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Competition in the Healthcare Sector – Contribution from Chile

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Mr Antonio Capobianco [Antonio.Capobianco@oecd.org]

JT03577528

Chile

1. The Chilean competition system has traditionally paid especial attention to the healthcare sector. The essential nature of many of the goods and services involved in this industry—critical for survival and well-being—and the economic relevance of the sector itself justify particular concern for it in the enforcement and advocacy activities of Chile's competition authority (Fiscalía Nacional Económica, or FNE).[1]

2. The purpose of this contribution is to present the most relevant activities performed by the FNE in this field. In recent years, key actions have been carried out on cartels and other anticompetitive agreements (Section I), unilateral conduct (Section II), merger control (Section III), and competition advocacy through market studies (Section IV). These actions have covered various segments of the healthcare sector, encompassing, among others, pharmaceutical markets, medical supplies such as ampoules and saline, and the provision of services by specialist physicians.

3. This contribution also highlights, for the first time, an ex-post analysis recently completed by the FNE on the remedies established in 2016 in *Searle*, an abuse of dominance case in the pharmaceutical market. The case concerned the artificial extension of the patent over the active ingredient Celecoxib by its original holder—a practice commonly known as "evergreening". The analysis shows that, over the evaluation period, the remedies established have generated cumulative savings of between USD 208 million and USD 546 million in the public procurement market for pharmaceuticals alone (*infra*, Section II.2).

1. Anticompetitive agreements in the healthcare sector

4. Since collusion constitutes the most serious offence against competition, and the healthcare sector is essential to the population's well-being, it has been natural for the FNE to regard the detection and prosecution of anticompetitive agreements within the healthcare sector as a top enforcement priority.

5. This is clearly reflected in historical practice. Indeed, cases of anticompetitive agreements affecting the healthcare sector and handled by the FNE have involved aspects that are legally and economically significant, establishing valuable landmarks for the development of Chilean competition law.

6. This is most vividly exemplified by the so-called Pharmacies case ("*Pharmacies*"), a collusive agreement among the three largest pharmacy chains in the country to raise the prices of more than two hundred medicines between December 2007 and March 2008, several of which were used for the treatment of chronic diseases. The FNE filed a lawsuit before the Competition Tribunal in 2008 and the case was decided by the Competition Tribunal in 2012, with the Tribunal sanctioning the participating chains. This decision was

[1] As contextual background, it is relevant to note that Chile's institutional framework for competition law enforcement is characterised by a bifurcated model, with a clear separation between the investigative and prosecutorial body—the FNE, which is also responsible for merger assessment and holds statutory powers to promote competition—and the adjudicative or judicial body—the Tribunal de Defensa de la Libre Competencia (Competition Tribunal or TDLC). The Supreme Court of Justice also plays a role within this institutional framework, acting as the appellate body that reviews TDLC's decisions.

subsequently upheld by the Supreme Court that same year, imposing record fines (set at the maximum allowed under the law at the time) on the companies involved.[2]

7. Beyond revealing the true extent of the harm that collusion can inflict on a country's economy, *Pharmacies* marked a milestone in the development of public awareness regarding the seriousness of such conduct. It also served as a direct precedent for a major amendment to the Chilean Competition Act, passed in 2009 (Law No. 20.361).[3] This reform—key to strengthening Chile's institutional framework for cartel enforcement—increased fines for anticompetitive conduct, introduced a leniency programme for collusion cases, and granted the FNE enhanced investigative powers, such as conducting dawn raids and wiretapping, among others.

8. Since then, the Chilean system quickly evolved towards the adoption of standards aligned with those of leading competition authorities worldwide. Since then as well, the FNE has actively focused on detecting and prosecuting collusive agreements affecting the healthcare sector.

9. The following sections highlight the most significant anticompetitive agreement cases in recent years, spanning different segments of the healthcare industry.

1.1. Collusion in public procurement: medicines

10. *Ampoules*. In August 2016, the FNE filed a lawsuit against the two main laboratories supplying low-volume injectable medicines (ampoules) to the public healthcare sector, for having entered into and executed an agreement to affect the outcome of a series of public tender processes called by CENABAST (the state agency that manages pooled public procurement of medicines for the public healthcare network)[4] between at least 1999 and 2013.

