

Chile

Agustín Barroilhet*

When Gubbins and López wrote their report on Chilean class actions, the class action procedure in Chile was only three years old. Thus little could be said then about how it would work in practice.¹ Moreover, given the complexities of the procedure itself and its reliance on provisions and institutions outside the class action statute, it was even harder to predict how the procedure was going to interact with rest of the legal system. But after 10 years, there is more clarity about how courts have interpreted the ambiguous black-letter provisions. In particular, one can now assess the broader institutional implications of the class action device in the context of the Chilean legal system. This updated report surveys the most important aspects of the evolution of Chilean class actions, supplementing and replacing, in part, Gubbins' and López's initial assessment. It emphasizes that the Chilean class action, in its most common version is opt-out, and describes why SERNAC, the Chilean consumer protection agency, has become the primary class action enforcer.

Rereading the Public Debate

The policy entrepreneur behind Chilean class actions was the head of the *Servicio nacional del Consumidor* (SERNAC)[Chilean Consumer Protection Agency], the Christian-Democrat Alberto Undurraga, an American-trained economist, who held the office from 2000 to 2004.² The project envisioned by SERNAC, although influenced by American class action procedure, was entirely original in many respects and built on the experience of the agency litigating

* S.J.D. Candidate Georgetown University Law Center, Assistant Professor of the University of Chile Law School. This report is based extensively on "Class Actions in Chile."

¹ See Martín Gubbins & Carla López, *Chile*, in *THE GLOBALIZATION OF CLASS ACTIONS*, 68 (Deborah Hensler, Christopher Hodges, & Magdalena Tulibacka eds., 2009).

² Undurraga is now Minister of Public Infrastructure (October, 2015). For a description of his involvement in drafting Chilean Class Actions see Agustín Barroilhet, *Class Actions in Chile*, 18 *LAW BUS. REV. AM.* 275, 280 (2012) (f. 11).

individual consumer cases since 1997. Chile was the second Latin-American nation to develop a class action procedure after Brazil.³

The legislative debate about class actions in Chile was somewhat exaggerated in the sense that detractors referenced “...the U.S. experience, [...] often [portraying it] inaccurately, based on anecdotes that [travelled] quickly over national borders.”⁴ Terms like ‘litigation industry’ and ‘legalized black-mail’ appeared often in the debate.⁵ Proponents, in turn, also used fairly conventional justifications for the device. As described by Gubbins and López, the debate was full of catchy phrases about “discouraging massive violations” and “[avoiding] court’s overloading.”⁶

However the Chilean debate presented a special feature that presumably will appear more and more as countries with particularly robust bureaucracies debate class actions: the active intervention of a public agency on the plaintiff’s side of the debate but with the self-advancing goal of becoming class actions’ primary enforcement agent. The latter is the key to understanding why the bill became law in Chile. Class actions were SERNAC’s creation. They ended up empowering SERNAC above any other private enforcer.⁷ And they endured, in the end, the limitations that other stakeholders and Congress sought to impose on SERNAC.⁸

³ Congress began debating class actions in 2001 and approved them in 2004. In 2003, a Brazilian scholar popularized the Brazilian model as a model to civil law countries. México is one of the countries that drafted its project based on this model. See, in general, Antonio Gidi, *Class Actions in Brazil - A Model for Civil Law Countries*, 51 AM. J. COMP. LAW 311 (2003). and Antonio Gidi, *The Class Action Code: A Model for Civil Law Countries*, 23 ARIZ. J. INT. COMP. LAW 37 (2005).

⁴ Deborah Hensler, *The Globalization of Class Actions: An Overview*, in THE GLOBALIZATION OF CLASS ACTIONS, 10 (Deborah R. Hensler, Christopher Hodges, & Magdalena Tulibacka eds., 2009).

⁵ See, e.g., HISTORIA DE LA LEY No. 19955, MODIFICA LA LEY No. 19496, SOBRE PROTECCIÓN DE LOS DERECHOS DE LOS CONSUMIDORES, 2004 (Chile) at 465.

⁶ Gubbins and López, *supra* note 1 at 69.

