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Minority Shareholding and coordinated effects – Note by Chile

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Chile

1. Introduction

1. Minority shareholdings in competitors are not anticompetitive in themselves and may pursue legitimate aims, such as diversifying investments, sharing costs and risks, or gaining access to technology or new markets. However, those benefits must be weighed against the potential of such shareholdings to give rise to unilateral and/or coordinated effects.[1] This contribution focuses on the latter. A minority shareholding in a competitor may make coordination easier to monitor, by giving the investor access to non-public information about the rival, particularly where it is represented on the rival's board, and easier to sustain, by reducing the investor's incentive to deviate.[2]

2. This contribution is organized as follows. Section II describes how Chilean competition law addresses minority shareholdings, with particular attention to the duty to inform the FNE of acquisitions of minority shareholdings in competitors, set out in Article 4 bis of DL 211 and introduced in 2016 by Law No. 20,945.[3] Section III discusses five cases in chronological order. Taken together, they illustrate the different ways in which minority shareholdings have raised coordination concerns in Chile: an active minority shareholding assessed before Law No. 20,945 (*Electrolux/Mabe*); a non-controlling stake with board representation, where the investor was also linked to a third competitor through a joint venture, and where the measures adopted have run their full course and the FNE assessed compliance with them in a closing report *(Tianqi/SQM*); a shareholding between competing airlines, investigated before its acquisition was completed and addressed through measures that apply for as long as the investor remains a shareholder (*Delta/LATAM*); an acquisition reported under Article 4 bis of the Competition Act and examined in a subsequent investigation (*Yura/Cementos Bío Bío*); and a market-sharing agreement implemented in the context of a minority shareholding (*Delivery Hero/Glovo*). Other proceedings, most of them related to the duty to inform, are referred to in Section II, where they illustrate specific aspects of the legal framework.[4]

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[1] FNE, Aporte de antecedentes, TDLC Case No. ERN-32-2023, "Conglomerados" (2024) ("FNE Submission, Conglomerados"), paras. 152 and 154–155, citing OECD, Antitrust Issues Involving Minority Shareholding and Interlocking Directorates, Series Roundtables on Competition Policy No. 88, DAF/COMP(2008)30 (23 June 2009) ("OECD, DAF/COMP(2008)30"), p. 22. Available at: https://www.fne.gob.cl/wp-content/uploads/2024/04/Informe-Conglomerados_VF.pdf and https://doi.org/10.1787/d81d1ccd-en [last accessed: 2 November 2026].

[2] FNE, Merger and Studies Division, Participaciones minoritarias y directores comunes entre empresas competidoras (November 2013) ("FNE Study (2013)"), pp. 10–11. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2013/11/Participaciones-minoritarias.pdf [last accessed: 2 November 2026]; and FNE, Report on the acquisition by Tianqi Lithium Corporation of a shareholding in Sociedad Química y Minera de Chile S.A., Investigation No. 2493-18 FNE (24 August 2018) ("Report, Tianqi/SQM"), para. 253. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2018/09/Informe-Expediente-Rol-N-2493-18-FNE.pdf [last accessed: 2 November 2026].

[3] English version available at: https://www.fne.gob.cl/wp-content/uploads/2018/09/DL_211_English.pdf [last accessed: 2 November 2026].

[4] In *Los Orientales* and *Banmédica,* the FNE brought complaints over shareholdings that had never been reported; both were resolved through settlements, and the former also addressed what constitutes a competitor. In *Mosa/Parque Arauco*, the FNE closed a complaint after finding that the

2. Minority shareholdings within the Chilean competition framework

3. Chilean law addresses minority shareholdings in competitors through several instruments. Section II.1 describes merger control, which applies only where a shareholding confers decisive influence. Section II.2 describes the duty to inform under Article 4 bis of DL 211, the provision most specifically aimed at them. Sections II.3 and II.4 describe the general conduct rules and the interlocking prohibition.

2.1. Merger control

4. Since 1 June 2017, Title IV of the Competition Act has required concentrations that meet certain sales thresholds to be notified to the FNE before completion.[5] A concentration includes, among others, the acquisition of rights that allow the acquirer, individually or jointly, to exercise decisive influence *["influencia decisiva"]* over the management of another economic agent.[6] Notification is mandatory where, in the previous financial year, the parties' combined sales in Chile reached UF 2,500,000 [approximately USD 103.7 million] and at least two of them each had sales in Chile of UF 450,000 [approximately USD 18.6 million] or more.[7] Concentrations below these thresholds may be notified voluntarily and, if not, may be investigated by the FNE within one year of completion.[8]

5. A minority shareholding therefore falls under merger control only where, alone or together with other rights or arrangements, it confers decisive influence. The FNE understands *decisive influence* as synonymous with *control:* the possibility, de jure or de facto, of determining or vetoing decisions on another economic agent's strategy and competitive conduct, whether or not it is exercised.[9]

6. The assessment is qualitative and not limited to the percentage held: a minority shareholding may confer decisive influence where, for instance, it carries veto rights over strategic decisions or is accompanied by an agreement with other shareholders that allows such decisions to be blocked.[10] In the *JetSMART/American Airlines* case, the FNE

companies were not competitors. In La Tirana, the FNE closed an investigation into a shareholding linked to a joint venture between competing lime producers, subject to commitments ensuring the joint venture's independent management and restricting information flows. See Sections II.2 to II.4.

