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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Chile

-- 2022 --

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

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Chile¹

Executive Summary

1. This report summarizes recent developments in competition law and policy in Chile. It also addresses the main precedents related to competition law enforcement, competition advocacy activities, as well as other developments that occurred during 2022.
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 of Justice 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 transactions which surpass certain thresholds.
4. In November 2022 Ricardo Riesco Eyzaguirre, Chief of the Fiscalía Nacional Económica, finished his period as head of the FNE. Since then, Mónica Salamanca Maralla has replaced him as acting Fiscal Nacional Económico.
5. On the other hand, the TDLC is an independent judicial body with exclusive jurisdiction to decide antitrust lawsuits, including the resolution of adversarial matters (*e.g.*, complaints brought by the FNE or private parties, regarding anticompetitive behaviour) 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.
6. During 2022 judge Enrique Vergara Vial, Chairman of the TDLC, finished his term. As his replacement, the President of Chile appointed Nicolás Rojas Covarrubias as judge and Chairman of the TDLC for the 2022-2028 term.
7. In the period covered by this report, thirty-four adversarial cases and sixteen non-adversarial cases were brought before the TDLC. The amount in the number of new cases represents a 62.5% increase in the number of cases compared to the cases brought the previous year (2021). In addition, during 2022 the Tribunal issued six rulings on adversarial cases (one cartel and five of them on unilateral conducts) and nineteen final decisions related to non-adversarial cases. These twenty-five cases had an average duration of 574 days (measured for this report since the case began until the Tribunal issued its final ruling or decision), which represents a decrease of 19.6% on the average duration of cases compared to 2021.
8. In the same period, the FNE initiated 26 investigations during 2022 and filed a variety of complaints and queries before the TDLC, including, first, a lawsuit against two companies for having provided false information in a procedure of merger control and for failing to comply with a remedy adopted during the approval of that process, and second, a query filed in a non-contentious process before the TDLC, consulting the competitive effects of joint storage contracts of liquid-fuels between competitors.

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

9. Secondly, in the year 2022 the FNE assessed 34 mergers, of which 31 were approved without conditions, two subject to remedies, and one was blocked.
10. It is also important to highlight that during the year 2022 the FNE published the preliminary findings of its seventh market study on the funerals industry.

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

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

11. During 2022 there were no new legal provisions on competition law.

1.2. Other relevant measures, including new guidelines

12. In September 2022, as part of its work aimed to improve compliance with Chilean antitrust law, the FNE's Remedies and Compliance Division initiated a public consultation process to update the FNE's Competition Law Compliance Programs Guidelines. The Guidelines, launched in 2012, intended to introduce the primary directives that a Competition Law Compliance Program had to include, according to the FNE. As such, they were an institutional landmark concerning competition law compliance in Chile. In this regard, the TDLC has explicitly considered them in all convicting judgments in cartel cases handed down since 2014, imposing the obligation to adopt compliance programs which at least include the requirements established by the Guidelines, plus other ones set by the H. TDLC. Moreover, the Supreme Court has confirmed these obligations, adopting them entirely or with minor modifications.
13. However, the FNE considered that the developments in the Chilean case law, plus international developments, justified an evaluation and update of the Guidelines. Thus, it opened the current public consultation process and received feedback from foreign agencies, international associations, legal offices, and other interested parties on a series of issues, including compliance culture, the essential requirements of a compliance program, the evolution of compliance standards and practices, best practices when detecting illegal behavior, among others, until November 2022. The FNE is analyzing the feedback received and preparing a draft version of the new Guidelines.
14. Additionally, in November 2022, the FNE released the "Guide for the Preparation of Tender Requirements for Public Interurban Bus Terminals" as part of its commitment to promote competition. This guide consolidates and clarifies the principles employed by the FNE during the evaluation of tender specifications for interurban bus terminal projects, ensuring compliance with Chilean antitrust law.
15. Recognizing the strategic significance of bus terminals in the passenger transport industry and their potential to create dominant positions, the FNE aims to provide guidance to Municipalities, who are responsible for issuing these tenders. The ultimate objective is to facilitate a competitive process that fosters rivalry between bidders, leading to positive outcomes for both transport companies and passengers. Furthermore, the guide enhances certainty by outlining the evaluation criteria the FNE will apply in future TDLC cases related to these tenders.
16. This guide was developed with careful consideration of recent decisions from the TDLC. Additionally, it benefitted from the input of the Norms and Operations Division of the Undersecretariat of Transport and underwent a thorough public consultation process, engaging multiple Municipalities and Associations of Municipalities.

1.3. Government proposals for new legislation

17. 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

18. During 2022, the FNE brought the following actions before the TDLC:

Query about coordination and exclusionary risks in liquid-fuel storage and distribution markets (Case No. NC-517-2022).

