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COMPETITION, FINTECHS, AND OPEN BANKING**

- Contribution from Chile -

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This attached document from Chile is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 9-10 October 2024 in Santo Domingo, Dominican Republic.

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Session I: Competition, Fintechs and Open Banking

– Contribution from Chile –

1. The National Economic Prosecutor’s Office (“FNE”) has conducted an assessment from the perspective of competition policy on the Open Finance System Regulation issued by the Financial Market Commission, the regulatory agency for the financial industry in Chile (“CMF”).
2. In Chile, the Open Finance System (“OFS”) and the Fintech industry were regulated in 2023 through the Law No. 21,521 (“Fintech Act”). This law aims to promote the provision of financial services through technological means, foster financial inclusion, and explicitly incorporate the principle of promoting competition¹.
3. Firstly, the Fintech Act regulates various Fintech services. It sets up procedures for the authorization of operations and the supervision of Fintech activities, and establishes reporting obligations and corporate governance rules, among others. These rules intend to provide legal certainty to those who wish to offer Fintech services, while also increasing the security of the financial system.
4. Secondly, the Fintech Act establishes and regulates the OFS, which is a technological and digital infrastructure that allows for the exchange of information between different financial service providers when their customers have expressly given their consent. The OFS also makes possible the exchange of other commercially relevant information for the design and delivery of financial products through remote, automated, and interconnected interfaces between participating institutions in the system.²
5. Although the Fintech Act establishes the basic rules and principles of the OFS, it entrusts the CMF with issuing the necessary regulations for the proper implementation and functioning of this system in accordance with the principles of risk-based proportionality, technological neutrality, and interoperability. It also requires a regulatory assessment report from the FNE to analyze the compliance of the OFS and its regulation with competition law.
6. In what follows, we present the main aspects analyzed by the FNE in its assessment of the Open Finance System Regulation, the most relevant findings and concerns raised in its assessment, and the recommendations made to the financial authority to ensure that the OFS adequately observes and promotes competition.

1. The Fintech Industry in Chile

7. Chile has experienced sustained growth in financial services offered through digital means, whether by incumbent firms in the financial industry or new entrants. The number

¹ According to Article 1 of the Fintech Law: “*This law is based on the principles of financial inclusion and innovation, promotion of competition, protection of financial customers, proper safeguarding of processed data, preservation of financial integrity and stability, and prevention of money laundering and the financing of drug trafficking and terrorism, all of which must be observed by all entities subject to it*” (underline added).

² Article 16 Fintech Act.

of Chilean Fintech startups rose to a total of 300 companies in 2023, representing almost a 200% increase compared to 2019, when there were 112 companies.³

8. Another relevant aspect of the Fintech ecosystem in Chile is the type of client for whom they develop their financial products or services: 63.7% of these products are focused on companies, while only 36.3% are aimed at consumers. Of this latter fraction, only 7.7% of the products are intended for unbanked individuals, which may be explained by the high levels of digital banking present in Chile, especially compared to other countries in the region.⁴⁻⁵

9. Finally, it can be noted that Fintechs have developed mainly in nascent markets. Specifically, 52.1% of Fintechs consider their main competitor to be other Fintechs, while only 25.6% view traditional financial institutions as their main competitors.⁶

10. This rapid development has created a consensus in the industry on the need to create an open financial system that provides an agile and secure way for customers to grant access to their financial information to new providers to facilitate the delivery of financial products and services tailored to their needs.

11. From a competition law perspective, the OFS is expected to facilitate the incorporation of new players by reducing entry barriers and information asymmetries, thereby expanding the range of financial products and services offered, leading to better prices and innovative products.⁷

12. To achieve these objectives, the FNE has considered it essential for the OFS regulation to define: (i) the entities that will be required to share financial information of the holders; (ii) whether there will be reciprocity in the transfer of information; (iii) the type of information that will be available for consultation; and (iv) the timelines and gradual implementation of the system.

³ The main segments in which these companies operate are Payments and Transfers (20.7%), Business Financial Management (17.3%), Loans (14.3%), Insurance (10.7%), and Personal Savings Management (10.3%). Market Report “Finnovista Fintech Radar Chile 2023,” pp. 5-6, available at: <https://www.finnovista.com/radar/chile2023/> [Date of consultation: May 15, 2024].

⁴ *Ibíd*, p. 10.

