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Digital Markets**

- Contribution from Chile -

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Session III: Remedies in digital mergers

– Contribution from Chile –

Executive Summary

The accelerated digitalisation of markets has allowed Chile's antitrust system, and in particular the Competition Authority (Fiscalía Nacional Económica, FNE), to gain significant practical experience in addressing emerging competition issues. Despite the absence of legislation specifically directed at digital markets, Chile benefits from a solid institutional framework that positions it well to respond successfully to the distinctive challenges these markets generate.

Diverse competition concerns have arisen in recent digital market cases in Chile. Enforcement activity by the FNE has focused, among other issues, on the widespread use of most-favoured-nation (MFN) clauses by delivery platforms and online travel agencies. Other significant cases include restrictions imposed by Google in the Android ecosystem (currently the subject of a lawsuit filed by the FNE) and commitments secured from the main digital platform operating in the property listings market. Importantly, the FNE has also recently pursued cartel enforcement against Delivery Hero and Glovo for an international market allocation agreement affecting four countries.

In addition, the FNE has made extensive use of its power to conduct market studies—most notably on the accommodation industry and on e-commerce—to identify competition risks in digital markets such as those related to MFN clauses, algorithmic pricing, and self-preferencing. With respect to merger control, transactions such as Uber/Cornershop and Microsoft/Activision were cleared without remedies, following detailed assessments of innovation incentives, data access, and dynamic competition.

Remedies may be imposed or accepted across different institutional contexts in Chile's bifurcated system: through FNE settlements, TDLC judgments, or in the context of FNE's merger review. The acceptance of remedies is generally subject to three basic conditions: (i) their effectiveness in resolving the competition concern identified; (ii) their feasibility with respect to implementation, execution, and monitoring; and (iii) their proportionality to the nature and gravity of the competition issue at stake.

In the digital sector, the FNE underscores the importance of carefully selecting the appropriate form of intervention, given the fast pace of market evolution and frequent innovation cycles. Accordingly, when accepting commitments, the FNE prioritises effective and efficient solutions that safeguard competition while avoiding undue disincentives to innovation.

1. Introduction

1. As digitalisation advances and new digital markets continue to emerge, the Chilean antitrust system has increasingly focused on addressing the challenges arising in this field. For Chile's Competition Authority (Fiscalía Nacional Económica, FNE), this has translated into strengthened antitrust enforcement, thorough merger reviews, and in-depth market studies. In a growing number of recent cases, remedies have been adopted or agreed upon to address competition concerns.

2. Although Chilean legislation does not include specific rules for digital markets, the FNE is aware of their particular features—such as rapid evolution, risk of irreversible effects, and accelerated market concentration or tipping—and may take these into account when assessing the need to act swiftly and to design appropriate remedies in each case.

3. This contribution provides a brief overview of some of the main efforts undertaken by the FNE in recent years with respect to digital markets, and examines the characteristics, trends, and challenges involved in designing remedies to address the competition issues that may arise within them. Section II offers a brief description of the main competition concerns recently identified by the FNE in digital markets in recent cases while Section III presents the main strategies deployed by the FNE to address these concerns. Section IV offers an overview of the remedies or commitments relevant to recent digital markets cases and the main trends that can be identified from them. Lastly, Section V refers to the regulatory landscape in this field.

2. II. Competition concerns in digital markets: Recent examples

4. The main competition concerns identified by the FNE in digital markets have been diverse and cover a broad range of competition law and policy topics. The following examples seek to illustrate the most salient problems found and analysed in recent years in Chile.

2.1. Enforcement activities

5. *MFN clauses.* As regards to antitrust enforcement, the FNE has given special attention to the widespread use of Most-Favoured-Nation (MFN) clauses—also referred to as price parity clauses—in various digital markets. These clauses have been the object of in-depth analyses particularly in relation to (i) food delivery platforms, and (ii) online travel agencies (OTAs). In both areas, the FNE has raised concerns over the potential restrictive effects these clauses may have on inter-platform competition, by limiting the ability of providers operating through these platforms to offer better commercial terms via alternative channels.

