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Chilean Supreme Court overturns interpretation of interlocking

Supreme Court adopts restrictive interpretation limiting the offense to direct interlocking and excluding legal entities

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KEY ASPECTS

- Article 3 letter d) of Decree Law No. 211 prohibits "*the simultaneous participation of a person as relevant executive or director in two or more competing companies*", when the business groups to which each company belongs exceeds a certain sales threshold.
- In 2025, the Competition Court rules for the first time on this offence, known as 'interlocking'.
- The Competition Court interpreted the prohibition to cover both direct interlocking (between companies that directly compete in the same market) and forms of indirect interlocking (when the competitive relationship occurs through parent companies or subsidiaries). It also held that both companies themselves and directors or executives involved can be penalized for this infringement.
- The Supreme Court rulings reverse this interpretation, concluding that the rule must be applied restrictively, that it only penalizes direct interlocking, and that only the director or executive –i.e., the natural person– who engages in it can be penalized.
- Still, the Supreme Court recognized that both the conduct of companies and cases of indirect interlocking can constitute violations of competition law, if anticompetitive effects are proven.

The TDLC Judgements and its interpretation of the interlocking rule

In December 2021, the National Economic Prosecutor's Office ("**FNE**") filed two actions before the Competition Court ("**TDLC**"), accusing violations of Article 3 paragraph 2 letter d) of Decree Law No. 211 ("**DL 211**"), alleging in both cases that the same individual would have served as director (and, in one case, as advisor to the board of directors) of two or more competing companies.

The companies in question did not compete directly in the market. Instead, their subsidiaries would compete with each other or with one of the parent companies involved.

The TDLC ruled on the FNE's actions through its Judgments No. 202/2025 and No. 203/2025 ("**TDLC Judgments**"), deciding in favor of the FNE and imposing fines on the accused companies and executives.

As we have previously reviewed (available on the Cuatrecasas website), the TDLC Judgments adopted a broad interpretation of both the concept of "competing companies" and of the entities subject to the interlocking rule.

First, it considered that both the directors or executives involved, and the companies, can be sanctioned for interlocking. Regarding the latter, the TDLC considered that a legal person could be sanctioned for infringing the rule, because the company (i) is responsible for the acts of its organs, including the shareholders' meeting that appoints the director; and (ii) it is **required to act as to prevent materialization of the infringement.**

In addition, the TDLC held that "competing companies" are independent economic agents that compete in the same market, without the separation between different companies within the same business group being relevant.

The key is that the TDLC interpreted that it can sanction both direct interlocking, that is, when the relevant director or executive serves in companies that compete directly with each other, and indirect interlocking, in which they do not serve in companies that compete directly, but in other related companies, such as the parent company of one or more of them. The TDLC found no distinction between the two hypotheses in either the wording of the rule or the legislative history.

The TDLC Judgments were appealed by the sanctioned companies and executives, who mainly alleged that: (i) including hypotheses of indirect interlocking would create an infringement that was not contemplated in the law; and (ii) entities that could neither comply, nor prevent or foresee the infringement would be penalized, as the rule is addressed to a natural person and it is the shareholders' meeting, and not the company, that appoints the directors.

The Supreme Court rulings and their strict interpretation

On March 2, 2026, the Supreme Court decided in favor of the appeals filed by the penalized parties, overturning the TDLC Judgments and acquitting both the companies and the directors involved.

The Supreme Court rulings represent a shift in the interpretation of the interlocking rule, opting for a more restrictive interpretation.

Per se rule and restrictive interpretation

The Supreme Court concluded that because the rule of Article 3, paragraph 2, letter d) of DL 211 constitutes a *per se* rule, that is, it does not require proof of anticompetitive effects or dominant position to establish an infringement, it must have a "*restrictive application, which requires adherence to its literal meaning because otherwise it could lead to excesses or unjustified limitations to legitimate competition*" (Recital 6º).

Lack of responsibility of companies

According to the Supreme Court, the interlocking rule only refers to the "person" who simultaneously participates in the relevant executive positions or as a director of two or more competing companies. **Because of this, sanctioning companies for violating Article 3, paragraph 2, letter d) of DL 211 is inappropriate**, since **the perpetrator of the offense is the individual that simultaneously participates as director or relevant executive in two competing companies** (Recitals 7º-10º). In other words, **it is only the natural person who could commit the conduct that is sought to be avoided** (i.e., the exchange of information between competing companies that could allow their coordination so that,even potentially, they can affect competition in the market).

Restrictive concept of "company" and limitation of scope of the rule to direct interlocking

In regard to the concept of "competing companies", the Supreme Court defines it as "*organizational units dedicated to the same sector, service, or sale of similar products that compete in the relevant market of which they are a part, in order to attract a greater number of customers*" (Recital 14º). Thus, the key to determining a competitive relationship is that there is rivalry between the "companies" or "organizational units" in which the same person serves as a director or relevant executive.

In this way, the **Supreme Court limits the infringement to cases of direct interlocking** —that is, companies in which the same person serves as a director or relevant executive must compete directly with each other—, **excluding indirect interlocking from its scope of application**.

The simultaneous participation of directors or executives in parent companies and/or subsidiaries may also constitute an infringement of competition law

The Supreme Court expressly acknowledged that while legal entities are not the perpetrators of the interlocking offense, this does not preclude the possibility that they may infringe competition law, in particular, the general anticompetitive conduct described in Article 3, paragraph 1, of DL 211 (Recital 9º).

Likewise, the Supreme Court noted that cases of indirect interlocking could also constitute violations of competition law. However, in such cases, it would be necessary to demonstrate the harm or danger that this conduct poses to competition in the relevant market, and the accused could invoke efficiency reasons that would hypothetically justify their actions (Recital 18º).

Conclusions and practical implications

The Supreme Court's rulings represent a substantial shift in the interpretation of the interlocking offense, significantly narrowing its scope of application. This does not mean that risks cannot arise from the same individual serving as a director or key executive in two competing companies, or in their parent companies and subsidiaries. The exchange of commercially sensitive information between competitors remains a potential anticompetitive practice.

Therefore, to avoid risks or violations of competition law, it remains crucial to evaluate and implement safeguards to prevent the exchange of commercially sensitive information between competitors through directors or key executives that are appropriate to the level of risk and the specific organizational and business realities of each company.

For additional information, please contact our Knowledge and Innovation Group lawyers or your regular contact person at Cuatrecasas.