11. In November 2018, the Competition Tribunal ruled against the laboratories (Sanderson and Fresenius-Kabi), imposing, among other punitive and corrective measures, the payment of substantial fines. However, one of the laboratories was exempted from paying the fine after entering the leniency program. The Supreme Court upheld the conviction in January 2020, although it reduced the amount of fines to those initially requested by the FNE (approximately USD 15 million in total).[5]

[2] See TDLC. Ruling No. 119/2012. Available at: link. See also Supreme Court. Case No. 2578-2012. Available at: link [last accessed: November 2025].

[3] See Library of the National Congress. Legislative History of Law No. 20.361. Available at: link [last accessed: November 2025]. In particular, before a leniency program existed in Chile, during the judicial proceedings of the Pharmacies case, the FNE reached a settlement with one of the pharmacies chains which, in exchange for a reduced fine, expressly acknowledged certain facts of the accusation and committed to cooperating in establishing the involvement of the other accused pharmacies. This circumstance helped drive the approval of the leniency system during the legislative debate that ultimately led to its enactment in 2009.

[4] CENABAST (Central Nacional de Abastecimiento del Sistema Nacional de Servicios de Salud) is a public demand aggregator that represents hospitals, clinics, municipalities, and other public entities. Its main function is carrying out health-related actions by acquiring goods and services through public tenders. CENABAST can also purchase medicines for private pharmacies under a capped maximum retail price.

[5] TDLC. Ruling No. 165/2018. Available at: link [last accessed: November 2025].

12. Beyond the extreme seriousness of the *Ampoules Case*—considering, among other factors, the nature of the affected market, the scope of the agreement (multiple tenders called to supply injectable medicines to the entire public sector over more than a decade), and the harm to public finances—its relevance goes even further, as it established the legal standard of a *"single and continuous agreement."* Indeed, the FNE's lawsuit, following the most convincing comparative legal literature and case law, argued that this cartel should be understood as a single agreement, notwithstanding that throughout the alleged period there may have been certain time gaps without evidence or even interruptions in the cartel's operation. The TDLC, after identifying what it considered to be the essential elements for the existence of a single and continuous agreement,[6] confirmed that these conditions were met in the *Ampoules case*. As a result, it sanctioned the involved laboratories for their participation in a single agreement, with all the legal consequences that followed, including the application of the statute of limitations. This interpretation was later upheld by the Supreme Court.[7]

13. *Saline*. Later, in July 2017, the FNE filed a lawsuit against two laboratories for having agreed to influence two specific public tender processes—one called by CENABAST and the other by a public hospital—for the purchase of saline solution (known as the "*Saline case*"). The Competition Tribunal sentenced both laboratories (Baxter and Sanderson) to pay fines, along with other corrective and punitive measures.[8] These sanctions were confirmed by the Supreme Court.[9]

14. The *Saline Case* presented a special feature: the laboratories involved argued that the collusive agreement had no effect on the market, since in one of the tenders, one of the laboratories allegedly failed to comply with the agreed arrangement, while in the other process, the tender was awarded to a third party. On this basis, the undertakings involved claimed they should be acquitted of all charges. Nonetheless, the Competition Tribunal and the Supreme Court reaffirmed that a collusive agreement is illegal even if it does not produce concrete effects.[10]

15. This concept was further reinforced by the amendments to the Chilean Competition Act (DL No. 211 of 1973, or DL 211) introduced by Law No. 20.945 in 2016, which eliminated any doubt regarding the *per se* illegal nature of hardcore cartels.

1.2. Collusion cases among physicians

16. Health services have also been a matter of concern for the FNE. In recent years, the cases involving agreements among physicians for jointly setting fees, which were further negotiated with private health insurance companies (ISAPRES).

17. *AM Patagonia*. In the AM Patagonia Case, in September 2008, the Competition Tribunal—acting on a lawsuit filed by the FNE—sanctioned a corporation and seventy-four specialist doctors from the city of Punta Arenas who were its shareholders.

18. The legal entity was sanctioned for coordinating specialty-based fee schedules and, following the failure of a negotiation process with the ISAPRES, facilitating the mass

[6] TDLC. Ruling No. 165/2018, §12.

[7] Supreme Court. Case No. 278-2019. Available at: link [last accessed: November 2025].

[8] TDLC. Ruling No. 172/2020. Available at: link [last accessed: November 2025].

