

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD



**VOLUNTARY PEER REVIEW
OF CONSUMER PROTECTION LAW AND POLICY
CHILE**



UNITED NATIONS

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD



**VOLUNTARY PEER REVIEW
OF CONSUMER PROTECTION LAW AND POLICY
CHILE**



UNITED NATIONS

© 2021, United Nations
All rights reserved worldwide

Requests to reproduce excerpts or to photocopy should be addressed to the Copyright Clearance Center at copyright.com.

All other queries on rights and licences, including subsidiary rights, should be addressed to:

United Nations Publications
405 East 42nd Street
New York, NY 10017
United States of America

Email: publications@un.org
Website: un.org/publications

The designations employed and the presentation of material on any map in this work do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Mention of any firm or licensed process does not imply the endorsement of the United Nations.

United Nations publication issued by the United Nations Conference on Trade and Development.

UNCTAD/DITC/CPLP/2021/1

ISBN: 978-92-1-113001-0

eISBN: 978-92-1-005461-4

Sales No. E.21.II.D.12

NOTE

The United Nations Conference on Trade and Development (UNCTAD) serves as the focal point within the United Nations Secretariat for all matters related to consumer protection policy. UNCTAD promotes the United Nations guidelines for consumer protection and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

UNCTAD seeks to further the understanding of the contribution of consumer protection law and policy to development and to create an enabling environment for the efficient functioning of markets. The work of UNCTAD is carried out through intergovernmental deliberations, capacity-building activities, policy advice, and research and analysis on the interface between consumer protection, competition and development.

Voluntary peer reviews of consumer protection law and policy conducted by UNCTAD are mandated by the General Assembly in its resolution 70/186 of 22 December 2015 adopting the United Nations guidelines for consumer protection. The guidelines seek, among other things, to assist countries in achieving or maintaining adequate protection for their population as consumers.

ACKNOWLEDGEMENTS

Voluntary peer reviews on consumer protection law and policy are conducted by UNCTAD at the annual meetings of the Intergovernmental Group of Experts on Consumer Protection Law and Policy or at the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

This report was prepared by Anahí Chávez, consumer protection expert and former Director of the National Consumer Protection Authority of Peru, and Luciano Timm, consumer protection expert and former National Consumer Secretary of Brazil (in charge of the section on dispute resolution and consumer redress), under the supervision of Arnau Izaguerri, Economic Affairs Officer, and direction of Teresa Moreira, Head of the Competition and Consumer Policies Branch.

The report benefited from helpful comments by Tansuğ Ok. It was edited by Eduardo Geronimi; the cover design is by Malagi Studer. UNCTAD would like to acknowledge the leadership provided by Lucas Del Villar, Director of the National Consumer Service of Chile (SERNAC), as well as the support and contributions of all on his team. UNCTAD would also like to thank all the individuals and representatives of institutions in the public, private and voluntary sectors who were interviewed for the report. Funding for the report was provided by the Government of Chile.

CONTENTS

NOTE	III
ACKNOWLEDGEMENTS	IV
FIGURES.....	VII
INTRODUCTION	1
I. POLITICAL, ECONOMIC AND SOCIAL CONTEXT.....	3
II. LEGISLATIVE FRAMEWORK	7
A. Consumer rights protection law (Act No. 19496).....	7
B. Powers of the National Consumer Service	8
1. Supervision.....	8
2. Administrative interpretation.....	9
3. Proposal of legislative amendments	9
4. Voluntary collective procedures.....	9
5. Evaluation of voluntary compliance plans	9
C. Main aspects of the legislation.....	9
1. Supplementary nature of Act No. 19496	10
2. Consumer rights	10
3. Consumer information	10
4. Dispute resolution and redress.....	11
D. Other relevant legislation	12
1. Privacy protection	13
2. Overindebtedness.....	13
3. Promotion of sustainable consumption	13
4. Financial services.....	14
5. Pharmaceuticals	14
6. Public services.....	14
E. Summary	15
III. PUBLIC POLICY FRAMEWORK.....	16
A. Information mechanisms for better consumer decision-making.....	16
1. Interactive platforms	16
2. Consumer information optimization studies.....	16
3. Studies of specific markets	18
4. Digital media and press tools and content	18
5. Access to information in the context of the COVID-19 pandemic	21

B.	Establishment of adequate infrastructure to develop, implement and monitor consumer protection policies.....	21
	1. Remote support service.....	22
	2. “Me Quiero Salir” (I want out) platform.....	22
	3. “No Molestar” (Do not disturb) platform.....	23
	4. Interpretative circulars.....	25
C.	Supervision.....	25
D.	Dispute resolution and consumer redress.....	26
	1. Consumer Care Platform.....	26
	2. Voluntary collective procedures.....	29
	3. Class action lawsuits.....	32
	4. Compensation reports.....	37
	5. Other means of dispute resolution.....	37
E.	Voluntary compliance programmes.....	39
F.	Prioritization of protection mechanisms.....	40
G.	E-commerce.....	42
H.	Summary.....	43
IV.	INSTITUTIONAL FRAMEWORK FOR CONSUMER PROTECTION IN CHILE.....	44
A.	A. National Consumer Service.....	44
B.	Consumer protection relations.....	46
	1. Institutional relations.....	46
	2. Relations with suppliers.....	47
	3. Relations with civil society.....	48
	4. International relations.....	50
C.	Institutional coordination forums for consumer protection.....	51
	1. Financial Education Committee.....	51
	2. National Product Safety Committee.....	52
D.	Summary.....	54
V.	CONCLUSIONS AND RECOMMENDATIONS.....	55
A.	Legislative framework.....	55
B.	Public policy framework.....	56
C.	Institutional framework.....	58
	BIBLIOGRAPHY.....	63
	ANNEX.....	64