⁷ See Barroilhet, *supra* note 2 at 287–293. In order to retain the standing to file class actions, SERNAC sacrificed the private enforcement regime of the class actions statute. This compromise facilitated the approval of the device by other public agencies, who also had good connections with Congress because of being part of the ruling majority, and kept the balance of power between the parties of the ruling coalition.

⁸ Note that Gubbins and López claim that “[i]n market governed by the principle of subsidiarity of the state, the latter may only intervene if private parties do not, so the active legitimacy of SERNAC was viewed as unnecessary and even as nuisance.” This assertion, which was based on right-wing congressman’s opinion claiming that SERNAC’s power would overlap with other regulatory bodies, does not reflect the reality of the debate. Chile has no plaintiff bar, and it didn’t then have any strong ties to international networks of consumer defense NGOs, thus there was no other entity than SERNAC behind the initiative. Had SERNAC been thrown off-board, the class action statute’s future would have been uncertain. See Gubbins and López, *supra* note 1 at 69.

The Class action procedure

General Overview

Chilean class actions aim to protect the collective or diffuse interests of consumers. According to Chilean Consumer Law, a 'collective interest' belongs to a determined or determinable group of consumers 'linked' or related to a provider by an enforceable contractual relation. A 'diffuse interest' belongs to an undetermined group of consumers who have not yet contracted with the provider or who are beneficiaries of general protections of the law. For example, a case of illegal fees under the Truth in Lending Act (TILA) in the U.S. would, in Chile, be a class action for the collective interest of consumers. A case against misleading advertising would be, in turn, a class action for the diffuse interest of consumers. Most of the provisions that deal with providers' offenses are included in the Consumer Law but these also can be found in other laws. Thus, Chilean class actions are transubstantive and apply to every statute that regulates consumer/provider relations unless expressly excepted by law.⁹

Chilean class actions' remedies are limited to injunctive relief and/or contractual pecuniary damages. Extra-contractual damages, such as *moral damages* (Civil Law non-pecuniary damages) are not available for the class action procedure because Congress, altering the substantive rules that would apply to individual cases, barred them expressly from the class action. Because of this limitation, nothing like mass torts exists in Chile.¹⁰

Breaking the principle *nul ne plaide par procureur* (no action by the procurator) inherited from the French legal system,¹¹ the Chilean class action procedure gave standing to file class actions to SERNAC, to consumer

⁹ See Law No. 19.496 Art. 2 bis and *Id.* at 74.

¹⁰ In mass cases that involve contractual consumer relations, such as a plane crash, it is much more sensible to use joinders. The Chilean Code of Civil Procedure allows joinders for situations in which plaintiffs claim being affected by the same behavior of the defendant, and in those cases moral damages would be available. For an example of a class action that went in parallel with a joinder against the same defendant, see Barroilhet, *supra* note 2 at 311 (footnote 131).

¹¹ This principle is still the general rule in the Chilean Civil procedures. For a brief explanation of the principle and its implications for class actions in Civil Law countries, see in general, Laurel J. Harbour et al., *Representative Actions and Proposed Reforms in the European Union*, in *WORLD CLASS ACTIONS: A GUIDE TO GROUP AND REPRESENTATIVE ACTIONS AROUND THE GLOBE* 144-168, 166 (Paul G. Karlsgodt ed., 2012).

associations formed at least a year prior to the complaint, and to 50 or more consumers grouped together filing on behalf of the purported class.¹²

Structure of the procedure

One salient feature of the Chilean class action procedure (and also of the Brazilian class action procedure¹³) often overlooked in the comparative literature is that the declaration of liability in these procedures is ‘decoupled’ from the determination of damages. This design may be surprising for American-trained scholars but it is the natural extension of how individual civil procedures work in most of the countries that received the French legal tradition. In these procedures, plaintiffs can reserve the valuing or determination of the damages for a separate stage or even a separate case without needing to invoke any reason to do so.¹⁴ The law gives plaintiffs this option as a part of their liberty to plead and frame the limits of the conflict and, hence, the limits of the jurisdiction of the court. In practice, however, this choice is also necessary because the rules of pleading are very strict and forcing plaintiffs to determine their damages upfront would open endless defenses and appeals, like the classic roman *ultra petita*.¹⁵

In the class action context, and following the ‘decoupled’ structure, SERNAC designed the procedure to include a declaratory stage, which is where the liability of defendant is discussed, and, eventually, a compensatory stage, in which each individual asserts her damages.¹⁶ In other words, Chilean class actions are designed to be one-way preclusive “issue-class actions” ending in *erga omnes* judgments, which in turn serve as the basis for a court injunction or multiple individual cases for damages.