[9] Supreme Court. Case No. 16.986-2020. Available at: link [last accessed: November 2025].

[10] TDLC. Ruling No. 172/2020, §9–31; Supreme Court. Case No. 16.986-2020, C. Cuarto.

termination of individual contracts that the shareholder doctors had with these insurers.[11] The decision was later upheld by the Supreme Court.[12]

19. *Ñuble's Gynecologists*. A similar situation occurred in the *Ñuble Gynecologists Case*. In April 2015, following a lawsuit filed by the FNE, the Competition Tribunal sanctioned a group of 25 obstetric-gynecologist physicians and the association that brought them together (the Trade Association of Obstetric-Gynaecologists of the Province of Ñuble or "AGGOÑ") for entering into and executing an agreement aimed at setting minimum prices for medical consultations and surgical procedures within their specialty across various municipalities.[13] This decision was upheld by the Supreme Court.[14]

20. One of the defences presented by the physicians to justify their conduct was based on the grounds of strengthening their bargaining power against private health insurers (ISAPRES), which was firmly rejected by the TDLC. This position was upheld by the Supreme Court, which emphasized that any notion of a supposed "compensation of faults" is inadmissible in competition law.[15]

21. Finally, the Supreme Court also accepted the FNE's request to dissolve AGGOÑ, considering that "*the Trade Association in question was directly and primarily involved in the anticompetitive acts that have been proven in these proceedings, and furthermore, the entire collusive conduct under scrutiny was organized around it—reasons more than sufficient to order its dissolution*"[16].

22. *Valparaíso's Surgeons*. Lastly, in March 2019, the TDLC approved a settlement agreement between the FNE and the Trade Association of Surgeons of the Valparaíso Region, along with its 111 physician members[17].

23. According to the FNE's findings, the trade association, acting on behalf of its members, entered into and implemented written or verbal agreements with private health insurers (ISAPRES), carried out monitoring activities, and sanctioned non-compliance with the agreed fee schedule.

24. Under the terms of the settlement agreement, the accused physicians acknowledged having jointly set and implemented fee schedules, committed to cease the conduct, and agreed to terminate the existing agreements.

25. Additionally, the parties undertook not to negotiate fees jointly with other physicians unless there was a real and effective integration of their operations, in which case they were required to notify the FNE prior to its formation. Lastly, among other commitments, the parties agreed to make a payment to the benefit of the Treasury.

[11] TDLC. Ruling No. 74/2008. Available at: link [last accessed: November 2025].

[12] Supreme Court. Case No. 5937-2008. Available at: link [last accessed: November 2025].

[13] See TDLC Ruling 145/2015 at: link [last accessed: November 2025].

[14] TDLC. Ruling No. 145/2015. Available at: link [last accessed: November 2025].

[15] Supreme Court. Case No. 5609-2015, §16: ": "(...) to claim that one anticompetitive conduct is punished in order to validate another that is equally or even more anticompetitive is inadmissible, since each party's responsibility is personal and cannot be shifted to third parties, especially considering that what is being investigated in this case is the actual commission of unlawful acts by the defendants, and not the conduct of the referenced ISAPRES" (free translation).

[16] Supreme Court. Case No. 5609-2015, §28.

[17] TDLC. Case No. C-353-2018. Available at: link [last accessed: November 2025].

1.3. Medical and industrial gases cartel

26. *Medical Gases*. The relevance of the healthcare sector for the FNE has once again become evident in a recent case, currently under review by the Competition Tribunal ("*Medical Gases*").[18]

27. In April 2024, the FNE accused two companies (Indura and Linde, the main producers of industrial and medical gases) and three of their senior executives of having entered into and executed a market allocation agreement, through which they decided not to poach each other's existing customers.

28. According to the FNE's investigation this agreement was in effect from at least November 2019 to January 2021, within the market for the production and commercialization of industrial, medical, and specialty gases throughout the national territory.

29. This a key case in the development of Chilean competition law. First, the sanctions requested by the FNE are among the highest ever sought in a cartel case in Chile (approximately a USD 34.2 million fine on Indura and a USD 124,000 fine on its general manager), which directly reflects the seriousness of the conduct and the social harm the cartel is estimated to have caused.

