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**REGULATION OF TIME TAKEN BY FINANCIAL CUSTOMER CARE SERVICES AND CONSUMER  
REDRESS: CASE LAW OF THE BRAZILIAN SUPERIOR COURT OF JUSTICE**

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**ABSTRACT:** Time exerts multiple influences on consumer relations, since it is a triggering factor for several legal obligations. The valuation of time as an essential and limited resource has emerged in the context of post-modernity with the formation of a new consciousness about the effects that its passage exerts on people. In Brazil, since 2009 several judicial decisions recognized the time lost by consumers trying to solve conflicts with suppliers as a special kind of moral damage and guaranteed the right to redress. Nowadays several states have laws limiting the time consumers are required to spend in bank lines. Therefore, the financial institutions must provide efficient customer care services in order to meet the legal requirements. The Brazilian Superior Court of Justice also recognizes that the financial institution that does not observe the legal obligation to preserve consumer's time must compensate the time lost with a cash indemnity. The research proposes a dual-criterion to pursue the adequate compensation for the time lost by consumer through the evaluation of suppliers conduct. The study makes a distinction of consumer time and supplier's time and defines the "*planned disregard*" as the abusive devaluation of time and the efforts made by consumers to achieve a successful conclusion to consumer contracts, mostly due to the lack of investments in efficient customer care services. The paper presents the legal duties of effective prevention and full redress of damages in Brazilian consumer law, which are the legal tools to compensate the damage due to the loss of time suffered by consumers. Finally, it suggests a new business ethics for financial institutions and proposes how the members of the national consumer protection system, such as the regulatory agencies, civil entities and the Judiciary, may contribute with structural processes to the prevention of undue loss of consumer time and to the improvement of financial consumer's services.

**KEYWORDS:** Consumer time; planned disregard; damage due to time lost; full redress; structural processes.

## **1. INTRODUCTION**

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Time exerts multiple influences on consumer relations, since it is a triggering factor for several legal obligations, especially in long-term contractual binds. The valuation of time as an essential and limited resource has emerged in the context of post-modernity with the formation of a new consciousness about the effects that its passage exerts on people.

In Brazilian Courts, the compensation for time lost by consumers trying to resolve problems caused by suppliers is very controversial. Especially since 2009, several judicial decisions recognized the time lost by consumers trying to solve conflicts with suppliers as a special kind of moral damage and guaranteed the right to redress. On the other hand, many consumers in similar situations had the same right denied in Courts, mostly due to the lack of criteria for compensation for the time lost due to acts attributable to suppliers.

In this context, the present research proposes a *double criterion* to pursue the adequate compensation for the time lost by consumer through the evaluation of supplier's conduct. The study makes a distinction of consumer time and supplier's time and defines the "*Planned Disregard*" as the abusive devaluation of time and the efforts made by consumers to achieve a successful conclusion to consumer contracts, usually caused by the lack of investments in efficient customer care services. This commercial practice – planned disregard – exceeds the limits of good faith and represents an excessive advantage for the supplier, breaking the legal balance that the law establishes in consumer relations.

The paper approaches the legal duties of effective prevention and full redress of damages in Brazilian consumer law, which are the legal tools to compensate the damage due to the loss of time suffered by consumers. Finally, it suggests how the members of the national consumer protection system, such as the regulatory agencies, civil entities and the Judiciary, may contribute with structural processes to the prevention of undue loss of consumer time.

## **2. THE LEGAL VALUE OF CONSUMER'S TIME**

Aristotle and Newton believed in absolute time. They believed that one can measure the time interval between two events in such a way that the result will be the same

in any measurement, if a precise clock is used. Their belief is the common sense today, that time is independent and completely separated from space.<sup>1</sup>

However, the science, with the technological support, made significant progress in the knowledge on this subject. The idea that there was a universal quantity called time that all clocks would measure equally has long been abandoned. Several experiments have already confirmed that the time measured by two people will only coincide if they are at rest in relation to each other, but not in accelerated motion. It is exactly what Albert Einstein demonstrated in his revolutionary theory of relativity.<sup>2</sup>

Distance and time gained new contours due to the technological advances. The railroad constructions, for example, were large historical landmarks. In the decades leading up to the completion of the Central Pacific Railroad, linking California to Utah (USA), the time of travel on this route was six to seven strenuous weeks, permeated by crashes and many other challenges. With the completion of the transcontinental railroad, the three thousand kilometers were comfortably trafficked in less than a week.<sup>3</sup>

At some point, horses were the fastest mean of transport, just as pigeons were the fastest mean of communication. Technology changed our relation with *time*. Now, as David Frisch points out, “our personal time is the ultimate scarce resource and should not be squandered without receiving something of value (such as money or enjoyment) in return.”<sup>4</sup>

Time, in general, is not the object of constant concern or reflection of human beings. Charles Lamb once said “nothing puzzles me more than time and space; and yet nothing puzzles me less, for I never think about them.”<sup>5</sup> This is a common paradox. Time is human being’s most valuable possession; it is actually one’s life. Frequently, however, the concern with time lost only arises from the forced perception of its scarcity, as the result of a dramatic event, such as illness or even the death of a loved one. Time then becomes the protagonist of the life affected, the person concentrates on how much of it is still left and how not to waste it. As these doubts gain focus, the value that the person ascends to his own time gradually increases.

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<sup>1</sup> Stephen W Hawking, *Uma breve história do tempo: do big bang aos buracos negros*. Rio de Janeiro: Rocco, 1992. p. 39.

<sup>2</sup> Stephen W Hawking, *O universo numa casca de noz*. 5. ed. São Paulo: Arx, 2002. p. 8-9.

<sup>3</sup> Rebecca Solnit, *River of Shadows: Eadweard Muybridge and the Technological Wild West*. New York: Penguin Books, 2004. p. 6-12.

<sup>4</sup> David Frisch. It’s about time. *Tennessee Law Review*. v. 79. Thomson Reuters, 2012. p. 757-801.

<sup>5</sup> Charles Lamb, *The Life, Letters and Writings of Charles Lamb*. (1897). v. II. *Correspondence with Manning*. New York: Cosimo Classics, 2008. p. 240.

In consumer relations, the passage of time should be favorable to the consumer, but mass society often brings out the fact that the time lost by the other is ignored, considered an annoyance that must be tolerated. Certainly not. Time has the utmost importance for the human being, its loss is legally valuable and economically quantifiable<sup>6</sup>, consumer time composes the damages reportable in the legal relations of consumption<sup>7</sup>, as well as the psychological damages and (totally avoidable) setbacks of our contemporary society.<sup>8</sup>

To redress consumer lost time means to compensate financially for the loss of the “opportunity to engage in an alternative activity; it is in this opportunistic sense that time has been lost”, in the perspective of “individuals who, for one reason or another, are forced to spend their personal or leisure time in undesirable ways, and for which no lost economic opportunity can be readily identified. Claims of this sort can be described as ‘lost personal time.’”<sup>9</sup>

On the other hand, supplier’s time relates to investments. As Claudia Lima Marques notes, “the 'loss' or deviation of the supplier's time is valued as a cost or economic burden: to inform the consumer in detail is 'cost';, to cooperate with the consumer during the execution of the contracts is 'professional burden', to develop a post-contractual system that avoids damages to the consumer, by organizing an effective customer care service and a network of capillary technical assistance, is 'cost'.”<sup>10</sup>

In this context, an important distinction is made: the time of the human being has an existential value, corresponds to one’s life, while the time of the legal entity (supplier) represents, as a rule, the capital invested in the productive activity. Both sides are undeniably relevant, but in consumer relations, the consumer’s time, the time of the vulnerable contractor, is the one that invokes and deserves legal guardianship.

Consequently, it is not possible to qualify in the same way or to attribute the same legal value to the time lost by the natural person and the time lost by the supplier in the direct exercise of its professional activity. Nowadays, it is unthinkable to wait the

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<sup>6</sup> Claudia Lima Marques & Laís Bergstein, A valorização e a tutela do tempo do consumidor: a nova posição do STJ sobre responsabilidade do comerciante por vícios, in *Revista dos Tribunais*, v. 997/2018, p. 211-226, Nov., 2018, p. 211 et seq.

<sup>7</sup> Claudia Lima Marques & Bruno Miragem, *O novo direito privado e a proteção dos vulneráveis*. 2. ed. São Paulo: Revista dos Tribunais, 2014. p. 219.

<sup>8</sup> Carlos Alberto Ghersi, *Valuación económica del dano moral y psicológico – Dano à la psiquis*. Buenos Aires: Astrea, 2000. p. 128 et seq.

<sup>9</sup> David Frisch. It's about time. *Tennessee Law Review*. v. 79. Thomson Reuters, 2012. p. 757-801.

<sup>10</sup> Claudia Lima Marques. Prefácio. p. 11-12. In: Marcos Dessaune. *Desvio Produtivo do Consumidor: o prejuízo do tempo desperdiçado*. São Paulo: Revista dos Tribunais, 2011.

length of a horseback trip for a product or to trust a message to a pigeon. The technology gave us a new perspective of reasonable time for the performance of the daily tasks and that is one of reasons suppliers must be encouraged and compelled to respect and protect consumer's time by investing in effective prevention for damages and customer care services.

### **3. THE CONSUMER RIGHT TO REDRESS FOR LOST TIME: THE BANK LINE CASES**

The Brazilian Consumer Defense and Protection Code (Law no. 8.078/1990 - CDC) establishes as a principle of the National Consumer Policy to incentive suppliers to create efficient ways to control the quality and the safety of products and services (article 4, V, CDC). It seeks to ensure consumers respect, health and safety, protection of their economic interests, improvement of their quality of life, as well as transparency and harmony of consumer relations. In addition, article 6th, VI, of the CDC, establishes as basic consumer rights the effective prevention and reparation for pecuniary, moral, individual, collective and diffused damages.

By establishing in Brazil adequate standards of quality, safety, durability and performance of products and services (article 4, II, d, CDC), the Consumer Defense Code stipulated clear criteria for the resolution of consumption problems. For example, it grants the suppliers a 30-day period to remedy the defect (Article 18, § 1, CDC), applicable when it is not an essential product and where replacement of the defective parts does not affect quality and characteristics of the product or do not diminish the value.

The National Consumer Relations Policy seeks to harmonize the interests of the participants in the relations based on good faith and equilibrium and assigns the consumer the basic rights to effective prevention and compensation of damages. Therefore, the equilibrium between parties in consumer relations also includes the regard to the fair distribution of "time investments".

The nature and role of mass culture ignores the individual as they seek to mold him into a preformatted role, disregarding its particular characteristics. The mass offer of products and services, although apparently personalized, actually follows the same itinerary. As Edgar Morin teaches, "technology transforms relationships between men and

relations between man and the world; it objectifies, rationalizes, depersonalizes."<sup>11</sup> In this context predominates a culture of disregard of personal interests in favor of increasing profits and market results (sometimes even against the law), and consumer disregard is observed when suppliers ignore the complaints or do not provide adequate, clear and timely information, either by excessive standardization of the service model or by the lack of investments in the expansion and qualification of the Consumer Services.