19. In November 2022, the FNE filed a query in a non-contentious process in TDLC, consulting if the joint storage contracts of liquid-fuels between Copec S.A., Empresa Nacional de Energía (Enex), y Esmax Distribución SpA (Esmax) and the execution of those, generate coordination risks and exclusion of other competitors in the liquid-fuel storage market (*upstream market*) and related markets of wholesale and retail distribution (*downstream market*).
20. The FNE held that the companies involved in those contracts have built and operated joint storage plants throughout the country which were ruled by different agreements of joint operation. At the same time these firms, which also own their plants, have agreements to share storage capacity and to loan liquid-fuel between them, in any plant, regardless the joint or individual property of those. These contracts have been in force for over 40 years.
21. The investigation of the FNE started with a complaint of a competitor of the queried companies, which has been impeded to access to the jointly owned storage plants, and therefore, it could not compete in the market of liquid-fuel distribution.
22. During the probes, the FNE detected that the access to the plants was closed to any other company different from the investigated firms. In addition, the queried firms shared information without safety protocols about volumes, stocks, fuel withdrawals and loans, increasing the coordination risks that could lead to a cartel.
23. Considering those facts, the FNE filed a query to be resolved by TDLC. This type of process has a preventive purpose, because the facts, acts or contracts subject to consultation could be adjusted according to the measures ordered by the tribunal, and it does not pursue imposing a fine to the firms involved in the conduct.
24. In particular, the FNE request measures from passive participations to disinvestment of the joint-owned plants. Also, other behavioral remedies were requested, like changes in the liquid fuel dumps protocols subscribed between the investigated firms and the main supplier in Chile, Empresa Nacional de Petróleo (ENAP).
25. TDLC rejected the query because considered that it should be discussed in a contentious process. The FNE filed an appeal before the Supreme Court, and its final decision is still pending.

Request for pricing of services related with drinking water supply and disposal of wastewater (Case No. NC-518-2022)

26. In November 2022, the FNE submitted a petition before the TDLC within the framework of the provisions of article 12 A of the Law on Sanitary Tariffs, a sectoral law that regulates the prices of the public sanitary services companies that produces and distributes drinking water, and treatment and disposal of wastewater. In general, these companies are private in Chile.
27. The article 12 A of the Law on Sanitary Rates for public services of drinking water or treatment and disposal of wastewater, contemplates a non-contentious procedure, which allows to the TDLC to determine that certain services related to the drinking water supply or treatment and disposal of wastewater have "monopolistic character", requesting that the sectorial authority Superintendencia of Sanitary Services or "SISS" be ordered to set prices for said services.
28. The FNE's petition contemplated 15 associated services provided by drinking water companies, from different areas of their production chain (for example, services associated with distribution, production, treatment, extensions of the operational territory of these companies, administrative services), in which the FNE detected monopolistic provision conditions or insufficient competition. The last precedent for this type of procedure in Chile dated back to 2004. The case is currently pending a judicial decision.

Case against Cadena Comercial Andina for providing false information in a merger control procedure (Case No. C-475-2022)

29. In December 2022, the FNE filed a complaint before the TDLC against Cadena Comercial Andina SpA (CCA), parent company of Oxxo Chile and OK Market, for having provided false information in the procedure of merger control through which the latter chain was acquired, and for failing to comply with a remedy adopted during the approval of that process.
30. Through an investigation conducted by the Compliance Enforcement Unit, the FNE concluded that CCA provided false information when notifying the acquisition of OK Market in 2020, failing to provide all the information required by the regulations governing the procedure even though it was in its possession.
31. The type of information that was not provided by the company consisted in studies, analysis, reports and surveys that contained information regarding the characteristics of the market affected by the operation, required in the Notification Regulations. This information would have made it possible to determine more quickly the relevant geographic market involved, to size the average purchase ticket of end consumers and to review at an early stage of the investigation the competitors considered to be the closest by Oxxo Chile.
32. On the other hand, after the approval of this acquisition, the parent company of Oxxo Chile and OK Market failed to comply with one of the remedies it offered during the procedure and to which the approval of the FNE was subject. This consists of sending letters to inform the unilateral and free waiver of the exclusivity clauses agreed in lease contracts of properties where its convenience stores are located, as well as the commitment not to request, require and/or consent to this type of clauses in future contracts for a term of 10 years after the acquisition.
33. In this regard the FNE has stated in its complaint that the remedies imposed by the FNE to approve the acquisition 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.

34. The case is currently pending a judicial decision, but the fines requested by the FNE amount to approximately US\$ 6,5 million.

