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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Chile

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

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Chile

Executive Summary

1. This report¹ summarizes 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 2021.
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 rulings and decisions.
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 to undertake competition advocacy. From 2016, the FNE performs preventive merger control in regard 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 rulings and decisions can be challenged before the Supreme Court. The competition law is Decree Law No. 211 and its subsequent modifications.
5. 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 exceptional measures for judicial proceedings. This law altered the normal functioning of the TDLC as it established: (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 of the evidentiary stage in all contentious proceedings before the TDLC, during the constitutional state of exception decreed by the Chilean government due to the pandemic. 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 health emergency (Auto Acordado No. 20/2020) and a protocol that sets the measures to maintain the continuity of the service and to ensure the right of access to justice. In September 2021, the Congress passed Law No. 21.379 that modified Law No. 21.226 allowing, at the request of a party, the resumption of the evidentiary stage in contentious proceedings followed at the TDLC.
6. In the period covered by this report, eighteen adversarial cases and sixteen non-adversarial cases were brought before the TDLC. The amount in the number of new cases represents a 24% decrease in the number of cases compared to the cases brought the previous year (2020). In addition, during 2021 the Tribunal issued three rulings on adversarial cases (all of them on unilateral conducts) and six final decisions related to non-adversarial cases. These nine cases had an average duration of 748 days (measured since

¹ Joint Contribution by the Fiscalía Nacional Económica (“FNE”) and the Tribunal de Defensa de la Libre Competencia (“Competition Tribunal” or “TDLC”)

the case started until the Tribunal issued its final ruling or decision), which represents a decrease of 3% on the average duration of cases compared to rulings and decisions issued during 2020.

7. On the other hand, the FNE initiated 39 investigations during 2021 and filed a variety of complaints, including the first two interlocking directorates cases, the first cartel case which may entail criminal charges and eventually prison for executives once the antitrust case has been successfully tried, the first complaint in which the FNE made an ex post challenge of a merger –a two to one merger in the maritime ferry industry in the Chilean Patagonia– that did not meet the thresholds for mandatory ex ante filing.

8. Secondly, in the year 2021 the FNE assessed 36 mergers, of which 34 were approved without remedies and two with remedies.

9. It is also important to highlight that during the year 2021 the FNE concluded its sixth market study, on the natural gas and liquified petroleum gas markets, and it launched a study on the funerals market.

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

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

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

1.2. Other relevant measures, including new guidelines

11. In May, 2021, as part of its work aiming at improving merger control, the FNE's Mergers Division issued the Guide on Pre-Notifications of Concentrations in order to clarify certain doubts that may arise in the notification process of a merger, avoiding unnecessary delays with transaction costs for merging parties and FNE. Through the Guide, the FNE aims to establish a voluntary, informal, cooperative and confidential stage, pursuant to the Chilean antitrust law (Title IV, DL 211), with the purpose to resolve any specific questions or doubts, substantial and/or procedural, that may be constructively addressed between the FNE and the merging parties before any formal filing.

12. Through pre-notification, the FNE ultimately seeks to establish a stage that will enable the merger control system in our country to be as expedient and effective as possible, seeking to set out procedural guidelines for the parties (how to participate during this stage and what they can expect from it). As a novelty, the Guide grants the parties the right to obtain formal responses to their requests (the FNE self-imposed response-deadlines) and also, the right to request a formal ruling in cases in which the parties are unclear whether their transaction could or not be legally qualified as a merger, from an antitrust standpoint.

13. At the same time, the FNE published a first draft of its new Horizontal Merger Guidelines. This document updates current guidelines issued in 2012, aiming to provide as much certainty and predictability as possible on the conceptual framework that the FNE will use to analyze the competitive impact of a horizontal concentration. The new Horizontal Merger Guidelines also refresh the criteria, types of evidence and analytical techniques used to resolve mergers investigations, quoting the most relevant decisions issued by the FNE during the almost five years of mandatory merger control. The definitive draft shall be published during the first term of 2022.

1.3. Government proposals for new legislation

14. There were no government proposals for new legislation last year.

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

15. During 2021, the FNE brought the following actions before the TDLC:

Cartel among cash and valuables transportation companies (Case No. C-430-2021)

16. In October 2021, the FNE filed a complaint before the Competition Tribunal against the three main cash and valuable's transportation companies that operate in the country, as well as individuals who participated in the cartel facilitating the coordination and execution of anti-competitive agreements.