- *Investigation on Most-Favoured-Nation Clauses by food delivery platforms.*¹ The FNE conducted an investigation that revealed a widespread usage of most-favoured-nation (MFN) clauses in the contracts and terms and conditions between Uber Eats, PedidosYa, and Rappi and the restaurants operating through them. These clauses restricted the ability of restaurants to set their own prices across different sales channels—specifically by preventing them from offering lower prices on competing platforms or through their own distribution channels.

1 FNE. “Investigación de oficio contra plataformas de reparto por establecimiento de restricciones verticales”. Investigation No. 2653-21 FNE.

The competition concerns identified by the FNE in regard to these clauses were essentially three: (i) *Reduction of competition between platforms*. This is particularly relevant with respect to the commissions they charge. A platform would have no incentive to offer a lower commission if it cannot be translated into lower prices for end consumers and, therefore, into greater customer demand for its platform. (ii) *Exclusion of competing platforms*. The widespread use of such clauses has an exclusionary character, since it restricts the entry of a potential new player that might enter with a low-cost strategy—for example, by charging a lower commission—which would not, however, be passed on to end consumers. (iii) *Harm to consumers*. This may occur through potential price increases. In line with the above, the use of such clauses would limit the ability of restaurants to adopt different pricing strategies in their own sales channels and on the platforms in which they participate.

A more limited use of exclusivity and semi-exclusivity clauses was also observed. While exclusivity prevents restaurants from marketing their products on other platforms, semi-exclusivity (identified only in the contracts of Uber Eats and PedidosYa) sets a maximum limit on the number of platforms with which restaurants may simultaneously contract.

The investigation ultimately resulted in out-of-court settlements between the FNE Uber Eats, PedidosYa, and Rappi, which was approved by the Competition Tribunal (Tribunal de Defensa de la Libre Competencia, TDLC) (see below).²

- *Investigation on Most-Favoured-Nation clauses agreed by online travel agencies*. Based on the findings of its Market Study on the Accommodation Industry (infra), which confirmed the widespread use of MFN clauses by online travel agencies (OTAs), the FNE started an investigation aimed at verifying potential anticompetitive conduct associated with this practice.³ This investigation has not concluded yet.

6. *Access conditions and rules applicable in digital platforms and ecosystems*. Access conditions and rules applicable in digital platforms—both from the perspective of end consumers and that of firms operating on the platform—have also been scrutinised in recent cases, sometimes raising significant competition concerns.

7. The FNE has examined, *inter alia*, the application of differentiated shipping fees by marketplace platforms due to potential distortions in competition among vendors within the same platform.⁴ It has also assessed fee increases and restrictions on the number of users per account imposed by a property listing platform for sales and rentals, due to their possible exclusionary effects on real estate aggregators. More recently, the FNE has also

2 See “Settlement FNE-Uber Eats”, “Settlement FNE-PedidosYa”, and “Settlement FNE-Rappi”, available at: <https://www.fne.gob.cl/fne-pidio-al-tdlc-que-apruebe-acuerdos-extrajudiciales-con-uber-eats-pedidosya-y-rappi-por-restricciones-en-contratos-con-restaurantes/> [last accessed: July 2025]. See also TDLC’s decisions on Case No. AE-29-2023 (28 December 2023), Case No. 30-2023 (28 December 2023), and Case No. 31-2323 (28 December 2023), which approve those settlements.

3 FNE. Estudio de Mercado sobre el Hospedaje (EM08-2023), Informe Final, p. 163. Available at: https://www.fne.gob.cl/wp-content/uploads/2024/04/03.Informe_Final.pdf [last accessed: July 2025].

