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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I: Competition
Law Enforcement in Informal Markets**

- Contribution from Chile -

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This Note his 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 14-15 October 2026 in Buenos Aires, Argentina.

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Session I: Competition Law Enforcement in Informal Markets

– Contribution from Chile –*

Summary

According to Chilean administrative practice and case law, informal economic agents are entities covered by competition law and, consequently, are taken into account in the analyses carried out by the National Economic Prosecutor's Office (FNE) and the Competition Tribunal (TDLC, Tribunal) whenever relevant. This can be observed, among others, in four areas.

The first concerns the measurement of economic activities and the calculation of market shares of agents operating informally. Both in investigations relating to anticompetitive conduct and in the assessment of merger operations, the FNE may include informal agents in its analyses of market structure. In this context, the most recurrent challenge is the lack of information sources and reliable data regarding the identity of, and transactions carried out by, informal agents, which in some cases may make it difficult to estimate the total number of actors and their respective market shares.

A second area concerns the exercise of enforcement powers in cases involving informal economic agents as alleged infringers of competition rules. In these cases, the FNE has sought to exercise its powers in an efficient and pragmatic manner, entering into out-of-court settlements with the investigated parties that include, among other obligations, a commitment to receive training in competition law. Nevertheless, where the scale and circumstances of the case so warrant, the FNE may also choose, and has chosen, to file complaints before the TDLC, seeking the imposition of sanctions. In the latter scenario, the characteristics of these agents have been taken into account as one factor, among others, in assessing the level of fines requested from the Tribunal or the appropriateness of bringing the case to an early conclusion through a settlement agreement.

A third area relates to the formulation of proposals to amend rules that hinder or prevent effective competition in certain markets. In this context, the FNE has observed, for example, that informality may give rise to distortions that affect the competitive functioning of a market.

Finally, a fourth area of interaction between informality and competition law arises in unfair competition cases in which the claimant alleges regulatory non-compliance by an economic agent seeking to achieve, maintain or increase a dominant position, where that agent's activity or business model is not covered, or at least not clearly covered, by the existing regulatory framework, thereby conferring an advantage over competitors that are subject to regulation. In this regard, the TDLC has held that, in order for the competition law system to address such conduct, the infringement of the sector-specific regulatory framework must first be established by the competent judicial or administrative authority. The same approach is followed by the FNE.

* Contribution from the National Economic Prosecutor's Office (Chile).

1. Informal economy and competition

1. According to Chilean administrative practice and case law, informal economic agents¹ are entities covered by competition law (Decree Law No. 211)² and, consequently, are taken into account in competition analyses whenever relevant.
2. Both the National Economic Prosecutor's Office (FNE) and the Competition Tribunal (TDLC, Tribunal) have recognised that informal economic agents may exert competitive pressure on formal actors and may engage in, and be held liable for, anticompetitive conduct. It is also recognised that informal economic agents may be harmed by such conduct.
3. As regards the FNE's activities, the exercise of its enforcement powers has extended to markets with national, regional and even local geographic scope, covering companies of different sizes. In some regional and local cases, the FNE's actions have concerned markets in which actors operate with high levels of informality. In such circumstances, as discussed in the following section, the FNE has sought to exercise its powers efficiently and effectively based on the merits of each case.

2. Cases involving interaction between the informal economy and competition

4. The challenges arising from the interaction between the informal economy and competition have manifested themselves mainly in the following areas: (a) difficulties in gathering information to estimate the market shares and activities of informal agents; (b) the exercise of enforcement powers in cases involving informal economic agents as potential infringers of competition rules; (c) the identification and assessment of regulatory improvements; and (d) the analysis of anticompetitive conduct linked to breaches of specific or sectoral regulation.
5. Reference is made below to a number of cases in which the FNE intervened, as well as one case in which only the TDLC intervened. The discussion of these cases is limited to those aspects that are relevant to the interaction between the informal economy and competition.

