

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Fiscalía Nacional Económica (“FNE”), Chile

25 February 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
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Statutory Laws

A. Notification provisions	1) Decree Law N°211 (“DL 211”), which is the Competition Law, includes the merger notification process (available in Spanish at: https://www.fne.gob.cl/wp-content/uploads/2010/12/DL_211_refundido_2016.pdf and in English: https://www.fne.gob.cl/wp-content/uploads/2018/09/DL_211_English.pdf).
B. Substantive merger review Provisions	Described mainly in DL 211 and in Merger Guidelines 2012: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2012/10/Guia-Fusiones.pdf).
C. Implementing regulations	Described in letters D, E, and F of this number 1., referred below.

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

D. Notification forms or information requirements	2) Regulation on the notification of mergers: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2017/10/Decreto-33-Aprueba-Reglamento-Operaciones-de-Concentracion-1.pdf).
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Guidelines on the calculation of thresholds: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2019/08/Guia_Umbrales-08.2019.pdf). Ordinary notification form: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2017/10/notificacion_ordinario-1.pdf). Simplified notification form: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2017/10/notificacion_simplificada-1.pdf).
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Merger Guidelines 2012: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2012/10/Guia-Fusiones.pdf). Guidelines on jurisdiction: (available in Spanish: https://www.fne.gob.cl/wp-content/uploads/2017/10/Guia-de-competencia-.pdf and in English: https://www.fne.gob.cl/wp-content/uploads/2017/11/Guidelines-on-Jurisdiction.pdf). Guidelines on remedies: (available in Spanish: https://www.fne.gob.cl/wp-content/uploads/2017/10/Guia-de-remedios-.pdf and in English: https://www.fne.gob.cl/wp-content/uploads/2017/11/Guidelines-on-Remedies.pdf).
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	The guidelines on the calculation of thresholds, titles VI through IX contains special provisions for: (i) banks and other financial entities, (ii) insurance and reinsurance companies and pension funds administrators, (iii) investment funds, and (iv) state owned companies.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	No. Nevertheless, there are some court decisions issued by the Chilean Competition Court (Tribunal de Defensa de la Libre Competencia, "TDLC"), previous to the mandatory merger control implementation in 2016. The TDLC reviewed merger cases before this reform.

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Fiscalía Nacional Económica, División de Fusiones (Mergers Division).
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Address: Huérfanos N° 670 Floors 8, 9 and 10, Santiago de Chile. Telephone: (+562) 27535600; (+562) 27535612. Website address: https://www.fne.gob.cl/ (available in Spanish and English).
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations].	Leonel Leal, FNE, Mergers Division. Telephone: (+562) 27535612 pre-notificacion@fne.gob.cl

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	According to article 47 of the DL 211, a concentration shall be deemed to be any event, agreement or contract, or a combination thereof, the effect of which is that two or more economic agents not forming part of a same corporate group and previously independent from each other, cease to be independent in any respect, by following any of the transactions detailed below: a) Merging, regardless of the type of corporate organization of the merging entities or the entity resulting from the merger; b) Acquiring, one or more of them, directly or indirectly, an interest that allows them, individually or jointly, to exert a decisive influence on the other agent's administration; c) Entering into agreements, under any modality, to form an independent economic agent, different than them, that may carry out activities in a continuous way; d) Acquiring, one or more of them, control over the other agent assets under any title.
B. What is the geographic scope of transactions covered?	According to title VII of the Guidelines on Jurisdiction, the FNE shall exercise its jurisdiction whenever it is probable that a concentration will affect the market and

	<p>competition in Chile. In order for such effect to occur, the concentration must have a geographical link with Chile.</p> <p>The geographic link of the concentration with the country is established through the notification thresholds, which consider the sales consummated in Chile. Thus, Title IV of the DL 211 provides that notification to the FNE will be mandatory regarding all concentrations that cause effects in Chile and are equal or exceed the turnover thresholds in Chile set in Article 48 of the DL 211.</p>
<p>C. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>According to title V.B. section ii) literal a. of the Guidelines on Jurisdiction, the FNE understands as control or decisive influence, the legal or de facto possibility of determining –or vetoing– the implementation of decisions regarding the competitive behavior and strategy of an undertaking. Such control implies, among others, the decisive influence or control over its management’s composition, veto rights, strategic or business decisions or, in general, in its competitive performance.</p> <p>The mere possibility of exercising decisive influence or control the competitive behavior of another undertaking suffices to fall within Article 47 (b) of DL 211. Thus, it is not necessary to determine if such decisive influence or control is or will be effectively exercised.</p> <p>The possibility of exercising decisive influence or control over another undertaking shall be assessed by the FNE in a case-by-case basis, considering the effective relation between the respective undertakings.</p>
<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p>As for partial stock acquisitions/minority shareholdings:</p> <p>According to article 47 (b) of the DL 211, a concentration shall be deemed to be any event, agreement or contract, or a combination thereof, the effect of which is that two or more economic agents not forming part of a same corporate group and previously independent from each other, cease to be independent in any respect by acquiring, one or more of them, directly or indirectly, an interest that allows them, individually or jointly, to exert a decisive influence on the other’s administration.</p>

