Organisation for Economic Co-operation and Development

DAF/COMP/AR(2021)5

Unclassified

English - Or. English

26 May 2021

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Chile

-- 2020 --

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

JT03477077

Table of contents

*Chile**

Executive Summary

1. This report summarizes the recent developments in competition law and policy in Chile. It also addresses the main precedents related to competition law enforcement, to competition advocacy activities, as well as other developments that occurred during 2020.

2. The Chilean competition system considers two main authorities: the Fiscalía Nacional Económica (hereinafter, "the FNE") and the 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's rulings and decisions. The competition law is Decree Law No. 211 and its subsequent modifications.

3. The FNE is an independent government competition agency whose main responsabilities entail the enforcement of competition law. Furthermore, it is responsible of issuing technical reports and studies, and undertaking competition advocacy. Since 2016, the FNE performs preventive merger control in regard to concentration operations which surpass certain sales' 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 submitted by the FNE or private parties, regarding anticompetitive behaviours) as well as non-adversarial matters. TDLC's rulings and decisions can be challenged before the Supreme Court.

5. During 2020, judges Javier Tapia Canales (lawyer) and Eduardo Saavedra Parra (economist), and deputy judges Nicolás Rojas Covarrubias (lawyer) and Jorge Hermann Anguita (economist) finished their term at the Tribunal. As their replacements, the President of Chile appointed Jaime Barahona Urzúa (lawyer) and Ricardo Paredes Molina (economist) as judges, while Rafael Pastor Besoain (lawyer) and Pablo González García (economist) were appointed as deputy judges.

6. It is worth to mention that due to the pandemic emergency triggered by COVID-19, on April 2, 2020, the Congress passed a law (Law No. 21.226) that established an exceptional regime for judicial proceedings. This law altered the normal functioning of the TDLC as it stablished: (i) the possibility to suspend hearings if deemed necessary or to hold them remotely; (ii) the prohibition of decreeing legal proceedings and actions that, if carried out, could cause defenselessness to any party; and (iii) the suspension, during the constitutional state of exception decreed by the Chilean government because of the pandemic, of the evidentiary stage in all contentious proceedings before the TDLC. In accordance with the mentioned law and the instructions given by the Supreme Court, the TDLC adopted an Instruction regulating the operation of the Tribunal during the pandemic emergency (Auto Acordado No. 20/2020) and a protocol that sets out the measures to maintain the continuity of the service and to ensure the right of access to justice.

* Joint Contribution from Fiscalía Nacional Económica ("FNE") and Tribunal de Defensa de la Libre Competencia ("Competition Tribunal" or "TDLC").

7. In addition, in April 2020 the TDLC issued an Instruction on Extraordinary Consultations (Auto Acordado No. 21/2020). The most important matters addressed in this instruction were the following: (i) manifest about competition law remaining in full force in periods of crisis; (ii) the recognition that during this health emergency there may be underproduction of certain goods and services, and therefore collaboration agreements may be needed, indicating the sectors in which this situation could occur: goods or services that are essential to maintain the supply chain, the continuity of transport services and the delivery of medicines or medical supplies, among others that may also have an indispensable character; and (iii) the granting of a "provisional authorization" when an agreement among competitors on those goods or services is submitted to the Tribunal.

8. In the period covered by this report, 26 adversarial cases and 19 non-adversarial cases were brought before the TDLC. These figures represent a 55% of increase in the number of cases submitted before the TDLC in 2019. In addition, during 2020 the Tribunal issued four rulings on adversarial cases (two cartels and two unilateral conducts) and two decisions related to non-adversarial cases. These six cases mentioned above had an average duration of 770 days (considering timing since the case was submitted up to the Tribunal's final ruling or decision), which represents an increase of 40% compared to rulings and decisions issued during 2019.

9. On the other hand, the FNE initiated 29 investigations during 2020 and filed a series of actions before the TDLC on a wide variety of competition enforcement matters regarding cartels, abuses of dominance, breaches of judgments issued by the TDLC, breaches of the legal obligation to notify the ownership of more than 10% of the property of a competitor, among others.

10. Secondly, in the year 2020 the FNE assessed 28 mergers, of which 26 were approved without conditions and two with remedies.

11. Thirdly, during this year, the FNE created an Intelligence Unit, as part of its program to enhance investigative techniques for cartel prosecution. Also, the Compliance Unit, which was created in 2019, became a Division, gaining complete independence from the Antitrust Division.

12. Fourthly, the FNE has had an active participation in the formulation and implementation of other policies. In effect, the FNE issued a series of reports to the TDLC regarding bidding rules' design and structural remedies related to the construction and operation of publicly-owned transport infrastructures, it proposed a regulatory reform to the Ministry of Transport and Communications to modify the requirements that must be met by the international entitites that issue in Chile the international driving permit and recently a law was passed that increases competition among mortgage related insurances was passed which is based on measures proposed by the FNE to the Chilean Govenrment.

