

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Chile

-- 2019 --

This report is submitted by Chile to the Competition Committee FOR INFORMATION.

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Chile

Executive Summary

1. This report summarizes recent developments in competition law and policy in Chile. It also addresses the main judicial and administrative decisions related to competition law enforcement, as well as the main competition advocacy activities and other relevant developments that occurred during 2019.
2. The Chilean competition system considers two main authorities: the Fiscalía Nacional Económica (hereinafter, “the FNE”) and Tribunal de Defensa de la Libre Competencia (hereinafter, “the Competition Tribunal” “the Tribunal”, or “the TDLC”). The Supreme Court is also included in the system as it reviews the TDLC rulings.
3. The FNE is an independent government competition agency whose main responsibilities entail the enforcement of competition law. Furthermore, it is responsible of issuing technical reports and studies, and of competition advocacy activities. From 2016, the FNE performs preventive merger control in regards to concentration operations which surpass certain thresholds.
4. On the other hand, the TDLC is an independent judicial body with exclusive and excluding jurisdiction to decide antitrust lawsuits, including the resolution of adversarial matters (*e.g.*, complaints brought by the FNE or private parties, regarding anticompetitive behaviours) as well as non-adversarial matters. TDLC’s decisions and resolutions can be challenged before the Supreme Court. The competition law is Decree Law No. 211 and its subsequent modifications.
5. During 2019, the Competition Tribunal issued decisions on a hub and spoke (“H&S”) cartel -- known as the “Supermarkets case”, and in an anti-competitive agreement between freight shipping companies (“Freight Shipping Case”). The Tribunal also issued a decision in an administrative non-adversarial procedure regarding the modification of the maximum limit of radioelectric spectrum that each operator of mobile services may have.
6. In the Supermarkets Case’s decision (Ruling No. 167/2019) the Tribunal established a standard regarding H&S agreements and set up criteria to condemn it. The case started in 2016, when the FNE filed a lawsuit against the three main supermarket chains in Chile (Walmart, Cencosud, and SMU), accusing them of agreeing on a common minimum resale price for fresh poultry meat between 2008 and 2011. The price was set by each upstream supplier through vertical agreements signed individually with each supermarket. Allegedly, though, there was an implicit mutual understanding between the supermarkets that each of them would comply with the price. At the end of the trial the three defendants were found to be guilty. In this ruling, the TDLC also established the standard that compliance programs must meet in order to assess the liability of a firm that was currently implementing them.
7. In the Freight Shipping Case (Ruling No. 171/2019), the TDLC partially accepted the FNE’s lawsuit against six shipping companies who executed agreements that restricted competition in the process of contracting services for the transportation of vehicles to Chile from Europe, America and Asia. Two firms were beneficiaries of the leniency program as first and second firms to apply. The first firm that requested leniency received immunity from fines, while the second one was convicted to a reduced fine of US\$ 6.1 MM. A third

firm was convicted to a fine of US\$ 2.3 MM, while the rest of the accused companies by the FNE were not sanctioned, as the TDLC accepted the statutory limitation period exception argued by them.

8. In its decision regarding the adjustment of the maximum limit of radioelectric spectrum that each operator of mobile services may have (Decision No. 59/2019), the Tribunal considered that it was appropriate to revise the maximum spectrum limit, considering that the competitive conditions had changed over time in terms of spectrum assigned to mobile companies and the use of new technologies. The Tribunal considered for its decision to modify the spectrum other relevant changes in the market, such as the evolution in the structure of the relevant market, and the level of penetration of mobile telephone services over the country.

9. On the other hand, the FNE initiated 92 investigations during 2019. In this regard, it filed a series of actions before the TDLC. One of them was in regards to a cartel between the four main salmon food producing companies in the country (case No. C-386-2019), agreeing to fix the prices of the product between 2003 and 2015. This case is pending a judicial decision.