FIGURES

Figure 1.	Chile: Regional and global rankings	4
Figure 2.	Chile: Macroeconomic indicators	5
Figure 3.	Chile: Evolution of poverty and inequality	5
Figure 4.	National Consumer Service: interactive platforms for consumer protection	17
Figure 5.	National Consumer Service: studies of relevant markets	18
Figure 6.	Interactive infographics	20
Figure 7.	Coronavirus web page of the National Consumer Service	21
Figure 8.	Basic product-pricing tool of the National Consumer Service.....	23
Figure 9.	Performance indicators of the “No Molestar” tool.....	24
Figure 10.	Chile: Complaints processed and closed by the National Consumer Service (2019).....	27
Figure 11.	Chile: Complaints, by market (2019)	27
Figure 12.	Chile: Complaints received (January–October 2020)	28
Figure 13.	Chile: Complaints processed and closed, by type of outcome (January–October 2020)	28
Figure 14.	Chile: Complaints processed, by market (January–October 2020)	29
Figure 15.	Chile: Number of complaints filed, by entry point and gender (January–October 2020)	30
Figure 16.	Chile: Complaints processed, by region (January–October 2020).....	30
Figure 17:	Stage 1. Class actions: admissibility	32
Figure 18:	Stage 2. Class actions: discussion, evidence and judgment	33
Figure 19:	Stage 3. Class actions: execution of the final judgment.....	34
Figure 20.	Chile: Institutions involved in consumer protection, their staffing levels and annual budgets.....	46
Figure 21.	Chile: Competitive funds and consumer associations’ projects awarded funding	50
Figure 22.	Chile: Safety alerts issued in 2019, by product type (%)	53

INTRODUCTION

In its resolution 70/186 of 22 December 2015 on consumer protection, the General Assembly reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems in order to promote their efficacy and assist interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances. The Guidelines also promote international enforcement cooperation among Member States and encourage the sharing of comparative experiences in consumer protection.

The General Assembly also decided to establish the Intergovernmental Group of Experts on Consumer Protection Law and Policy in UNCTAD to provide the international institutional machinery for the guidelines. The Intergovernmental Group has a mandate to conduct voluntary peer reviews of the national consumer protection policies of Member States. At its second session, the Intergovernmental Group discussed the framework for voluntary peer reviews¹ and encouraged Member States to volunteer for such reviews.²

The purpose of voluntary peer reviews is to provide an external and independent assessment of the effectiveness of consumer protection law and policy in a given country; to identify the challenges to be addressed and the areas to be improved in the legal and institutional frameworks, thereby contributing to enhancing the quality and efficiency of consumer protection regimes; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures in keeping with the economic and developmental particularities of each country; and, where appropriate, to assist countries in implementing the recommendations made by peers within the framework of the review.³

To date, Indonesia, Morocco and Peru have undergone reviews. Chile volunteered for the process in 2019 and is the first State member of the Organisation for Economic Co-operation and Development (OECD) to do so; its review will take place at the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, to be held on 5 and 6 July 2021. At its first session, the Intergovernmental Group agreed that the scope of the review should correspond to the areas of interest of the volunteering country.⁴

In this regard, Chile decided that the priority areas for consideration, in accordance with the guidelines, were the following: (a) dispute resolution and consumer redress; (b) access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs; and (c) the establishment of adequate infrastructures to develop, implement and monitor consumer protection policies. This selection guided the drafting of the substantive report and will guide the interactive discussions that take place during the review, complementing the holistic approach that this type of evaluation entails.

The present report, which will serve as the basis for the interactive stage of the voluntary peer review of the country's consumer protection law and policy, has three aims: a descriptive one, in that it details the consumer protection system in Chile; an evaluative one, in that it compares the situation in Chile with international best practices; and a prescriptive one, in that it contains recommendations for strengthening consumer protection in the country.

Following this introduction, the present report contains a brief overview of the political, economic and social situation in Chile (chap. I). The substantive part of the report is divided into three parts, which address the legislative framework (chap. II), public policy (chap. III) and the institutional framework (chap. IV).

Chapter II, on the legislative framework, focuses on an analysis of Act No. 19496, which establishes the rules on consumer rights protection, and on the Act's supplementary nature and its amendments, with an emphasis on the new powers granted to the National Consumer Service under Act No. 21081. Chapter III,

¹ UNCTAD, Framework for voluntary peer reviews on consumer protection law and policy, TD/B/C.I/CPLP/6, 2017.

² UNCTAD, Report of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on its second session, TD/B/C.I/CPLP/9, 2017.

³ UNCTAD, Framework for voluntary peer reviews.

⁴ UNCTAD, Report of the Intergovernmental Group.

Voluntary peer review of consumer protection law and policy: CHILE

on the public policy framework, focuses on activities, relations and policy in the area of consumer affairs. Chapter IV, on the institutional framework, looks at the work of the National Consumer Service and its role in enforcing consumer standards, as well as at other public institutions with a hand in consumer protection.

The report ends with the conclusions and recommendations arrived at over the course of the review, with an indication of the target audience for each recommendation (chap. V).

I. POLITICAL, ECONOMIC AND SOCIAL CONTEXT

Chile is located in south-western South America. Its coastline is 6,435 km in length and, according to a census conducted in 2017, it has a population of 17.5 million inhabitants.⁵ The country is bordered by Peru to the north, the Plurinational State of Bolivia to the north-east, Argentina to the east and the Drake Passage to the south, notwithstanding its island territories and Chilean Antarctica. The official language is Spanish and its currency is the Chilean peso.

Under the current Constitution,⁶ Chile is a democratic republic and a unitary State, the administration of which is functionally and territorially decentralized, or devolved in some cases, in accordance with the law. Its territory is divided into regions. Its system of government is based on the principle of separation of powers between the executive branch, which is headed by the President of the Republic, the legislative branch, which is composed of a national congress comprising the Chamber of Deputies and the Senate, and the judicial branch, which is responsible for administering justice, the highest court being the Supreme Court.

The Constitution recognizes that all persons are equal in dignity and rights and provides that the State is at the service of the individual and that its goal is to promote the common good. It is also the duty of the State to safeguard national security, protect the population and the family, strengthen the family, promote the harmonious integration of all sectors and ensure the right of every individual to participate in national life with equal opportunities.

The Constitution also recognizes the right to the protection of health and provides that the State is therefore responsible for ensuring free and equal access to services for the promotion, protection and recovery of health and for individual rehabilitation. Moreover, it establishes that the State has the duty to coordinate and oversee actions relating to health and, in particular, to ensure that they are carried out through public or private institutions.

In the economic sphere, freedom of enterprise is a fundamental right, and provision is made for freedom from arbitrary discrimination by the State and its bodies in economic matters and the regulation of the right to ownership, in its various forms, of all kinds of tangible and intangible property.