[5] Articles 47 and 48 DL 211. Title IV was introduced by Law No. 20,945 (published 30 August 2016) and, under Article 1 of its transitory provisions, entered into force on the first day of the sixth month following the publication of the resolution setting the thresholds of Article 48.

[6] Article 47(b) DL 211.

[7] The Unidad de Fomento (UF) is an inflation-indexed unit of account calculated by the Central Bank of Chile. For ease of reference only, and unless otherwise indicated, approximate equivalents in United States dollars (USD) are provided throughout this document, based on the value of the UF and the USD/CLP (Chilean peso) exchange rate as of 29 October 2026.

[8] Article 48 DL 211; and FNE, Resolución Exenta No. 157 (25 March 2019). Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2019/03/Resoluci%C3%B3n-exenta-157.pdf [last accessed: 2 November 2026].

[9] FNE, *Guía para la Determinación de la Competencia de la Fiscalía respecto de Operaciones de Concentración Sujetas a Control* (June 2017), commonly known in Chile as the *Guía de Competencia* ("Jurisdictional Guidelines"), paras. 53–55. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2025/06/FNE_Guia_Competencia_2017.pdf [last accessed: 2 November 2026].

[10] Jurisdictional Guidelines, paras. 54–55 and 60 and n. 12.

considered that a minority shareholding would give American Airlines negative control over JetSMART, and thus decisive influence.[11]

2.2. The duty to inform under Article 4 bis of DL 211

7. Article 4 bis of DL 211 originated in proposals by members of Congress, made during the legislative debate on Law No. 20,945, to prohibit minority shareholdings in competitors.[12] The Executive and the FNE acknowledged the concern behind those proposals, but firmly preferred to address the competition risks arising from minority shareholdings on a case-by-case basis under the general prohibition in Article 3, first paragraph, of the Competition Act.[13] The solution adopted was a duty to inform. As summarized during the Senate floor debate, the law does "not prohibit, but require[s] all those with a certain level of capital commitment in competing companies to inform, so that the FNE can gauge and investigate when such a shareholding may pose a threat to competition".[14] Article 4 bis of the Competition Act is therefore essentially an information mechanism.

8. The duty to inform must be discharged within 60 days of completion of the acquisition; it neither suspends the acquisition nor subjects it to clearance. Nor does Article 4 bis of the Competition Act create a separate substantive standard. Whether the FNE learns of an acquisition through Article 4 bis of DL 211 or from any other source, it may investigate under its general powers in Article 39 letter (a) of the Competition Act, and the shareholding is assessed under Article 3, first paragraph, of DL 211.[15] Breach of the duty to inform is a separate matter. It may give rise to the sanctions of Article 26 of the Competition Act and to any necessary preventive, corrective or prohibitive measures.[16]

9. The duty applies to the acquisition, by a company or by any entity of its business group, of a direct or indirect interest in more than 10% of the capital of a competitor, counting both its own holdings and those it manages on behalf of third parties.[17] It therefore cannot be avoided by acquiring the shareholding through another entity of the same group. The duty applies only where the acquirer, or its business group, and the target each had annual revenues exceeding UF 100,000 [approximately USD 4.1 million] in the previous calendar year (which corresponds to the threshold for qualifying as a "large enterprise"

[11] FNE, Report on the acquisition by American Airlines, Inc. of a minority shareholding in JetSMART, Investigation No. F327-2022 FNE (22 December 2022), para. 6. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2022/12/inap1_F327_2022.pdf [last accessed: 2 November 2026].

[12] Historia de la Ley No. 20.945 (Biblioteca del Congreso Nacional) ("Legislative History, Law No. 20,945"), pp. 446–447 and 534–536. Available (in Spanish) at: https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/5311/ [last accessed: 2 November 2026].

[13] Ibid., pp. 447, 535–536 and 538–540.

[14] Ibid., pp. 541–542 and 745 (free translation).

[15] Article 4 bis, first paragraph, and Article 39 letter (a) DL 211; Legislative History, Law No. 20,945, p. 542; and FNE Submission, Conglomerados, para. 157.

[16] Article 4 bis, last paragraph, and Article 26 DL 211; and Legislative History, Law No. 20,945, p. 786. See also note 21.

[17] Article 4 bis, first paragraph, DL 211.

under Chilean law). Acquisitions are reported through an online form.[18] Shareholdings already held when Law No. 20,945 was published had to be reported by 26 February 2017.[19] As a result, the duty to inform helps the FNE to keep track of corporate structures, which enables it to carry out its enforcement work more effectively.