¹ Following the definition of the International Labour Organization (ILO), for the purposes of this contribution, informal economic agents and/or economic activities are understood to be those that: (i) are not covered by the law (or are insufficiently covered by the law); or (ii) are covered by the law, but the law is not applied to them in practice (for example, because the law discourages compliance by being inappropriate or by imposing excessive costs on those involved). Accordingly, this concept of informality encompasses economic activities which, although generally lawful, are carried out without clarity as to the regulatory framework applicable to them, or alternatively are carried out with some degree of non-compliance with existing regulation (for example, tax, labour or sector-specific regulation). See ILO, *Informal Economy and Atypical Forms of Employment*, 2012. Available at: www.ilo.org/resource/informal-economy-and-atypical-forms [last accessed: August 2026].

² Decree with Force of Law No. 1 of 2004 of the former Ministry of Economy, Development and Reconstruction, which establishes the Consolidated, Coordinated and Systematised Text of Decree Law No. 211 of 1973. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=236106> [last accessed: August 2026].

2.1. Difficulties in measuring the economic activities and market shares of informal agents

6. One economic sector in Chile in which formal and informal agents commonly coexist is land transport, which is composed of services provided through different types of vehicles (for example, buses, minibuses, taxis and shared taxis)³. In the *Pullman and Others* case (Judgment No. 136/2014), the issue arose as to whether so-called "pirate buses"⁴ should be included within the relevant market definition. Although the TDLC ultimately decided not to include them, the reason for their exclusion was not their informal nature, but rather the characteristics of the service provided and its differences from intercity bus transport services⁵.

7. Furthermore, a recurring problem associated with defining the relevant market in industries involving informal economic agents has been the lack of information regarding their identity, activities and transactions. Among others, this issue has arisen in investigations into possible anticompetitive infringements in the markets for the production and sale of fresh potatoes⁶ and money remittance services⁷.

8. In the fresh potato market investigation (Case No. 2730-23), the FNE identified difficulties in collecting information regarding the activities of informal actors, namely potato producers and wholesale traders. This difficulty stemmed, first, from the absence of a centralised source of information and statistics on prices paid to potato producers⁸ and, second, from traders' non-compliance with tax legislation by not issuing invoices, which led the FNE not to request sales information from the Internal Revenue Service (SII)⁹.

³ The FNE has conducted several investigations in the land transport sector. By way of illustration, in the area of coordinated anticompetitive practices, from 2007 to 2025 the FNE concluded 26 investigations.

⁴ "Pirate buses" are operators that provide land transport services without complying with transport regulations (that is, they operate unlawfully).

⁵ TDLC, Judgment No. 136/2014, Case No. 234-11, recital forty-six ("Given the differences between intercity transport services, 'pirate buses', and private passenger transport services, this Tribunal will consider only the former as part of the relevant market."). Available at: https://www.tdlc.cl/wp-content/uploads/sentencias/Sentencia_136_2014.pdf [last accessed: August 2026].

⁶ FNE, Closing Report, Confidential Investigation Case No. 2730-23 FNE, 6 January 2025. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/01/InAr-Rol-2730-23_FNE.pdf [last accessed: August 2026].

⁷ FNE, Closing Report, Confidential Investigation Case No. 2750-23 FNE, 3 February 2025. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/02/inpu_2750-23_2025.pdf [last accessed: August 2026].

⁸ FNE, Closure Report, Confidential Investigation Case No. 2730-23, 6 January 2025, para. 22 ("With regard to the marketing prices of potatoes produced in the country, it is important to note that, at present, no entity in Chile, such as ODEPA or the National Statistics Institute (INE), collects information on the prices paid to domestic potato producers. Furthermore, this is a market characterised by high levels of informality. This absence of reliable data substantially hinders the possibility of carrying out a comprehensive analysis of the prices paid to domestic producers.")

⁹ *Ibid.*, para. 45 ("It is important to note that wholesale traders also operate with significant levels of informality. Indeed, during the investigative measures carried out by this Prosecutor's Office, it was reported that, within this segment, there is a widespread practice of not issuing invoices or, where invoices are issued, recording information that does not correspond to the actual amounts and quantities involved in the transaction. This situation has created difficulties in establishing detailed and reliable historical records regarding the quantity and price of potatoes in the market. In this context, the Prosecutor's Office chose not to request sales information from the Internal Revenue

Accordingly, the FNE had to rely on other investigative measures to estimate the number of market participants, such as witness interviews and site visits to wholesale and retail markets and fairs.