13. Lastly, the agency concluded the market study on Public Procurement and launched the Gas Market Study.

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

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

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

1.2. Other relevant measures, including new guidelines

15. During this year, as part of its program to enhance investigative techniques for cartel prosecution, the FNE created an Intelligence Unit, that will report directly to the Anti-Cartel Division. This Unit will be responsible for a cartel detection system based on data science, which is currently under development by economists and data scientists. The new unit will also work on the improvement of available investigative techniques, including the preparation and execution of dawn raids and wiretaps, the development of intelligence based on open, public and private sources, as well as fostering collaboration with international teams and agencies. Additionally, this team will seek to implement a follow-up program aiming to provide support to complainants and informants in collusion cases that may require it.

16. The creation of the Intelligence Unit consolidates various internal projects which had as a relevant milestone the international workshop on tools and techniques for the detection and persecution of cartels held in 2019, in which attorneys and agents of the FBI and the United States Department of Justice (DOJ) participated.

17. This is the second unit recently created in the FNE. The first was the Compliance Control Unit, created in 2019, which is responsible for adherence to Article 4 bis of DL 211, observance of mitigation measures established in concentration operations, and compliance with resolutions of the Competition Tribunal or the Supreme Court. The Compliance Control Unit became a Division according to the Budget Law for the Public Sector year 2021 Law Nº21.289, that was published on December 16, 2020. This implies it is completely independent from the Antitrust Division of the FNE.

1.3. Government proposals for new legislation

18. The Chilean Government introduced a bill in March, 2020, to give the FNE new powers to investigate cartels and establish harsher criminal sanctions for cartels involving specific basic goods and services.

19. Among the new investigative tools the bill intends to introduce, it considers: enhanced protections for whistleblowers, sanctions for the obstruction of dawn raids and access to bank records (with a warrant). Regarding criminal sanctions, the bill proposes to increase these for cartels involving basic goods and services from 3 to 10 years (the current range) to 5 to 10 years of jail time.

20. The bill has had little progress in Congress since it was introduced in March, 2020.

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 2020, the FNE brought the following actions in front of the TDLC:

Cases regarding breaches to notify the ownership of more than 10% of the property of a competitor (Cases No. C-388-2020 and C-389-2020)

22. In January 2020, the FNE filed the first two complaints before the TDLC against companies that did not comply with the legal obligation to notify the FNE about having a stake greater than 10% in the property of competing firms.

23. Complaints were filed against the companies Banmédica S.A., a private health insurance company, and Sociedad de Inversiones Los Orientales Limitada, a company dedidcated to the wholesale of plastic products, for violating transitory Article 4 of Law No. 20.945, which establishes that companies that had a stake of more than 10% in the property of a competitor and that exceeded certain sale thresholds, had to inform the FNE no later than February 26, 2017, when 180 days had elapsed since the new law came into force.

24. The cases were the result of ex officio investigations by the Compliance Enforcement Unit, supported by a platform that shows structural relations between companies and economic groups, allowing the identification of breaches of the legal obligation to notify the ownership of more than 10% of the property of a competitor.

25. Both cases were resolved by settlements between the defendants and the FNE, approved by the Competition Tribunal. In those agreements, both firms pledged to make a tax benefit payment for the infringement and to take publicity actions regarding the agreement. Banmedica agreed to a tax benefit payment of approximately US$282 thousand and Los Orientales agreed to a tax benefit payment of approximately US$141 thousand.

Breach of judgment issued by the TDLC on behalf of Nestlé Chile S.A. (Case No. C-387-2020)

26. In January 2020, the FNE filed a complaint against Nestlé Chile S.A. (Nestlé) for failure to comply with the judgment No. 7/2004 issued by the Competition Tribunal, particularly in respect of the measure that ordered Nestlé and other processors to maintain price lists, specifying all the parameters that determined the price that is paid per litre of milk. According to judgment No. 7/2004, price lists must contain adequate information for the producers in the dairy farming.

27. Nestlé was accused of not informing in their price lists the existence, quantity and characteristics of certain commercial conditions that affect the final price paid per litre of milk. In effect, Nestlé did not inform the possibility and conditions under which dairy producers could join as a group in order to obtain a higher volume bonus compared to that which individual suppliers could obtain nor did it inform the bonuses that those diary producers could obtain by signing contracts with Nestlé to sell their fresh milk.

28. This breach has allowed Nestlé to discriminate in an arbitrary manner between different producers who participate in the milk industry, paying some of them a higher price per litre of milk and others a lower price.

29. This case was resolved by a settlement between the defendant and the FNE, approved by the Competition Tribunal. In the agreement, Nestlé pledged to incorporate all the abovementioned information in its price lists and make a tax benefit payment of US$1.8 million, the highest amount paid in an agreement of this nature until now.