Congress did not change the basic decoupled structure proposed by SERNAC in the class action bill. However it introduced, (a) a preliminary admissibility stage, (b) capped the remedies that could be pleaded and (c) added an expedited form of compensation if defendants could identify the class members. Each of these changed –somewhat incongruently– the dynamics of SERNAC’s decoupled procedure. Each of these additions is described below.

¹² See Law No. 19496, Art. 51.

¹³ See Gidi, *supra* note 3 at 359.

¹⁴ See Código de Procedimiento Civil [Code of Civil Procedure], Art. 173, incs. 2. The only exception to this liberty of pleading damages are procedures in which the law commands the amount of damages have to be pleaded, like in summary procedures.

¹⁵ An exception against a judgment that “gave more than what was asked.” Also noted by Gidi, *supra* note 3 at 359.

¹⁶ See Barroilhet, *supra* note 2 at 281.

(a) The admissibility stage that Congress added required judges to assess using sound evaluation of proof if (1) if the complaint was filed by one of the authorized entities with standing, (2) the conduct of the defendant affected the collective or diffuse interests of consumers, (3) the complaint identified the matters of fact that affected the collective or diffuse interest of consumers, and (4) the potential number of involved consumers justified, in terms of 'costs and benefits' the procedural or economic necessity to use the class action to effectively protect consumers' rights. These requirements made little sense in the context of the decoupled procedure. Most of the cases could not pass admissibility because requirements 2 and 4 forced judges to rule in the merits of the case too early in the process, a problem that was aggravated by the fact that Chile does not have 'discovery' as procedural institution. In particular, assessing the cost and benefits inclined some judges to accept the defendants' claims about the convenience of using existing administrative 'procedures,' an allegedly cheaper official solution to the massive abuses that the bureaucracy itself favored too. It also induced several judges to value damages in the admissibility stage, which was precisely what the decoupling was supposed to avoid. Moreover, the admissibility was instated without excluding it from the general regime of appeals and defenses contained in the Code of Civil Procedure that governs all Chilean procedures and procedural institutions by default. Hence all the problems of interpretation of the admissibility requirements created endless back and forth between the Civil Courts handling the cases, and their respective Courts of Appeals.

In 2011, after realizing that admissibility was taking on average more than 2 years, Congress repealed requirement 4, and mixed 2 and 3. The new rule asks judges to rule on the admissibility based on the complaint and the answer to the complaint without admitting further evidence or discussion on the merits. Though the ruling on the admissibility still can be appealed, the appeal now does not stay the process. To declare a case admissible, judges only have to find that the conduct denounced in complaint is 'potentially' capable of affecting consumers' collective or diffuse interest.¹⁷ In practice, the 2011 reform put the admissibility stage in tune with the regular pleading rules of summary procedures, thus rendering the admissibility irrelevant as a separate procedural stage.

(b) Regarding the remedies, Congress barred the otherwise available moral damages from the class action procedure without much discussion. An

¹⁷ See Law No. 20543.

ostensible reason invoked in the debate that may justify the decision was that moral damages are individual to each consumer and, thus, would not fit an aggregated produce such as the class action. However, moral damages were an important-if not the most important-part of the contingency fees on non-aggregated procedures dealing with consumer claims (usually of low value). It was also what judges used in practice to punish defendants in low value claims. Hence, it is reasonable to presume that Congress made a clear choice to remove both the incentive and the punishment to avoid transferring too much power to plaintiffs and courts. Congress' decision to bar moral damages without providing a sensible substitution for either the incentive or the punishment, took away all class actions' potential deterrent power.

(c) Regarding the expedited form of compensation, Congress introduced a simple statutory provision that went unnoticed in Gubbins' and López's assessment. It is stated as follows:

"In any case, the judge may order that some or all damages, repairs or returns that apply in respect of a group or subgroup, be made by the defendant without asking consumers to come forward [...], when the judge considers that the provider has the necessary information to individualize and compensate them."¹⁸

It is opt-out!