17. The corporations involved are Brink's Chile S.A. (Brink's), Juncadella Prosegur Group Andina S.A. (Prosegur) and Wagner Seguridad Custodia y Transporte de Valores SpA (Loomis), the three firms' main executives in Chile: Alberto Bálsamo Barreiro (Brink's), Marco Malverde Muñoz (Prosegur) and Cristián Catalán Jerez (Loomis), and the Regional Managers of two of the companies: Martín Matos Pardo (Prosegur) and Rui Sanches Da Silva (Loomis).

18. The FNE accused the aforementioned corporations and individuals of celebrating and executing an anticompetitive agreement that affected the prices offered for their valuable's transportation, ATM, treasury and payment services.

19. The investigation began after an individual applied to the leniency program and the cartel was detected while it was still ongoing in December 2018. The FNE detected evidence of several meetings held by the main executives of the three accused firms, as well as communications via instant messaging platforms and exchanges of spreadsheets that contained prices for their different services, which were later completed by the different parties to the agreement.

20. This cartel was developed after the last modification of the Chilean competition law, enabling the FNE to request the highest individual fines known by the Chilean antitrust system and to take the first step required by law for an eventual criminal prosecution of the cartel.

21. The fines requested by the FNE amount to US\$ 63,4 million; US\$30,5 million for Brink's, US\$25,8 million for Prosegur and US\$6,4 million for Loomis, and fines that range between US\$88 thousand and US\$135 thousand for each of the accused executives. The leniency applicant will be exempted from paying a fine and provided immunity from criminal prosecution.

22. The case is currently pending a judicial decision.

Case against Navimag Carga S.A. for monopolizing maritime route (Case No. C-433-2021)

23. In November 2021, the FNE filed a complaint before the TDLC against Navimag Carga S.A. (Navimag) for having monopolized the maritime route between Puerto Montt and Chacabuco through the acquisition of the only freighter that competed with the accused undertaking in that route.

24. Navimag was accused of breaching the law considering that the acquisition of its only competitor in the route allowed the company to increase its capacity and incentives to unilaterally restrict competition, raising prices and reducing supply.

25. The FNE requested that the TDLC order Navimag to comply with a series of preventive, corrective and prohibitive measures regarding the acquisition of its competitor in order to counteract its position in the market. It also requested the imposition of a fine of approximately US\$760 thousand.

26. In the complaint, the FNE points out that, although the operation did not exceed the thresholds that make its notification mandatory, the market structure changed, as it went from two market actors to one in the aforementioned route.

27. The case is currently pending a judicial decision.

Case against Hernán Büchi Buc, Banco de Chile, Consorcio Financiero, and Falabella for the creation of an illegal interlocking directorate

28. In December 2021, the FNE filed one of the first complaints for infringements of the horizontal interlocking prohibition established in Decree Law No. 211 of 1973. Such a prohibition refers to the simultaneous involvement of the same board member or relevant executive in two or more competing companies. The FNE brought one of these lawsuits against Hernán Büchi Buc, and three companies, i.e., Banco de Chile, Consorcio Financiero, and Falabella.

29. Through an investigation conducted by the Compliance and Enforcement Division, the FNE concluded that since February 26, 2017, the date on which the prohibition acquired legal force, Hernán Büchi Buc has simultaneously held the position of director and/or relevant executive in Banco de Chile, Consorcio, and Falabella. Such a simultaneous involvement existed before the entry into force of the prohibition, it was maintained during the transition period, and it continued after February 2017.

30. The FNE also concluded that these undertakings compete against each other in the supply of banking and insurance products (in the case of Banco de Chile, Consorcio, and Falabella) and the provision of stockbroker services (in the case of Banco de Chile and Consorcio). Additionally, the FNE established that each of these companies had revenues above the threshold established by law (around US\$ 3,700,000 in the last calendar year).