Request from the FNE for issuance of General Instructions in the negotiation and execution of agreements between medical providers and health insurance companies (Isapres). (Case No. NC-519-2022)

35. On December 2022 the FNE requested the TLDC to initiate a procedure to analyze the need to issue general instructions on the negotiation and execution of agreements between medical providers and health insurance companies and, in the event of doing so, to determine the scope and content of such instructions, with the object to promote competition and avoid conducts against it.
36. In the request, the Prosecutor's Office asked the Court that these instructions, which should apply for an initial period of 5 years, must obligate doctors to negotiate individually with the health insurances companies the prices of their services and that only in exceptional cases, such as when they have a real and effective integration of their operations, they can jointly establish prices.
37. This is the first time that the FNE asks the TLDC to issue general instructions in this market, and is motivated by the fact that over the years there has been multiple cases in which the TDLC and the Supreme Court have analyzed coordinated actions by doctors to negotiate with health insurances companies and, in such cases, the defenses of those involved have argued a supposed ignorance about what is prescribed by the legislation, or that they have acted in good faith.
38. Moreover, the FNE states in its request that "the joint fixing of medical tariffs for the private health market has not been able to be corrected by the experiences of contentious cases and the aforementioned resolutions", and it is a reiterated problem which demands high investigations costs for the FNE and for individuals who must provide information in the context of these investigations.
39. In this sense, the request made to the TDLC is in accordance with the FNE function of promoting competition, because the instructions would provide the necessary guidelines to prevent anti-competitive actions from taking place by doctors, in such a way of "allowing its recipients to know the limits of the legality of their actions at a lower cost than the study of jurisprudence demands".

TDLC

40. During the period covered by this report, thirty-four lawsuits were submitted before the TDLC (adversarial cases). Twenty-two cases were related to abuses of dominant position, one referred to regulatory decisions that undermine competition, two referred to unfair competition, one referred to the submission of false information and non-compliance with remedies imposed on a merger transaction and the remaining eight injunctions and pre-trial discovery measures.
41. Also, the TDLC issued six final decisions or rulings on adversarial cases. Five cases were lawsuits filed by private parties and one was filed by the FNE, and the average duration of these proceedings was 929 days, which represents a decrease of 18% on the average duration of cases compared to 2021. One ruling was condemnatory for coordinated conducts [Ruling No. 179/2022], one ruling was condemnatory for unilateral conducts (failure to comply with a previous court decision) [Ruling No. 184/2022] and one ruling upheld the prohibition of a merger by the FNE in a special review process [Ruling No. 182/2022], while in the other three cases the TDLC acquitted the defendants [Ruling No.

180/2022, Ruling No. 181/2022 and Ruling No. 183/2022]. Rulings No. 179/2022, No. 181/2022, No. 182/2022 and No. 184/2022 were challenged before the Supreme Court.

42. On the other hand, the TDLC issued nineteen final decisions related to non-adversarial cases and the average duration of these proceedings was 462 days, which represents a decrease of 9% on the average duration of cases compared to 2021. Eight decisions were inquiries by parties or the FNE [Decision No. 69/2022, Decision No. 70/2022, Decision No. 71/2022, Decision No. 72/2022, Decision No. 73/2022, Decision No. 74/2022, Decision No. 75/2022, Decision No. 76/2022], one issued a General Instruction [General Instruction No. 5/2022] and ten were mandatory reports, five of them in regard to bidding rules for awarding port concessions [Report No. 21/2022, Report No. 22/2022, Report No. 23/2022, Report No. 24/2022, Report No. 25/2022] and five of them regarding Extended Producer Responsibility (EPR) [Report No. 26/2022, Report No. 27/2022, Report No. 28/2022, Report No. 29/2022, Report No. 30/2022]. The EPR reports are the first to be issued by the TDLC and are required by Law No. 20.920 which establishes recovery targets of different types of waste. The TDLC must review the collective waste management systems run by producers and the bidding rules for contracting waste collection and treatment services in order to prevent risks to competition.

Decision on lawsuit filed by the FNE against Faasa Chile and Martinez Ridao Chile for coordinated conducts/Decision in the firefighting cartel (Ruling No. 179/2022)

43. The FNE filed a lawsuit against Faasa Chile and MR Chile, accusing them of agreeing to act jointly in the Chilean market for forest firefighting and firefighting services provided by air tankers, between 2009 and 2015, indicating that, within the framework of this agreement and with the purpose of assigning contracts in the referred period, the defendants would have determined the commercialization conditions, prices and the participation of bidders in public and private contracting processes.
44. The TDLC accepted the complaint in view of the evidence submitted, the Tribunal considered that the necessary elements were present to prove the existence of a single and continuous collusive agreement between the defendants, entered into for a single purpose, namely, to assign or award contracts to provide forest fire fighting and extinguishing services through air tankers, within the framework of contracting processes convened by private companies and public entities between 2009 and 2015.
45. Finally, based on the economic benefit obtained by the defendants and the deterrent effect that must be considered when setting the fine, the TDLC decided to condemn these companies to pay a fine of USD\$1.539.932, in the case of Faasa Chile and USD\$4.943.992, in the case of Martinez Ridao Chile; the foregoing, together with the payment of the court costs. The TDLC also imposed on the defendants the obligation to adopt an antitrust compliance and ethics program for at least five years.
46. The decision was unanimous with a dissenting particular opinion of Minister Domper regarding the requirement set for the antitrust compliance program in order to conduct surveillance of e-mails of officers; and the dissenting particular opinion of Ministers Paredes and Barahona, who did not concur to imposing the antitrust compliance and ethics program.
47. The defendants challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2022.

