

NARRATIVE REPORT OF THE “MIS DEUDAS” PROJECT SUPPORTED BY MATANEL FOUNDATION

For the second funding period: 2013-2014

Introduction

The implementation of the three-year project called "*Misdeudas*" begun in October of 2012, whose overall objective is to develop measures intended to improve the conditions under which the rights of consumers are respected in the wide world of consumption and the financial market.

To this end, several actions were planned, which have remained in the reporting period (2013 - 2014), namely:

- a) The installation of a Customer Service (SAP) with the purpose of collecting cases of problematic situations that consumers experience in their relations with suppliers in general and financial institutions, in particular.
- b) The initiation or maintenance of collective legal action due to harmful practices.
- c) The maintenance of an information and guidance channel on the use of credit and credit market characteristics in the country (www.misdeudas.cl).
- d) Lobbying activities directed to government agencies and business institutions to improve conditions concerning the of respect for consumer rights.

IMPLEMENTATION.

a) Customer Service (SAP)

During this period (2013-2014), a public inquiries service was carried on through three channels: on-site, by telephone and via the Internet.

For this purpose the staff that had already participated in that activity the previous period remained the same.

The on-site service is performed in the ODECU office on Mondays, Wednesdays and Fridays from 4pm-7pm. This facility is secured by two officials with legal training. One is a lawyer and the other is in process of certification. They are also in charge of the telephone answering service.

Assistance by e-mail is handled by a lawyer who answers queries directly.

This team is supervised by the ODECU coordinator, who has lead the misdeudas.cl program for nine years.

On-site, telephone and online services

The Customer Service has received inquiries from consumers who have directly contacted the ODECU Chile offices, following a procedure that has been improved over time. Whether the person accesses the virtual platform, sends a direct mail to the service or communicates by phone, it is recommended to convey as much backgrounds as possible before arranging the on-site service to provide a comprehensive guidance and relevant to the needs of the client. Having the backgrounds moves forward a study that allows answering questions and concerns at the time of the meeting and allows the applicant to make the best decision.

During the last period, 109 cases have been thoroughly dealt with, where the issues range from worrying about over-indebtedness to situations where the debtor's property or goods at risk, as a consequence of the enforcement procedure deemed by the creditor. Each of these cases requires two or more counseling sessions.

These cases were treated in the following ways:

Channel	%
In-site	20
By phone	26
E-mail	49

And the following sectors were involved:

Sector	%
Financial	48
Retail	18
Telecommunications	5
Sanitary services	3
Transport	3
AFP	2
Health	3
Electricity and fuels	1
Education	1
Insurance	1
Not classified	12

Examples of inquiries:

- Executive claims: notification of the application; seizure and removal of specie; consequences for the debtor's assets.
- Evaluate whether if it is convenient or not for the debtor to contact commercial houses and banks to renegotiate debts.
- Study and analysis regarding certain clauses in the contracts that raise questions about the debtor's obligations.
- Contracts and unfair terms contained therein.
- Lease agreements.
- Accidents involving personal injuries in the facilities of a shopping center.
- Inquiries about HABITAT and Los Heroes cases marked a trend during the year. Both cases will be discussed later, in relation to class actions.

Many of those involved have expressed their approval of the care received and find that they were able to make the best decision according to their individual situation.

As a result of the experience of the time of attention, it was decided to implement a more detailed register procedure for each of the attentions, including telephone service, in order to make a more diligent systematization of the caseloads.

b) Class actions

Held actions

Overcharges in mortgage loans.

As explained in the previous report (2012 - 2013), in 2006, ODECU initiated class actions against seven banks concerning improper charging costs in mortgage contracts in the districts of Santiago, Puente Alto, San Miguel, Valparaíso and Viña del Mar.

Given the slowness of the collective processes, in 2013 a settlement was reached in three of the cases with settlement agreements in which the banks agreed to return the overcharged amounts to the customers. This is the case of Santander Boston and BBVA banks.

Banco Chile is among the banks that are still outstanding, which is one of the largest in the banking sector and has expressed its willingness to litigate as long as it is necessary, which has required an audit and an inspection financed by the

ODECU as the complainant. As we are certain of the correctness of our demand, we know that, ultimately, affected customers will be compensated accordingly

Collusion of pharmacy chains

As was also explained in the previous report, in 2008 the Public Prosecutor for Economic Crime (FNE) submitted an accusation to the Court for Free Competition (TDLC), for collusion, against the three pharmacy chains that dominate more than 93% of that market.