30. In addition to this complaint and in relation to the dairy farming industry, during 2020, the FNE also reached extrajudicial agreements with Soprole/Prolesur, Watt's and Nestlé, the main milk processing companies in Chile. In its investigation the FNE discovered that these companies were not fully complying with measures established by the TDLC in judgment No. 7/2004 and/or resolution No. 57/2019. Soprole/Prolesur, Watt's and Nestlé agreed to adopt different actions aimed to adopt their trade policy in order to fully comply with the aforementioned rulings. Aditionally, Soprole and Watt's made a tax benefit payment of approximately US$1 million and US$650 thousand, respectively.

Cartel among helicopter companies in the forest firefighting market (Case No. C-393-2020)

31. In March 2020, the FNE filed a complaint before the Competition Tribunal against three helicopter companies in the forest firefighting market, as well as two executives who facilitated the coordination and execution of anti-competitive agreements. This is the first time that the FNE files a complaint against individuals who participate in a cartel.

32. The accused corporations are Calquín Helicopters SpA (Calquín), Inaer Helicopter Chile S.A. (Inaer), and Pegasus South America Servicios Integrales de Aviación SpA (Faasa), and two of their principal executives: Ricardo Pacheco Campusano from Faasa and Rodrigo Lizasoaín Videla, who worked at Inaer and then at Calquín.

33. However, the tribunal issued a decision in which it stated that the accused anticompetitive agreements should be resolved in different judicial proceedings, which led to the FNE filing an additional complaint specified below.

34. As a result of this decision, Calquín was excluded from the accused parties in this particular proceeding and the FNE accused the remaining companies and individuals of forming and maintaining a single and continuous agreement to affect the outcome of various planified contracting processes in the national market for planned helicopter services to fight forest fires.

35. The fines requested by the FNE amount to approximately US$6 million, US$3.8 million for Faasa, US$2.2 million for Inaer, and US$50 thousand for each of the accused executives.

36. The case is currently pending a judicial decision.

Cartel among helicopter companies in the forest firefighting market (Case No. C-403-2020)

37. In August 2020, the FNE filed another complaint before the TDLC for collusion in the forest firefighting market against corporations Calquín Helicopters SpA (Calquín) and Pegasus South America Servicios Integrales de Aviación SpA (Faasa), and individuals Rodrigo Lizasoaín Videla and Ricardo Pacheco Campusano, who facilitated the coordination and execution of anti-competitive agreements.

38. The FNE accused the aforementioned corporations and individuals of celebrating and executing an anticompetitive agreement that affected a contracting process called by CONAF in 2014. In this case, the FNE detected evidence of multiple contacts held between the opening and closing dates for the submission of tender offers, through which Faasa and Calquín designed a common strategy to implement in their applications.

39. The fines requested by the FNE amount to approximately US$1.6 million, US$850 thousand for Calquín, US$619 thousand for Faasa, US$70 thousand for Rodrigo Lizasoaín and US$62 thousand for Ricardo Pacheco.

40. The case is currently pending a judicial decision.

Case against The Walt Disney Company and TWDC for providing false information in a merger control procedure (Case No. C-404-2020)

41. In august 2020, the FNE filed a complaint before the TDLC against The Walt Disney Company (Disney Parent Company) and its subsidiary TWDC Enterprises 18 Corp. (TWDC) for having provided false information in the procedure of merger control through which it acquired the shares of Twenty-First Century Fox, Inc. (Fox) and for failing to comply with a remedy adopted during the approval of that process.

42. Through an investigation conducted by the Compliance Enforcement Unit, the FNE concluded that TWDC provided false information when notifying the merger with Fox in 2018, stating that it did not have certain background information required by the regulations governing the procedure. However, in later stages it became clear that the company had such information and that it should have accompanied them in its notification.

43. The type of information that was not provided by the company consists in studies, analysis, reports and surveys that contained information regarding the characteristics of the market affected by the merger in Chile, required in the Notification Regulations. On the other hand, after the approval of this merger, Disney Parent failed to comply with a remedy related to a publicity measure offered in the procedure and to which the approval of the FNE was subject.

44. In this regard the FNE has stated in its complaint that the remedies imposed by the FNE in order to approve the merger are mandatory, imperative and enforceable. Likewise, it has been stated by the Tribunal in previous decisions that remedies are deemed as legal requirements upon which the validity of the operation depends upon. The aforementioned is reinforced by the fact that, generally, parties that notify an operation propose the remedies.

45. The case is currently pending a judicial decision.

CDF's abuse of monopoly power in the market of transmission of live football matches (Case No. C-411-2020)

46. In December 2020, the FNE filed a complaint against Canal del Fútbol (CDF, the Chilean football channel), at present, "TNT Sports", before the TDLC for abuse of monopoly power in the market of transmission of live football matches. CDF has established a series of practices that impede competition in the market.

47. The FNE points out four practices that limit competition between cable operators, impeding them to attract new customers using certain promotions or strategies such as loss-leading. First, CDF controls and limits promotions that a cable operator might offer to its customers regarding HD/Premium signals; second, CDF establishes a restriction on the minimum price that cable operators can charge for the HP/Premium signals; third, CDF charges to every cable operator a different goal of a minimum amount of customers that

each operator must have in the HD/Premium signals, and if that goal is not met, the operator must pay to CDF as if it were; finally, CDF demands that every operators' customer has access the basic channel, even if the consumer does not require it, charging the cable operator a price per subscriber.

