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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Chile

-- 2023 --

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

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Chile

Executive Summary

1. This report summarizes recent developments in competition law and policy in Chile. It also addresses the main precedents related to competition law enforcement, competition advocacy activities, as well as other developments that occurred during 2023.
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’s 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 for issuing technical reports and studies, and to undertake competition advocacy. From 2016, the FNE performs preventive merger control regarding transactions which surpass certain thresholds.
4. In May 2023, the President of Chile appointed attorney Jorge Grunberg Pilowsky as National Economic Prosecutor of the FNE for the period 2023-2027. This, after the end of the term of Ricardo Riesco in November 2022.
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 behavior) 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 2023 judge Daniela Gorab Sabat, resigned to the TDLC.
7. In the period covered by this report, twenty-six adversarial cases and sixteen non-adversarial cases were brought before the TDLC. The amount in the number of new cases represents a 24% increase compared to the cases brought the previous year (2022). In addition, during 2023 the Tribunal issued five rulings on adversarial cases (two cartels, two unilateral conducts and one on compensation for damages) and twelve final decisions related to non-adversarial cases. These seventeen cases had an average duration of 565 days (measured for this report since the case began until the Tribunal issued its final ruling or decision), which represents a decrease of 2% on the average duration of cases compared to 2022.
8. In the same period 2023, the FNE initiated 21 investigations and filed two actions before the TDLC, the first, a lawsuit against a company for having breached the obligation imposed in a previous conviction issued in a collusion case, and the second, a lawsuit for failure to comply with the commitments reached in a previously signed agreement with the FNE to protect competition in the beer market.
9. Secondly, in the year 2023 the FNE concluded 32 mergers investigations, of which 26 were approved without conditions, 6 subject to remedies, and none was blocked.
10. It is also important to highlight that during the year 2023 the FNE published the final report on the funeral services market study and the preliminary report of the hospitality sector market study.

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

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

11. In August 17 of 2023, Chile enacted Law No. 21.595, introducing a comprehensive legal framework for economic crimes and offenses against the environment and economic order. This law amends various statutes, establishing the criminal liability of legal entities, while significantly expanding the catalog of offenses for which corporations can be held criminally liable. It introduces a special sentencing regime for a new category of offenses referred to as “economic crimes”, covering activities from collusion and fraud to environmental violations. This legislative update affects competition norms, specifically regarding collusion offenses and leniency programs, ensuring stricter compliance and punishment frameworks.

12. The law reforms competition laws by specifically targeting the crime of collusion, classifying it as a first-category economic crime. This classification means that collusion is considered an economic crime under all circumstances, irrespective of whether the legal entity involved benefits from it. The law removes the necessity for a legal entity to directly benefit from collusion for it to be deemed an economic crime.

13. Additionally, the law modifies the provisions related to leniency, altering how penalties can be reduced for those who provide significant information or cooperation to the FNE. It updates the criteria and procedures for attenuating penalties, aligning them with the new framework for economic crimes. This adjustment aims to encourage cooperation from participants in collusion by offering a potential reduction in sanctions for contributing valuable insights into anti-competitive behaviors.

1.2. Other relevant measures, including new guidelines

1.2.1. Guidelines on frequently asked questions for pre-notification in the merger control procedure

14. In August 2023, the FNE published a document containing the most frequently inquired issues by its users since the implementation of the pre-notification of concentrations regime in 2021 –a voluntary, informal, collaborative and confidential instance, implemented to facilitate the process of merger notification–. The document constitutes an annex to the Guidance on Pre-Notifications of Concentrations of May 2021 and tackles issues regarding thresholds calculation, legal qualification of a concentration and procedural issues, aiming at making Chile’s merger control regime as expeditious as possible for both economic agents and the legal community.

1.2.2. 20th Competition Day Focusing on Labor Markets

15. On December 19th, 2023, the FNE celebrated its annual Competition Day, which was themed “Competition and the Labor Market”. The event featured a keynote by MIT economist Professor Nancy Rose, who examined economic models relevant to assessing the impacts of employer concentration on social welfare and labor conditions. Jorge Grunberg, the National Economic Prosecutor, announced that this topic was now among the FNE’s priorities considering the unique characteristics of labor markets, such as switching costs and geographical limitations, and highlighting the importance of promoting competition to improve conditions for workers and economic agents. The session underscored the complex interplay between competition law and labor issues, reflecting on the legislative history in Chile and the ongoing adaptations in response to market dynamics.

1.3. Government proposals for new legislation

16. Please refer to section 3.

2. Enforcement of competition laws and policies

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

2.1.1. FNE

17. During 2023, the FNE brought the following actions before the TDLC:

Case against Biosano for failure to comply with the adoption of an antitrust compliance program (C 485-2023)

18. In March 2023, the FNE filed a complaint before the TDLC against Laboratorio Biosano S.A. (hereinafter, “Biosano”), for having failed to comply with the only obligation imposed on the company in a previous conviction issued in a collusion case: adopt a five-year antitrust compliance program.

19. This judgment had condemned certain pharmaceutical laboratories for having executed a collusive agreement to affect several public bidding processes between 1999 and 2013, exempting Biosano from paying a fine because the company held the benefit of leniency.

20. In its accusation, the FNE requested the imposition of a fine equivalent to US\$ 1.4 million, pointing out that Biosano had failed to comply with the referred program in the time and manner established in the judgment, executing late or deficiently some of the obligations imposed and leaving others unexecuted.

21. This breach was particularly serious for the FNE, since the main purpose of the measures imposed on Biosano was to mitigate future risks to competition by preventing and discouraging the execution of possible collusive behaviors.

22. The case ended due to a judicial settlement presented by the FNE and Biosano, in which the company acknowledged the facts described in the accusation, committed to comply with the measures associated with the compliance program imposed by the Court, as well as to make a payment to fiscal benefit for more than USD\$340,000.

23. The agreement was approved in September 2023, as the TDLC considered that the commitments assumed by the parties allow compliance in a reasonable and proportional manner to the purpose pursued at the time of imposing the unfulfilled measure. This is of great relevance for the FNE, as it shows the importance of the implementation of the compliance program required by the TDLC at the end of a particularly serious case.

Case against CCU for breach of the agreement signed in 2008 to protect the competition in the beer market (C 494-2023)

24. In August 2023, the FNE presented a claim before the TDLC against Compañía Cervecerías Unidas S.A. (hereinafter, “CCU”) for breach of the commitments included in a judicial settlement signed in 2008 to protect competition in the beer market.