In a plebiscite on 25 October 2020, it was decided to launch a constituent process for the formulation of a new constitution. The new constitution will be drafted by a Constitutional Convention composed of 155 citizens, who will be elected by popular vote and on the basis of gender parity on 11 April 2021. The draft constitution will be presented by mid-2022 and put to a new plebiscite for approval or rejection (the “constituent process”).⁷

At the international level, Chile has an active foreign policy based on the principles of international cooperation, adherence to international law and the promotion of democracy and respect for human rights (Ministry of Foreign Affairs, 2020). Chile is a founding Member of the United Nations, having joined the Organization in October 1945, and has been a full member of OECD since May 2010.⁸

According to the World Trade Organization (WTO),⁹ Chile’s entry into OECD is a significant milestone that has helped it to continue strengthening its institutional framework; this, in turn, has allowed the country to bolster the implementation of high-level policies in various sectors, such as education, labour, financial regulation, environmental protection, State reform, international trade and investment.

Despite the economic slowdown of recent years, Chile continues to demonstrate remarkable leadership in the region thanks to its performance in various areas. In 2019, Chile was ranked as the most competitive country in the region by the World Economic Forum (WEF)¹⁰ and it ranked highly on the Index of Economic

⁵ National Institute of Statistics. Available at <https://www.ine.cl/estadisticas/sociales/censos-de-poblacion-y-vivienda>.

⁶ Library of the National Congress of Chile. For more information, see <https://www.bcn.cl/leychile/navegar?idNorma=242302>.

⁷ See <https://www.gob.cl/procesoconstituyente/#cronologia>.

⁸ See <https://research.un.org/en/unmembers/founders>.

⁹ Trade Policy Review, Chile, 2015. Available at https://www.wto.org/english/tratop_e/tpr_e/tp415_e.htm.

¹⁰ The Global Competitiveness Report 2019. Available at http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

Voluntary peer review of consumer protection law and policy: CHILE

Freedom.¹¹ Its ranking was based on an assessment that took into account the rule of law, the size of its Government, regulatory efficiency and the openness of its markets. In 2020, Chile ranked fifty-ninth in the world and second in Latin America, after Costa Rica, on the UNCTAD business-to-consumer electronic commerce index.¹²

Chile also leads in other rankings. In 2020, it ranked first in Latin America and thirty-fourth in the world on the Social Progress Index, based on an evaluation of its capacity to meet basic human needs, provide opportunities and ensure the foundations of the well-being of its citizens.

Chile ranks “very high” on the United Nations Development Programme (UNDP) human development index, with a score of 0.847; its score has been steadily increasing since 1990.¹³ However, in 2019, while it ranked highest in its region, it came in at forty-second place globally, with a score below the average of the other countries in the same category.

According to the World Bank (2020) and OECD (2018), Chile has been one of the fastest-growing Latin American economies in recent decades thanks to its solid economic framework, which has cushioned it from the effects of a volatile international environment and allowed it to reduce poverty and significantly improve the quality of life of its citizens.

Between 1990 and 1999, Chile's average annual growth was 6.09 per cent, exceeding the global average as well as that reported by developed economies. While economic growth has since decreased (from 4.16 per cent between 2000 and 2009 to 3.31 per cent between 2010 and 2019), per capita income increased substantially during the period under review; per capita gross domestic product (GDP) has almost tripled over the last 20 years, in the context of monetary and fiscal policy management that has allowed for a stable macroeconomic environment that is favourable to private investment, with low inflation, low levels of public deficit, continued trade liberalization and solid growth in the financial system.

This strong macroeconomic performance has contributed to the improvement of social indicators. According to figures published by the Chilean Ministry for Social Development and Family in 2019, the poverty rate fell from 29.1 per cent to 8.6 per cent between 2006 and 2017, while extreme poverty was reduced from 12.6 per cent to 2.3 per cent (equivalent to 412,839 persons).¹⁴

¹¹ The Heritage Foundation, 2020 Index of Economic Freedom. Available at <https://www.heritage.org/index/download>.

¹² *The UNCTAD B2C E-commerce Index 2020: Spotlight on Latin America and the Caribbean*. Available at https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf.

¹³ UNDP, *Overview, Human Development Report 2019: Beyond income, beyond averages, beyond today – Inequalities in human development in the 21st century*. Available at http://hdr.undp.org/sites/default/files/hdr_2019_overview_-_english.pdf.

¹⁴ *Informe de Desarrollo Social 2019* (Social Development Report 2019). Available at: https://www.desarrollosocialyfamilia.gob.cl/storage/docs/Informe_de_Desarrollo_Social_2019.pdf.

Figure 1. Chile: Regional and global rankings

Indicator	Year	Score	Regional position	Global position
Global Competitiveness Index	2019	70.5	1	33
Index of Economic Freedom	2020	76.8	1	15
Global Innovation Index	2020	33.9	1	54
Global Entrepreneurship Index	2019	58.3	1	19
Global Connectivity Index	2018	52.0	1	33
Human development index	2019	0.847	1	42
Social Progress Index	2020	83.3	1	34

Source: WEF, Heritage Foundation, World Intellectual Property Organization (WIPO), Global Entrepreneurship and Development Institute, Huawei, UNDP, Social Progress Imperative.

Voluntary peer review of consumer protection law and policy: CHILE

Figure 2. Chile: Macroeconomic indicators

Indicator	1990–1999	2000–2009	2010–2019
GDP (average real growth)	6.09%	4.16%	3.31%
	1999	2009	2019
Population (millions)	15.2	16.9	19.1
GDP per capita (in US\$)	4 952.9	10 220.1	14 772.1
Unemployment rate (annual)	10.0%	11.1%	7.2%
Inflation (annual change)	3.3%	1.5%	2.3%
Current account balance (% of GDP)	0.1%	1.9%	-3.8%
Public deficit (% of GDP)	-2.0%	-4.2%	-2.6%

Source: International Monetary Fund (IMF).