31. In this case, the FNE requested the imposition of fines amounting to more than US\$ 420,000 for Mr Büchi and more than US\$ 3 million for each company. Additionally, it requested the TDLC to order the defendants to cease the interlocking and adopt all the necessary measures to avoid using sensitive information obtained by Hernán Büchi—as board member in Banco de Chile, Consorcio, and Falabella—in any of the other competing companies.

32. The case is currently pending a judicial decision.

Case against Juan José Hurtado Vicuña, Consorcio Financiero, and Larraín Vial for the creation of an illegal interlocking directorate

33. In December 2021, the FNE filed another complaint for infringement of the horizontal interlocking prohibition. In this instance, the FNE brought the complaint against Juan José Hurtado, and two companies, i.e., Consorcio Financiero and Larraín Vial.

34. Through an investigation conducted by the Compliance and Enforcement Division, the FNE concluded that between February 26, 2017, the date on which the prohibition entered into force, and April 29, 2019, Juan Hurtado participated simultaneously as board member of both Consorcio and Larraín Vial. Such a simultaneous involvement existed before February 26, 2017, it was maintained throughout the transition period, and it continued until 2019.

35. The FNE also concluded that these undertakings compete against each other in providing stockbroker services. Additionally, in this case the FNE determined that each of the companies had revenues above the legal threshold.

36. In this instance, the FNE requested the imposition of fines of more than US\$190,000 for Juan Hurtado, approximately US\$1.5 million for Consorcio, and approximately US\$2.2 million for Larraín Vial.

37. The case is currently pending a judicial decision.

TDLC

38. During the period covered by this report, eighteen lawsuits were submitted before the TDLC (adversarial cases). One case was related to a collusive agreement, six referred to abuses of dominant position, one referred to public administration acts that undermine competition, two referred to unfair competition, one referred to a merger that was not notified to the FNE as it did not exceed the notification thresholds but which allegedly produced anticompetitive effects, two referred to breaches on interlocking directorates, and the remaining five cases were about preliminary measures for the preparation of lawsuits.

39. Also, the TDLC issued three final decisions or rulings on adversarial cases. All these cases were lawsuits filed by private parties, and the average length of these proceedings was 1,228 days. One ruling was condemnatory for unilateral conducts (abuse of dominance and unfair competition) [Ruling No. 178/2021], while in the other two cases the TDLC acquitted the defendants [Ruling No. 176/2021 and Ruling No. 177/2021]. Rulings No. 176/2021 and No. 178/2021 were challenged before the Supreme Court.

Decision on lawsuits filed by groups of taxi drivers against ridesharing apps for abuse of dominant position and other unilateral conducts (Ruling No. 176/2021)

40. In case C 319-17 two groups of taxi drivers filed lawsuits against Uber Chile, Cabify and EasyTaxi, three ride-sharing apps companies, accusing them for having committed the following unilateral conducts: (i) predatory pricing (an abuse of dominance conduct); and (ii) unfair competition for breaching the rules governing public passenger transportation in order to achieve or maintain a dominant position in the market.

41. In its ruling (Ruling No. 176/2021), the Tribunal concluded that plaintiffs did not prove their claims during the trial. Regarding predatory pricing accusations as an abuse of dominance act, the Tribunal indicated that plaintiffs did not provide any evidence on the elements that must be present to prove there is a dominant position, such as market shares of the defendants, the existence of barriers to entry, etc. With regard to the accusation concerning unfair competition for breaching public transport regulation, the Tribunal stated

that the judgment of anticompetitive effects generated by violations of regulations different from antitrust matters requires “prejudiciality”, which means that in order to analyze the existence of anticompetitive effects, first it is required that said violations have been previously sanctioned by the competent authority through an administrative or judicial conviction. However, evidence provided by plaintiffs did not allow such prejudiciality to be proven. Hence, accusations of predatory pricing and unfair competition were rejected, and in consequence, the Tribunal acquitted all defendants.

42. Both groups of plaintiffs challenged the TDLC’s judgment before the Supreme Court. The Supreme Court’s ruling was still pending by December 31, 2021.

Decision on lawsuit against “Subsecretaría de Pesca” for the establishment of barriers to entry in fishing quotas auctions (Ruling No. 177/2021)

43. A group of industrial fishing companies (“Sonapesca”) accused Subsecretaría de Pesca (“Subpesca”), the public agency that regulates fishing activities in Chile, for the establishment of barriers to entry in fishing quota auctions.