48. Taking into account this breach in the law, the FNE requested that the TDLC order CDF to end the aforementioned practices, and the imposition of a fine of about US$ 24 million.

49. The case is currently pending a judicial decision.

TDLC

50. During the period covered by this report, twenty six lawsuits were submitted before the TDLC (adversarial cases). Two cases were related to collusive agreements, eleven referred to abuses of dominant position, two referred to infringement of conditions previously imposed by the TDLC or the FNE, two referred to failure to inform the FNE minority cross-shareholdings among competitors, one referred to public administration acts that undermine competition, one referred to unfair competition, four cases related to compensations to victims of antitrust violations and, in the remaining three cases, the TDLC declared its absolute incompetence.

51. During this period, the TDLC issued four final decisions or rulings in adversarial cases. The average length of these proceedings was 930 days. These cases stem lawsuits filed by the FNE and private parties. Three of these rulings were condemnatory -two cases were anticompetitive agreements between competitors (Ruling No. 172 and Ruling No. 175) while the other case was a unilateral act (Ruling No. 173)- whereas in the other case the TDLC acquitted the defendant (Ruling No. 174). All cases were challenged before the Supreme Court.

Decision on a bid rigging case in the health sector between Industrial y Comercial Baxter de Chile Ltda. ("Baxter") and Laboratorio Sanderson S.A. ("Sanderson") (Ruling No. 172/2020)

52. The FNE accused Baxter and Sanderson of bid rigging on two public tenders of medical items. Defendants denied having participated in any collusive agreement and claimed that, in any case, the mere existence of an agreement is not punishable, the existence of other collusion's elements must be proven and that the agreement had not effects, since neither of the firms won the tenders.

53. The TDLC upheld the FNE's accusation entirely, declaring that the defendants agreed to affect the results of the procurement process. Although Baxter and Sanderson had not financial benefits from the agreement, the Tribunal imposed the same fines requested by the FNE (US$ 170.000 for each firm). It also imposed them the obligation to adopt a compliance program to prevent these behaviors in the future.

54. Baxter challenged the TDLC's judgment before the Supreme Court. The Supreme Court issued its final decision on October 16th, 2020. In its ruling, even though the Court upheld TDLC's decision to condemn Baxter, it accepted Baxter's request to modify some aspects of the compliance programme imposed by the TDLC.

Decision against the Nationtal Professional Football Association (Ruling No. 173/2020)

55. The FNE accused the National Professional Football Association ("ANFP") for stablishing the payment of an incorporation fee of UF 50.000 (US$ 2 million approx.) in 2011 -which was later reduced to UF 24.000- to teams promoted from third tier division to second tier division in the Chilean professional football league. The FNE claimed that the fee was anticompetitive as it reduced the competitive intensity in the league. The FNE based its claim on the argument that the fee's amount had the potential to exclude teams from the market, while it also affected in a negative manner those teams that were able to pay the fee, in terms of their competitive capacity.

56. The ANFP presented three defenses against the FNE's accusation: (i) the TDLC had absolute incompetence to hear FNE's lawsuit since it is not empowered to review rules that govern sports associations; (ii) the action to pursue an eventual sanction for this conduct would be prescribed and; (iii) the payment of the fee had no anticompetitive effects.

57. In its ruling, the TDLC upheld FNE's accusation, and stated that the fee was anticompetitive because it acted as a barrier to entry. The ANFP was condemned to a fine of US$ 2.7 million and was ordered to cease the collection of the fee as a requirement for promoted teams to access the league's second division tier.

58. The ANFP challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2020.

Decision on abuse of dominant case against Banco Estado (Ruling No. 174/2020)

59. Five banks accused Banco Estado -a State owned bank- of incurring in an abuse of dominant position. Plaintiffs claimed that Banco Estado, abusing its dominant position in the market of electronic transfer funds, charged discriminatory prices without having an economic reasonableness ground for doing so. These banks stated that Banco Estado charges them with higher rates than those charged to bigger banks for exactly the same service, which entails the same cost.

60. The defendant argued that Banco Estado could not have committed any anticompetitive offense since it lacked a dominant position. Regarding the accusation of discriminatory prices, Banco Estado claimed that rates were reciprocal, negotiated upon each pair of banks and were justified in costs.

61. In its decision, the TDLC rejected the lawsuit due to the statutory-limitation period exemption filed by Banco Estado for some of the contracts under question. The Tribunal also ruled that the correct market definition consisted in bank accounts -which include current accounts and electronic-wallet accounts (both of which allow users to make electronic transfer funds)-, and that Banco Estado lacked a dominant position in that market. Hence, the defendant was acquitted.

