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**Information Sharing in Competition Policy – Note by Chile**

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## Chile

1. This contribution examines Chile’s legal framework, enforcement practice, and policy approach to information sharing under competition law, with particular attention to the circumstances in which exchanges of commercially sensitive information between competitors may raise competition concerns. It begins by setting out the legal and analytical framework (Section I), followed by a review of a selection of relevant enforcement experience and case law (Section II). It then addresses trade associations and other organised mechanisms for information sharing (Section III), before turning to information-sharing risks in merger control, common ownership, and shared infrastructure (Section IV). The contribution also considers pro-competitive transparency (Section V) and advocacy practice and emerging challenges (Section VI), to finally conclude in Section VII.

### 1. Legal and Analytical Framework

2. The relevant competition law framework is contained in Decree Law No. 211 of 1973 (DL 211), Chile’s Competition Act.<sup>1</sup> Article 1 states that the purpose of the statute is to promote and defend competition, while Article 2 delegates that function to the Fiscalía Nacional Económica (FNE) and the Tribunal for the Defence of Free Competition (TDLC).<sup>2</sup> Within that institutional framework, the FNE investigates conduct and may bring proceedings before the TDLC, while the TDLC determines infringements and may impose sanctions and/or preventive, corrective, or prohibitory measures, subject to review by the Supreme Court.

3. The main substantive basis for addressing information exchanges is Article 3 of DL 211.<sup>3</sup> Its first paragraph contains a broad general prohibition on any act, agreement, or convention that prevents, restricts, or hinders competition, or tends to produce such effects. The provision then identifies, in non-exhaustive terms, the main categories of anticompetitive conduct, including horizontal agreements, unilateral conduct, and interlocking directorates. Title IV of DL 211 contains the merger control regime. This matters for present purposes because, although anticompetitive information sharing has been enforced in Chile mainly under Article 3(a) of DL 211, which prohibits collusive agreements and concerted practices between competitors, information-sharing concerns may also arise in other contexts governed by different provisions of the statute.

4. Chilean law does not expressly recognize information sharing as a standalone infringement, nor does it treat every exchange of information between competitors as unlawful. Its assessment is instead contextual, turning on the circumstances of the exchange and the nature of the information involved. In practice, Chilean authorities have examined these issues case by case and across different procedural settings. The most developed line of enforcement has emerged in cases involving agreements or concerted practices between competitors, where Article 3 (a) has generally been the central provision, especially when the exchange relates to prices, output, market allocation, or bid-rigging.

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<sup>1</sup> Decree Law No. 211 of 1973 (“DL 211”). Available in English at: [link](#) [last accessed: May 2026].

<sup>2</sup> Articles 1 and 2 DL 211. Available in English at: [link](#) [last accessed: May 2026].

<sup>3</sup> Article 3, first paragraph, DL 211. Available in English at: [link](#) [last accessed: May 2026].

5. The broad wording of the general clause in Article 3 means that Chilean competition law is not limited to the specific categories listed in the subsequent paragraphs of the provision. Information exchanges between competitors may be relevant in at least three different settings: they may form part of a collusive agreement or concerted practice; they may be assessed in merger control or gun-jumping contexts; or, in an appropriate case, they may be examined directly under the general prohibition as autonomous conduct. The framework is functional rather than formal: the central question is whether, in its market context, the exchange is capable of diminishing the uncertainty and competitive autonomy that should exist between competitors.

6. The FNE's Trade Associations Guidelines remain the main soft-law instrument for analysing when exchanges between competitors become problematic.<sup>4</sup> It provides the clearest general framework for distinguishing benign or pro-competitive transparency from anticompetitive exchanges of commercially sensitive information. The Guidelines define "relevant information" as strategic information of a firm that would influence a competitor's market conduct and would not normally be accessible to it.<sup>5</sup> It identifies as relevant information, among others, current or future pricing policies, cost structures, current or projected output, expansion and investment plans, import policies, market shares, customer lists, discount policies, payment terms, commercial strategies, and the design or content of bids in future tenders.<sup>6</sup> Key factors in assessing whether information is relevant, and thus capable of increasing anticompetitive risk when exchanged among competitors, include whether it is historical or current, aggregated or disaggregated, public or non-public, and whether it relates to future conduct. Also relevant are the frequency of the exchange, the degree of market concentration, and the institutional setting in which the information is shared.<sup>7</sup>

7. This analytical framework is reflected in Chilean case law and practice. The TDLC and the Supreme Court have examined information exchanges most prominently in cartel and bid-rigging cases, but also in non-contentious proceedings concerning the dissemination of market information through trade associations, in cases involving third-party information services, and in gun-jumping matters involving premature access to sensitive business data. The same concerns are also reflected in the FNE's investigative files and archive reports, including more recent matters in which the authority has considered the risks associated with exchanges of commercially sensitive information. Across all settings, the core concern is consistent: whether the exchange creates a level of competitive transparency that undermines independent decision-making and facilitates coordination.