	<p>Nevertheless, as a related matter, article 4 bis of DL 211 requires notifying the FNE in cases of acquisitions of 10% or more of the shares of a competitor.</p> <p>As for acquisitions of assets:</p> <p>According to article 47 (d) of the DL 211, a concentration shall be deemed to be any event, agreement or contract, or a combination thereof, the effect of which is that two or more economic agents not forming part of a same corporate group and previously independent from each other, cease to be independent in any respect by acquiring, one or more of them, control over the other agent assets under any title.</p> <p>According to title V.B section iv) literal a. of the Guidelines on Jurisdiction, the change of control over the assets can only be considered as a concentration if such assets are relevant and significant enough to result in a lasting change in the market and competition. At the same time, the acquired assets must allow the conduct of the economic activity on an ongoing basis. In addition, the acquired assets must have a turnover over the thresholds set in the FNE's Resolution mentioned in Article 48 of the DL 211.</p>
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4. Thresholds for notification	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>According to article 48 of the DL 211, merger and transactions are to be notified to the FNE:</p> <p>a) If the sales in Chile of the economic agents that intend to merge, during the fiscal year prior to that in which the notification is made, reach or exceed the threshold set by a resolution of the FNE; and,</p> <p>b) If in Chile, separately, at least two of the economic agents that intend to merge have had, during the fiscal year prior to that in which the notification is made, sales that reach or exceed the threshold set by a resolution of the FNE.</p>

	The resolution of the FNE that sets the aforementioned thresholds is: (available in Spanish only: https://www.fne.gob.cl/wp-content/uploads/2019/06/resol_157.pdf).
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	<p>According to article 47 of the DL 211, an economic agent shall be deemed to be any entity or part thereof, whatever its corporate type or even without legal existence, which may offer or demand goods or services. A group of tangible or intangible assets, which is capable of offering or demanding goods or services, shall also be considered as an economic agent.</p> <p>The thresholds are calculated in the different transactions described in article 47 of the DL 211, according to the criteria set by the Guidelines on the calculation of thresholds, mentioned in number 1. E above. Each type of transaction of letters a) to d) of this article, is calculated in a different manner. As mentioned above in this report, control is determined in the general terms described in number 3. C. above.</p>
C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”	<p>According to title VII of the Guidelines on Jurisdiction, the FNE shall exercise its jurisdiction whenever it is probable that a concentration will affect the market and competition in Chile. In order for such effect to occur, the concentration must have a geographical link with Chile.</p> <p>The geographic link of the concentration with the country is established through the notification thresholds, which consider the sales consummated in Chile. Thus, Title IV of the DL 211 provides that notification to the FNE will be mandatory regarding all concentrations that cause effects in Chile and that are equal or exceed the turnover thresholds in Chile set in the FNE’s Resolution mentioned in Article 48 of the DL 211.</p>
D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?	No. Article 48 of the DL 211 and the Resolution setting the thresholds consider the sales made not only by one of the parties of a transaction. It requires a minimum individual threshold for both parties involved in the transaction.