⁵ The high levels of banking in Chile are partly explained by the financial inclusion policy of Banco Estado (a state-owned enterprise) called “Cuenta RUT.” This is a basic account that includes a debit card, and opening it only requires the holder to have their RUN (Unique National ID Number), without the need to verify financial background. Additionally, this account has no maintenance or opening costs.

According to public figures from Banco Estado’s published annual reports, there are 14.6 million people with a Cuenta RUT, which provides its holders with a Visa-branded debit card. In other words, financial inclusion in Chile, and the expansion of payment methods, has been achieved through a product offered by a state-owned company, namely the Cuenta RUT, which provides a low-cost card for merchants. Source: https://www.bancoestado.cl/content/dam/bancoestado-public/portal-corporativo/pdf/documentos/memorias-bancoestado/2023/Memoria_Integrada_BancoEstado2023.pdf [Date of consultation: August 22, 2024].

⁶ Market Report “Finnovista Fintech Radar Chile 2023”, p. 15.

⁷ Ministry of Finance of Chile (2021), *Lineamientos para el Desarrollo de un Marco de Finanzas Abiertas en Chile, con Foco en Competencia e Inclusión Financiera*, p.11.

2. The CMF's Draft OFS Regulation

13. The draft OFS Regulation is divided into five sections. The first section establishes the basic definitions and identifies the institutions participating in the OFS, as well as the deadlines for mandatory institutions to register. The entities obligated to provide information are the Information Provider Institutions (banks and issuers of credit and prepaid cards, among others)⁸ and the Account Provider Institutions.⁹ The companies that have the authority to consult, access, and receive data to provide financial services to their clients are the Information-Based Service Provider Institutions (which must register these purposes)¹⁰ and the Payment Initiation Service Providers.¹¹

14. The second section regulates the technological mechanisms for information exchange and the requirements related to the quality of the information to be exchanged. Generally, the information exchange is carried out through a main system consisting of Application Programming Interfaces (hereinafter “API” in singular and “APIs” in plural) that must comply with minimum standards. All system actors must connect bilaterally through these APIs. The regulation addresses the levels of availability and performance of the system.

15. Additionally, an alternative mechanism for data exchange is contemplated, which will be used only in the event of a malfunction in the main system. The technical specifications of this mechanism will be proposed by the institutions themselves and must be approved by the CMF.

16. The third section establishes the security requirements of the system, the requirements and manner in which consent must be given for entities to access their clients' financial information, and the distribution of system operating costs. The fourth section contains the categories of information that can be exchanged, and finally, the fifth section contains the sanction regime applicable to the various system actors.

⁸ According to Article 18 of the Fintech Law, “banks and issuers of credit cards, prepaid cards, or any other system similar to the aforementioned payment methods authorized by the Commission must participate in the Open Finance System as information providers, as well as those institutions supervised by the Commission as determined by general regulations.”

This obligation will extend to other types of financial institutions and insurers indicated in the same article, in the time and manner determined by the CMF.

⁹ Article 20 of the Fintech Law establishes that these are institutions that provide a client with checking accounts, savings accounts, or accounts with fund provision.

¹⁰ According to Article 19 of the Fintech Law, these companies: “providers of services enabled by financial information who voluntarily register for these purposes in the Public Information-Based Service Providers Registry maintained by the Commission [for the Financial Market].”

¹¹ Article 20 of the Fintech Law defines them as: “entities that provide services to Clients who hold checking accounts, savings accounts, or fund provision accounts, under which they can instruct, on behalf of the Client and before the bank or the financial institution providing the respective account, hereinafter ‘Account Providers,’ the execution of payment orders or electronic fund transfers, including predefined recurring payments to third-party beneficiaries specified by the clients, charged to their respective accounts and payment methods”.

3. The Assessment Conducted by the FNE

17. The competition assessment of general and abstract norms must consider both coordinated risks—that is, the creation of incentives or the lack of safeguards against collusive behaviors of regulated companies—and unilateral risks of an exclusionary and exploitative nature.

18. The FNE identified a series of coordinated risks because the OFS is essentially a mechanism for exchanging information among current or potential competitors. It was also considered that certain provisions of the draft OFS Regulation could affect the competitive dynamics of the OFS and, therefore, the Fintech industry by either erecting unnecessary barriers to entry or allowing certain strategic behaviors of incumbent firms to exclude competitors.

3.1. Competition Risks Derived from Information Exchanges

19. From a competition law perspective, an OFS is essentially a mechanism for exchanging information among financial entities that may be competitors in different market. This is the source of efficiencies and risks.