The Prosecutor proved that the accused had made arrangements to jointly increase the prices of 206 drugs. For which the prosecutor received the collaboration of one of the colluding pharmacies.

The Court found that the illicit had indeed been consummated and that the three pharmacy chains had collectively obtained, as a result of the collusion, an additional gain of 27 billion pesos (equivalent to about USD \$ 54 million).

As penalty for despicable conduct against free competition, the court sentenced the accused to pay a fine to the state. The fine was USD \$19 million for two of the colluded pharmacies and \$1 million for the one who confessed to the crime and cooperated with the investigation (protected by the leniency system).

After the appeal made by two of the chains, the Supreme Court ratified the sentence of the Court for Free Competition.

Consequently, the infringing received a punishment for criminal behavior: a fine to the State.

Consumers who were stripped of 27 billion pesos have not received any compensation.

The three pharmacy chains remain in possession of the illegally acquired 27 billion pesos, money they have undoubtedly used to increase their profits. A sum that, at the moment, adjusted and with just bank interests, represents more than 37 billion pesos (USD \$ 74 million).

Faced with this situation, the National Consumer Rights Service (SERNAC) filed a class action, which was not accepted for processing by the court.

For its part, ODECU, filed another class action, which was accepted for processing. This lawsuit seeks to obtain full compensation for the affected consumers, so that the three infringing pharmacies chains return the misappropriate funds, readjusted and with interest.

This process is in full swing.

Actions undertaken

AFP Habitat

AFPs are private companies that are authorized by law to administer the retirement funds of all persons working under contract in the country. All employees are required to allocate 7% of their salary to the formation of a retirement fund, no employer contribution. That 7% must be placed in one of the administrators of pension funds (AFPs), which constitutes their account 1. In addition to the mandatory account, the workers, also called contributors, can register an account 2 to increase their retirement funds, in order to receive a better pension on retirement. For the administration of these funds, AFP charges fees to the contributors, which must be agreed in the contract.

AFP Habitat has been charging fees to contributors with account 2, without obtaining proper consent, for a period of over two years, which lead to the misappropriation of significant sums of money from their customers. For this reason, ODECU's general assembly adopted the following resolution:

It is agreed unanimously to authorize a collective and/or diffuse demand, for the violation of the Consumer Protection Law, against **A.F.P. Habitat** for: charging savers of voluntary savings account or account 2 - whatever its denomination - without their knowledge and/or acceptance thereof.

The demand was accepted by the court and is currently in progress. A process where a study funded by ODECU was presented.

Caja de Compensación Los Héroes

Family Compensation Funds, or **compensation funds** are Chilean corporations of private law, with their own assets and non-profit. Their purpose is to administer social security benefits intended for the development and welfare of workers and their families, protecting them from social and economic contingencies. Membership to the compensation fund is voluntary and has a cost of a percentage of the salary or pension of the affiliate.

One of the social security benefits consists allegedly in more advantageous loans in comparison to the market. However, many of the members of the Caja de Compensación Los Héroes (compensation fund) came to ODECU to present cases in which they had felt deceived.

After studying the situation, the Assembly agreed to file a lawsuit against Caja de Compensación Los Héroes for: deceiving its senior customers by offering a product with characteristics that in practice are different from those reported when signed for.

It was unanimously agreed to authorize a collective and/or diffuse demand, for the violation of the Consumer protection law, against Caja de Compensación Los Héroes, whatever its denomination, for misleading its senior customers by offering a product with characteristics that are different from those reported when signed for. Indeed, they offer a 3-year credit, with an automatic discount from the pension paying entities, and at a prime rate, when in reality, these credits are awarded with high rates and 5 year installments, which means paying enormous sums of money they never consented to.

With the recent broadcasting of the news of the submission of the complaint, many senior citizens who are affiliated to the compensation fund have come to deliver their backgrounds to ODECU. The demand has been accepted by the court.

