



Regulatory Alert: Competition Law: The electric sector is under the magnifying glass of the Competition Monitoring Unit of the Electric Coordinator

July 18th, 2019 | By Carolina Bawlitza and Macarena Alliende

One year after putting the Competition Monitoring Unit of the Electric Coordinator in place, the Advisor to the Coordinator **has examined seven instances for possible violation of the free competition regulations, one of which was turned over to the National Economic Prosecutor's Office (FNE)** for action under their legal authority.

The Competition Monitoring Unit is charged with searching for "actions that could constitute an attack on free competition" according to Law Number 20,936 (Law of Electrical Transmission) under which it monitors the fulfillment of the regulations of free competition in the electricity sector.

It is necessary to bear in mind that the Electric Coordinator will not accuse or judge the cases; its duty is to report possible breaches against free competition to the FNE, which will proceed in the following stages:

- i. First to analyze the **admissibility** of the report;
- ii. Once the complaint has been deemed admissible, the **investigation** of the alleged act will proceed, during which various diligences may be carried out such as requiring more information or economic reports.
- iii. As a **result of the investigation**, the FNE will take one of the following routes: (a) initiate proceedings before the Tribunal for the Defense of Free Competition (TDLC), such as an injunction or a legal opinion; (b) conclude and out of court agreement with the offender; or, (c) shelve the investigation.

The TDLC is the jurisdictional body charged with determining the sanctions in the case of an infraction. The sanctions are varied and include: (i) fines consisting in 30% of the offender's sales to 60,000 UTA (51 million USD approximately); (ii) order the dissolution of companies, corporations, and entities that are implicated; (iii) prohibit the offender from being awarded State contracts, such as provision of concessions for a period of five years from the final judgment; (iv) bar those who have participated in the unlawful act from holding certain positions such as director or manager of an open corporation, state company, trade or professional association. Collusion or agreements between competitors can be criminally sanctioned with a prison sentence ranging from three to years if criminal prosecution is later initiated.

Considering the surveillance by the Competition Monitoring Unit of the Electric Coordinator, **it is particularly important that the companies engaged in the electricity sector have proper training on risky behavior and competition law**, and take the necessary precautions and measures to avoid perpetrating an illicit act that can later be sanctioned.

[Review More Legal Alerts](#)

Contacts

We hope you find this information helpful:

[Carolina Bawlitza \(counsel\)](#)
cbawlitza@dlapiper.cl

[Macarena Alliende \(asociada\)](#)
maliende@dlapiper.cl

** This report provides general information on certain legal or commercial matters in Chile, and not intended to analyze in detail the matters contained in it, not is it intended to provide a particular legal advice on them. It is suggested to the reader to look for legal assistance before making a decision regarding the matters contained in this report. This report may not be reproduced by any means or in any part, without the prior consent of DLA Piper BAZ|NLD SpA 2019.*