10. Likewise, the FNE presented a claim against the Banco de Crédito e Inversiones (“BCI”) for abusing its dominant position in a tender that sought to provide life insurance for its mortgage clients (case No. C-379-2019). In this case, the FNE argues that the banking entity excluded the proposal that offered the best price, and awarded the tender to a company that submitted a more expensive offer, which in turn was operating in conjunction with a subsidiary company of BCI. The FNE sustains that this operated to the direct detriment of the mortgage debtors, which paid a very high price premium. This case is still pending a judicial decision.

11. Lastly, the agency concluded two market studies, in the market of school textbooks and the pharmaceutical market, and also published an internal guide to establish criteria regarding the fine requests that it will request from the TDLC.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

12. There are no new legal provisions on competition law.

1.2. Other relevant measures, including new guidelines

13. During this year, the FNE took two relevant measures: an increase of the sales thresholds that determine whether a merger should be notified, and the publication of internal guidelines for the request of fines.

14. On one hand, in March 2019, the FNE increased the sales thresholds that determine whether a merger has to be mandatorily notified. The new thresholds are set at UF¹ 450,000 (US \$ 19.4 million) in the case of individual sales and at UF 2,500,000 (US \$ 107.6

¹ The UF (Unidad de Fomento) is a unit of account used in Chile, adjustable according to inflation, its value is determined by the Central Bank of Chile. Their value according to date can be found at the following link: http://www.sii.cl/valores_y_fechas/uf/uf2020.htm

million), regarding joint sales. Previously, these thresholds were set at UF 290,000 or more per year (US \$ 12.5 million) and UF 1,800,000 (US \$ 77.5 million), respectively.

15. The new amounts consider the international practices in the matter and the experience accumulated during the almost two years that the system has been operating. The purpose of the new thresholds is that agency focuses its resources on the mergers that have the most potential to substantially reduce competition.

16. On the other hand, in August 2019, the FNE published the “Internal guidelines for the request of fines”. The purpose of these guidelines, in addition to increasing the transparency and objectivity of its actions, is to effectively inform the courts of the grounds underlying its requests for fines. Notwithstanding the fact that the TDLC and the Supreme Court have the adjudicatory power, the FNE deemed it convenient to make public the parameters that it will consider to determine the fines it requests.

17. For its drafting, the FNE had special consideration of the decisions of the TDLC and the Supreme Court, the provisions of guides and instructions on the application of fines prepared by foreign agencies. The guide also benefited from comments from different parties in the context of a public consultation process.

18. Here we provide the links for the resolution modifying the concentration thresholds, the report that explains the adjustments, and the internal guideline for the request of fines:

- Resolution
<https://www.fne.gob.cl/wp-content/uploads/2019/03/Resoluci%C3%B3n-exenta-157.pdf>
- Report
<https://www.fne.gob.cl/wp-content/uploads/2019/03/Informe-de-ajuste-de-umbrales.pdf>
- Guideline
<https://www.fne.gob.cl/wp-content/uploads/2019/08/Gu%C3%ADa-de-multas.pdf>

19. Finally, during April 2019, a new Enforcement and Compliance Unit of the FNE began to function, which ensures compliance with the decisions of the Agency (including those related with mergers) and the TDLC and the Supreme Court.

1.3. Government proposals for new legislation

20. None.

2. Enforcement of competition laws and policies

2.1. Actions against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities of:

FNE

21. During 2019, the FNE brought the following actions in front of the TDLC:

BCI's abuse of its dominant position in a tender to grant group credit life insurance (Case No. C-379-2019)

22. In August 2019, the FNE filed a complaint against one of the main banks in Chile, the Banco de Créditos e Inversiones ("BCI"), for having abused its dominant position in a tender to grant credit life insurance for its mortgage clients. According to the FNE, BCI excluded the proposal that offered the lowest price and granted the tender to an insurer that bid together with the brokerage services of one of the BCI's subsidiaries. The brokers normally receive a percentage of the insurance premium as commission.