20. As for efficiencies, the exchange of information allowed by the OFS reduce information asymmetries among providers of financial services, thereby lowering entry barriers, facilitating financial portability, and fostering innovation.¹²

21. In regard to risks, firstly, these exchanges of information may reduce strategic uncertainty and thus hinder competitive intensity, as companies can access commercially relevant information from their competitors. Secondly, these exchanges can make coordinated competitive behavior among companies more likely by creating a common understanding of the conditions for potential collusion.¹³

22. Thirdly, they can increase the stability of an existing coordinated behavior. Increased transparency facilitates monitoring deviations from coordinated behavior and thus provides certainty for retaliation. Besides, it allows cartel members to respond to the entry of new competitors by focusing their efforts on responding to and/or excluding disruptive agents who are outside the coordination.¹⁴

23. The magnitude and likelihood that these risks will materialize depend on the content, scope, and nature of the information shared and the characteristics of the markets involved, such as their level of concentration, the market shares of their agents, and their stability, among others.¹⁵ Therefore, in the context of an *ex ante* regulatory assessment, the FNE cannot determine a priori whether the content of the information shared in the OFS has the potential to generate coordinated risks. What the FNE did at this stage was analyzing whether the type of information to be shared in the OFS was specifically defined

¹² Montoya, A., Celedón, R., Novoa, V. (2022) Finanzas abiertas y acceso a infraestructura financiera: políticas públicas para promover la innovación, competencia e inclusión financiera en América Latina. Published by the Centro de Competencia Universidad Adolfo Ibáñez, pp. 10-11, available at: <https://centrocompetencia.com/celedon-montoya-novoa-finanzas-abiertas-y-acceso-a-infraestructura-financiera/> [Accessed: July 24, 2024]

¹³ Whish, R. Bailey, D. (2021) Competition Law, Tenth Edition, pp. 615 a 620.

¹⁴ European Commission (2011) Guidelines on the Application of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Cooperation Agreements, p. 15.

¹⁵ Ibid., p. 13.

to limit the discretion of the actors participating in the system and thus the possibilities for them to coordinate.

24. In its assessment, the FNE concluded that the type of shareable information was sufficiently identified through a three-level definition: (i) category of information; (ii) variables that compose each category; and (iii) detail of each variable.¹⁶ However, it warned the CMF that any modification to this catalog should avoid the use of ambiguous clauses or broad concepts that enable system agents to exchange information beyond what is permitted.

25. Furthermore, information exchanges can also create exclusionary effects: in a system where different actors can share data, those who cannot participate are at a competitive disadvantage compared to those who can. This demands the existence of the lowest possible entry barriers.

26. In the Draft OFS Regulation assessed by the FNE, the requirements that Information Provider Institutions and Account Provider Institutions had to meet were detailed. However, it was established that the evidence these institutions had to present to prove compliance with the requirements would be regulated in a subsequent instrument.¹⁷ Therefore, the FNE warned the CMF that this was a significant omission for a complete competition analysis and that depending on the type of information requested, entry barriers could be created. It was thus necessary to request only the essential information to verify compliance with the registration requirements.

3.2. Interoperability of Information Exchange Mechanisms

27. To prevent the OFS from unjustifiably excluding those interested in participating in it, and thereby avoiding a competitive advantage for those within the system over those who have not been able to enter, it must be ensured that there are no technological impediments to information exchange. This is achieved through interoperability.

28. As mentioned, the main information exchange mechanism is structured based on APIs, whose standards are defined in the regulation itself,¹⁸ and must be complied with by all participants in the OFS. In this regard, the FNE indicated that standardizing the API standards is correct and encourages the operation of as many actors as possible within the system. However, the incompatibilities that updates or new versions of the APIs may create must be taken into account, given that these standards are constantly evolving.

29. Specifically, in the opinion of the FNE, if an OFS actor develops a new version, improvement, or update of the API, it must be compatible with the other APIs that have the

¹⁶ For example, within the category “*Transactional Information*” there is information about the financial product “Credit Cards, with their respective associated credit lines,” which includes 10 variables. One of these variables, for example, is “type of transaction”, which is detailed in the same regulation that Indicates the type of card transaction (installments, cash advance, revolving).

¹⁷ According to Section V, literal D, “The details of the information required under this regulation will be specified in a guideline to be issued subsequent to the publication of this standard”.