4 FNE. “Denuncia por restricciones verticales en contra de Mercado Libre”. Preliminary Investigation No. 2624-20 FNE. In light of the reported conduct and the characteristics of the market at that time, the FNE decided not to open an in-depth investigation in this occasion.

scrutinised various restrictions imposed by Google in the Android operating system through its app Play Store, concluding that they amounted to an abuse of dominant position. The last two cases deserve to be described in greater detail:

- *Investigation into increased fees and account terms of use established by Portal Inmobiliario*.⁵ In its investigation, the FNE found that Portal Inmobiliario held a dominant position in the relevant market for online platforms for listing properties for rent and sale nationwide. It also identified, among other concerns, competition risks associated with the additional-user fee plans implemented by the platform. The analysis concluded that these plans may entail exclusionary effects on competing platforms by means of restricting the business of aggregators or integrators (companies that provide services to real estate brokers for managing listings across multiple platforms simultaneously). However, in light of the fact that Portal Inmobiliario discontinued the additional-user fee policy under review during the investigation and committed not to reinstate it (among other factors), the FNE decided to close its investigation with no further action.
- *FNE v Google*.⁶ The FNE has recently filed a lawsuit against Google before the Competition Tribunal for abusing its dominant position in the markets for app distribution and the distribution of paid digital goods within the Android ecosystem. The lawsuit was filed after an investigation launched in October 2022 following a complaint from a private party.⁷ The FNE found that Google had implemented anticompetitive restrictions that limited download channels other than its Google Play Store in the app distribution market. It also found that Google anticompetitively required developers to exclusively use its integrated billing system (Google Play's Billing System) in the market for the distribution of paid digital goods within apps. Developers were also prohibited from informing users about, or redirecting them to, alternative payment methods or promotions outside the app.

In its filing, the FNE requested that the Court order Google to adopt a set of remedies to ensure the cessation of the anticompetitive conduct and to impose a fine of 101,482 Annual Tax Units (UTA), equivalent to approximately US\$ 89 million. The case is currently being litigated before the Competition Tribunal.

⁵ FNE. "Denuncia en contra de Portal Inmobiliario por abusos en el mercado de las publicaciones de inmuebles". Preliminary Investigation No. R2739-23 FNE

⁶ TDLC. Case No. C-533-2025 "Requerimiento de la Fiscalía Nacional Económica contra Google LLC". FNE's lawsuit is available at <https://www.fne.gob.cl/en/fne-acusa-a-google-por-abuso-de-posicion-dominante-y-pide-al-tdlc-multa-de-us-89-millones/> [last accessed: July 2025].

⁷ The complaint also referred to a series of similar practices carried out within the Apple ecosystem by Apple Inc. These practices gave rise to a separate investigation, which is still ongoing.

8. *Cartelization: International market allocation agreements.*⁸ In regard to collusive agreements—which, in digital markets as well, are without doubt a priority in the FNE’s enforcement work—the FNE recently filed a lawsuit for collusion against the delivery platforms Delivery Hero (parent company of PedidosYa) and Glovo. The case concerns a market allocation agreement covering four countries, which resulted in Glovo’s sudden exit from the Chilean market in April 2019. The FNE determined that the parties implemented the collusion through the execution of four asset transfer agreements, all dated April 26, 2019, under which Glovo withdrew from Chile and Egypt, and Delivery Hero withdrew from Peru and Ecuador. The companies also exchanged emails in which their executives discussed adjustments to the terms of these agreements to avoid scrutiny by the relevant competition authorities.

2.2. Merger control

9. In the area of merger control, two recent transactions relating to digital markets stand out, both of which were approved without the need for remedies:

- *Uber/Cornershop.*⁹ In May 2020, the FNE cleared in Phase 2 the acquisition involving Cornershop (a platform providing online shopping and home delivery services for both consumable and non-consumable goods, primarily from supermarkets) and Uber (a platform with a presence in ride-hailing services as well as in food delivery through Uber Eats). After carefully analysing the risks identified in the preliminary phase—mainly concerning the elimination of potential competition in online supermarket shopping and the possible bundling of Uber Rides and Uber Eats services for anticompetitive purposes—these concerns were ultimately dismissed. As a result, the transaction was approved without the need for remedies.

In its assessment, the FNE also examined preliminary concerns related to increased access to consumer data and the potential loss of incentives to innovate in other areas of e-commerce. It concluded that other players have sufficient incentives to innovate and that the information collected by these platforms is not essential to compete and, moreover, can be obtained through other means.