23. According to the complaint, the BCI benefitted financially through its subsidiary, since it obtained for two years monthly income that it would not have received if the tender had taken place under competitive conditions. The FNE argued that all this was to the direct detriment of the mortgage clients (which at the date of the tender exceeded 80.000), who eventually had to pay a higher insurance premium in comparison to the one offered by the excluded bid.

24. Since 2011, Chilean law has obliged banks to call for public tenders to grant credit life insurance for all their mortgage clients for a two-year period. However, clients can eventually choose an alternative credit life insurance provided by other insurer, which is not a realistic option for them in the FNE's opinion, considering its higher price and the costs of switching. Therefore, clients are somehow "locked-in" by BCI's decision in the public tender.

25. Taking into account this breach in the law, the FNE requested that the TDLC order BCI to carry out tenders that ensure effective competition, and the imposition of a fine of about US \$ 3 million.

26. The case is currently pending a judicial decision.

Cartel among salmon feed producers (Case No. C-386-2019)

27. In December 2019, the FNE accused the four main salmon feed producers in Chile of cartel conduct: Biomar Chile S.A. (Biomar), Comercializadora Nutreco Chile Limitada (Skretting), Ewos Chile Alimentos Limitada (Ewos) and Vitapro Chile S.A. (Salmofood). The FNE argued that these companies engaged in an agreement or concerted practice to fix the prices of salmon feed between 2003 and 2015.

28. According to the accusation, the companies colluded in two ways: in the first instance, by fixing the prices of the salmon feeds and allocating percentages of the clients' purchases, and later, by fixing the prices of some of the most relevant raw materials making up the salmon feed (reported to their clients in the price lists). The executives usually communicated through emails, meetings and telephone calls, which they subsequently attempted to erase.

29. In its complaint, the FNE requested that the TDLC impose on Biomar, Skretting and Salmofood a fine of approximately US\$ 23.3 million each, which represents the maximum fine according to the applicable law. In total, the requested fines amounted to approximately US\$ 70 million. The FNE did not request a fine for Ewos since this company applied for the leniency program, providing evidence that led to the opening of the investigation and that serves as proof of the misconduct. This evidence was further

strengthened by other measures adopted by the FNE, such as searches and interviews, among others.

30. This was the seventh case in which the FNE had filed a claim before the TDLC that included a leniency application. Due to the time at which the accused events took place, the legal change in Chile reestablishing criminal sanctions for cartel offences, dated August 2016, is not applicable to this case.

31. The case is currently pending a judicial decision.

TDLC

32. During the period covered by this report, 19 lawsuits were submitted before the TDLC (adversarial cases). Eight cases were related to unilateral conducts, two referred to infringement of conditions previously imposed by the TDLC, four referred to Public Administration acts that undermine competition, two referred to cartel agreements, one referred to unfair competition and, in the remaining two cases, the TDLC declared they were out of its jurisdiction.

33. The TDLC also issued five final decisions or rulings in adversarial cases during the period. The average length of these proceedings was 814 days. These cases stem from claims filed by the FNE, as well as from complaints filed by private parties. Two of these rulings were condemnatory (both cases were brought in by the FNE) while in the other three cases the TDLC acquitted the defendants. Four out of these five decisions were challenged before the Supreme Court, rulings that were still pending a decision by December 31st 2019.

Decision in the Supermarkets hub & spoke cartel (Ruling No. 167/2019)

34. One of the main decisions issued by the TDLC during year 2019 was the Supermarkets H&S cartel (Ruling No. 167/2019). In this case, the TDLC established a standard regarding this kind of conduct and set up the criteria to condemn it.

35. The case started in 2016, when the FNE filed a lawsuit against the three main supermarket chains in Chile (Walmart, Cencosud and SMU), accusing them of agreeing on a common minimum resale price for fresh poultry meat between 2008 and 2011. The price was set by each upstream supplier through vertical agreements signed individually with each supermarket. Allegedly, though, there was an implicit mutual understanding between the supermarkets that each of them would comply with the price.