Undue charging in surface parking lots

The lawsuit filed against the company ECM S.A. and the Municipality of Santiago, for abusive charges for parking services in public areas. It is common practice for municipalities to grant a concession of the administration of certain sectors to exploit as parking lots.

The legal action specifically targets the practice of "rounding up" used by ECM S.A., which consists in charging a full time slot for the parking service, even though the user has used only a part of it. For example, parking in the intersection of San Pablo and Bandera has an initial value of \$ 420 for the first 20 minutes, if the user exceeds the period by 60 seconds, the cost will increase to \$ 840. That is, the user will be charged the full \$ 420 corresponding to a period between minutes 21 and 40.

That is why, through this lawsuit, ODECU requests the court to declare the calculation system that enables rounding up invalid, considered abusive. It is intended that both ECM S.A. and the Municipality of Santiago, cease the conduct, stop applying it and return everything that has been overcharged by the implementation of this system -This is in addition to the respective fines for reported infractions and court costs.

This initiative is supported with a recently published study by ODECU on fares and collection modes of 20 parking areas of 10 districts of Santiago.

The research also revealed a significant market concentration in the granting of public spaces to be used as parking lots, as well as the lack of regulation: grants that exceed 20 years of duration.

c) Information channel

This line of work has the purpose of providing information and advice for people who rationally and appropriately use the credit opportunities offered by the market, and that, if necessary, can successfully resolve situations of over-indebtedness.

To this end, ODECU, has maintained the website www.misdeudas.cl since 2005. Which receives an average of 30,000 visits per year.

In the period 2013 - 2014 the layout was improved and the contents were updated in order to provide a useful, attractive and easy to use instrument.

To this end, the following procedures were applied.

- a) Update of the content manager.
- b) Review and reformulation of contents.
- c) Carrying out of two investigations on the financial market to create new content.
- d) Improvement of the design: Incorporating dynamic graphic elements; incorporating elements gif and flash

d) Studies.

In the second half of 2014, a study on surface parking charges in four districts of Santiago was conducted.

The initiative, which received technical support from the **Universidad Tecnológica Metropolitana**, assessed fees imposed by the concessionaires of 20 parking spaces of a total of 10 districts in the northern sector, south, west and east of Santiago. For this, the technique called "hidden client" was used, who parked in **Las Condes, Vitacura, San Bernardo, Independencia, Santiago, Providencia, Recoleta, Puente Alto, Estación Central and Ñuñoa**. This allowed the analysis of the different payment method used by the concessionaires, as well as fees charged per minute and per hour.

The exercise identified three types of collection modes: by time slot, by time slot plus additional minute, and by differentiated time slot. In addition, a difference of up to 80% was detected in the fees charged, noticeable within the same district. This is the case of **Vitacura**, where parking in the area of **Los Cobres de Vitacura**,

costs \$15 a minute. While parking in the area of **Alonso de Córdova street with Vespuccio** avenue costs \$ 27 a minute.

The study also detected the use of "rounding up" by companies that operate with time slots, where the full value of a slot is charged once the client has exceeded the time of the previous slot, even for a minute. Therefore, if a driver outstrips the minimum amount of time, a disproportionate fee is charged in relation to the time of use. For example, parking in **Providencia** for 20 minutes -the minimum time-, has a value of \$ 362, while parking for 21 minutes, rises the value to \$ 724.

e) Lobbying

ODECU, through its President and other representatives, carries out an intense activity of representing the interests of consumers before state institutions as well as some companies.

Representation before State institutions:

- Advisory Council of the National Consumer Rights Service
- Advisory Council of the Public Health Institute
- Advisory Council of the Department of Telecommunications
- Advisory Council of the Ministry of Education
- Advisory Council of the Superintendence of Sanitation Services (SISS)

In February of 2011 Law No. 20,500 on Citizen Participation was enacted.

Among other things, this law requires state institutions to create Advisory Councils whose work is to discuss the relevant policies of a particular sector.

Although it is true that these boards are non-binding, they are a mechanism where participating organizations can discuss sector policies, fully inform of its contents and make their views known.

Representation before companies.

Within the framework of Social Responsibility policy and its relationship with the various stakeholders, some service enterprises have created Advisory Councils. In such boards the company raises questions about some of their policies and seeks to know what the participating organizations think.

These boards have worked well in general and within a framework of respect and transparency.