- *Microsoft/Activision Blizzard.*¹⁰ On December 2022, the FNE cleared in Phase 1 the acquisition of Activision Blizzard, Inc (“ABK”) by Microsoft Corporation (“Microsoft”), which combined the activities of Microsoft –global provider of Xbox video game consoles, as well as developer and publisher of video games– with the activities of ABK – which is one of the world’s leading video game developers, thus generating horizontal and vertical overlaps.

⁸ TDLC. Case No. C-534-2025 “Requerimiento de la Fiscalía Nacional Económica contra Delivery Hero S.E y Glovoapp23 S.A.”. FNE’s lawsuit is available at <https://www.fne.gob.cl/fne-pide-al-tdlc-multa-de-mas-de-us-74-millones-para-matriz-de-pedidos-ya-y-glovo-por-acuerdo-internacional-de-reparto-de-mercados-que-ocasiono-la-salida-de-esta-ultima-de-chile/> [last accessed: July 2025].

⁹ FNE. FNE. Case No. F217-2020: “Adquisición de Cornershop por parte de Uber Technologies, Inc.” Final Report (29 May 2020).

¹⁰ FNE. Case No. F320-2022: “Adquisición de control en Activision Blizzard, Inc. por parte de Microsoft Corporation.” Final Report (28 December 2022).

Among other market data gathered during the investigation, the FNE executed a consumer's survey to Chilean consumers of videogames, which supported the fact the merger would not raise either horizontal nor vertical concerns in Chile. In its horizontal analysis, the FNE ruled out the transaction would raise competition concerns on the grounds of low combining market shares and due to the presence of an important number of competitors in the videogames market. In its vertical assessment, the FNE firstly considered the possibility of Microsoft restricting the distribution of ABK content (mainly its most popular franchise, Call of Duty) from rival consoles, in particular PlayStation. However, the FNE was able to conclude that, in Chile, other players such as Electronic Arts, Take Two, Ubisoft and Epic Games exert competitive discipline on ABK. In addition, Call of Duty was not found to be as relevant for the Latin American region, as it would be for the rest of the global regions.¹¹

2.3. Market Studies

10. Finally, the FNE has detected and thoroughly analysed various competition concerns in digital markets in the context of its market studies. Two studies are relevant in this regard:

- *Market study on the Accommodation Industry*.¹² A very relevant part of this study, concluded in 2024, was devoted to analysing online travel agencies (OTAs) as well as the emergence of short-term rentals (STRs), whose growing importance is closely tied to the digitalization of accommodation services. The study's findings provide a clear picture of this trend: in 2022, more than 40% of total sales recorded by formal accommodation providers in Chile were intermediated through an OTA, while over 26% of overnight stays during the same year took place in STRs, with the remainder corresponding to traditional accommodations.

Two competition concerns directly related to digital markets were analysed in this study. Firstly, the emergence of *algorithmic pricing by OTAs in relation to accommodations*. In this regard, analyses were conducted to determine: (i) whether pricing mechanisms of this kind or similar ones are used in the accommodation market; and (ii) to assess the direction and magnitude of their potential effect on prices. The analysis showed that price suggestions in the market effectively operate as a price-setting tool. Nevertheless, it was also found that, in the current state of the industry, the mechanism tended to lower price levels when used. Accordingly, it was concluded that, at that time and under the conditions examined, it did not constitute a restriction on competition.

Secondly, the study examined the relevance of price parity clauses, or most-favoured-nation (MFN) clauses, included by OTAs in their agreements with accommodations, which limit the latter's freedom to set prices. Given (i) that the market share of some OTAs was high, (ii) that more than half of the accommodations surveyed reported having some type of MFN clause with one of

¹¹ It is worth noting that the survey mentioned above revealed local consumption patterns that differ from those observed in other jurisdictions. When making decisions in markets like these, which have a global dimension, the local factors should not be overlooked.

¹² FNE. "Market Study on the Accommodation Industry" (EM-08-2024). Final Report (April 2024). Available at: <https://www.fne.gob.cl/fne-propone-9-medidas-regulatorias-para-fortalecer-la-competencia-en-el-mercado-del-hospedaje-actualizando-y-simplificando-su-normativa/> [last accessed: July 2025].

the main OTAs, and (iii) that accommodation prices were consistent with the existence of such clauses, the FNE opened an investigation to assess the legality of these practices (*supra*).

