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Defense begins in Chile's 'chicken cartel' case

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Report Highlights:

The Government of Chile accuses major Chilean poultry companies of supply and price fixing. Defense responds that it was a simple industry sharing of information in response to common competition from international imports and slim profit margins.

General Information:

Recently the three main poultry producers in Chile have been accused by the National Prosecutor's Office (FNE) of collusion to fix prices. The FNE is seeking a fine of US\$110 million. The entity presented a request before the Court of Free Competition by alleging that for more than ten years these agents violated the law. Prosecutors allege that for the last 10 years the three largest poultry producers intentionally limited chicken production, divided market shares between the three of them in order to keep chicken prices high. That is the accusation that the economic national prosecutor's Office (FNE) rose against Agrosuper, Ariztía, Don Pollo and the Chilean Poultry Producers' Association (APA). The investigation began in September of 2010. In January 2012 Government of Chile officials raided the offices of APA and Don Pollo. In this sting the government found letters and emails that they claim proved that these organizations acted together and the coordinating role of the producers association.

The three accused poultry companies, Agrosuper, Ariztía, Don Pollo along with the Poultry Producers Association of Chile (APA), began their defense in front of the Chilean Free Trade Defense Court on Tuesday, January 10, 2012. In December 2011, after a nine month investigation, the National Economic Prosecutor's Office (FNE) formally charged the defendants with colluding to control the price on chicken through limiting production.

The three poultry companies control 92 percent of the Chilean market and have been accused of colluding with the APA to keep production in a certain range in order to keep poultry prices high. They are accused of doing this through end of the year quotas defined by the APA. According to the documents submitted by the FNE in court, all four organizations mentioned that the importing of chicken, which they claim represents 15 percent of the Chilean market, would not allow them to be able to participate in collusion as it would drive Chileans to theoretically cheaper imported products.

The APA claimed that that any information passed between the companies was perfectly legal and is standard business practice, not collusion. They stated they only shared information that was already public and not anything that would be considered a trade secret. They claimed the "quotas" they gave to each company were merely forecasts for the coming year, and are something most labor organizations do.

The four companies cited the FNE's misunderstanding of the domestic poultry market as a defense. They claim that the FNE considers the poultry market one that is homogeneous when really it is diverse with many different facets, such as the difference in fresh and frozen chicken, among other parts.

Chile has already seen several governmental officials resign over ties to the poultry companies. The government's impartiality relating to the case has been called into question because President Sebastián Piñera's son married the granddaughter of Manuel Ariztía, founder of the Ariztía.

Agrosuper, the largest company with a 56 percent share of the market, defended their poultry prices by claiming all the metrics they use to set a price come from internal market analysis and not from any information provided by the APA. ‘

“The development of such projections is part of the objectives which are inherent in any professional association,” Agrosuper said in court document.

“Performances in this context are quite legitimate, legally recognized to promote the development and competitiveness of the poultry sector and, thus, support the development and sustainability of the industry.”

Ariztía staked their defense on their modest profits of margin and a lack of market share, claiming 29 percent, which meant they had to follow the pricing of the bigger Agrosuper. “Agrosuper has a determining effect on production decisions and prices on the market shares that affects other companies, making it the undisputed leader of pricing and production, so that other companies have no choice but to follow Agrosuper price,” Ariztía claimed in court documents.

Ariztía also claimed that emails used by the FNE as evidence were taken out of context and left out key parts of communications.

The crux of Don Pollo’s defense was that they are the smallest of the three at almost 7 percent, and therefore do not have the weight necessary to impact prices on the Chilean market. They also claimed to have suffered losses in 2011, illustrating that no collusion took place.

“The consistent reduction in direct operating margins and profits,” Don Pollo said on court documents, “has led the company to have significant losses, given its size, in 2011, which shows conduct contrary to collusion and as the company has seen little economic benefit.” The defendants, if found guilty, could face a maximum fine of US\$110 million, but no jail time. The FNE is also seeking the dissolution of the APA.

Latest statistics show an increase of total poultry meat imports from 39,649 MT in CY 2010 to 51,171 MT in 2011, a 30 percent increase. Imports from the United States increased from 10,851 MT to 23,964 MT in the same period of time, a 121 percent increase. The United States had a duty import quota of 10,210 MT in 2011. There is no quota from year 2012 on. Total imports from the US will be duty free. Chiles total poultry production for 2011 is estimated to be 550,000 MT.