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

**Co-operative Antitrust in Remedy Design – Note by Chile**

3 December 2025

This document reproduces a written contribution from Chile submitted for Item 3 of the 142<sup>nd</sup> meeting of Working Party 3 on 3 December 2025.

More documentation related to this discussion can be found at: [oe.cd/card](https://oe.cd/card).

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## Chile

1. This contribution outlines FNE's approach to, and experience with, collaborative remedy design, focusing on merger cases. Section I describes key features of Chile's merger control system; Section II examines the collaboration that takes place with the merging parties and other market participants in the design of remedies; Section III discusses cooperation with sectoral regulators and other public bodies; and finally, Section IV addresses the cooperation developed with other competition agencies.

### 1. The merger control procedure in Chile: General aspects

2. In the context of reviewing mergers that could substantially lessen competition unless corrective measures are implemented, the process of designing and monitoring remedies is essential.

3. In Chile this process is regulated by the Competition Act (DL 211)<sup>1</sup> and the *Regulation on Merger Notification*.<sup>2</sup> In addition, the FNE has published guidelines on remedies design (*Guidelines on Remedies*, 2017)<sup>3</sup> to provide transparency and guidance to the notifying parties regarding the assessment that the FNE will carry out of the proposed mitigation measures, as well as the general principles applicable to the remedies it will be willing to consider in its decisions.

4. Under Chilean merger control system, the notifying parties are responsible for submitting remedy proposals.<sup>4</sup>

5. In general, remedy proposals are submitted after the FNE has communicated to the parties the potential competition concerns posed by the notified transaction. However, according to the applicable regulations, the parties have the right to submit such proposals at any stage of the proceeding, including at the time of the initial filing and up until the deadlines established for *Phase II* review. Furthermore, there is an informal mechanism, called *pre-filing* that is designed for the parties to submit queries before submitting a filing, through which the parties are encouraged to consult on matters such as remedies associated with a merger. The formal proposal for remedies must be submitted in writing, signed by those who would assume the commitments, and must contain details on the method of implementation and the timeline for doing so.

6. Once the remedy proposal is submitted, the deadlines of the merger procedure are suspended for up to 10 or 15 business days, depending it is submitted on Phase I or Phase II, respectively. This period is used to assess whether the proposed remedies comply with the criteria set out in the *Guidelines on Remedies*—namely, whether: (i) they are effective in preventing the transaction from substantially lessening competition, (ii) they are feasible to implement and monitor, and (iii) they are proportionate to the competition concerns

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<sup>1</sup> Law Decree No. 211 of 1973. Available in English at: [link](#) [last accessed: November 2025].

<sup>2</sup> Decree No. 41 of 2017 of the Ministry of Economy, Development and Tourism. Available in Spanish at: [link](#) [last accessed: November 2025].

<sup>3</sup> FNE, "Guidelines on Remedies" (2017). Available in English at: [link](#) [last accessed: November 2025].

<sup>4</sup> Article 53, paragraph 3 DL 211.

identified. Accordingly, the proposal must include sufficient information to enable the authority to assess its effectiveness, feasibility, and proportionality.

7. To assess whether the remedies meet these criteria, the FNE conducts its market tests during this brief period. For that purpose, the legal framework governing merger control in Chile allows the proposed remedies to be disclosed to interested third parties. These may include competitors, suppliers, customers, potential purchasers, national or foreign authorities, and sectoral regulators.

8. With respect to foreign authorities, the regulation governing merger control requires the notifying parties to provide a list of all jurisdictions in which the transaction has been or is expected to be notified. It further requires the notifying parties to authorize the FNE to share relevant information with the competition authorities in those jurisdictions.

## 2. Cooperation with the merging parties and third parties

9. As previously noted, the submission of a remedy proposal is a right afforded to the notifying parties and may be exercised at any time. According to the Competition Act the exercise of this right does not, under any circumstances, constitute an acknowledgment of the competition concerns that the proposed remedies aim to address.<sup>5</sup>

10. Once the proposal is submitted, the parties and the authority engage in a dialogue wherein the FNE provides feedback regarding the effectiveness, feasibility, and/or proportionality of the proposed measures intended to mitigate the competition risks arising from the transaction.

11. Through this dialogue and the guidance provided by the FNE, the parties typically adjust their proposed measures by submitting revised proposals. Once the FNE is satisfied that the remedies may meet the required standards to mitigate the potential risks, the authority initiates a market test, seeking third-party input on the suitability of the remedies to address the competition concerns and on any potential implementation challenges. In the case of structural remedies involving divestments, the FNE will also use the market test to assess the attractiveness and effective operability of the divestment package or assets.