- *Market Study on E-Commerce*.¹³ Finally, in 2024 the FNE launched a Market Study on E-Commerce. Although the study is still ongoing (and therefore no conclusions can yet be anticipated), the information released at its outset highlighted the very significant growth that e-commerce has experienced in Chile in recent years, reaching annual sales estimated to 3.7% of GDP. At the same time, reference was made to several practices whose competitive effects the FNE considers essential to examine more closely, such as: (i) the possible widespread use of MFN clauses (or the implementation of restrictions with similar effects); (ii) the use of algorithms for price determination and suggestions; and (iii) possible self-preferencing practices by platforms, among others.

3. Addressing Competition Concerns in Digital Markets: Strategies, Tools, and Opportunities

11. The FNE has adopted a range of strategies to address concerns in digital markets, recognizing that these markets present significant challenges but also that Chile's current institutional framework is robust and well-suited to address them. This is, *inter alia*, due to the open-ended nature of Article 3, paragraph 1 of the Competition Act (Law Decree No. 211 of 1973, DL 211) which allows the FNE to pursue a broad array of anticompetitive conduct across all types of markets, including digital ones.

12. This flexibility is key, as digital markets can be particularly dynamic and often give rise to novel practices that, while not expressly mentioned in the statute, can nonetheless be addressed under Chile's general competition rules. An example of such conduct includes so-called most-favoured-nation (MFN) or price parity clauses.

13. Building on this foundation, the FNE's main strategies and tools in this field include:

14. *Conducting market studies*. Since 2016, the FNE is legally empowered to carry out market studies and, in this context, to request information from both private and public entities (Article 39 p Competition Act). Based on the findings of these studies, the FNE may issue regulatory recommendations to improve competition in the sector, as well as recommendations directed at specific market participants and public entities. It may also initiate investigations into anticompetitive conduct if, in the course of conducting a study, it uncovers indications of such behaviour.

15. Market studies allow the agency to advance an in-depth understanding of how digital markets function and evolve, enabling preventive action. For this reason, they constitute a key tool for addressing the challenges specific to digital markets, given the speed at which transformations can occur in these markets and the sophistication and subtlety of the conduct that market participants may engage in. The FNE is aware of the need for and usefulness of this tool and has therefore recently used it on two occasions to address digital markets: see *Market Study on the Accommodation Industry* (concluded in 2024), and *Market Study on E-Commerce* (launched in 2024) (*supra*).

¹³ FNE. "Market Study on E-Commerce" (EM-10-2025). Launch note (November 2024). Available at: <https://www.fne.gob.cl/fne-inicia-estudio-de-mercado-sobre-comercio-electronico/> [last accessed: July 2025].

16. As anticipated, the *Market Study on the Accommodation Industry* proposed a set of measures aimed at strengthening competition, and acknowledging the technological disruption introduced by digital platforms and non-traditional accommodations. They seek to foster a level regulatory playing field that encourages market entry and promote diverse options and more competitive prices for consumers. As mentioned, the study also prompted a follow-up investigation into the online reservation services for tourist accommodations offered through digital platforms.

17. *Tailoring the right analytical framework for merger control.* Through the merger review regime established in 2016 (Title IV Competition Act), the FNE has also closely monitored the development of digital markets in Chile.

18. In light of the growing importance of digital markets in the competitive process and the unique challenges they pose, the FNE updated its *Guidelines on the Assessment of Horizontal Mergers* in 2022 to set a more specific analytical framework applicable to them.¹⁴ In particular, the new guidelines emphasize the importance of dynamic effects over the more static parameters typical of traditional merger assessment, and call for attention to issues such as interoperability, data access and value, technological innovation, network effects, ‘market tipping’, and the role of ecosystems when assessing mergers that have effects in digital markets.¹⁵

19. Additionally, it is worth emphasising that the FNE can investigate consummated mergers that were not subject to mandatory notification (Article 48 Competition Act), allowing it to address so-called killer acquisitions (i.e. transactions intended to eliminate emerging competitors). This mechanism also encourages the voluntary notification of deals with potential effects in dynamic markets, even when they do not meet formal thresholds. Therefore, this feature of the Chilean institutional framework may prove particularly useful in addressing the competition concerns that may arise in digital markets.