30. Moreover, the case exhibits an effective use of FNE's investigative powers. Almost 20 years ago, the FNE accused a cartel in the same market, but the companies were acquitted because no direct evidence of the agreement could be obtained. Since then, the FNE has been empowered to wiretap communications, access phone logs, conduct searches and seizures, and implement a leniency program. *Medical Gases* clearly illustrates the importance of this toolkit since it involves dismantling an ongoing cartel by employing each of the information-gathering powers entrusted to it by the legislator (wiretapping, conducting dawn raids, searching for and seizing objects and documents, and compulsory information requests).

31. The case also illustrates the strength and effectiveness of Chile's Leniency Program. The FNE requested that the Competition Tribunal exempt Linde and its executives from fines due to their cooperation and fulfillment of the program's requirements. Additionally, the FNE requested that the tribunal grant full immunity from criminal prosecution to the Linde executives covered by the leniency application.

32. Last but not least, the case emerges particularly relevant given its social impact. As stated in the FNE's lawsuit, *"the infringement occurred concurrently with the COVID-19 pandemic, which affected Chile starting in early 2020, during which medical oxygen played a key role in the treatment of the disease and was an essential input for the proper functioning of the country's healthcare system"*.[19]

1.4. The near future

33. The prosecution of cartels by the FNE involves a multifaceted policy that combines a wide range of reactive and proactive tools reinforcing one another to ensure effective

[18] TDLC. Case No. C-511-2024. Available at: link [last accessed: November 2025].

[19] FNE. Complaint in TDLC Case No. C-511-2024. Available at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42445link [last accessed: November 2025].

enforcement. As has been highlighted in other instances,[20] the FNE has, for several years now, been working to intensify the use of proactive measures.

34. In this context, the use of technological tools for market screening is essential. Among these tools, the Intelligence Unit of the FNE's Anti-Cartel Division—established in 2020—has successfully implemented, and is currently working to optimize, a platform that analyses public tenders using data obtained through a cooperation agreement with Chile's public procurement agency (*Chilecompra*). The use of this platform has significantly reduced the time spent collecting and reviewing large volumes of data, thereby improving the detection of anticompetitive behaviour related to procurement mechanisms.

35. In selecting which markets to prioritize, it is undeniable that those concerning the healthcare sector have a prominent position, given their critical social importance.

2. Abuse of dominance and other unilateral conduct cases

2.1. Overview on abuse of dominance and unilateral conduct cases

36. With respect to abuse of dominance and other unilateral practices, the FNE has undertaken wide range of investigations and issued several policy recommendations, seeking to address the most serious risks it has identified across different segments of the healthcare industry. The following paragraphs highlight a few examples, before turning to a more detailed discussion of the *Searle* case.

37. Within the pharmaceutical sector, the FNE identified arbitrary price discrimination between distribution channels—specifically between retail pharmacies and public or private healthcare institutions.[21] To address this issue, the FNE proposed a regulatory amendment allowing retail pharmacies to participate in public drug procurement processes. This measure—subsequently endorsed by the Competition Tribunal—sought to enhance price competition and deliver benefits to consumers. [22]

38. As part of its work on public tenders for medical supplies, the FNE reviewed the procurement procedures of CENABAST (the state agency that manages pooled public procurement of medicines) and recommended the introduction of stronger incentives for healthcare facilities to ensure timely payment compliance. In particular, the FNE proposed automating the suspension of deliveries in cases of non-payment to secure a prompt response and improve operational efficiency within the public health system[23]. Besides, following a consultation by independent pharmacies concerning their eligibility as bidders, the FNE recommended to enable their participation in tenders,[24] a conclusion later ratified by the TDLC.[25]

[20] OECD. Latin American and Caribbean Competition Forum 2024. (October 2024). Available at: link [last accessed: November 2025].

[21] FNE. Report to dismiss the case N°2517-2018. Available at: link [last accessed: November 2025].

[22] TDLC. Ruling No. 78/2023. Available at: link [last accessed: November 2025].

[23] FNE. Report to dismiss the case N°2557-2019. Available at: link [last accessed: November 2025].

[24] FNE. Submission of Background Information in case N° NC- 458-2019 (TDLC). Available at: https://www.fne.gob.cl/wp-content/uploads/2024/02/inf_TDLC_005_2019-2574-19.pdf [last accessed: November 2025].