25. The accusation asserts that, at least from 2019 to the present, CCU carried out acts that effectively created exclusive sales and restricted or hindered the sale and display of

third-party beers in commercial establishments for on-premise consumption such as restaurants, bars, and pubs, where CCU holds a market share of approximately 90% of sales.

26. The 2008 settlement between the FNE and CCU, approved by the TDLC, included that CCU could not establish sales exclusivity for on-trade establishments, nor could they use exclusivity agreements for publicity to prevent, restrict, or hinder the sale of third-party beer.

27. During the investigation initiated in 2019, the FNE discovered that even though the contracts stipulated the freedom of the establishments to sell any brand of beer, in practice, this freedom had been curtailed and limited by CCU's action. The FNE obtained evidence of verbal agreements, demands, or conditions placed on establishments outside of formal contracts, which contradicted the terms of the agreement, practically creating sales exclusivity or restrictions to the commercialization and exhibition of third-party beers. The foregoing was carried out through using exclusivity publicity contracts, loan-for-use agreements for goods, and providing monetary assistance or other benefits to the establishments.

28. In the complaint, the FNE requested the TDLC to impose a fiscal benefit fine equivalent to more than US\$ 6 million. In addition, the FNE requested the imposition of a series of preventive, corrective and prohibitive measures on CCU to prevent the company from impeding, restricting, or hindering the sale of third-party beers. Other proposed measures seek to facilitate the entry of smaller competitors for a period of 5 years, for example, by allowing the use of at least 20% of the refrigeration equipment and beer dispensing machines or taps supplied by CCU to offer products from other beer suppliers that have no more than a 5% market share in the retail channel, at the choice of the establishments. Finally, the FNE demanded the supervision of the ruling against CCU by a monitoring trustee, in addition to the improvement of the company's compliance program and the imposition of specific advertising obligations related to the measures that were adopted.

29. The case ended due to a judicial settlement presented by the FNE and CCU. In this agreement, approved by the TDLC on March 2024, the company committed to pay USD\$2,4 million as fiscal benefit and to comply with specific measures associated with the FNE's request.

30. These commitments include that CCU must guarantee the use of part of its larger vending machines and their refrigeration equipment by an alternative supplier with no more than a 5% market share in the on-trade channel. Furthermore, the company committed to define the contributions or payments made to establishments with objective, general, and non-arbitrarily discrimination criteria. Finally, the agreement contemplated a monitoring trustee totally independent of the company, responding to the FNE, that it shall report periodically on compliance with the commitments.

31. This settlement satisfies the concerns raised by the FNE in its complaint, favoring competition in the market by opening spaces for craft brewers to sell their products in restaurants, bars, and pubs.

2.1.2. TDLC

32. During the period covered by this report, twenty-six lawsuits were submitted before the TDLC (adversarial cases). Thirteen cases were related to abuses of dominant position, one referred to unfair competition, two referred to compensation for damages, two referred to non-compliance with remedies imposed on a previous decision or ruling and the remaining eight injunctions and pre-trial discovery measures. Also, the TDLC issued five

final decisions or rulings on adversarial cases. One case was a lawsuit filed by a private party and three were filed by the FNE, and the average duration of these proceedings was 1471 days, which represents an increase of 58% on the average duration of cases compared to 2022. Two rulings were condemnatory for coordinated conducts [Ruling No. 185/2023 and Ruling No. 187/2023], one ruling was condemnatory for unilateral conducts [Ruling No. 186/2023], while in the other two cases the TDLC acquitted the defendants [Ruling No. 188/2023 and Ruling No. 189/2023]. All five rulings were challenged before the Supreme Court.

33. On the other hand, the TDLC issued twelve final decisions related to non-adversarial cases and the average duration of these proceedings was 188 days, which represents a decrease of 59% on the average duration of cases compared to 2022. Three decisions were inquiries by parties or the FNE [Decision No. 77/2023, Decision No. 78/2023, Decision No. 79/2023], two were mandatory reports regarding Extended Producer Responsibility for recyclable products (EPR) [Report No. 31/2023, Report No. 32/2023] and seven were approvals of out-of-court agreements.

Decision on lawsuit filed by the FNE against Inaer and Faasa for coordinated conducts in the forest firefighting market (Ruling No. 185/2023)

34. At the request of the FNE, the TDLC sentenced Inaer Helicopter S.A. (hereinafter, “Inaer”), Pegasus SouthAmérica Servicios Integrales de Aviación SpA (hereinafter, “Faasa”), and the main executives of each company, for participating in a cartel affecting public tenders for air transportation services for firefighting forest fires in various regions of the country.

35. The TDLC accepted the complaint, asserting the existence of a single and continuous collusive agreement between the defendants, which contacted each other through their executives to affect the bidding processes called by the National Forest Corporation (hereinafter, “CONAF”) and two forestry companies, during year 2006 and 2013. In addition, it was found that the agreement conferred market power to the requested companies, since they acted as the main helicopter suppliers in the relevant market defined by the TDLC during the 2006-2007 to 2013-2014 seasons.

36. Inaer was sentenced to a fine of approximately USD\$2,3 million, while Faasa was sentenced to a fine of approximately USD\$ 3,9 million. The executives were sentenced to fines of approximately USD\$53.400 per executive.

37. This case was the first time that the TDLC declared the joint and several liability of one of the executives, due to his position as administrator of the company during the period of the infringement and his participation in the conduct. This was also the second case in which the FNE presented evidence obtained using a Multilateral Legal Assistance Treaty, including documents seized by Spanish criminal prosecutors.

38. The case is currently pending appeal before the Supreme Court.

Decision on lawsuit filed by the FNE against Banco Crédito e Inversiones (BCI) for unilateral conducts in the finance and insurance industry (Ruling No. 186/2023)

¹ In this report we included the approval of the out-of-court settlements that have an average duration of 30 days.

39. The FNE accused bank BCI of arbitrarily excluding the lowest-priced economic offer submitted by Rigel Seguros de Vida S.A. in the bidding for the collective mortgage life insurance held in July 2017, and instead awarding the bid to an insurance company that participated jointly in the bid with its brokerage subsidiary BCI Corredores de Seguros S.A., thereby exploiting its mortgage loan customers. The reason given for excluding this offer was that Rigel did not provide the powers of attorney for the representatives of its broker in the form established in the Bidding Terms.

