

Free Translation

INFORMATION OF INTEREST

FALABELLA S.A.

**Company Registered under No. 582 of the Securities
Registry of the Financial Market Commission**

Falabella S.A., hereinafter also referred to as “Falabella”, in accordance with the provisions of General Rule No. 30 of the Financial Market Commission and the provisions of the Company’s Manual for Handling Information of Interest to the Market, reports the following information of interest:

By resolution issued on November 4, 2022, the Chilean Competition Court (*Tribunal de Defensa de la Libre Competencia - TDLC*) approved the settlement agreement signed between the Chilean Competition Agency (*Fiscalía Nacional Económica - FNE*) and Falabella, to terminate, with respect to this company, the lawsuit initiated in December 2021 for alleged infringement of the prohibition of horizontal interlocking.

Attached hereto is the text of said settlement with the FNE, as well as the aforementioned resolution of the TDLC that approved it.

Santiago, November 11, 2022.

**REPUBLIC OF CHILE
CHILEAN COMPETITION COURT**

Santiago, November fourth, two thousand twenty-two.

IN VIEW OF:

1. On page 4, the Chilean Competition Agency (*Fiscalía Nacional Económica* - “FNE”) filed a demand against Hernán Büchi Buc, Banco de Chile S.A., Consorcio Financiero S.A. and Falabella S.A. (“Falabella”), arguing that these would have violated Article 3, first and second paragraphs letter d) of Decree Law No. 211 (“D.L. No. 211”), since February 2017, at least, until the date of the demand. The offense would have been committed when Mr. Büchi Buc participated simultaneously in the positions of director and relevant executive in the companies subject to the demand, which in the opinion of the FNE are competitors among themselves in the supply of various products and services, and belong to business groups with revenues over 100,000 Unidades de Fomento in the last calendar year prior to the beginning of the violation, as well as in the following calendar years.
2. On page 77, Falabella answered the demand requesting its dismissal, based, among other considerations, on the fact that in this case we would be in the presence of an indirect horizontal interlocking and not a direct one, categories that are clearly distinguished in the law and in legal doctrine. Consequently, in its opinion, the typical assumption of Article 3, paragraph 2, letter d) of D.L. No. 211, which requires that the director or relevant executive affected be a director or executive of competing companies, cannot be fulfilled.
3. Then, on page 91, the Court summoned the parties to a reconciliation, in accordance with the provisions of Article 22 of D.L. No. 211, and four hearings were held: on May 18, June 30, September 15 and November 2, all of 2022, as shown in the minutes of pages 94, 95, 105 and 109, respectively. Only the claimant and Falabella were summoned to this last hearing, as stated in the resolution on page 10, after the reconciliation process had failed, notwithstanding the right of the parties to submit an agreement on the matter at issue to the Court for its approval.
4. At the hearing held on November 2, 2022, the FNE and Falabella submitted the proposed settlement agreement that is the subject of this resolution.

AND WHEREAS:

First. That, in the aforementioned terms of settlement, the FNE and Falabella state that they intend to terminate the present lawsuit, without acknowledgment or admission by the latter of the liability attributed to it by the FNE in the demand;

**REPUBLIC OF CHILE
CHILEAN COMPETITION COURT**

Second. That the settlement terms state Falabella's commitment to take measures to reinforce its antitrust compliance programs, the objectives of which include the prevention of cases of simultaneous participation of a person in the positions of director or relevant executive of competing companies, or interlocking directorates, as stated in the settlement terms, which are hereby deemed reproduced. Likewise, Falabella agrees to pay a sum of money for the benefit of the public treasury, and further agrees that it will not hire Mr. Büchi Buc as an advisor or in any other position similar to that of a relevant executive, who will resign from his position as a director of Falabella within 30 business days following the date on which this resolution becomes final;

Third. That the obligations assumed by the respondent in the aforementioned terms and conditions are in line with the objective pursued in the demand in terms of safeguarding free competition, particularly by increasing the company's internal safeguards to prevent the occurrence of conduct contrary to D.L. No. 211.

Fourth. That, consequently, the settlement agreement submitted for approval does not threaten free competition in the terms set forth in the first paragraph of Article 22 of D.L. No. 211;

BE IT RESOLVED:

- 1) To approve the settlement reached by the Chilean Competition Agency and Falabella S.A., under the terms of the proposed settlement agreement;
- 2) To terminate the lawsuit only with respect to Falabella S.A., in accordance with the provisions of Article 22 of D.L. No. 211; and
- 3) Not to order payment of court costs, since none of the parties was totally defeated.

In view of the foregoing, the confidentiality of the proposal for the terms of settlement approved by this resolution is hereby lifted. Be it removed from custody and added to the file.

The pending accessory matter on page 106 is resolved: be as previously resolved. Delete the document in custody.

Notify in the daily list of court decisions.

**REPUBLIC OF CHILE
CHILEAN COMPETITION COURT**

Case C No. 436-21.

I hereby certify that, on this date, the preceding resolution was notified in the daily list of court decisions.

