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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CHILE**

-- 2013 --

17-18 December 2014

*This report is submitted by Chile to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 December 2014.*

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## EXECUTIVE SUMMARY<sup>1</sup>

1. This report summarises recent developments in competition law, policy and enforcement in Chile. It also refers to the main cases of competition law enforcement, competition advocacy activities, and other developments that occurred between August 2013 and April 2014.

2. The *Fiscalía Nacional Económica* (hereinafter, “the FNE”) is an independent government competition agency whose main roles are to detect, investigate and bring cases against antitrust violations, to produce technical reports and studies, and to undertake competition advocacy. The *Tribunal de Defensa de la Libre Competencia* (hereinafter, “the Competition Tribunal”, or “the TDLC”) is the independent judicial body with exclusive and excluding jurisdiction to decide antitrust matters, including the resolution of adversarial matters (e.g., complaints brought by the FNE or private parties regarding collusion and abuse of dominance) as well as non-adversarial matters (e.g., preventive merger control). Decisions and resolutions issued by the TDLC can be challenged before the Supreme Court. The competition law is Decree Law No. 211 and its subsequent modifications.<sup>2</sup>

3. During the period covered by this report, various important enforcement matters were resolved, and new ones initiated.

- On Cartels, the Competition Tribunal has not yet arrived to a decision on the poultry cartel case, mainly due to the additional challenges raised by the defendants before other courts, which implied that the Competition Tribunal need to rule a stay on the proceedings until parallel litigation was finished. In this case, the FNE received a favourable ruling on behalf of the Constitutional Tribunal, which ordered CEOs of the companies accused of participating in the collusive agreement to testify before the Competition Tribunal. In addition, the Appeals Court ruled that the proceedings followed by the FNE during the dawn raid at the offices of the Trade Association involved were within the terms established in the law, and hence could be used as evidence before the Competition Tribunal.
- The FNE also received favourable rulings from the Supreme Court in the appeals to the decisions of the Competition Tribunal in two cartel cases. In the appeal of Whirlpool, who was accused in 2011 by the FNE to participate in an international agreement to fix the prices of low power hermetic compressors used in the production of refrigerators, the Supreme Court reduced the fine imposed to the firm to almost half, even though it rejected most of Whirlpool’s allegations. In the case against advertising agencies, the Supreme Court completely upheld the decisions by the TDLC.
- Additionally, in January of 2014, the Competition Tribunal ruled in favour of the FNE in two important collusion cases against intercity bus services that involved price fixing and artificial creation of entry barriers in different routes connecting Santiago with other cities.

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1. Joint Contribution by the Fiscalía Nacional Económica and the Tribunal de Defensa de la Libre Competencia (August 2013 – April 2014)

<sup>2</sup> The most significant modifications to the competition law in recent years have been Law No. 19.911/2003, which created the TDLC and Law No. 20.361/2009, which improved the law on hard-core cartel enforcement.

- In October 2013, the FNE presented a complaint before the Competition Tribunal accusing obstetric gynecologists of one local area of Chile, of colluding to artificially raise prices for privately insured individuals. This case is still pending before the TDLC.
- At the same time and within the period of the report, the agency has initiated 9 new cartel investigations.
- In February 2014, the World Bank awarded the FNE the first prize of an advocacy contest for their work on changing the cultural perception of competition among Trade Associations, increasing compliance and decreasing potential risks of using these institutions as facilitators of collusion. Since 2010, the FNE has designed and applied a strategy that included publishing guidelines that outlined the co-ordination risks and provided recommendations on compliance with the norms of free competition, jointly with an advocacy campaign that included talks and presentations to a number of stakeholders across the country.
- On unilateral conducts, the FNE complained against the main brewery of Chile for trademark registrations that aimed to exclude competitors from the Chilean market. In addition, the agency kept a close watch on regulated markets, which led to one complaint against a mobile phone operator and three consultations to the Competition Tribunal advocating for regulatory changes to the markets of Liquid Petroleum Gas and telecommunication infrastructure in new residential buildings, and modifications to conditions previously established in the acquiring market for payment cards.
- Investigations in merger cases also increased from 14 in 2012 to 21 in 2013. In the beginning of 2014, the FNE presented an inquiry, asking the TDLC to rule on whether a joint venture for the creation of a video distribution platform established by agency national broadcasters restricted competition. Although most of the merger investigations were closed because no competitive risks were found, some of them were closed because the parties refrained from the merger. In this area, it is worth mentioning the case of two privately owned hospitals with a common minority shareholder with a right to name directors on the respective boards. The FNE highlighted the risks to competition stemming from information exchange and co-ordination between the hospitals, but closed the investigation after the shareholder's withdrawal from both entities.
- Advocacy was one of the agency's most active areas during the past year. The FNE published a study on existing information asymmetries in the market for prescription drugs, presenting an important set of regulatory recommendations which were later included in the statute that was passed by Congress. Also, the FNE published a study on Minority Interests and Interlocking Directorates between competitors, drawing attention to their use in facilitating co-ordinated behaviour, and draft version of its Guidelines on Vertical Restraints. In addition, during the beginning of 2014 the FNE presented a report on Competition in the Wholesale Electricity Market produced by expert consultants, issuing recommendations for regulatory changes in the market.

## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Summary of new legal provisions of competition law and related legislation***

4. No legal provisions directly or indirectly regarding competition law were enacted in the reported period.

## *1.2 Other relevant measures, including new guidelines*

### *1.2.1 FNE*

5. At the end of 2013, the FNE published a study on Minority Interests and Interlocking Directorates between competitors, which discussed the literature on the anticompetitive risks associated to structural links among competitors, including a comment on foreign legislation and judicial decisions. In addition, the study underscores some national cases, recognising the need for antitrust authorities to review these types of structures directly, especially considering their co-ordinated effects.

6. In a parallel effort, the FNE is currently in the process of reviewing the comments made during the public consultation of the first draft of the guidelines on Vertical Restraints. The final version of the guidelines, should be published later this year and aims to provide the agency's views on practices applied in the vertical chain that are most likely to be considered anticompetitive and outlines the elements that the Agency will consider at the time of investigation.

### *1.2.2 TDLC*

7. In April 2014, the TDLC resolved to adopt a Regulatory Amendment Proposal on the offer of telecommunication services in residential buildings. The FNE requested the Tribunal to study this market, and recommend general norms to the Ministry of Urban Planning and the Ministry of Transport and Telecommunications, aiming to increase the number of suppliers of such services in residential buildings. The proposals of the FNE included recommendations on processes that ensure open and equal conditions to all providers of telecommunications services for the access to new real estate projects, as well as the obligation to install multi network pipelines, interior distribution networks and other infrastructure facilities for this goal. The TDLC, after hearing the point of view of all interested parties who chose to take part in this proceeding, considered that there was a need for improvement in competition in this area, suggesting a series of regulatory changes in line with the FNE's requests.

8. Immediately after this Regulatory Amendment Proposal was released, the Competition Tribunal started a new Regulatory Amendment Proposal proceeding, this time regarding access conditions to underground pipelines installed over streets and other assets for public use.

## *1.3 Government proposals for new legislation*

9. The report issued in May 2012 by a Presidential Commission of competition law and policy experts has not resulted in any amendments to the Competition Act. Nonetheless, towards the end of last year, the Ministry of Economics asked the OECD to produce a report on the current system of merger review. The report, which should be published by July 2014, aims to make a review of the system and provide recommendations in line with international best practices.

10. In addition, the new government, in power since March of 2014, included a series of proposals to improve the legal framework of competition in Chile in its election program. Among others, the program includes measures such as the increase of fines for contentious matters, the reform on merger control processes, and the increase of the powers of the FNE for the production of studies in markets that present persistent failures.

## 2. Enforcement of competition laws and policies

### 2.1 Actions against anticompetitive practices, including agreements and abuses of dominant positions

#### 2.1.1 Summary of activities of:

##### 2.1.1.1 FNE

11. Towards the end of last year, the FNE underwent restructuring, separating Cartel Investigations from Unilateral Conducts. This responded to the increasing number of cartel investigations which in turn created the need for a team fully and exclusively dedicated to horizontal agreements.