40. The TDLC found that BCI's interpretation of the formalities of the powers of attorney presented was not legally based and that, moreover, virtually all of the other companies that participated in the bidding and not excluded were in the same situation as Rigel.

41. Therefore, the exclusion of Rigel's offer, for the reasons held by BCI, constituted a discriminatory and arbitrary conduct that harmed its mortgage loan customers and benefited its related brokerage firm.

42. Finally, the TDLC sentenced the respondent to pay a fine of approximately USD\$1 million.

43. The case is currently pending appeal before the Supreme Court.

Decision on lawsuit filed by the FNE against Calquín and Faasa for coordinated conducts in the forest firefighting market (Ruling No. 187/2023)

44. In November 2023, the TDLC rejected the request of the FNE against the companies Calquín Helicopter SpA (hereinafter, "Calquín"), Faasa, and two of their main executives.

45. The FNE accused the defendants of having entered and executed an agreement to affect the result of the contracting process called by CONAF in 2014, to provide the firefighting services and transportation in helicopters of the required personnel, for the 2014-2015, 2015-2016 and 2016-2017 seasons, which was developed in two consecutive bidding processes.

46. The Tribunal considered as proven the existence of a collusive agreement between the companies, through the intervention of their main executives, whose purpose was to affect the result of the first bidding process. However, it considered that the evidence submitted was not conclusive to prove the said collusive agreement had extended to a second bidding process, and therefore the action was time-barred and should be rejected due to the statute of limitations.

47. The case is currently pending appeal before the Supreme Court.

Decision on lawsuit filed by Papeleras Cerrillos against CMPC Tissue and other for damages (Ruling No. 188/2023)

48. The TDLC rejected the damages claim of Papelera Cerrillos S.A. against CMPC Tissue S.A. and SCA Chile S.A., filed following the issuance of Ruling No. 160/2017 of the TDLC, confirmed by the Supreme Court, which declared that both companies coordinated to allocate market shares and fix selling prices for their tissue products. Papelera Cerrillos sought compensation for consequential damages and lost profits allegedly suffered as a result of the acts declared illegal in the infringement proceeding, which claims were the cause of the company's bankruptcy in 2008.

49. Regarding the object of the procedure to seek damages contemplated in Article 30 of Decree Law No. 211, the Tribunal established that it is limited when ruling to

determining the existence, nature, and amount of the damages, as well as the causal link between the acts declared as anticompetitive and the damages claimed by the plaintiff.

50. Regarding SCA's argument that CMPC's coercion of SCA established by the Supreme Court would prevent asserting its eventual civil liability arising from the anticompetitive infringement sanctioned, it was resolved that, since coercion does not operate in any case as an exemption from infringement liability in the field of competition law, it cannot operate as an exemption from civil liability to third parties either.

51. Regarding the substance of the claim, the Tribunal established that a significant part of the facts to which the plaintiff attributes the failed state of its business did not refer to behaviors that would have been subject to reproach in the infringement proceedings. Likewise, it considered that the plaintiff did not provide evidence of the existence of a causal link between the conduct for which the defendants were sanctioned and the failed state of Papelera Cerrillos' business, which ultimately led to its bankruptcy and subsequent exit from the market. Instead, it established that from the evidence submitted to the process, it can be concluded that Papelera Cerrillos' bankruptcy has a multi-causal explanation, unrelated to the behaviors that were sanctioned.

52. This is the first time that the Tribunal has ruled upon the damages compensation suit arising from anticompetitive practices, since it was granted the jurisdiction to hear such cases following the reform introduced by Law No. 20,945.

53. The case is currently pending appeal before the Supreme Court.

Decision on lawsuit filed by SURBTC against Banco del Estado and others for unilateral conducts in the cryptocurrency market (Ruling No, 189/2023)

54. The TDLC rejected the claims of SURBTC SpA, CRYPTOMKT SpA, and Orionx SpA against a group of banks, accusing them of exercising an abuse of collective dominant position with the purpose of preventing, restricting, or limiting the participation of cryptocurrency intermediaries, through the closing of bank accounts or by refusing to open them. In addition, the plaintiffs accused the defendants of abusive exploitation of an economic dependency situation, exclusionary practices, arbitrary anticompetitive discrimination, and refusal to sell. Orionx SpA accused, alternatively, an individual abuse of dominant position by the banks.

55. The TDLC considered that, although it cannot be ruled out that the plaintiffs could exert competitive pressure on banking services in the foreign exchange and remittance markets, payment methods, cryptocurrency intermediation, and investments, the plaintiffs did not provide evidence in the case that would allow concluding that they were competitors of the banks. However, the TDLC analyzed the structural and behavioral elements necessary to establish the accused collective dominant position abuse.

56. Regarding the structural element, the TDLC determined that there is strategic interdependence in the market for the provision of bank accounts, but ruled out that the requirements of transparency and sustainability of the conduct necessary to configure a collective dominant position were met. On the other hand, from the analysis of the behavioral element, corresponding to the refusal to sell or deal, the TDLC was able to conclude that bank accounts do not have the quality of an essential input, given that there are no capacity limitations by the banks, bank accounts are not provided by a single bank, and no abusive collective behavior was observed. Finally, the TDLC evaluated and weighed the evidence offered regarding the conduct and justifications of each accused bank, ruling out the alleged conducts, as it was proven the existence of facts that justified

the decisions taken by the defendants, or the absence of a serious intention to contract on the part of the plaintiffs.

57. The case is currently pending appeal before the Supreme Court.

2.1.3. Supreme Court

58. During the period covered by this report (2023), five adversarial rulings of the TDLC were challenged before the Supreme Court. None of the non-adversarial decisions of the TDLC were challenged before the Supreme Court. Also, during this period, eight competition matters (adversarial and non-adversarial) were decided by the Court. From these eight decisions: four appeals were rejected by the Court, upholding the decision of the TDLC [Supreme Court cases No. 17.418-2021, No. 26.624-2021, No. 25.179-2022 and No. 114.616-2022] and four decisions of the Tribunal were reversed in whole or in part [Supreme Court cases No. 7.600-2022, No. 120.309- 2022, No. 120.313-2022 and No. 143.550-2022].

59. Relevant cases ruled by the Court:

Supreme Court Case No. N°17.418-2021 regarding TDLC Ruling No. 175/2020

60. In June 2023, the Supreme Court unanimously upheld the TDLC's decision to sanction 11 urban public transportation companies operating in southern Chile for collusion.

