applicable procedures in such circumstances. Article 28A of the Act provides that: '... commits a breach of this law anyone that, through any kind of advertisement, produces confusion among consumers about the identity of businesses, activities, products, names, marks or other distinctive signs of his competitors.'

With the newest amendments to the competition law the Tribunal became an independent entity with judicial powers; however, it is not part of the judiciary. This quasi-judicial Tribunal is composed of three lawyers and two economists. Its chairman is a lawyer and is appointed by the President of the Republic from a list of five nominees proposed by the Supreme Court. One lawyer and one economist are appointed by the President of the Republic from a list of three nominees proposed by the Central Bank. The other lawyers and economists are designated by the Central Bank directly. In all cases there is a previous public contest where all candidates could apply.

**Box 1: Main Laws that Regulate Competition in Chile**

1. Constitution Article 19 (21) and (22) assures the right that every individual has to engage in any economic activity that is not considered illegal or that puts into risk national security or the public order. It also establishes that no privilege can be given to any sector, activity or geographic area.
2. Decree Law No. 211 of 1973 which established the rules for the protection and defense of free competition,
   - whose text revised, coordinated and systematised was included in Executive Decree No. 511 issued by the Ministry of Economy, published in the Official Gazette on October 27, 1980;
   - as amended by Law No. 19.610 published in the Official Gazette on May 15, 1999;
   - by Law No. 19.806, published in the Official Gazette on May 31, 2002; and
   - by Law No. 19.911 published on November 14, 2003, amends the prior competition law by creating a new Competition Tribunal and introducing a number of other reforms.
   - Article 3 of the Unfair Competition Act of 2007
   - As amended by Law 20,361 / 2009; and
   - Law No. 19.496 on Consumer Protection (as last amended by Law No. 20543 of October 21, 2011)

Another important reform is the creation of the staff of the Tribunal. The predecessors – the Preventive and Antitrust Commissions – did not have their own staff and received support from the National Economic Prosecutor's Office. This aspect of the reform increases the independence of the Tribunal in relation to the National Economic Prosecutor's Office.

The Competition Tribunal maintains the staff of the Preventive and Antitrust Commissions. Consequently, its main function is to resolve conflicts and enforce the law. The Tribunal also fulfills an advocacy function when it responds to consultations about future contracts, or when it proposes to the President of the Republic the modification, approval or termination of laws. Furthermore, it can promote competition principles when issuing general rules.

**Institutions and its Competencies**

Decree 211 of the current legislation created the National Economic Attorney along with the creation of a three-tiered institutional framework:

1. A number of Preventative Commissions (one Central and various regional);
2. A special tribunal (the Antitrust Commission the Tribunal de Defensa de la Libre Competencia or "TDLC"); and
3. An enforcement agency (the National Economic Prosecutor's Office, Fiscalía Nacional Económica, or "FNE").

The *Preventative Commissions* are administrative bodies, which accomplish an important task in the transitional period from a planned economy to a market economy, educating firms and entrepreneurs on competition affairs. They can direct the Prosecutor 's Office to conduct investigations and can issue orders to halt any conduct that they find illegal. In addition, at the request of the Prosecutor's Office, they can issue interim orders that for 15-30 days suspend anticompetitive agreements or set maximum prices; and request any governmental entity to exercise its regulatory powers to prevent harm from conduct that was under investigation.

**Box 2: AGIP A.G. vs. Supermercados Líder**

AGIP, the Association of Retailing Suppliers, asked the TDLC for a consultation about the tactics of Líder, a leading supermarket. A supplier, Nestle, had refused to participate in a Líder promotion. Líder retaliated by removing the products from its shelves; however, the products were still included on promotional posters.

In examining this dispute, the TDLC also looked at other common supplier complaints about the practices of chain retailers, such as marketing private label products, sales "below cost" and unilateral changes in terms with suppliers. The TDLC noted that conditions of sale and other aspects of the relationships with suppliers should be established objectively and in a non-discriminatory manner, and that the chains should not unilaterally alter prices or terms that had been negotiated.

The TDLC also ordered the two chains to notify it in advance of any proposed mergers or acquisitions, but the Supreme Court overturned this order.

*Source: OECD Report 2011*

They do not have powers to enforce the Law but to respond to complaints from legal entities or individuals on competition issues.

The *Antitrust Commission* is a judicial body in the Chilean competition system. Its main function is to decide cases brought by either the Prosecutor's Office or private complainants. The Commission can also open an investigation on its own. In addition, it also decides appeals concerning the Prosecutor's information requests and the Preventative Commissions' decisions. It has the broadest remedial powers. It can impose fines (up to US$16,500,000)**, modify and nullify contracts, or order the dissolution and termination of corporations, disqualify

individuals from holding office in professional and trade associations. It is composed of two government officials, two members of the academic world, and one Supreme Court Judge. They also serve without payment and with the technical support of the National Economic Prosecutor's Office.