8. Accordingly, the Chilean approach does not rest on a formal prohibition of information sharing as such. It distinguishes between transparency that may support the proper functioning of markets and exchanges of commercially sensitive or strategically relevant information that may soften rivalry. The growing number of cases in which information exchanges have played a relevant role, together with the breadth of Article 3

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<sup>4</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011). Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>5</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), p. 14 (definition of competitively sensitive information). Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>6</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), pp. 14-15. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>7</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), pp. 15-16. Available in Spanish at: [link](#) last accessed: May 2026].

of DL 211, shows that the issue may be assessed under different provisions and in different settings. This case-by-case approach remains the defining feature of Chilean law in this area, providing flexibility while also leaving open the possibility that, in an appropriate case, an exchange of commercially sensitive information that impedes, restricts or hinders competition could be assessed directly under the general prohibition of the Act under a rule-of-reason analysis.

## 2. Enforcement Experience

9. In Chile, exchanges of commercially sensitive information between competitors have been analysed most extensively in cartel cases under Article 3 (a) of DL 211. In that context, information exchange has served different functions: as evidence of collusion, as a mechanism for monitoring and implementing a cartel, as a facilitating device for coordination, and, more recently, as conduct regarded as consubstantial to the collusive scheme itself. These cases illustrate an important evolution: exchange of commercially sensitive information between competitors has moved from being viewed mainly as part of the evidentiary record to being analysed as conduct capable of structuring the collusive arrangement itself.

10. A key cartel case in which information exchange played a central role was *Poultry* (2014), concerning Chile's three main poultry producers.<sup>8</sup> The cartel was implemented and monitored through the poultry producers trade association (APA), which operated as a platform for the circulation of detailed and strategically sensitive information. Through the APA, demand projections were shared among the producers, and production adjustments were promoted in order to preserve agreed market shares. The TDLC treated this systematic exchange of quantity-related information as a core mechanism for implementing and monitoring the cartel. The Supreme Court upheld the judgment and ordered the dissolution of the APA.<sup>9</sup>

11. The landmark *Supermarkets* (2019) case broadened that understanding by showing that the exchange of commercially sensitive information does not need to occur through direct contacts between competitors; it may also take place indirectly, through vertically related firms acting as intermediaries.<sup>10</sup> The case concerned an arrangement among the main supermarket chains to avoid selling fresh chicken below the suppliers' list price, with the relevant flows of information and pressure channelled through common suppliers rather than through direct retailer-to-retailer communications.<sup>11</sup> Each chain monitored its rivals' retail prices, complained to the suppliers when a competitor deviated, and relied on those suppliers to intervene. The suppliers thus functioned as intermediaries within a hub-and-

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<sup>8</sup> TDLC. Judgment No. 139/2014, "Requerimiento de la FNE contra Agrícola Agrosuper S.A. y otros" (*Poultry*). Available at: [link](#) [last accessed: May 2026].

<sup>9</sup> TDLC. Judgment No. 139/2014 (*Poultry*), paras. 255-270. Available at: [link](#) [last accessed: May 2026]. See also Supreme Court, Rol No. 27.181-2014. Available at: [link](#) [last accessed: May 2026].

<sup>10</sup>TDLC. Judgment No. 167/2019, "Requerimiento de la Fiscalía Nacional Económica en contra de Cencosud S.A. y otras" (*Supermarkets*). Available at: [link](#) [last accessed: May 2026].

<sup>11</sup>TDLC. Judgment No. 167/2019 (*Supermarkets*), paras. 89-93. Available at: [link](#) [last accessed: May 2026].

spoke scheme.<sup>12</sup> The case showed that the exchange of competitively relevant information may sustain a cartel even when mediated through non-competitor intermediaries.<sup>13</sup>

12. The most developed Chilean authority on information exchange between competitors is *Helicopters* (TDLC, 2023; Supreme Court, 2025).<sup>14</sup> The case concerned a collusive arrangement between Inaer and Faasa/Pegasus in a series of tenders for helicopter firefighting services conducted between 2006 and 2013. The companies, acting through their executives, communicated during the preparation of their offers, exchanged commercially sensitive information, and coordinated their strategies across five episodes, including CONAF<sup>15</sup> tenders in 2006, 2009 and 2011, and two private tenders in 2012 and 2013.