10. The FNE has actively enforced the duty to inform from the outset, initiating two separate cases.[20] In both complaints, the FNE emphasized three core arguments: the breach requires no effect on competition; complying with the duty is inexpensive; and leaving it to companies to decide whether to report would render the system ineffective.[21] Both cases ended in settlements approved by the TDLC. The defendants acknowledged the breach and agreed to pay 165 UTA [approximately USD 121,000 at the time][22] and CLP 200 million [approximately USD 260,000 at the time][23], respectively, together with measures to publicize the outcome.

11. In the two complaints referred to above, the FNE also addressed the concept of competitor, which Article 4 bis of DL 211 does not define. It took the view that two companies are competitors where the products or services they offer generically perform the same functions and have similar characteristics, and that the concept also covers companies that could compete for the same customers by making changes to their production processes or products at a reasonable cost.[24]

12. In the FNE's view, given the preventive purpose of the duty, an analysis based on functional and objective considerations that shows some reasonable scope of competition between the companies is sufficient.[25] In *Los Orientales,* the defendant acknowledged in

[18] Article 4 bis, second paragraph, DL 211. The online form is available at: http://formulario4bis.fne.gob.cl/ [last accessed: 2 November 2026]. On the value of the UF, see note 7.

[19] Article 4 of the transitory provisions of Law No. 20,945.

[20] FNE, Complaint against Sociedad de Inversiones Los Orientales Limitada, TDLC Case No. C-389-2020 (24 January 2020) ("Complaint, Los Orientales"), paras. 1–2. Available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42172; and FNE, Complaint against Banmédica S.A., TDLC Case No. C-388-2020 (24 January 2020) ("Complaint, Banmédica"), paras. 1–2. Available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42171 [last accessed: 2 November 2026].

[21] Complaint, Los Orientales, paras. 37–38 and 42; and Complaint, Banmédica, paras. 41–42 and 46.

[22] See FNE, "FNE acuerda el pago de $ 100 millones a beneficio fiscal con empresa que no notificó su participación en la propiedad de un competidor" (1 July 2020). Available (in Spanish) at: https://www.fne.gob.cl/fne-acuerda-el-pago-de-100-millones-a-beneficio-fiscal-con-empresa-que-no-notifico-su-participacion-en-la-propiedad-de-un-competidor/ [last accessed: 2 November 2026]. The Unidad Tributaria Anual (UTA) is a unit of account used, among other things, to set fines under the Competition Act.

[23] See FNE, "FNE acuerda el pago de $200 millones a beneficio fiscal con Banmédica, empresa que no notificó su participación en la propiedad de un competidor" (3 September 2020). Available (in Spanish) at: https://www.fne.gob.cl/fne-acuerda-el-pago-de-200-millones-a-beneficio-fiscal-con-banmedica-empresa-que-no-notifico-su-participacion-en-la-propiedad-de-un-competidor/ [last accessed: 2 November 2026].

[24] Complaint, Los Orientales, paras. 30–31; and Complaint, Banmédica, paras. 34–35.

[25] Complaint, Los Orientales, para. 32; Complaint, Banmédica, para. 36; and FNE, Closing Report, Investigation No. 2638-20 FNE, "Mosa/Parque Arauco" (25 March 2021) ("Closing Report,

the settlement that the companies concerned were competitors on that basis.[26] By contrast, in *Mosa/Parque Arauco*, the FNE closed a complaint after finding that shopping-center operators located too far apart to compete for the same customers were neither current competitors nor expected to become competitors within a reasonably proximate period. It noted, however, that the duty would apply if they became competitors in the future.[27]

2.3. Substantive criteria for the assessment: General conduct rules

13. Minority shareholdings that do not amount to concentrations remain subject to the general prohibition in Article 3, first paragraph, of DL 211, which sanctions anyone who, individually or collectively, executes or enters into any act, conduct or agreement that prevents, restricts or hinders competition, or tends to produce such effects. In addition to sanctions, preventive, corrective or prohibitive measures may be imposed in respect to such acts, conduct or agreements.[28] Article 3, first paragraph, of the Competition Act does not require the conduct to take the form of an agreement, to be carried out by a dominant firm or to entail a change of control. It therefore allows structural links between competitors to be assessed on the basis of their actual or potential effects, whatever form they take.[29] Where the FNE identifies relevant risks, it may use the range of tools available under the Competition Act, including a complaint before the TDLC, a non-contentious proceeding, an out-of-court settlement, or the closing of an investigation subject to commitments.[30]

14. Structural links between competitors may also be relevant under the prohibition of collusion in Article 3, second paragraph, letter (a), of the Competition Act, for instance by facilitating the exchange of information between competitors or the monitoring of an agreement.[31] Section III.5 discusses *Delivery Hero/Glovo*, a collusion case concluded through a settlement approved by the TDLC.