The *National Economic Prosecutor's Office* has powers to investigate and prosecute anticompetitive conduct. Its head is appointed by the President of the Republic, but has statutory independence from any authority. In 1999, Law No. 19.610 was enacted and its investigative powers and budget were substantially improved. Its main duties are:

- to investigate and order confidential proceedings;
- to request the Commission to order injunctions;
- to act in any case before the Courts and Tribunals; and
- to request the support of the Police.

**Anticompetitive Business Practices**

According to the Competition Law anyone executing or entering into, individually or collectively, any event, act or agreement tending to impede free competition in economic activities within the country, both those of a domestic nature and those involving external trade activities, shall be liable to punishment by short prison term in any of its degrees. When the offense affects essential articles or services, such as those corresponding to food, clothing, housing, medicine or health, the punishment will be increased by one degree (Article 1, Decree 511 of 1980).

Abuse of a monopolistic market position is a restraint on competition. Monopolistic market position is taken to mean not only that of a monopoly, but that of any dominant position exercised by one or more firms, whether they are monopolies or not.

Monopolies, as defined in this Act, which impedes competition in the production, processing, distribution or marketing of goods and services, are prohibited.

The concession of any monopoly for exercising economic activities, such as extractive, industrial, commercial or services activities shall not be granted to private individuals.

The monopoly of certain activities may be reserved for fiscal, semi-fiscal, public, autonomous administration or municipal institutions.

**Box 3: Flat-Panel TV War**

Banco de Chile had contracted with two firms, Travel Club and Duty Free TC, to manage its premium dollars fund scheme and to run events, promotions and advertising campaigns for its credit cards. Duty Free organised a trade fair for several days at a convention centre, Casa Piedra. At the trade fair, Banco de Chile's credit card users would have an opportunity to buy products under the premium dollars fund scheme and to earn up to 12 interest-free quotas. The effective consumer prices represented discounts of up to 30 percent. The organisers lined up distributors to supply the products, and Banco de Chile advertised the event to its clients.

The defendants, Falabella and Paris, are major retailers of home appliances and electronic products. Each accounts for approximately 50 percent of the sales of the distributors who had agreed to participate in the trade fair. The trade fair represented a threat to the defendants' businesses, both for retail sales of these products and for business-related credit cards. Under pressure from the defendants, the distributors withdrew from the trade fair.

Banco de Chile filed a suit at the TDLC, and the FNE presented a petition to the TDLC alleging abusive conduct and collusion. FNE argued that the boycott had a clear exclusionary purpose, aimed at preventing the entry of a new competitor. FNE pointed out the importance of the defendants' retail outlets for these distributors and their success at pressuring the distributors to withdraw from the trade fair.

To prove that the two firms agreed on the boycott, the FNE relied on phone records, e-mails and statements by executives of both defendants and of their suppliers.

Collusion was evidenced by repeated communications between executives of the companies, followed by their co-ordinated pressure on their respective suppliers, to impede their participation at the fair trade. They also attempted to involve in the boycott a third department store.

The TDLC defined the relevant market as including both credit card service at retail stores for the purchase of home appliances and electronic goods and the distribution and retail sale of those goods. An important dimension of competition between retail stores in Chile is over the discounts and premiums given to customers who use the retailers' credit card systems. The TLCD found SACI Falabella and Paris S.A. to have colluded and to have abused their dominant position. It ordered SACI Falabella and Paris S.A. to pay fines of 8000 and 5000 annual tax units, respectively (USD 7 700 000 in total).

*Source: OECD Report 2011*

**http://www.luc.edu/law/academics/special/center/antitrust/pdfs/chilean_comp_law.pdf

There are no specific provisions governing market control. Nevertheless, in light of the comprehensive nature of the general prohibition under Article 1 of the Law, that prohibition has been applied to instances of concentration among firms that threaten to interfere with free competition within the country.

**Regulatory Framework**

In formulating its economic policy at the domestic level, the Government placed emphasis on stability, both economic and institutional, by creating and developing an appropriate regulatory framework designed to favour private initiative while at the same time safeguarding the guiding principles of development with equity.

**Box 4: The Falabella Case**

One of the main Chilean retail companies, Falabella, and the most important supermarket chain, D&S, agreed in 2007 on a merger. A new entity would be formed, in which Falabella would own 77 percent of the shares and D&S would own 23 percent. The combination would become the second largest firm traded on the local stock market. With annual sales of approximately US$8bn, it would be the second largest retailer in Latin America, after Wal-Mart in Mexico. The TDLC rejected the proposed merger, in a decision issued January 31, 2008.