13. The significance of *Helicopters* lies in the TDLC's effort to articulate a broader analytical framework for information exchanges in bidding markets. The Tribunal held that, in bid-rigging cases, the exchange of detailed commercially sensitive information between competitors is "(...) a consubstantial part of the collusive offence, because, whatever strategy is adopted between competitors, it will always be necessary for the participants in the collusive conduct to know in advance the price or the conditions of the bid that will, or is intended to, be awarded the tender".<sup>16</sup> On that basis, the TDLC explained that exchanges of strategic information allow competitors to structure a common understanding affecting key competitive parameters of the tender.<sup>17</sup>

14. The TDLC also situated the case within a wider framework. It identified three settings in which information exchanges between competitors may arise under Chilean competition law: as part of a horizontal co-operation agreement, in merger control or gun-jumping contexts, and as part of a collusive infringement.<sup>18</sup> In relation to the latter, the Tribunal held that the exchange of strategic information may operate as a facilitating element, may form part of the collusive infringement itself, and may also serve, from a procedural perspective, as circumstantial evidence of collusion.<sup>19</sup>

15. Drawing on EU and UK case law and guidance<sup>20</sup>, the TDLC stated that direct or indirect contacts between competitors are unlawful where they serve to reduce or eliminate

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<sup>12</sup>TDLC. Judgment No. 167/2019 (*Supermarkets*), paras. 89-97. Available at: [link](#) [last accessed: May 2026]. See also Supreme Court, Rol No. 9361-2019, as reported in the TDLC case file page. Available at: [link](#) [last accessed: May 2026].

<sup>13</sup>TDLC. Judgment No. 167/2019 (*Supermarkets*), paras. 89-97. Available at: [link](#) [last accessed: May 2026].

<sup>14</sup>TDLC. Judgment No. 185/2023 (*Helicopters*), paras. 42-55. Available at: [link](#) [last accessed: May 2026]. See also Supreme Court, Rol No. 217.744-2023 (17 February 2025), as reported on the TDLC case page. Available at: [link](#) [last accessed: May 2026].

<sup>15</sup> Chile's National Forestry Corporation, the public agency in charge of forest management and wildfire prevention and response.

<sup>16</sup>TDLC. Judgment No. 185/2023 (*Helicopters*), para. 42. Available at: [link](#) [last accessed: May 2026]. (free translation).

<sup>17</sup> *ibid.*, para. 42.

<sup>18</sup> *ibid.*, para. 47.

<sup>19</sup> *ibid.*, para. 48.

<sup>20</sup> *ibid.*, paras. 47-50. See European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01), para. 414; Case C-8/08, *T-Mobile Netherlands and Others*, EU:C:2009:343, paras. 33 and 41; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184,

the uncertainty inherent in competition, either by influencing rivals' conduct or by revealing intended market behaviour<sup>21</sup>, even where that disclosed intention does not ultimately reflect the undertaking's actual future conduct<sup>22</sup>. It stressed that exchanges concerning intended prices, production capacity, and current or future strategy are especially harmful because they are capable of removing that uncertainty.<sup>23</sup> The judgment therefore offers a more explicit analytical framework than earlier Chilean cases: the key issues are whether the information is strategic, whether it concerns future conduct, whether it is exchanged in the course of an ongoing competitive process, and whether it is capable of reducing strategic uncertainty.<sup>24</sup>

16. An important feature of the TDLC's reasoning is its evidentiary treatment. The judgment relied on the proposition, drawn from comparative jurisprudence, that when competitors exchange strategic information and remain active in the market, it may be presumed that they took that information into account in determining their subsequent conduct, unless rebutted.<sup>25</sup> In *Helicopters*, the Tribunal found both that the exchanges articulated a common course of action and that there was a causal nexus between the communications and the offers actually presented.<sup>26</sup>

17. On review, the Supreme Court upheld the TDLC's findings in full.<sup>27</sup> It stressed that the record showed, through concordant evidence, that the firms communicated through their executives, exchanged commercially sensitive information, and coordinated their strategies.<sup>28</sup> Although the Supreme Court did not reproduce the TDLC's broader doctrinal discussion, it endorsed the core factual and legal conclusion that the communications were a central part of the collusive conduct<sup>29</sup>.