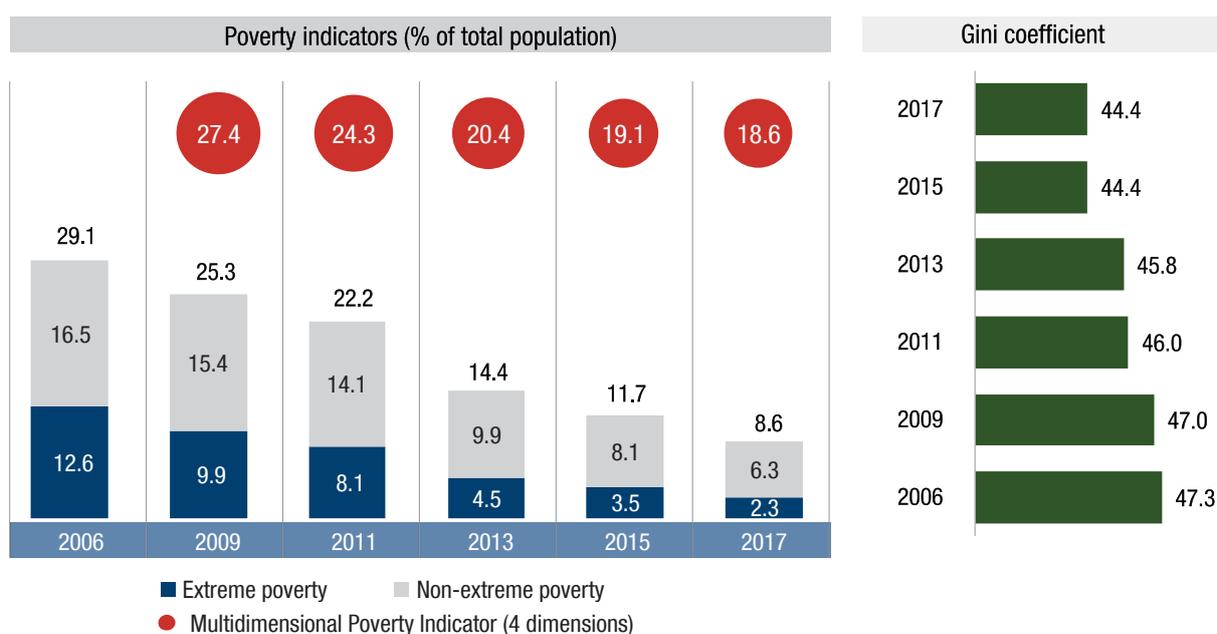
However, progress has not been uniform; poverty is more than twice as prevalent in rural areas as in urban areas.

Looking beyond income, around 18.6 per cent of the population is classified as vulnerable in terms of multidimensional poverty, with no significant change since 2015; this population group is affected by gaps in areas such as education, health, work, social security, housing and general living standards. Moreover,

despite a reduction in recent years, income inequality remains high, with the Gini coefficient standing at 44.4 in 2017.

The above-described environment of economic slowdown, income inequality and a growing feeling of abuse and lack of protection among citizens sparked a massive social movement in October 2019, prompting a shift in favour of greater social spending and the beginning of what is likely to be

Figure 3. Chile: Evolution of poverty and inequality



Source: Ministry of Social Development, World Bank.

Voluntary peer review of consumer protection law and policy: CHILE

a reconfiguration of the legal framework governing the Chilean model. As mentioned above, in a national plebiscite on 25 October 2020, citizens approved a proposal to launch a constituent process for the formulation of a new constitution; the election of the members of the aforementioned Constitutional Convention is to be held on 11 April 2021.

Moreover, in 2020, Chile, like the rest of the world, was impacted by the health emergency caused by the coronavirus disease (COVID-19) pandemic,

which led to a deterioration of conditions and greater precariousness in the labour market and in households and to a high level of uncertainty.

In conclusion, Chile faces a broad range of challenges in the context of social expectations that will require full political consensus on the public policies needed to respond to social demands without eroding the country's traditionally solid and successful macroeconomic management model.

II. LEGISLATIVE FRAMEWORK

This chapter focuses on the main Chilean consumer protection law, Act No. 19496, and its amendments, principally those contained in Act No. 21081, which was published in September 2018 and has been in force since March 2019. This law represents the major regulatory landmark of the last 20 years; it established the powers and structure of the National Consumer Service and procedural aspects of class actions for consumer protection. The relevant consumer protection legislation is examined below.

A. CONSUMER RIGHTS PROTECTION LAW (ACT NO. 19496)

The relevant legal framework for consumer protection consists mainly of Act No. 19496 of March 1997, which establishes rules for the protection of consumer rights and mandates the National Consumer Service to enforce them. The Act is of general application, except with regard to matters regulated by sectoral laws of the same rank,¹⁵ such as those relating to transport services and utilities, in which case it is of supplementary application.

The main purpose of Act No. 19496 is to regulate consumer-supplier relations and to identify infringements that are damaging to consumers, together with the applicable procedure and collective mechanisms that consumers can use to obtain compensation in such cases. The Act is of full or concurrent application within the Chilean legal system in respect of mechanisms for the protection of the collective and common interests of consumers.

According to the UNCTAD World Consumer Protection Map (2021),¹⁶ the constitutions of Chile and Uruguay – unlike those of Argentina, Brazil, Colombia, Mexico and Peru and an increasing number of OECD member countries – do not encompass the protection

of consumer rights.^{17, 18} Therefore, and in view of the current constituent process, it would be appropriate for the National Consumer Service to provide input and advice to the Constitutional Convention regarding the protection of consumer rights and for this body to consider including consumer protection in the Chilean Constitution.

Act No. 19496 has been amended several times over the years. The principal amendments were introduced in 1999, by Act No. 19659 establishing penalties for illegal collection procedures; in 2004, by Act No. 19955, which modifies aspects related to the right or possibility of withdrawal from certain types of contracts, facilitates the creation of consumer associations and lays down a framework for class actions; in 2011, by Act No. 20555, which confers powers on the National Consumer Service for the protection of consumers in financial markets; and in 2018, by Act No. 21081, which, after being extensively debated by the legislature and referred to the Constitutional Court and the Comptroller-General's Office for an opinion, increased the powers of the National Consumer Service, thus strengthening the consumer protection framework.

The process that led to the most recent amendment of Act No. 19496 began with the presidential message of 2 June 2014 and concluded with the publication of Act No. 21081 in the Official Gazette of 13 September 2018. Over this period of more than four years, the draft legislation was the subject of intense debate, including review by the Constitutional Court and the Comptroller-General's Office.