The TDLC held that the risks to competition could not be corrected by imposing conditions. In assessing these potential effects, the TDLC applied a concept of "integrated retail", involving a combination of retail stores, malls and consumer credit.

The TDLC found that the proposal would lead to a huge change in market structure, by creating a company that would be the dominant player in retailing, involved in virtually all segments and functions: department stores, home improvement stores, supermarkets, real estate and financing. It might extend that power into other retail areas in the future, while the effects of integration could create barriers to entry by others.

Tracing the history of retailing, the TDLC noted the advantages of an "integrated retail" operation, in functions such as inventory management, transport, refrigeration and others. It would have greater access to capital and a larger base to cover fixed costs. It would have greater power to negotiate better terms from suppliers. It would have advantages in compiling information about consumers' consumption and credit. It could retain and expand its consumer client base through fidelity programmes and non-bank consumption cards.

The TDLC found that complementary services and sales would create market power and increase the minimum efficient scale of operations, making it more difficult for competitors to enter. Specific risks would include:

- Developing better commercial research on customers' consumption patterns and hence a competitive advantage in identifying market niches unavailable to smaller competitors.
- Using fidelity programmes to increase consumers' switching costs.
- Tied sales strategies among retail segments under their control.
- Economies of scale and scope from savings in complementary costs.

The TDLC described its conception of an "integrated retail market" as "dynamic" in contrast with the "static", segment-by-segment analysis that would have applied under the FNE's Guidelines on Operations of Horizontal Mergers. That analysis would have dealt separately with supermarkets, department stores, home improvement, real estate and financing. Nevertheless, the TDLC did examine each of these segments and concluded that post-merger market concentration would be high and that the advantages of integrating complementary services would raise entry barriers significantly.

The TDLC devoted particular attention to the use of non-bank credit card systems by retailing firms. It rejected evidence of increasing use of similar non-bank credit cards by other retailers. Rather, it contended that the brand value of the card issued by a dominant retailer would create a barrier to entry. The TDLC argued that bank credit cards would become effective competition only if there was rivalry in the retail market, but the combination would reduce that competition.

In effect, the TDLC regarded as sources of market power the same commercial advantages that the merging parties regarded as sources of long run efficiencies. It rejected the parties' claim of pro-competitive efficiencies because they did not show how they would be passed on to consumers.

*Source: OECD Report 2011*

***Telecommunications Sector***

The Telecommunications Law was enacted in 1982. Tariff regulations were introduced in 1987. Tariffs are set freely in the market except when access charges are involved or when the TDLC states that specific tariffs have to be regulated. The TDLC has ruled that consumer tariffs only should be regulated in the case of dominant fixed-line telephone companies, that is, Telefonica CTC in most of the country and Telsur and Telcoy in some southern areas. The agency in charge of reviewing tariffs and access charges is the Undersecretariat of Telecommunications (SUBTEL).*** Chile's telecom industry has been privatised. To a great extent, it is owned by foreign firms. In Chile, the telecommunications sector was reformed as part of a broad strategy to open up the economy to foreign investment, to competition, to greater domestic and foreign private sector participation, and allow ready access to foreign exchange and a simplified tax regime.

The country has one of the least-regulated telecom markets in the region, with full competition in all areas. The telecoms law states that providers may set the price of their services, except that access charges are always fixed and other prices may be fixed if the Antitrust Commission finds that competitive conditions do not exist. This means, Chile's telecom regulator sets tariffs for local fixed telephony (pursuant to Antitrust Commission rulings) and for access charges; in the mobile market, only access prices can be fixed and long distance charges are free by law.

Before privatisation, Chile's telephone system was dominated by two state-owned companies: *Compañia de Téléfonos* (CTC), which provided local telephony services, and *Empresa Nacional de Telecommunicacion* (ENTEL) providing domestic and international long distance service.

Notably, the pro-growth agenda originally contained several proposals for regulatory reform in the telecom sector, but the proposed amendments have apparently been withdrawn and replaced by a programme that involves regulatory changes, still unclear at this point.

***Energy Sector***

The Electricity Law was enacted in 1982, Chile's electricity sector was dominated by two SoEs: ENDESA, which operated on the national level and engaged in generation, transmission (through ownership of TRANSELEC), and distribution, and CHILECTRA, which distributed electricity in the Santiago metropolitan area.

Had competition policy principles been given serious consideration when privatisation occurred, ENDESA might have been divided vertically (and perhaps horizontally) before it was sold, but this did not happen. Several buyers acquired minority interests in ENDESA, while ENERSIS acquired CHILECTRA. Since then, Chile has been engaged in a lengthy struggle to limit the anticompetitive effects of vertical integration, which relate in large part to the resulting barriers in generation and marketing, both of which are potentially competitive. The struggle has included both unsuccessful attempts by the Prosecutor's Office to force vertical separation and the usual sorts of regulatory strategies for preventing abuse of dominance.