<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>No. There are no sectors excluded in advance of the merger review requirements.</p> <p>Thresholds are related to the most recent calendar year before the notification is made.</p>
<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>(i) Banks and other financial entities: To determine the value of their sales, the FNE only considers: (a) incomes on interests of any kind, (b) revenue from titles of any kind or corporate shares, (c) commissions, charges, fees and similar payments, (d) net worth income from financial transactions, and (e) other results from their main or secondary business activities.</p> <p>(ii) Insurance and reinsurance companies and pension funds administrators: To determine the value of their sales, the FNE considers the value of the paid fees plus the income from their investment. The fees considered are those of contracts signed within the period, as well as from those still enforced within the said period of time.</p> <p>As for pension funds administrators, sales are counted as the ordinary incomes from the charge of commissions and the income paid for the investment of their assets.</p> <p>(iii) Investment funds: The FNE will consider the commissions charged as well as the sales of the companies over which the investment fund holds control.</p> <p>(iv) State owned companies: The FNE will only consider as entities within a holding those companies that belong to the same independent decision-making center. Other State owned companies that are not controlled by such entity will not be considered as within the same holding.</p>
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	<p>No, there are not such special rules or exceptions.</p>

<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	<p>According to article 48 of the DL 211, when concentrations do not reach or exceed the thresholds referred to in literals a) and b) of this article, the FNE will be authorized to initiate the investigations it may deem fit in accordance with the general rules prescribed on article 39 literal a) of the DL 211, within one year as from the consummation of the relevant concentration transaction.</p>
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>The FNE has jurisdiction to review transactions even though they do not exceed the thresholds above mentioned in this report, a rule that is also applicable to digital markets transactions.</p>

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>According to article 48 of the DL 211, the thresholds are based on the sum of the sales of the economic agents (but there are also individual thresholds). For the purposes of this article, the joint sales volume shall be calculated as follows:</p> <p>i) For the cases contemplated in article 47 literals a) and c), the sales in Chile of the economic agents merging or to be associated, as well as those of their respective corporate groups, shall be added up.</p> <p>ii) For the cases contemplated in article 47 literal b), the sales in Chile of the economic agent obtaining a decisive influence will be added to those of its corporate group and they also has to consider the acquired economic agent sales.</p> <p>iii) For the cases contemplated in article 47 literal d), the sales in Chile of the acquiring economic agents, of their respective corporate groups, and those arising from the acquired assets, shall be added up.</p> <p>Further explanations are described in the Guidelines for the calculation of thresholds.</p>
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<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control,</p>	<p>As prescribed on the Guidelines on jurisdiction, the FNE applies the general definition of control described above in question 3.C.</p>
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<p>is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>For investment funds under a general administrator entity (“AGF”), the rule that applies generally is that the funds are considered as controlled by the AGF which has the power to manage and administer the respective and separate funds. Therefore, if a certain fund controls another entity shares, for example, all the companies controlled by the funds managed by the AGF must be considered in determining the applicable thresholds. For more details, please review the details in title VIII of the Guidelines on the calculation of thresholds mentioned in 1.E above of this report.</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p>As mentioned above in 4.K, if a certain fund controls another entity shares, for example, all the companies controlled by the funds managed by the same AGF must be considered in determining the applicable thresholds. However, the type of turnover considered in each case depends on the kind of transaction prescribed in article 47 of DL 211.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>According to title X of the Guidelines on the calculation of thresholds, the currency conversion considers the annual average exchange rates determined by the Central Chilean Bank, published the year prior to the notification of the concentration.</p>
<p>5. Pre-notification</p>	
<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</p>	<p>According to the Ordinary notification form, notifying parties may contact the Mergers Division before they submit their notification to prepare the necessary information and solve relevant questions regarding the notification procedure.</p> <p>At this preliminary and non-mandatory stage, notifying parties may ask about the range and scope of the information that is to be submitted with their notification. The parties may determine with the FNE the precise information that is to be sent and explore the possibility of not submitting certain information, requesting an exemption in accordance with article 3 of the Regulation on the notification of mergers.</p> <p>None of the opinions expressed by the FNE at this stage will be binding, for they are only meant to be used for informative purposes, and under no circumstance may be considered either as recommendation or advice regarding the pending operation.</p>