9. In addition, the opacity of this market led the National Economic Prosecutor, exercising the power conferred by Article 39(q) of Decree Law No. 211, to recommend to the President of the Republic, through the Minister of Agriculture, that the legal framework governing the Office of Agricultural Studies and Policies (ODEPA) be updated so as to empower that body to request information from private parties and create a register of the actors involved in the marketing chain¹⁰.

10. Similarly, in the money remittance market investigation (Case No. 2750-23 FNE), for the purpose of determining the number of market participants and the volume of their transactions, the FNE reviewed data provided by the Financial Analysis Unit (UAF)¹¹ and the Central Bank of Chile (BCCh)¹², which mainly related to firms operating in the formal market. For example, the Central Bank's data did not record remittances sent from Chile to Venezuela through informal channels, the volume of which could be particularly significant given the substantial migration flows from that country. During the investigation, the FNE identified the presence of unregistered actors promoting remittance services through social media.¹³

11. Notwithstanding the foregoing, the fact that the FNE did not possess complete data concerning the activities of informal economic agents in these cases did not prevent them from being taken into account in its market analysis. Thus, in the fresh potato market investigation, one of the considerations that led the FNE to reject the hypothesis of anticompetitive coordination and close the investigation was the large number of participants in the potato production and sales market, together with its high degree of atomisation and fragmentation, (precisely due to the significant presence of informal actors and their participation in "open-air markets."¹⁴)¹⁵ Similarly, in the money remittance market investigation, one of the factors that led the FNE to reject the hypothesis of collusion

Service (SII), which is a usual source for obtaining price data, since such information would not reflect the actual amounts.”)

¹⁰ FNE, Resolution No. 2, 6 January 2025, pp. 2–3. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/01/ResolAr-Rol-2730-23_FNE.pdf [last accessed: August 2026].

¹¹ These figures correspond to the list of entities registered in the UAF register under the economic activity category “money transfer companies”. See FNE, Closure Report, Confidential Investigation Case No. 2750-23, 3 February 2025, para. 11.

¹² These data correspond to remittance transactions recorded in the Central Bank of Chile's (BCCh) Balance of Payments. Ibid., para. 9.

¹³ *ibid.*, para. 13 (“In addition to the list of companies supervised by the Financial Analysis Unit (UAF), there are numerous other operators offering remittance services from Chile to foreign countries that advertise through social media, reinforcing the fact that the expansion experienced by the market has created opportunities for new providers to develop and enter it.”)

¹⁴ A street market, in its ordinary sense, is an open-air market, operating on a periodic or itinerant basis, in which independent traders set up temporary stalls to sell fresh food and other retail goods directly to consumers. In Chile, street markets that comply with the applicable regulations (e.g. municipal by-laws) are legally recognised under Law No. 21.815. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=1225210> [last accessed: August 2026]. This law, published on 17 June 2026, will enter into force six months after its publication.

¹⁵ FNE, Closure Report, Confidential Investigation Case No. 2730-23, 3 February 2025, para. 78.

was the number of market participants, (particularly fintech companies¹⁶), taking into account both formal and informal agents.¹⁷

12. Furthermore, because they exhibit characteristics similar to those already described, it is also worth referring to the investigations carried out in the property brokerage market (Case No. 2518-18 FNE)¹⁸ and in the food and beverage services market at a major National Holidays event (Case No. 2713-22 FNE)¹⁹⁻²⁰.

13. In the first case, concerning property brokerage services, the FNE investigated a possible anticompetitive infringement by real estate brokers in connection with certain price recommendations, namely commission percentages, issued by trade associations. Based on information supplied by the SII, the FNE found that, as of 2020, the number of registered and active taxpayers carrying on property brokerage activities exceeded 30,000, of whom 89% were micro or small enterprises. Accordingly, considering the low barriers to entry²¹ and the large number of actors registered in the official tax records, which in fact represent only a subset of the actors operating in the market, the FNE concluded that the price recommendations issued by the trade associations were unlikely to be effective²².