The Brazilian Superior Court of Justice (STJ) has already shown clear signs of its concern with consumer's time when deciding, for example, that "it constitutes moral damages, susceptible to compensation, when the consumer of a new vehicle needs to return to the concessionaire several times for repair of defects presented on the vehicle purchased."<sup>12</sup> Also, in February 2018, when revisiting the subject of the responsibility of the merchant to provide technical assistance services, the same Court recognized his duty to "actively participate in the repair process, mediating the relationship between consumer and manufacturer"<sup>13</sup>. The reason is that the merchant, unlike the consumer, usually has a direct relationship with the manufacturer or his legal representative.

The Court weighed the time lost by the consumer to "locate the technical assistance close to his residence or place of work or even from where they purchased the product; and also the effort to schedule a 'visit', as well as it's part of the risk of the merchant's activity to use of "faster and more efficient solutions." It was pointed out in the judgment that in a large city, such as Rio de Janeiro, it is possible for a consumer to travel more than 30 (thirty) kilometers to take a defective product to its technical assistance, a commercial practice that is regrettably repeated in large urban centers. It recognizes that it is unreasonable to add to the frustration of the consumer who has acquired a defective product all the annoyance and the time lost trying to solve, himself, the problem caused by the supplier. The merchant, therefore, must actively participate in the repair process by contacting the manufacturer or his legal representative.

In February 2019, it was published the first collegiate decision of the Superior Court of Justice expressly referring to the "theory of lost time". It recognized that "the duty of quality, safety, durability and performance that is attributed to suppliers of products and services by art. 4, II, d, of the CDC, has an implicit collective content, a social function,

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<sup>11</sup> Edgar Morin, *Cultura de massas no Século XX: espírito do tempo 1 – neurose*. 9. ed. Tradução: Maria Ribeiro Sardinha. Rio de Janeiro: Forense Universitária, 1997. p. 171.

<sup>12</sup> BRAZIL. Superior Court of Justice. Case AgInt no AREsp 821.945/PI, Justice Marco Aurélio Bellizze, 23/06/2016, published in 01/07/2016.

<sup>13</sup> BRAZIL. Superior Court of Justice. Case REsp 1634851/RJ, Justice Nancy Andrighi, 12/09/2017, published in 15/02/2018.

related to the optimization and maximum utilization of productive resources available in society, including *time*.” It establishes that “voluntary disrespect of legal guarantees, with the clear intention of optimizing profit in detriment of quality of service, reveals an offense to the duties attached to the principle of good-faith and configures an unfair and intolerable injury to the social function of productive activity and protection of consumer time.”<sup>14</sup>

Recently, a financial institution paid 50,000 dollars to redress consumer’s lost time in lines, considering that: the "voluntary disrespect of legal guarantees, with the clear intention of optimizing profit to the detriment of quality of service, reveals offense to the duties attached to the objective good faith principle and configures unfair and intolerable injury to the social function of productive activity and protection of consumer time."

The case concerned the violation of the municipal and state laws that stipulates a limit of time a consumer should be kept waiting in bank lines (usually around 20 minutes). Justice Nancy Andrichi recognized in her written arguments that the “maximum use of time” is a collective interest protected by the legal system and that “unfair and intolerable loss of consumer time”, which occurs “for the voluntary disregard of legal guarantees...with the clear intention of optimizing profit to the detriment of the quality of the service.”

The Superior Court members recognized it constitutes an “offense to the duties annexed to the principle of good faith” and determined the payment of collective moral damages. In this case, it was also considered that the violation of the quality of service obligations imposed by the law “infringes essential values of society and has ... the attributes of gravity and intolerability, and does not constitute mere violation of law or contract.” This is the first collegial decision of a Superior Court ‘*Turma*’ expressly acknowledging the appropriateness of the “Theory of Lost Time”<sup>15</sup>, which means consumers have a right to redress due to abusive loss of time caused by suppliers’ misconducts.

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<sup>14</sup> BRAZIL. Superior Court of Justice. Case. REsp 1737412/SE, Justice Nancy Andrichi, 05/02/2019, published in 08/02/2019.

<sup>15</sup> The São Paulo State Court of Justice, among others, admits the configuration of moral damage due to the time lost by the citizen in the search, without success, for the resolution of a consumption conflict. It is by them called “Theory of Lost Time”. It considers that “cannot seem reasonable, in a minimally organized society, which lives in the incessant search for the optimization of its precious time, that a company can, with impunity, perform an undue charge and not solve the question of administrative way, causing the citizen to be compelled to move the Judiciary to get rid of something that he did not hire.” (BRAZIL. São Paulo State Court of Justice. Case nº 1043696-86.2017.8.26.0224. L. G. Costa Wagner. Guarulhos. 34ª Câmara de Direito Privado. 17/09/2018. Published in: 17/09/2018.)

It should also be noted that damage due to lost time may imply patrimonial repercussions (for example, a professional who fails to provide remunerated assistance to a client because he is diverted from his productive activity to solve a consumption problem<sup>16</sup>) or moral damages, when the consumer is deprived of the freedom to enjoy his life as he might prefer. It is also admitted that the same situation of lost time may configure these two modes of damages cumulatively. It is the case of the liberal professional who, in addition to losing the commitment of work, not receiving its income, has its image blurred with the client that was not attended to.

It is natural and expected that problems arise in a few consumer relations, but in such cases the consumer cannot be compelled to bear alone - at the expense of his lifetime - all negative contingencies. Suppliers must find ways to resolve possible problems and conflicts in an agile and effective manner and, if this is not the case, it is their duty to redress the damages caused to the consumer whose time was improperly wasted. On the other hand, since compensation for moral damages is not meant to comfort the mishaps of common life, the suppliers conduct must be properly analyzed by reasonable criteria.

#### **4. PLANNED DISREGARD: ANALYSING SUPPLIER'S CONDUCT REGARDING CONSUMER'S TIME**

For the characterization of the obligation to indemnify consumers' lost time, it is necessary to make a weighing judgment, analyzing the current legislation, the actual circumstances and, mainly, the conduct of the supplier.

Some suppliers impose to consumers a *via crucis* to solve problems regarding defective products or services, which we call "planned disregard". In spite of the high standards established by the legislation, what is observed in numerous situations, it is an abuse of the supplier's right, who seeks to fully transfer to the consumer the burden of his economic activity. For example, in a daily basis, numerous infractions to the Decree that establishes standards for costumer services (Decree no. 6.523/2008) occur in Brazil and many of them are related to the resolution of consumer problems in a reasonable time. Planned disregard for legal safeguards also appears when the time taken by the supplier to present a solution is disproportionate in relation to its complexity.

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<sup>16</sup> In Brazil, a professional may also be considered a consumer. Also, the definition of consumer contemplates natural persons and legal entities. (Article 2<sup>nd</sup>, Consumer Defense Code).

The effect of this practice is perverse in the markets. Frequently, consumers simply give up claiming rights resulting from unsuccessful hires in the face of huge barriers to contacting suppliers.<sup>17</sup> By weighing the costs and the benefit of the time and effort required to solve the problem faced, the consumer sometimes gives up the unmet demand. And in making the choice of valuing its own time, the consumer assumes a property loss that would compete with the supplier, that is a risk inherent to his own economic activity. At some point the “comings and goings” of the consumer go beyond the limit of reasonable, justifying the deferral of the indemnity payment for lost time. This evaluation is necessarily casuistic and should be based on the rules of experience.

In order to measure the damage caused by lost time in consumer relations, particularly the non-financial damages resulting from consumer’s lost time, we propose the application of a double criterion.

First, it is proposed to identify in the particular case the *disregard*: the consumer or his demand were disrespected or disregarded by the supplier? Consumer disregard is observed in the cases of suppliers who ignore consumer requests and complaints or do not provide adequate, clear and timely information. Disregard is disrespect, devaluation of the importance of one’s request.

The second criterion is *planning*: could the supplier of products or services have spared consumer time by the implementation of mechanisms to increase contract security? There are damages that cannot be avoided. However, the conduct of the contractor who is responsible for them should influence the limits of the duty to repair. The second factor for the characterization of the duty to compensate for consumer lost time - planning - is characterized by the absence of adequate, agile, effective and efficient mechanisms to solve consumer demands. Investments in the production chain are always planned, controlled by the supplier. And the lack of investment is also planned.<sup>18</sup>

If the answer is affirmative to both questions, therefore, if the consumer was disregarded, had his legitimate expectation frustrated, and the supplier could have avoided the loss of consumer time by implementing mechanisms to increase security or the agility

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<sup>17</sup> “The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.” (Carnegie v. Household Intl. Inc., 376 F.3d 656, 661 (CA7 2004), <http://caselaw.findlaw.com/us-7th-circuit/1296172.html>, 4 mar. 2019.)

<sup>18</sup> As we noted before, among the differences between consumer time and supplier time is the finding that “the 'loss' or time deviation of the supplier is valued as an economic cost or burden”. (Claudia Lima Marques, *Prefácio*. p. 11-12- *In: Marcos Dessaune, Desvio Produtivo do Consumidor: o prejuízo do tempo desperdiçado*. São Paulo: Revista dos Tribunais, 2011.)

of contracting, the supplier is charged with responsibility for the time unduly lost by the consumer waiting for a resolution to his demand.

In order to assess, in the specific case, if the supplier fulfills the legal duties of adequate service to consumers, it is recommended to observe, among other actual circumstances: *a)* the prior implementation of concrete measures for the prevention of damages to consumers, compatible with the size of the company; *b)* the existence of channels and means to receive and register the complaint that are appropriate to the target public of the supplier in question and the voluntary adherence to alternative dispute resolution programs; *c)* the investments made in structure and employees training in order to meet the demands of consumers, in proportion compatible with the performance of the company; *d)* the waiting time for customer service that has a claim or complaint, as well as whether or not there has been a violation of the criteria established by law or by the regulatory agencies; *e)* the response time of the supplier in the specific case, analyzing mainly the proportionality between the degree of difficulty of the diligence and the time used by the supplier until the definitive resolution of the problem; *f)* the occurrence of extreme situations, natural disasters or other disasters, which are not confused with the risks of the activity, but made the delivery or response delay inevitable.

The disregard for consumer's time is not a tolerable nuisance, the application for compensation for wrongfully lost time is not “frivolous litigation” but rather a reaction to abusive and planned commercial strategy of disobedience to quality standards imposed by legislation to maximize profit and results. It operates with the system failures, such as the lack of supervision and the enormous difficulties imposed on consumers to seek the effectiveness of their rights. Planned disregard makes small damages to consumers become great gains for suppliers. And with this type of strategy, the Judiciary cannot be conniving.

The attitude of suppliers causing excessive delay in customer services and problems solving cannot be awarded with the conclusion it generates merely a discomfort or an annoyance that does not motivate the duty to compensate consumer individually. Compensation for moral damages in this case – considering the legal barriers to punitive damages in Brazil – is not a distortion of the purpose of the institute, nor generates unjust enrichment to the consumer (since he was indeed a victim of poor service delivery), but serve as remedy for breach of statutory warranty obligations and quality standards imposed by the CDC.