62. All plaintiffs challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2020.

Decision on bus companies anticompetitive agreement (Ruling No. 175/2020)

63. The TDLC upheld the FNE's accusation of an anticompetitive agreement, or cartel, performed by ten bus companies that operated in Temuco and Padre Las Casas, two urban areas in the south of Chile. The companies involved in the cartel agreed to limit the bus fleet so that each firm could increase their own fleet in only two buses per year. The agreement was easy to monitor since the number of buses that each firm operates in the

market is publicly available. The colluded companies also agreed not to ally with new entrants to the market. Such conducts took place from 2003 to 2017.

64. The agreement implied a supply restriction because it limited the number of buses that each company would have chosen in a competitive scenario. Moreover, it is expected that the customers in the geographic area affected by the cartel would have experienced an increase in frequency or decrease in prices if the firms behaved competitively. The cartel also prevented the emergence of new routes that might have benefited areas that experienced important demographic growth during the collusive period.

65. To set the fines imposed to these firms, the TDLC considered the role played by the local transport authority who endorsed the first instrument in which the agreement was embodied. According to the Tribunal this gave an erroneous signal about the behavior competitors should have in a market. In its ruling the Tribunal sanctioned defendants with fines that in total sum up to USD 1 million, besides ordering these firms to stop any anticompetitive conduct and to write a code of conduct to avoid committing the same kind of behaviors in the future.

66. Seven out of ten bus companies involved in the conduct challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2020.

Supreme Court

67. During the period covered by this report, eleven competition matters (adversarial and non-adversarial) were decided by the Supreme Court. Three cases were rejected by the Court, so previous decisions issued by the TDLC were upheld (Supreme Court cases No. 8850-2019, No. 8843-2019 and No. 34013-2019) while eight decisions of the Tribunal were modified in some aspect by the Court (Supreme Court cases No. 44266-2017, No. 1531-2018, No. 26525-2018, No. 278-2019, No. 9361-2019, No. 15005-2019, No. 16986-2020 and No. 181-2020).

68. Five of these decisions are related to condemnatory judgments issued by the TDLC regarding cartel cases accused by the FNE (Supreme Court cases No. 16.986-2020, No. 15.005-2019, No. 9361-2019, No. 278-2019, No. 1531-2018).

69. Relevant cases issued by the Court:

Supreme Court Case No. 9361-2019 on Ruling No. 167/2019

70. A relevant case the Supreme Court issued was on TDLC's Ruling No. 167/2019, a hub & spoke agreement among supermarkets that were sanctioned by the Tribunal (Supreme Court case No. 9361-2019). In its ruling, the TDLC established a standard regarding this kind of conduct and set up criteria to condemn. 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 maintenance 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 set-out price.

71. For this anticompetitive behavior all defendants were found guilty by the Tribunal. As Walmart argued a "compliance program defense", in its ruling, the TDLC also established the standards competition compliance programmes must meet in order to assess the liability of a firm that was currently implementing them while an anticompetitive conduct took place. 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.

72. Although the Supreme Court upheld the accusation with regard to the infringement, the Court held that the very existence of a competition compliance program cannot be regarded as an exemption from liability, as this faces a legal obstacle. According to the ruling of the Court, exemptions or exonerating circumstances are expressly regulated by law and, in this case, a code of ethics is not considered in DL 211 as a trigger or cause for this effect to proceed. The Court also based its conclusion considering the fact that for leniency applications DL 211 expressly contemplates the benefit of an exemption for the company whose application is approved (immunity). Nonetheless, the Court explicitly stressed and promoted the implementation of compliance measures.

73. Additionally, the Court rejected the mitigating effect of the compliance program with respect to the defendant that had been benefited by the TDLC's decision. The Court based its ruling on grounds that the compliance program the company implemented was not suitable or effective in complying with the preventive purpose that embodies them, a circumstance that reveals, according to the Court, on the one hand, the need for its improvement and, on the other hand, that the conduct deserved a sanction.

Supreme Court Case No. 1531-2018 on Ruling No. 160/2018

74. Another relevant case issued by the Supreme Court was on TDLC's ruling No. 160/2019 (Supreme Court case No. 1531-2018). In this case the Court upheld TDLC's decision to condemn CMPC Tissue and SCA Chile for collusion as these companies agreed to assign market share quotas and to fix sale prices of tissue paper products -disposable and facial tissues, toilet paper, paper towels and napkins- between years 2000 to 2011.

75. In its ruling, the Supreme Court revoked the benefit of immunity granted to CMPC Tissue by the TDLC. The Tribunal had granted immunity to CMPC Tissue in its Ruling No. 160 as this firm applied to leniency to the FNE, confessed its participation in the cartel and collaborated with the FNE during the investigation. The Supreme Court argued that CMPC Tissue -firm that held up to 75% market share while the agreement was in place- should be deprived of said benefit, as it was duly proven that this company not only organized the collusive agreement, but also exercised economic coercion on its competitor SCA in order to lead it to be part of the cartel and, later, to ensure their permanence in the agreement.