44. The plaintiffs claimed that the fact that Subpesca reserved between 40% and 60% of the auctioned lots to small and middle size fishing firms was anticompetitive as it acted as a barrier to entry for bigger firms. Sonapesca also argued that the fact that after awarding the lots, some small and middle size firms sold their fishing quotas to bigger firms was a proof that there was an allocative efficiency problem as awardees of auctioned lots were not the firms that most valued them.

45. On the other hand, the defendant argued that the Chilean Fishing Law establishes that the access of small and middle size fishing firms to fishing activities is one of its fundamental principles, so it was in the application of such principle that Subpesca reserved a percentage of the auctioned lots to those kind of firms.

46. To evaluate the impact that the reserved lots had on competition, the Tribunal defined the relevant markets affected by each auction and then evaluated if the percentage of the lots reserved by Subpesca had the potential to affect competition in those relevant markets.

47. As the auctions awarded extraction rights in the following fishery units²: (i) “sardina” between Region V and Region X of Chile³; (ii) “jurel” between Regions XV - II, III - IV, V – IX and XIV - X; (iii) “congriso dorado” between parallels 41° 28 south latitude to 47° south latitude and 47° south latitude to 57° south latitude; (iv) “merluza del sur” between parallels 41° 28 south latitude and 47° south latitude, and between 47° south latitude and 57° south latitude; (v) “merluza común” between the city of Coquimbo and parallel 41° 28 south latitude; and (vi) “anchoveta” between Regions XV – II; the Tribunal decided that each fishery unit corresponded to a specific relevant market. On this regard it is worth to mention that according to Sonapesca’s lawsuit, each auction was a relevant market, so according to Sonapesca, Subpesca had reserved between 40% and 60% each relevant market to small and middle size firms.

48. According to the auctions rules, in those relevant markets defined by the TDLC (fishery units), the auctions awarded extraction rights that represented a 15% of the total

² Each fishery unit refers to the right to extract a specific kind of fish in a certain geographic area.

³ Chile is divided in sixteen administrative regions that range from north to south in the following order: Region XV, Region I, Region II, Region III, Region IV, Region V, Region VI, Region VII, Region XVI, Region VIII, Region IX, Region XIV, Region X, Region XI and Region XII.

extraction rights of each relevant market, whereas Subpesca reserved between 40% to 60% of that 15% to small and middle size fishing firms.

49. Given this analysis, the Tribunal concluded that the amount of auctioned lots reserved to small and middle size firms was not enough to have the potential to generate anticompetitive effects in the market because, even in the event that a single small or middle size firm was awarded all reserved lots in a specific fishery unit, that firm would not reach a share greater than 7,5% in that relevant market. This prospective analysis assumes the small or middle size firm that eventually gets the lots is the one with the highest market share before the auction, which is a conservative assumption.

50. Accordingly, the Tribunal acquitted Subpesca and rejected Sonapesca's law suit.

51. Sonapesca did not challenge the TDLC's judgment before the Supreme Court.

Decision on lawsuit against "Correos de Chile" for abuse of dominant position and unfair competition (Ruling No. 178/2021)

52. In ruling No. 178/2021, the TDLC upheld the lawsuit filed by Servicios de Correspondencia Envía Ltda. ("Envía") against "Correos de Chile" -a State owned postal correspondence company-. In said lawsuit, Envía accused Correos de Chile for the execution of the following unilateral conducts in the market of postal correspondence for public and private institutions in Chile: (i) abuse of dominance by granting special discounts to Envía's clients, discounts that could have exclusionary effects on Envía; (ii) unfair competition practices in order to maintain or increase its dominant position in the market.

53. In order to analyze Envía's accusations, first the Tribunal concluded that the evidence provided by the parties showed that Correos de Chile had a dominant position in the market since: (i) Correos de Chile had high market shares (above 60%); (ii) there were barriers to entry to the market; and (iii) there was no evidence of the existence of countervailing power that could mitigate Correos de Chile market power.