18. Read together, the judgments in *Helicopters* confirm that exchanges of forward-looking, commercially sensitive information between competitors —especially in a bidding

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paras. 120 and 122; Case C-74/14, *Eturas and Others*, EU:C:2016:42, para. 27; UK Competition Appeal Tribunal, *Balmoral Tanks Limited*, Case No. 1277/1/12/2017, para. 38; and UK Competition Appeal Tribunal, *Lexon (UK) Limited*, Case No. 1344/1/12/20, para. 187.

<sup>21</sup> *ibid.*, paras. 49-50.

<sup>22</sup> *ibid.*, para. 204-209.

<sup>23</sup> *ibid.*, paras. 49-50.

<sup>24</sup> *ibid.*, para. 50.

<sup>25</sup> *ibid.*, paras. 51-52.

<sup>26</sup> *ibid.*, para. 53.

<sup>27</sup> Supreme Court, Rol No. 217.744-2023, judgment of 17 February 2025, as reported on the TDLC case page for Judgment No. 185/2023. Available at: <https://www.tdlc.cl/sentencia-n-185-2023-tdlc-acoge-requerimiento-de-la-fne-contra-inaer-helicopter-s-a-pegasus-south-america-servicios-integrales-de-aviacion-spa-faasa-ricardo-pacheco-campu/> [last accessed: May 2026].

<sup>28</sup> *ibid.*

<sup>29</sup> This was not the Supreme Court's only ruling that day in the *Helicopteros* litigation. In a separate judgment, it also reversed TDLC Judgment No. 187/2023, which had dismissed the FNE's complaint concerning the 2014 CONAF tender on statute-of-limitations grounds, holding instead that the conduct formed part of a single unlawful agreement whose effects persisted beyond the date relied upon by the TDLC, and finding, in line with the FNE's complaint, that Faasa and Calquín had entered into an unlawful agreement affecting that procurement process. See Supreme Court, Rol No. 251.306-2023, judgment of 17 February 2025, reversing TDLC Judgment No. 187/2023 in the *Helicopteros* litigation concerning the 2014 CONAF tender. Available at: [link](#) [last accessed: May 2026]. See also TDLC. Judgment No. 187/2023. Available at: [link](#) last accessed: May 2026].

context— may perform several functions simultaneously: they may reduce uncertainty, help structure a common strategy, facilitate implementation, and provide especially strong evidence from which an agreement or concerted practice may be inferred.

19. Overall, Chilean case law shows a gradual evolution in the treatment of information exchanges. Earlier judgments tended to treat them mainly as part of the evidentiary record of collusion or as mechanisms for monitoring a cartel. More recent case law, especially *Helicopters*, while still arising in the context of a collusive agreement, reflects a clearer recognition that, in a sufficiently defined setting, the exchange itself may be not only consubstantial to the infringement, but also, in an appropriate case, an autonomous infringement, particularly where it concerns forward-looking strategic information capable of reducing the uncertainty inherent to competition. While Chilean law does not currently treat information sharing as a per se infringement or as a separately typified category of conduct, the breadth of Article 3 of DL 211 leaves open the possibility that, in an appropriate case, such conduct could be assessed more directly under the general prohibition of the Act.

### 3. Trade Associations, Professional Bodies, and Other Mechanisms

20. Trade associations occupy a particularly important place in Chilean practice on information sharing because they create regular and institutionalized channels through which competitors meet, exchange views, collect data, and disseminate industry information. The FNE's Trade Associations Guidelines proceed from the premise that, by the nature of their functions and activities, trade associations are exposed to a certain risk of infringing competition rules.<sup>30</sup>

21. The Guidelines recognise that trade associations may play a legitimate role, but stress that cooperation among competitors does not always produce outcomes beneficial for competition.<sup>31</sup> Trade associations may lower the costs of coordination among rivals by providing a mechanism through which firms meet and exchange views about the market. The concern is not limited to formal resolutions; meetings, committees, surveys, benchmarking exercises, and informal conversations may all become problematic where they enable competitors to share strategic information or align behaviour.<sup>32</sup>

22. Whether information is competitively sensitive depends on both market conditions and the nature of the information.<sup>33</sup> The risks are greater in concentrated or oligopolistic markets, where entry is not easy, rivals interact repeatedly, and products are relatively homogeneous.<sup>34</sup> The Guidelines attach particular significance to the content, timing, degree of aggregation, and frequency of the information exchanged.<sup>35</sup> It warns against private, non-aggregated information, especially where it concerns current or future prices or quantities. Conversely, it recommends safeguards: collecting only historical

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<sup>30</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), p. 5. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>31</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), pp. 5-7 and 15-16. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>32</sup> *ibid.*, pp. 6-7.

<sup>33</sup> *ibid.*, pp. 14-17.