	During this preliminary stage, parties may discuss the possibility to submit their notification according to the simplified procedure, if the applicable requirements are fulfilled.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	There is currently no requirement to submit some specific information during this pre-notification stage, but the parties may submit documents or drafts of the merger pre-notification if they require more precise non-binding and informal advice by the FNE.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	According to article 48 of the DL 211, economic agents that are a party to the concentration are bound to file the notification to which this article refers, as long as the operation meets the requirements there established. The notification process is mandatory in Chile since the reform in 2016 to the DL 211, which is in force since 2017.
B. If parties can make a voluntary merger filing when may they do so?	According to article 48 of the DL 211, concentrations that do not reach or exceed the thresholds referred to in literals a) and b) of this article may be voluntarily notified to the FNE by the economic agents that intend to merge. Voluntary notifications shall be subject to the same rules applicable to the mandatory notifications, provided that the transaction has not been consummated at the time of the notification.
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	According to title VIII of the Guidelines on jurisdiction, mandatory and voluntary notification set in Article 48 of the DL 211, will be admissible from the existence of a real and serious intention of the notifying parties to consummate the transaction and until prior to its materialization.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of	The notification must be made before the materialization of the transaction. The DL 211 does not set a triggering event, therefore, as long as there is a real and serious intention of the notifying parties to materialize the operation. Therefore, in any case, before it is consummated, it must be notified to the FNE.

the transaction? Are there special rules for public takeover bids?	There are no special rules for public takeover bids.
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	According to title VIII of the Guidelines on jurisdiction, mandatory and voluntary notification set in Article 48 of the DL 211, will be admissible until prior to its materialization. However, the suspension of the transaction before the merger process is finalized provides incentives to the parties to notify the transactions as soon as possible, in order not to unduly delay the closing of the transaction.

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	If the simplified procedure is to be applied, the information requirements are also simplified, as prescribed in title III of the Regulation on the notification of mergers. In each procedure, ordinary or simplified, the parties may request an exemption to provide certain specific documents, according to causes prescribed in the same regulation.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	<p>According to article 4 of the Regulation on the notification of mergers, the simplified procedure will apply if any of the following conditions are met:</p> <p>a) That there is no horizontal or vertical overlap between the parties involved or other entities within their holdings, for neither of them operates in the same relevant product or geographic market, nor in vertically related ones.</p> <p>b) That the market share of the parties involved or other entities within their holdings in the markets, given its minor relevance (20% or less in the same relevant market or 30% or less in a vertically integrated market), is notable to substantially reduce the competition.</p>

	<p>c) When, regarding one of the hypotheses considered in literals a), b) or d) of article 47 of the DL 211, the following requirements are met:</p> <p>i. The combined market share of all parties and members of their respective holdings involved in a horizontal relation is below 50%.</p> <p>ii. The increase on the HHI index after the merger is below 150.</p>
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<p>8. Information and documents to be submitted with a notification</p>	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>According to article 2 of the Regulation on the notification of mergers, the notifying parties must submit, at least: (1) an executive summary of the merger, (2) a complete individualization and contact information of the entities involved, the description of their economic activities, and individualization of their related persons, (3) property and control structure prior to the merger, (4) the structure of the merger and of the property and control after the merger, (5) the definition of the relevant markets involved, (6) information on each of the relevant markets involved.</p> <p>The specific information required in the ordinary and simplified procedures is contained in the Regulation on the notification of mergers, mentioned in number 1. D of this report.</p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>No, there is not a distinction between these assets. This may be considered, nevertheless, in the substantive assessment of the merger review process.</p>

<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>According to article 2.9 of the Regulation on the notification of mergers, the notifying parties may submit a description of the productive and/or dynamic efficiencies expected from the operation, quantifying them and justifying the period on which their effects will be achieved, detailing how they will be transferred to the consumers. Also, they may express reasons as to why such efficiencies may not be achieved by any other means different from the proposed operation. In summary, parties may provide the FNE with information to assess the verifiability, inherence and aptitude to compensate the market power obtained by the merged entity.</p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>There is no specific information required in this case by the Regulation on the notification of mergers.</p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No, there are not specific procedures related to this case in hostile/unsolicited bids.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>Yes, the Regulation on the notification of mergers describes some documents (i.e power of attorney, certificates, etc.) that must be duly legalized or be provided with an apostille.</p>
<p>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>There are not specific rules in these cases, but the parties to the transaction may require an exemption to provide certain documents in some specific cases indicated in the Regulation on the notification of mergers (i.e., when information is unavailable to the parties).</p>
<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>According to article 52 of the DL 211, during the course of the investigations initiated in accordance with the preceding article, the FNE may exercise the powers set out in article 39 literals f), g), h), j), k), l) and m). This provision allows the FNE to request information and records from private parties, and to summon them to submit their verbal or written depositions.</p>