The Constitutional Court declared part of the bill approved by Congress – mainly the articles empowering the National Consumer Service to initiate administrative penalty proceedings – to be unconstitutional. Despite the criticisms received, the Service does not believe that the withdrawal of this competence hinders the performance of its public

¹⁵ Article 2 bis of Act No. 19496 provides that: "Notwithstanding the provisions of the preceding article, this Act shall not apply to the production, manufacture, import, construction, distribution or sale of goods or the rendering of services when these activities are regulated by special laws, except: (a) in matters that are not provided for in special laws."

¹⁶ Available at <https://unctadwcpm.org/map.html#>.

¹⁷ World Consumer Protection Map, taking account of responses from 28 of the 37 OECD member countries.

¹⁸ However, the Constitutional Court has recognized the importance and protective nature of consumer protection rules, as is clear from the judgments in case No. 980-07 and case No. 4792-18. Available at <https://www.tribunalconstitucional.cl/expediente>.

functions, as the Act allows it to use equivalent protection mechanisms, thanks to its supervisory role and its power to file complaints in the general interest in a less bureaucratic procedure. Although this allows for fewer administrative and judicial appeals, offenders are still subject to the same system of fines and the consumers affected can, through an individual judicial procedure, obtain full compensation for harm suffered and have unfair terms and conditions declared null and void.

The consumer protection framework, as reformed by Act No. 21081, has the following characteristics:

- The National Consumer Service wields supervisory powers, powers of administrative interpretation, and the power to propose legislative amendments, initiate voluntary collective procedures and evaluate compliance plans, all of which will be described below.
- The limitation period within which actions must be brought has been extended from six months to two years, counting from the cessation of the infringement. Civil suits are time-barred in accordance with the provisions of the Civil Code or special laws.
- A collective mediation procedure of an administrative nature has been established so that parties to disputes can obtain prompt, timely, efficient and adequate solutions without turning to the courts.
- Fines have been increased so that in class actions they are now up to six times higher than they used to be, and can amount to as much as 2,250 monthly tax units (approximately US\$ 162,000). Furthermore, in the event of serious and large-scale infringements, fines can be applied in respect of each affected consumer and can be as much as 45,000 annual tax units, or about US\$ 38 million.
- Prevention of infringements has been encouraged by establishing the mitigating circumstance of “substantial cooperation”, which may be taken into account for companies that have, for example, had a compliance plan approved by the National Consumer Service.
- In the case of class action lawsuits, compensation may extend to moral damage,

in other words, non-pecuniary, emotional or psychological damage caused to consumers by infringements of the law.

B. POWERS OF THE NATIONAL CONSUMER SERVICE

The powers of the National Consumer Service are laid down in Act No. 19496 and, as mentioned above, were strengthened by amendments introduced by Act No. 21081 with a view to enhancing the consumer protection framework and the performance of the consumer protection agency. Among the Service’s main competencies, which were not provided for in the original legislation, are its supervisory powers, its powers of administrative interpretation and its power to propose legislative amendments, initiate voluntary collective procedures and evaluate compliance plans.

1. Supervision

Supervisory power is understood as “the activity carried out by the Government, with prior legal authorization, consisting of inspections undertaken by a government agency to ensure the proper functioning of a legitimate activity carried out by a private party in the public interest”.¹⁹ The Government is thus able to intervene in the private sphere in order to verify compliance with the requirements and conditions laid down by law.²⁰

Article 58 of Act No. 19496 states that the National Consumer Service is responsible for overseeing compliance with the provisions of the Act and all legislation for the protection of consumer rights.

The Service carries out supervisory activities on the basis of risk-weighting, as set forth in its supervision policy.²¹ This policy establishes that the supervisory process is composed of different stages and means of implementation, depending on the inspection authority concerned, and that the supervisory activities may take any of the forms provided for in this process. Thus, such activities may be face-to-face, with

¹⁹ Bermúdez Soto, Jorge, *Derecho Administrativo General* (General administrative law), 3rd ed., updated, Thomson Reuters, 2014, pp. 323–324.

²⁰ *Ibid.*, p. 323.

²¹ National Consumer Service, Exempt Resolution No. 370 of 23 April 2020. Available at https://www.sernac.cl/portal/618/articles-58538_archivo_01.pdf.

verification carried out by an inspector at the supplier's offices or store; digital, with an inspection of the supplier's website or digital platforms made available to consumers; or they may take the form of a formal request for information for use in an investigation into the company's compliance with consumer rights in its sphere of activity.

The Service's supervisory activities are carried out in accordance with its Annual Supervision Plan,²² which prioritizes those areas of the market that present the highest level of risk for the exercise of consumer rights, and which has a scheduled and an unscheduled component. The latter makes it possible for the Service to address contingent problems that were not foreseen in the initial planning.

Unjustified refusal to comply with formal requests made in the course of supervisory activities may result in a fine of up to 750 monthly tax units. The Service may also request the issuance of an arrest warrant against a duly summoned person who fails to appear, and the seizure of documents; however, for these more intrusive actions it requires the authorization of the local police court.

2. Administrative interpretation

Article 58 (2) (b) of Act No. 19496²³ authorizes the National Consumer Service to prepare interpretative circulars²⁴ and administrative rulings.²⁵ The former are general interpretations of consumer protection legislation, while the latter are individual pronouncements on specific matters raised by citizens in the form of questions – they differ from circulars in that they contain the interpretation of consumer law in the specific case in simple terms.

3. Proposal of legislative amendments

Under article 58 (2) (c), the National Consumer Service may propose to the President of the Republic, through the Ministry of Economic Affairs, Development and

Tourism, the approval, amendment or repeal of legal or regulatory provisions to the extent that this is necessary for the adequate protection of consumer rights. Legislative or regulatory amendments proposed by the Service must be accompanied by a technical report providing background information and stating the grounds for the proposed amendments.

4. Voluntary collective procedures

As mentioned above, the National Consumer Service, by virtue of article 58 (2) (f) of Act No. 19496, is authorized, ex officio, at the request of a supplier or on the basis of a well-founded complaint from a consumer association, to initiate a voluntary procedure whose purpose is to obtain a prompt, comprehensive and transparent solution in the event of conduct harmful to the collective or common interests of consumers. In each case the solution must be proportional to the damage caused, include all affected consumers and be based on objective elements.