20. *Enhancing the agency’s own capabilities for digital cartel detection.* The FNE has also developed a strategy to improve the detection and prosecution of cartels and coordinated practices in digital environments. Since 2020, its Intelligence Unit has been actively implementing *data science* and *artificial intelligence* tools to detect anticompetitive conduct.

21. The agency seeks to maintain these efforts and continue investing in the development of these tools in the future, increasingly incorporating them across all the areas of its investigative work.

22. *Conducting timely investigations into unilateral conduct.* In cases of abuse of dominant position, the FNE has made particular efforts to act proactively in safeguarding the competitive process in digital markets, conducting numerous investigations into the rules of use and access imposed by various digital platforms and their relationship with market participants operating through them.

23. Examples include the investigations into most-favoured-nation clauses imposed by *food delivery platforms* and into the operation of *Google’s Play Store*, which concluded,

¹⁴ FNE. “Guía para el Análisis de Operaciones de Concentración Horizontales” (May 2022). Available at: <https://www.fne.gob.cl/wp-content/uploads/2022/05/20220531.-Guia-para-el-Analisis-de-Operaciones-de-Concentracion-Horizontales-version-final-en-castellano.pdf> [last accessed: July 2025]. A non-official English version is available at: https://www.fne.gob.cl/wp-content/uploads/2025/06/FNE_Horizontal_Merger_Guidelines_2022.pdf [last accessed: July 2025].

¹⁵ See section III.C.V. (“Digital platforms and Digital Markets”) of the Horizontal Merger Guidelines.

respectively, in out-of-court settlements and a lawsuit before the TDLC (above). Another example is the investigation against *Portal Inmobiliario*, which resulted in a change of conduct (above). Moreover, the FNE is currently conducting public investigations concerning mobile applications and in industries such as digital advertising and digital messaging.

24. *Making use of out-of-court settlements (where appropriate)*. The Competition Act expressly empowers the FNE to enter into out-of-court settlements with market participants, enabling competition issues to be resolved promptly and effectively (Article 39 ñ). This tool is particularly relevant in dynamic markets such as digital platforms, where delays may stifle innovation.

25. A key example involves the settlements reached with delivery platforms Uber Eats, PedidosYa, and Rappi in November 2023, following an investigation into vertical restraints in the food delivery sector (above).

26. *Monitoring global enforcement trends and collaborating with peer foreign agencies*. Last but not least, the FNE closely follows investigations and enforcement actions in jurisdictions in which digital markets started to develop earlier, integrating those insights into its own work. This is reflected in: Its recent complaint against Google LLC, and ongoing public investigations into large digital firms, including: Facebook, Inc. and WhatsApp LLC (abuse of dominance), Apple, Inc. (abuse of dominance), and Booking and Expedia (abuse of dominance).

27. Moreover, the FNE views technical cooperation among countries as a key element in building the institutional capacities required for the effective enforcement of competition law. For this reason, it maintains active international cooperation networks to exchange experiences regarding competition law enforcement and advocacy.

4. Remedies

4.1. Circumstances or conditions for imposing or accepting remedies

28. In Chile's bifurcated competition system, remedies may arise in different institutional contexts. The FNE investigates anticompetitive conduct while the TDLC adjudicates cases. In merger control, the FNE is responsible for approving or rejecting remedies proposed by the parties. In market studies, as anticipated, the FNE may only issue non-binding recommendations, the most relevant of which are regulatory recommendations.

29. The following section reviews the main contexts in which remedies (understood broadly as measures aimed at addressing a competition concern) may be applied or accepted, with reference to digital markets where relevant.