Disregard lies in devaluation, disrespect, lack of consideration, disproportional time-consuming efforts within a consumer legal relationship at any stage, whether to

resolve a product or service defect, or to understand inadequately presented technical instructions, for example. If the consumer was disregarded, disrespected, if he had his legitimate expectation of good service unattended, and the supplier could have avoided the damage by implementing mechanisms to increase security or agility in service, but incurred in “voluntary disrespect of legal guarantees”, the supplier’s liability must be recognized.

On the other hand, this will not be the case if the supplier is able to prove the impact of one of the exclusions of responsibility set forth in articles 12, § 3, and 14, § 3, of CDC. For example, although there may have been an unexpected delay in fulfilling the consumer’s request, there was no lack of diligence or attention by the supplier to the timely demand. If there was not another possible conduct for the supplier in the specific case, due to the proven lack of mechanisms to improve service in that circumstance, the supplier failure to fulfill his legal obligations will not be characterized. Examples include natural or other disasters, massive landslides or major floods with damage to residential and commercial units – in such situations the delay is inevitable and gives rise to the exclusion of responsibility for unreliable conduct of the supplier. It is clear in these situations that the delay was not caused by any abusive commercial practice or strategy.

The focus of this methodology lays not only in the value and quantification of “consumer time”, but in the scheduling, planning, and the control exercised by suppliers that allows them not to perform, in good faith, their duties to prevent and fully redress damages to consumers (grounds for the obligation to redress, “*Haftungsgrundlage*”<sup>19</sup>). It is necessary to overcome the culture of disregard for “the time of the other”, to initiate a new cycle of respect for the essential and existential interests of vulnerable agents in the markets through the evolution of commercial practices.

It must be remembered that the “rules of the game are not to end it, but to allow it to develop, considering the movement of all those involved”<sup>20</sup> and that investments in quality and proper services reverts in good standing and customer loyalty, something that the best companies in the markets realized a long time ago. The case law formed in favor of guaranteeing products and services with adequate standards of quality,

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<sup>19</sup> Claudia Lima Marques, *Presentation*. In: Laís Bergstein, *O tempo do consumidor e o menosprezo planejado: o tratamento jurídico do tempo perdido e a superação das suas causas*. São Paulo: Revista dos Tribunais, 2019.

<sup>20</sup> José Luis Bolzan de Morais, *A subjetividade do tempo: uma perspectiva transdisciplinar do Direito e da Democracia*. Porto Alegre: Livraria do Advogado, 1998. p. 83.

safety, durability and performance - as provided in art. 4, II, d of the CDC - contributes to the incorporation of the role of Consumer Law in business behavior.

## **6. CONCLUSION**

Consumer relations are constantly affected by our societies' transformations and our periodical technological revolutions. The law makers cannot keep up with it, at least not as fast as we would like them to do. However, innovation in consumer law also means to be aware of those changes and to rethink the way we interpret and apply the existing law, especially if Congress doesn't change a single word of it.

In a society that values time immensely, consumer's right to full redress must also contemplate the time unfairly lost. The right to products and services of quality must also consider the guarantee of proper and timely response in case of defect. And the denial of a fair treatment by the supplier, forcing the consumer to seek judicial interference, must be replied with the guarantee of compensation for the lost time, at least.

It cannot be worth to injure several people and responding only to the few who have access to the Judiciary. It is fundamental avoid mass damages and avoid litigation with exemplary sanctions from those who seek to preserve this unbearable system of repeated non-compliance with the legal duties of conduct. At the end of the day, it must not be more profitable for suppliers to ignore consumer rights than to fulfill them.

It is necessary to construct a new and equitable distribution of time in consumer relations, to restore to consumer the control of his own time, to make him the protagonist of his own history. Above all, we must not surrender to the "tyranny of quantifiable". We shall overcome this obstacle, the wrong perception that compensation should be denied because it is not possible to establish, with reasonable accuracy, the (economic-financial) value of lost time.

The recognition of consumers' right to redress due to lost time related to suppliers' violations of good faith is an evolution (or even a revolution) of consumer law. However, the case law shows some welcome concern regarding individual litigation. At the end of the day, the results of too many fines regarding the violation of the law that limits the waiting time might be the end of face-to-face customer service in banks. Several Bank agencies were already closed, especially in small cities, and the customer services is now available only online.

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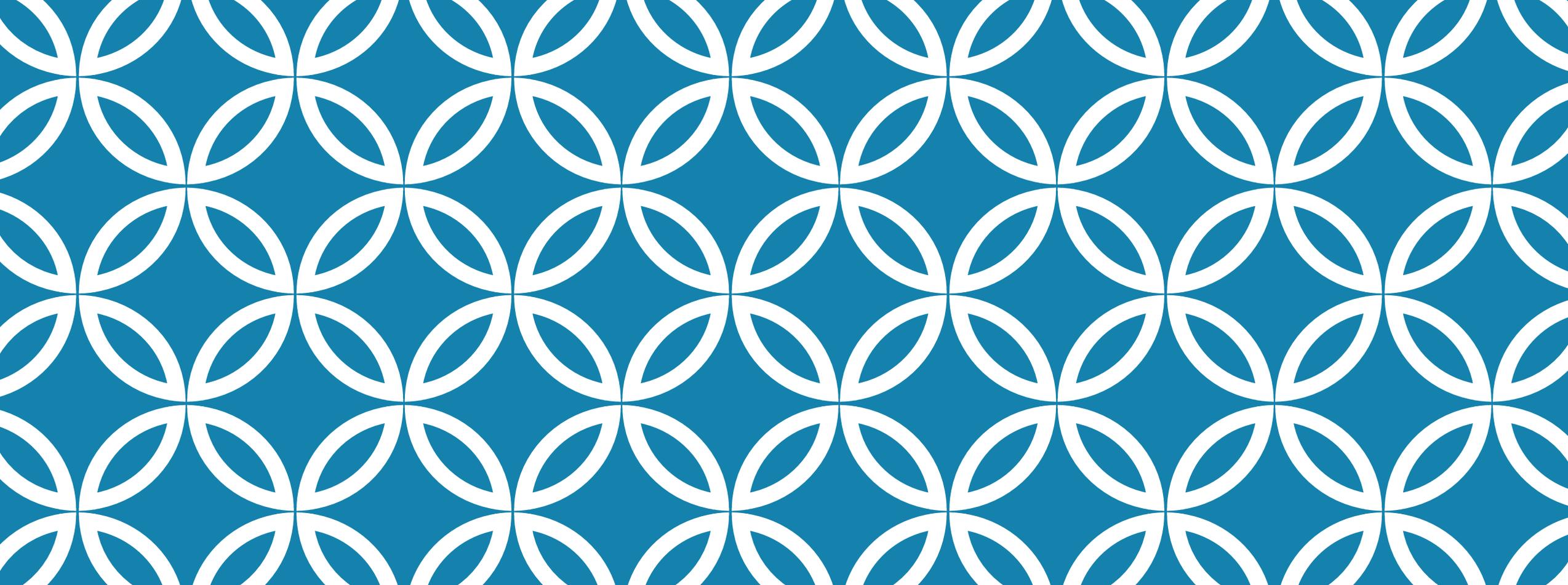
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# PROTECTION OF FINANCIAL CONSUMERS IN CHILE

**Cristobal Caorsi**

Chief of Modernization, Ministry of the Interior

Former Chief of Financial Consumer Protection, Consumer Protection Agency

Professor Universidad Adolfo Ibanez

CHILE

August 20th, 2019

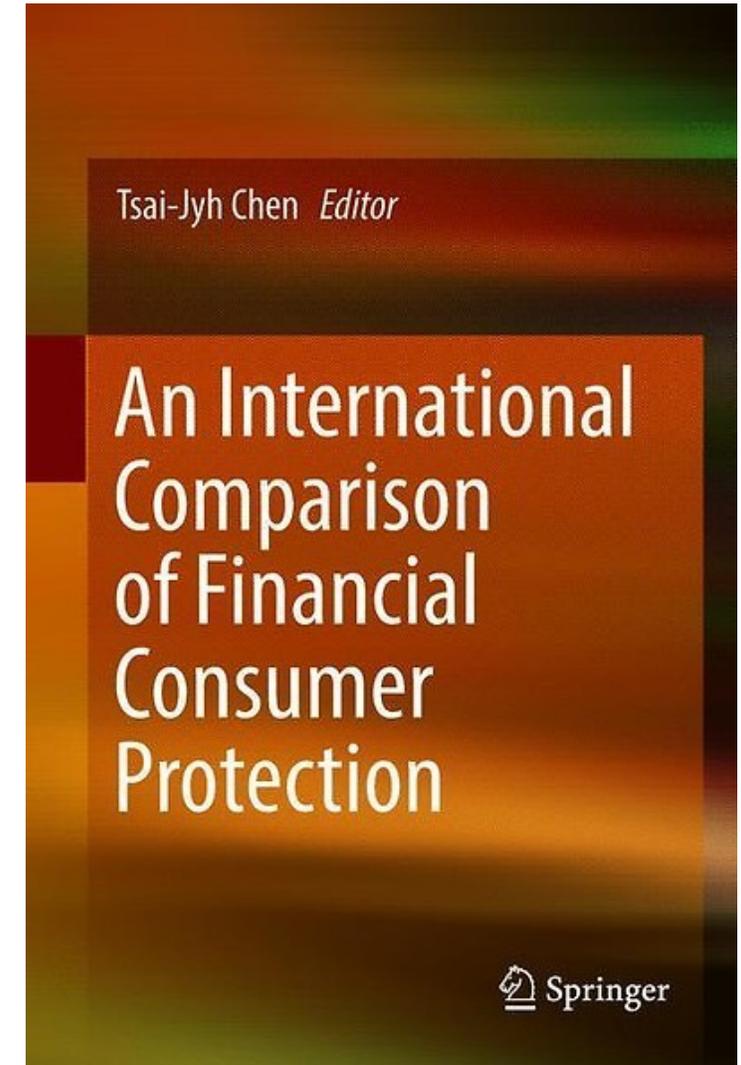
# “AN INTERNATIONAL COMPARISON OF FINANCIAL CONSUMER PROTECTION”

Chen + 21 scholars, 2018

- 13 Economies:

- Australia
- Bangladesh
- Canada
- China
- France
- Indonesia
- Italy
- Japan
- Korea
- Malaysia
- Spain
- Taiwan
- United States

¿Latin America?