¹⁸ The regulation specifies the following protocols: (i) Specification and Design: OpenAPI (version 3.1); (ii) Messaging: JSON; (iii) Architecture: REST reference framework, and its implementation must be RESTful; (iv) Data Management Standards and Data Dictionary: ISO 20.022 latest version; (v) Authorization and Authentication: OAuth 2.0 and OpenID Connect; (vi) Security Profiles: FAPI 2.0; (vii) Exchange Protocol: mTLS.

same standard. That is, any new version must be backward compatible with the APIs that have the same standard, in order to ensure interoperability at all times.

30. The draft OFS Regulation did not include any provisions in this regard. Following the FNE's recommendation, the CMF introduced an amendment requiring system participants to ensure that any new version of the APIs used must be compatible with their respective previous versions.¹⁹

31. Additionally, the alternative mechanism—which will operate only in case of malfunction of the main system—raised concerns for the FNE, as, according to the OFS Regulation, these communication systems would be determined individually by the companies responsible for providing the information: the Information Provider Institutions and the Account Provider Institutions. The other system participants would have to adapt to them.²⁰

32. Considering that homogeneity in communication standards is what allows different market actors (regardless of their business, size, or level of activity within the OFS) to participate in the exchange of information, empowering the obligated information providers to define their own mechanisms may generate incompatibilities or significantly increase costs for those who require information within the system.

33. Therefore, the FNE proposed establishing a more homogeneous alternative mechanism that does not depend on the proposal of each information provider in the system, to ensure the participation of all authorized agents in the OFS.

34. The CMF took the FNE's proposal into consideration and eliminated the possibility of each actor presenting their alternative mechanism. Instead, it established the parameters that this mechanism must meet and left pending the issuance of a technical annex specifying the detailed aspects, thus standardizing this mechanism for all OFS actors.²¹

3.3. Distribution of the Open Finance System's Costs

35. Both the implementation and operation of the OFS generate costs for its participants. According to the Fintech Act, the implementation costs must be fully borne

¹⁹ The amendment states: "In order to minimize disruptions and maintain the functionality of the integrations that are implemented, the respective IPI or IPC, in the development of their interfaces, must ensure, to the extent technically and operationally possible, that any new version of such interfaces is compatible with its previous versions".

²⁰ According to the OFS Regulation: "*IPIs and IPCs must have an alternative information delivery mechanism in the event of unavailability of the main mechanism described in this section, below (...)*

The alternative mechanism to be used by the entity must be validated as part of its accreditation or inclusion process in the respective roster, and be subjected to functional testing as specified for the registration process".

²¹ The amendment introduced by the CMF establishes that: "*IPIs and IPCs must have an alternative information delivery mechanism that operates in the event of unavailability of the interfaces described in this section, below:*

(...) The specifications of the alternative mechanism may consider variations or specific elements depending on the nature of the information to be exchanged and the technical details of the respective main interface. Nonetheless, the alternative mechanism and the specifications in Annex No. 3 will be uniform for all Participants, thus ensuring the interoperability of the System" (underline added).

by each of the agents entering the system,²² whether they have joined compulsorily or voluntarily. Regarding operational costs, the Fintech Act stipulates that companies obliged to provide information cannot charge those who request information, except if their requests exceed a threshold defined by the CMF.²³

36. The OFS regulation analyzed by the FNE establishes the thresholds above which the requester of information must reimburse the costs.²⁴ It also stipulates that each company obliged to provide information must report to the CMF the costs generated by information requests over the threshold so that they can be reimbursed.

37. The FNE highlighted the critical importance of the thresholds for the proper functioning of the system. If thresholds are set at levels lower than optimal, some information petitioners will most likely have to constantly reimburse the providers for the inquiries they make, which goes against the objectives of the system (i.e. having no transactional costs or these being as low as possible in order to reduce information asymmetries among competitors).

38. Conversely, if the thresholds are set at levels above optimal, undesired incentives arise for certain requesters as they could opportunistically use the system by making massive inquiries not associated with a specific financial client's request, jeopardizing the economic and/or technical sustainability of the OFS.

39. Considering this framework and having previously interviewed various agents and industry trade organizations, the FNE concluded that the threshold levels were appropriate, as they were determined based on international experiences. In the countries studied, information requesters rarely had to pay for an inquiry that exceeded the threshold.

40. However, the FNE stressed that the rule establishing the duty of each information provider to report the costs generated by information requests over the threshold was deficient, since it did not specify the methodology that must be used to calculate said costs. This could lead to opportunistic behavior by information providers, in the form of including expenses that artificially increase the costs of using the OFS for requesting companies. This results in harmful effects on competition, as it could create barriers to entry or growth for Information-Based Service Providers, potentially preventing these companies from providing the financial services for which they were created.