The Antitrust Commission plays a special role in this market, since by law prices may be set only for services that the Commission finds are not subject to competitive conditions. The market is regulated by Chile's National Energy Commission and the Superintendency of Electricity and Fuels, acting under a 1998 regulation that sought to increase transparency and competition. Chile's pro-growth agenda includes further pro-competitive reform in this sector. An ambiguity in the electricity law is holding up investment in new transmission assets, which in turn is deterring investment in new generation facilities. The main purpose of the proposed amendments is to clarify how investors in transmission assets will be able to obtain a return on their investment.

In utility sectors, such as telecom, electricity and water industries, prices should be free unless there are no competitive conditions. The laws that regulate these sectors empower the Antitrust Commission to authorise government intervention in prices. In fact, the Competition Tribunal must determine the competition conditions of those markets. The exercise of this legal duty is, in part, a competition advocacy task of the Commission.

Electricity regulation has been revised since 2004, largely to clear up some problems that might have discouraged investment in transmission or generation and to create new mechanisms for dispute resolution.

The latest statement about competition standards in this industry came from the TDLC. In 2007, the TDLC approved the petition of two electricity generating companies to jointly build and operate five hydroelectric power plants in the south of Chile. The authorisation set parameters for consultants and the new joint venture to determine the transfer price. It ordered that the transmission facilities pricing (or prices paid by third parties) should be based on objective and non-discriminatory criteria. And it ordered that all contracts for the transmission line design should consider a minimal period to receive petitions about line transmission capacity from independent parties. ***

**Consumer Protection**

In Chile, the protection of the consumers is organised on the basis of a system that comprises the state, through the National Consumer Service (SERNAC) and the regulatory organs in special markets (electricity, fuel, potable water, banks, telecommunications). The basic legal frame that

***http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/47950954.pdf

the SERNAC enforces is the Consumer Protection Act (CPA) of 1997.

Unlike authorities such as the US FTC, SERNAC only takes care of consumer protection whereas other bodies like the Office of the National Economic Public Prosecutor and the Court of Fair Competition take care of competition matters.

The SERNAC has undertaken a mission to inform, educate and protect consumers. Within the scope of protection mediation is also included voluntary settlement of disputes between the parties. The Role of SERNAC in the resolution of conflicts takes the form of administrative/voluntary mediation, which allows them to do conflict resolution of individual and collective nature.

The role of the Judiciary is to decide upon these disputes once disputes cannot be resolved through administrative procedures, or when the consumer directly seeks the intervention of the Courts. The number of NGOs devoted to the protection of consumer rights has increased. Public funds have been allocated to the development of such organisations.

**Concluding Observations and Future Scenario**

Competition policy aims at maximising the welfare of society by preventing the economic inefficiency and waste that is caused when laws and regulations unnecessarily limit the ability of enterprises to respond efficiently to consumer demand.

Competition policy can help strengthen the 'safety net' for the disadvantaged. Chile's competition-oriented approach to telecom is to provide service efficiently and at lower cost, leaving consumers and the government more resources to spend on other essentials. And as a sort of 'applied microeconomics', competition policy might be useful in reforming aspects of Chile's health regulations, which reportedly create perverse incentives that unduly limit health care.

Competitiveness and higher productivity are the keys for sustaining growth. The goal of policy is to bring about systemic competitiveness of the economy. The Government is expected to continue developing competition law as a base of competition policy. The application of a competition law is increasingly important in dealing with the efficient operation of markets and with the effective benefits of a globalised economy, in order to assure transparency, non-discrimination, comprehensiveness and accountability.

Chile's Government regards the principal goal of its competition law as an instrument to promote economic efficiency with the expectation that in the long run this maximises consumer welfare. Enforcement is paying much more attention now to cartels. Uncertainty about what the TDLC will do is magnified by the inconsistency of the Supreme Court's directions. The Supreme Court lacks capacity to deal with complex economic issues itself, and its disagreements with the TDLC reveal a lingering judicial preference for decisions in terms of legal categories and rules. Uncertainty remains about the methods for defining markets, the legal standard applicable to mergers and the evidentiary standard applied to hard core cartels. ***

The Chilean competition law is distinctly improving in efficiency, the quantity of fines has increased and the new juridical organ has received more power. The Tribunal, urged to resolve conflicts and enforce the law, is expected to play a big role in carrying out its advocacy functions and specially promoting competition principles. The main distinction of the Preventative Commissions is the staff which is much more professional now and allows the Competition Tribunal to meet its mandate more efficiently. This will permit Chile to develop more rapidly.

Thus, free competition in Chile is being facilitated not only by a strong economical basis but also by an efficient administrative one.