61. In its decision, the Court rejected the appeals filed by the companies and confirmed the fines imposed by the TDLC, which amount to an equivalent of approximately USD\$1,1 million in total. In addition, the judgment affirmed the order to implement compliance measures to discourage practices that limit competition among transport operators.

62. The complaint by the FNE against the companies, was based for having executed a collusive agreement, which operated between 2003 and 2017 and affected the users of public transportation by limiting the frequency of the buses.

63. This judgment led to the first decision by the FNE in relation to the exercise of criminal actions for collusion cases after its establishment as a criminal offense in 2016 (Law No. 20.945).

64. After carefully weighting the criteria established previously in its guidelines, the FNE decided not to file this action, considering especially: (i) the non-existence of an obligation to file a criminal complaint since the facts established in the judgment did not seriously compromise competition; (ii) the lack of necessity and proportionality in the exercise of the criminal action, as the sanctions imposed by the TDLC and the Supreme Court were sufficient to generate a general deterrent effect for society, and particularly with regard to the convicted bus lines themselves; and (iii) that the public policy objectives that guide the actions of the FNE of defending and promoting competition were sufficiently guaranteed.

65. Among the circumstances considered by the FNE to reach this conclusion was that the agreement adopted was not concealed by the parties, disseminated through the press and with the support of the authorities, with no clear awareness of its illegality. The FNE also considered that the agreement had a limited geographic scope and that its economic effects were not of great magnitude, among other factors.

66. Notwithstanding the above, the FNE informed that it will firmly exercise its power to file a criminal complaint whenever cases of collusion exist that considerably affect competition in the markets.

Supreme Court Case No. N°7.600-2022 regarding TDLC Ruling No. 179/2020

67. The Supreme Court upheld the decision of the TDLC to sanction for collusion the companies Faasa Chile Servicios Aéreos Limitada (hereinafter, “Faasa”) and Martínez Ridao Chile Limitada (hereinafter, “Martínez Ridao”) for having entered and executed an anti-competitive agreement to prevent, restrict or hinder competition in the market for firefighting services using air tankers in the national territory during the seasons between the years 2009 and 2015.

68. In its decision, the Supreme Court rejected Faasa's appeal and accepted in part the appeal filed by Martínez Ridao only in its request to reduce the fine imposed by the TDLC. Thus, each of the companies were fined approximately USD\$1,5 million. The ruling also ratified the order to implement an antitrust compliance program that satisfies the requirements established in the FNE's guidelines.

69. The complaint by the FNE brought against both companies in July 2018 argued that they agreed to act jointly in the Chilean market, determining marketing conditions, prices and the allocation of bidders in public and private contracting processes to assign contracts in the referred period.

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

70. Please refer to section 2.1.1. In addition, the FNE considers important to highlight the following investigations and (out-of-court) settlements:

Investigation about allocation of TV broadcasting rights of the 2023 Pan American Games

71. On February 23, 2023, the FNE dismissed a complaint filed in December 2022 by a private entity regarding the direct, exclusive, and complimentary granting of the broadcasting privileges to the 2023 Pan American Games and 2023 Parapan American Games (hereinafter, “the Games”) by the Santiago 2023 Corporation (hereinafter, “the Corporation”) to Televisión Nacional de Chile (hereinafter, “TVN”).

72. As per the complaint, the Corporation, responsible for orchestrating the Games and allotting the TV broadcast rights to this multi-sport spectacle, justified this decision based on TVN's public function as a state-owned channel and its wider geographic reach. The complaint also asserted that although the Corporation proposed an alternative broadcasting scheme to other free-to-air TV networks, it wouldn't be in an official capacity, and the content would be confined to categories delineated by the Corporation itself. Such actions could potentially signify the assignment of significant rights without a competitive mechanism in the market, thus undermining competition.

73. The FNE undertook various proceedings to scrutinize the complaint, including requesting information from the Corporation and taking statements from different industry stakeholders.

74. Consequently, it was established that the Games constitute the foremost multi-sport event in Chile, rendering the acquisition of its TV broadcast rights highly coveted by players in the television industry. It was also determined that the pertinent market would revolve around the allocation of TV broadcast rights to the Games in Chile, where there would be no substitutability, and wherein the Corporation would occupy a monopolistic position, holding exclusive dominion over their allocation within the nation. On the demand side, there exist various free-to-air TV networks with national coverage, whose significance

- as per the amassed evidence - can be gauged not only by the number of concessions but also in terms of viewership ratings and financial performance.

75. Concerning the competitive analysis, the FNE noted that in March 2022, the Corporation initiated an information request with different interested channels, presuming that the allocation system would entail a bidding process. However, in May 2022, the Corporation opted to approach TVN to gauge its interest in formulating an official broadcast proposal, which TVN subsequently submitted, outlining minimum broadcasting hours and commercial obligations that, according to the proceedings, were of substantial magnitude.

76. Thus, in September 2022, the Corporation publicly disclosed its decision to directly, exclusively, and complimentary allocate the TV broadcast rights to TVN.

77. Despite the foregoing, the FNE deemed that, based on the aforementioned facts, there were several contentious aspects from a competitive perspective. Firstly, the absence of ex-ante delineation of the allocation process and its prerequisites, coupled with the consideration of TVN's public role, which could potentially contravene the principle of competitive neutrality. This principle stipulates that all enterprises should operate on a level playing field concerning a state's ownership, regulation, or activity in a market, and that undue advantages that may distort competition and selectively benefit some enterprises over others should be averted².

78. On the flip side, it was also observed that although TVN holds the highest number of concessions, this doesn't guarantee broader population-level coverage, as the broadcast of the Games might hinge on other factors such as channel ratings or alternative media like streaming platforms.

79. Nonetheless, subsequent developments emerged indicating that the exclusive allocation of TV broadcast rights was no longer in effect. Indeed, in light of FNE intervention and market responses, and subsequent to the unsuccessful alternative proposal with any of the remaining channels in December 2022, the Corporation extended to them the allocation on similar terms to TVN, provided they matched or surpassed its offer.

80. This piqued the interest of these entities, with whom the Corporation commenced negotiations, resulting in an agreement with a specific channel (Canal 13), wherein the originally stipulated requirements with TVN were relaxed. The Corporation apprised the FNE that these requirements would be applied to negotiations with other channels and to the agreement already signed with TVN. Consequently, this shift in conduct led to the closure of the investigation, as no further proceedings were deemed necessary.