12. The FNE generally requests third-party feedback through direct contacts, primarily with those stakeholders who have previously expressed interest in the process. On occasion, third-party feedback has led the FNE to propose adjustments to the remedies initially submitted by the parties.

13. In general, the FNE receives and values all information submitted by both the notifying parties and third parties as part of its assessment. However, such input is always analyzed in light of the strategic interests that may underlie each submission, requiring a careful, case-by-case evaluation.

14. One example of cooperation with notifying parties and third parties is one case related to the telecommunications industry, which considered the acquisition by a company active in the telecommunications industry of the fibre to the home network infrastructure assets (FTTH) of another one.<sup>6</sup> The transaction also included a long-term and exclusive wholesale service agreement, in which the acquiring company would supply wholesale

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<sup>5</sup> Article 53, paragraph 3 DL 211.

<sup>6</sup> FNE. Final Report on OnNet Fibra / Entel (2024). Filing No. F340-2023. Available (in Spanish) at: [link](#) [last accessed: November 2025].

FTTH services to the selling one. The FNE found that the transaction implied the concentration of two rivals, whose networks overlapped significantly in certain communes that are commercially attractive to Internet Services Providers. Consequently, wholesale access to FTTH in these areas would only be possible through the merged entity, thus becoming an unavoidable commercial counterpart for Internet Service Providers that want to access such areas. Hence, it was concluded that post-transaction, the acquiring company could increase prices or decline the quality of its services.

15. To address these concerns, the parties proposed the divestiture of the FTTH infrastructure of the selling party in eight communes. In addition, the selling party would enter into a wholesale service agreement with the buyer, under which the buyer would provide FTTH wholesale services to the selling party in those areas.

16. The complexity of this case lay primarily in the technical challenges associated with divesting portions of a network, assessing the attractiveness of the divestment package, and establishing transitional and ancillary agreements to ensure the continued operability of the divested assets. The FNE worked closely with the notifying parties to gain a full understanding of the technical details of the divestiture. In addition, it held multiple meetings with third parties to evaluate whether the package contained all the elements necessary to operate the network effectively and whether it would be attractive to potential purchasers. This process involved six successive remedy proposals, each refining and improving upon the previous one, until a final proposal was reached—at which point the FNE concluded that the remedies were adequate to mitigate the identified risks.

17. Another instance of cooperation, this time with third parties potentially affected by the remedies, occurred in the context of an investigation involving two global suppliers of industrial gases.<sup>7</sup> In this case, the manufacturing of the product under investigation relied entirely on inputs derived from the operations of third parties, whose waste was used as raw material. This raw material was difficult to source from abroad and, following the merger, the parties would control all local sources available. For one of the parties, the use of the raw material was regulated by a supply contract that was about to expire. Accordingly, the parties offered as a remedy that the merged entity would not participate in the renewal process. This commitment made it possible to free up a key asset that determined the competition in the market, thus facilitating the entry of a new operator independent of the merged entity.

### 3. Cooperation with sector regulators and other public bodies and/or competition agencies

18. In the context of merger control, it is common for the FNE to engage with sectoral regulators and other relevant national public bodies during the design of remedies. These interactions are primarily aimed at obtaining input from these authorities on the technical and legal feasibility of the proposed remedies, particularly those that fall within their areas of expertise.

19. Such interactions have enabled the FNE to refine and adjust proposed measures, especially where the authority has provided information on the practical feasibility of implementation or where remedies apply to complex industries requiring specialized technical knowledge.

20. For example, in telecom mergers, the FNE regularly meets with the Undersecretariat of Telecommunications (SUBTEL), the authority responsible for

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<sup>7</sup> FNE. Final Report on Linde Aktiengesellschaft / Praxair Inc. (2018) Filing No. F108-2017. Available (in Spanish) at: [link](#) [last accessed: November 2025].

regulating, supervising, and developing Chile's telecommunications industry. One illustrative case involved a joint venture between two telecommunications companies for the provision of fixed and mobile services, in which the FNE determined that the transaction would not give rise to competition concerns at the retail level.<sup>8</sup>

21. However, the FNE identified competition concerns arising from the transaction, as the merging parties would concentrate a significant portion of spectrum, exceeding ideal benchmarks and raising the risk of anticompetitive spectrum hoarding. To address these concerns, the parties offered a remedies package that included the divestment of 10 MHz in the 3.5 GHz band and 10 MHz in the AWS band, along with commitments to comply with usage obligations to ensure effective and efficient spectrum use. The FNE deemed the remedies effective, proportionate, and appropriate to prevent a substantial lessening of competition.