Contrary to what was reported by Gubbins and López,¹⁹ the Chilean is a true opt-out representative class action procedure. Gubbins' and López's confusion in stating the contrary is understandable considering the complicated wording of the statute and its length. The text of the statute allows individuals to express their will by opting-in and becoming full parties to the case in the declaratory stage. The statute is also obscure because it deals extensively with how consumers should be notified and how should they come forward to receive compensations in the class actions for damages. These facts can be read as implying that the device was opt-in.

The fact of the matter is that the class action procedure is always opt-out in its declaratory stage because the declaration of liability of the defendant has *erga omnes* effects except for consumers that opt-out and despite the fact that if the case is dismissed, any entity with standing can bring the case again based on new facts. It might also be opt-out in the compensatory stage of the class action for damages if consumers are known and the judge can envision a mechanism to

¹⁸ See Law No. 19.496, Art. 53 C final paragraphs.

¹⁹ See Gubbins and López, *supra* note 1 at 69. ("Only those who join may receive whatever relief, reimbursements, or compensation is granted.")

redress them without further intervention by the consumers.²⁰ In practice, a Chilean consumer may get a check in the mail, funds transferred to her bank account, or discounts on her bills of service, etc., without ever knowing she was part of a class action.

Types of class actions

The statute regulating the procedure does not make clear distinctions between different types of class actions. Thus, these must be inferred from the text using the alternatives the procedure offers for provisions like the interest pleaded or the remedies available. The result of the exercise is the following.

The first type is the class action for the diffuse interest of consumers. Though the law does not state it, these class actions never entail damages because compensation in Chile needs to be pocket-to-pocket and cannot be distributed to third parties. A classical class action for diffuse interest of consumers would be one that seeks to preemptively invalidate an abusive clause of a bank's lending contract,²¹ or one that forces a company to withdraw misleading advertising, or to respect the terms of a promotion, or comply with some generic provision of the Consumer Law that protects consumers in general.²²

The second type is the class action for the collective interests of consumers. In these cases the remedies will normally include damages. If they do not consist of damages, however, the injunctive relief will take the form of court-ordered contract modifications or specific performance. No compensatory stage will be therefore needed.

If the class action for the collective interest of consumers does seek damages, two scenarios open up depending on whether consumers are known or unknown to defendants. If consumers are unknown, as said above, the declaratory stage will declare the defendant responsible with *erga omnes* effects. This, in turn, will open two alternatives for absent members. The first one is to join the compensatory stage along with all the other absent class members that come forward after the declaratory judgment is published in the news media. The second is to take the declarative judgment to any court with jurisdiction

²⁰ See *supra* note 18, and Barroilhet, *supra* note 2 at 285.

²¹ Most of SERNAC's collective mediations are attempts to regulate the contracts of the banking industry. When these fail, SERNAC will file the class action. For a description of collective mediations, see *Id.* at 309.

²² The Consumer Law includes a lot of dispositive or regulatory provisions but does not give SERNAC any power to monitor their compliance. Thus SERNAC uses the procedures of the consumer law to regulate them.