# PROTECTION OF FINANCIAL CONSUMERS IN CHILE

## Framework/Structure:

Section	Items	
(1) Financial Consumer	<ul style="list-style-type: none"><li>a. Legal meaning of financial consumer</li><li>b. Economic situation of financial consumer</li></ul>	
(2) FCP System (software)	<ul style="list-style-type: none"><li>a. Relevant laws and rules</li><li>b. Rationale and direction of FCP</li><li>c. Ex-ante protection</li><li>d. Ex-post protection</li></ul>	
(3) FCP Institution (hardware)	<ul style="list-style-type: none"><li>a. Financial Supervision Organization</li><li>b. Deposit insurance corporation</li><li>c. Dispute settlement organisation</li></ul>	
(4) Special FCP systems	<ul style="list-style-type: none"><li>a. For the elderly group</li><li>b. For the poor group</li><li>c. For the young group</li></ul>	<ul style="list-style-type: none"><li>a. Female group</li><li>b. Students group</li></ul>
(5) Market Issues	<ul style="list-style-type: none"><li>a. Product complexity</li><li>b. Price dispersion</li><li>c. Governance</li></ul>	

# 1. FINANCIAL CONSUMER

## 1.1 Legal Meaning

No Legal Meaning, but since 2011 five rights:

1. Total Cost + APR + Rejection
2. Conditions
3. Releasement of guarantees
4. Choose appraiser
5. Settlement of the debt

¿Oversight?

=

**Consumer Protection Agency**

("SERNAC" o Servicio Nacional del Consumidor)

**Unit of Financial Consumer Protection**

("SERNAC Financiero" o Subdirección de Consumo Financiero)

# 1. FINANCIAL CONSUMER

## 1.1 Legal Meaning

Estrategia Nacional de  
Educación Financiera

### 2018 National Strategy of Financial Education defined “financial education”:

*“The process by which people, throughout their life circle, improve their understanding of the financial world, concepts and risks, and with information, training and advice develop skills, attitudes and trust to gain more awareness of the financial risk and opportunities, take informed decisions, know where to ask help or protection of their rights, and take any effective action to improve their personal and society welfare.”*

### 2018 - 2019 Roundtables for new National Strategy of Financial Inclusion

The Consumer Protection Agency is proposing two definitions:

- Financial consumer:

“An individual or legal entity that uses financial products or services with the intention of increasing his welfare”

- Financial protection:

“Ex ante and ex post actions to guarantee that financial consumers increase their welfare when they use financial products or services”

# 1. FINANCIAL CONSUMER

## 1.2. Economic situation of financial consumer

American Continent 2018 Human Development Index

6 countries with “very high human development”:

N°12 Canada

N°13 United States

**N°44 Chile**

N°47 Argentina

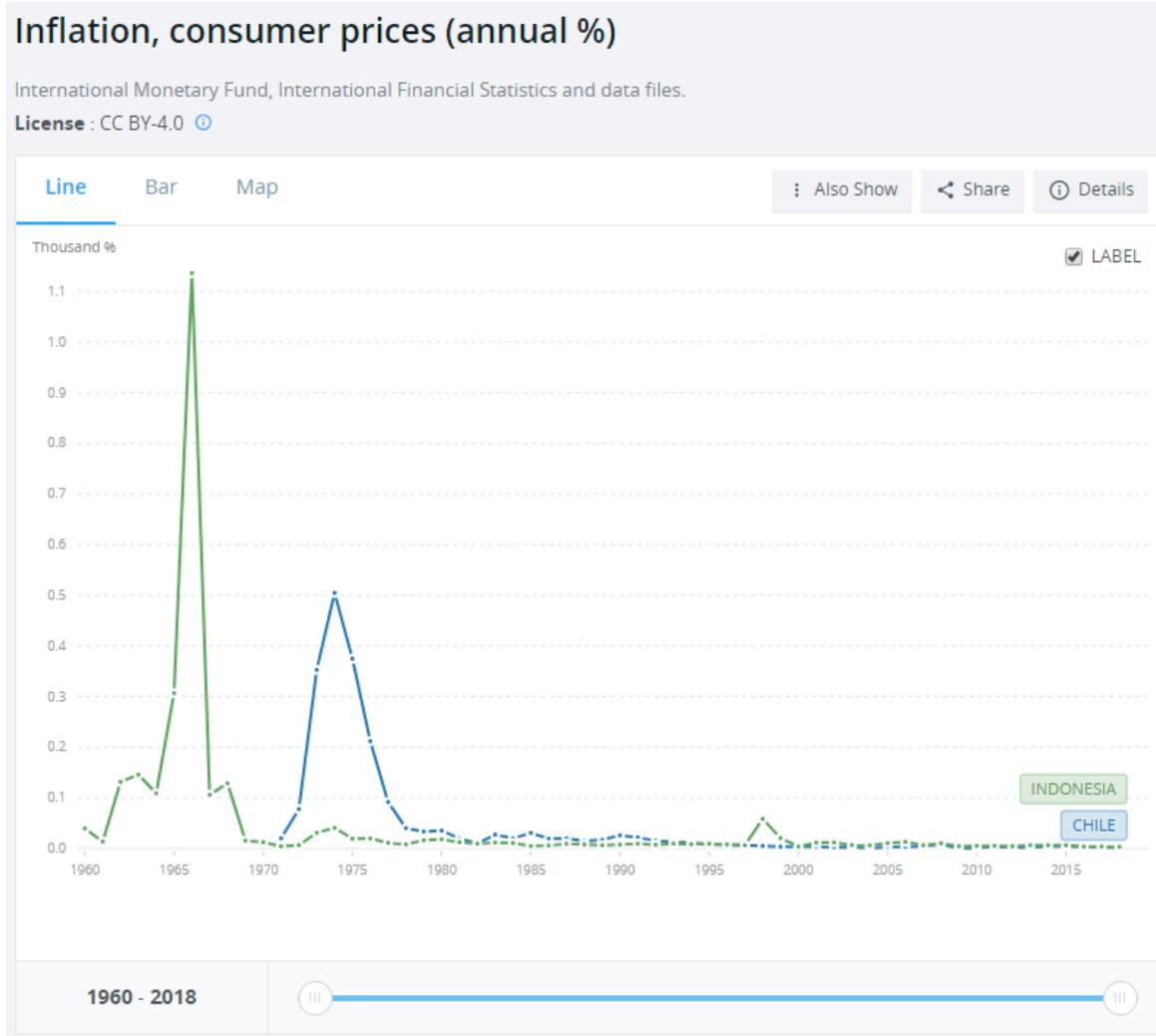
N°54 Bahamas

N°55 Uruguay

N°58 Barbados

# 1. FINANCIAL CONSUMER

Source: World Bank Database



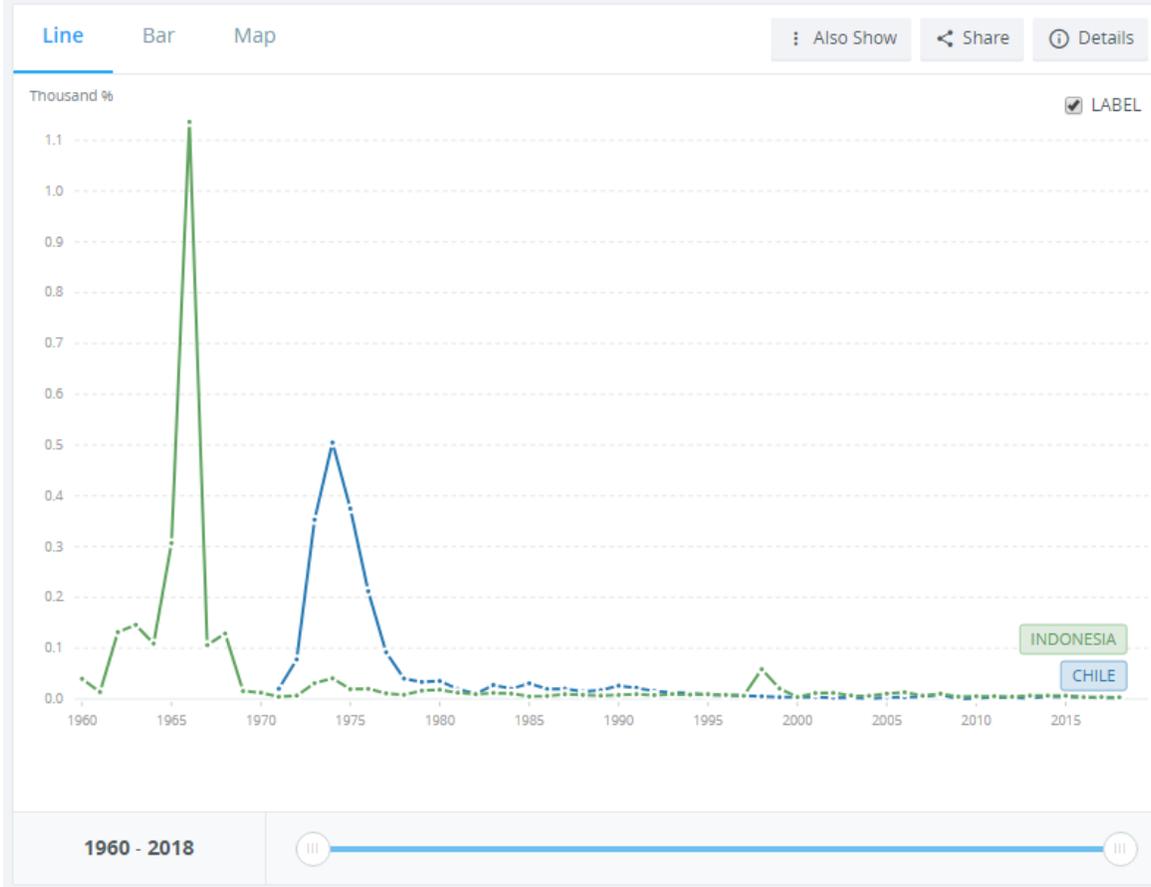
# 1. FINANCIAL CONSUMER

Source: World Bank Database

## Inflation, consumer prices (annual %)

International Monetary Fund, International Financial Statistics and data files.