54. Regarding the accusation of exclusionary discounts, the Tribunal stated that this kind of conduct can be declared anticompetitive even if discounts offered to competitors' clients generate prices that are not below a relevant measure of costs (as it would be the case of a predatory pricing scheme), which was one of Correos de Chile's defenses. Additionally, the analysis carried out showed that special discounts offered exclusively to three former clients of Envía, who switched to Correos de Chile because of those special discounts offered to them, were not fully justified in terms of cost savings nor had other objective justifications. Hence, the Tribunal concluded that said discounts could generate exclusionary effects in a market where economies of scale, among other market characteristics, play a relevant role. Consequently, the accusation of exclusionary discounts offered by Correos de Chile to three of Envía's former clients was fully accepted and the defendant was sanctioned for it.

55. With respect to the accusation of unfair competition, the Tribunal accepted said accusation as it was proved that Correos de Chile had pressured a potential client of Envía in order to discourage him from signing a contract with Envía. In particular, the TDLC stated that it is anticompetitive to condition a commercial offer to a client subject to the condition that he does not contract other services with another supplier.

56. Therefore, based on: (i) the economic benefit obtained by the defendant with the accused behaviors; (ii) the dissuasive effects that a fine must have; and (iii) the seriousness of the infringements, the Tribunal imposed a fine of UTA 6.000 (US\$ 4.5 million) to Correos de Chile.

57. Correos de Chile challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2021.

Supreme Court

58. During the period covered by this report (2021), eleven adversarial and non-adversarial rulings and decisions of the TDLC were challenged before the Supreme Court. Also, during this period, seven competition matters (adversarial and non-adversarial) were decided by the Court. From these seven decisions: one case was declared inadmissible (Supreme Court case No. 14395-21); two cases were rejected by the Court, meaning that previous decisions issued by the TDLC were upheld (Supreme Court cases No. 76009-21 and No. 94189-20) and; four decisions of the Tribunal were modified in some aspect by the Court (Supreme Court cases No. 22270-21, No. 1181-20, No. 125657-20 and No. 138221-20).

59. Only one of the seven decisions issued by the Supreme Court is related to a condemnatory judgment issued by the TDLC, decision where the Court upheld the Tribunal's ruling (Supreme Court case No. 94189-20). The rest of the Court's decisions were related to procedural and admissibility matters.

60. Relevant cases issued by the Court:

Supreme Court Case No. 94189-20 on Ruling No. 173/2020

61. In the only decision of the Supreme Court related to a condemnatory (or non-condemnatory) judgment issued by the TDLC, the Court upheld the Tribunal's ruling.

62. In this case, the FNE accused the National Professional Football Association ("ANFP") for establishing 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.

63. The ANFP presented three defenses against the FNE's accusation: (i) the TDLC has 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.

64. In its ruling, the TDLC upheld FNE's accusation, and stated that the fee was anticompetitive because it acted as a barrier to entry. Accordingly, the ANFP was condemned to a fine of US\$ 2.7 million (amount that is 37% lower than the fine requested by the FNE in its lawsuit) and was ordered to cease the collection of the fee.

65. The ANFP and the FNE challenged the TDLC's judgment before the Supreme Court. In its ruling, the Court upheld the TDLC's decision and rejected the allegations of the ANFP as it stated that: (i) the TDLC was competent to hear the FNE's lawsuit; (ii) the action to pursue eventual sanctions for this conduct was not prescribed because the ANFP was still charging the fee to promoted teams; (iii) and the fee was anticompetitive because it did act as a barrier to entry. The Court also rejected the FNE's allegation related to the amount of the fine imposed by the TDLC because it considered that the amount established by the Tribunal was adequate given the elements of the case.

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

67. In 2021, the Mergers Division received 46 notifications: 36 of them were investigated, while ten were dismissed due to substantive aspects (i.e. the transaction could not be legally qualified as a concentration); and procedural aspects (i.e. the parties did not complement the notification within the legal term, etc.). In the same period, the FNE concluded 36 merger investigations, all of them were cleared: 34 without conditions and two subject to remedies.

68. The average duration of merger investigations was 26 days for unconditional approvals, and 259 days for conditional approvals.