[25] TDLC. Ruling No. 61/2020. Available at: link [last accessed: November 2025].

39. Finally, in relation to mandatory occupational accident and disease insurance (required under Chilean law for a range of work activities), the FNE identified deficiencies in the regulatory framework that limited competitive and efficient outcomes. To remedy these, it proposed the introduction of transparency mechanisms for insurance costs and a review of the methodology used to determine premium amounts. These recommendations aimed to foster efficiency, accountability, and competition within the insurance market.[26]

2.2. Demonstrating successful enforcement: ex post assessment of the Searle case remedies

40. *Searle*. The intervention of the FNE in the market for pharmaceuticals containing the active ingredient Celecoxib—mainly indicated for the treatment of inflammation, chronic pain associated with osteoarthritis and rheumatoid arthritis in adults, as well as for the management of acute pain—constitutes a clear example of the tangible impact that competition enforcement can have on consumer welfare and the efficiency of public expenditure.

41. Following a complaint filed in 2015, the FNE initiated an investigation against G.D. Searle LLC ("Searle"), a subsidiary of Pfizer, with the purpose of examining potential anticompetitive conduct in the market for pharmaceutical products containing the active ingredient Celecoxib, in which Searle primarily participated through its drug CELEBRA®.

42. The FNE's investigation established that Searle had artificially extended its monopoly over this compound beyond the expiration of its original patent by obtaining, maintaining, and strategically using a secondary patent related to minor modifications of the product—a practice commonly known as *"evergreening"*. This conduct aimed to restrict and hinder the entry of generic competition until the year 2029.

43. Consequently, in June 2016 the FNE filed a lawsuit for abuse of dominant position before the Competition Tribunal. This action concluded through a settlement agreement reached between the FNE and Searle, which was approved by the TDLC. Under this settlement, the company undertook to: (i) grant a free, non-exclusive, irrevocable, and sublicensable licence to any current or potential competitor within the Chilean territory for the manufacture, marketing, distribution, use, offering for sale, sale, or importation of the product, use, and process covered by the secondary patent; (ii) refrain from conducting promotional activities with medical professionals regarding its pharmaceutical products marketed as "second brands" of Celecoxib, such as Valdyne® and Capsure®, for a period of two years; (iii) refrain from undertaking any administrative or judicial action in enforcement of the secondary patent; (iv) withdraw the judicial actions already filed in connection with the secondary patent; and (v) terminate the onerous licence agreements related to the secondary patent. In this way, the entry of bioequivalent medicines containing the active ingredient Celecoxib into both the institutional and private markets was effectively enabled.

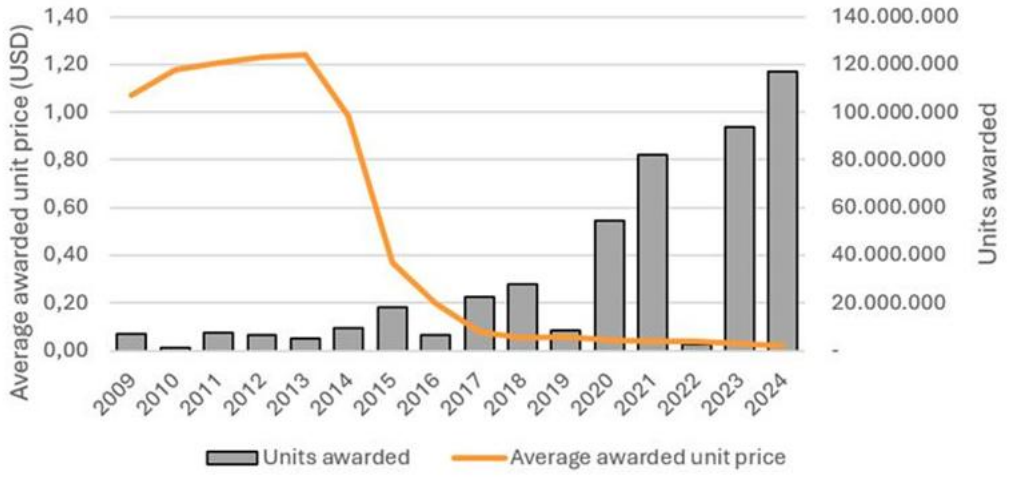
44. Nine years after the FNE's competition enforcement action, the present assessment compiles, systematises, and analyses all public purchases of Celecoxib in capsule or tablet form reported on the public procurement platform (*Mercado Público*) from 2009 to 2024.