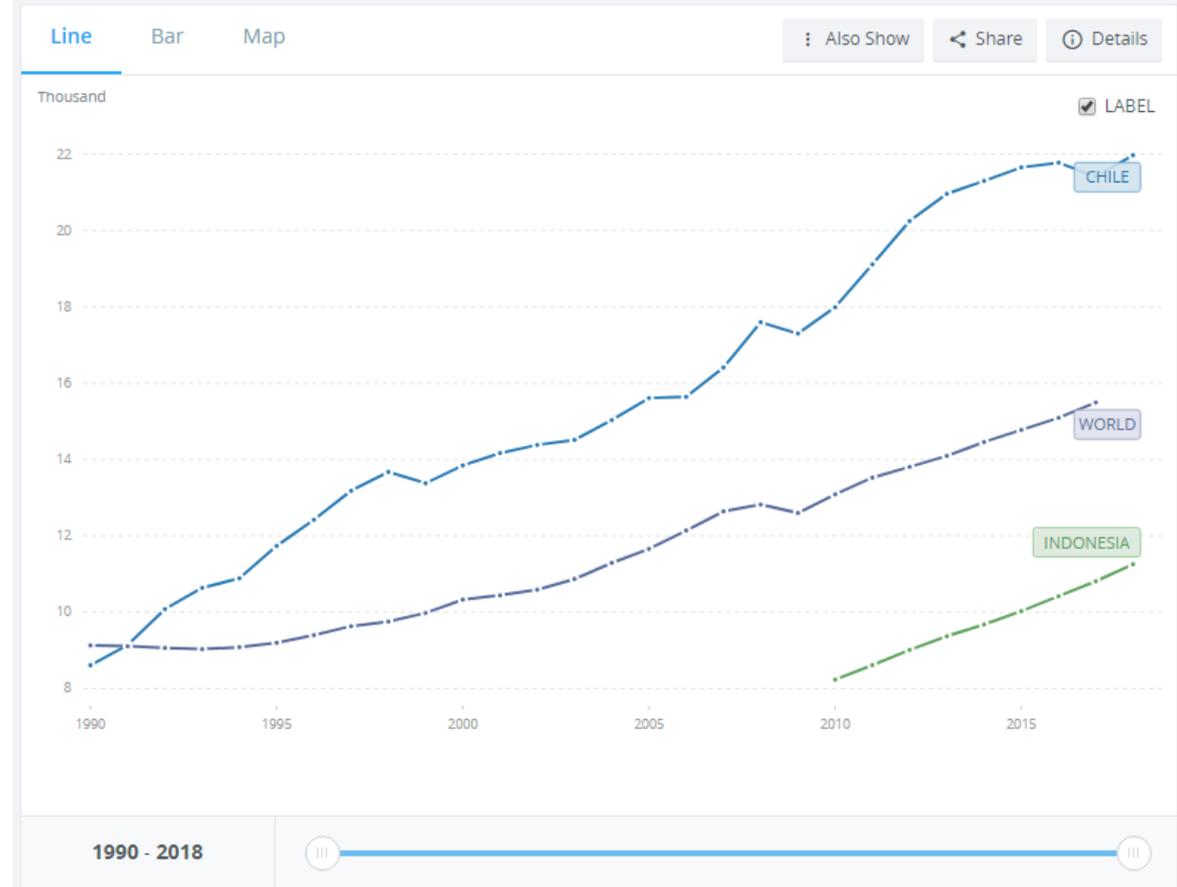
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## GNI per capita, PPP (constant 2011 international \$)

World Bank, International Comparison Program database.

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# 1. FINANCIAL CONSUMER

## 1.2. Economic situation of financial consumer

Financial inclusion = 97% of the adult population has access to at least one financial product

1/3 has access simultaneously to products of credit, saving and cash management

	June 2015	June 2016	June 2017	June 2018
Debt US\$ median	3,213,231,429	3,784,841,429	4,101,384,286	4,514,535,714
Financial Burden	21,8%	24,0%	23,7%	25,7%
Leverage	4,4	5,0	5,2	5,7

Debt = Loans to people (capital + interest)

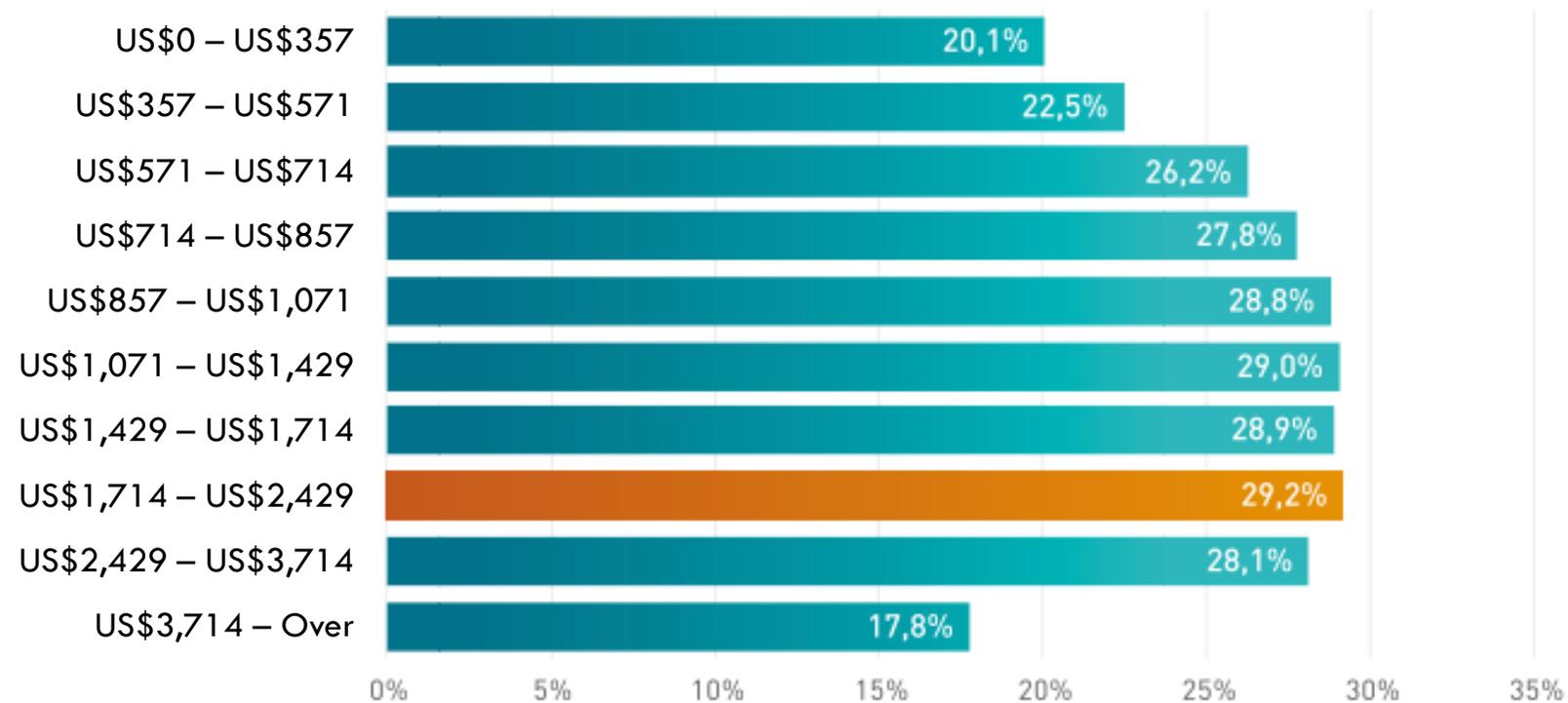
Financial Burden = Monthly financial obligations / Monthly income

Leverage =  $\sum$  Financial obligations / Monthly income

# 1. FINANCIAL CONSUMER

## 1.2. Economic situation of financial consumer

### Financial burden by monthly income segment



Source: Banks and Financial Institutions regulator

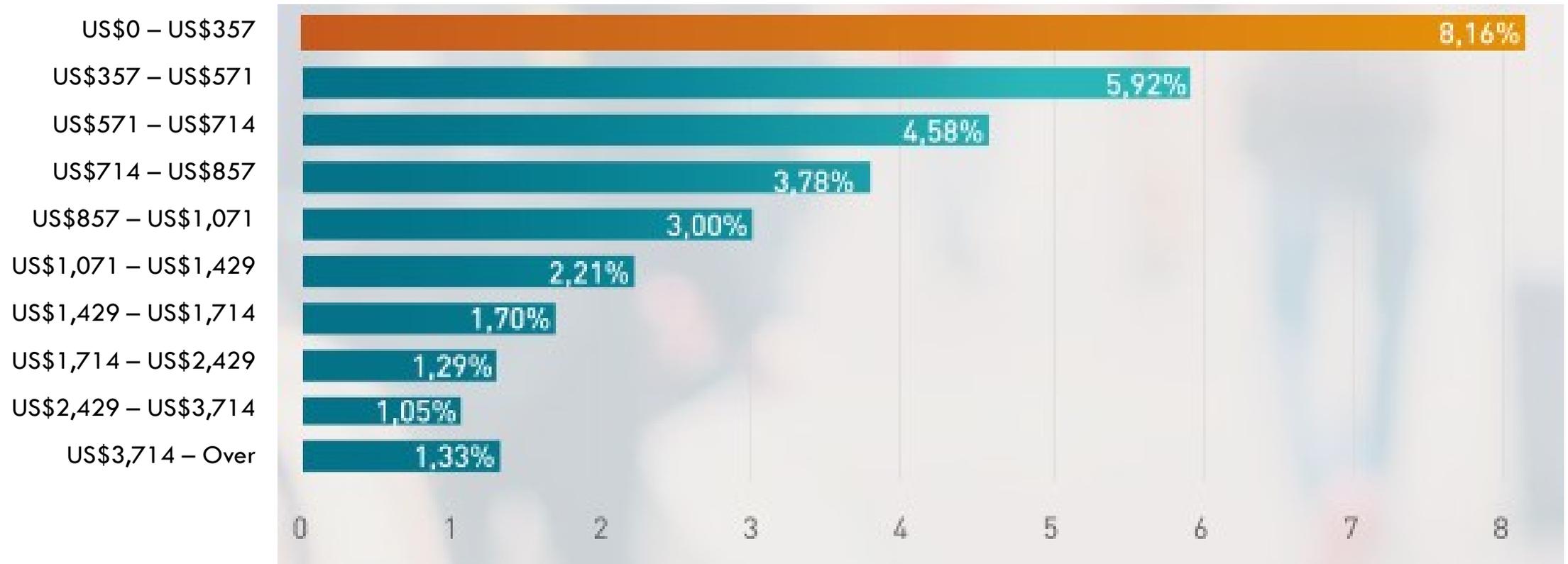
# 1. FINANCIAL CONSUMER

## 1.2. Economic situation of financial consumer



Unpaid debt as % of debt by monthly income segment

Source: Banks and Financial Institutions regulator



# 2. FCP SYSTEM (SOFTWARE)

## 2.1. Relevant laws and rules (consumer protection)

Law N°21,555 (2011) strengthens Law N°19,496 (1997) of consumer protection in financial issues:

- Total Cost + APR in credit simulations and advertisement 
- Summary sheet 
- Trustmark 
- Basic commercial information 
- Dedicated Unit for Financial Consumer Protection 

HOJA RESUMEN DE COTIZACIÓN O DE CONTRATO CRÉDITO DE CONSUMO		1 SELLO SERNAC (si aplica) 2 CAE: XX%
3 Nombre titular	—	
Fecha	—	
Plazo de vigencia cotización	—	
<b>I. Producto Principal</b>		
4 Monto líquido del Crédito (pesos)	—	
5 Plazo del Crédito (meses)	—	
6 Valor de Cuota (pesos)	—	
7 Costo Total del Crédito (pesos)	—	
8 Carga Anual Equivalente (CAE)	XX%	
<b>II. Gastos o Cargos Propios del Crédito</b>		
Gastos o Cargos		
8 Impuestos	—	
9 Gastos Notariales	—	
10 Monto Bruto del Crédito	—	
11 Garantías Asociadas	Si/No - ¿Tipo de garantía?	
<b>Gastos o Cargos por Productos o Servicios Voluntariamente Contratados</b>		
12 Valor: Cuota Referencia (pesos)	—	
<b>13 Seguros</b>		
Costo mensual (pesos)	—	
Costo Total (pesos)	—	
Cobertura	—	
Nombre proveedor del servicio asociado	xxx	
<b>13 Seguros</b>		
Costo mensual (pesos)	—	
Costo total (pesos)	—	
Cobertura	xxx	
Nombre proveedor del servicio asociado	—	
<b>III. Condiciones de Prepago</b>		
14 Cargo Prepago (%)	—	
15 Plazo de aviso para pago anticipado o prepago	—	
<b>IV. Costos por Atraso</b>		
16 Interés Moratorio (%)	—	
17 Gastos de Cobranza (%)	—	
<b>Advertencia</b>		
18	"El Crédito de Consumo de que da cuenta esta Hoja Resumen, requiere del Consumidor contratante, NN patrimonio o ingresos futuros suficientes para pagar su costo total de \$xx, cuya cuota mensual es de \$xx, durante todo el periodo del crédito".	