Investigation and settlement regarding exchange of sensitive commercial information among egg producers (Case No. AE-27-2023)

81. During 2023, the FNE concluded an investigation that found that the egg producers' trade association (hereinafter, "Chilehuevos") participated in the collection of commercially sensitive information from some of its members and made efforts to make it available to egg producers and to the market in general, through publications in a trade magazine until 2018.

82. In addition, the FNE found that until 2020, egg producing companies were required to pay annually to the association a fee, which was set according to the annual acquisition

² OECD (2021), Recommendation of the Council on Competitive Neutrality. Available at: <https://www.oecd.org/mcm/Recommendation%20of%20the%20Council%20on%20Competitive%20Neutrality.pdf>.

of laying pullets made by each producer, and for which hatcheries were requested to report annually the sales of pullets made to producing companies, both associated and non-associated.

83. Finally, in September 2023, the TDLC approved a (out-of-court) settlement reached between the FNE and Chilehuevos, who admitted its participation in the collection and dissemination of commercially sensible information of its members. As a result of the settlement, the association adopted a series of commitments, including the payment of approximately USD\$1 million, together with the adoption of measures to safeguard Competition in the market.

Investigation and settlement regarding vertical restraints in the food delivery industry (Cases No. AE-29-2023, AE-30-2023 and AE-31-2023)

84. In November 2023, the FNE concluded an investigation against three food delivery platforms (Uber Eats, PedidosYa, and Rappi) for establishing vertical restrictions following the signing of three (out-of-court) settlements with each of these companies.

85. The investigation began in 2021 after it was found that the delivery platforms maintained most favored nation clauses, also known as price parity clauses, as well as exclusivity and semi-exclusivity clauses in their agreements with restaurants.

86. The most favored nation clauses prevented restaurants from offering lower prices on other delivery platforms or their own distribution channels, while exclusivity and semi-exclusivity clauses limited the number of platforms restaurants could use.

87. The FNE undertook various procedures to determine if these clauses could restrict competition, following the analytical framework outlined in the 'Guidelines for the Analysis of Vertical Restraints of the National Economic Prosecutor's Office (2014)³. These investigative measures included requests for information, statements from various market actors, and a massive survey directed to all restaurants in the country associated with delivery platforms.

88. The investigation revealed that most favored nation clauses were prevalent in most of the agreements between platforms and restaurants, with limited use of exclusivity and semi-exclusivity clauses. Uber Eats was identified as holding a market share ranging from 40-60%, followed by PedidosYa with 20-40%, and Rappi with 0-20%.

89. Concerning the anticompetitive risks of the most favored nation clauses, it was determined that they had the ability to reduce competition among food delivery platforms by removing the incentives to lower commissions applied to restaurants, leading to a lack of price competition between platforms. Additionally, it reduced the incentive for restaurants to offer discounts to consumers or engage in promotional activities and hindered the development of different pricing strategies in alternative sales channels.

90. Furthermore, it was found that most favored nation clauses had the potential to exclude platforms by restricting the ability of new entrants to establish themselves and expand their market share through offering lower commissions to restaurants.

91. Regarding efficiencies, the delivery platforms argued that most favored nation clauses ensured a credible experience for consumers, reduced free-riding risks, and allowed for cost reduction in search, as well as diversification of competition variables. However,

³ FNE's Guidelines for the Analysis of Vertical Restraints (2014), available on: <https://www.fne.gob.cl/wp-content/uploads/2017/10/Gu%C3%ADa-Restricciones-Verticales.pdf>.

according to the FNE, these alleged efficiencies did not meet the standard set by the Guidelines.

92. On the other hand, exclusivity and semi-exclusivity clauses could exclude or hinder the entry of competitors, as well as limit their expansion possibilities. Furthermore, they could reduce the choices available to consumers who purchase food from restaurants through delivery platforms.

93. Considering these findings, the delivery platforms reached a settlement with the FNE, agreeing to end the investigation by committing to eliminate or modify the most favored nation clauses, and not to apply these clauses in the future. They also agreed to inform the associated restaurants that they are free to set prices in any sales channel they use. Additionally, only PedidosYa and Rappi agreed to report information to the FNE regarding exclusivities and semi-exclusivities.

94. Finally, in December 2023, the Tribunal approved the (out-of-court) settlements signed between the FNE and each of the food delivery platforms, stating that “*the adopted agreements adequately safeguard competition in the market related to digital restaurant platforms, as they are relevant and proportional to the results of the investigation*”.

2.2. Mergers and acquisitions

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

95. In 2023, the Mergers Division received 34 notifications and in the same period, the FNE concluded 32 merger investigations: 26 were cleared without conditions, 6 subject to remedies and none was blocked.

96. The average duration of merger investigations was 24 days for phase 1 unconditional approvals, 37 days for phase 1 with remedies and 188 days for phase 2 cases.

2.2.2. Summary of significant cases

Acquisition of SAAM Ports and SAAM Logistics by Hapag-Lloyd

97. On July 19, 2023, the FNE unconditionally cleared in phase 2 the acquisition of control of SAAM Ports and SAAM Logistics by Hapag-Lloyd. SAAM Ports manages and operates five port terminals in Chile: Iquique Terminal Internacional (ITI), Antofagasta Terminal Internacional (ATI), San Antonio Terminal Internacional (STI), San Vicente Terminal Internacional (SVTI) and Portuaria Corral. SAAM Logistics offers logistics services in the off-port storage and contract logistics segments. On the other hand, Hapag-Lloyd participates in the shipping industry through liner services for the global transport of containerized cargo. Therefore, the operation would generate a vertical integration between the parties' activities, in relation to the ports and the liner services, and a conglomerate integration, regarding the off-port storage services and the shipping services.

98. In its vertical assessment, the FNE considered the potential for input foreclosure, wherein SAAM Ports could have prevented Hapag-Lloyd's rivals from competitively participating in the Chilean markets. During phase 1, the FNE dismissed input foreclosure risks in Antofagasta and San Vicente –due to the competitive characteristics of these geographic markets–, as well as the existence of overlaps in Corral. However, it could not rule out the concurrence of a risk of input foreclosure in Iquique and San Antonio. Subsequently, in phase 2, an in-depth examination was conducted, which allowed the FNE to rule out the risks. In its analysis, the FNE took into account port sector regulations,

outlined in Law No. 19.542 on the Modernization of the State Port Sector and rulings from competition authorities regarding this market, which provide specific rules and conditions for the bidding and operation of public berths. Additionally, other elements considered were some relevant economic factors, which limit the ability and incentives for engaging in input foreclosure practices, such as the estimation of ports' incentive to raise prices, through the calculation of vGuppies. Finally, the FNE ruled out conglomerate risks, considering that the entity resulting from the operation will not have the ability to tie SAAM's off-port storage services to its shipping services.