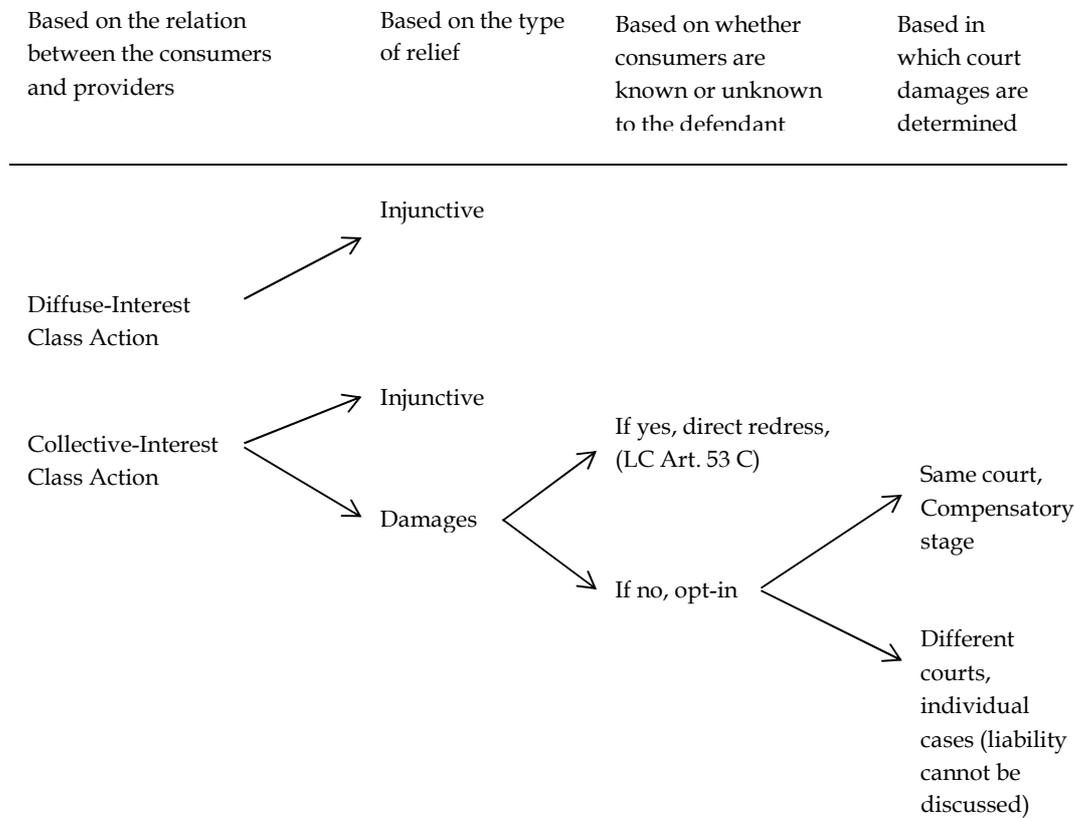
Chile Report
October, 2015

Agustín Barroilhet
ab2897@georgetown.edu

(usually where the class member resides), and initiate an abbreviated procedure there. In this case, however, the damages will remain limited to pecuniary contractual damages and defendant's liability will not be discussed.²³

²³ See Law No. 19496 Art. 51 (2) In theory consumers that opted-out after the declaratory sentence could use the class judgment as a mere antecedent in their cases. This would open the chance for consumers to claim moral damages, but also for defendants to discuss their liability.

Diagram of Chilean consumer class actions



If the defendant can identify the consumers that are part of the class and the court can envision a way for the defendant to compensate these consumers without their intervention, the judge can order it directly, effectively suppressing the compensatory stage.²⁴ Two of the three most important class actions completed –classical fees cases– have ended in direct compensation by the defendants.²⁵ These were true opt-out class action for damages representative of the most common cases litigated in the country.²⁶

²⁴ The procedure does not deal explicitly with the cases in which known consumers are not found at their registered addresses. However, the court can order the defendant to take reasonable measures to find them during a certain period of time.

²⁵ The two cases are *CONADECUS c. BancoEstado*, Rol 11679-2004, 14th Civil Court of Santiago, and *SERNAC c. Cencosud*, Rol 21910-2006, 10th Civil Court of Santiago.

²⁶ Illegal fees cases, a classical class action for the collective interest of consumers that involves damages, are by far the most common class action litigated in Chile. Whenever the defendant has a registry of its clients and the money collected from them, it might be subject to these direct orders. See Barroilhet, *supra* note 2 at 303.

Litigation Incentives for Plaintiff's Lawyers

Chilean class actions offer little incentive for legal entrepreneurs. Direct incentives are minimal and uncertain. They include contingency fees for which the class counsel must bargain with consumer associations or the 50 or more consumers groups. Yet, these fees will be limited to the members of the consumer association or the 50 or more consumers in the group, because neither of these have the power to agree on contingency fees on behalf of absent members of the class. In addition, the Chilean class actions are consumer class actions limited to contractual pecuniary damages, thus damages are often small. The class counsel (called *procurador común* or common procurator) may receive court-awarded fees and *costas* [legal costs], the latter a form of partial fee shifting. Yet, courts have been historically very conservative in their awards and often award fees and costas according to old references and charts that do not reflect market rates. Moreover, the class action procedure commands that the court has to fix the leading counsel's fees, taking into account "the plaintiffs' economic means," which may offset the incentive of the contingency fees.