2.4. Interlocking directorates

15. Minority shareholdings in competitors are closely related to interlocking directorates, since it is usually a minority shareholding that gives the investor the power to appoint a representative to the target's board.[32] Law No. 20,945 introduced in Article 3, second paragraph, letter (d), of DL 211 a per se prohibition of the simultaneous holding by a person of relevant executive or director positions in two or more competing companies,

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Mosa/Parque Arauco"), para. 11 and n. 7. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2021/03/inpu_003_2021-Rol-2638-20.pdf [last accessed: 2 November 2026].

[26] TDLC, Resolution approving the conciliation between the FNE and Sociedad de Inversiones Los Orientales Limitada, Case No. C-389-2020 (6 July 2020), Recital 1. Available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42172 [last accessed: 2 November 2026].

[27] Closing Report, Mosa/Parque Arauco, paras. 11 and 24–25.

[28] Article 3, first paragraph, and Article 26 DL 211.

[29] FNE Study (2013), pp. 55–56.

[30] FNE, Closing Report, Investigation No. 2446-17 FNE, "Inversiones La Tirana/Cementos Bío Bío" (19 February 2020) ("Closing Report, La Tirana"), para. 41. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2020/07/inpu_003_2020.pdf [last accessed: 2 November 2026]. See also Articles 18(2) and 39 letter (ñ) DL 211.

[31] Article 3, second paragraph, letter (a) DL 211; and FNE Study (2013), pp. 10–11.

[32] FNE Study (2013), p. 6; and Closing Report, La Tirana, para. 40.

where the business group of each company had annual revenues from sales, services and other business activities exceeding UF 100,000 [approximately USD 4.1 million] in the previous calendar year and the positions are still held 90 calendar days after the end of that year.[33] Article 3, second paragraph, letter (d) and Article 4 bis of the Competition Act thus address the two dimensions of structural links between competitors: the personal link is prohibited, while the material link must be reported so that the FNE can assess its risks.[34] Interlocking situations that fall outside Article 3, second paragraph, letter (d), of DL 211 are not exempt from scrutiny and may be assessed under Article 3, first paragraph, of the Competition Act.[35]

3. Case studies

3.1. *Electrolux/Mabe* (2015)

16. *Electrolux/Mabe* predates Law No. 20,945 and illustrates the FNE's assessment of an active minority shareholding in a competitor. In 2014, as part of its acquisition of General Electric's (GE) global appliance business, Electrolux agreed to acquire GE's 48.4% stake in Mabe, a Mexican manufacturer whose Chilean subsidiary was a direct competitor of Electrolux in Chile. The FNE opened an investigation on its own initiative. In its view, the acquisition was an active minority shareholding. It combined a financial interest with rights to appoint directors and senior executives and to influence strategic commercial decisions. This created a risk of a lasting loss of independence and rivalry between the two competitors.[36]

17. The FNE assessed the following three aspects:

- *Incentives*. Electrolux's incentive to deviate from any coordination would be tempered, since it would bear 48.4% of any harm caused to Mabe.
- *Information*. Electrolux would gain access to confidential information on the commercial policy of Mabe's Chilean subsidiary. Mabe's board would also provide a formal forum in which the conduct of both competitors in Chile could be aligned.[37]
- *Influence*. Electrolux's rights under Mabe's by-laws and the joint venture agreements included vetoes over strategic decisions of the Chilean subsidiary. In

[33] Article 3, second paragraph, letter (d) DL 211, in force since 26 February 2017 under Article 1 of the transitory provisions of Law No. 20,945. On the value of the UF, see note 7.

[34] Closing Report, La Tirana, paras. 38–42.

[35] FNE, "Interlocking". Available (in Spanish) at: https://www.fne.gob.cl/fiscalizacion/interlocking/ [last accessed: 2 November 2026].

[36] Out-of-court settlement between the FNE and Electrolux Chile S.A. (24 August 2015) ("Out-of-court settlement, Electrolux/Mabe"), Background, paras. 1–10; and TDLC, Resolution approving the out-of-court settlement between the FNE and Electrolux Chile S.A., Case No. AE-12-2015 (16 September 2015) ("TDLC Resolution, Electrolux/Mabe"), Recitals 1–4. Both available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=41598 [last accessed: 2 November 2026]. In this contribution, "financial interest" refers to the investor's share in the target's profits deriving from its shareholding, as distinct from any control or influence that the shareholding may confer.

[37] Out-of-court settlement, Electrolux/Mabe, Background, para. 14(ii)–(iii); and TDLC Resolution, Electrolux/Mabe, Recitals 8–9.

the FNE's view, these rights went beyond the mere protection of minority interests and could be used to align Mabe's incentives with Electrolux's own.