14. In the case concerning a major National Holidays event, the FNE investigated a possible conspiracy regarding the sale prices of certain products²³ among the operators of food stalls and stands at the event.²⁴ The temporary nature of the market (limited to a small number of days), the absence of a centralised record of transactions carried out by

¹⁶ Companies that carry out activities involving the use and application of innovation and technological developments in the provision of financial services (Law No. 21.521). These companies increased significantly in number, particularly from 2019 onwards, following the rise in immigration to Chile, which led to an increase in remittances sent from Chile to Colombia, Bolivia and Haiti.

¹⁷ FNE, Closing Report, Confidential Investigation Case No. 2750-23, 3 February 2025, para. 15 (“The rapid increase in the number of companies registered with the Financial Analysis Unit (UAF) offering remittance services, together with the presence of other operators in the market providing these services without being registered, significantly reduces the likelihood that an agreement could be sustained over time.”)

¹⁸ FNE, Closing Report, Confidential Investigation Case No. 2518-18, 9 July 2025. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/07/inpu_2518_2018.pdf [last accessed: August 2026].

¹⁹ This is the “Fiestas Patrias 2022 Santiago” event, held in Parque O’Higgins, in the Municipality of Santiago, and organised by the Corporation for the Development of Santiago between 15 and 19 September 2022. Its structure is similar to that of a street market.

²⁰ FNE, Closing Report, Confidential Investigation Case No. 2713-22, 14 January 2025. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/01/inpu_2713-22_2024.pdf [last accessed: August 2026].

²¹ Property brokers may be either natural persons or legal entities, and there is no requirement to be registered in any official register, nor to hold any specific certification or professional qualification in order to operate. Consequently, this is a market with very low barriers to entry. See FNE, Closing Report, Confidential Investigation Case No. 2518-18, 9 July 2025, paras. 8 and 24.

²² Ibid., para. 24.

²³ For example, empanadas, chips (French fries), and alcoholic beverages.

²⁴ Although these economic agents are not necessarily informal from a tax or labour law perspective, their structure, scale and mode of operation are similar to those of the actors that participate in so-called street markets.

operators, and even the failure of some operators to display prices to the public²⁵, led the FNE to adopt investigative measures tailored to those circumstances. Accordingly, it gathered information on products and prices through site visits, reviews of social media profiles, and a request for information sent to the organiser of the event²⁶. These measures revealed, among other findings, significant price dispersion among the products concerned, leading the FNE to reject the collusion hypothesis²⁷.

15. The challenges referred to in the preceding paragraphs concerning the inclusion of informal agents in the definition of the relevant market and the gathering of reliable information relating to their economic activity also arise on occasion in merger control proceedings.

16. For example, in the *Unifrutti/Verfrut* merger operation (Case No. F382-24)²⁸, concerning the market for the marketing of fresh export fruit in Chile, the FNE identified a high degree of fragmentation and informality among market participants²⁹. This circumstance resulted, among other things, in a low response rate (50.6%) to the information requests sent by the FNE³⁰ and required it to assess the true significance of the merger by relying on additional corroborating evidence.

17. Accordingly, the FNE considered the market shares compiled from information provided by the responding producers and traders to be overstated. To assess those shares, it relied on ODEPA statistics regarding the total hectares planted by company for each fruit variety, finding that, under that methodology, the thresholds established in the Guidelines for the Analysis of Horizontal Merger Operations³¹⁻³² were not exceeded. Similar difficulties and strategies were observed in the *Hortifut/PSP* merger operation (Case No. F365-23)³³.

²⁵ For a number of operators, prices could only be ascertained by requesting a direct quotation. See FNE, Closure Report, Confidential Investigation Case No. 2713-22, 14 January 2025, footnote No. 11.

²⁶ *Ibid.*, para. 20.

²⁷ Some of the additional reasons relied upon by the FNE in rejecting the existence of anticompetitive coordination were: (i) the incentive for stallholders to sell off their products at the end of the event, that is, to sell them at low prices to avoid being left with surplus stock; (ii) the presence of new stallholders, namely individuals with no ties to the traditional stallholders; and (iii) the geographic proximity between suppliers, which enabled them to engage in some degree of monitoring of their competitors' prices. *Ibid.*, paras. 22, 24 and 25.