Decision on lawsuit filed by Asilfa against Cenabast for failure to comply with a previous decision (Ruling No. 184/2022)

48. Asilfa accused Cenabast of failing to comply with the Supreme Court ruling which compelled the latter to initiate a process of drafting and implementing new bidding rules for public procurement of pharmaceuticals, in order to safeguard compliance with competition law. On the other hand, Asilfa accused Cenabast of having abused its dominant position by continuing to execute the rules and awarding tenders in accordance with the terms challenged, without introducing any mitigation measure.
49. The TDLC determined that Cenabast failed to comply in full and in a timely manner with the judgment. The breach was due to (i) the way in which the drafting and review process was carried out, (ii) the failure to prepare new bidding and supply conditions, and (iii) the failure to reach a new text of the tender conditions, which already approved by the FNE.
50. Regarding the charge made of abuse of dominant position, although the TDLC concluded that notwithstanding that Cenabast had a dominant position considered that the conduct was subsumed in the non-compliance accusation.
51. Finally, Cenabast was ordered to pay a fine of USD\$ 85.658. It also ordered (i) to adopt in future bidding rules the conditions contained in Decision No. 316/2020; and (ii) prohibited future bidding rules from having more burdensome conditions for suppliers than those set forth in Decision No. 316/2020.
52. Both parties challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2022.

Decision which affirmed the prohibition of the merger between Colmena and Nueva Mas Vida (NMV) (Ruling No. 182/2022)

53. Colmena and NMV filed an appeal against the FNE decision to block the transaction through which NMV would acquire control over Colmena in the private health insurance market. The challenged resolution was based on the report of the Mergers Division of the FNE, which had recommended the prohibition of the deal based on different legal and economic grounds.
54. In its decision the FNE determined that the transaction, even if it were subject to mitigating measures offered by the Parties, would imply a relevant harm to competition, negatively impacting consumers, and could reduce competition in the market in the terms set forth in Article 57 letter c) of Decree Law No. 211.
55. The Tribunal concluded that the execution of the transaction would substantially reduce competition in the affected markets. Specifically, it considered that the transaction would generate relevant risks, both unilateral -related to the future behavior of the new entity- and coordination risks, and that the conditions of entry and rearrangement of the market would not be sufficient to avoid these risks. The TDLC likewise concluded that the parties did not prove the existence of efficiencies capable of offsetting the risks.
56. In turn, the Tribunal also ruled out that the mitigation measures proposed by the companies were capable of avoiding or adequately minimizing the risks associated with the transaction, concluding that they were insufficient to restore competitive pressure, in addition to being difficult to monitor and complex to implement. Likewise, the TDLC affirmed that a structural measure such as the divestment of assets through the transfer of health care contracts and affiliates portfolio was not capable of mitigating the risks, due to the uncertainty associated with its execution under the current regulations.

57. NMV challenged the TDLC's judgment before the Supreme Court. The Supreme Court's ruling was still pending by December 31, 2022.

Supreme Court of Justice

58. During the period covered by this report (2022), seven adversarial and non-adversarial rulings and decisions of the TDLC were challenged before the Supreme Court. Also, during this period, six competition matters (adversarial and non-adversarial) were decided by the Court. From these seven decisions: one case was withdrawn [Supreme Court case No. 85.604-2021]; one appeal was rejected by the Court, upholding the decision of the TDLC [Supreme Court case No. 40.775-2021]; two cases ended in settlements [Supreme Court case No. 4.041-2020 and No. 40.807-2022] and; three decisions of the Tribunal were reversed in some aspect by the Court [Supreme Court cases No. 125.433-2020, No. 82.422-2021 and No. 22.271-2021].
59. Relevant cases ruled by the Court:

Supreme Court Case No. 125.433-2020 regarding TDLC Ruling No. 174/2020

60. In the only decision of the Supreme Court related to a condemnatory (or non-condemnatory) judgment issued by the TDLC, the Court reversed the Tribunal's ruling.
61. In this case, the TDLC rejected the lawsuit filed by Bice, Security, Scotiabank, Scotiabank, BBVA and Banco Internacional against Banco Estado for abuse of dominant position in relation to the interbank fees charged for the receipt of electronic transfers.
62. The TDLC allowed in part the exception based on the applicable statute of limitations filed by Banco Estado in respect to price discrimination and excessive prices accusations.
63. Regarding the analysis of the merits of the rest of the price discrimination and bundling accusations, the TDLC held that Banco Estado does not have a dominant position from which it can abuse in the bank accounts market.
64. The plaintiffs challenged the TDLC's judgment before the Supreme Court. In its ruling, the Court rejected in full the exception based on the statute of limitations and upheld the claims only insofar ordered that Banco del Estado must self-regulate the fees charged to commercial banks for the service of receiving electronic transfers that the clients of said banks make to clients of the defendant, establishing, in doing so, equal and non-discriminatory amounts for all said commercial banks, to warrant equality before the law enshrined in the Constitution.