## 2. FCP SYSTEM (SOFTWARE)

### 2.1. Relevant laws and rules (all regulators)

	Social Security regulator	Insolvency regulator	Consumer Protection Agency	Financial Market Commission (since 2018)	Securities regulator (until 2018)	Banks and Financial Institutions regulator (until 2019)
Complaints handling	X	X	X	X	x	x
Sanctions	X	X		X	x	x
Inspections	X	X	X	X	x	
Regulation	X	X	X	X	x	x
Mediation	X	X	X			
Market monitoring (advertisement, sales materials, websites, etc.)			X	X	x	x
Mystery shopping						

Source: Draft Survey, Consumer Protection Agency (SERNAC)

# 2. FCP SYSTEM (SOFTWARE)

## 2.2. Rationale and direction of FCP

1. Informational Asymmetries

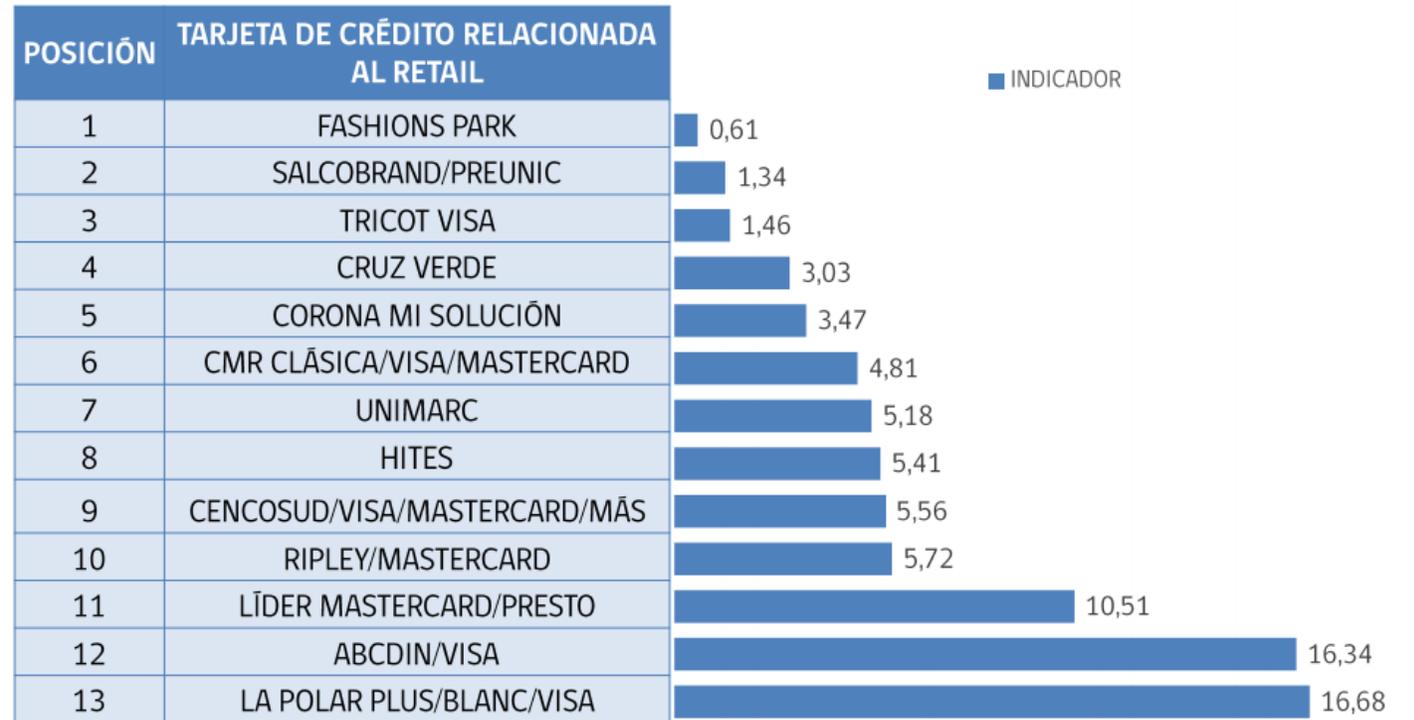
2. Effective compensations

Consumer Protection Agency (SERNAC) vs Banks and Financial Institutions regulator (SBIF)

## 2. FCP SYSTEM (SOFTWARE)

### 2.3. Ex-ante protection

#### 1. 10 years “naming and shaming”



Source: Consumer Protection Agency (SERNAC)

#### 2. Inspections

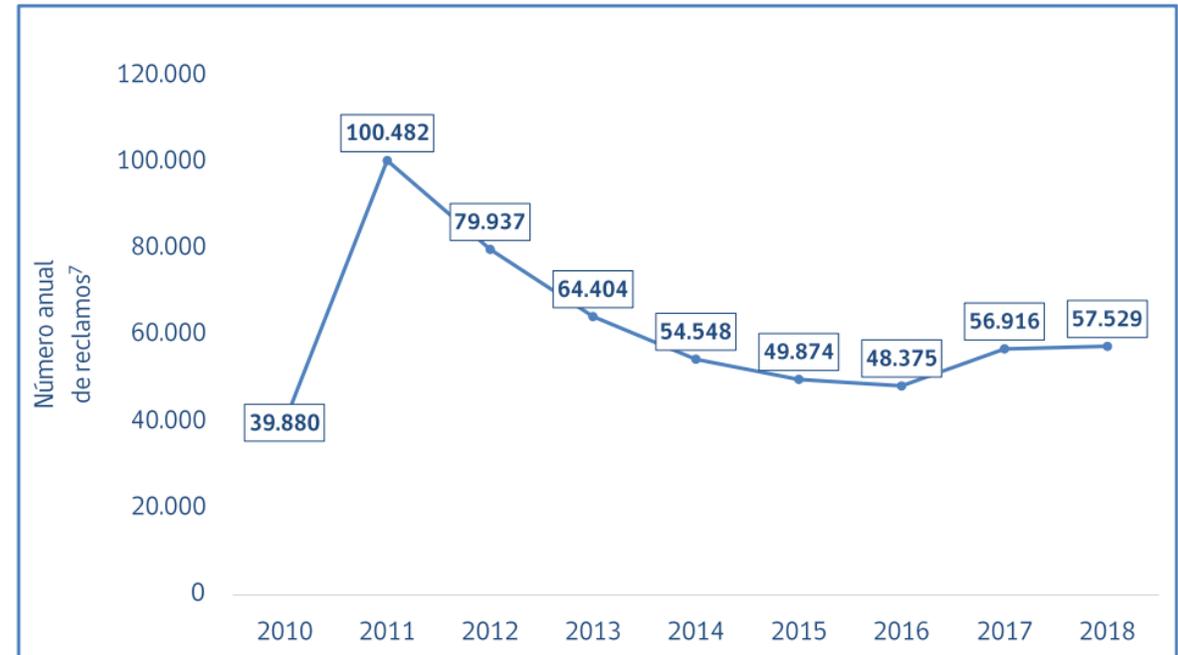
Law N°21,081 (2018) strengthens Law N°19,496 (1997) of consumer protection adding inspections, among others.

# 2. FCP SYSTEM (SOFTWARE)

## 2.4. Ex-post protection

### 1. Mediation

- 320,241 complaints in total
- All forwarded
- 57,529 financial providers



Source: Consumer Protection Agency (SERNAC)

# 2. FCP SYSTEM (SOFTWARE)

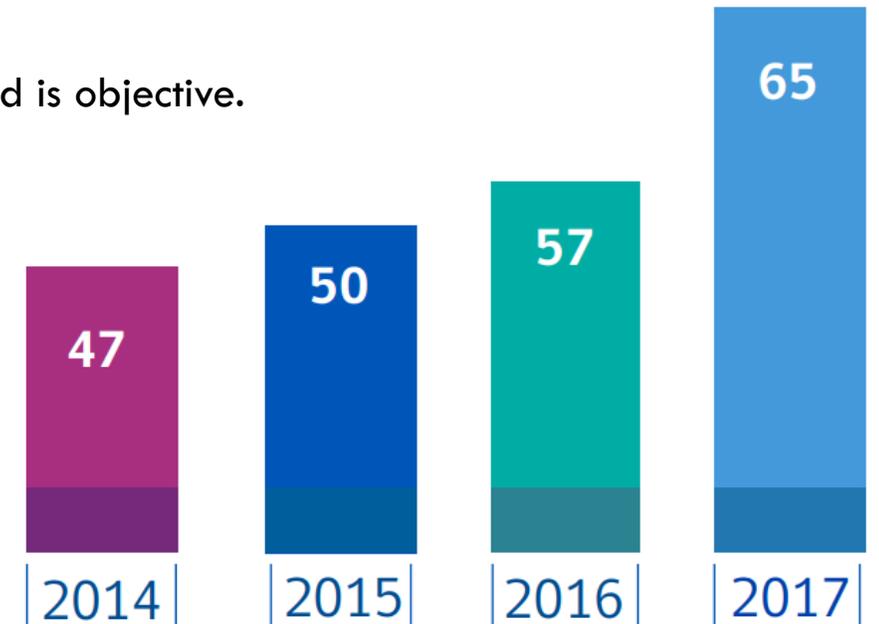
## 2.4. Ex-post protection

### 1.1 Collective mediation / Law N°19,496 (1997) changed by Law N°21,081 (2018)

- Corporations have cease their wrongful behaviour.
- Compensations or reimbursement have been calculated, if applicable.
- The solution is proportional to the harm, is to every concerned consumer and is objective.
- The mechanism and procedures to execute the agreement are clear.
- The procedures to oversee compliance is clear.

¿What is sought?

- Compensation, change of behaviour or both.
- E.g.: Between 2018 and 2019 four banks (Scotiabank, Security, BICE and Consorcio) changed their contracts -> Arbitrary responsibility limitation



Source: Consumer Protection Agency (SERNAC)

# 2. FCP SYSTEM (SOFTWARE)

## 2.4. Ex-post protection

### 2. Class actions

- The Consumer Protection Agency looks into deviations in its complaints database, research and decide to fill in a class action.
- E.g.: In 2015 sued Banco de Chile -> double overdraft lines with different fees.
- Before the court sentence an agreement was reached = US\$30,000,000
- 2010 OECD Consumer Policy Toolkit was used.
- OECD invited us to present the case in Paris.