²⁸ FNE, Report Approving a Merger Operation, Case No. F382-2024, 6 June 2024. Available at: https://www.fne.gob.cl/wp-content/uploads/2024/06/inpu_F382_2024.pdf [last accessed: August 2026].

²⁹ The actors in this industry are producers and wholesale traders of fresh export fruit. As regards producers, who constitute the segment with the highest degree of fragmentation and informality, this group comprises companies of various sizes as well as natural persons (small-scale farmers). *Ibid.*, para. 16.

³⁰ *Ibid.*, para. 10 and footnote 44.

³¹ *Ibid.*, paras. 11, 33 and 34.

³² FNE, Guidelines for the Analysis of Horizontal Merger Operations, 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: August 2026].

³³ FNE, Report Approving a Merger Operation, Case No. F365-23, 4 March 2025. Available at: https://www.fne.gob.cl/wp-content/uploads/2025/03/inpu_F365-23_2024.pdf [last accessed: August 2026].

2.2. Challenges in the exercise of enforcement powers in relation to informal economic agents and the advocacy function

18. As noted above, the FNE has conducted investigations and exercised enforcement powers in several markets in which economic agents operate with some degree of informality. In these cases, informality did not relate to the legal status of the activities concerned, which were lawful activities, nor to any possible non-compliance with tax or sector-specific legislation, but rather to certain characteristics of the entities involved, including their particularly small size (micro and small enterprises), simple organisational structures, limited access to legal advice, and low levels of awareness of competition law.

19. As will be seen, in such cases the FNE has sought to exercise its legal powers efficiently and pragmatically, adopting an approach consistent with the merits and realities of each of the agents involved. The following cases illustrate the challenges associated with the degree of informality of the actors concerned, as well as the opportunities for advocacy and capacity-building that they presented.

20. A first group of cases concerns the public passenger land transport sector, specifically radio taxi services and shared taxis³⁴, in which actors often participate through different organisational arrangements, such as independent vehicle owners, owners associated with taxi dispatch centres, and firms operating several vehicles. In this regard, a significant case was the *Coyhaique Radio Taxis* matter, in which the FNE investigated five radio taxi dispatch operators³⁵ that had allegedly met to coordinate an increase in transport fares from CLP 1,500 to CLP 2,000 (approximately USD 1.5 to USD 2), even announcing the decision publicly through a radio programme. This latter circumstance partly revealed the limited awareness among these actors of the restrictions imposed by competition law.

21. The *Coyhaique Radio Taxis* case concluded through an out-of-court settlement entered into by the FNE and the taxi dispatch centres, which was approved by the TDLC on 23 January 2023 (Settlement Agreement No. 25-22)³⁶. Notably, this was the first cartel case to be resolved through an out-of-court settlement. In reaching this outcome, the FNE considered the local scope of the conduct, limited to the municipality of Coyhaique, the microenterprise status of the agents involved, the public nature of the fare increase announcement, and their lack of awareness of the illegality of their conduct.

August 2026]. For example, see para. 45 (“Given the particular characteristics of the market, namely its atomisation and informality, this Division considers that this figure understates the number of competitors that are actually active in that segment and that, consequently, the total size of the market would be larger and composed of a greater number of competitors.”)

³⁴ Shared taxis are passenger transport vehicles of the saloon-car type used to provide public transport services. Unlike ordinary taxis, whose origin and destination are determined by the passenger, shared taxis operate along routes that have been predetermined by the competent authority. They are regulated under Supreme Decree No. 212 of 1992 of the Ministry of Transport and Telecommunications. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=11043> [last accessed: August 2026].

³⁵ Radio taxi dispatch centres are natural or legal persons that provide intermediary services between taxi operators and potential passengers, primarily through telephone communications.

³⁶ TDLC, Extrajudicial Settlement No. 25/2022, Case No. AE 25-22, decision of 23 January 2023. Available at: https://www.tdlc.cl/wp-content/uploads/2023/02/AE_25-22.pdf [last accessed: August 2026].