99. In conclusion, after conducting the investigation, the FNE resolved that this operation was not likely to substantially lessen competition.

Acquisition of Entel's fiber infrastructure by OnNet

100. On December 14, 2023, the FNE cleared, conditioned to remedies, the acquisition by OnNet of Entel's fiber to the home (hereinafter, "FTTH") network infrastructure assets. The transaction also included a long-term and exclusive wholesale service agreement, by which OnNet will supply wholesale FTTH access services to Entel. OnNet is an infrastructure operator that offers wholesale FTTH access services in Chile, while Entel is a telecommunications company that provides retail and wholesale fixed and mobile services.

101. Following an in-depth investigation, the FNE found that the transaction implied the concentration of two competitively close rivals in the market of wholesale access to FTTH, whose networks overlap significantly in certain municipalities that are commercially attractive to Internet Service Providers, mainly in the Metropolitan (i.e., Santiago) and Valparaiso regions. Consequently, wholesale access to FTTH in those areas would only be possible through the merged entity, becoming an ineludible commercial counterpart for Internet Service Providers that want to access such areas. Hence, after the transaction, OnNet could increase prices or decline the quality of its services.

102. Additionally, the FNE found that certain clauses of the vertical wholesale service agreement between the parties could generate anticompetitive effects, rising artificial barriers that could difficult entry or expansion in the market.

103. To address such concerns, OnNet and Entel offered to divest Entel's FTTH infrastructure in 8 municipalities, and to enter into a wholesale service agreement with the buyer to supply FTTH wholesale services to Entel in those areas. The parties also offered to modify some of the vertical wholesale agreement clauses that the FNE deemed anticompetitive. In particular, the parties reduced the length of an exclusivity clause from 15 to 5 years; modified a wholesale non-compete clause from 15 to 2 years, and removed a right of first offer clause, a right to match clause and a retail non-compete clause, from the agreement. The FNE found the remedies' package to be effective, proportional, and suitable to prevent the merger from substantially lessening competition.

Acquisition of AD Retail S.A. by Empresas La Polar

104. On January 9, 2024, the FNE cleared unconditionally in phase 2 the acquisition of AD Retail S.A. (hereinafter, "AD Retail") by Empresas La Polar S.A. (hereinafter, "Empresas La Polar"). AD Retail, which operates under the Abcdin brand, is a retail holding company that sells technology, consumer electronics and domestic appliances. It also participates in the financial business through its ABCVisa credit card. On the other hand, Empresas La Polar is a retail holding company that sells clothing, technology, consumer electronic products, among others, and participates in the financial retail business through its Visa La Polar credit card.

105. In the assessment of the competitive effects of the transaction, the FNE focused mainly on two of the segments in which the parties' activities overlap: the retailing of consumer electronics, major domestic appliances and small domestic appliances in department stores; and financial retailing, i.e. the issuance and operation of credit cards. The FNE ruled out the existence of anti-competitive risks regarding both segments.

106. In the case of product retailing, in phase 2 the FNE conducted an in-depth analysis in nine geographic markets in which the parties' shops overlap.

107. After conducting a competitive proximity analysis, it was determined that in these markets, there exist competitors close enough to exert significant competitive pressure on the resultant entity from the transaction. This observation stems from considerations of their respective business models, sales volumes, store formats, and customer segments served.

108. With respect to the analysis of retail finance, the investigation found that the parties compete with players that issue and operate open and/or hybrid credit cards and that are associated with a retail shop, whether or not they are bank affiliated. Subsequently, a structural analysis of market shares was undertaken, determining that the market share thresholds set out in the FNE's May 2022 Guidelines for the Analysis of Horizontal Merger Transactions were not surpassed. Specifically, the combined market share of the parties remains below 10%, as measured by the number of active credit cards during year 2022.

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. Recommendation for SMS Tariff Regulation

109. The FNE has forwarded a regulatory recommendation to the Ministry of Transportation and Telecommunications (MTT) and the Ministry of Economy with the purpose of incorporating into the current 2024 tariffing process, which regulates mobile operators, the termination services of text messages (hereinafter, "SMS") between concessionaires, as well as the enabling services necessary for the optimal provision of said service.

110. In the context of its investigation, initiated following a complaint against WOM for the increase in the termination fee of some SMS, the FNE verified that each mobile operator with a network (such as Claro, Entel, Movistar, and WOM) holds a monopoly over the termination service of these messages, which is currently governed by a regime of free prices.

111. This lack of price regulation entails various potential risks to competition by companies, such as exploitative price increases or the impact on the ability to compete in SMS markets for agents whose income depends significantly on the transmission of text messages.

112. The FNE concluded that SMS termination services can be regulated without the need for a prior judicial declaration, according to Article 25, final paragraph of the General Telecommunications Law. Therefore, the recommendation is addressed to the competent ministries, urging them to issue the necessary administrative and/or regulatory acts to incorporate SMS termination services into the current 2024 tariffing process, without establishing any specific distinction or categorization for such messages.

113. According to the report prepared by the FNE, the implementation of this recommendation would mitigate the identified risks to competition. Under conservative assumptions, the FNE estimates that these risks could result in total price increases of around \$30 billion annually, equivalent to USD\$36 million.

114. Following this recommendation, the Undersecretariat of Telecommunications (Subtel) published the Final Technical Economic Bases of the tariff process for mobile companies in 2024, including for the first time the termination of SMS as one of the services subject to tariff setting. As a result of this process, a value of CLP\$0.04 has been established for text messages, representing a significant reduction from the previous average charge of CLP\$5.

Impact Assessment of Regulatory Measures on Mortgage Insurance Market Competition: 2021-2023

115. The FNE has conducted an impact assessment of regulatory measures between 2021 and 2023, examining the effects of recommendations made by the institution in August 2019 to the Executive Branch through the Ministry of Finance, aimed at enhancing competitive dynamics in the mortgage insurance market.

116. These recommendations emerged following an inquiry into mortgage insurance tenders conducted by the FNE, which identified a lack of competition in the brokerage segment associated with mortgage life and fire insurance.