5. Evaluation of voluntary compliance plans

Article 24 (4) (c) of Act No. 19496 provides that "substantial cooperation" with the National Consumer Service will be considered a mitigating factor in the application of fines, and that such cooperation occurs when the supplier has, for example, a compliance programme that: (a) specifically concerns the matter to which the infringement relates; (b) was previously approved by the National Consumer Service; and (c) is proved in the relevant proceedings to have been effectively implemented and monitored. Thus, in order for a supplier to benefit from this mitigating circumstance, it must have first submitted its compliance plan to the National Consumer Service for approval. Furthermore, article 54 P of the Act provides for corrective compliance plans, which may be included in agreements that are reached in voluntary collective procedures involving one or more suppliers and the National Consumer Service.

C. MAIN ASPECTS OF THE LEGISLATION

Having reviewed developments in connection with the main consumer protection law, we will briefly explain certain aspects of it that will come up repeatedly in this report, namely the supplementary nature of the Act,

²² National Consumer Service, Annual Supervision Plan Guidelines 2020.

²³ Article 58 (2) (b) provides that: "The National Consumer Service shall be responsible for the following functions in particular: ... Administratively interpreting the consumer rights protection legislation that it oversees. Such interpretations shall be binding only on officials of the Service."

²⁴ Available at <https://www.sernac.cl/portal/618/w3-propertyvalue-21072.html>.

²⁵ Available at <https://www.sernac.cl/portal/618/w3-propertyvalue-66262.html>.

consumer rights, consumer information and conflict resolution mechanisms.

1. Supplementary nature of Act No. 19496

Act No. 19496 regulates consumer relations in general, while recognizing the existence of other applicable legislation. Thus, while article 2 lists the acts and contracts that are subject to the Act's provisions, article 2 bis provides for exceptions to the scope of application, stipulating that "notwithstanding the provisions of the preceding article, this Act shall not apply to the production, manufacture, import, construction, distribution or sale of goods or the rendering of services when these activities are regulated by special laws", thus recognizing the "principle of speciality". However, article 2 bis also states that despite special laws having precedence over the general law contained in Act No. 19496, the latter will have preferential application: "(a) in matters that are not provided for in special laws; (b) in matters regarding procedure in cases in which the collective or common interest of consumers or users is compromised, and regarding the right to request compensation by means of that procedure; and (c) in matters regarding the right of consumers or users to resort individually, in accordance with the procedure established in this Act, to the corresponding court of law in order to be compensated for any damage caused by a breach of an obligation assumed by a supplier, provided that no compensation procedures are provided for in said special laws."

Given the general and supplementary nature of Act No. 19496, it is clear that a review of consumer protection in Chile must cover not only the provisions of the Act, but also those of special laws (or "sectoral laws", as they are also known) that establish the rules that apply to specifically regulated markets, such as financial services, pharmacies, privacy protection, waste management and extended producer liability. Similarly, and for the same reason, attention is drawn to the need for coordinated action between the National Consumer Service, as the consumer protection agency, and the other government bodies responsible for ensuring compliance with these special laws.

2. Consumer rights

Article 3 of Act No. 19496 sets out the basic rights and duties of all consumers, including consumers of

financial products or services. Article 4 stipulates that consumers cannot waive these rights in advance.

The rights and duties of consumers are:

- (a) Freedom of choice in goods and services;
- (b) The right to truthful and timely information on goods and services offered, their price, conditions of contract and other relevant characteristics, and the duty to inform themselves responsibly about them;
- (c) The right not to be arbitrarily discriminated against by suppliers of goods and services;
- (d) The rights to safely consume goods and services, and to the protection of their health and the environment, and the duty of suppliers to prevent risks that may affect consumers;
- (e) The right to adequate and timely redress and compensation for all material and moral damages arising from a breach of any of the obligations assumed by suppliers, as well as the duty to take legal action in accordance with the remedies provided by law;
- (f) The right to education on responsible consumption and the duty to engage in consumer transactions only with established businesses.

3. Consumer information

As mentioned above, article 3 (1) (b) of Act No. 19496 recognizes the basic right to receive truthful and timely information on goods offered, their price, conditions of contract and other relevant characteristics. This right is counterbalanced by the duty of consumers to inform themselves responsibly about the goods and services that they purchase. The right to information is related to the right to freedom of choice in goods or services enshrined in article 3 (1) (a).

To give effect to both rights, the Act defines basic commercial information as the data, instructions, facts or indications that suppliers are required to provide to consumers in compliance with a law. It thus refers to the many laws that establish specific duties in, for example, the areas of financial products, procurement and safety.

Meanwhile, article 58 of the Act establishes that the National Consumer Service must ensure compliance with the consumer protection laws, publicize the rights and duties of consumers, carry out activities to inform and educate consumers and request information from suppliers under its supervisory powers.

In the specific area of advertising, article 30 establishes the obligation of suppliers to make public the prices of the goods they sell or the services they offer, and regulates how these prices must be displayed, i.e., in a clearly visible and complete manner. In e-commerce, the Act provides that websites used by suppliers to display goods and offer services must state the price and the essential characteristics and functions of those goods or services.

Furthermore, in respect of contracts concluded electronically, suppliers are obliged (under article 12 A of Act No. 19496) to send written confirmation once a contract is concluded. This confirmation may be sent electronically or by any means of communication, indicated to the consumer in advance, that ensures that the consumer is duly informed in a timely manner. The confirmation must contain a full, clear and legible copy of the contract.

4. Dispute resolution and redress

Failure to comply with the provisions of the Act may give rise to the use of various protection mechanisms, the purpose of which may be to: (a) fine suppliers who infringe said provisions; (b) invalidate unfair terms in standard contracts; (c) obtain the performance of unfulfilled obligations; (d) put an end to acts that affect the exercise of consumers' rights; and (e) obtain due compensation for damages or due redress, as the case may be, in accordance with article 50 of the Act.

The Act thus recognizes that it may be the individual, general, collective or common interests of consumers that are affected and establishes various ways in which consumers or their representatives may request the protection of their rights.