18. The FNE found that the acquisition would not significantly change Electrolux's unilateral incentive to raise prices. The concern lay in coordination: as an upper bound of its potential harm, the FNE estimated the price increases that would result if the two firms jointly maximized their profits and found them to be high in several of the concentrated markets concerned, where entry barriers and limited buyer power offered no effective counterweight.[38]

19. The case was resolved through an out-of-court settlement approved by the TDLC, with commitments lasting ten years:

- Electrolux would not take any action or exercise any right in respect of its Chilean subsidiary or Mabe's that could lead to coordination between them or otherwise limit the ability of either to compete independently.
- Its directors on Mabe's board would not block decisions on prices, output or other strategic matters of the Chilean subsidiary.
- Electrolux would waive its right to appoint the board's vice-chair.
- The same persons could not serve both on Mabe's side and in key positions at Electrolux Chile.
- Information barriers would apply in both directions.
- An independent trustee would monitor compliance.[39]

20. The TDLC found these behavioral measures adequate and proportionate to the risks identified, and considerably less burdensome than the structural alternatives. It also noted that the trustee and reporting mechanisms addressed the difficulty of monitoring them.[40]

3.2. *Tianqi/SQM* (2018)

21. In May 2018, Tianqi Lithium Corporation agreed to acquire from Nutrien around 23.8% of the shares of Sociedad Química y Minera de Chile (SQM), which, together with a stake bought in 2016, would give it around 25.9% of SQM.[41] Tianqi, SQM and Albemarle were among the main producers of refined lithium products, and Tianqi and Albemarle were already linked through Talison, an Australian joint venture producing lithium concentrate, in which they held 51% and 49% respectively.[42] Following complaints by the Chilean Economic Development Agency (CORFO), filed before the acquisition was agreed, and by a senator, the FNE opened an investigation on 15 June 2018, before the acquisition was completed. The FNE concluded that Tianqi, which would be able to appoint three of SQM's eight directors, would be able neither to appoint the chair on its own nor to

[38] Out-of-court settlement, Electrolux/Mabe, Background, para. 14(i), (iii)(b) and (iv); and TDLC Resolution, Electrolux/Mabe, Recitals 7 and 9–10.

[39] Out-of-court settlement, Electrolux/Mabe, clauses 3.1.1, 4.1, 4.2.1, 4.2.3, 4.2.4, 5 and 8; and TDLC Resolution, Electrolux/Mabe, Recitals 13–18.

[40] TDLC Resolution, Electrolux/Mabe, Recitals 23–25.

[41] Report, Tianqi/SQM, paras. 4 and 16.

[42] Ibid., paras. 221 and 80.

block board decisions, and therefore assessed the acquisition under Article 3, first paragraph, of DL 211 in two markets: lithium carbonate and lithium hydroxide.[43]

22. The FNE ruled out unilateral effects, given Tianqi's limited market shares, the small increase in the modified Herfindahl-Hirschman Index (HHI) and the fact that any reduction in Talison's output required Albemarle's agreement. However, given Tianqi's stated intention to take part in formulating SQM's strategy, the FNE considered it appropriate to assess measures offered by Tianqi to prevent any potential, albeit uncertain, influence over SQM's lithium strategy.[44] The core of the case lay in coordinated effects among SQM, Tianqi and Albemarle, linked by Tianqi's shareholding and board presence in SQM and by Talison.[45]

23. The acquisition marked a qualitative change in the ability to monitor: Tianqi had until then held less than 10% of SQM, whereas it would now appoint directors with access to detailed and frequent information on SQM's lithium production, inventories, investments, sales contracts, pricing policy and costs, in markets where bilateral negotiation of supply contracts otherwise made those variables opaque.[46] The small number of firms linked in this way, their presence in both markets and the relative symmetry of their refining costs favored coordination; differences in contract duration, independent competitors accounting for a significant share of supply, the prospect of entry and expansion, and customers' bargaining power worked against it.[47] The FNE concluded that, although these factors made coordination less likely, the acquisition would make the markets more prone to it: it brought no efficiencies of any kind and only created a new channel for information flows, increasing transparency in variables relevant to coordination on quantities, together with new meeting points on the boards of SQM and Talison.[48]

24. The FNE considered these risks adequately mitigated by behavioral measures offered by Tianqi, set out in an out-of-court settlement signed on 27 August 2018 and approved by the TDLC on 4 October 2018.[49] Their guiding principle was to limit Tianqi's access to commercially sensitive information on SQM's lithium business.[50] Tianqi undertook not to elect its own directors, executives or employees to SQM's board; not to have the directors elected with its votes take part in the boards, committees or management

[43] Ibid., paras. 36–41 and pp. 32–43.

[44] Ibid., paras. 233–239.

[45] Ibid., paras. 242–245.

[46] Ibid., paras. 251–254.

[47] Ibid., paras. 256–259 and 262–269; and FNE, Closing Report, Investigation No. 2521-18 FNE, monitoring of compliance with the out-of-court settlement in Case No. AE-16-2018 (5 June 2025) ("Monitoring Report, Tianqi/SQM"), para. 4. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2025/08/inpu_2521_2018.pdf [last accessed: 2 November 2026].

[48] Report, Tianqi/SQM, paras. 278–281.