| New Investigations initiated        | 2011      | 2012      | 2013      | 2014 <sup>3</sup> |
|-------------------------------------|-----------|-----------|-----------|-------------------|
| Abuses of dominance                 | 8         | 7         | 15        | 3                 |
| Agreements (horizontal)             | 5         | 5         | 5         | 4                 |
| Regulatory/Government acts.         | -         | 6         | -         | -                 |
| Unfair Competition                  | -         | 2         | -         | -                 |
| Vertical Restraints                 | -         | -         | 4         | 4                 |
| Infringements of previous decisions | 4         | 4         | 5         | -                 |
| <b>Total</b>                        | <b>17</b> | <b>24</b> | <b>29</b> | <b>11</b>         |

12. The FNE initiated 29 investigations in 2013 and 11 in 2014, from January to date. The number of investigations rolled over from previous years, has reduced significantly over the past few years. In 2013, 50% of the cases rolled over from previous were resolved and for 2014 the FNE has set a goal of resolving 79% of the cases rolled over from previous years.

13. During the period covered by this report, the FNE filed five complaints before the TDLC as well as four non-adversarial proceedings.

##### 2.1.1.2 Competition Tribunal

14. During the period covered by this report, 18 new adversarial cases were initiated before the TDLC<sup>4</sup>. Of the total number of cases, 95% are related to unilateral conduct and 5% to cartels.

15. The TDLC issued 5 decisions in adversarial cases during the period covered by this report: 2 in 2013 (August-December)<sup>5</sup>, and 3 through April 2014<sup>6</sup>. These cases originated both from claims by the FNE, as well as through complaints filed by private parties. 4 out of these 5 rulings were condemnatory. The average length of these proceedings was 653 days (roughly 1 year and 9 months).

16. Of these 5 decisions, 2 have been challenged before the Supreme Court, and both of them are still under review.

<sup>3</sup> Include data for January to July 2014. The figures indicated here exclude cases declared inadmissible.

<sup>4</sup> TDLC, Docket No. 260-13, 261-13, 262-13, 263-13, 264-13, 265-13, 266-13, 267-13, 268-13, 269-13, 270-13, 271-13, 272-14, 273-14, 274-14, 275-14, 276-14 and 277-14.

<sup>5</sup> TDLC, Rulings No. 131 (*Electrocenter vs. Nokia*) and No. 132 (*Sonda vs. Registro Civil*).

<sup>6</sup> TDLC, Rulings No. 133 (*FNE vs. Pullman Bus Costa Central and Others I - Curacavi*), No. 134 (*FNE vs. Pullman Bus Costa Central and Others II – Bus Terminals*) and No. 135 (*Saavedra vs. Pichilemu Fishers Union*).

17. Of the 4 condemnatory decisions issued during the period covered by this report, 3 relate to collusion, and the other to an anticompetitive public tender.

#### 2.1.1.3 Supreme Court

18. On September 2013, the Hon. Supreme Court of Chile upheld a decision of the Competition Tribunal, which had accepted a complaint of the FNE against Whirlpool S.A. and Tecumseh Do Brasil Ltda. for taking part in an illicit agreement to artificially increase the price of low power hermetic compressors (essential inputs for the manufacture of refrigerators) sold in the Chilean market, between 2004 and 2008. This was the first case in Chile in which the FNE used leniency as a tool to detect a cartel.

19. The case was brought before the Supreme Court by Whirlpool, who claimed lack of jurisdiction, *res judicata* and *ne bis in idem*. In its ruling, the Supreme Court rejected Whirlpool's claim of lack of jurisdiction because the cartel was carried out outside of Chile, arguing that: "*the purpose of the rules established in Decree Law No. 211 is to protect competition in Chile, it is clear that our courts do have jurisdiction to consider those attempts against these norms that have produced effects in Chile or that have the ability to do so, wherever they are carried out or held*". Moreover, the judgment stated that having accepted Whirlpool's argument "*would imply that such unlawful conduct, which also would have materialised in Chile, would be excluded from control and punishment by the country's courts*".

20. The ruling also rejects arguments relating to *res judicata* and *ne bis in idem*, considering that in this case "no foreign jurisdiction has considered or punished the events that occurred in Chile, which have affected the domestic market".

21. The Supreme Court imposed a US\$4.6 million<sup>7</sup> fine on Whirlpool SA, thus lowering the original fine of US\$9.7 million.