Supreme Court Case No. 181-2020 on Decision No. 59/2019

76. In a relevant non adversarial matter, the Supreme Court overruled TDLC's decision regarding the maximum radioelectric spectrum limit (Decision No. 59/2019). In its ruling, the Tribunal stated that it was appropriate to revise the maximum spectrum limit each mobile services operators may have, considering that competitive conditions have changed over time, in terms of the use of new technologies and the spectrum assigned to mobile companies.

77. Therefore, in its decision the TDLC set the following spectrum limits for each of the macrobands:

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 macrobando (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.

78. In its ruling, the Supreme Court overruled the TDLC's decision and decided to lower the cap in Low macroband (less than 1 GHz) from 35% to 32%, following the Telecommunications regulator request during the non adversarial trial before the TDLC. Additionally, the Court eliminated the gradualism to achieve caps that TDLC decided for Medium and High macro band. Hence, the Court stablished the following caps: (a) Low macroband, 32%; (b) Lower middle macroband, 30%; (c) Medium macroband, 30% with no gradualism; (d) Upper middle macroband, no limits were set; (e) High macroband, 25% with no gradualism.

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

79. 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

80. The Merger Control System, that introduced the mandatory merger control exceeding certain turnover thresholds has continued to be successful after 4 years of its implementation. In the year 2020 the FNE assessed 28 mergers, of which 26 were approved without conditions and two with remedies.

81. Additionally, the average length of the investigations was of 25 working days for mergers cleared without conditions pending phase 1; 54 working days for mergers approved with remedies in phase 1 and 107 working days for phase 2 mergers approved in phase 2. The FNE continued to decide mergers in short time periods even in times of sanitary crisis.

2.2.2. Summary of significant/ongoing cases

Acquisition of Cornershop by Uber, first digital platforms' merger case

82. On May 29, 2020 the FNE approved without conditions in phase 2 the acquisition of Cornershop Technologies LLC by Uber Technologies Inc, the first merger between two digital platforms analysed by the FNE. Uber is a company dedicated to the development of multi-sided platforms, providing the service of intermediation of different products and/or services among different users. In Chile, it operates as Uber Rides in the ride-sharing market and as Uber Eats in the food delivery market. Cornershop is a company that operates in the grocery delivery market. Based on the evidence collected in Phase 1, the FNE identified three theories of harm: 1) the loss of a potential competitor in the grocery delivery market; 2) a decrease in the merging parties' incentives to innovate; and 3) the existence of conglomerate effects, mainly linked to the potential use of mixed bundling and increased data collection capabilities. These theories required an in-depth investigation in Phase 2.

83. During Phase 2 the investigation focoused in conglomerated effects considering: (i) the potential input foreclosure through mixed bundling considering the particularities of digital markets, (ii) market foreclosure as a result of further data accumulation, (iii) deterioration of consumers' privacy policies and (iv) deterioration of the conditions of service for delivery partners, shoppers and drivers (for both Uber and Cornershop).

84. In addition, due to the Covid-19 crisis, the FNE extended its analysis to assess whether the contingency could affect the transaction and the market. In this context, the sudden positive demand shocks for online services generated by lockdowns acted as a sort of "natural experiment", which could be used to evaluate whether the current competitive conditions of these markets favor the expansion of actual competitors and/or the potential entry by new firms.

85. In that regard, it was observed that, in response to the increase in consumers' demand for online delivery services, different platforms in the market reacted by accelerating certain investment plans. This new information support some of the conclusions previously reached by the FNE, in terms of anticipating the existence of competing platforms that could exert sufficient competitive pressure to the parties. Nevertheless, the Covid-19 crisis did not change nor determine the results of the investigation and only helped to confirm some of its results.

86. After the investigation, the concerns were discarded and the FNE cleared the merger without conditions.

Acquisition of assets of CGL by Copec, first failing firm defense

87. On June 8, 2020, the FNE approved without conditions the acquisition of assets involving a regional gas station property of CGL by the dominant gas conglomerate in Chile, Copec. The transaction raised antitrust concerns both unilateral and coordinated effects, given the target was one of the few independent gas stations of the relevant grographic market and Copec is the largest gasoline retailer in the country.

88. The parties invoked the Failin Firm Defense (FFD) late into the phase 2 investigation, stating that the target's poor financial situation was due to the crisis caused by Covid-19, but also due to causes that preceded the pandemic. The FNE requested additional information to the parties, such as additional financial statements, the target's accounts and books, tax information, among others.

89. After an analysis of the possible counterfactuals and the probable exit of the target from the market, the FFD was accepted due to the fact that consumers would be in a better position with the merger than without it. Indeed, the following conditions were satisfied: (i) the acquired firm will exit the market because of its financial difficulties, (ii) in the absence of the merger the assets would exit the market and (iii) there is no less anti-competitive alternative acquirer than the notifying party.