69. The FNE's merger statistics are published in its website: https://www.fne.gob.cl/wp-content/uploads/2022/01/Estadisticas_Division_Fusiones_2021.pdf

2.2.2. Summary of significant/ongoing cases

Acquisition of CGE by State Grid, cleared unconditionally

70. On March 31, 2021 the FNE cleared unconditionally the acquisition of Compañía General de Electricidad S.A. (CGE) and CGE Servicios S.A., mainly engaged in the transmission and distribution of electricity, with widespread presence in many geographical locations in Chile, by State Grid International Development Limited (SGIDL), a company controlled by Assets Supervision and Administration Commission, a state-owned enterprise of the People's Republic of China.

71. Following the investigation, the FNE concluded that the merger would not substantially lessen competition in the electricity generation, transmission and distribution markets, as well as in the non-regulated services associated to distribution or the commercialization of standard distribution transformers and compact measuring equipment.

72. The analysis carried out by the FNE included not only the activities of CGE and SGIDL, but also those of the related entities that are part of their respective business groups, since Chile's merger control regime entrusts the FNE to determine whether, as a result of an acquisition, structural changes could be generated in the market that provide the buyer the incentives and the ability to raise the prices of products or services, decrease their quality, block access or affect other competition variables resulting in consumer harm. Other considerations or public interests, such as geopolitical, national defense and security interests, are excluded from the legal assessment that the FNE is legally mandated to perform when analyzing a transaction.

Acquisition of GrandVision by EssilorLuxottica, conditioned to structural and behavioral remedies

73. On April 9, 2021 the FNE cleared in phase 2, conditioned to both structural and behavioural remedies, the acquisition of Grandvision, a globally active eyewear retailer, by EssilorLuxottica, the largest supplier of ophthalmic lenses and eyewear worldwide, and

owner of a large portfolio of well-known brands. In Chile, the transaction implied the merger from 3 to 2 players. The Parties offered in phase 1 a structural proposal for commitment in addition to accessory behavioral remedies regarding: (i) the divestiture of two EssilorLuxottica's optical chains; (ii) as well as the execution of a supply agreement; and (iii) Chinese walls regarding the divested entities. The aforementioned was considered to be insufficient by the FNE in order to offset the lost competition brought about by the merger, therefore raising competition concerns.

74. The FNE's horizontal risks assessment concluded that an increase in prices in the optical products in retail was expected under the initial remedies proposal. The optical retail chains that would have been owned by EssilorLuxottica after the merger are currently the two main players in the retail market, and are also perceived by consumers as the closest competitors. Additionally, there were no mitigating elements as expected new entry, repositioning or expansion of existing actors in the market, or efficiencies generated by the merger that could have been enough in order to offset the identified risks. The vertical risks assessment concluded that EssilorLuxottica would have had the ability and incentives to increase prices of frames, sunglasses and lenses processing services provided to the divested optical retail chains, which in consequence would have generated an increase in prices in the optical retail chain segment.

75. Considering the antitrust concerns raised by the FNE, the parties offered remedies consisting in the execution of a repurchase regarding GrandVision assets in Chile by Hal. This repurchase would avoid concentration in Chile in the retail of optical products in optical chains. Additionally, between September 2020 and March 2021, the parties offered several proposals to guarantee the competitive capability of Rotter & Krauss after the merger, which included: (i) obligation to supply Rotter & Krauss with GrandVision's own brands, under same conditions currently applied; (ii) obligation to supply Rotter & Krauss with EssilorLuxottica brands, under same conditions currently applied; (iii) support agreement in information technology services; (iv) limitations to access Rotter & Krauss's sensitive information for the whole remedies period; and (v) prohibition for EssilorLuxottica to hire Rotter & Krauss key managers.

Acquisition of OK Market by Oxxo, cleared subject to structural and behavioral remedies

76. On November 26, 2021 the FNE cleared in Phase II, subject to compliance of structural and behavioral remedies, the acquisition of OK Market S.A., a convenience store chain controlled by one of the main supermarket chains in Chile (SMU), by Mexican business grupo Femsá (Fomento Económico Mexicano S.A.B de C.V.), controller of Oxxo, a convenience store chain with activities in Mexico, Perú, Colombia and Chile. The transaction involved the purchase of the 126 OK Market convenience stores, which are located in three regions of Chile and, during the investigation, the FNE concluded that the concentration would provide the acquirer with the incentives and ability to raise prices. In addition, the FNE verified that, without the transaction, the companies involved planned to open new stores in areas where the other company was already active, therefore, the acquisition would reduce dynamic competition by eliminating OK Market as a potential competitor in new markets, and that the concentration would entail the closure of some stores currently operated by OK Market.