30. *Out of court settlements*. Once the FNE concludes its investigations into potential infringements of the Competition Act, it may enter into out-of-court settlements with the economic agents involved, with the purpose of safeguarding competition in the markets (Article 39 ñ Competition Act). The law stipulates that the FNE negotiates and signs such agreements with the investigated parties and subsequently submits them to the Competition Tribunal, so that the Tribunal may take cognizance of the agreement and decide whether to approve or reject it. The intervention of the Tribunal aims to validate or give approval to the agreement reached between the FNE and the investigated parties, ensuring that the agreement is suitable to protect competition in the relevant markets.

31. The FNE strongly considers accepting commitments via out-of-court settlements when they allow for timely and effective solutions to the competition concerns identified during its investigations.

32. In the context of digital markets, the FNE emphasizes the need to be cautious in selecting the appropriate form of intervention due to the sector's fast-paced evolution and frequent innovation cycles. Accordingly, when accepting commitments, the FNE seeks effective and efficient solutions that do not discourage innovation while also fostering vigorous competition.

33. In this context, the FNE also tends to prioritize speed, efficacy, and precision in its interventions, as well as the opportunity to act preventively. Hence, a timely resolution of competition issues over lengthy litigation may be preferred in a number of cases.

34. As anticipated, the FNE has successfully used out of court settlements to address competition concerns in digital markets, as demonstrated by the out-of-court settlements reached in November 2023 with delivery platforms Uber Eats, PedidosYa, and Rappi. These agreements effectively safeguarded competition through feasible, proportional, and sufficient measures, without undermining innovation or the dynamism characteristic of these markets.

35. *Merger review.* In the context of merger review, the FNE may approve a concentration subject to the condition that the measures (remedies) offered by the notifying party must be performed, if it arrives at the conviction that by observing such measures the transaction does not substantially reduce competition (article 57 Competition Act).

36. As set out in the *Guidelines on Remedies (2017)*, key conditions for the FNE to accept these measures include: (i) their effectiveness in addressing the identified competition concern; (ii) their feasibility in terms of implementation, execution, and monitoring; and (iii) their proportionality in relation to the competition issue detected.¹⁶

37. The FNE commonly favours structural remedies, especially the divestiture of assets to a suitable buyer, to mitigate risks arising from horizontal mergers.¹⁷ This preference stems from the fact that divestitures directly address the source of the competition concern, restore competitive pressure, generate fewer market distortions, and are easier to monitor since they are implemented in a single step.

38. Other remedies—such as behavioural and quasi-structural measures (e.g., prohibitions on certain acts or contracts, mandatory access to essential inputs, or firewalls to prevent information sharing)—are more frequently considered for vertical and conglomerate mergers.¹⁸ However, the FNE generally avoids approving remedies that directly regulate market power (e.g., price caps) as a main solution, except as transitional measures, due to the risks of circumvention, monitoring difficulties, and potential deterrence of market entry.¹⁹

16 FNE. “Guía de Remedios” (June 2017), §8 ff. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/06/FNE_Guia_Remedios_2017.pdf [last accessed: July 2025]. A non-official English version is available at: <https://www.fne.gob.cl/wp-content/uploads/2017/11/Guidelines-on-Remedies.pdf> [last accessed: July 2025].

17 Ibid., §36-38.

18 Ibid., §79 ff.

19 Ibid., §84-85.

39. FNE's assessment of a merger effects on competition considers the specificities of digital markets and this is reflected in the relevant Guidelines.²⁰

40. *Remedies adopted by the Competition Tribunal.* In the context of an adversarial proceeding, the Competition Tribunal is empowered, in its final judgment, to impose—alongside sanctions—the preventive, corrective, or restrictive measures it deems necessary in relation to the facts constituting the infringement (Articles 3 and 26, Competition Act). This gives the Tribunal broad authority to impose remedies in such cases.

41. The Tribunal may also order precautionary measures, either *ex officio* or at the request of a party, at any stage of the proceeding or even prior to its commencement (Article 25 Competition Act). Such measures may be issued for the period deemed appropriate by the Tribunal and are intended to prevent the negative effects of the conduct under review, as well as to safeguard the public interest. For such measures to be granted, the applicant must submit evidence that establishes at least a serious presumption of the right being claimed or of the facts alleged. In addition, the existence of *periculum in mora* (danger in delay) must be demonstrated—that is, the risk that the conduct under investigation may produce effects in the market before the Tribunal is able to issue a decision on the merits.