	<p>The decisions issued by the FNE that initiate the investigations are public, therefore any third party may submit relevant information.</p> <p>During phase II, article 55 of the DL 211 provides that, regarding the decisions envisaged in literal c) of the preceding article, the FNE shall communicate its issuance and attach its text, or the public version of the same, to the directly involved authorities and the economic agents that may have an interest in the transaction. Those that received the said communication, as well as any third party interested in the concentration, including suppliers, competitors, clients or consumers, shall be entitled to contribute information to the investigation within the term of 20 days following the publication of the decision ordering its extension, on the institutional website.</p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>According to article 53 of the DL 211, the notifying party shall always have the right to be heard, and may express to the FNE its opinion on the notified concentration, on the information submitted to the investigation by third parties, on the investigation itself, and on the information that may be submitted in accordance with the preceding paragraph. The notifying party may also propose any investigative proceedings it may deem fit.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>No, they are not.</p>
<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same</p>	<p>There are not specific requirements to investments funds in this regard.</p> <p>The same indicated above, is applicable to ii) of this question. The answer depends on the review to be made in each case, under the specific circumstances of the case.</p>

<p>relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>As mentioned above, there are some general requirements to request an exemption not to provide information required by the general rules of the applicable procedure, mentioned in article 3 and 8 of the Regulation on the notification of mergers.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>According to article 2 of the Regulation on the notification of mergers, all information required in the notification forms must be submitted in Spanish. However, the FNE may grant a special request to submit some of the documents in English, in such cases and under such conditions as it deems necessary.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted? 	<p>All documents drafted in a foreign language are to be submitted both in their original version and translated to Spanish, unless such translation is unnecessary or unreasonable for the parties. As mentioned above, the parties may require an exception to be allowed to provide some documents in English.</p>

10. Review Periods	
A. Describe any applicable review periods following notification.	<p>According to article 54 of the DL 211, the FNE has 30 days from the decision to open an investigation (provided all the documents required have been provided to the FNE) to determine whether to approve the transaction unconditionally, to approve it under conditions submitted by the parties, or to extend the review for up to another 90 days.</p> <p>According to article 57 of the DL 211, if the FNE has extended the review period for up to 90 days (Phase II review), by the end of it, it may approve the transaction unconditionally, approve it under conditions, or prohibit it.</p>
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	No, there are not such specific rules.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	<p>Within 30 days from the notification, the FNE must decide to extend the investigation for up to 90 days from the resolution to open an investigation.</p> <p>Requests for information do not suspend nor re-start the review period.</p>
D. Is there a statutory or other maximum duration for extensions?	The DL 211, both on articles 54 and 57, sets the maximum duration for investigations and its extensions. The maximum duration is 30 days in Phase I and up to 90 additional days in Phase II, but the parties may request or agree with the FNE the suspension of these deadlines.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	<p>According to article 60 of the DL 211, the terms established in the first subsection of article 54 and the first subsection of article 57 shall not be suspended, with the exception of the cases envisaged in this article.</p> <p>The FNE and the notifying parties can mutually agree to suspend, on a single occasion, each term referenced in the preceding subsection. The first term may be suspended for</p>

	<p>up to 30 days, and the second for up to 60 days. These suspension agreements must be recorded in writing.</p> <p>These terms may also be suspended if remedies are offered by the notifying parties.</p>
F. What are the time periods for accelerated review of non-problematic transactions, if any?	According to article 47 of DL 211, the simplified procedure has the same time periods than the ordinary procedure.
G. If remedies are offered, do they impact the timing of the review?	According to article 60 of DL 211, the terms mentioned in the first subsection shall be suspended when the notifying party offers remedies in accordance with the provisions of subsection third of article 53. The term envisaged in subsection first of article 54 (Phase I) or the one established in subsection first of article 57 (Phase II) shall be suspended for a maximum term of 10 or 15 days, respectively.

11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	According to article 49 of the DL 211, the economic agents that intend to merge may not consummate the relevant concentrations they have notified to the FNE; these concentrations shall be deemed suspended as from their notification date and until the decision that concludes the relevant proceedings has become final and binding.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No, once agreed or due, according to the circumstances of each provision, the suspension or waiting periods may not be derogated.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's	There are not specific limits provided by law or regulation to the waiting periods/suspension obligations of the parties involved in the transactions.