Issued by Justices Mr. Nicolás Rojas Covarrubias, Chairman, Mrs. Daniela Gorab Sabat, Mr. Ricardo Paredes Molina, Mr. Jaime Barahona Urzúa. Authorized by the Secretary Attorney at Law, Mrs. María José Poblete Gómez.



A3C070DF-C3E3-4972-A0F7-F9DE81D7AE64

This document incorporates an advanced electronic signature. Its validity can be checked at www.tdlc.cl with the verification code indicated under the barcode.

Settlement Agreement
Case No. C 436-2021 followed before the
Honorable Chilean Competition Court (TDLC)

Approved by the TDLC by resolution dated November 4, 2022

I. Background: Demand by the FNE

On December 27, 2021, on page 4, the FNE filed a Demand against Mr. Hernán Büchi Buc, Banco de Chile, Consorcio Financiero S.A. (hereinafter, “**Consorcio**”) and Falabella, arguing that these companies would have violated Article 3, first and second paragraphs letter d) of DL 211, since February 2017, at least, up to the date of the Demand, by virtue of the former participating simultaneously in positions of director and relevant executive in the challenged companies, which in the opinion of the FNE are competitors among themselves in the offer of various products and services. Indeed, as described by the FNE: **(i)** Banco de Chile, Consorcio and Falabella participate in the offer of banking products and services; **(ii)** Banco de Chile and Consorcio in the provision of securities brokerage services and other services provided by stockbrokers; **(iii)** Consorcio and Falabella in the issuance of life and credit life insurance; and, finally, **(iv)** Banco de Chile and Falabella in insurance brokerage. The Demand also states that the respective business groups to which each of the companies belong had revenues over 100,000 Unidades de Fomento (hereinafter, “**UF**”) in the last calendar year prior to the beginning of the infringement, as well as in the following calendar years.

According to the FNE’s Demand, the legislator established an absolute prohibition against horizontal interlocking, in order to avoid the serious risks to free competition that such situation poses. Thus, according to the FNE, in order for the aforementioned offense to be constituted, it is sufficient that the copulative requirements contemplated in the law are verified, without the need to prove any additional element or circumstance, such as the effect on competition or the existence of market power.

Likewise, the FNE pointed out that the expression “*relevant executives*” does not refer to a specific position or function within the company, but rather the essence of the concept lies in the possibility of access to strategic or commercial information relevant to the companies from a competitive point of view. The term “*director*” should be understood as a member of the board of directors of a company.

In addition, the Demand added that, if a company is in a position to influence the competitive behavior of subsidiaries or other related companies, or directly determines such behavior, it is part of the competitive decision-making process, and therefore both should be considered as part of the same company in this regard. In addition, the Demand argued that for the preventive purposes of the prohibition against interlocking, two companies may be considered competitors when they offer products or services that perform generically the same functions and have similar characteristics.

Finally, the Demand emphasized that the individuals responsible for the infringement of article 3, paragraphs 1 and 2 letter d) of DL 211 are: (i) the individual who participated simultaneously in relevant executive and/or director positions in two or more competing companies; and, (ii) the competing companies in which this simultaneous participation was verified. Regarding the latter, the Demand pointed out that they intervene in the establishment of the simultaneous participation, as well as in the maintenance of such situation; they are in a position to comply with the rule; and they would receive the direct benefits of any restriction to competition derived from the interlocking directorates.

II. Background: Falabella's Defense

On April 22, 2022, on page 77, Falabella answered the Demand against it, and requested its dismissal, based, among others, on the following considerations: **(i)** in this case, there would be an indirect horizontal interlocking and not a direct one, in the context in which these categories would be clearly distinguished in the law and in legal doctrine, since: **(a)** Falabella, which is the company in which Mr. Hernán Büchi is a director, does not carry out banking activities, nor insurance intermediation or marketing (in fact, not even its direct subsidiary, Falabella Inversiones Financieras S. A. engages in these activities), **(b)** as a consequence of the foregoing, Falabella would not be a competitor of Banco de Chile or Consorcio, so that the typical assumption of article 3 paragraph 2 letter d) of DL 211, which requires that the director in question be a director of “companies that compete with each other”, could not be fulfilled; **(ii)** the prohibition of direct horizontal interlocking under article 3 paragraph 2 letter d) of DL 211 would be a matter of strict law, which cannot be made applicable by analogy to other forms of interlocking, such as indirect interlocking, which must be judged in accordance with the universal antitrust law and its rule of reason, i.e., to be sanctioned only to the extent that it causes or tends to cause an anticompetitive effect; **(iii)** Falabella (since it does not itself participate in the board of directors of any company nor does it have any influence in

the formation of its own board) would not be in a position to execute an anticompetitive act, deed or agreement that violates the prohibition against direct horizontal interlocking; therefore, since it does not meet the elements of the type of conduct, it cannot be sanctioned for its alleged non-compliance; **(iv)** Falabella's legitimate expectations in its capacity as a regulated entity had operated, specifically, with respect to the way in which the FNE, and with it the national forum, had been interpreting the concept of interlocking directorates, and in particular the differences in the legal treatment between direct horizontal interlocking and indirect interlocking; and, **(v)** the *pro-persona*, *pro-homine*, *favor libertatis* or *favor rei* principle should be applied, according to which, in case of any doubt as to the way in which the applicable law is understood, including the interpretation and application of the law, the judge will prefer that sense or understanding of the law which, while reasonable, favors the respondent and exempts him from any sanction. Finally, Falabella invokes a statute of limitations defense with respect to all facts and conducts prior to April 28, 2020.