42. By contrast, the FNE does not have the legal authority to impose interim measures during the course of an administrative investigation.

4.2. Remedies and commitments accepted in recent cases

43. Three recent cases in digital markets (previously noted) warrant special attention regarding remedies:

- *Out-of-court settlements with delivery platforms Uber Eats, PedidosYa, and Rappi.* As part of these settlements, approved in December 2023, the food delivery platforms committed to eliminating, modifying, and refraining from implementing in the future any price parity or most-favoured-nation (MFN) clauses, as well as any practices that limit restaurants' ability to offer products at lower prices through other sales channels.
- Additionally, two of these platforms undertook the further commitment to report annually to the FNE on the scope of certain exclusivity and semi-exclusivity clauses.
- *Portal Inmobiliario's commitments in the context of an investigation into alleged abuses in the real estate listing market.* As anticipated, the main competition concern identified by the FNE in this case was the structure of fees implemented by Portal Inmobiliario for additional users, which significantly increased the operating costs of aggregators and reduced their competitive capacity, which, in turn, gave rise to exclusionary risks for rival platforms.
- To address this issue, Portal Inmobiliario committed to completely eliminating this fee for brokers or sellers using the platform, starting March 1, 2025, and not to reinstate it in the future. Additionally, the platform committed to keeping its pricing plans publicly available and easily accessible on its website.
- *FNE's lawsuit against Google.* Although this case is still pending before the TDLC, it is illustrative to consider the remedies that the FNE requested the Tribunal to impose in its lawsuit against Google Inc. for abuse in the app distribution market

²⁰ Supra, §18 ff.

within the Android ecosystem and in the market for the distribution of paid digital goods within apps.

- The requested remedies are as follows: (i) Refrain from conditioning access to Google products, services, payments, or revenue-sharing on agreements requiring the preinstallation of Google Play in a specific location on the device interface; (ii) Permit the distribution of third-party app stores through Google Play; (iii) Eliminate all unjustified or disproportionate actions, messages, or mechanisms that discourage—or are likely to discourage—the downloading of apps or app stores through channels other than Google Play; (iv) Allow developers to enable the use of alternative in-app billing systems, without prejudice to the continued availability of Google’s integrated billing system where required; (v) Permit developers to redirect users to external billing systems from within the app, including through buttons, links, or equivalent interface elements; (vi) Allow developers to inform users—both inside and outside the app—about alternative billing systems, prices, promotions, and any product-related information; (vii) Cease all conduct described in the lawsuit that prevents, restricts, or hinders competition, or seeks to do so; (viii) Comply in good faith with these remedies, ensuring that no technical or contractual measures are imposed that would undermine their purpose.

4.3. Monitoring and Compliance with Remedies

44. The FNE is legally mandated to secure compliance with remedies adopted or accepted either by the agency itself or by the Competition Tribunal (or its legal predecessors). Monitoring compliance with remedies is a key aspect of its role.

45. In 2021, the FNE created the Compliance Monitoring Division, which is responsible for conducting this task.

5. Regulatory landscape and current proposals

46. No *ex-ante* regulation proposals have been discussed in Chile to address general competition concerns specific to digital platforms.

47. FNE’s present view, as anticipated, is that Chile’s competition law framework (amended and significantly strengthened for the last time in 2016) currently provides an adequate institutional basis for addressing the challenges posed by the digital economy. Firstly, the open-textured nature of Article 3, paragraph one, of the Competition Act enables the FNE to address a broad spectrum of anticompetitive conduct in digital markets—an essential feature in light of their dynamic character. Secondly, Chile benefits from a robust institutional framework: both the FNE and the Competition Tribunal are equipped with tools which, if effectively used, enable timely, flexible, and effective intervention, as well as an adequate level of deterrence against anticompetitive conduct.

48. Nevertheless, this does not mean that digital markets do not pose significant challenges. As this contribution has highlighted, these challenges will, in all likelihood, continue to require a proactive role by the FNE and the other main institutions of Chile’s competition system in order to promote and secure competitive digital markets.