<sup>34</sup> *ibid.*, pp. 15-16.

<sup>35</sup> TDLC. Judgment No. 139/2014 (*Poultry*). Available at: [https://www.tdlc.cl/wp-content/uploads/sentencias/Sentencia\\_139\\_2014.pdf](https://www.tdlc.cl/wp-content/uploads/sentencias/Sentencia_139_2014.pdf) [last accessed: May 2026].

information; disseminating it only in aggregated form; and, where appropriate, relying on third parties subject to appropriate controls.<sup>36</sup> Similar considerations can also be seen in the FNE’s administrative practice. In its 2026 archive report in the wood pellet market, the FNE treated disaggregated information of firms’ monthly output as potentially commercially sensitive and, although it ultimately closed the investigation, expressly warned the trade association involved about the competition risks of information exchanges among competitors and urged it to follow the safeguards set out in the Guidelines<sup>37</sup>.

23. Chilean enforcement practice is consistent with that approach. In *Poultry (2014)*, the trade association was treated as an organisational platform through which the cartel was channelled and monitored.<sup>38</sup> As the later *Gynaecologists (2015)* case confirmed, Chilean case law accepts that the responsibility of an association may be pursued separately from that of its members where it plays an active role in facilitating coordination.<sup>39</sup>

24. A more recent illustration is the 2023 extrajudicial agreement between the FNE and the Trade Association of Egg Producers.<sup>40</sup> The competitive concern arose from the mechanism for collecting and disseminating competitively sensitive information itself. The FNE found that the association had collected commercially sensitive information from some of its members and made efforts for that information to be available to egg producers and to the market in general, mainly through a specialized agricultural magazine.<sup>41</sup> The FNE also found that annual membership fees were determined by reference to each producer’s acquisition of laying hens, for which the association requested hatcheries to report sales data.<sup>42</sup> In the FNE’s assessment, the collection and dissemination of such information may, depending on the circumstances, affect competition by influencing decisions that competitors must take independently, under the uncertainty inherent in competition.<sup>43</sup> The commitments assumed included compliance with the Trade Associations Guidelines, restructuring the fee system to avoid access to disaggregated production data, implementing a compliance programme, and making a monetary payment of nearly USD 1 million to the Treasury.<sup>44</sup> This case illustrates Chilean practice addressing

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<sup>36</sup> FNE. *Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011)*, pp. 15-16. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>37</sup> See FNE. *Informe de archivo de investigación en el mercado de producción, distribución y comercialización de combustible de pellet de madera en el territorio nacional (2026)*, Investigation File No. 2657-21. Available (in Spanish) at: [link](#) [last accessed: May 2026]; and FNE. *Resolución de archivo de investigación en el mercado de producción, distribución y comercialización de combustible de pellet de madera en el territorio nacional (2026)*, Investigation File No. 2657-21. Available (in Spanish) at: [link](#) [last accessed: May 2026].

<sup>38</sup> TDLC. Judgment No. 139/2014 (*Poultry*). Available at: [link](#) [last accessed: May 2026]. See also Supreme Court, Rol No. 27.181-2014. Available at: [link](#) [last accessed: May 2026].

<sup>39</sup> TDLC. Judgment No. 145/2015, “Requerimiento de la FNE contra la Asociación Gremial de Ginecólogos Obstetras de la Provincia de Ñuble y otros” (*Gynecologists*). Available at: [link](#) [last accessed: May 2026].

<sup>40</sup> TDLC. Extrajudicial Agreement No. 27/2023, paras. 1-9. Available at: [link](#) [last accessed: May 2026].

<sup>41</sup> *ibid.*, paras. 1-5.

<sup>42</sup> *ibid.*, paras. 4-6.

<sup>43</sup> *ibid.*, paras. 6-8.

<sup>44</sup> *ibid.*, operative part and commitments described in paras. 7-9.

anticompetitive information flows through corrective intervention, not only through ex post cartel litigation.

25. Trade association risks also arise when associations issue price-related suggestions or create focal points for coordination through referential tariffs. In *Dentists* (2014)<sup>45</sup>, the TDLC treated a proposed reference fee schedule as a form of information exchange capable of affecting market conduct.<sup>46</sup> It found that a referential tariff is not harmless merely because it is optional: where the benchmark reflects expected income rather than actual historical prices, and where it is prepared by the association itself, it can operate as a focal point for coordination.<sup>47</sup> The Tribunal articulated conditions under which reference parameters may present lower risk: they must be based on historical variables, determined by a third party, aggregated so as not to identify individual suppliers, of voluntary adherence, and publicly available.<sup>48</sup>