77. The FNE considered that the merger would raise antitrust concerns particularly in several geographical markets in which the parties would face low or no competitive pressure after closing. Aiming at addressing those concerns, OK Market and OXXO offered a structural remedy consisting in the divestiture to a suitable buyer of a package of assets comprised by 16 convenience stores of both brands, located in concerned markets. The

divestiture will take place once the FNE approves the identity of the suitable buyer. Since the merger control regime started operating in Chile in 2017, this is the first case the FNE issues a conditional clearance subject to an up-front-buyer solution. Additionally, the companies offered to withdraw all exclusivity clauses agreed in the stores' lease agreements (of both brands), together with a 10-year commitment not to include such clauses in future contracts with third parties. Also, the parties offered the obligation to keep open certain convenience stores that they planned to close upon completion of the transaction, for a period of 36 months. To ensure compliance, the FNE will monitor the remedies through its newly-created Enforcement Division.

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 Energy

78. During 2021 the FNE proposed regulatory changes to the Government through its gas market study. This report performed a comprehensive market study of the liquified petroleum gas (LPG) and natural gas (NG) markets. It covered both the public and private sector and the whole supply chain, from the production and import of gas to the sale or dispensation to final consumers. Among the many conclusions, the study recommended the prohibition of dispensation by LPG wholesalers in the retail market, open access regulation in NG and the modification of profit calculation of NG distributors.

79. The proposal is available in Spanish here: https://www.fne.gob.cl/wp-content/uploads/2021/12/1.-Informe_Final_publicado.pdf

Law that regulates the interchange fees for payment cards was passed in July 2021 (Law N° 21.365)

80. With the change in the Chilean payment card industry from a three-part model to a four-part model, the FNE and TDLC detected a series of distortions to competition caused by the Interchange Fees discretionally set by the Card Brands that were being applied since September 2019 for one of the largest issuing banks, and since April 2020 for all issuing banks.

81. The FNE requested the TDLC, in June 2020, to issue general instructions to set limits to Interchange Fees, which was rejected by the TDLC. Notwithstanding, Congress took note of the concerns from FNE and TDLC, and initiated a bill to regulate Interchange Fees.

82. After an amendment sent by the Government, this bill became a law in July 2021, which creates a Committee (technical, autonomous and specialized agency) formed by expert public officers nominated by the Ministerio de Hacienda (Secretary of the Treasury), the Central Bank, the Financial Market Commission (the sector regulator), and the FNE, with gender parity. This Committee regulates the limits of the Interchange Fees through a participative proceeding, open to all those concerned, and they must be reviewed at least every three years. The preliminary first IF limit was published in February 2022.

Rule that increases competition in mortgage-related insurances was passed in April 2022 based on FNE's proposal (General Rule N° 469, Financial Market Commission)

83. A rule enacted in April 2022 by the Financial Market Commission culminated a process of changes in the regulation of mortgage lenders' auctions for collective life and fire hazard insurances.

84. This rule specifies how the legal changes are going to be applied in this market, following the mandates of a law published in April 2021 (Law N° 21.314). The aforementioned law, among other issues, incorporated regulatory changes proposed by the FNE to the Government in 2019 in order to promote more intense competition in the auctions that mortgage lenders have to call for contracting mandatory collective insurances.

85. According to the Financial Market Commission, they expect that this rule will promote participation in tenders, directly benefiting mortgage debtors with better price conditions in the mortgage insurances.

3.2. TDLC

3.2.1. Decision on acquirer margin in a Four-Party card Scheme (Decision N° 67/2021)

86. In a relevant non-adversarial case, Transbank S.A. ("TBK"), an integrated payment processor and acquirer that for decades had the monopoly in the card payment industry in Chile, asked the Tribunal to review if its new tariff scheme was in accordance with antitrust rules.

