

Approach of Competition Authority on privilege of attorney/client relation

The recently published Storytel and Oriflame decisions¹ reveal the Competition Authority's consistent approach to the privilege of the attorney/client relationship. In both files, it was claimed that the recipient or sender of certain documents taken during the on-site inspections of the enterprises was an independent lawyer and that they were requested to be returned. However, the Competition Authority did not accept these requests, citing its previous jurisprudence.

There is no direct specific provision in Law No. 4054 regarding the privilege of the attorney/client relationship and it is shaped by secondary regulations and the Competition Authority and court precedents. Two conditions are mentioned that must be met in order to benefit from the principle of privilege of the lawyer/client relationship in the Guidelines on the Examination of Digital Data: (i) any correspondence between a client and an independent lawyer with no employee-employer relationship with the client and (ii) aimed at the exercise of the client's right to defense. However, correspondence that is not directly related to the exercise of the right to defense do not benefit from the privilege, especially if they involve giving assistance to an infringement of competition or concealing an ongoing or future violation.

However, some steps can be taken that may contribute to preserving the essence of the privilege of confidentiality regarding the attorney-client relationship and improving current practice. To begin with, not rejecting privilege objections against documents issued before the administrative process for the allegations subject to examination, based solely on the date, giving time to undertakings to make confidentiality assessments and objections before privileged documents are made available to the investigation committee, and taking measures to resolve privilege objections outside the Competition Authority, which is the final decision-making authority, may provide significant achievements. In addition, diligent utilization of stay of execution of courts in terms of lawsuits executed towards decisions of Competition Authority subject to such privilege claim and making amendments to the legislation to include cases on this issue as urgent matters may assist using of defense right more effectively in order to prevent problems arising time inconsistency in terms of administrative and judicial processes.

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¹ Decisions numbered 23- 16/ 274-94 and-39/735-252.