22. In December 2013, the Supreme Court upheld the TDLC's decision against the Trade Association of Advertising Agencies and its members, who were found guilty of hindering tender processes by means of boycott, as well as imposing terms and more favourable conditions that included restricting the number of participants to the tender process as well as allocating the market.

#### 2.1.1.4 Other Courts

23. In August 2013, the Court of Appeals rejected an appeal presented by the Trade Association of poultry meat producers, who claimed that the FNE did not comply with the requirements of the law and the legal procedures followed for dawn raids and confiscation of documents and electronic evidence. This was a unanimous ruling.

24. The appeal aimed to prevent the use of e-mails as evidence in trial. The Court of Appeals considered that the FNE acted within the limits of the law, regarding compliance with safeguards established by the law.

25. Concerning the same case, the Constitutional Tribunal unanimously rejected a claim made by one of the companies accused of an illicit agreement to allocate production in the poultry meat case. The aim of the complaint was to prevent the CEOs of the three companies accused of collusion, as well as the President of the Trade Association, from testifying in court, as requested by the FNE. The claimants argued that this was an illegitimate compulsion of the kind prohibited by paragraph 1 of Article 19 of the Constitution. There were criminal proceedings pending against the executives of the defendants. In this

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<sup>7</sup> Using the CL\$-US\$ exchange rate published by the Central Bank of Chile for the month of December 2013.

instance, the Constitutional Tribunal declared that “...it does not seem possible to consider the obligation to testify under oath as a coercive measure. It is a requirement aimed at obtaining the faithful co-operation of third parties and parties in the exercise of the judicial function that corresponds to the State, and seeks to add reliable evidence that completes the understanding of the matter for its appropriate resolution to the proceedings. It cannot be deemed that the obligation to tell the truth constitutes an illegitimate compulsion of the kind prohibited by the final clause of paragraph 1 of Article 19 of the Constitution, because the laws can and must demand truth from the person who testifies in a proceeding and, according to the subject concerned, punish false statements ...” (Consideration Twenty-Eight, Constitutional Tribunal’s Ruling).

### 2.1.2 Description of significant cases, including those with international implications

#### 2.1.2.1 CCU: Trademark registrations used for exclusionary practices

26. In October 2013, the FNE presented a complaint before the competition Tribunal against two companies belonging to the Group of Companies CCU (Compañía Cervecerías Unidas S.A. and Cervecera CCU Chile Ltd.) for exclusionary practices in the brewery market of Chile.

27. The FNE presented a list of trademarks registered by CCU, but inactive in the Chilean market. These trademarks referred to either brands commercialised in foreign markets by CCU’s current or potential competitors, or to trademarks that made reference to specific characteristics that help consumers distinguish between beers, such as type or place of origin.

28. The FNE argued that, by doing so, CCU was strategically raising entry barriers to new competitors and requested the Competition Tribunal to put an end to all trademarks registration under dispute. This case is still in the early stages of review in the TDLC.

#### 2.1.2.2 FNE vs. Obstetric Gynecologists: The role of Professional Associations as facilitators of illicit agreements

29. In October 2013, the FNE filed a complaint against the Trade Association of Obstetric Gynecologists of the rural area of Ñuble. According to the complaint, the Association was fixing minimum prices for standard maternity procedures, causing direct harm to privately insured patients.

30. In light of the aforementioned, the FNE requested the TDLC to order the immediate termination of such practices, as well as a fine of approximately US\$28,000 for each Association member and a fine of US\$47,000 for the President of the Association.

31. The FNE also asked for a fine of US\$ 93,000 for the Professional Association, and for its dissolution, given its role as a facilitator of this agreement. This case is still in the early stages of review in the TDLC.

#### 2.1.2.3 Claro Chile: Compliance with decision of the Courts

32. In 2012, the TDLC dictated General Instructions in the mobile telephony market, aiming to eliminate the adverse effects to competition that price differentiation in public services of mobile telephony, according to destination network, generate. The TDLC concluded that such discrimination caused exclusionary effects, particularly towards non dominant firms or new entrants, and produced inefficiencies in the mobile telephony market.

33. In the beginning of 2014, the FNE filed a complaint before the Competition Tribunal against Claro Chile S.A. due to infringement of the aforementioned instructions. Claro Chile marketed Pay-Monthly and Pay-As-You-Go mobile telephony plans that discriminated between on-net and off-net calls,

therefore not complying with the conditions authorised by the TDLC in the General Instructions No. 2/2012 (IG2), and thus affecting the growth and entrance in said market.