Follow

SERNAC presenta en la OCDE caso Banco de Chile, como ejemplo de éxito en el uso de la recomendación OECD Consumer Policy Decision Making 2014

Tras acuerdo conciliatorio el banco debió compensar a más de 140 mil consumidores por US\$ 30 millones [bit.ly/2uYYWIQ](https://bit.ly/2uYYWIQ)



7:18 AM - 10 Apr 2019

# 3. FCP INSTITUTION (HARDWARE)

*“...Chile is an interesting case: although, is the first [Latin-American] country to consolidate regulatory frameworks as a governance system in several sectors, regulatory agencies lack of autonomy”  
Jordana & Levi-Faur (2005).*

Few changes since then...

- Central Bank is autonomous since 1989
- The Financial Market Commission is a “brand new” exception → More autonomous (and acquired the Securities regulator in 2018 and the Banks and Financial Institutions in 2019).

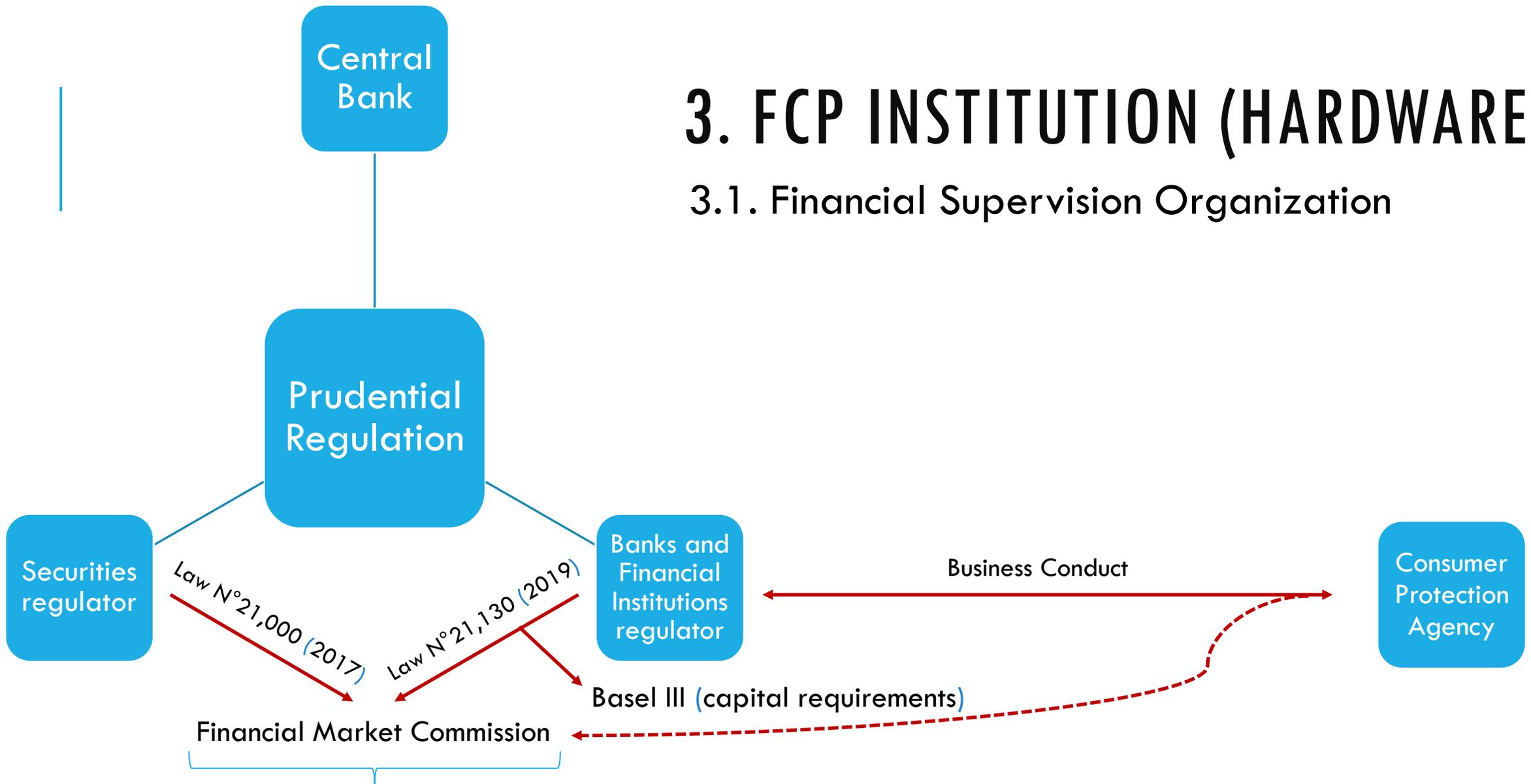
# 3. FCP INSTITUTION (HARDWARE)

	Central Bank	Social Security regulator	Insolvency regulator	Consumer Protection Agency	Financial Market Commission (since 2018)	Securities regulator (until 2018)	Banks and Financial Institutions regulator (until 2019)
Commercial banks			X	X	X		X
Other banks			X		X		X
Financial cooperatives			X	X	X		x
Endorsable mortgage loans administrators			X	X	X	x	
Insurers				X	X	x	
Allowance funds		X	X	X			
Financial retail			X	X			
Firms that support banks				X	X		x
Stockbrokers					X		
Others			X	X	X	x	

Source: Draft Survey, Consumer Protection Agency (SERNAC)

# 3. FCP INSTITUTION (HARDWARE)

## 3.1. Financial Supervision Organization



7,500 regulatees approx. (banks, cooperatives, credit card issuers, stockbrokers, issuers, intermediaries, fund administrators, insurers, etc.)

# 3. FCP INSTITUTION (HARDWARE)

## 3.2. Deposit insurance corporation



- No permanent fund, but...
- Deposit insurance scheme since 1986
- Seeks to reduce the impact of a bank run
- US\$16,000 approx. (US\$8,000 max. approx. per institution)
- Have not been used

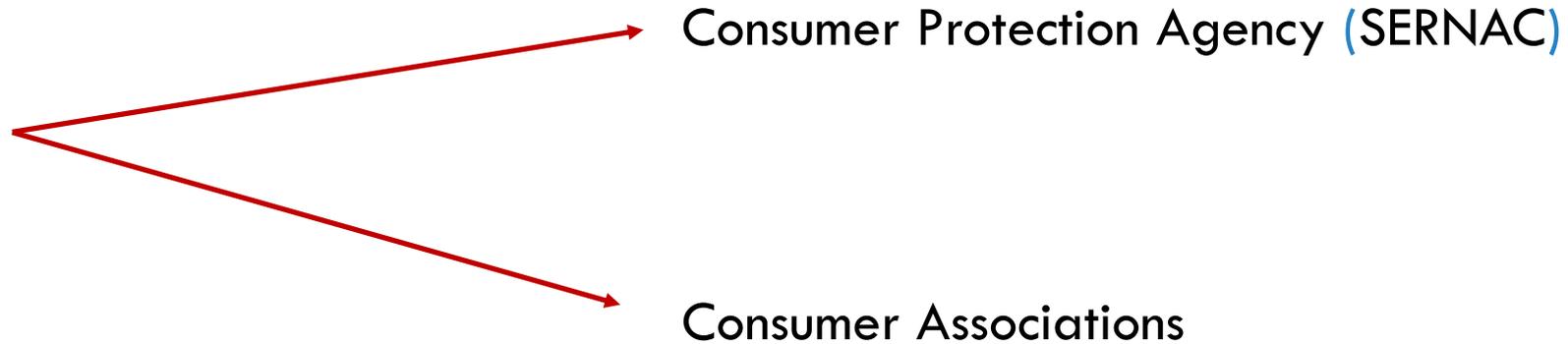


# 3. FCP INSTITUTION (HARDWARE)

## 3.3. Dispute settlement organization

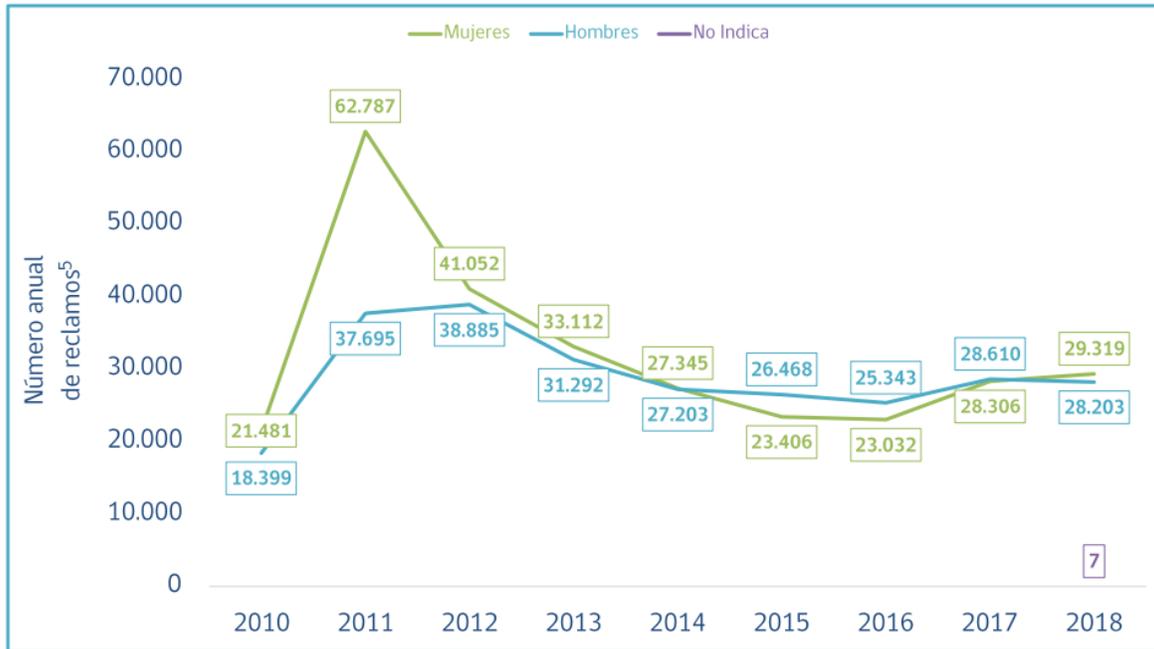
¿Ombudsman?

No, but...