<p>jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. According to article 54 of the DL 211, the FNE shall be considered to have approved the corresponding transaction if it fails to decide on any of the abovementioned three options within the established term. The authorization shall be considered granted in the terms offered by the notifying parties, including the remedies they may have proposed.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>According to article 60 of the DL 211, the terms established in the first subsection of article 54 and the first subsection of article 57 shall not be suspended, with the exception of the cases envisaged in this article.</p> <p>The FNE and the notifying parties can mutually agree to suspend, on a single occasion, each term referenced in the preceding subsection. The first term may be suspended up to 30 days, and the second for up to 60 days. These suspension agreements must be recorded in writing.</p> <p>Moreover, the terms mentioned in the first subsection shall be suspended when the notifying party offers remedies in accordance with the provisions of subsection third of article 53. In these cases, the term prescribed in subsection first of article 54 or the one established in subsection first of article 57 shall be suspended for a maximum term of 10 or 15 days, respectively.</p> <p>Third parties are not allowed to alter or to extend the waiting period/suspension obligation.</p>

F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	N/A.
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G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	N/A.
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12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	According to article 48 of the DL 211, economic agents that are a party to the concentration are bound to file the notification jointly.
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B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No, there are not specific rules regarding these public tender procedures.
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C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There are not specific rules regarding who can be representatives of the parties, but the companies are usually represented by a lawyer registered in Chile.
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D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?	The regulations require a power of attorney ("PoA") and provide a model of a PoA in its institutional web page, in Annex III (https://www.fne.gob.cl/wp-content/uploads/2017/10/Anexos.pdf).
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13. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p>No, there are not filling fees.</p>
<p>B. Who is responsible for payment?</p>	<p>N/A.</p>
<p>C. When is payment required?</p>	<p>N/A.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>N/A.</p>

<p>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</p>	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>The stages are the following:</p> <ol style="list-style-type: none"> 1. Completion Procedure. According to article 50 of DL 211, the FNE review that the documents required by the regulations are complete. If the documents are not complete, parties must submit the missing documents identified by the FNE. 2. Investigation. After the documents required are completed, a decision to open the investigation is issued, and later the review is made in the stages and phases (I and II) referred above in this report (in No. 10, Review Periods). 3. Decision. FNE must provide a decision approving the merger, accepting the transaction with remedies, or prohibiting the transaction in the terms established in this report.

<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>According to the DL 211, the agency must apply the substantial lessening of competition test.</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>According to the Merger Guidelines, the FNE considers that competition may be harmed if the transaction can raise either unilateral, coordinated or conglomerate effects on the market.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>According to the Merger Guidelines key stages are: (i) characterization of the transaction, (ii) determination of the relevant market, (iii) determination of the market shares of the parties, (iv) analysis on the concentration of the market, (v) entry barriers to the market, (vi) effects on competition, and (vii) possible benefits to the competition or the market.</p> <p>The analysis does not differ depending on the type of transaction, but emphasis may be different according to the different legal and factual circumstances of each case.</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>No, non-competition issues are not required to be considered by the competition authority in the merger review process.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>According to articles 54 and 57 of the DL 211, possible outcomes are unconditional clearance, conditional clearance (with remedies), and prohibition after an investigation.</p>
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>According to the Guidelines on remedies, the commitments usually accepted to eliminate the competitive concerns raised by concentrations can be classified into those that involve structural remedies by the merging parties, and other behavioral remedies.</p>

	<p>There are two types of structural commitments: those that involve the sale of assets to a suitable purchaser (hereinafter, “divestiture of assets to a suitable purchaser”), and those that seek to remove links between the parties and competitors.</p> <p>On the other side, behavioral remedies will be understood as all the spectrum of remedies regarding limitations or modifications in the future behavior of the merged entity.</p> <p>Although each concentration will be assessed on its own merits and circumstances, generally, in cases of horizontal mergers, the FNE will generally prefer structural remedies or require the divestiture of assets to a suitable purchaser. This does not impede the adoption of other remedies as a complement to the structural remedies in cases considered to be appropriate by the FNE.</p>
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15. Confidentiality	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>The FNE only discloses the fact that a notification has been filed when the FNE’s decision that initiate an investigation is issued.</p>
<p>B. Do notifying parties have access to the agency’s file? If so, under what circumstances can the right of access be exercised?</p>	<p>According to the Ordinary notification form, the investigation file is confidential during the first stage of it (phase I). However, article 53 of the DL 211 states that the notifying party may at any time request the FNE to provide information regarding the course of the investigation, and shall be entitled to be informed, prior to the passing of any of the decisions contemplated in articles 54 to 57, about the anticompetitive concerns of the concentration based on the background information of the investigation.</p>