Merger between PSA Group and FSA Group, cleared subject to quasi-structural and behavioural remedies

90. On December 31, 2020, the FNE approved with remedies the merger between PSA Group and FCA Group. During the phase 1 of the investigation, the FNE was able to conclude that both companies were close competitors on the light commercial vehicle (LCV) segment, opening an in depth investigation (Phase 2). The competition analysis in phase 2 showed that there were few similar alternatives to the small LCV models commercialized by the parties and that one of the most important barriers to entry was the limited size of the Chilean market.

91. The FNE concluded that the transaction without remedies could significally lessen competition in the market of small LCVs. The parties offered remedies that consisted in the obligation to maintain the import and wholesale distribution of the brands RAM and Citroën in the hands of independent third parties and to maintain the wholesale distribution of Peugeot and Opel brands under the PSA's Chilean subsidiary. Also, considering that PSA and Toyota have a cooperation or joint venture agreement for the development, manufacture and supply of small LCVs in the EMP2 (K9) platform in Europe -where LCVs are produced-, the commitments include the unilateral obligation of PSA to offer Toyota an annual capacity of small LCVs destined exclusively for Chile. This annual capacity can be requested by Toyota at its sole discretion during the term of the cooperation agreement. Additionally, the remedy offered by PSA includes a discount on the transfer prices of the vehicles and on the prices of parts and spare parts associated with these products.

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

3.1.1. Regulatory reform proposal for the Ministry of Transport and Communications

92. The FNE sent a regulatory reform proposal to the Ministry of Transport and Communications in order to modify the requirements that must be met by the international entities that issue in Chile the international driving permit. The proposal specifically eliminates the requirement to demonstrate that an entity has "international recognition" before the ministry that must issue the document, established in Law no. 18.290. The aforementioned requirement is not included in the Geneva Convention on Road Traffic 1949, which contains international standards in this regard.

93. According to the FNE, this requirement, in addition to lacking justification, creates a legal barrier to entry that is difficult to overcome and that restricts competition in this market in which, only one institution currently participates.

94. The proposal is available in Spanish here: https://www.fne.gob.cl/wp-content/uploads/2020/09/arch_2548_2020.pdf.

3.1.2. Law that increases competition on mortgage related insurance was passed in April 2021 based on FNE's proposal (Bulletin Nº 10162-05, Law Nº 21.314)

95. In a much wider bill draft regarding financial and insurance markets regulation, an amendment proposed in March 2020 by the Government included changes to the rules applied to mortgage lenders' auctions for collective life and fire hazard insurances.

96. These changes were proposed by the FNE to the Government in 2019, after an investigation in this market that discovered several regulatory issues that hindered a more intense competition in the auctions that mortgage lenders have to call for contracting mandatory insurances. In the context of widespread vertical integration between mortgage lenders, insurers and insurance brokers, the FNE identified certain regulatory prerogatives of the lenders in the design of the auction and its results (ie., the right to replace the broker of the winning offer with another of their choosing -commonly, their integrated broker- and tailor-made service specifications that increased the cost for non-related brokers), that inhibited the participation of independent brokers with lower bids.

97. The bill was passed in April 2021 and removes several regulatory barriers in this auctions, each described in the FNE proposal of 2019.

3.1.3. Reports issued to the TDLC regarding bidding rules' design and structural remedies related to the construction and operation of publicly-owned transport infrastructures

98. In 2020, considering the relevance to achieve competition when assigning the construction and operation of publicly-owned transport infrastructures (ports, railroad, and bus terminals) and prevent ex-post abuses of dominance, the FNE issued reports to the TDLC in several cases, stating the importance of the bidding rules' design and structural remedies in order to promote competition. In the first of these cases -related to the future bus station in the city of Santiago- the FNE suggested forbidding intercity bus operators to bid and vertically integrate with the administration of the future Santiago's bus station.

99. The reports are available in Spanish here:

https://www.fne.gob.cl/fne-pide-al-tdlc-precisar-aspectos-de-la-nueva-licitacion-del-terminal-n2-del-puerto-de-valparaiso-para-garantizar-la-competencia-en-el-proceso/

https://www.fne.gob.cl/fne-pide-al-tdlc-que-limite-participacion-de-usuarios-relevantes-en-la-futura-concesion-del-principal-puerto-de-aysen/

https://www.fne.gob.cl/fne-solicita-al-tdlc-hacer-mas-competitiva-licitacion-del-puerto-de-puerto-montt-y-establecer-limites-a-participacion-de-actores-de-la-industria-y-usuarios-de-la-infraestructura/

https://www.fne.gob.cl/fne-presento-consulta-al-tdlc-para-que-se-revisen-las-bases-de-licitacion-del-terminal-intermodal-de-pedro-aguirre-cerda-y-pidio-suspender-licitacion/

3.2. TDLC

3.2.1. Decision on 3400-3600 MHz band frequencies in the telecommunications sector (Decision No. 62/2020)

100. In a non adversarial case the TDLC declared that the execution of Exempt Resolutions No. 1289/2018 and No. 1953/2018, issued by the sector regulator regarding the use of 3400-3600 MHz frequency band, does not violate competition insofar the regulator does not exempt current concessionaries of said band from participating in future auctions for the provision of mobile telecommunications services.