45. The calculation considers both the annual quantities awarded and the weighted unit price for each respective year. Based on these data, two clearly distinct periods can be identified: a pre-intervention phase, characterised by high prices and limited competition

[26] FNE. Submission of Background Information in case N° NC-527-2023 (TDLC). Available at: link [last accessed: November 2025].

(with weighted average unit values close to USD 0.88 per tablet), and a post-intervention phase, in which the sharp decline in price coincides with the entry of multiple suppliers following the removal of the barriers imposed by the secondary patent.

Figure 1. Awarded Public Tenders for Celecoxib



Source: FNE's own elaboration based on data from Mercado Público.

46. The FNE's intervention brought an end to the anticompetitive practices and, consequently, opened up the market. The awarded prices of Celecoxib dropped significantly, stabilising at around USD 0.04 per tablet—that is, a 96% decrease compared to its original average price (see Figure No. 1)[27].

47. The evidence shows that, following the FNE's intervention, the State was able to procure medicines at significantly lower costs, generating average annual fiscal savings exceeding USD 39 million[28]. Accordingly, had the secondary patent remained in force until 2029—and considering the average quantities and prices from previous years—these accumulated savings could have reached approximately between USD 208 million and USD 546 million to this date.[29] It is important to note that this exercise captures only the effects on public purchases, corresponding to the institutional channel, which represents approximately 88% of the total combined institutional and retail channels measured in

[27] The 96% decrease corresponds to the percentage variation between the weighted average price during the period prior to the FNE's intervention (2009–2015) and the weighted average price during the period following the intervention (2016–2024).

[28] The calculation of the average annual savings corresponds to the average of the differences between the effective price and the weighted average price during the period prior to the FNE's intervention (2009–2015), weighted by the quantity effectively transacted in each period.

[29] The calculation of the accumulated savings by 2029 corresponds to the product of the previously estimated average annual savings and the 14 years considered in the evaluation period (2016–2029), which represents the upper bound of the estimate. On the other hand, the lower bound uses the quantity awarded in 2015 as a fixed value through 2029, in order to isolate the behaviour of the Celecoxib market in the absence of intervention from the additional growth derived from the substitution triggered by the entry of new alternatives—an expansion that would not have occurred without the competitive intervention that affected this market.

units, and about 8% when measured in sales.[30] Consequently, the overall impact of the FNE's intervention could be even greater if all three marketing channels—institutional, retail, and private—were taken into account.

48. The opening of the market to new competitors not only contributed to these reductions in expenditure but also enabled more competitive prices for private consumers, thereby expanding access and enhancing social welfare, in line with international standards on competition and access to medicines.

49. Additionally, it is worth highlighting that the FNE's intervention ensured the market opening occurred in a timely manner. Indeed, although the secondary patent was granted at the end of 2014, the 2016 settlement agreement enabled the immediate entry of six laboratories offering bioequivalent drug alternatives containing the same active ingredient. As of today, this number has tripled, reaching a total of 19 laboratories with approved sanitary registration for the commercialisation of this medicine.

50. Hence, *Searle* clearly illustrates how active and technically proficient competition enforcement actions can protect consumers and enhance the efficiency of public spending.

51. The case also highlights the importance of collaboration and coordination among sectoral agencies. The investigation conducted by the FNE required to closely examine substantive aspects of intellectual property that had been debated during the processing of the secondary patent. This analysis was successful largely thanks to the collaboration and technical support provided by the National Institute of Industrial Property (INAPI), which ultimately made it possible to achieve a virtuous outcome for consumers.

3. Merger control

52. The FNE has also engaged in extensive activity in the healthcare sector with respect to merger assessment. In fact, two of the four merger prohibitions issued to date have arisen in the health sector (out of more than three hundred concentrations notified under the current merger control procedure, in force since 2017). The FNE has also conducted *ex officio* merger investigations in this industry. The following sections discuss four recent cases.