117. The lack of competition was evidenced, for instance, by the fact that 94.8% of tenders conducted between 2012 and 2017 involved only the participation of the broker linked to the lending institution, and that the average commission of brokers not affiliated with or independent from the lending institution was significantly lower. Likewise, it was found that in 99.96% of cases where there was a broker linked to the lending institution, the service was awarded to them.

118. Based on this diagnosis, the FNE recommended to the Executive Branch to make adjustments to regulations to promote competition, focusing on insurance brokerage. These recommendations were mostly accepted, resulting in Law No. 21,314 of 2021, which establishes new transparency requirements and strengthens the responsibilities of market agents.

119. The main changes introduced by this law include: (i) eliminating the right of the lending institution to arbitrarily replace the broker included in tendered collective insurance offers, provided that the commission was matched; (ii) abolishing the ability of lending institutions to require the presence of an insurance broker; and (iii) reviewing the services that could be demanded from the insurance broker.

120. The FNE's regulatory impact assessment indicates that the implementation of these recommendations has generated annual savings of USD\$25.52 million and has benefited nearly 1.3 million mortgage loan clients. This is primarily due to reduced participation and awarding of tenders to brokers related to banks offering mortgage loans, and a significant increase in participation and awarding of policies to insurers without insurance brokers, resulting in a reduction in the price of the final product.

121. According to the FNE's evaluation, the largest savings were concentrated in the fire and earthquake insurance portfolio, with savings of USD\$17.92 million, representing 70% of the total. Next, was the mortgage life insurance segment, where individuals' lower expenses reached almost USD\$7 million, equivalent to 26% of the total.

122. Moreover, the increased competition observed in this market resulted in a significant reduction in the system's average commissions, which were less than 3% in

2023, compared to 17% before 2019. Similarly, the gap in the price of offers between independent brokers and affiliated brokers decreased.

Regulatory reforms derived from the Notary Market Study published in July 2018

123. As a result of a market study published in July 2018, the FNE suggests structural reforms to the notary market, aiming to promote competition. Some of the key recommendations included reducing the number of notarial procedures, promoting the establishment of new notaries, relaxing commercial conduct rules for notaries, and modernizing service provision regulations. These changes are expected to enhance service quality, lower costs, and promote the use of technology, potentially saving up to USD\$149 million annually.

124. As a result of these recommendations, on July 7, 2023, Law No. 21.582 was enacted, which amends various normative bodies, and eliminates or modifies the involvement of notaries in certain procedures, actions, and management tasks.

125. Moreover, bill draft 15.291-07 presented on August 17, 2022, currently in discussion in the Senate, aims to modernize the management of notaries, conservators, and judicial archivists, which considers many of the recommendations proposed by the FNE. The bill has been forwarded to the Commission of Constitution, Legislation, Justice, and Regulation for further discussion. This legislative proposal seeks to update and streamline the administrative processes and regulations governing these legal professions.

Regulatory reforms derived from public purchases and procurement market study published in August 2020

126. The FNE's public purchases and procurement market study highlighted potential annual savings of US\$290 to US\$855 million for the state through proposed reforms targeting inefficiencies and enhancing competitiveness. The proposed recommendations focused on better planning, data systematization, clearer contract guidelines, granting regulatory powers to the Public Procurement and Contracting Directorate (hereinafter, "ChileCompra"), strengthening oversight, and digitizing the procurement process to ensure transparency and efficiency.

127. Following the recommendations from the FNE, Law N°21.634 was enacted on November 28, 2023, aiming to modernize the public purchase and procurement system. This new legislation incorporates the FNE's suggestions by reforming procurement practices to improve government spending's efficiency, probity, and transparency. It empowers ChileCompra with new corrective abilities and broadens the Public Procurement and Contracting Tribunal's authority. The phased implementation of these reforms, with regulatory details to be outlined within 180 days, represents a significant advancement in public policies based on the FNE's market studies.

Regulatory formulations derived from gas market study published in December 2021

128. The FNE's report published on December 2021 concerning the gas market identified competition issues in the liquefied petroleum gas (hereinafter, "LPG") and natural gas sectors, proposed three main reforms: prohibiting wholesale LPG distributors from participating in retail distribution to end consumers, clarifying open access regulations for natural gas transportation networks, and revising the profit rate calculation for a certain natural gas distributor to consider the profitability of the entire vertically integrated economic group. These recommendations aimed to enhance market competitiveness and address regulatory gaps affecting the gas market's efficiency and prices.

129. As a result of the market study, the bill draft 16035-03, presented in June 2023, incorporated various of the FNE's recommendations to reform the LPG sector. The bill focuses on enhancing competition through four main strategies: separating the wholesale and retail distribution segments; ensuring open access to bottling of cylinders services for retailers to facilitate market entry; banning exclusivity clauses that maintain vertical integration and stifle competition; and legally establishing LPG cylinder interchangeability with a reliable traceability system to prevent hoarding with anticompetitive effects. This initiative reflects a significant legal shift towards a competitive LPG market, informed by the FNE's comprehensive market study and normative recommendation on cylinder traceability.

130. Moreover, the Committee of Experts for Regulatory Improvement in the Natural Gas Market, established by Chile's Ministries of Economy and Energy in 2022, published a final report in 2023. The report utilized the FNE's 2021 market study on the natural gas industry as a foundation to propose significant regulatory reforms. Recognizing the FNE's findings regarding the lack of competition, particularly in the residential sector for non-heating purposes, the committee suggested bolstering competition through regulatory changes. These recommendations are aimed at guaranteeing access to essential infrastructure at equitable rates and to refine the profitability check mechanism, thereby nurturing a more competitive environment in the natural gas market. The concordance with FNE's insights highlights the significance of the recommendations made within the context of market studies.

Regulatory formulations derived from funeral market study published in January 2023

131. In the final report of the funeral market study, the FNE recommended changes to increase competition in the funeral market, including allowing consumers to purchase funeral goods and services separately, rather than exclusively through bundled plans, among other relevant recommendations.

132. In September 2023, Bill No. 16271-03 (called, "SERNAC Protects You"), currently in discussion in the Chamber of Deputies, was presented. A crucial aspect of the bill is the introduction of a measure to prevent tied sales by funeral service providers, allowing consumers the freedom to purchase funeral goods and services separately, following the recommendations made by the FNE in the market study.