Supreme Court Case No. 82.422-2021 regarding TDLC Decision No. 67/2021

65. On September 21, 2021, the TDLC issued Decision No. 67/2021 which approved the tariff system proposed by Transbank S.A., an acquiring company in the payment system, provided that it complies with the conditions imposed. Said conditions were established with respect to the fees -acquiring margin- that said company charges to firms that participate in the card payment market, i.e., merchants, payment service providers, other operators and issuers.
66. However, the Supreme Court concluded that the tariff system proposed by Transbank exacerbates the dominant position of the plaintiff in the market, generating incentives to increase tariffs and the emergence of entry barriers that prevent new companies from competing effectively. Therefore, it decided that the proposed tariff system did not comply with the competition rules.

67. 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

68. In 2022, the Mergers Division received 34 notifications: 32 of them were investigated, while two were dismissed because the parties withdrawn the notification file. In the same period, the FNE concluded 34 merger investigations: 31 were cleared without conditions, two subject to remedies and one was blocked.
69. The average duration of merger investigations was 31 days for unconditional approvals, and 142 days for conditional approvals.
70. Summary of significant/ongoing cases

Acquisition of Isapre Colmena Salud S.A. (Colmena) by Nexus Chile SpA

71. On February 3, 2022, the FNE blocked the acquisition of Isapre Colmena Salud S.A. (Colmena), the fourth-largest health-insurance company in Chile, by Nexus Chile SpA, controller of Isapre Nueva MasVida (Nueva MasVida). The investigation concluded that the proposed transaction would substantially lessen competition in the market of private healthcare insurance companies (locally known as “Isapres”).
72. The merger scrutiny included a closeness of competition assessment, which concluded that there were a relevant portion of consumers who consider Colmena and Nueva MasVida as close competitors. It also showed that the proposed transaction would cause price increases in health insurance plans offered to new clients and in health plans of current insured individuals. These price increases would be applied on the top of what the healthcare regulation actually allows the Isapres to adjust according to an annual cap.
73. The FNE also noted that, even without price increases, similar effects may occur as a result of the proposed transaction through quality deterioration. It was concluded that the merged entity could degrade the conditions, coverage or benefits included in the health insurance plans, and the overall quality of service provided by the merged entity would be diminished because of the transaction.
74. In addition, the analysis also concluded that the concentration would facilitate coordination among the merged entity and its competitors in the health insurance industry, by making coordination more likely and sustainable over time.
75. The parties argued the transaction would generate efficiencies (cost savings) that could outweigh their incentives to raise prices or diminish quality of health plans. They also claimed that a new rival’s entry would be able to mitigate the proposed merger’s anticompetitive effects.
76. However, the FNE dismissed such claims. Efficiencies were not verifiable, merger-specific or sufficient to address the concerns. In addition, new entry was qualified as a ‘niche entry,’ insufficient to compete head-to-head with the parties after the merger.
77. The parties offered a package of behavioral remedies, which included commitments to regulate price increases and quality of the health plans. Those commitments were considered by the FNE to be insufficient to offset the anticompetitive effects raised by the merger. No structural or divestiture remedy was offered by the parties.

78. The FNE's decision was challenged by the notifying parties before the competition specialized court (*Honorable Tribunal de Defensa de la Libre Competencia*). On September 2022, the TDLC, on a majority vote and exerting a full review of both facts and law, upheld the FNE's decision and confirmed the blocking decision.
79. Challenging this decision, parties filed an extraordinary complaint before the Supreme Court of Justice. This is a very extraordinary judicial complaint when there are no other legal appeals available. The parties claimed that the TDLC's judges had not considered all the evidence provided by the parties and that their arguments were contradictory by itself.
80. The Supreme Court accepted the parties' complaints and conditionally cleared the concentration, stating that both the FNE and the TLDC should have considered the critical economic situation of the Isapres Industry, which may affect its competitive behavior. In addition, the Court held current health insurance regulation sufficiently limited the Isapres' ability to increase prices, and that therefore the transaction raised no antitrust concerns whatsoever. However, the Court considered accepted that the merger should be cleared subject to the behavioral and price-regulation remedies offered by the parties, plus additional obligations imposed by the Court, to mitigate any concerns.

Acquisition of WarnerMedia LLC by Discovery, Inc.