22. Thus, although the conduct was unlawful, those circumstances enabled the FNE to determine that an out-of-court settlement was the most efficient and proportionate solution in terms of resource allocation and the seriousness of the infringement. Under the settlement, the taxi dispatch centres undertook not to repeat the conduct or exchange competitively sensitive information in the future, to pay fines proportionate to their size (approximately USD 900 each), and to participate in comprehensive competition law training. This final commitment sought to remedy the actors' lack of knowledge of competition law by building their future capacity to comply with that framework.

23. Along the same lines as the *Coyhaique Radio Taxis* case, mention may be made of the out-of-court settlements reached in *Victoria Shared Taxis*, involving three shared taxi lines (Settlement Agreement No. 36-25)³⁷, and *Municipality of San Bernardo*, involving a municipality and 13 shared taxi lines (Settlement Agreement No. 38-25)³⁸. In these cases, the FNE considered that its institutional role in promoting competition involves an educational and pedagogical dimension with respect to investigated parties. Accordingly, one of the most significant tasks undertaken during these investigations consisted of explaining, in clear yet comprehensive terms, the scope of Decree Law No. 211 and the seriousness of its infringement.

24. Nevertheless, notwithstanding the informality of the economic agents concerned, where the specific circumstances of the case and the behaviour of those agents so warranted, the FNE has filed complaints before the TDLC. One example is the *Iquique Bakers* case (Case No. C-531-2025)³⁹, in which the authority brought proceedings against twelve natural persons associated with industrial bakeries located in the Province of Iquique for collusion regarding the wholesale price of bread⁴⁰.

25. Although the case is still pending before the TDLC, it is worth noting that the characteristics of the economic agents influenced, together with other factors: (i) the determination of the fines sought by the FNE; (ii) the request for the imposition of a preventive behavioural remedy involving training; and (iii) the availability of settlement

³⁷ TDLC, Out-of-Court Settlement No. 34/2024, Case No. AE 34-24, decision of 21 October 2024. Available at: https://www.tdlc.cl/wp-content/uploads/2024/10/AE_34-24_-1.pdf [last accessed: August 2026].

³⁸ TDLC, Out-of-Court Settlement No. 38/2025, Case No. AE 38-25, decision of 11 November 2025. Available at: https://www.tdlc.cl/wp-content/uploads/2026/01/AE_38-25.pdf [last accessed: August 2026].

³⁹ FNE, Complaint against Guido Condori Manuel and Others, Case No. C-531-2025, filed before the TDLC on 31 March 2025. Available at: <https://www.fne.gob.cl/wp-content/uploads/2025/04/Requerimiento-FNE-contra-Condori-y-otros.pdf> [last accessed: August 2026].

⁴⁰ Another earlier case in which the FNE filed a complaint against economic agents displaying characteristics of informality is that of the Punta de Choros Sea Workers' Trade Association. In this case, the complaint was directed against boat operators providing tourist transport services by boat from San Agustín cove to the Humboldt Penguin Reserve on Damas Island. These agents agreed, within the framework of a trade association, to fix a uniform fare for that transport service, in addition to establishing a rota system for trips. The case was resolved through a settlement, which was approved by the TDLC in a decision issued on 13 July 2010. See FNE, Complaint against the Independent Sea Workers' Trade Association of Punta de Choros Cove, Case No. C-198-2009, filed before the TDLC on 29 December 2009. Available at: https://www.fne.gob.cl/wp-content/uploads/2011/03/requ_0006_2009.pdf [last accessed: August 2026].

procedures with some of the parties involved who acknowledged their participation in the conduct and undertook behavioural commitments⁴¹.

26. It is also important to note that informal economic agents have not only appeared in cases as subjects of investigation or defendants in proceedings brought by the FNE; on some occasions, they have been the direct victims of anticompetitive infringements. An example is the *Centolla* case (Case No. C-540-2025)⁴², which concerns alleged collusion in the purchase price of king crab by companies processing that product⁴³. As this was a buyer cartel, those harmed by the conduct were the sellers of the product, namely artisanal fishers in the Magallanes and Chilean Antarctic Region. Because they were affected by the alleged buyer cartel, the artisanal fishers played an active role in the investigation, participating in specific investigative measures. These are economic agents that also display characteristics of informality in the sense described above.