36. According to the FNE, the case had then two core elements:

- The existence of a “rule” or mode of behavior among the supermarkets. This was the “vertical” component of the practice – i.e. a separate vertical restraint between each producer and each supermarket, which consisted on the prohibition of selling fresh poultry meat below the wholesale price.
- The voluntary observance of that rule by each chain, subject to the observance of the same rule by the other supermarket chains (the “horizontal” component of the practice).

37. Given the evidence submitted in the trial –mainly, e-mails exchanged between each supermarket and each producer requesting other supermarkets not to deviate from the rule and threatening punishments– the three defendants were found guilty. It was proved the rule existed and that its enforcement was conditioned to mutual compliance. The decision

also stated that there was no alternative explanation that could justify the pattern of behavior displayed by the firms.

38. No charges were requested against the poultry producers involved. Each supermarket was condemned to fines that ranged from US\$2.7 to 4.6 M. Walmart benefited from a 15% fine reduction because it had an antitrust compliance program in place while the conduct was carried out, albeit highly incomplete. It was also considered that the firm improved its program after the conduct ended. This was the first time the Tribunal acknowledged that a firm may not be found liable if it has a complete and serious compliance program in place, and that the program may be considered a mitigating circumstance provided it fulfils certain standards.

39. The Tribunal's decision was challenged before the Supreme Court. The Supreme Court is empowered to carry out a merit review of the Tribunal's decision. The Supreme Court's ruling was still pending by December 31st 2019.

Decision in the "Freight Shipping Companies" cartel (Ruling No. 171/2019)

40. On April 24th 2019, the TDLC partially accepted the FNE's lawsuit against six freight shipping companies for executing agreements that restricted competition in the process of contracting services to transport vehicles to Chile from Europe, America and Asia. The accused companies were Compañía Sudamericana de Vapores de Chile ("CSAV"), Compañía Marítima de Chile ("CMC"), Eukor Car Carriers Inc. ("Eukor"), Kawasaki Kisen Kaisha ("K-Line"), Mitsui O.S.K. Lines Ltd. ("MOL") and Nippon Yusen Kabushiki Kaisha ("NYK").

41. CSAV received immunity from fines, since the company applied to the leniency program established in Article 39 bis of the D.L. N° 211. NYK, second firm in order to apply to the leniency program got a reduced fine of US\$ 6.1 M and MOL, the other convicted company was sentenced to a fine of US\$ 2.3 M. These shipping companies were ordered to adopt a compliance program.

42. On the other hand, CMC, Eukor and K-Line were not sanctioned as the TDLC accepted the statutory limitation period exception filed by these companies.

43. The judgment of the Tribunal was challenged before the Supreme Court. The final decision was still pending by December 31st 2019.

Supreme Court.

44. During the period covered by this report, seven competition cases were decided by the Supreme Court. Two cases were rejected, so the previous decisions issued by the TDLC (Decision No. 443-17 and Decision No. 427-14 of the TDLC) were maintained, four decisions of the Tribunal were overruled in some way and in one case the Supreme Court annulled the Tribunal's ruling after considering that it seriously omitted some of the parties' allegations (Ruling No. 305-16 of the TDLC).

45. One relevant case the Supreme court overruled was the TDLC's Decision No. 54/2018 on two Joint Business Agreement (JBAs) for the air transport service of passengers and cargo: one of them to be executed by LATAM and American Airlines, for flights between South America, United States and Canada and the other by LATAM, Iberia and British Airways for flights between South America and Europe. In its decision, the TDLC had cleared both of the consulted JBAs with behavioural remedies. The Supreme Court reversed the Tribunal's decision claiming that, despite agreeing with the economic analysis

carried out by the TDLC, it considered that the remedies imposed to the parties were not enough to offset the risks created by the agreements, so the JBAs were prohibited.