²² Section 4 of Article 25 of the Fintech Law establishes that: *“No reimbursement of costs by participating institutions will apply with respect to the development of the interface or information exchange mechanism defined for the implementation of the Open Finance System according to Article 21”*.

²³ Section 1 of Article 25 of the Fintech Law provides that: *“Information Providers may not charge Information-Based Service Providers for the communication of client data information requested through the interfaces defined for the Open Finance System, except for the reimbursement of direct incremental costs incurred to handle the increase in information requests when these exceed the request volume threshold defined by the Commission”*.

²⁴ The thresholds are as follows:

- (i) Terms and Conditions; Service Channels: 120 calls (queries or information requests) per month per Information-Based Service Provider.
- (ii) Enrollment: 4 calls per month per client and Information-Based Service Provider.
- (iii) Historical Financial Positions; Usage and Transaction History; and Current Products: 150 calls per month per client and Information-Based Service Provider.

41. Similarly, the individual power that each information provider has to control the expenses they make to process information requests may lead to heterogeneity in the charges made by each provider, which in turn could lead to asymmetric competition: information providers that incur in higher costs in handling information requests would be in an improved position *vis-à-vis* other competitors.

42. In this regard, following the FNE's recommendations, the CMF concluded that the draft OFS Regulation gave too much discretion to its participants in determining their reimbursable costs for handling information requests. As a solution, it was established: (i) that the reimbursable costs would only amount to "incremental costs", and (ii) that the methodology for their determination would be carefully detailed in an annex to the regulation (thus avoiding unjustified differences in cost quantification among Information Provider Institutions).

3.4. Incentives to stay out of the OFS

43. From a competition policy perspective, companies required to participate in and provide information to other agents within the OFS may have incentives to avoid participating,²⁵ in order to exploit the competitive advantages (information asymmetries) they have compared to new competitors that do not possess the same level of information to offer financial products and services. Therefore, the FNE asked the CMF about the magnitude of the sanctions that would be imposed on those Information Providers that fail to comply with the obligations established by the Fintech Act and the OFS Regulation.

44. In this regard, CMF representatives indicated that in addition to exercising their sanctioning powers, non-compliance with the requirements, obligations, and standards set forth in the OFS Regulation by Information Providers would impact their evaluation as financial institutions. Repeated non-compliance would affect their management classification,²⁶ potentially leading to more severe sanctions or even preventing them from continuing to operate as financial entities.

45. In the view of the FNE, sanctions of this nature are sufficiently significant to deter such companies from abstaining from participating in the OFS or engaging in other strategic practices that may distort the system's functioning.

4. Conclusions

46. The assessment conducted by the FNE on the OFS Regulation issued by the CMF in Chile has addressed various aspects that are critical from a competition perspective. The analysis highlighted the substantial growth of the Fintech industry in Chile, marked by a very significant increase in the number of startups and diversity in the types of services offered (primarily focused on businesses). This growth has underscored the need for an efficient OFS that—subject to customer consent—facilitates the exchange of financial information between different providers in order to improve the range of financial products and services and foster innovation.

47. The FNE identified key efficiencies associated with the OFS, such as reducing information asymmetries and facilitating the entry of new market players. It also underlined some risks, such as the possibility of coordinated and exclusionary effects. In particular,

²⁵ Montoya, A., Celedón, R., Novoa, V. (2022), *Op. Cit.*, p. 21.

²⁶ According to Chapter 1-13 of the Updated Compilation of CMF Regulations.

the FNE emphasized the importance of clearly defining the type of information to be shared and ensuring the technological interoperability of the system in order to reduce entry barriers and promote healthy competition.

48. The FNE's recommendations, adopted by the CMF, include the need to standardize API protocols, ensure compatibility with new versions, and establish a uniform alternative mechanism for information exchange. Additionally, the importance of a clear methodology for cost determination and the implementation of effective sanctions to deter strategic behaviors that could distort the functioning of the OFS was also noted in the FNE's assessment.

49. In summary, the implementation of the Fintech Act and the amended OFS Regulation, taking into consideration the recommendations made by the FNE, represents a significant step toward the modernization and opening of the financial system in Chile. It has the potential to increase competition, reduce entry barriers, and improve the provision of financial services for all market participants.