2.3. Formulation of legislative proposals aimed at improving competitive conditions in markets

27. The FNE has also addressed issues relating to the informal economy indirectly through the exercise of its power to propose to the President of the Republic, on a reasoned basis, legislative amendments aimed at removing obstacles to competition or improving competitive conditions in markets (Article 39(q) of Decree Law No. 211). This power may be exercised on the basis of the findings of either a market study or an investigation into possible anticompetitive conduct.

28. For example, in its 2024 *Study of the Accommodation Market*⁴⁴, the FNE proposed easing certain regulatory requirements applicable to traditional accommodation providers and improving the permit regime for accommodation activities. The objective was to encourage the regularisation of economic agents operating informally and advertising their services through online travel agencies (OTAs), principally providers of so-called short-term rentals (STRs)⁴⁵, thereby avoiding competitive distortions vis-à-vis formally operating providers, namely accommodation establishments registered with the National Tourism Service (SERNATUR)⁴⁶.

⁴¹ Unlike an out-of-court settlement (regulated under Article 39(ñ) of Decree Law No. 211), conciliation is available only after contentious proceedings have commenced, specifically once the pleadings stage has concluded, and relates to claims that have already been submitted to the TDLC for adjudication. It is regulated under Article 22 of Decree Law No. 211.

⁴² FNE, Complaint against Elaboradora de Alimentos Porvenir S.A. and Others, Case No. C-540-2025, filed before the TDLC on 12 September 2025. Available at: <https://www.fne.gob.cl/wp-content/uploads/2025/09/Requerimiento-FNE-centolla.pdf> [last accessed: August 2026].

⁴³ *Centolla*, internationally known as King Crab, is a hydrobiological resource harvested in the Magallanes Region and subsequently processed and primarily exported to other countries.

⁴⁴ FNE, Final Report of the Study on the Accommodation Market, April 2024. Available at: https://www.fne.gob.cl/wp-content/uploads/2024/04/03.Informe_Final.pdf [last accessed: August 2026].

⁴⁵ Ibid., para. 170 (“Unlike traditional accommodation providers, which are subject to formal regulatory requirements, not all STRs comply with the formal requirements relating to tax payments or registration.”)

⁴⁶ Indeed, one disadvantage faced by formal accommodation providers compared with informal ones, arising from the latter’s lack of regularisation, concerns compliance with tax legislation. Informal operators may not pay Value Added Tax (VAT), enabling them to offer a more attractive final price to consumers. In this regard, one of the recommendations contained in the market study

29. The market study concluded that the regulatory framework applicable to traditional accommodation providers contains installation, operating and quality requirements that are, in some respects, disproportionate to their objectives and have not been reviewed for decades, making reform advisable⁴⁷. The FNE found that these requirements may create significant barriers and may discourage registration by accommodation providers, thereby encouraging informal operation. To address this issue and avoid potential distortions arising from informality, the study proposed facilitating registration with SERNATUR⁴⁸ and simplifying the requirements for establishing and operating accommodation services⁴⁹.

2.4. Analysis of anticompetitive conduct linked to breaches of specific regulation

30. A final area of intersection between competition law and the informal economy concerns the competitive advantages that may arise from regulatory non-compliance by a market participant. This may occur, for example, where an economic agent's activity or business model is not fully covered, or at least not clearly covered, by the regulatory framework in force at the relevant time, generating disagreement among market participants.