26. Chilean practice also recognises that collective information mechanisms do not need to take the form of a trade association to raise similar concerns. In *Equifax Exchange* (2015), the TDLC addressed a non-contentious consultation regarding a debt-information exchange service.<sup>49</sup> The Tribunal identified the key risk factors: relevance, disaggregation, recency, and private character of the information, as well as its periodicity.<sup>50</sup> It allowed the service only subject to strict safeguards: output must be aggregated, no identification of specific lenders should be possible, no deduction of credit conditions should be permitted, and a minimum of three participating institutions was required.<sup>51</sup> This case evidences that information sharing may raise competition concerns even where disclosure is unilateral and not limited to exchanges through organised forums of competitors.

27. Overall, Chilean practice treats trade associations and similar mechanisms as particularly sensitive environments for information exchange. The central concern is whether they circulate disaggregated, strategically relevant, non-public and/or current or forward-looking information in a way that reduces uncertainty about rivals' conduct. Where that occurs, the association may become a facilitator of concerted practices or a stabilising mechanism for collusion. Where, by contrast, the information is historical, aggregated, public, and subject to appropriate safeguards, Chilean practice leaves room for legitimate transparency.

#### 4. Information Sharing Risks in Merger Control, Common Ownership, and Shared Infrastructure

28. Information-sharing concerns may also arise outside the context of horizontal agreements. Title IV of DL 211 establishes Chile's merger control regime and requires

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<sup>45</sup> TDLC. Resolution No. 45/2014, "Consulta del Colegio de Cirujano Dentistas de Chile A.G. sobre determinación de aranceles de referencia" (Dentistas). Available at: [link](#) [last accessed: May 2026].

<sup>46</sup> *ibid.*, paras. 53-55.

<sup>47</sup> *ibid.*, para. 66.

<sup>48</sup> *ibid.*, paras. 67-68.

<sup>49</sup> TDLC. Resolution No. 47/2015, "Consulta de Servicios Equifax Chile Ltda. sobre Servicio de Información Comercial Exchange" (Equifax Exchange), Section II.I. Available at: [link](#) [last accessed: May 2026].

<sup>50</sup> *ibid.*, Section II.I.

<sup>51</sup> *ibid.*, Section II.I, paras. 38-42.

notifiable transactions to be filed with the FNE. As is typical in merger control, the relevant substantive standard is not whether the parties have engaged in an unlawful agreement or conduct, but whether the transaction is capable of substantially lessening competition<sup>52</sup>. As the cases discussed below illustrate, at different stages of the merger process—from pre-closing conduct to the implementation of remedies—the central concern is whether the transaction or resulting structure allows access to commercially sensitive information in a way that may undermine the strategic independence of competing firms.

29. A clear example is *Servipag/Santander* (2018).<sup>53</sup> The FNE concluded that Santander’s acquisition of one third of Servipag, a payment platform jointly owned by competing banks, should be prohibited. The authority identified coordinated risks: the parties’ cross-participation increased transparency between the leading banks and allowed them to monitor each other more effectively.<sup>54</sup> The outcome was a decision to prohibit the acquisition.<sup>55</sup>

30. By contrast, the *Catena-X Joint Venture* (2022)<sup>56</sup> illustrates that Chilean merger control does not treat all data-sharing mechanisms as inherently problematic. The FNE approved unconditionally a joint venture to operate a data-exchange platform for the automotive industry. What mattered was the architecture: the joint venture would not have access to, store, or process the exchanged data; no data pool would be created; and the information to be exchanged consisted of ESG-related compliance, traceability, and circular-economy metrics rather than commercially sensitive operational data.<sup>57</sup>

31. Information-sharing risks were likewise considered in *SQM/Codelco* (2025).<sup>58</sup> In its coordinated-effects analysis, the FNE observed that, in the lithium industry, certain competitively relevant variables are already subject to a degree of market transparency through public sources. At the same time, it identified the additional risk of exchanges of commercially sensitive information through common instances—such as cross-shareholdings or aligned interests—and, more specifically, through the governance and administration of the joint venture. In that context, the FNE stressed that not all information is competitively equivalent: what matters is whether the information is strategic and non-public, such that access to it by a competitor could influence its business decisions.<sup>59</sup> In the case at hand, this included periodic updates on production volumes, inventory policies, investments, technologies, know-how, sales contracts, pricing policies, patents, new

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<sup>52</sup> Articles 54 and 57 of DL 211. Available in English at: [link](#) [last accessed: May 2026].

