

UNFAIR COMPETITION

On February 16, 2007 was enacted the Law No.20,169 on Unfair Competition (the “Act”). Even though as of that date the unfair competition had not been statutorily defined, it was notwithstanding regulated in other bodies such as the Free Competition Act, the Law on Protection of the Rights of the Consumers and the laws on Intellectual Property. The Act defined through a broad concept what is to be understood by unfair competition, considering as such “any conduct contrary to the good faith or to the good customs that, by illegitimate means, pursues to deviate the clientele from a market agent”. The Act, in addition, gave some examples, by no means limitative, of acts that constitute unfair competition, such as the conducts aimed at mistaking the own goods, distinctive signs, etc. with those of a third party; expressions aimed at discrediting or jeer at properties, services, distinctive signs, etc., without an objective reference, or the evidently abusive exercise of legal actions in order to hinder the operation of an agent of the market.

The Act does neither abrogate nor intends to coordinate the other statutory bodies dealing on the matter of unfair competition, leaving in the hands of the affected person the decision to exercise the action according to the regulation that he or she deems convenient.

In accordance with the Act, a person affected by the act of unfair competition may request to the ordinary courts the declaration of the existence of such an act, order the cessation of same and the removal of its effects, and determine the indemnification of the relevant damages. All these actions are to be instituted before the ordinary civil courts, which marks a difference with those established in other statutory bodies regulating the matter of the unfair competition, which require that such actions be instituted and pursued before courts of special jurisdiction.

The action seeking the indemnification of damages may not be instituted in the event that the condemned persons shall have been already obligated to remedy the same damage under a different proceeding.

In the event that the civil court shall recognize the existence of one or more acts of unfair

competition, such court must remit the information to the National Economic Prosecutor, in order to allow him to request from the Court for the Defense of Free Competition the application of a fine in a maximum amount approximate to US\$65,000.

RELATED PERSON

On April 27, 2007 the Superintendency of Securities and Insurance (the “SVS”) answering an inquiry submitted by the shareholders of Sociedad Química y Minera de Chile S.A. (“Soquimich”), particularly Pension Funds Managing Companies, and PotaschCorp, a majority shareholder -but not the controlling shareholder- of Soquimich, ruled that two persons are not related between themselves for the mere fact of entering into a shareholders agreement by means of which they acquire the control of a company. In fact, in the case of the related persons, the law understands that because of their permanent links they are guided by a set of common interests, and in the case of the shareholders agreement, the parties only converge to a specific purpose, in this case the control of Soquimich.

In reaching this conclusion, the SVS specified that: (i) by virtue of the entering into the shareholders agreement, the shareholders executing the act become members of the controller and thus persons related *with* the company in which they exercise the control, Soquimich, in this case, rather than persons related *between or among* themselves; (ii) following the doctrine already set forth by the SVS in the Anheuser-Busch/Quiñenco case (2003), the SVS reiterated that the members of a controlling agreement may not be individually considered as the controlling shareholders of the company in question; and (iii) finally, and due to reasons applicable to the particular case, the SVS did not exercise in this specific situation the power vested upon it by the Chilean Securities Act in order to consider the members of the controlling group as part of a single entrepreneurial group (the Chilean Securities Act sets forth that the persons belonging to a single entrepreneurial are related persons). This ruling is susceptible of been challenged before the ordinary courts.

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