ODECU participates in:

- Advisory Council of Chilectra (The Company that supplies electricity to the city of Santiago). This advice is the oldest and we participated since its creation in 2008.
- Advisory Council of VTR. (Telephone internet and cable Company. This council was created last year and meets every two months.
- Advisory Council of Telefónica/Movistar. This council lasted just over a year. There has been no announcement as the company is working on a restructuring.

Actions regarding the legislature.

ODECU is constantly invited to various congressional committees concerning consumer protection, be it the Senate or the Chamber of Deputies.

During the period covered by this report, the president has participated in the following parliamentary sessions.

- October 2012. *Economy Commission of the Chamber of Deputies to discuss the Interest rate ceiling (TMC).*
- May 10, 2013. *Economy Commission of the Chamber of Deputies to discuss the Drugs Act*

Odecu has been very committed to this bill that would force some doctors to prescribe a generic bioequivalent along with the brand name drug. It also requires pharmacies to sell OTC drugs in shelves that allow consumers to choose freely, and proposes selling of OTCs outside pharmacies. It is worth remembering, that the pharmaceutical market in Chile is an oligopoly, where 93% of the market belongs to only three pharmacy chains, facilitating collusion and abuse of dominant position. The lobbying against this project has been very large by the aforementioned pharmacies chains and laboratories, both national and international.

- June 12, 2003: *Attendance to the Plenary Discussion of the House of Representatives, Bill that amends the Health Code. (In this opportunity ODECU participated with a delegation of 20 people)*

- July 29, 2013: *Health Commission by the Senate for discussion of Drugs Act.*
- July 30, 2013. *Committee for the Defense of Consumers of the Chamber of Deputies to know the quality of yoghurts conducted by Odecu.*

In 2010 ODECU conducted a study of the quality of yoghurt. The result was that one of the analyzed (9 samples) complied with the regulations in order to be considered as yoghurt.

Despite this evidence and due to the public outcry, both the Ministry of Health as the companies denied this and tried to undermine the outcome of our study.

Recently, in July of this year, a program of journalistic investigation of the Chilean television, came to the same, surprising results. This revived the debate and we were mentioned as the first ones to warn about this irregularity and fraud. It is for this reason that we were invited to the parliamentary committee outlined above.

- December 16, Economy Commission of the Chamber of Deputies to review changes in food labeling regulations proposing new regulations to report about the content of the foods.

Institutional reform and the Consumer rights and consumer protection law.

Even before the establishment of the new government, the process was initiated to define the institutional reforms that strengthen and expand the scope of the law. ODECU was invited to participate in different events of this procedure.

- After the government was established, ODECU was summoned to attend a meeting with the Minister of Economy and his advisers to discuss the issues of the new policy. The President and two members of the executive team represented ODECU.

ODECU participated in various events aimed for this purpose, including:

- June 17. Economics Committee of the Chamber of Deputies to know the opinion of ODECU on the consumer law amendment by the executive.
- July 7. Debate on the role of SERNAC in defending the rights of consumers. Thematic event organized by the Commission of Economy, Development, MSMEs, Consumer Protection and Tourism of the Chamber of Deputies.

- August 13. The President was invited as an exhibitor to ICARE, the main business forum in Chile, to state the position of ODECU on amendments to the consumer law proposed by the government.
- September. As part of the amendments proposed by the new government, among including the consumer law, the Capital magazine organized along Sofofa (Main trade organization of employers) a meeting held outside Santiago on Freedom and Equality. Different figures of the political and business world were invited to this meeting. The President ODECU was invited as well.

Drawing up an energy policy for sustainable development

ODECU has been the only consumer organization invited to participate in the development of measures, both short-term and strategic that lead to firstly, improve conditions for consumers in these markets and secondly to establish an energy matrix that ensures the provision of energy needed for development.

- September 24. The Chilean Senate's Mining and Energy Commission. Review a draft law modifying the General Law on Electrical Services.
- October. Chamber of Deputies' Mining and Energy commissions, for the same purpose.
- Working Group convened by the National Energy Commission.

ODECU is the only consumer organization in Chile that participated in the group convened by the National Energy Commission, composed of different players in the industry and the government, which was held for four months in order to agree on a bill that would be later approved by the parliament.