46. Other relevant case the Supreme Court overruled was the TDLC's Decision No. 435-16 on the merchant discounts applied by Transbank, a bank supporter company that administrates credit and debit cards, among other payment methods. The TDLC sentenced that Transbank may only discriminate based on the number of card transactions of each business and based on the average value of card sales of each store, and prohibited discrimination based on categories or industries. The Supreme Court stated that the TDLC's decision was discriminatory and stated that Transbank must apply publicly known merchant discounts, which must also be objective, reasonable and non-discriminatory. According to the Supreme Court, Transbank should not discriminate prices based on volumes, amount of transactions, categories or industries.

2.1.2. Description of significant cases, including those with international implications

47. Please refer to section 2.1.1.

2.2. Mergers and acquisitions

2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

48. The new Merger Control System, that introduced the mandatory notification of mergers exceeding certain turnover thresholds has showed to be quite successful after three years of practical implementation. The results for year 2019 show that the FNE assessed 42 mergers, 39 of them being approved without any reserves, two approved with remedies and one blocked.

49. Additionally, the merger control investigations to date show, in average, to be of short-length. The investigations for cases unconditionally cleared lasted 24 days, while those approved with remedies reached up to 87 days. Investigation of prohibition cases lasted, in average, 160 days.

2.2.2. Summary of significant/ongoing cases

Acquisition of Clínica Iquique by Red Interclínica (blocked merger)

50. In December 9th, 2019, the FNE decided to block the acquisition of Clínica Iquique S.A. by Red Interclínica S.A., a transaction that was notified to the FNE in February 2019. This merger would have entailed a monopoly between the only two private healthcare providers in Iquique, an isolated coastal city in the north of Chile.

51. The FNE carried out an investigation in order to analyze the effects of the merger and concluded that it would lead to a substantial lessening of competition on the relevant market by increasing prices and reducing quality of services. The parties claimed efficiencies that were assessed by the FNE, but were not able to offset the anticompetitive effects of the merger. They also submitted behavioural remedies consisting on ten-year price caps, a quality-standard regulation, and a new investment plan (i.e. obligation to implement new healthcare units).

52. On the investigation the FNE resorted to different tests (i.e. UPP, IPR, CMCR), based on the closeness of competition between the parties and the services they provided. In addition, the agency conducted a consumer survey and an analysis of market shares and concentration indexes following different relevant market definitions .

53. This was the third time that the FNE blocks a transaction since the mandatory merger control regime was established in June 2017. After the decision the parties did not challenge it before the Competition Tribunal and abandoned the deal.

Merger between Bizarro and Fidelitas, cleared with remedies

54. In April 2019, the FNE cleared the merger between Bizarro Producciones –one of the largest live music promoters in Chile– and Grupo Fidelitas –the current manager of one of the most relevant venues for live music events in the country (Movistar Arena) and a non-controlling shareholder of the biggest ticket sales company of Chile (Punto Ticket)– with behavioral remedies.

55. In order to mitigate the vertical foreclosure concerns regarding Movistar Arena and the disclosure of commercially sensitive information that could be used for exclusionary purposes, the merging parties committed themselves to: (i) establish of a non-discriminatory, transparent and objective booking procedure for the Movistar Arena venue; (ii) an obligation not to arbitrarily discriminate against the different promoters that request the use of the Movistar Arena venue; and (iii) to implement firewalls in order to avoid the disclosure of commercially sensitive information from rival promoters –gathered by Movistar Arena and Punto Ticket– to the merged entity and its subsidiaries that participate in the relevant markets.

56. These commitments were complemented by additional remedies, such as the appointment of a monitoring trustee; the prohibition of the simultaneous participation of the same person in the management of Punto Ticket and Bizarro Producciones; the obligation to inform the FNE of any modification of Grupo Fidelitas’ –or its related entities– stake in Punto Ticket; the obligation to carry out antitrust training workshops; and the subscription, by the directors and other relevant executives of the merged entity and Punto Ticket, of protocols that safeguard commercially sensitive information, among others.