3.2. TDLC

3.2.1. Decision on the pricing conditions of pharmaceutical products (Decisión No. 78/2023)

133. In a relevant non-adversarial case, Socofar S.A., asked the Tribunal if the differentiated treatment granted by pharmaceutical laboratories operating in the market, in determining the price of their products to public and private clients participating in the distribution segment, is compliant or not with the competition law.

134. In its decision, the Tribunal declared that the obligations imposed on laboratories and other suppliers by Resolution No. 634/2001 of the former Resolutive Commission and its subsequent amendments allow the sale of products in tender processes and do not imply the obligation to sell these at the published listed prices. Referring to volume discounts, the regulations allow the existence of price differences particularly based on volumes of sales provided that they do not result in any discrimination and have reasonable economic justifications.

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)

Table 4.1. The annual budget assigned to the FNE

Year	Chilean Pesos	USD ⁴
2014	4,675,937,000	5,572,762
2015	7,070,663,000	8,426,786
2016	5,816,708,000	6,932,327
2017	6,575,860,000	7,837,082
2018	6,981,152,000	8,320,107
2019	7,208,103,000	8,590,586
2020	7,426,218,000	8,850,535
2021	6,833,691,000	8,144,363
2022	7,045,099,000	8,396,319
2023	7,591,428,000	9,047,431

Table 4.2. Number of employees

Staff	2015	2016	2017	2018	2019	2020	2021	2022	2023
Economists	20	19	31	30	30	27	27	25	27
Lawyers	39	42	47	50	51	50	44	47	49
Other professionals	23	22	21	11	3	4	6	4	5
Support staff	10	11	13	18	19	18	25	19	18
All staff	92	94	112	99	103	99	102	95	99

Table 4.3. Human resources

Areas	2015	2016	2017	2018	2019	2020	2021	2022	2023
Enforcement against anticompetitive practices	33	33	39	52	42	44	45	38	40
Merger review and enforcement	11	13	22	21	20	15	14	15	15
Advocacy efforts	11	11	13	6	6	5	3	5	4
Litigation	18	18	15	15	14	13	10	11	14

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

⁴ Source Central Bank of Chile, annual average change rate USD 2023: \$839.07. Available online: https://si3.bcentral.cl/siete/ES/Siete/Cuadro/CAP_TIPO_CAMBIO/MN_TIPO_CAMBIO4/DOLAR_OBS_ADO?cbFechaDiaria=2024&cbFrecuencia=ANNUAL&cbCalculo=NONE&cbFechaBase=.

4.2. TDLC

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

Table 4.4. Annual budget (in your currency and USD)

Year	Chilean Pesos	USD ⁵
2015	1,729,560,000	2,061,282
2016	1,795,289,000	2,139,618
2017	1,849,141,000	2,203,798
2018	1,897,219,000	2,261,097
2019	2,153,804,000	2,566,894
2020	2,270,103,000	2,705,499
2021	2,119,502,023	2,526,013
2022	2,245,823,000	2,676,562
2023	2,649,467,000	3,157,623

Table 4.5. Number of employees (including staff members and 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
2023	34

Table 4.6. Informing separately for each year

Staff	2017	2018	2019	2020	2021	2022	2023
Economists	6	7	7	7	7	7	7
Lawyers	9	10	10	11	12	13	13
Support staff	8	8	9	11	11	13	14
All staff	23	25	26	29	30	33	34

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

⁵ Source Central Bank of Chile, annual average change rate USD 2023: \$839.07. Available online: https://si3.bcentral.cl/siete/ES/Siete/Cuadro/CAP_TIPO_CAMBIO/MN_TIPO_CAMBIO4/DOLAR_OBS_ADO?cbFechaDiaria=2024&cbFrecuencia=ANNUAL&cbCalculo=NONE&cbFechaBase=

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

5.1. Final report of the funeral market study

137. In January 2023, the FNE published the final report on the funeral market which sheds light on significant findings concerning the market's competitive dynamics, consumer behaviors, and regulatory frameworks. The study points out that the cost of funeral services, including both burial and cremation, can be significant for families, underlining the budgetary impact of arranging end-of-life services.

138. One of the key issues identified in the report is the substantial price dispersion and high mark-ups across the funeral services market, suggesting a lack of effective competition. This situation is exacerbated by cognitive biases affecting consumers during vulnerable times, limiting their ability to compare prices and services effectively.

139. The report also highlights the market's structure, characterized by a notable concentration of service providers, which contributes to the challenges consumers face in seeking affordable options. Additionally, the prevalence of pre-need contracts, often sold at lower prices compared to at-need services, underscores the complexity of consumer choices in planning for funeral services.

140. Regulatory aspects further complicate the market dynamics, with policies around mortuary benefits and requirements for specific types of coffins influencing both competition and consumer decisions. The FNE's recommendations focus on improving market transparency, encouraging price comparison among consumers, and reforming regulatory barriers to foster a more competitive and fair market.

141. Overall, the FNE's report calls for comprehensive reforms to address the lack of competition in Chile's funeral market, aiming to ease the financial and emotional burden on families arranging funeral services.

5.2. Preliminary report on the accommodation sector market study

142. In December 2023, the FNE published the preliminary report of the accommodation sector market study. The market study focused on three key hypotheses: the competitive dynamics between registered and unregistered accommodations, the impact of algorithmic pricing by online travel agencies (hereinafter, "OTAs"), and the effects of most favored nation clauses in OTA contracts. The Preliminary Report of the study reveals significant insights into market behavior and competitive challenges.

143. The investigation highlighted the increasing competition between short-term rentals (hereinafter, "STRs") and traditional accommodations, altering market concentration and pricing dynamics. This competition underscores the evolving landscape of the accommodations sector, influenced significantly by digital platforms and changing consumer preferences.

144. The market study also found that the rise of OTAs as major booking channels has introduced new competitive pressures. Particularly, the presence of most favored nation clauses in OTA contracts raised concerns regarding their potential to stifle price competition and create barriers for new entrants in the market.

145. Algorithmic pricing strategies, although not widely reported among OTAs, suggest a move towards more dynamic pricing models. This shift could have broad implications for pricing strategies across the accommodations market.

146. To address these findings, the FNE proposes nine regulatory measures aimed at promoting fair competition and regulatory equity among accommodations providers, including recognizing OTAs and STRs within the legal framework and investigating the legality of most favored nation clauses.

147. The report calls for regulatory updates to foster a more competitive and transparent accommodations market in Chile, highlighting the need for adjustments considering digitalization and market evolution.