81. On February 9, 2022, the FNE cleared in phase I, conditioned to behavioral remedies, the acquisition by Discovery, Inc. ("Discovery") of WarnerMedia LLC ("WarnerMedia"), aimed at creating an enlarged global entertainment group (Warner Bros. Discovery). In Chile, Discovery is mainly engaged in the production and distribution of pay television channels, including Discovery Channel, Animal Planet, Discovery Kids and Discovery Home & Health. WarnerMedia, on the other hand, is an entertainment conglomerate that in Chile is mainly engaged in the production and distribution of pay television channels and distributes movies for broadcast in theaters, and the HBO Max and Estadio TNT platforms. Among the pay TV channels distributed by this company are HBO, TNT Sports, CNN, TNT, and Cartoon Network.
82. A first set of remedies responds to the main risk detected by the FNE during the investigation, associated to the increased negotiating power that the merged entity would have in the commercialization of pay TV channels. These commitments seek to avoid the joint commercialization of WarnerMedia's channels with those belonging to Discovery for a period of seven years, and consist of: (i) prohibition of tied or bundled sales between WarnerMedia's channels and Discovery's channels; (ii) prohibition of technical packaging or transfer of the most relevant children's content from WarnerMedia channels to Discovery channels, or vice versa; and (iii) prohibition to include cross-termination clauses that allow for the early termination of the WarnerMedia contract based on the termination of the Discovery contract, or vice versa. Likewise, an arbitration body is contemplated for possible disputes in the negotiations with the pay TV operators, avoiding possible attempts of transfer of market power by the concentrated entity and acting as a deterrent to incur in this type of conduct.
83. Secondly, given that an individual - indirect controller of VTR, a pay TV operator - could be appointed as a director of Warner Bros. Discovery, a second set of commitments is established for the same duration, prohibiting such individual to access to certain sensitive commercial information about Warner Bros. Discovery's operations in Chile.

Joint venture between VTR and Claro, conditioned to structural and behavioral remedies.

84. On October 5, 2022, the FNE cleared, conditioned to remedies, a joint venture between Liberty Global and America Movil. Liberty Global is an international holding company that operates in Chile through VTR and is active in telecommunications services, like retail fixed services, such as internet, television, and telephony, and in retail mobile services, as well as corporate services and other segments. America Móvil, on the other hand, operates through Claro in retail fixed services (internet, television, and telephony), retail and wholesale mobile services, corporate services, wholesale offer of data transport links, among others.
85. In particular, regarding fixed internet services, the agency's scrutiny concluded that the joint venture would be constrained by the competitive pressure exerted by both incumbents and recent entrants, who also have a technological advantage vis-à-vis the merging parties due to fiber deployment, as well as significant expansion plans. Regarding pay TV, the FNE verified there are other relevant operators that would also exert competitive pressure to the joint venture, as well as new platforms, such as streaming TV and over-the-top platforms, which would increasingly constrain the parties in the future.
86. However, the merging parties would concentrate a relevant portion of the spectrum holdings, particularly in the mid-band (3.5 GHz) and in the mid-low-band (AWS). The FNE raised the concern that the parties would eventually incur in anticompetitive spectrum hoarding, to the detriment of consumers, particularly in the relevant bands for the 5G network's deployment.
87. To address such concerns VTR and Claro offered the FNE to divest 10MHz in the 3.5 GHz band and 10MHz in the AWS band. The parties also offered to comply with usage obligations, to promote the effective and efficient use of the spectrum to be acquired. The FNE considered the remedies package to be effective, proportional, and suitable to prevent the merger from substantially lessening competition.

Acquisition of Activision Blizzard by Microsoft Corporation

88. On December 28, 2022, the FNE cleared unconditionally the acquisition of Activision Blizzard, Inc ("ABK"), one of the world's leading video game developers, by Microsoft Corporation ("Microsoft"), global provider of Xbox video game consoles, as well as developer and publisher of video games.
89. In its horizontal analysis, the FNE ruled out the transaction would raise competition concerns on the grounds of low combining market shares and due to the presence of an important number of competitors in the videogames market.
90. In its vertical assessment, the FNE firstly considered the possibility of Microsoft restricting the distribution of ABK content -mainly its most popular franchise, Call of Duty- from rival consoles, especially PlayStation. However, the FNE concluded that, in Chile, other players such as Electronic Arts, Take Two, Ubisoft and Epic Games exert competitive discipline on ABK. In addition, Call of Duty was not found to be as relevant for the Latin American region, as it would be in the US or Europe.
91. The evidence showed that in the event that Call of Duty were not available on a player's preferred console, the costumers would switch to a different game rather than switching to a different gaming platform. Consequently, an input foreclosure would not prevent Microsoft's rivals from participating in the Chilean market.

92. The FNE also discarded the concerns that the market would ‘tip’ in favor of the merged entity, since local data showed that ABK’s video games were not found to be the most relevant for local consumers, being other players greatly preferred by Chilean consumers.
93. Finally, in relation to the concerns of customer foreclosure, the FNE was able to conclude that Microsoft does not have incentives to stop demanding video games published by third parties, mainly considering the great dynamism shown by the market in terms of new entry of relevant players.

Merger between Enjoy S.A. and Dreams S.A.

