

Chile's Antitrust Regulator Recommends Opening the Acquiring Industry to Competition



On January 13, 2017, the Chilean Antitrust Tribunal (“TDLC,” its Spanish acronym) published a series of recommendations aimed at opening up the Chilean acquiring industry to competition. The TDLC recommendations are not binding at this time. The recommendations will go to the Minister of Finance and to the President, who will decide whether legislative action is needed. However, these recommendations are another sign of the regulator’s preference for a more competitive acquiring landscape in the country.

The Chilean Acquiring Industry and the TDLC Recommendations

Traditionally the acquiring industry in Chile has been dominated by a single acquirer—Transbank. Transbank was created in 1989 as an interbank organization with the mission of providing merchant acquiring and processing services to its banks’ owners. Transbank’s dominant position in the market has continuously attracted the attention of Chilean regulators; as a result, its activities have been closely monitored and regulated.

The recommendations from the TDLC come as a result of an extensive evaluation that took place over a period of almost three years in which multiple market participants, in addition to Transbank, had an opportunity to express their positions. The TDLC made the following key recommendations:

- 1. Differentiate Clearly Between Industry Participants and Their Roles:** Currently, the roles of acquirer and acquiring processor are combined and concentrated within Transbank. The regulator proposed that any legislation clearly differentiates each industry participant: 1) network; 2) issuer; 3) acquirer; 4) acquiring processor; and 5) issuing processor. In particular, the role of acquirer should be clearly distinct from the role of acquiring processor, with the acquirer being the entity that enters into the contractual relationship with the merchant for the provision of acquiring processing services independently of whether it provides the processing services itself or outsources those services to a third party.
- 2. Modify the Rules Applicable to Organizations Created to Support the Banking Industry:** To date, the organizations with the mission of supporting banking activities are only allowed to serve banks. The regulator proposed to modify the rules so organizations such as Transbank could provide services to industry participants that are non-banks as well.
- 3. Prohibit Issuing Banks From Jointly Providing Acquiring Services:** The TDLC stated that there is no need that justifies competitor banks to act jointly in the provision of acquiring services through Transbank. The TDLC proposed that the regulators establish a reasonable period in which the issuing banks will revoke the mandate that they gave Transbank to act as an acquirer. This recommendation is forward looking; Transbank would still be allowed to act as an acquirer for merchants boarded before any regulatory changes take place.
- 4. Allow Issuers to Enter into Partnerships in Order to Provide Acquiring Processing Services:** The regulator recognized that economies of scale are relevant in the acquiring processing industry due to the high investment requirements in technology and infrastructure. Therefore, the prohibition in the preceding paragraph does not apply to Transbank when it acts as an acquiring processor. The regulator stated that there is justification for two or more banks to use the same processor or develop a common platform to serve more than one acquirer.
- 5. Open The Access To Processing Networks:** To foster competition in the market, the regulator recommended implementing (1) the obligation to open access to the processing networks to acquirers as long as the networks have available capacity and there are no technical impediments to support additional acquirers in the market; and (2) the obligation to interconnect industry participants to the different processing networks, establishing the applicable fees and operating terms.
- 6. Prohibit the No Acquiring Without Issuing Rule (“NAWI”):** This rule, according to the regulator, has limited competition in the market by precluding non-card issuers from entering the acquiring market. The regulator recommended eliminating the rule in order to allow additional types of organizations to enter the Chilean acquiring industry.

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7. **Eliminate the No-Surcharge Rule:** The No-Surcharge Rule prohibits merchants from charging a different price for goods based on the type of payment used by the consumer (e.g., cash, check, credit, or debit cards). The regulator stated that this rule limits the merchants' freedom to set their pricing policies and that it should be eliminated from general forms of merchant acquiring contracts.
8. **Regulate the Relationship Between Acquirers and Card Networks:** In order to promote transparency and ensure that the networks do not refuse to contract with acquiring providers without justification, the

regulator recommended that the processes and contractual requirements between networks and acquirers be public.

9. **Allow the Chilean Authority to Set Interchange Rates:** There is no interchange system in the current Chilean acquiring industry. Transbank transfers all merchant discount revenues to issuers according to their issuing market share, and issuers pay Transbank a per item processing fee. If the regulator's recommendations are implemented, there will be a need for an interchange system. The regulator recommends that the entity in charge of setting the domestic interchange fee rates be the Chilean authority.

Chile's Economy and Card Stats in the Latin American Context

Chile is an attractive market in Latin America. Economically the country has been one of the most successful in the region. It exhibits a GDP per capita above those of Mexico, Brazil, Colombia, and Peru. Despite having 14% of the population of Mexico (approximately 18 million people), Chile has approximately 40% of the card volume of Mexico, with card volume growing at a 14% CAGR between 2012 and 2016. The economy is expected to grow at 3% per year until 2020, and with it, card volume is expected to continue growing at healthy rates.

	 Chile	 Mexico	 Brazil	 Peru	 Colombia	 Argentina
2016 Population (millions)	18	129	210	32	49	44
2016 GDP Per Capita (USD)	\$13,546	\$9,070	\$8,130	\$6,249	\$5,985	\$13,965
2010-2016 GDP CAGR	2%	2%	-4%	5%	0%	6%
2016-2020 GDP CAGR (estimated)	3%	4%	0%	3%	7%	-2%
2012-2016 Card Volume CAGR	14%	12%	12%	11%	16%	38%
2016-2021 Card Volume CAGR (estimated)	7%	11%	9%	10%	10%	24%

First Annapolis Observations

Given the recent regulatory events in the country, we expect that international industry players—PSPs, gateways, acquirers, and processors—will start exploring the opportunities in the Chilean acquiring market. Undoubtedly, local issuing banks and Transbank will start considering their options going forward as well. Even though some changes might be forthcoming in the market, we do not expect major structural changes in the short to medium term. As we mentioned, the TDLC recommendations at this point are not binding. It will take legislative action to implement any regulatory industry changes. According to local sources, significant legislative actions are unlikely this year as presidential and parliamentary elections are scheduled for November. Furthermore, a major legislative action, such as one intended to change the structure of such an important industry in the country, will take some time for approval and implementation.

Sources: IMF, Investopedia, Euromonitor, and First Annapolis Consulting analysis.

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