87. To understand this case, it is worth to mention that before the case started, TBK had previously established merchant discounts (MD), which is the merchant service rate that TBK charges to its clients. Through this merchant discount, TBK implicitly set two of the three elements that compose the fee: the interchange fee and the margin acquiring. Since 2017, motivated by a regulatory reform, competition in the segment of acquiring is allowed in the card payment industry in Chile. After this reform, TBK moved from a three-party to a four-party card scheme, which implies that the interchange fee, the main component of the merchant discount, now would be set directly by international card systems providers. In a four-party card scheme, TBK is only responsible for the component associated with the acquiring margin.

88. It was in this context that TBK submitted an inquiry to the TDLC in order to check -or review- if the tariff scheme that was planning to adopt in the four-party card scheme was in accordance with antitrust rules.

89. TBK's clients are merchants and Payment Services Providers ("PSP"). The fee proposed by TBK to be charged to those clients consists in a percentage of the value of each transaction. TBK proposed that this percentage should be structured based on its clients characteristics: (i) the quantity of monthly card-based payments transactions; and (ii) the average value of the tickets associated to the transactions.

90. In its decision, the Tribunal approved the scheme tariff proposed by TBK subject to the following conditions:

- The acquirer margin shall be fixed. This means TBK cannot charge different prices to merchants that have the same number of transactions and average value of the ticket. In very exceptional cases, TBK is allowed to apply discounts to meet the

price offered by a competitor, provided that FNE is previously informed of those discounts.

- Tariffs shall be set exclusively according to the costs associated with acquiring and processing activities. Discounts based on the number of transactions are allowed, but they shall be constant across all possible segments of ticket value.
- For a given segment of number of transactions, fees shall be increasing at a decreasing rate. The acquiring margin difference between the upper and the lower threshold of two consecutive segments shall not be greater than 3%.
- Tariffs shall be greater than the average variable cost associated with the activities of acquiring or payment processing, depending on the type of consumer charged (if it's a merchant or a PSP). The estimations of these costs shall be done with the information of the immediately previous year.
- Tariffs per transaction associated with prepaid and debit cards, shall be lower than tariffs per transaction associated with credit cards.

4. Resources of competition authorities

4.1. FNE

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

Annual budget

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

Table 1. Annual budget (in your currency and USD)

Year	Chilean Pesos	USD
2014	4,675,937,000	5,499,485
2015	7,070,663,000	8,315,981
2016	5,816,708,000	6,841,174
2017	6,575,860,000	7,734,031
2018	6,981,152,000	8,210,705
2019	7.208.103.000	8,477,628
2020	7.426.218.000	8,734,159
2021	6.833.691.000	8,037,273

Source: Central Bank of Chile: https://si3.bcentral.cl/Bdemovil/BDE/Series/MOV_SC_TC1
Change USD December 30 2021: \$850.25

1.1.1.1. Number of employees

Table 2. Number of employees (person-years)

Staff	2015	2016	2017	2018	2019	2020	2021
Economists	20	19	31	30	30	27	27
Lawyers	39	42	47	50	51	50	44
Other professionals	23	22	21	11	3	4	6
Support staff	10	11	13	18	19	18	25

All staff	92	94	112	99	103	99	102
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4.1.2. Human resources

Table 3. 4.1.2. Human resources

Areas	2015	2016	2017	2018	2019	2020	2021
Enforcement against anticompetitive practices	33	33	39	52	42	44	45
Merger review and enforcement	11	13	22	21	20	15	14
Advocacy efforts	11	11	13	6	6	5	3
Litigation	18	18	15	15	14	13	10

4.1.3. Period covered by the above information

92. 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 your currency and US\$)

Year	Chilean pesos	USD
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
2021	2,119,502,023	2,493,532

4.2.2. Number of members

Table 5. 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
2021	30

4.2.3. Informing separately for each year:

Table 6. Informing separately for each year:

Staff	2016	2017	2018	2019	2020	2021
Economists	6	6	7	7	7	7
Lawyers	9	9	10	10	11	12
Support staff	8	8	8	9	11	11
All staff	23	23	25	26	29	30

4.2.4. Period covered by the above information:

93. The budget for the TDLC refers to the period of January to December of each year. Staff as of December 31st of each year.

94. Exchange rate USD December 30 2021: \$850 (Central Bank of Chile)

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

95. 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.

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