Indirect incentives, which plaintiffs could use to obtain settlement-awarded fees, simply do not exist. Settlements are authorized but given that moral damages are not possible and counsels cannot sacrifice consumers' compensation to enlarge their fees because of courts' and SERNAC overview of settlements' fairness, there is simply not enough space for an attractive fee. Moreover, the class action procedure itself does not help to create settlement pressure. With no punitive damages available in the country, moral damages barred, and the expectancy of court-awarded fees to be very low, the only thing that could induce avoidance of the final judgment would be court-fixed interests and inflation adjustments over consumers' pecuniary damages. But Chilean courts seldom adjust these numbers and if they do, they will be, again, very conservative using average interest rates. If a company is willing to suffer the bad press, the most financially sound strategy is to delay the judgments as much as possible and never settle, much less with private parties, when SERNAC is at hand.

Perhaps the only aspect that could have created incentives for settlements were the fines prescribed in the Consumer Law that predated the enactment of

class actions. These fines, overlooked by Congress in the class action debate,²⁷ were substantive if considered on an individual-case basis. In fact, this loophole incentivized some sophisticated class action-litigation.²⁸ However, the courts quickly ruled that the fines were applicable to the whole class and not to the individual cases within the class, equating the maximum fines of the class action to the maximum available for a single case.²⁹ Since courts set these fines at trivial levels, the government sent a proposal to Congress to fix an 8-dollar compensation per consumer as part of the cost of filing the claim. So far the legislation has not been approved and it doesn't seem to be a priority for congressional action.³⁰

Because class actions are not profitable from the standpoint of private enforcers, the question of whether there could be third-party funding for them is, in practice, irrelevant. Lawyers are not barred in Chile from financing litigation or paying experts. They can bargain to retain the *costas* and contingency fees up to 50% of the final award. But without a clear way to recover their investment, all this aid is pointless.

The role of SERNAC

SERNAC litigates on a public budget and has a permanent staff. It also offers a web platform for consumer claims that predates the class actions, when the agency's powers were limited to conveying agreements between consumers and providers. This webpage generates a database that contains consumers' claims identified by defendant's *rol único tributario* [unique tax identifier], which allows the agency to detect repeated practices on wide scale suitable for class actions' complaints without the need to incur in any additional cost. These advantages give SERNAC a prominent position as a class action enforcer; it doesn't need additional funding and it has its cases and clients at hand.

²⁷ Drafters confirmed in interviews that this was an unintended loophole, which neither detractors nor supports of the device foresaw. See *Id.* at 287 (n.38).

²⁸ See Agustín Barroilhet, *Self-interested gatekeeping? Clashes between public and private enforcers in two Chilean class actions*, in CLASS ACTIONS IN CONTEXT (Hensler et Al. Eds.) (forthcoming 2016).

²⁹ See 14vo Juzgado Civil de Santiago [14 J. Civ. Stgo] [14th Civil Court of Santiago], 28 Septiembre 2010, "Corporación Nacional de Consumidores y Usuarios de Chile c. Banco del Estado de Chile," Rol de la causa: 11679-2004, Res. 'II II.2, confirmed by Corte de Apelaciones de Santiago [C. Appel. Stgo] [Court of Appeals of Santiago], 3 Noviembre 2011, "Corporación Nacional de Consumidores y Usuarios de Chile c. Banco del Estado de Chile," Rol de la causa: 7459-2010, Res. II.

³⁰ See Boletín 6534-04, *Modifica ley N° 19.496, sobre Protección de los Derechos de los Consumidores*, available at, <http://www.senado.cl/appsenado/templates/tramitacion/index.php> (using right side search box). Last active on March, 2011.

Besides these relative advantages, the class action procedure grants SERNAC the right to become a party, allowing it to challenge class representation in every class action. It also grants the agency the right to be notified of every settlement proposed along with the right to continue cases that private parties decide to withdraw from court. Thus, the presence of the agency looms behind any strategy devised by private enforcers. They know that at the very least they will need to get the agency's informal acquiescence before moving forward, otherwise risking losing the case to the agency.