<sup>53</sup> FNE. Informe de prohibición, Rol FNE F101-2017, “Operación de Concentración entre Banco Santander-Chile y Sociedad de Recaudación y Pagos de Servicios Limitada” (*Servipag/Santander*), 18 July 2018. Available at: [link](#) [last accessed: May 2026].

<sup>54</sup> *ibid.*, paras. 248-253.

<sup>55</sup> *ibid.*, paras. 269-272.

<sup>56</sup> FNE. Informe de aprobación, Rol FNE F319-2022, “Asociación entre BASF, BMW, Henkel, Mercedes-Benz, Bosch, SAP, Schaeffler, Siemens, T-Systems, Volkswagen y ZF” (*Catena-X Joint Venture*), 15 September 2022. Available at: [link](#) [last accessed: May 2026].

<sup>57</sup> *ibid.*, paras. 24-25 and 35-40.

<sup>58</sup> FNE. Informe de aprobación, Rol FNE F399-2024, “Asociación entre Codelco y SQM S.A.” (*SQM/Codelco*), 18 April 2025. Available at: [link](#) [last accessed: May 2026].

<sup>59</sup> *ibid.*, paras. 195-196 and 201-206.

extraction, refining or expansion projects, new business initiatives, costs, and other competitively strategic variables.<sup>60</sup>

32. Information-sharing issues have also been scrutinized in the pre-merger phase. In *JBS/Minerva* (2018)<sup>61</sup>, the FNE's gun-jumping complaint was based, among other relevant factors, on Minerva's access (after closing and while the transaction remained suspended in Chile) to sensitive and strategic information from the target business, including customer data and disaggregated information on prices and sales volumes.<sup>62</sup>

33. Chilean practice has also addressed information-sharing risks at the remedies stage. In *LATAM/Delta* (2021)<sup>63</sup>, the FNE entered into an extrajudicial agreement addressing Delta's minority shareholding in LATAM, board representation, and related information-access risks.<sup>64</sup> The agreed solution was behavioural: independent-director requirements, restrictions on Delta's role in executive appointments, strict prohibitions on the receipt and disclosure of commercially sensitive information, internal protocols, and reporting obligations.<sup>65</sup> The case shows that, where structural separation is not the chosen route, Chilean practice may rely on remedies such as targeted information barriers and governance safeguards.

34. Taken together, these cases show that Chilean competition practice applies a consistent analytical logic across different settings. The decisive question is whether the arrangement gives competitors access to information that is sufficiently current, granular, strategically relevant, and recurrent to reduce uncertainty and soften rivalry. Conversely, information that is public, aggregated, historical, or materially delayed is generally treated as less capable of generating those effects.

## 5. Pro-Competitive Transparency and Lawful Disclosure

35. Chilean practice does not treat transparency as inherently suspect. The FNE's Trade Associations Guidelines expressly recognizes that information services may have legitimate and even pro-competitive functions.<sup>66</sup> However, competitive risk increases where the information shared is current, frequent, individualized, or sufficiently detailed to increase transparency among rivals. By contrast, information that is historical, aggregated, already public—or at least accessible to the public—is materially less problematic.

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<sup>60</sup> *ibid.*, para. 205.

<sup>61</sup> FNE. Requerimiento contra Minerva S.A. y JBS S.A., Rol C-346-2018 TDLC, 6 April 2018. Available at: [link](#) [last accessed: May 2026].

<sup>62</sup> *ibid.*, p. 7.

<sup>63</sup> FNE. Acuerdo Extrajudicial suscrito entre la FNE, Delta Air Lines, Inc. y LATAM Airlines Group S.A., 13 August 2021. Available at: [link](#) [last accessed: May 2026].

<sup>64</sup> *ibid.* See also TDLC decision approving the agreement, 21 October 2021. Available at: [link](#) [last accessed: May 2026].

<sup>65</sup> FNE. Acuerdo Extrajudicial FNE/Delta/LATAM (2021), Section C, including paras. 46-104. Available at: [link](#) [last accessed: May 2026].

<sup>66</sup> FNE. Asociaciones Gremiales y Libre Competencia - Guía de la FNE (2011), pp. 15-16. Available in Spanish at: [link](#) [last accessed: May 2026].

36. Recent FNE market studies have promoted disclosure aimed at improving consumer choice. In the Funeral Services Market Study (2023),<sup>67</sup> the FNE recommended the creation and prominent display of standardized plans at a single list price, so that consumers could compare alternatives more easily in a context marked by urgency and vulnerability. In the Higher Education Market Study (2026),<sup>68</sup> the FNE promoted a centralised comparison platform and better information tools, including data on employability, expected income, tuition, programme duration, and dropout rates. In both instances, the underlying logic was that better consumer-facing information can strengthen demand-side discipline and enhance competitive dynamics.