III. Acknowledgment of Facts

Falabella acknowledges the following facts, described in the FNE's Demand and which are the subject matter of the case number C 436-2021 before the Honorable TDLC:

1. That Mr. Hernán Büchi Buc participated simultaneously in the positions of director and board advisor in Banco de Chile and director in Consorcio and Falabella from February 26, 2017 until at least the date of the filing of the Demand. Currently, Mr. Hernán Büchi Buc participates simultaneously in director positions in Banco de Chile and Falabella.
2. That Falabella, through its subsidiaries, as detailed in the following paragraph, participates in the banking business; in insurance brokerage; and, in the issuance of life and credit life insurance.
3. That Falabella is the parent company of: **(a)** Banco Falabella, which offers products and services in the banking business; **(b)** CF Seguros de Vida S.A., which offers life insurance and credit life insurance; and, (c) Seguros Falabella Corredores Ltda. Falabella, in its capacity as parent company, has control over the aforementioned subsidiaries, and is therefore in a position to: **(i)** exercise all the political and economic rights conferred to it by law as controlling shareholder; **(ii)** access strategic business information on these subsidiaries and their performance; **(iii)** supervise and influence the performance of these subsidiaries; **(iv)** supervise and influence the

progress and development of the businesses of such subsidiaries, monitoring that they are within the plans, guidelines and policies defined for the group; and, **(v)** determine the investments and resources allocated to such subsidiaries.

4. That the business group of which Falabella is a part reported revenues in excess of UF 100,000 during each calendar year between 2016 and 2021.

Falabella states having acted in good faith, under a different understanding of the scope of the norm than that expressed by the prosecuting entity, which does not prevent it from reaching a settlement agreement in the terms indicated in this document, making the acknowledgments of fact and committing to the payment and measures expressed herein.

IV. Payment to the benefit of the public treasury

In accordance with the provisions of these terms of settlement, and without admitting any liability whatsoever, for the sole purpose of bringing this lawsuit to an early end, Falabella agrees to pay the amount of 1,700 (one thousand seven hundred) Annual Tax Units to the benefit of the public treasury within 30 business days following the date on which the resolution of the Court approving this settlement becomes final.

V. Falabella's Additional Undertakings

Falabella undertakes to reinforce its existing antitrust compliance programs, including specifically, within its objectives, the adoption of measures aimed at preventing cases of interlocking, and to meet the requirements established in the *"Guide to Antitrust Compliance Programs"*, prepared by the FNE, dated June 2012, for at least 5 years.

Additionally, the company is required to publish, for a period of one year, and easily viewable, the text of this settlement on its website: <https://investors.falabella.com>.

Falabella states that Mr. Hernán Alberto Büchi Buc will resign from his position as a director of Falabella within 30 business days after the resolution of the Court approving this settlement becomes final.

Finally, Falabella declares and represents that it will not hire Mr. Hernán Büchi Buc as an advisor or in any other position that could be equated to that of a relevant executive in accordance with the criteria established by the FNE in the Demand.

VI. Protection of Free Competition

The purpose of this settlement agreement is to protect free competition and reflects the criteria used by the FNE to prosecute the illicit of horizontal interlocking described in Article 3, paragraph 2, letter d) of DL 211. These criteria, in the FNE's opinion, are intended to comply with the objective of the aforementioned prohibition, that is, to avoid: risks of information flow between competitors, which could facilitate coordinated action between agents even without an express agreement; the configuration of concerted practices or collusive agreements, in addition to the possibility that the deviations be better identified and corrected; and, decreasing the uncertainty inherent to competition, weakening its intensity.

VII. No Recidivism

The FNE, by virtue of the provisions of Article 26 letter c) of DL 211, does not consider that this settlement agreement or the payment that Falabella is required to make may constitute a cause of recidivism, by virtue of which it will not invoke this settlement agreement or the aforementioned payment in the determination of the fine that may be imposed on it in future Demands against it.

VIII. Confidentiality prior to approval by the Honorable TDLC

In the event that these Terms and Conditions are not approved, the FNE and Falabella undertake to keep them confidential and not to disclose their contents, unless they are required to do so by law or by the competent authority. Likewise, they undertake not to invoke, in this or any other process, the fact that this settlement agreement proposal or its clauses existed, since it is their intention that no one should derive any benefit or sustain any harm as a result of having agreed to this instrument. Confidentiality applies to this document and its contents during the period prior to the approval of these Terms and Conditions.

IX. Court Costs

Each party shall pay its own court costs.