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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**Methodologies for Conducting Market Studies - Note by Chile**

**20 June 2017**

*This document reproduces a written contribution from Chile submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 20 June 2017.*

*More documents related to this discussion can be found at [www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm](http://www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm)*

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## Chile

### 1. Legal framework for market studies

1. The legal framework related to market studies was amended in mid-2016. Both the old and new legal frameworks will be briefly explained below:

2. Pre-law 20.945 (August 2016): The *Fiscalia Nacional Económica* (“FNE”) had no explicit power to conduct market studies. The FNE historically based its decision to carry out market studies, despite not having this power, on provisions from the Chilean competition law (“DL 211” or “Competition Law”) which were enacted for more general purposes. For example, article 1 of the DL 211 states that one of the objectives of that law is to “promote” competition in the markets and the FNE understood that this encompassed advocacy work which, in hand, allowed it to develop market studies.

3. Current regime: Law 20.945, which amended the DL 211 in August of 2016 gave the FNE an explicit power to conduct market studies in letter p) of article 39 of that legal body including the same information gathering powers that the FNE has to carry out investigations (which are not cartels investigations). Among these powers, the most relevant for gathering information for market studies are the power to request information from companies and to interview any person the FNE deems necessary. The amendment to the law also included fines and even criminal sanctions for those who do not comply with the information and/or interview requests from the FNE or who submit false information or delay the submission of the same.

4. The FNE has also published in May of 2017 internal guidelines<sup>1</sup> on how it will carry out market studies which were developed with the assistance of the OECD and the Competition and Market Studies Authority of Great Britain. This guideline makes public the procedure and methodology that the FNE will use in regards to market studies and explains the different stages they will have.

### 2. Information gathering

5. Under the old legal framework, some market studies were externalized to the academia and had the general purpose of gathering information on markets which were of special interest to the FNE. Most of these studies also identified possible competition problems and provided possible solutions. Other markets studies were developed internally by the FNE and generally had a narrower scope than those carried out by the academia.

6. As was explained above, the FNE did not have the explicit power to carry out market studies nor collect information in a compulsory manner, and as such information was gathered for these studies primarily from public sources and from government entities (which did have the obligation to provide the requested information).

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<sup>1</sup> <http://www.fne.gob.cl/2017/05/04/guia-para-el-desarrollo-de-estudios-de-mercado/>

7. Under the new regulatory framework, the FNE does have the power to request information from private entities but as the power is new, it has not yet started any study in particular. According to the market study guidelines, the FNE will conduct background research, mainly from public sources, when deciding upon which market to study and will move on to more intensive data gathering once it decides to open a study on a particular market.

### 3. Information Analysis

8. Most studies carried out internally by the FNE were actually focused on the analysis of legal and regulatory frameworks. Those carried out by the academia used more economic analysis but did so with limited amount of data due to the lack of powers the FNE had to gather information.

9. Under the new regime, the market study guidelines do not explicitly refer to the type of analysis that will be used, but it is expected that, depending on the particular market, it will use quantitative and qualitative methods for both data gathering and for data analysis.

### 4. Case studies

10. Under the old legal framework, the FNE carried out various market studies in areas such as banking, construction, health, and energy.<sup>2</sup>

11. Some of the most relevant and recent studies carried out are the following:

#### 4.1. Supplemental protection of patents (2016)<sup>3</sup>

12. In this market study the FNE gave its opinion in regard to two legal rules that regulated the length of protection of patents of prescription drugs. It specifically criticized an interpretation of a rule that gave supplemental protection to patents when the process before the government to obtain the patent took longer than estimated. For this market study, the FNE used primarily public information. It was primarily a legal analysis text but it did include an estimation of the harm caused by the interpretation of the legal rules.

#### 4.2. Tender processes for prescription drugs in the public health sector (2014)<sup>4</sup>

13. This market study, carried out by the FNE, was centered on public tender processes for prescription drugs in public hospital. The main findings was that the tender terms and conditions could be beneficial for incumbent firms of original products and block the entrance of companies that manufacture generic drugs. This was inconsistent with the bioequivalence policy that the Health Ministry was promoting at the time. The study suggested changes to the tender terms and conditions to allow more competition from companies that manufacture generic drugs. In this study, the FNE used public information primarily (both national and international) and the focus was on a legal analysis of the tender documents.

<sup>2</sup> These studies can be found in the FNE's webpage (in Spanish): <http://www.fne.gob.cl/promocion-de-la-libre-competencia/estudios-de-mercado/66316-2/>

<sup>3</sup> <http://www.fne.gob.cl/wp-content/uploads/2016/02/FNE-Proteccion-suplementaria.pdf>

<sup>4</sup> [http://www.fne.gob.cl/wp-content/uploads/2014/11/Estudio\\_Licitaciones\\_compras\\_medicamentos.pdf](http://www.fne.gob.cl/wp-content/uploads/2014/11/Estudio_Licitaciones_compras_medicamentos.pdf)

### 4.3. Competition in the wholesale energy market in Chile (2014)<sup>5</sup>

14. This market study was externalized by the FNE to a group of academics from Stanford, Universidad Católica de Chile and Universidad Carlos III of Madrid. The study analyzed the level of competition in the wholesale market, both in public tenders for domestic energy and in relation to “free clients” (larger companies with individual contracts with energy providers). The research concluded that there was adequate competition in the public tenders but less in relation to free clients. It suggests the introduction of tender processes for free clients as a way to introduce more competition in that market.

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<sup>5</sup> [http://www.fne.gob.cl/wp-content/uploads/2014/01/informe\\_final\\_FNE\\_Enero13\\_2014.pdf](http://www.fne.gob.cl/wp-content/uploads/2014/01/informe_final_FNE_Enero13_2014.pdf)