[49] Out-of-court settlement between the FNE and Tianqi Lithium Corporation (27 August 2018) ("Out-of-court settlement, Tianqi/SQM"). Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2018/09/Acuerdo-Extrajudicial-FNE-Tianqi-con-firma-27.08.18.pdf [last accessed: 2 November 2026]; and TDLC, Resolution approving the out-of-court settlement between the FNE and Tianqi Lithium Corporation, Case No. AE-16-2018 (4 October 2018). Available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42124 [last accessed: 2 November 2026]. See also Monitoring Report, Tianqi/SQM, para. 5.

[50] Out-of-court settlement, Tianqi/SQM, para. 29.

of SQM's lithium subsidiaries, or in SQM's own lithium-related committees, unless nominated by an independent director; and not to request or access such information.[51]

25. To address influence and further points of contact, Tianqi also undertook not to use its shareholder rights, and to use its best efforts so that its directors would not vote to influence SQM's lithium business for its own benefit and to the detriment of SQM and its other shareholders; to notify under Title IV any acquisition of control or decisive influence over SQM; and to inform the FNE 30 working days in advance of any agreement with SQM or Albemarle concerning lithium products.[52] Consistent with Chilean corporate law, the settlement preserved the right of the directors elected with Tianqi's votes to take part in all meetings of SQM's board. Each of them signed a Directorship Agreement assuming the measures as personal obligations and gave annual sworn statements, and Tianqi reported to the FNE periodically.[53]

26. The measures were to last four years, renewable automatically for two more unless Tianqi showed that the conditions of its investment or of the lithium market had changed so that they were no longer justified.[54]

27. The FNE monitored compliance in a separate investigation opened in December 2018, relying on the reports required by the settlement, information requests and interviews.[55] In September 2022, Tianqi asked the FNE to lift or revise the measures, arguing that market conditions had changed significantly and permanently and that lifting them would generate efficiencies. The FNE rejected the request, and subsequently Tianqi's administrative reconsideration, finding that the risks identified in 2018 had not changed substantially and that, as long as the characteristics of the lithium market persisted, they would remain while Tianqi held a relevant stake in SQM and a presence on its board.[56] On efficiencies, the FNE reiterated its long-standing view that, as a general matter, unlike a full merger, a minority shareholding in a competitor does not integrate the firms' operations and therefore lacks the efficiencies that could offset the coordination risks it entails; in any event, the efficiencies alleged were neither inherent to lifting the measures nor necessarily tied to Tianqi's stake in SQM.[57]

28. The measures ran their full course, expiring in December 2024 and April 2025. In June 2025, the FNE closed the monitoring investigation, having found no breach.

[51] Ibid., paras. 35–37 and 40.

[52] Ibid., paras. 41 and 43–46.

[53] Ibid., paras. 37, 48 and 49.

[54] Ibid., paras. 54–56.

[55] Monitoring Report, Tianqi/SQM, paras. 12–13.

[56] FNE, Exempt Resolution No. 95 (2 March 2023) ("Resolution No. 95/2023"), Recitals 8–9, 11, 17 and 26. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2023/03/res_exent_95_2023.pdf [last accessed: 2 November 2026]; FNE, Exempt Resolution No. 202 (21 April 2023) ("Resolution No. 202/2023"), Recitals 51–52 and operative paragraph 1. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2023/04/Res_exent_202_2023.pdf [last accessed: 2 November 2026]; and Monitoring Report, Tianqi/SQM, paras. 14–15.

[57] FNE Study (2013), p. 55; Resolution No. 95/2023, Recitals 27–29; and Resolution No. 202/2023, Recital 45.

3.3. *Delta/LATAM* (2021)

29. *Delta/LATAM* concerns several links between Delta Air Lines, Inc. (Delta) and LATAM Airlines Group S.A. (LATAM), two competing airlines: a 20% shareholding, a joint venture on routes between the United States and Canada and South America, codeshare agreements and Delta's indirect participation in the financing of LATAM's reorganization. The FNE examined each of them in a single investigation and addressed them in one out-of-court settlement; this section focuses on the shareholding.[58] On 26 September 2019, Delta and LATAM entered into a framework agreement under which Delta undertook to launch a tender offer for 20% of LATAM's shares, which succeeded on 29 December 2019.[59] The FNE opened an investigation on 1 October 2019, before the tender offer was launched.[60] Delta subsequently reported the acquisition under Article 4 bis of DL 211 in March 2020. The FNE concluded that the stake did not, by itself, give Delta control or decisive influence over LATAM, not even negative control, and therefore assessed it under Article 3 of DL 211 rather than under the merger control rules of Title IV.[61] The out-of-court settlement was premised on Delta holding no more than 20% of LATAM's capital and being able to propose and vote no more than two of its directors, and on the absence of shareholder or joint-action agreements between Delta and any other LATAM shareholder.[62]

30. The FNE identified two risks arising from the shareholding. First, Delta would have the ability and incentive to influence LATAM and Aeroméxico, in which Delta held a significant stake, to raise prices or reduce capacity or quality on the Chile–Mexico route. Second, Delta's access to LATAM's commercially sensitive information would make coordination more plausible between LATAM and Delta, or the airlines in which Delta held stakes, in the markets where they compete.[63] The parties offered behavioral measures, which they implemented immediately during the investigation and which were then incorporated into an out-of-court settlement signed on 13 August 2021 and approved by the TDLC on 28 October 2021.[64] Delta undertook to propose and vote only for directors independent of Delta, who could not chair LATAM's board and who personally assumed