31. In Chile, the clearest example of this situation to date concerns a dispute between private parties heard by the TDLC, in which the FNE did not intervene. In *Taxi Union v Uber and Others* (Judgment No. 176/2021)⁵⁰, the claimant alleged unfair competition by ride-hailing platforms (Uber, Cabify and Easy Taxi), arguing that they obtained competitive advantages through non-compliance with both passenger transport regulation and tax legislation. According to the claimant, their breach of passenger transport regulation consisted of failing to obtain insurance and failing to comply with the fare regulation applicable to taxis. As regards tax legislation, the alleged infringement consisted of failing to declare components relevant to the calculation of taxation, specifically the tax valuation required of taxi operators, thereby allowing them to benefit from a lower tax burden⁵¹.

was that online travel agencies (OTAs) should withhold the VAT payable on accommodation services offered through their platforms (Final Report of the Study on the Accommodation Market, paras. 516 et seq.). The study also estimated that, owing to the lack of tax enforcement in relation to STR-type accommodation providers, the potential fiscal impact in 2022, in terms of reduced tax revenues, could have ranged between USD 35 million and USD 45 million per year. Ibid., para. 291.

⁴⁷ For example, health and safety regulations relating to ventilation and sanitary facilities. Ibid., paras. 324 et seq.

⁴⁸ Ibid., paras. 524 et seq.

⁴⁹ Ibid., paras. 532 et seq.

⁵⁰ TDLC, Judgment No. 176/2021, Case No. C-319-17, 15 March 2021. Available at: https://www.tdlc.cl/wp-content/uploads/2021/03/Sentencia_176_2021.pdf [last accessed: August 2026].

⁵¹ This case was heard by the TDLC before the enactment of Law No. 21.553 of 2023, which regulates ride-hailing applications and the services provided through them (commonly known as the "Uber Law"), and this absence of regulation was expressly acknowledged by the TDLC in its judgment. In this regard, the TDLC stated that: "(...) with respect to the nature of the activity carried out by the defendants and its subjection to the regulatory framework applicable to public passenger transport, the Supreme Court has indicated that no regulation of such activity currently exists in Chile" (TDLC, Judgment No. 176/2021, Case No. C-319-17, 15 March 2021, fiftieth-fifth recital). Indeed, in an earlier case, the Supreme Court had held that: "(...) the introduction in Chile of the technological applications Uber and Cabify has generated various controversies, ranging from questions concerning the legality of the activity to conflicts between authorised transport operators

32. In resolving the dispute, the TDLC applied a test requiring three conditions for a systematic breach of regulation to amount to unfair competition hypothesis under Decree Law No. 211: (i) there must first be a ruling establishing the infringement of the specific regulation concerned, whether through a judicial judgment or an administrative decision by the competent authority; (ii) the competitive advantage obtained must result from that infringement; and (iii) the advantage must be significant⁵². Applying this test, the TDLC found that the evidence submitted by the claimant did not establish that the conduct of the defendants had been declared to infringe the relevant specific regulations and therefore dismissed the claim. The TDLC's judgment and reasoning were subsequently upheld by the Supreme Court⁵³.

33. A similar line of reasoning has also been applied by the FNE, for example in an investigation into anticompetitive conduct in the market for electronic receipt issuance services (Case No. 2649-21)⁵⁴.

and those who use the application as 'driver-partners'. These circumstances led to a review of the applicability of the existing legal framework, and the conclusion reached by the authorities was that the activity is not regulated. Consequently, a legislative proposal seeking to regulate it is currently under consideration before the National Congress" (Supreme Court, Constitutional Protection Action, Case No. 10210-2017, judgment of 31 July 2017, second and third recitals).

⁵² TDLC, Judgment No. 176/2021, Case No. C-319-17, 15 March 2021, thirty-fifth recital.

⁵³ Supreme Court of Chile, Case No. 28,624-2021, judgment dated 18 January 2023.

⁵⁴ FNE, Closing Report, Confidential Investigation Case No. 2649-21, 19 October 2021. Available at: https://www.fne.gob.cl/wp-content/uploads/2021/10/inpu_009_2021-Rol-2649-21.pdf [last accessed: August 2026]. In this case, the FNE investigated a possible instance of anticompetitive conduct in the form of unfair competition in the market for electronic receipt issuance services, linked to an alleged infringement of sector-specific regulation. In that context, applying the preliminary ruling requirement (prejudicialidad) established in TDLC Judgment No. 176/2021, the FNE requested a ruling from the relevant sector regulator, namely the Financial Market Commission (CMF), in order to determine whether the economic activity carried out by the investigated companies was lawful or unlawful (paras. 10 and 11).