<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>No third party or government agency may obtain access to confidential information provided by the parties.</p> <p>As for non-confidential information, during phase I of the investigation procedure, any third party may submit a request to obtain information regarding the investigation proceedings, according to the provisions of the Public Information Access Act (Ley N°20.285, de Acceso a la Información Pública).</p> <p>During phase II, third parties are contacted in order to present any information they seem relevant for the investigation. In addition, non- confidential information in phase II must be made available and prepared to anyone who requires it.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>According to article 10 of the Regulation on the notification of mergers, the parties may request the confidentiality of any such materials submitted along with the notification. If such request is made, the parties must present a public redacted version of the documents with confidential information. The Ordinary notification form sets further criteria on the matter. But the fact that a notification has been made is public when the decision to initiate an investigation is made available to the market in the FNE website.</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>According to article 10 of the Regulation on the notification of mergers, the FNE may require public versions of the documents that contain confidential information, and must require the parties to justify of the reasons of this assertion. If public versions of the documents are not submitted or the reasons of the confidential treatment are not properly justified, the FNE may prepare those public versions it deems most appropriate in accordance with the law.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>According to article 10 of the Regulation on the notification of mergers, if the parties request confidentiality of certain documents, they must also submit a public version of such documents. These versions may be reviewed by the competition authority, and there are internal procedures to prevent or limit public disclosure of information designated as confidential.</p>

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	No, but public versions of the decisions on merger cases are made public in the institutional website mentioned above in this report.
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	Information about the cases is provided in the institutional website.
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	A search tool for the public version of merger decisions made by the FNE is provided here (available in Spanish only): https://www.fne.gob.cl/fusiones/buscador/ .
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	Statistics on the number of annual notifications are provided here (available in Spanish only): https://www.fne.gob.cl/fusiones/estadisticas/ .
17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	If the transaction is being notified in other agencies, the parties can give a waiver to the FNE to exchange information with those agencies.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	The FNE is party to several international cooperation agreements with foreign competition authorities. International cooperation agreements are provided here (available in Spanish only): https://www.fne.gob.cl/internacional/ .

<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>The FNE needs consent from the parties who submitted confidential information to share it with foreign competition authorities. The waiver format is provided here: Annex II (available in Spanish and English) https://www.fne.gob.cl/wp-content/uploads/2017/10/Anexos-1.pdf.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>The FNE is party to several national cooperation agreements, as listed on the website. (available in Spanish only: https://www.fne.gob.cl/advocacy/acuerdos-nacionales-de-cooperacion/). Nevertheless, the FNE must comply with its duty of confidentiality in the cases and circumstances established in the DL 211.</p>

<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p>According to article 3 bis of the DL 211, the described behaviors may be sanctioned with any of the following measures contained in article 26:</p> <ul style="list-style-type: none"> a) The amendment or termination of agreements, contracts, conventions, systems or arrangements that violate the provisions of this law; b) The amendment or dissolution of companies, corporations and other private legal entities which might have intervened in such agreements, contracts, conventions, systems or arrangements referred to in the preceding literal; c) The imposition of fines for amounts up to thirty percent of the sales of the offender within the product or service line associated with the infringement during the period in which the infringement was being perpetrated, or up to the double of the economic benefit received as a result of the infringement. <p>Article 39 h) of the DL 211 provides that, any party who, with the purpose of hindering, diverting, or eluding the authority of the FNE, conceals information that has been requested by the latter, or submits false information, shall be penalized with minor imprisonment, in its minimum to medium degree. In order to apply such penalties, the</p>

	<p>FNE shall forward the relevant information to the criminal public prosecutor (“Ministerio Público”). This notification shall be considered a criminal report, for the purposes of article 53 of the Criminal Procedures Code.</p> <p>In addition, and specifically related to the merger review process, article 58 of the DL 211 provides that, through a duly justified decision, the FNE shall be entitled to unregister the investigative file, thus terminating the procedure, regardless of its status, when the notifying party has withdrawn or abandoned its notification.</p> <p>The notifying party shall be understood to have withdrawn its notification when it communicates this course of action in writing to the FNE.</p> <p>Regarding the point iii) of this question, a notification shall be deemed abandoned when, on two or more occasions during the course of the investigation, the notifying party fails to promptly and duly reply to the information requests issued by the FNE, in accordance with the law, or when on two or more occasions the notifying party or its legal representatives have failed to appear to a deposition to which they were summoned in accordance with the law.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>As a general rule, any notifying party is subject to the sanctions previously described. As for A.(iii), third parties may also be sanctioned if they fail to provide information required by the authority.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>Judicial action is required to impose sanctions to the infringing party, according to the ordinary judicial procedure before the TDLC, described in article 19 and following articles of the DL 211.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>Yes, there are. For example, in year 2020 the FNE requested the TDLC to impose sanctions for the provision of false information in a merger review process. In another case, a sanction was issued against merging parties for failure to observe a waiting</p>