37. The FNE has also promoted transparency where information asymmetries weaken the bargaining position of participants at another level of the chain. In an investigation concerning alleged abuse of dominance in the wine grape market (2022), the FNE found that, where reference prices were not effectively published, producers lacked adequate information to negotiate, which reduced competitive pressure among buyers.<sup>69</sup>

38. Accordingly, Chilean practice draws a clear distinction between disclosure that improves comparison, reduces information asymmetries, or strengthens the position of consumers or other market participants, and disclosure of recent, granular, commercially strategic information among competitors that may reduce the uncertainty necessary for effective rivalry. The concern turns not on “information” in the abstract, but on the direction of the information flow, the identity of the recipient, the nature and detail of the data, its timing, and the role that the disclosure has in the competitive process.

## 6. Advocacy and Emerging Challenges

39. The FNE’s response to information-sharing risks extends beyond litigation or ex post enforcement. In recent years, it has complemented investigations with soft law, advocacy, and compliance-oriented tools aimed at preventing harmful exchanges before anticompetitive conduct occurs. This reflects a broader understanding that information-related risks often arise in ordinary business interactions, industry forums, governance structures, and regulatory settings.

40. The FNE has consistently shown concern about the competition risks associated with exchanges of commercially sensitive information, and this is reflected not only in its enforcement practice but also in its advocacy activity. In its 2023 Competition Day remarks, for example, it warned that exchanges of competitively sensitive information between employers, including through trade associations, may infringe the law where they neutralize independent decision-making and reduce competitive uncertainty. It referred to the exchange of current and future wage information, noting that such conduct may be

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<sup>67</sup> FNE. Estudio del Mercado Fúnebre (EM07-2021). Informe Final [Final Report] (2023), pp. 245-252. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>68</sup> FNE. Estudio de Mercado sobre Educación Superior (EM09-2024). Informe Final [Final Report] (2025), summary and recommendations on information and comparison tools. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>69</sup> FNE. Informe de Archivo, Rol No. 2525-19, “Denuncia sobre abusos de posición dominante en el mercado de compra de uvas viníferas” (2022), pp. 1-5; and 62-70. Available in Spanish at: [link](#) [last accessed: May 2026].

objectionable in itself and may also amount to collusion.<sup>70</sup> The FNE has since engaged in a series of outreach and training activities in this area.

41. The FNE has also indicated in its advocacy work that competition concerns increasingly arise in technologically mediated settings. At its 2024 *Competition Day*, on “Algorithmic Pricing and Collusion”, the National Economic Prosecutor stressed that collusion may be supported by increasingly sophisticated technologies and that Chile’s competition law, given its open-textured and versatile wording, is capable of addressing these new forms of anticompetitive conduct. He also noted that firms using technological tools to personalise prices or other commercial conditions must ensure that such tools are not used to facilitate infringements of competition law.<sup>71</sup>

42. The existing Chilean framework appears sufficiently broad to address both established and emerging forms of anticompetitive information sharing. Article 3 of DL 211 is not confined to media, technologies, or predetermined forms of coordination. This breadth suggests that the analysis can evolve together with market practices: the legal question remains whether information sharing, whatever its form, can undermine the independence of competitors, and thus affect competitive conditions.

## 7. Conclusion

43. The Chilean experience shows, first, increasing scrutiny of exchanges of commercially sensitive information between competitors, particularly where such exchanges reduce strategic uncertainty, soften rivalry, or help align market conduct; second, that the breadth of Article 3 of DL 211 provides a sufficiently flexible basis to assess these risks across different contexts, including cartel enforcement, trade-association activity, merger review, gun-jumping, common ownership, shared infrastructure, and emerging market settings; and third, that while Chilean practice continues to distinguish clearly between harmful rival-facing exchanges and pro-competitive transparency directed at consumers or other market participants, the underlying institutional message is unequivocal: competitors are expected to determine their market behaviour independently, and exchanges of sensitive information that materially weaken that independence or facilitate coordination will be subject to scrutiny through the tools available under the statute.

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<sup>70</sup> FNE. Discurso del Fiscal Nacional Económico, 20° Día de la Competencia (19 December 2023), pp. 2-4. Available in Spanish at: [link](#) [last accessed: May 2026].

<sup>71</sup> FNE. Discurso del Fiscal Nacional Económico, XXI Día de la Competencia (11 December 2024), pp. 5-6. Available in Spanish at: [link](#) [last accessed: May 2026].