Merger between Disney and Fox, cleared with remedies

57. On August 2018, The Walt Disney Company (Disney) and Twenty-First Century Fox, Inc. (FOX) filed a merger that would lead to Disney’s control over FOX’s main assets. The FNE decided to approve the merger, subject to remedies, on March 19th, 2019.

58. In order to address concerns regarding the use of the merged entity’s augmented bargaining power, the parties offered a prohibition of tying products from the acquired entity (FOX) and the purchasing firm (Disney). This remedy was reinforced with a prohibition of technical tying due to the similarity of contents offered by the merging parties which, in turn, could lead to a rearranging of contents in just one of the entities, thus getting the same results from product tying. For any additional concern involving the use of this acquired bargaining power, the notifying parties offered a baseball-style arbitration to solve any discrepancies that could arise throughout negotiations.

59. In this case, the FNE considered that transitory behavioural remedies were effective to offset the identified concerns, and that actually they were more appropriate than a structural remedial relief involving the divestment of ESPN channels. These remedies were

considered a least burdensome alternative to the parties while also avoided further distortions in the industry. This is mainly because sports' contents were negotiated regionally, which would mean that a divestment of these contents for Chile could generate greater problems for consumers, as they might have ended up depending on a third party willing to distribute to Chilean consumers only what Disney was already distributing on a regional basis. Due to the small size of the Chilean market, the possibility of losing these contents for the country was relatively high. Moreover, a divestment in this case had to procure a suitable buyer in advance. Due to the high concentrations in sports' contents, Turner –which seemed to be the only available and willing candidate– would have certainly been excluded.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1. FNE

60. During 2019 the FNE released two Market Studies. One was in the market of school textbooks and the other in the pharmaceutical market. The former was released in March, and it analysed the competition in the public and private market. In the first case, the problems detected were related to the design of the public tender to acquire textbooks for public schools made by the Ministry of Education. In the second case an agency problem was confirmed between schools and parents of students that pay for the textbooks, as well different strategic behavior of publishers in the private market in order to avoid the existence of a second-hand school textbook market.

61. These obstacles generate a series of consequences in the price and in the quality of the school textbooks, which include productive inefficiencies and indirect costs.

62. On the other hand, the Pharmaceutical Market Study was published in November. Among the information collected are detailed information of cost structures, and distribution strategies of laboratories and pharmacy chains, surveys to consumers and physicians, data collected from various public bodies, and expert analysis in the area.

63. In this market study, the FNE concluded that there were problems in different areas of the commercialization of drugs that produces that the commercial conditions to which consumers access to them are not optimal. In this sense, amongst interesting findings, some that can be pointed out are that: (i) The therapeutic equivalence policy has not been effective. Thus, 80% of the drugs registered in Chile still do not have therapeutically equivalent alternatives; (ii) The market works as a brand driven one, in the same way as any other mass consumer market. Simply put, labs promote brands to doctors, doctors prescribe brands to their patients, patients buy brands at pharmacies, and pharmacies are forced to buy these brands from laboratories; and (iii) One effect of this is that large pharmacy chains pay an average of 70% more than the public sector for the same products and 60% more than private hospitals.

64. To increase competition in the studied market, the FNE proposed to the government a series of measures. Some of the measures related to the marketing of medicines are to: (i) Modify the procedures before the Instituto de Salud Pública (Public Health Institute) to obtain market authorization and the bioequivalence certification; (ii) Establish a faster procedure to grant market authorization to medicines that are already authorized in other countries that meet an adequate safety standard; (iii) Establish an obligation for

laboratories to inform the Public Health Institute of current patents; (iv) Grant a reward to the first generic to enter the market; (v) Strengthen the Agencia Nacional de Medicamentos (National Drugs Agency) to allow more expedited processes for the registration of drugs and the certification of bioequivalence and improve duties of control and pharmacovigilance; (vi) Create a single national platform for practitioners which requires them to prescribe by the International Common Denomination (DCI); and (vii) Implement measures to increase the number of pharmaceutical products that are therapeutically equivalent.