34. During an investigation that aimed to oversee the compliance by Mobile Operators to the General Instructions No. 2/2012, the FNE detected that Claro entered into around 140.000 contracts as well as Pay-As-You-Go plans that did not abide the mandates of the TDLC.

35. Considering the above, the FNE requested the TDLC to order a fine of approximately US\$4.6 million and the modification or termination of all acts and/or contracts celebrated in breach of IG2.

#### 2.1.2.4 Settlements

36. In August 2013, the FNE filed a complaint before the Competition Tribunal against the state-owned National Railways (EFE), for abusive exploitation of its dominant position. The company is the sole provider of rights of way across its railroads. According to the complaint, EFE established and applied charges that were not objective, were arbitrarily discriminatory and lacked transparency; and as such, undermined competition in this market. In December of the same year, the Competition Tribunal approved a settlement agreement between EFE and the FNE, according to which EFE would modify its pricing regime for rights of way across the railroads, and publish the new technical specifications for determining said price on their webpage.

37. Earlier in 2013, the FNE submitted a complaint against Unilever Chile S.A. before the Competition Tribunal, claiming exclusionary practices in the distribution of laundry detergent market. According to the FNE, Unilever -who commercialises the brands OMO, DRIVE, SKIP and RINSO-, developed a strategy that prevented entry and expansion of rival detergent brands, thus harming competition. Several competitors of Unilever in the market requested to be assisting parties to the FNE.

38. The case was closed after the approval of a settlement among the parties by the Competition Tribunal. According to this agreement, Unilever would cease all practices that could lead to the exclusion of competitors.

#### 2.1.2.5 Recent decisions by the TDLC – Collusions in intercity transport services

39. In January 2014, the Competition Tribunal issued decisions on two important collusion cases on intercity bus services. In the first, the FNE filed a complaint against three intercity transport firms, Pullman Bus Costa Central, Ruta vía Curacaví and Atevil. The FNE accused these firms of agreeing to fix prices and assign frequencies for the offering of intercity transport services for the route Santiago-Curacaví, between 2008 and 2011. Atevil made use of the leniency program; Pullman Bus Costa Central and Ruta vía Curacaví were sentenced by the Competition Tribunal to pay a fine of approximately US\$5 million and US\$2 million, respectively.

40. The second ruling referred to a complaint by the FNE, according to which some of the main intercity transport companies took joint actions that aimed to block access to the main bus terminals of the country in the cities of Valparaíso, Coquimbo, La Serena and Antofagasta, therefore creating artificial barriers to the entry of new competitors. The companies denied the charges of collusion, but agreed to the anticompetitive elements of the market, and signed a partial settlement agreement with the FNE, according to which each company agreed to sell office space and ticket-selling points in the terminals included in the complaint in exchange of a reduction of the fine requested. The Competition Tribunal accepted the partial settlement and issued a decision on the original complaint, considering the settlement and condemning all companies for collusion, ordering them to pay fines that varied between US\$52,000 and US\$1.8 million.

## 2.2 *Mergers and acquisitions*

### 2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws;*

41. 21 merger investigations were initiated by the FNE in 2013, and 5 in the months between January and April 2014. During this period, the FNE presented one non-adversarial proceeding to the TDLC, regarding a joint venture among national broadcasters to create an Over-the-Top video distribution platform. This is the only review proceeding of this kind pending before the TDLC at the time.

42. Within 2013, the FNE also initiated an investigation on the acquisition of minority shareholding by one large Chilean conglomerate on two privately owned hospitals of Santiago. The preliminary findings of a lengthy investigation showed that the acquisition would pose risk to competition, primarily due to information sharing and co-ordination incentives. The FNE closed the investigation after the withdrawal of the minority shareholder from both entities..

### 2.2.2 *Summary of significant/ongoing cases*

#### 2.2.2.1 Joint Venture of Broadcasters for an Over-The-Top distribution platform

43. In April 2014, the National Economic Prosecutor presented an inquiry to the Competition Tribunal, for the review of a project by the four major national broadcasters to create a joint Over-the-Top (OTT) video distribution platform.