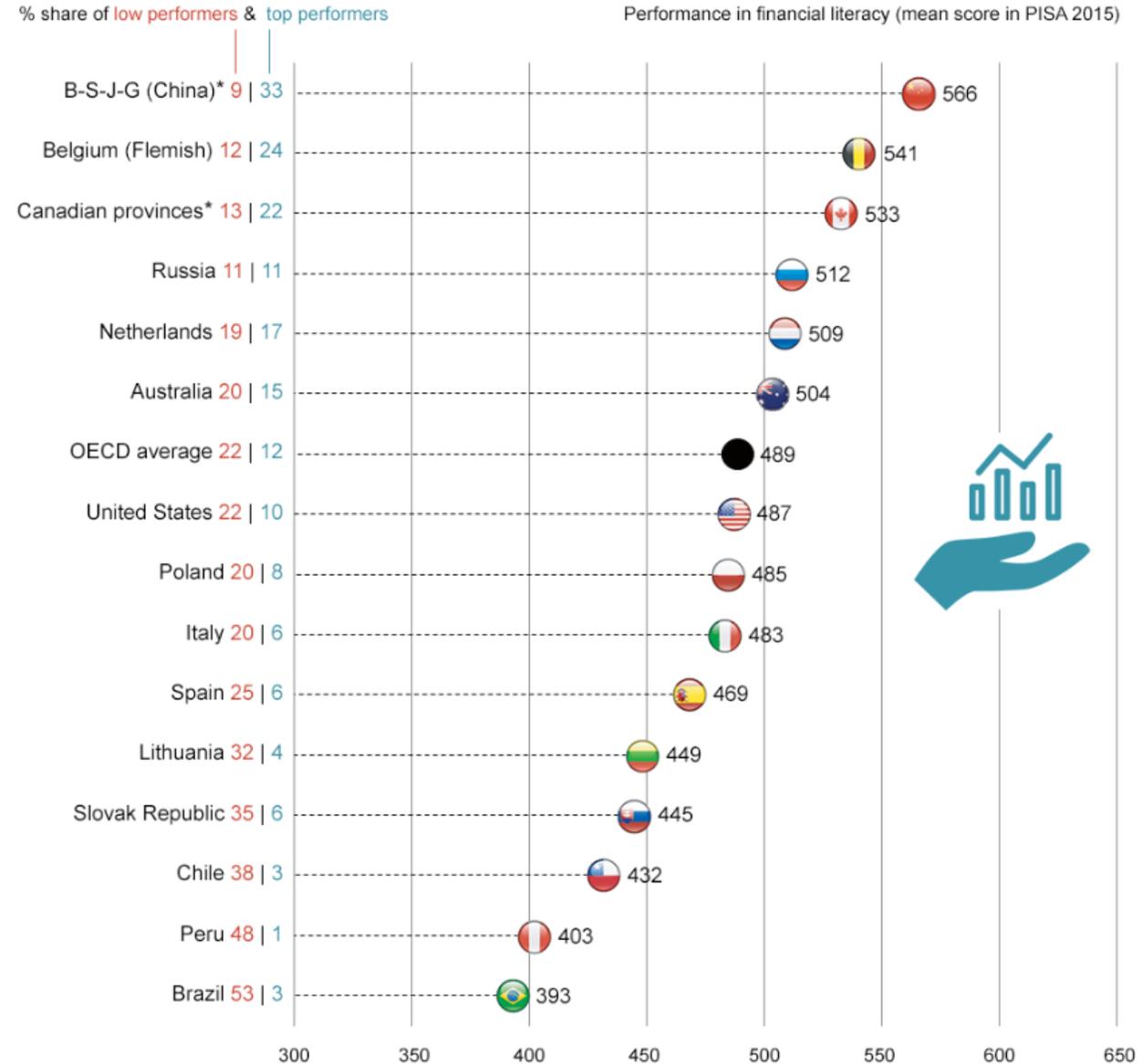


# 4. SPECIAL FCP SYSTEMS

## 4.1. Female group



## 4.2. Students group



# 5. MARKET ISSUES

## 5.1. Product complexity

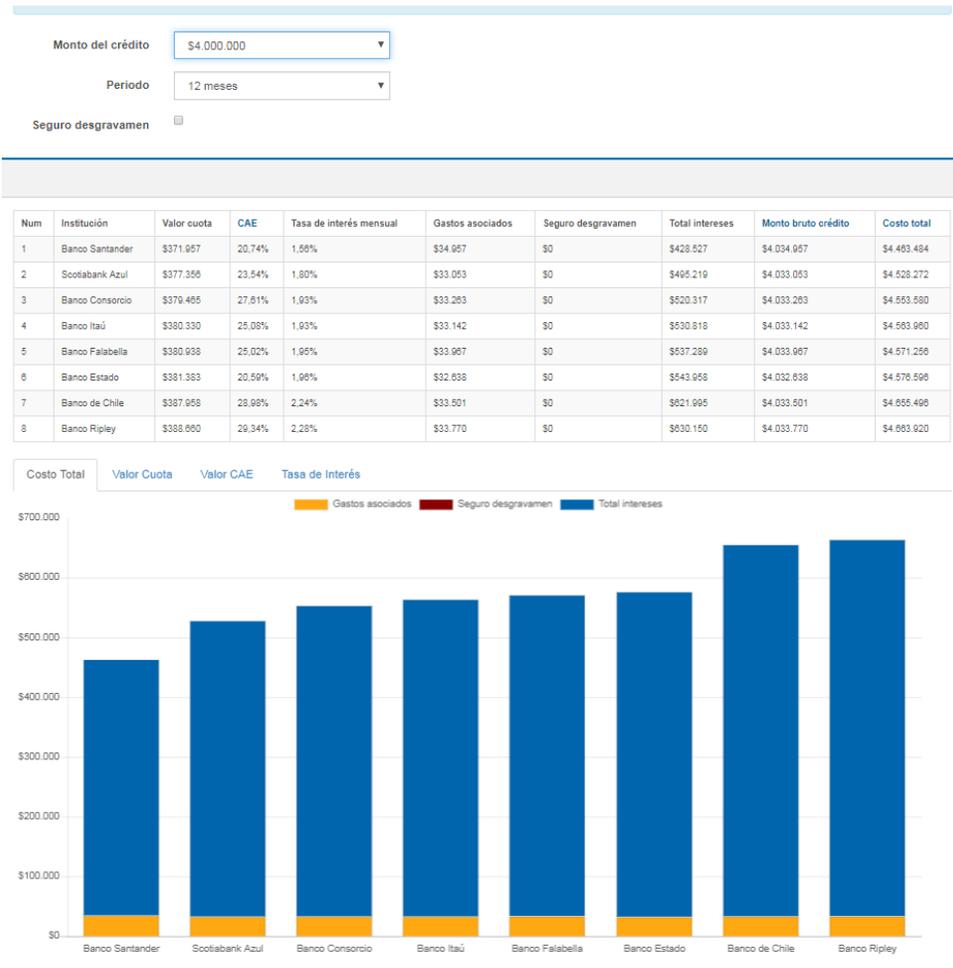
Chile is not a sophisticated market, however financial literacy is low!



HOJA RESUMEN DE COTIZACIÓN O DE CONTRATO CRÉDITO DE CONSUMO		1 SELLO SERNAC (si aplica)
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<b>Gastos o Cargos</b>		
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# 5. MARKET ISSUES

## 5.2. Price dispersion



Source: Consumer Protection Agency (SERNAC)

## Interest rate spread (lending rate minus deposit rate, %)

International Monetary Fund, International Financial Statistics and data files.

License: CC BY-4.0



Source: World Bank Database

# 5. MARKET ISSUES

## 5.3. Governance

Lack of coordination!

E.g.: Regulators are legally obligated to send their sanctions to the Consumer Protection Agency => not happening.

¿Does Chile need a  
Consumer Financial Protection Bureau (United States)

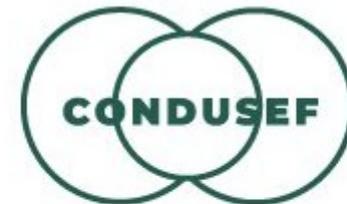


Consumer Financial  
Protection Bureau

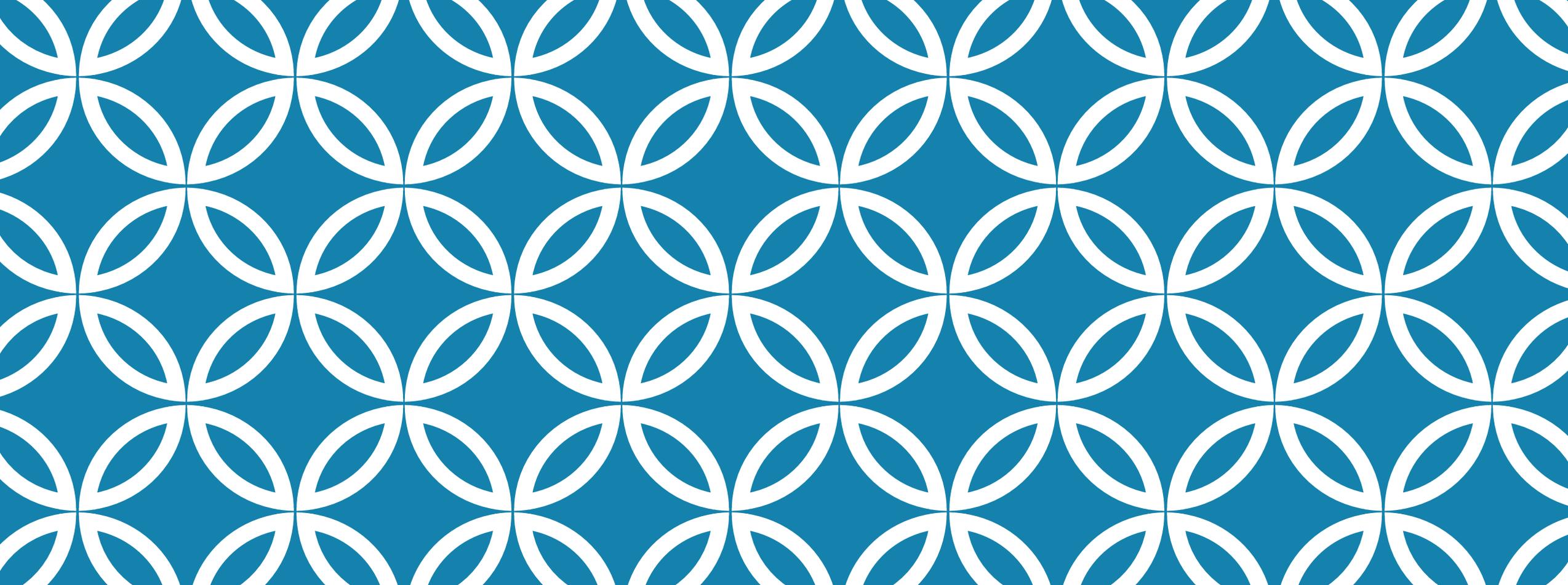
Financial Consumer Agency of Canada or



Comisión Nacional Protección y Defensa Usuarios de Servicios Financieros?



COMISIÓN NACIONAL PARA LA PROTECCIÓN  
Y DEFENSA DE LOS USUARIOS DE  
SERVICIOS FINANCIEROS



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