65. On the other hand, regarding the distribution market, the Study recommends: (i) Allow the sale of Over the Counter drugs (OTC) in establishments different from pharmacies; and (ii) Regulate and allow the sale of drugs online.

66. Finally, in May 2019, the FNE announced the start of the public procurement market study, in which the State spends more than US\$ 10 billion annually. The hypothesis of lack of competition is that there are spaces in the public procurement market that are not operating competitively, which would be causing the commercial conditions that state agencies can access to are not optimal and therefore poorly allocate its resources. Some of the reasons that justified carrying out this study are the absence of a standard document to guide agencies in purchasing processes, and the few purchasing mechanisms available to public entities, compared to other OECD members. The study will be completed and published during the second semester of 2020.

67. Here we provide the links for both Market Studies and the launch document of the Public Procurement Market Study:

- School Textbooks Market Study:
https://www.fne.gob.cl/wp-content/uploads/2019/06/Informe_Final_EM04.pdf
- Pharmaceutical Market Study:
<https://www.fne.gob.cl/wp-content/uploads/2020/01/Informe-Final.pdf>
- Public Procurement Market Study:
https://www.fne.gob.cl/wp-content/uploads/2019/05/Minuta_EM_05_2019.pdf

3.2. TDLC

3.2.1. Decision in the maximum radioelectric spectrum limit (Decision No. 59/2019)

68. In other relevant case, in December 2019 the Tribunal decided on the adjustment of the maximum limit of the radioelectric spectrum that each operator of mobile services may have (Decision No. 59/2019). The Tribunal decided that it was appropriate to revise the maximum spectrum limit, considering that competitive conditions have changed over time in terms of spectrum assigned to mobile companies and the use of new technologies. The Tribunal considered other relevant changes in the market for its decision to modify the spectrum, such as the evolution in the structure of the relevant market, and the level of penetration of mobile telephone services over the country.

69. For purposes of setting the new maximum limits of radio spectrum that may be used by each mobile telephone company, the following circumstances were considered:

- The balance that must exist between competition and the objectives of sectorial public policy;

- The convenience of establishing percentage limits instead of fixed amount limits;
- The technical properties of each macroband of the spectrum;
- The International Mobile Telecommunications 2020 (“IMT-2020”) standards;
- The multilayer need for a credible operator;
- The requirement of contiguous spectrum in certain bands and;
- The asymmetry in spectrum possession.

70. Under these circumstances, the TDLC set the following spectrum limits for each of the macrobands, which will be imposed on each territorial area or unit:

1. Low macroband (less than 1 GHz): spectrum holding limit of 35% per operator.
2. Lower middle macroband (between 1 and 3 GHz): a maximum limit of 30% per operator.
3. Medium macroband (between 3 and 6 GHz): the following special measures were established for the short, medium and long term:
 - a. In the short term, the Telecommunications Sub-secretary (“Subtel”) will not be able to auction contiguous blocks that, in sum, are less than 40 MHz per operator. In that regard, the first auction must have at least 80 MHz of spectrum, thus ensuring the existence of a minimum of two operators.
 - b. In the medium term, making use of its rearrangement powers, Subtel must ensure that there are at least four operators with a minimum of 40 contiguous MHz each.
 - c. Finally, in the long run, a maximum spectrum limit of 30% will apply to this macroband, with each operator having at least a minimum of 80 contiguous MHz.
4. Upper middle macroband (between 6 and 24 GHz): no limits were set due to the absence of allocations and assignments for mobile services in the bands that comprise it.
5. High macroband (higher than 24 GHz): as in the medium macroband, the following measures were set for the short, medium, and long term:
 - a. In the short term, Subtel shall ensure the award of contiguous blocks that, in sum, are not less than 400 MHz per operator. In that regard, the first auction must have at least 800 MHz of spectrum, that should allow the existence of at least two operators in this macroband.
 - b. This should allow the existence of at least two operators in this macroband.
 - c. In the medium term, making use of its rearrangement powers, Subtel must ensure that there are at least four operators with a minimum of 400 contiguous MHz each in this macroband.
 - d. Finally, in the long term, a maximum limit of 25% will apply. In any case, Subtel must ensure there are at least four operators with a minimum of 800 contiguous MHz each.