Consumers whose **individual interests** are affected may file individual lawsuits without the assistance of a lawyer before the local police courts. The National Consumer Service, meanwhile, may either initiate proceedings of the same nature before the same courts, acting in the general interest of consumers, or else become a party to any of the suits initiated by a consumer, acting for the benefit

of consumers in general. In view of this division of responsibilities, it is important that Chile provide continuous training for law enforcement authorities on consumer issues, as recommended in the following sections on the public policy framework and the institutional framework.

These lawsuits may be filed in the court corresponding to the place where the consumer or supplier is domiciled and do not require the assistance of a qualified lawyer. The consumer concerned may appear in person in a simplified procedure in which the prorogation of jurisdiction by contractual means is prohibited.

The Act expressly states that consumers who cannot afford to pay for their defence may be assisted by the relevant legal assistance agency or by a consumer association. In this regard, it is important to take steps to verify compliance with the Act – allocating the necessary resources for this purpose – in order to promote access to justice for the individual consumers concerned, with special consideration for consumers in vulnerable situations.

In addition to lawsuits to protect the individual interests of consumers, the Act provides under article 58 (2) (g) for lawsuits in defence of their **general interest**, which may be brought only by the National Consumer Service. The general interest is understood as that of society as a whole and is synonymous with the public interest or common good, the promotion of which is the goal of the State and its agencies under article 1 of the Constitution. The aim of such lawsuits is to promptly correct conduct that infringes the rights of consumers and to punish suppliers who engage in such conduct.

The Act provides for two mechanisms for the protection of **collective and common interests**. One, which is voluntary and consensual and based on a negotiation between the National Consumer Service, on behalf of consumers, and the supplier, is called the **voluntary collective procedure**. The other, of an adversarial judicial nature, is the **class action**, whose purpose is to establish penalties for the infringement of the Act and to obtain due compensation, cessation of the conduct and the invalidation of unfair terms in standard contracts.

The ordinary courts of justice have jurisdiction to hear cases concerning the protection of the collective or common interest of consumers, in accordance with the general rules on such matters. In short, the class action, or action with *erga omnes* effect, allows for the processing and resolution, in a single trial before the same court, of cases in which infringements of consumer protection laws affect a determined or undetermined number of consumers in a similar way.

Under article 51 of the Act, this supra-individual procedure may be initiated by a claim filed by: (a) the National Consumer Service; (b) a consumer association formed at least six months prior to the filing of the suit and duly authorized by its board of directors to do so; or (c) a group of no fewer than 50 consumers, duly identified, having the same affected interest. The procedure has at least three stages: (a) admissibility of the claim, beginning with the filing of the claim and ending with the publication of the court's ruling on admissibility; (b) discussion, evidence and judgment, consisting of the company's response, the conciliation hearing, the assessment of evidence if no conciliation is reached, and the handing down of a decision in accordance with the rules of sound judgment (appeals against such judgments may be lodged with the Court of Appeal, while the judgments of the Court of Appeal may be the subject of an appeal in cassation on the form and merits, which would be heard by the Supreme Court); and (c) implementation of the final judgment, in which the company must provide the compensation, redress or refunds ordered by the court, and the consumers may: (i) exercise their rights as set forth in the judgment, if it does not provide for automatic implementation by the company, or (ii) reserve their rights.

Pursuant to the amendments contained in Act No. 21081, which entered into force in 2019, compensation determined by this procedure can extend to moral damages whenever the physical or psychological integrity or the dignity of consumers has been affected. Likewise, suppliers may make a proposal for compensation or redress for moral damages, considering a common minimum amount for all affected consumers. Once a claim has been contested or the defendant is declared in default, the judge may summon the parties to a conciliation hearing (or as many hearings as the judge deems necessary), at which the parties present specific proposals for a settlement. Full or partial conciliation has the value of an executory judgment for all legal purposes.

As mentioned previously, **voluntary collective procedures** are a supra-individual consensual mechanism of an extrajudicial administrative nature designed to protect the collective or common interest of consumers. Article 54 H of Act No. 19496 provides that the purpose of these procedures is to obtain prompt, comprehensive and transparent solutions in the event of conduct harmful to the collective or common interests of consumers. The procedure is set in motion by the National Consumer Service, which is authorized to negotiate with suppliers on the basis of various principles such as consumer indemnification, economy of procedure, openness to the public, integrity and due process.

The procedure is initiated by the National Consumer Service through an administrative act, which may be issued: (a) ex officio; (b) at the request of the supplier concerned; or (c) on the basis of a well-founded complaint by a consumer association. As the procedure is voluntary, suppliers are not obliged to submit to it, and once it has started, they can express their wish not to continue. The National Consumer Service can also decide at any time during the procedure to discontinue the negotiations.

The procedure has a short time frame. The Act provides for a maximum of three months, which may be extended once by up to three months, either at the request of the company or ex officio by the National Consumer Service, when justified by the advanced stage of negotiations or the need for more time to review background information or examine compensation proposals made in the course of the negotiations.

D. OTHER RELEVANT LEGISLATION

Some consumer relations take place in the context of activities or markets that are regulated by laws other than Act No. 19496, in which case, as indicated above, the Act has a general and supplementary nature. These special laws are described below, with reference to the recommendations contained in the United Nations guidelines for consumer protection, the relevant provisions of which are indicated in each subsection.

1. Privacy protection

With regard to the protection of privacy and the processing of personal data (United Nations guidelines for consumer protection, paras. 5 (k) and 11 (e)), Act No. 19628 (the Privacy Protection Act) guarantees the rights of individuals and establishes a set of obligations for public and private entities that process personal data. The Act provides for a procedure before the local police courts whereby data subjects can file individual lawsuits for the improper processing of their data, requesting the deletion, modification or blocking thereof, and may also request compensation for pecuniary and moral damages.