Despite all these relative advantages, SERNAC has not used its power to litigate the cases it could or it should because it knows the favorable scenario that defendants face once sued. Instead, it has used its advantages either to litigate against petty defendants for seemingly unimportant abuses that capture media attention,³¹ or to try to negotiate outside court consumers' compensations and contracts' adjustments as an indirect form of regulation. This process is called 'collective mediation,' and has been criticized because it produces impracticable regulation and often only yields discount coupons in compensation for consumers' damages.³²

Future Developments: Bureaucratic-led class actions?

When Gubbins and López wrote their original report it was too early to observe the equilibrium of the mixed-enforcement regime of Chilean class actions. At the time, plaintiffs' attorneys tested the boundaries of the procedure in a number of sophisticated cases. SERNAC, in turn, was streamlining its collective mediations and showing little litigation. More importantly, it was unclear then how SERNAC was going to react to sophisticated private enforcement. Things have changed radically since that time. Private attorneys are no longer trying to bring sophisticated high-profile cases. Consumer associations can barely sustain themselves and cannot handle more than one case at a time, which has left them mired in their pre-2010 cases. SERNAC, on the contrary, has

³¹ For example, an agency sued a printing company that induced clients to believe that it would include the Chilean team stickers on its 3-dollar sticker album of South Africa World Cup Sticker Album, but it didn't. This fault only affected a few thousands buyers, who will be hard to locate, and the recovery will be, at its maximum, the reimbursement of the 3 dollars, if clients come forward. See *Sernac concreta demanda colectiva contra Panini por album Sudafrica 2010* [Sernac Files a Class Actions Against Panini for South Africa World Cup Sticker Album], Terra, http://economia.terra.cl/noticias/noticia.aspx?idNoticia=201005201940_INV_79001522

³² See Barroilhet, *supra* note ___ at 310. Collective mediations involve a trade-off between currently injured consumers and future consumers. Unconstrained and unmonitored, SERNAC usually relinquishes compensations in favor of securing new consumers' contracts and does so with the internal conviction that this less adversarial approach protects consumers better in the long-term.

grown stronger, taking a preeminent role in the class action litigation. The explanation for this phenomenon is two-fold.

First, as collective mediations became ubiquitous, their implied next step, which was the class action, needed to become real as well. SERNAC's class actions have followed several failed collective mediations. Secondly, and more importantly, SERNAC has given a strong signal to sophisticated enforcers that the agency will use its powers to challenge and take control of cases that threaten to overshadow the agency's image as the sole and most important protector of consumers.³³

The agency's relative advantages have been fruitful and its message has been heard. When Gubbins and López wrote their report in 2007, admissibility was taking years but private enforcers were trying.³⁴ When "Class Actions in Chile" was written in 2011, SERNAC had filed almost the same number of cases as the private attorneys but its number were on the rise.³⁵ After 2011, and despite the reforms that almost suppressed admissibility as a stage, there has been only one single privately initiated class action. The other 62 cases filed since then all belong to SERNAC.³⁶

The foreseeable future of Chilean class actions is uncertain because the new government has declared its intention to pass reform which would give SERNAC direct regulatory and enforcement powers to address consumer abuses.³⁷ If this reform passes and SERNAC is given powers to address collective issues, it is likely that class actions will be repealed completely or readopted with a scope that does not interfere with the agency's administrative enforcement.

³³ This argument is developed in Barroilhet *supra* note 28.

³⁴ See Gubbins and López, *supra* note 1 at 73.

³⁵ See Barroilhet, *supra* note 2 at 305.

³⁶ These numbers come from SERNAC's official database that reports all existing cases based on the notices that courts have to send to the agency at beginning of each case. The database that can be found in: <http://www.sernac.cl/proteccion-al-consumidor/juicios-colectivos/iniciados-por-sernac-2/> A quick survey of the cases reveal that SERNAC's litigation remains dominated by cases triggered by news media or cases in which the agency, seeking the diffuse interest of consumers, is trying to regulate some industries through their contracts with consumers.

³⁷ See Muñoz: *Dotaremos al Sernac de facultades fiscalizadoras, normativas y sancionadoras* [Muñoz, we will give SERNAC powers to monitor, regulate and sanction], in EL MERCURIO, 21 de Marzo de 2014, available at <http://www.economiaynegocios.cl/noticias/noticias.asp?id=118056> (Last visited, March 27, 2014).