	period/suspension obligation, and for other infringements of provisions above referred in No. 18.A of this report.
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19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No.
B. What are the grounds for such ministerial intervention?	N/A.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	N/A.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	<p>According to article 57 of the DL 211, the notifying party may challenge the FNE's decision that prohibits an operation by lodging a duly justified reconsideration review before the TDLC within a term of 10 days as from the date of notification of the said decision.</p> <p>According to article 31 bis of the DL 211, once the appeal has been filed, the TDLC shall order the FNE to submit the case file containing the investigation in which the appealed decision has been issued, and issue a summon for a public hearing in which the appealing party, the FNE and any other party who has contributed information to the investigation as per subsection two of article 55, will be entitled to be represented. The public hearing shall be held within a term of 60 days, as from the reception of the case file.</p>

	<p>The TDLC shall issue a decision, either confirming or revoking the challenged FNE decision, based on the information included in the investigation case file and on the arguments issued by the parties that participated in the hearing mentioned in the previous subsection, along with any other information collected <i>ex officio</i> or upon the request of a party. The TDLC must issue the said decision within a term of 60 days as from the date when the referenced hearing is held.</p> <p>If the decision revokes the appealed decision, the TDLC – in the same decision – can approve the concentration, either unconditionally or subject to the last measures offered by the notifying party pursuant to the provisions of subsection three of article 53. Additionally, the TDLC may approve the transaction subject to the condition of complying with other remedies it may deem adequate and sufficient.</p> <p>No other judicial review whatsoever may be filed against the decision issued by the TDLC, unless the decision has subjected the approval of the transaction to the condition of complying with remedies different from those contained in the last proposal submitted by the parties pursuant to subsection three of article 53. In this last case, both the parties and the FNE will be authorized to file the appeal detailed by article 27 of the DL 211.</p> <p>According to article 27 of the DL 211, appeals to be reviewed by the Chilean Supreme Court may be only lodged against the final judgments which impose any of the measures set out in article 26, or which acquits the defendants. The review must explain in full its motives, and may be lodged by the FNE or any of the parties within 10 days as from the date of notification of the TDLC decision.</p>
<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>The parties must submit public versions of the documents that contain confidential information.</p> <p>According to article 39 a) of the DL 211, the FNE may determine the confidentiality of certain documents contained on the investigation file.</p>

<p>C. Are there any limitations on the time during which an appeal may be filed?</p>	<p>The reconsideration appeal before the TDLC must be filed within 10 days as from the date of notification of the FNE decision.</p> <p>The complaint appeal before the Chilean Supreme Court must be filed within 10 days as from the date of notification of the TDLC judgement.</p>
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<p>21. Additional filings</p>	
<p>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</p>	<p>There are some specific sectors regulatory requirements regarding mergers and acquisitions transactions, for example in the sanitary, banking, and other regulated sectors laws and provisions.</p>

<p>22. Closing Deadlines</p>	
<p>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</p>	<p>No, there are not specific time period provisions during which the parties must close the transaction to remain authorized.</p>

<p>23. Post Merger review of transactions</p>	
<p>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</p>	<p>According to article 32 of the DL 211, the acts or agreements executed or signed in accordance with the decisions of the FNE shall not entail any liability whatsoever in this regard, unless that the same TDLC or FNE subsequently and with effect onwards, and on the basis of new factual information, consider that they may harm competition in accordance to the provisions of DL 211.</p> <p>According to article 20 of the DL 211, the actions contemplated in this law shall have a statute of limitations of 3 years as from the perpetration of the anti-competitive conduct on which they are based. This statute of limitations is interrupted by any complaint submitted by the FNE or lawsuit filed by a private party with the TDLC.</p>

B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?

No.