94. On April 13, 2023, the FNE concluded the procedure related to the merger between Enjoy S.A. (“Enjoy”) and Dreams S.A. (“Dreams”), the main undertakings in the casino industry in Chile, following the withdrawal of the merger by the parties.
95. The investigation began on May 3, 2022, scrutinizing the merger’s effects on competition in the markets related to the casino services and focusing on the transaction’s impact in both the bidding process for casino licenses and in the competition among the different casinos operating in Chile –both locally and nationally–.
96. Following the analysis conducted in Phase 1, the FNE concluded that the merger could raise horizontal competition concerns, both unilateral and coordinated, by granting the merged entity with the ability and incentives of reducing the quality of casino services provided by Enjoy and Dreams, as well as strengthening coordination sustainability. Therefore, and according to the provisions of Chilean competition law, on June 14, 2023, the FNE decided to extend the analysis of the transaction into Phase 2, for a period of up to 90 business days, since the preliminary assessment concluded that the merger could substantially lessen competition.
97. The merging parties offered commitments to mitigate the competition unilateral and coordinated concerns, which were evaluated by the FNE’s Mergers Division. However, on April 12, 2023, Enjoy and Dreams communicated they would not pursue with the transaction and withdraw the merger filing.

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 to the Ministry of Agriculture

98. In 2023, the FNE proposed regulatory changes to the Government, through the Ministry of Agriculture, to improve the sectorial regulation in the wine grape market to promote and protect competition. This proposal followed an investigation that was initiated by a joint complaint from associations of wine grape producers in the central-southern region of Chile, regarding possible exploitative abuse of dominant position and unfair competition by the buyers.

99. While the investigation did not find evidence of abusive purchasing power or individual buyer dominance, the FNE's complementary analysis revealed several findings. For instance, in some grape varieties and regions, the competition conditions were less intense due to high atomization of producers, the moderate concentration of buyers, the smaller number of grape reception places and the product's own characteristics, such as a brief harvest season and rapid perishability. Additionally, there were no regulations

concerning the valuation of grape quality, an asymmetry of information between the parties and there was a lack of transparency and monitoring of “reference prices”, the instrument established in Law No. 20.656 to regulate commercial transactions of agricultural products to provide greater transparency in the market.

100. To address these issues, the FNE recommended two proposals to the Ministry of Agriculture: (i) reviewing the regulation concerning the transfer of agricultural products to establish clear and objective criteria for grape quality determination by an independent third party; and (ii) reviewing the current regulations concerning the transfer of wine grapes to establish a mechanism that facilitates effective monitoring of the actual prices used in the commercialization of wine grapes, the fulfillment of the obligation of agribusinesses and intermediaries to publish their reference prices, and the publication of these prices and their easy access by wine grape producers.

101. The proposal is available in Spanish here:

https://www.fne.gob.cl/wp-content/uploads/2022/12/2525-19_Informe-de-archivo_firmado-VINAS.pdf

3.1.2. Law that establishes framework for waste management, extended producer responsibility and promotion of recycling (Law N° 20.920)

102. During 2022, the FNE submitted information in six proceedings before the Competition Tribunal, initiated by collective waste management systems in compliance with Law N° 20.920, which requires that to be authorized, such systems must obtain a report from the TDLC stating that the bidding conditions for the contracting of waste management services and the bylaws for the incorporation of members and operation of the system do not contain provisions that could impede, restrict or thwart competition.

103. The purpose of the FNE’s intervention in these proceedings is to provide a well-founded opinion on the formation of these systems and the possible competitive risks that they may pose, as they are cooperation agreements among companies that could be competitors. To this end, after an investigation in which it analyses these matters, the FNE issues a document with remarks and guidelines to be considered by the TDLC in its report.

104. The guidelines provided by the FNE address, in the case of the bylaws, the importance of ensuring new members' incorporation and equitable participation in the collective system. In the case of the bidding conditions, these should guarantee allocative efficiency and competitive intensity. Additionally, both should also contain measures to avoid the unilateral and coordinated risks that these systems could raise.

3.1.3. Funeral industry market study

105. During November 2022, the Market Studies Division launched the Preliminary Report of the funeral industry. Please see question N° 5 for a summary of the study.

3.2. TDLC

3.2.1. General Instructions, related to the market for credit card, debit card and prepaid cards (ICG N° 5/2022)

106. On August 16, 2022, the TDLC issued General Instructions (ICG) No. 5/2022, related to the market for credit, debit and prepaid cards. These instructions constitute the final decision in this procedure initiated ex officio by the TDLC on September 25, 2020.

107. In order to advance in the implementation of the four-party model in the card payment market, instructions were issued to payment card issuers and issuing processors to ensure full interoperability among the various players in the industry.

108. Likewise, instructions were issued ordering card (payment) brands to modify their rules, especially those related to cross-border transactions and the so-called (i) "no acquiring without issuance" rule (or NAWI); (ii) "no discrimination or surcharge" or "no surcharge rule"; and (iii) "honor all cards" rule in its "honor all products" dimension.

109. In particular, the instructions forbid the no surcharge rule, which prohibits merchants from charging a different price depending on the means of payment used. Regarding cross-border transactions, card brands are instructed to adapt their definition of cross-border transaction or acquiring to comply with Central Bank regulations.