44. The FNE determined that the operation -merging the OVDs (Online Video Distributors) that are currently operating on each of the broadcasters' websites- has a direct impact in this nascent and dynamic market. The agreement would increase the risk that the parties would charge prices for video content, which consumers can currently access for free, and, in addition, would grant the parties exclusionary power against competing OTTs, due to their joint dominant position in both the production of national TV content and the sale of free-to-air TV advertising spots.

45. Likewise, the FNE considered that the operation may have an impact on the aforementioned related markets: free-to-air TV content broadcasting and the sale of free-to-air TV advertising spots. Regarding free-to-air TV broadcasting, the FNE is concerned that the OTT may lead the parties into skimming TV contents, delivering the most valuable TV contents through the OTT (subject to a subscription fee) at the expense of free-to-air TV viewers. Moreover, TV content segmentation may diminish competition in content production among the parties, which would have a negative impact in TV content quality. The FNE also warned that the OTT may help the parties achieve price co-ordination in the market for the sale of free-to-air TV advertising spots.

#### 2.2.2.2 Transbank

46. On December 2013, the FNE filed an inquiry before the TDLC, requesting the revision of the authorisation that was granted to banks, allowing them to act jointly in the credit and debit card acquiring market in 1991.

47. In Chile, the issuing banks act jointly through their affiliated company, Transbank. Transbank is the only acquirer of all brands (e.g., Visa, MasterCard, Diners Club, American Express) of general purpose credit and debit card transactions in Chile. As a result, any merchant that wishes to accept general purpose credit or debit cards as a payment method must obtain service from Transbank.

48. The absence of competition has entailed the charge of supra-competitive merchant discounts by Transbank, which not only affect merchants, but also consumers, given the transfer of costs from the

former to the latter. In addition, the FNE stated other anticompetitive effects that stemmed from this joint company, such as not enough coverage of merchants, lack of innovation and insufficient adoption of technology.

49. In April of 2014, the Competition Tribunal declared the case inadmissible, arguing that some of the allegations of the FNE correspond to adversarial proceedings, and some others correspond to a request for the issuance of general instructions that would affect any future participants of the market, and not only the incumbent, Transbank. For this reason, the TDLC deemed that the appropriate course of action was a regulatory amendment proposal proceeding, which was initiated *ex-officio* by the TDLC.

50. The FNE presented an appeal for reversal of the decision before the Competition Tribunal, as well as a claim for its review by the Supreme Court. Both petitions were rejected by the TDLC, which stated that there were no new arguments that justified the reversal of the decision. The Competition Tribunal also stated that a claim before the Supreme Court does not proceed when the Competition Tribunal declares a case inadmissible. The case is still pending as the FNE requested the Supreme Court to overrule this last decision and proceed with the review of the decision that declared the inquiry inadmissible.

### **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

51. During 2013, the FNE published a study on the effects on competition of bioequivalence and generic drug penetration in the market. The study was conceived as part of the agencies' regular advocacy activities.

52. In the study, the FNE highlights the importance of bioequivalence and the implementation of policies that increase the use of generic drugs, as a mechanism to reduce distortions in the market. The report further presents a list of other limitations in the distribution of pharmaceuticals that need to be addressed for the market to be competitive. Finally, the study considers an important set of regulatory recommendations, which were later included in the statute that was passed by Congress.

53. In December 2013, the FNE asked the TDLC to recommend to the President of the Republic, through the Ministry of Energy, to enact legal or regulatory provisions in the market of Liquid Petroleum Gas (LPG) for residential customers. More specifically, the FNE requested to regulate the transfer of LPG tanks between distributors, decreasing consumer switching costs and thus boosting competition in the market. The FNE also suggested extending this regulation to industrial and commercial segments.

54. The FNE argued that the current tank ownership system lessens firms' incentives to offer better services. In addition, industry highlighted the sunk costs associated to tank ownership and manifested their agreement to the proposed measures. This case is under review in the Competition Tribunal.

55. In the same period, another aspect of the energy market was also considered by the FNE. In the beginning of 2014, the agency published a report on "Competition in the Wholesale Electricity Market in Chile", which was commissioned by the agency to three independent economists: Natalia Fabra (Carlos III University), Juan-Pablo Montero (Catholic University of Chile) and Mar Reguant (Stanford University). The report analysed the competitive dynamics in the wholesale electricity market for both the regulated (energy distributors) and non-regulated clients, and proposes specific regulatory recommendations that can make the market more competitive.