71. Along with the above, it was decided that the adjustment to the proposed limits should be subject to a gradual transition, which means, it should be carried out on the

occasion of future spectrum auctions. In this way, mobile operators that exceed any of the previously established maximum tenure limits may participate in the auctions, but only after adapting their spectrum tenure. Lastly, before Subtel decides to auction the blocks of spectrum in the bands that fluctuate between 6 and 24 GHz, operators must request the TDLC's decision regarding the maximum limit of radio spectrum tenure that can be used by each mobile service operator in the upper middle band.

72. The decision of the Tribunal was challenged before the Supreme Court. The Supreme Court's final decision was still pending by December 31st 2019.

4. Resources of competition authorities

4.1. The FNE

4.1.1. Resources overall (current numbers and change over previous year)

Annual budget (in your currency and USD)

73. The annual budget assigned to the FNE is shown in the table below:

Table 1.

Year	Chilean Pesos	USD
2012	4,220,158,000	5.667.532
2013	4,507,826,000	6.053.861
2014	4,675,937,000	6.279.629
2015	7,070,663,000	9.495.666
2016	5,816,708,000	7.811.646
2017	6,575,860,000	8.831.162
2018	6,981,152,000	9.375.456
2019	7.208.103.000	9.680.244

Note: Source SII: http://www.sii.cl/valores_y_fechas/dolar/dolar2019.htm

Source: Change USD December 31 2019: \$744,62.

Number of employees (person-years)

Table 2.

Staff	2013	2014	2015	2016	2017	2018	2019
Economists	20	20	20	19	31	30	30
Lawyers	36	42	39	42	47	50	51
Other professionals	20	19	23	22	21	11	3
Support staff	14	15	10	11	13	18	19
All staff	90	96	92	94	112	99	103

*Human resources***Table 3.**

	2014	2015	2016	2017	2018	2019
Enforcement against anticompetitive practices	45	33	33	39	52	42
Merger review and enforcement	8	11	13	22	21	20
Advocacy efforts	8	11	11	13	6	6
Litigation	12	18	18	15	15	14

Period covered by the above information

74. The budget for the FNE refers to the period of January to December of each year. Staff as of January of each year.

4.2. TDLC*4.2.1. Resources overall (current numbers and changes over the previous year):***Table 4. Annual budget**

In local currency and US\$.

Year	Chilean Pesos	USD
2013	1,228,933,000	1,864,845
2014*	1,434,228,420	2,176,371
2015	1,729,560,000	2,624,522
2016	1,795,283,000	2,724,253
2017	1,849,141,000	2,759,582
2018	1,897,219,000	2,781,886
2019	2,153,804,000	2,892,565

Note: Includes only operational budget. The total budget for 2014 is around USD 3,334,517 and includes the change of headquarters of the TDLC..

Table 5. Number of members (including staff members + judges)

Year	Staff members + judges
2013	21
2014	21
2015	22
2016	23
2017	23
2018	25
2019	26

Table 6. Informing separately for each year:

Staff	2014	2015	2016	2017	2018	2019	
Economists		6	6	6	6	7	7
Lawyers		8	8	9	9	10	10
Support staff		7	8	8	8	8	9
All staff		21	22	23	23	25	26

Period covered by the above information:

75. The budget for the TDLC refers to the period of January to December of each year. Staff as of January 1st of each year.

76. Change USD December 31 2019: \$744,6 (Central Bank of Chile)

5. Summaries of or references to new reports and studies on competition policy issues

77. The power of the FNE to develop market studies was granted in 2016 in the last amendment of the Competition Act and a specific market studies division of the FNE was created in 2017.

78. Please refer to section 3 for detail of the developed market studies.