53. *Red Interclínica / Clínica Iquique (2019) - Prohibition Decision*. In December 2019, the FNE prohibited a hospital merger regarding the acquisition of Clínica Iquique S.A. by Redinterclínica S.A. The transaction, filed voluntarily on February 1, 2019, under Chile's merger control regime, was assessed by the FNE due to the potential concentration of the only two private institutional healthcare providers offering hospital services in the city of Iquique.

54. The investigation, which was extended to *Phase II* to allow for an in-depth merger review, involved an extensive evidence-gathering process that included an analysis of concentration indexes under various definitions of the relevant market, as well as an assessment of upward pricing pressure based on the degree of competitive closeness between the hospitals involved and other, more distant potential alternatives. As part of this process, the FNE conducted surveys of patients and medical professionals, carried out field visits, and consulted both private and public sector stakeholders.

[30] Own elaboration based on the total number of units awarded through the institutional channel and the total number of units sold through the retail channel for the year 2024.

55. The FNE found that the transaction would merge the only two providers offering inpatient care in the area, resulting in a monopoly in private hospital services and that it would significantly reduce competition in outpatient and emergency care. Moreover, the competitive assessment revealed significant unilateral effects since the merged entity would gain both the ability and the incentive to increase hospital tariffs and reduce service quality. Competitive constraints from hospitals located in nearby regions or the public network were deemed insufficient to discipline the merged firm.

56. The FNE evaluated the parties' submissions, including an efficiencies report, but determined that the alleged efficiencies did not jointly meet the required criteria of being verifiable, merger-specific, and capable of offsetting the identified anticompetitive effects. In addition, the parties presented behavioural remedies that included temporary price caps, and investment commitments. The FNE concluded that the remedies proposed by the parties were purely behavioural and insufficient to mitigate the identified competition concerns, and pointed out that, according to its Remedies' Guidelines, structural remedies —such as divestitures— are generally capable of effectively restoring competitive conditions, but none were offered by the parties.

57. Consequently, the FNE concluded that the merger was capable to substantially lessen competition and prohibited it. The parties did not exercise their right to appeal before the TDLC. Therefore, the decision became final and the transaction did not materialise.

58. *Nexus / Colmena (2021) - Prohibition Decision.* On February 3, 2022, the FNE blocked the acquisition of Isapre Colmena Salud S.A. (Colmena) by Nexus Chile SpA, controller of Isapre Nueva MasVida (NMV), after concluding that the proposed transaction would substantially lessen competition in the market of private healthcare insurance companies (locally known as "ISAPRES"). The acquirer, Nexus Chile SpA (Nexus), is a private investment fund related to an American business group, Nexus Chile Health LLC.

59. At the time, the target, Colmena was the fourth-largest health-insurance company in Chile, while NMV was the fifth. Due to concerns that the merger might consolidate two of the six open-membership private health insurers in Chile, significantly increasing market concentration, the investigation was extended to *Phase II*.

60. During the in-depth *Phase II* investigation, the FNE conducted economic, structural, and behavioural analyses, supported by market surveys and submissions from sectoral authorities, health providers, and trade associations, and complemented its assessment with a calibrated merger simulation. The assessment found that Colmena and NMV were close competitors, particularly for consumers choosing individual or collective health plans. The FNE concluded that the transaction would substantially lessen competition by enabling price increases in health insurance plans—both for new and existing clients—and by deteriorating quality (for example, reducing coverage or benefits). The analysis also indicated an increased likelihood of coordinated behaviour among remaining ISAPRES, given their market symmetry, transparency, and ability to monitor one another's prices.

61. The merging parties argued that the transaction would generate efficiencies and improve the management of the merged entity. However, the FNE found that the alleged efficiencies failed to cumulatively meet the conditions of verifiability, merger specificity, and effectiveness in offsetting the anticompetitive effects. Entry by new rivals was deemed unlikely or limited to niche markets. Finally, behavioural remedies regarding regulation of price increases and quality of health plans were considered ineffective and lacking enforceability. The FNE emphasized that only structural remedies, such as divestitures, could have restored competitive conditions, but none were offered by the parties.

62. Hence, the FNE prohibited the merger, concluding that it would substantially lessen competition. In February 2022 the parties challenged the decision before the Competition Tribunal, which upheld the FNE's decision. The parties later filed an extraordinary complaint before the Supreme Court, a complaint that had no precedent nor legal foundation under the Competition Act, which on merger control regards the Competition Tribunal's decision as final. For the first-time, the Supreme Court conducted an in-depth review of the assessment, ultimately revoking the Competition Tribunal decision and imposing remedies on the operation. Following the Supreme Court's decision, however, the merger was abandoned.