[58] Out-of-court settlement between the FNE, Delta Air Lines, Inc. and LATAM Airlines Group S.A. (13 August 2021) ("Out-of-court settlement, Delta/LATAM"), paras. 14–16, 21–22, 27 and 47; and TDLC, Resolution approving the out-of-court settlement between the FNE, Delta Air Lines, Inc. and LATAM Airlines Group S.A., Case No. AE-23-2021 (28 October 2021) ("TDLC Resolution, Delta/LATAM"), Recitals 2–3. Both available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42285 [last accessed: 2 November 2026].

[59] Out-of-court settlement, Delta/LATAM, para. 14; and TDLC Resolution, Delta/LATAM, Recital 2.

[60] Out-of-court settlement, Delta/LATAM, paras. 14 and 29.

[61] Out-of-court settlement, Delta/LATAM, para. 106(b); and FNE, Report, Investigation No. 2585-19 FNE, "Investigation into various agreements and links between LATAM Airlines Group S.A. and Delta Air Lines, Inc." (13 August 2021), Annex 2 to the Out-of-court settlement, Delta/LATAM, paras. 33, 35–36 and 39. Available (in Spanish) in the TDLC case file at: https://consultas.tdlc.cl/do_search?proc=3&idCausa=42285 [last accessed: 2 November 2026].

[62] Out-of-court settlement, Delta/LATAM, para. 106; and TDLC Resolution, Delta/LATAM, Recital 11.

[63] Out-of-court settlement, Delta/LATAM, para. 31; and TDLC Resolution, Delta/LATAM, Recital 6.

[64] Out-of-court settlement, Delta/LATAM, paras. 17–19 and 37; and TDLC Resolution, Delta/LATAM, operative part.

the relevant obligations; not to appoint members of LATAM's executive or management bodies, regardless of the thresholds of the interlocking prohibition (see Section II.4); not to access or exchange LATAM's commercially sensitive information through those directors; and not to vote or exercise its shareholder rights in order to influence LATAM to Delta's benefit and to LATAM's detriment. It also undertook that the directors it appointed to Aeroméxico's board would refrain from intervening in, influencing or accessing commercially sensitive information on the routes on which Aeroméxico competed with LATAM.[65] The measures relating to the shareholding apply for as long as Delta remains a shareholder of LATAM. The TDLC found the measures proportionate and suitable to mitigate the risks identified.[66]

3.4. Yura/Cementos Bío Bío (2023)

31. *Yura/Cementos Bío Bío* shows how a report under Article 4 bis of DL 211 may lead to an investigation, and how the FNE assesses safeguards adopted by the target itself. In October 2020, Yura Chile SpA, a subsidiary of the Peruvian cement producer Yura S.A., acquired 19.7% of Cementos Bío Bío S.A. (CBB), a Chilean producer of cement, concrete and lime, which entitled it to appoint one of CBB's seven directors. Yura reported the acquisition under Article 4 bis of the Competition Act, stating that it competed with CBB in the sale of gray cement in the regions of Arica y Parinacota and Tarapacá.[67] Since the preliminary information did not allow it to rule out the possibility that the acquisition could restrict competition, the FNE opened an investigation on its own initiative in December 2021.[68] It found that the two firms' activities overlapped in the areas of Arica and Iquique.[69] To measure concentration, it used a modified HHI reflecting both Yura's financial interest in CBB and its degree of influence, approximated by its share of board seats. After an in-depth analysis, it ruled out unilateral risks, given the firms' different commercial focus and the ability of ready-mix concrete producers to supply themselves.[70]

32. On coordinated effects, the question was whether Yura's seat on CBB's board opened a channel for information to flow between competitors.[71] Shortly after the acquisition, CBB's board had instructed management to prevent commercially sensitive information from reaching the "competitor shareholder" through the director it had appointed, and a protocol on the handling of sensitive information was then issued. The protocol defined sensitive information broadly, reserved its treatment to board committees and the boards of CBB's subsidiaries, barred directors appointed by competitor

[65] Out-of-court settlement, Delta/LATAM, paras. 54–59, 64 and 70–72; and TDLC Resolution, Delta/LATAM, Recitals 8–10.

[66] Out-of-court settlement, Delta/LATAM, para. 107; and TDLC Resolution, Delta/LATAM, Recital 24.

[67] FNE, Closing Report, Investigation No. 2682-21 FNE, "Yura/Cementos Bío Bío" (20 October 2023) ("Closing Report, Yura/Cementos Bío Bío"), paras. 1–4, 7–9 and 25. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2024/04/inpu_2682-21_2024.pdf [last accessed: 2 November 2026].

[68] Ibid., para. 5.

[69] Ibid., paras. 10–21.