110. In addition, the ICG instructs card brands to report to the FNE their brand costs at a disaggregated level and also to inform in a justified manner of any increase. To improve the transparency of the charges associated with the use of cards, the brands are ordered to publish their interchange fees with a break down by merchant category, card type, card category, sales channel or any other variables used as a differentiation mechanism for these fees.

111. Likewise, brands may not prevent their acquiring licensees from providing information on brand costs and interchange fees to the corresponding merchants and sub-acquirers. In the same line, acquirers and sub-acquirers are instructed to provide their affiliated retailers (merchants) with the ability to opt for an unbundled pricing structure that identifies each component of the merchant discount.

112. It is noted that some instructions are directed exclusively to brands that have a dominant position in the market (Visa and Mastercard).

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)

113. 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

Source Central Bank of Chile: https://si3.bcentral.cl/Bdemovil/BDE/Series/MOV_SC_TCI Change USD December 30 2022: \$859.5.

Table 2. Number of employees (person-years)

Staff	2015	2016	2017	2018	2019	2020	2021	2022
Economists	20	19	31	30	30	27	27	25
Lawyers	39	42	47	50	51	50	44	47
Other professionals	23	22	21	11	3	4	6	4
Support staff	10	11	13	18	19	18	25	19
All staff	92	94	112	99	103	99	102	95

Table 3. Human resources

Areas	2015	2016	2017	2018	2019	2020	2021	2022
Enforcement against anticompetitive practices	33	33	39	52	42	44	45	38
Merger review and enforcement	11	13	22	21	20	15	14	15
Advocacy efforts	11	11	13	6	6	5	3	5
Litigation	18	18	15	15	14	13	10	11

4.1.2. Period covered by the above information

114. 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 USD)

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
2022	2,245,823,000	2,612,941

4.2.2. Number of members (including staff members + judges)

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

Year	Staff members + judges
2013	21
2014	21
2015	22
2016	23
2017	23
2018	25
2019	26
2020	29
2021	30
2022	33

4.2.3. Informing separately for each year:

Table 6. Informing separately for each year:

Staff	2017	2018	2019	2020	2021	2022
Economists	6	7	7	7	7	7
Lawyers	9	10	10	11	12	13
Support staff	8	8	9	11	11	13
All staff	23	25	26	29	30	33

4.2.4. Period covered by the above information:

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

Exchange rate USD December 30, 2022: \$859.5 (Central Bank of Chile)

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

116. During November 2022, the Market Studies Division launched the Preliminary Report of the funeral industry.
117. The FNE initiated the study considering the characteristics of this market, since the death of a relative forces families to make an unavoidable expense, where the purchase decisions are done within a very limited period (48 hours) and at a time of emotional vulnerability. Additionally, hiring funeral services and burial or cremation compromises a significant percentage of the monthly budget of families.
118. During the preparation of the study, the FNE collected quantitative information on the sales and operation of both funeral homes and cemeteries and crematoriums and met with industry participants and experts in legal medicine and industrial design of urns.
119. Additionally, the FNE commissioned a telephone survey of 400 consumers to characterize the demand for funeral goods and services, describing the purchasing behavior and consumer preferences.
120. The study concluded that approximately 70% of consumers do not search among the various funeral services and that 49% said they have not received mortuary benefits, such as death allowance or mortuary fee, which are charged directly by funeral homes. This would imply that consumers have behavioral biases that prevent them from quoting and choosing the best option between equivalent services.
121. Due to the above, the measures proposed in the study aimed at promoting that consumers quote for services, making the benefits and prices charged by funeral establishments more transparent.
122. In particular, the study recommends the creation of a standardized "Preferred Plan" for each of the funeral services, which would allow a frame of reference for a faster quote, without prejudice to the final choice of the funeral plan that the consumer deems most appropriate.
123. The proposals formulated respond to four objectives: to increase the contribution between funeral homes and the freedom of choice of funeral services by consumers; remove certain regulatory barriers to the use of consumer death benefits; facilitate the entry of new cemeteries and crematoriums and supervise the adhesion contracts entered into between cemeteries and their clients.
124. In summary, the recommendations of the market study are as follows:
- Promote a higher price of funeral homes by consumers.
 - Allow the purchase of funeral goods and services separately, unbundling the funeral plans.
 - Modify the regulation of mortuary benefits and their knowledge by consumers (death allowance and mortuary fee).
 - Regulate basic aspects of the anticipated sale of funeral services.
 - Technically regulate the characteristics of the coffins, to allow the entry of new actors.
 - Improve planning for the installation and expansion of cemeteries and crematoriums.

- Improve the requirements and the evaluation process of the cemeteries and crematorium projects by the administrative authorities.
- Clarify the legal nature of the right that purchasers have regarding graves.
- Investigate and regulate aspects of contracts between consumers and cemeteries.

125. If its recommendations are applied, the estimated benefits for consumer, calculated conservatively, could reach annual savings of US\$45 million.