4. Market studies

63. Finally, the FNE has sought to supplement its enforcement and merger-control activities in the healthcare sector through the development of market studies. This is because some competition problems in the sector stem from market or regulatory characteristics, giving rise to systemic issues rather than problems attributable to any specific anticompetitive conduct. For this reason, market studies—and the formulation of regulatory recommendations that follow from them—constitute an especially suitable tool for improving competition in the healthcare sector.

64. The FNE's concern at this level is evidenced by a series of brief studies carried out between 2012 and 2016, even before it was expressly granted the power to conduct market studies by compulsorily requesting information from private parties and the State (a power incorporated into the law in 2016, following OECD's recommendations).[31] Prior to that date, the FNE had commissioned studies on topics such as the structure of the private healthcare market, the penetration of generic medicines and the effects of bioequivalence, public procurement of pharmaceuticals, and the effects on competition of the supplementary patent protection system.[32]

65. *Market study on pharmaceuticals*.[33] Once it was expressly granted the legal authority to conduct market studies *stricto sensu* and gather information for this purpose, the FNE decided to carry out its third market study in the pharmaceutical industry, which made it possible to conduct a comprehensive and systematic assessment of how competition in the sector had evolved. The study was launched in 2018, and the final report was published in January 2020.

66. The FNE conducted a thorough review of the pharmaceutical industry, covering the entire chain from production to the sale of medicines, and including all relevant stakeholders and regulators. In the course of this work, the FNE identified obstacles to competition in the pharmaceutical retail market (sales by pharmacies to customers), in the pharmaceutical distribution market (sales by laboratories to pharmacies), and in the public procurement market for medicines. Among others, it was found that competition in this

[31] OECD. "Competition and market studies in Latin America: The case of Chile, Colombia, Costa Rica, Mexico and Peru" (2015). Available at: link [last accessed: November 2025].

[32] FNE. "Study on the Supplementary Patent Protection System in Chile and Its Effects on Competition" (2016); FNE. "Study on Public Procurement of Medicines in Public Healthcare Facilities" (2014); FNE. "Study on the Effects of Bioequivalence and the Penetration of Generic Medicines in the Field of Competition" (2013). Pontifical Catholic University of Valparaíso. "Private Healthcare Market in Chile" (2012). Available at: link [last accessed: November 2025].

[33] FNE. Market Study on Pharmaceuticals (EM03-2018). Final report published in January 2020. Available at: link [last accessed: November 2025].

market was primarily taking place through marketing rather than price, a dynamic that was facilitated by certain regulatory issues related to the intersection between competition and intellectual property.[34]

67. In response to these findings, the FNE proposed a package of fifteen regulatory measures aimed at improving competition in the sector, whose objectives can be summarised as follows: (i) to ensure that more bioequivalent medicines enter the market, and at a faster pace; (ii) to require physicians to prescribe medicines without brand names, using their international non-proprietary name (INN); (iii) to require pharmacies to dispense the lowest-priced medicines available; and (iv) to ensure that the State purchases medicines in a more transparent, efficient, and effective manner.

68. These measures included, among others: introducing improvements to the process for registering and certifying the bioequivalence of medicines; establishing a faster mechanism for registering medicines that are already sold in other countries and have certified bioequivalence; introducing a requirement to inform the health authority about patents in force that are associated with a given active ingredient (and including such information in a public registry); establishing a reward for the first generic medicine to enter the market; removing the restriction on selling over-the-counter medicines outside pharmacies; increasing the number of interchangeable medicines; and improving information dissemination policies.

69. The FNE's proposal had a significant impact on public policy discussions, with several of its recommendations being incorporated into a bill aimed at reforming the sector's legislation (*Proyecto de Ley de Fármacos II*). Although this bill has been extensively debated in Parliament, its legislative process encountered major obstacles in the final stage of discussion, effectively bringing its progress to a halt for now.

[34] For instance, the study revealed problems related to the lack of transparency in sanitary registrations; delays in granting patents; limited entry after patent expiry; the use of secondary patents as a tool to block competitors; and issues concerning data exclusivity.