#### 4. Resources of competition authorities

##### 4.1 FNE Resources overall (current numbers and change over previous year):

###### 4.1.1 Annual budget (in your currency and USD):

56. The annual budget assigned to the FNE is shown in the table below:

| Year | Chilean Pesos | USD*      |
|------|---------------|-----------|
| 2011 | 3,988,427,000 | 8,057,428 |
| 2012 | 4,220,158,000 | 8,525,572 |
| 2013 | 4,507,826,000 | 9,106,719 |
| 2014 | 4,675,937,000 | 9,446,337 |

\*Using average exchange rate for 2013, published by the Central Bank of Chile, USD 1 = CLP 495.0

\*\*Includes only operational budget, the total budget for 2014 is around USD 14,960,341 and includes the change of headquarters of the FNE.

###### 4.1.2 Number of employees (person-years):

| Staff               | 2011 | 2012 | 2013 | 2014 |
|---------------------|------|------|------|------|
| Economists          | 18   | 18   | 20   | 20   |
| Lawyers             | 31   | 40   | 36   | 42   |
| Other professionals | 26   | 20   | 20   | 19   |
| Support staff       | 14   | 13   | 14   | 15   |
| All staff           | 89   | 91   | 90   | 96   |

##### 4.2 FNE Human resources (person-years) applied to:

|  | 2013 | 2014 |
|--|------|------|
| Enforcement against anticompetitive practices; | 36   | 45   |
| Merger review and enforcement;                 | 9    | 8    |
| Advocacy efforts.                              | 9    | 8    |
| Litigation                                     | 13   | 12   |

##### 4.3 FNE Period covered by the above information:

57. The budget for the FNE refers to the period of January to December of each year. Staff as of 1st of January of each year.

##### 4.4 TDLC Resources overall (current numbers and changes over the previous year):

###### 4.4.1 Annual budget (in your currency and US\$)

| Year | Chilean Pesos | USD*       |
|------|---------------|------------|
| 2011 | 1,016,627,000 | 2,053,791  |
| 2012 | 1,117,052,000 | 2,256,670- |
| 2013 | 1,228,933,000 | 2,482,692  |
| 2014 | 1,900,675,000 | 3,839,747  |

\*Using average exchange rate for 2013, published by the Central Bank of Chile, USD 1 = CLP 495.0

4.4.2 *Number of members (including staff members + judges)*

|      | Staff members + judges |
|------|------------------------|
| 2011 | 19                     |
| 2012 | 18                     |
| 2013 | 21                     |
| 2014 | 21                     |

4.4.3 *Informing separately for each year:*

|               | 2011 | 2012 | 2013 | 2014 |
|---------------|------|------|------|------|
| Economists    | 5    | 5    | 6    | 6    |
| Lawyers       | 7    | 7    | 8    | 8    |
| Support staff | 7    | 6    | 7    | 7    |
| All staff     | 19   | 18   | 21   | 21   |

**5. Summaries of or references to new reports and studies on competition policy issues**

58. The FNE took the initiative to publish two different products that are worth mentioning in this review. The first is the publication of a book that includes the resolutions of preliminary reviews and the final resolutions to close investigations during 2012. The idea behind this work is to publish the doctrine applied by the FNE in its findings, allowing stakeholders to understand the approach used by the agency in its decisions on substantive competition issues.

59. The FNE also commissioned a book on the history of competition in Chile from 1959 to 2010 to Prof. Patricio Bernedo. The book, which is also available online<sup>8</sup>, makes a critical review of the law and institutions of competition in Chile, taking into consideration the economic and political background for each analysed period.

60. In November of 2013, the FNE also celebrated the 11<sup>th</sup> version of the Competition Day, the annual event that brings together the Agency with its stakeholders, including lawyers, academics and businesses. Last year's event included distinguished presenters, such as Commissioner Maureen Ohlhausen, of the FTC and Professor Richard Whish.

61. During the same days, Professor Richard Whish presented a workshop for the FNE and TDLC staff on recent developments in competition law in Europe.

8. <http://www.fne.gob.cl/2013/11/11/68854/>