22. This assessment was carried out in close coordination with the telecommunications regulator, involving multiple meetings and a formal request for information. Notably, after several rounds of proposals, the parties ultimately agreed to divest more spectrum than initially planned, with the regulator's input playing a key role in shaping the final outcome.

23. Likewise, although less frequently, the FNE has consulted other authorities to understand their interpretations of specific legal provisions and the compatibility of those provisions with proposed remedies. This has occurred, for example, in cases involving companies that trade public securities and offer behavioural remedies related to their corporate governance. In such instances, the FNE has cooperated with the securities-market supervisory and regulatory authorities to ensure that the proposed remedies are implementable and do not contradict or conflict with sectoral regulations.<sup>9</sup>

24. The FNE has a dedicated division responsible for monitoring compliance with agreed-upon remedies, and these responsibilities are not delegated to other authorities or regulators. However, in one past case, the FNE did take into account—solely for the purpose of assessing the effectiveness of implementing and monitoring a specific measure—the legal powers of a sectoral authority that could oversee such a measure, albeit without formally delegating this function.<sup>10</sup>

#### 4. Cooperation with other competition agencies

25. Finally, the FNE considers cooperation with other competition authorities essential in the context of remedy design to avoid divergent approaches in cross-border transactions. In a case related to the automotive industry,<sup>11</sup> the theory of harm was discussed throughout the investigation in coordination with the European Commission, including joint discussions on the scope of the remedy applied in both jurisdictions. In that case, both the European Commission and the FNE approved the transaction in *Phase II*, subject to access remedies, among others. Given differences in the timing of the investigations, by the time the parties submitted their first mitigation proposals to the FNE, they had already agreed

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<sup>8</sup> FNE. Final Report on Liberty Latin America Ltd. / América Móvil, S.A.B. de C.V. (2022) Filing No. F295-2021. Available (in Spanish) at: [link](#) [last accessed: November 2025].

<sup>9</sup> FNE. Final Report on Codelco / SQM S.A. (2025). Filing No. F399-2024. Available (in Spanish) at: [link](#) [last accessed: November 2025].

<sup>10</sup> FNE. Final Report on Liberty Latin America Ltd. / América Móvil, S.A.B. de C.V. (2022) Filing No. F295-2021. Available (in Spanish) at: [link](#) [last accessed: November 2025].

<sup>11</sup> FNE. Final Report on Fiat Chrysler Automobiles N.V. / Peugeot S.A. (2020). Filing No. F233-2020. Available (in Spanish) at: [link](#) [last accessed: November 2025].

on a specific remedy with the European Commission. This remedy consisted of granting a competing third party access to one of their light commercial vehicle (LCV) production platforms, with a pre-established maximum capacity. In this context, the parties informed the FNE that it was not possible to offer a similar remedy in Chile, since the remedy proposal process with the European Commission had already been concluded. Ultimately, the parties offered additional capacity exclusively for Chile, without compromising the remedy previously agreed upon with the European Commission.

26. Nonetheless, collaboration does not necessarily entail alignment in the decisions adopted by each authority, as market conditions, consumer preferences, and enforcement standards may differ across countries.

27. An example of divergence is the Microsoft/Activision case. The FNE approved the transaction in *Phase I* with no remedies,<sup>12</sup> while other authorities such as UK's CMA and the European Commission approved in *Phase II*, subject to remedies. During its review, the FNE engaged in a dialogue with the CMA and the European Commission and identified significant differences in the assessment, particularly regarding the role of game categories and consumer preferences. The FNE adopted a local-market approach, focusing on the effects of the transaction on Chilean consumers. To that end, it conducted a survey of local users to determine whether Activision Blizzard's games held the same relevance in Chile as in other jurisdictions. The survey results indicated that other video-game developers also had a significant presence in the market, which was a key factor supporting the approval of the transaction.

28. That said, the FNE considers that collaboration is invariably valuable for understanding each agency's perspectives and concerns, for improving the quality of information available, refining its own analysis, and for remaining attentive to cross-border dynamics.

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<sup>12</sup> FNE. Final Report on Activision Blizzard, Inc. / Microsoft Corporation. (2022). Filing No. F320-2022. Available (in Spanish) at: [link](#) [last accessed: November 2025].