[70] Closing Report, Yura/Cementos Bío Bío, paras. 24–27, 31, 36 and 43, and n. 16.

[71] Ibid., para. 37.

shareholders from attending those bodies, and entrusted CBB's internal audit department with supervising compliance.[72]

33. The FNE examined how the protocol had been applied in practice, on the basis of information requested from CBB, and treated it as a mitigating factor rather than a complete safeguard, since it did not eliminate the possibility of exchanges between the two firms.[73] Having weighed all the evidence gathered, the FNE concluded that the acquisition did not restrict competition and closed the investigation in October 2023.

3.5. Delivery Hero/Glovo (2026)

34. In May 2025, the FNE filed a complaint before the TDLC alleging that the food-delivery platforms Delivery Hero (the parent company of PedidosYa) and Glovo had engaged in collusive conduct by entering into and implementing a market allocation agreement covering four countries, which resulted in Glovo's abrupt exit from the Chilean market in April 2019.[74]

35. The FNE's investigation found that the companies had implemented the collusive arrangement through a joint initiative known as "Project Green" and the execution of four asset transfer agreements, all dated 26 April 2019. Pursuant to these agreements, Glovo withdrew from Chile and Egypt, while Delivery Hero exited Peru and Ecuador. The agreements also contained non-compete clauses which, in the case of Chile, resulted in Glovo's withdrawal from the domestic market and remained in effect until April 2022.[75]

36. The anticompetitive arrangement was entered into and implemented in the context of successive equity investments by Delivery Hero in Glovo. As relevant to the agreement alleged by the FNE, in 2018, Delivery Hero acquired a minority shareholding in Glovo, which granted it certain shareholder rights, including supermajority veto rights over specified corporate decisions. In July 2022, Delivery Hero increased its shareholding in Glovo, thereby acquiring control of the company.[76]

37. In February 2026, the TDLC approved a settlement between the FNE and the respondent companies, thereby bringing the proceedings to an end. The companies, which currently form a single economic entity, made a total payment of 33,733 UTA [approximately USD 31.5 million at the time] to the Treasury. This constitutes the largest payment recorded in a Chilean competition law case involving a single economic agent. In

[72] Ibid., paras. 38–39 and nn. 25–29.

[73] Ibid., para. 40.

[74] FNE, Complaint against Delivery Hero S.E. and Glovoapp23 S.A., TDLC Case No. C-534-2025 (16 May 2025), paras. 3–5 and 24–25. Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2025/06/Requerimiento-de-la-FNE-contra-Delivery-Hero-S.E__.pdf [last accessed: 2 November 2026].

[75] Ibid., paras. 3–5, 7 and 24.

[76] Ibid., paras. 16–17 and n. 24; and TDLC, Resolution approving the settlement between the FNE, Delivery Hero S.E. and Glovoapp23 S.A., Case No. C-534-2025 (5 February 2026) ("TDLC Resolution, Delivery Hero/Glovo"), Recital 3(b) and (e). Available (in Spanish) at: https://www.fne.gob.cl/wp-content/uploads/2026/02/Resolucion-aprueba-conciliacion.pdf [last accessed: 2 November 2026].

addition, Delivery Hero undertook to implement an annual competition law compliance training program at its Chilean subsidiary for a period of five years.[77]

38. Through this enforcement action, the FNE underscored the importance of effective cartel enforcement in digital markets, demonstrated its ability to successfully investigate anticompetitive agreements entered into abroad without relying on evidence obtained through the leniency program, and established that minority shareholdings in competing undertakings and asset acquisitions cannot be used as vehicles for implementing collusive arrangements.[78]

[77] TDLC Resolution, Delivery Hero/Glovo, Recitals 2, 6–7 and 10, and operative paragraph 1; and FNE, "TDLC aprobó acuerdo entre la FNE y las matrices de Pedidos Ya y Glovo que establece pago a beneficio fiscal de US$ 31,5 millones en juicio iniciado por acuerdo internacional de reparto de mercados que ocasionó la salida de Glovo de Chile" [TDLC approved settlement between the FNE and the parent companies of PedidosYa and Glovo providing for a payment of USD 31.5 million to the State in proceedings brought over an international market-sharing agreement that caused Glovo's exit from Chile] (press release, 5 February 2026) ("FNE Press Release, Delivery Hero/Glovo"). Available (in Spanish) at: https://www.fne.gob.cl/tdlc-aprobo-acuerdo-entre-la-fne-y-las-matrices-de-pedidos-ya-y-glovo-que-establece-pago-a-beneficio-fiscal-de-us-315-millones-en-juicio-iniciado-por-acuerdo-internacional-de-reparto-de-mercados-que/ [last accessed: 2 November 2026]. On the value of the UTA, see note 22.

[78] FNE Press Release, Delivery Hero/Glovo, quoting the National Economic Prosecutor: the settlement "sends a very clear signal to economic agents that minority shareholdings in competing undertakings and asset acquisitions cannot be used for the purpose of implementing anticompetitive coordination" (free translation).