101. In addition, the Tribunal stated that possible first-player advantages that Entel and Claro (incumbent mobile operators) could have in relation to the deployment of infrastructure compatible with the 5G network in the aforementioned frequency band do not derive from Exempt Resolutions No. 1289/2018 and No. 1953/2018. Moreover, the Tribunal indicated that the advantages these companies could have, might be related to various elements such as technological progress and strategic decisions of these firms, among others.

3.2.2. Proposition to modify some regulations of Public Work contracts (Proposition 20/2020)

102. A group of construction companies made a request before the TDLC for a recommendation to amend articles 11, 41 and 101 of the Registry of Public Works Contractors ("RCOP"), as these articles might contain requirements that may lessen competition.

- Article 11 regulates the formation of consortia between contractor companies enrolled in the registry of public work contractors.
- Article 41 establishes a restriction so that related companies can not be simultaneously enrolled in the same registry of contractors regulates in the RCOP.
- Article 101 establishes requirements for subcontracting works in a public contract.

103. Based on the information provided in the proceeding, the Tribunal decided to recommend the following amendments to articles 41 and 101 of the RCOP:

1. Replace the restriction that prohibits related companies to be simultaneously enrolled in the same registry of contractors, for a ban on related companies from participating in a same auction.

2. Establish, at a regulatory level, an obligation to report annually any changes in property and management relations between companies enrolled in the registry of contractors.
3. Review regulations on subcontracting in the following sense:
    a. Define the concept of subcontracting in the context of public works contracts.
    b. Eliminate the obligation for subcontractors to be enrolled in the Ministry of Public Works registry of contractors.
    c. Evaluate raising the maximum percentage the holder of a contract can subcontract in a public work contract.

104. Incorporate into the RCOP a dispute resolution mechanism.

3.2.3. Proposal for regulation of interchange rates on card payment systems (Bulletin Nº 13654-03)

105. In July 2020, a group of Senators proposed to regulate the interchange rate (IR) paid by card payment systems acquirers to credit, debit and prepaid card issuers (mostly banks) for each transaction, in the context of a transition from a 3-parties system dominated by a single acquirer (Transbank) owned by issuers and no explicit IR, to 4-parties systems where IR would be set by the card systems (Visa, Mastercard, Amex, etc.).

106. This proposal follows a recommendation made by the TDLC in 2017 (Proposition 19/2017), in the context of a review of the card payments market, and the experience with IR regulation in the EU and several other countries.

107. The original bill was modified after a proposal from the Government, eliminating the IR limits set in the draft and instead designing a new institutional framework and procedures for the periodic regulation and review of IR limits, creating a Commission that would be composed by four experts nominated by the Ministry of Treasure, Central Bank, Financial Markets Commission and the FNE, with gender parity.

108. This bill draft was on the last stage of review by December 31, 2020.

4. Resources of competition authorities

4.1. FNE

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

Annual budget (in your currency and USD)

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

Year	Chilean Pesos	USD[1]
2013	4,507,826,000	6.337.982
2014	4,675,937,000	6.574.345
2015	7,070,663,000	9.941.318
2016	5,816,708,000	8.178.263
2017	6,575,860,000	9.245.613
2018	6,981,152,000	9.815.466
2019	7.208.103.000	10.134.558
2020	7.426.218.000	10.441.227

Number of employees (person-years)

Staff	2014	2015	2016	2017	2018	2019	2020
Economists	20	20	19	31	30	30	27
Lawyers	42	39	42	47	50	51	50
Other professionals	19	23	22	21	11	3	4
Support staff	15	10	11	13	18	19	18
All staff	**96**	**92**	**94**	**112**	**99**	**103**	**99**

4.1.2. Human resources

Areas	2014	2015	2016	2017	2018	2019	2020
Enforcement against anticompetitive practices	45	33	33	39	52	42	44
Merger review and enforcement	8	11	13	22	21	20	15
Advocacy efforts	8	11	11	13	6	6	5
Litigation	12	18	18	15	15	14	13

4.1.3. Period covered by the above information

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

[1] Source Central Bank of Chile: https://si3.bcentral.cl/Bdemovil/BDE/Series/MOV_SC_TC1 Change USD December 30 2020: $711,24.

4.2. TDLC

4.2.1. Resources overall (current numbers and changes over the previous year):

Annual budget (in your 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
2020	2,270,103,000	3,192,831

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

4.2.2. 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
2020	29

4.2.3. Informing separately for each year:

Staff	2015	2016	2017	2018	2019	2020
Economists	6	6	6	7	7	7
Lawyers	8	9	9	10	10	11
Support staff	8	8	8	8	9	11
All staff	22	23	23	25	26	29

4.2.4. Period covered by the above information:

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

112. Change USD December 31 2020: $711 (Central Bank of Chile)

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

113. 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.

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