Furthermore, in application of article 2 bis of Act No. 19496, the National Consumer Service may initiate proceedings to protect the collective interests of consumers who are data subjects and who have suffered damages caused by infringements of the Privacy Protection Act. The Service also continuously reviews standard contracts, paying special attention to the processing of the personal data contained therein and the possibility that the contracts might contain unfair terms. In this regard, the Supreme Court has stated that “although consumer protection laws are not applicable, in principle, to matters of personal data, they are applicable when the collective or common interest is compromised”.²⁶

In this context, the National Consumer Service has brought several class actions to protect the interests of consumers who are personal data subjects, with a view to modifying the conduct of suppliers in a manner that ensures consumer protection. One example was the “Cartolazo” case involving Banco de Chile in 2012, which resulted in compensation payments totalling approximately 1.3 billion Chilean pesos.²⁷

2. Overindebtedness

In the area of overindebtedness and bankruptcy proceedings (guidelines, para. 40), the Office of the Superintendent of Insolvency and Restructuring is responsible for ensuring the effectiveness and transparency of bankruptcy proceedings by overseeing and facilitating agreements to protect the parties. It promotes restructuring by helping individuals

and companies overcome situations of insolvency and overindebtedness.

Act No. 20720 established a renegotiation procedure as a solution to the overindebtedness of individuals and provided for corporate reorganization as a new way for companies in financial difficulties to stay in business.

The activities of the Office of the Superintendent complement the functions of the National Consumer Service with regard to consumers of financial services. Thus, under Act No. 20555, amending Act No. 19496, the Service carries out financial education and literacy activities and produces and disseminates research aimed at: (a) increasing consumers’ financial knowledge to improve their decision-making; (b) optimizing consumers’ use of their financial resources; and (c) drafting legislative amendments on key aspects of the use of financial services (including behavioural studies).

3. Promotion of sustainable consumption

Regarding the promotion of sustainable consumption and environmental regulations (guidelines, paras. 49–62) and in connection with solid waste, the promotion of responsible consumption and environmental protection, Act No. 20920 establishes the framework for waste management, extended liability and the promotion of recycling. The Act contributes to the education and awareness of consumers so that they purchase more environmentally friendly products.

In line with the relevant OECD recommendations, the Ministry of the Environment is in charge of reducing waste generation and promoting reuse, recycling and other types of recovery.

Within this framework, in November 2020 the Government launched the “#ElijoReciclar” (I choose to recycle) label²⁸ as the first national certification of the level of recyclable content. The label is awarded to products that are more than 80 per cent recyclable, with the aim of promoting sustainable consumption. The use of the label will be accompanied by educational campaigns designed to improve household recycling practices among consumers.

²⁶ Supreme Court judgment of 11 October 2016 in case No. 4903–2015, legal ground 13.

²⁷ <https://www.sernac.cl/portal/604/w3-article-2560.html>.

²⁸ <https://elijoreciclar.mma.gob.cl/>.

The National Consumer Service has taken an active role in promoting responsible consumption. In 2018, for example, the Service, together with the Chile Foundation, the Ministry of the Environment and the Interministerial Committee on Sustainable Consumption and Production, and with the support of UNDP through the One Planet network, launched the “Mi Código Verde” (My green code) platform²⁹ to highlight products that comply with Sustainable Development Goal 12 on sustainable production and consumption.³⁰ The platform disseminates clear and comparable information about sustainable products, educates consumers about sustainability and encourages companies to engage in clean and socially responsible production practices.

4. Financial services

The National Consumer Service is responsible for ensuring compliance with consumer protection laws in the financial services market (guidelines, paras. 66–68). As stated above, in 2011 legislative amendments were introduced to regulate consumption of financial services, attributing new functions to the Service. Furthermore, recent laws such as the Financial Portability Act (No. 21236) and the Release of Mortgages and Collateral Act (No. 20855) have established new rules in this area.

Since 2011, the National Consumer Service, acting through its collective protection mechanisms, has secured more than 380 billion pesos (approximately US\$ 318 million) in reparation, indemnities and compensation for 3 million financial consumers. In one of the most important cases, brought in 2012 against the retail company La Polar SA, it obtained more than 17 billion pesos (US\$ 23 million) in direct payments, plus a reduction of 293 billion pesos (US\$ 398 million) in the interest applied to unilaterally rescheduled debts and the elimination of insurance and other charges. More recently, an agreement was reached with Banco Scotiabank for the payment of 19,854 million pesos (US\$ 27 million) under a voluntary collective procedure initiated in respect of differences in the interest rates offered and charged to consumers in mortgage-refinancing deals.

²⁹ <https://micodigoverde.cl/>.

³⁰ <https://www.un.org/sustainabledevelopment/es/objetivos-de-desarrollo-sostenible/>.

5. Pharmaceuticals

In the area of pharmaceuticals (guidelines, para. 74), the Ministry of Health is responsible for ensuring, through its regional secretariats and the agencies that liaise with the President of the Republic through the Ministry, that the population has access to high quality, safe and effective medicines and pharmaceuticals (Act No. 20724). The Ministry approves a national formulary containing the list of essential medicines (identified according to their international non-proprietary name, dosage form, dosage and indicated use) that constitute the pharmacotherapeutic package needed to effectively care for the population, taking into consideration its health status and the prevalence of diseases. The formulary is the basis for determining the minimum list of pharmaceuticals that must be stocked by pharmacies.

To inform consumer decision-making, the National Consumer Service carries out inspections in pharmacies. For example, it verifies whether less expensive generic drugs are on sale and, if not, whether alternatives are offered, and whether the companies meet the legal obligation to provide consumers with a way to check prices for themselves. Such activities result in more information being provided to consumers and promote best practices among suppliers. The Service shares its findings with the Ministry of Health so that the Ministry can take any necessary measures within its sphere of competence.

6. Public services

With regard to public services (guidelines, para. 77), the Office of the Superintendent of Sanitation Services has responsibility for drinking water and sewerage services (Act No. 18902, establishing the Office); the Office of the Superintendent of Electricity and Fuels is responsible for electricity, gas and fuel services (General Electrical Services Act, Law-Ranking Decree No. 4 of 2018); and the Office of the Undersecretary for Telecommunications is responsible for claims related to telecommunications services (Act No. 18168). The Office of the Undersecretary for Transport has responsibility for public transport, vehicle-testing centres and driving schools. The Office of the Superintendent of Health is responsible for claims against private health providers, including doctors, clinics and medical centres (Law-Ranking Decree No. 1, establishing the consolidated, coordinated and systematized text of Decree-Law No. 2763 and Acts No. 18933 and No. 18469).

As mentioned above, the National Consumer Service, in conformity with Act No. 19496, protects the rights of public service users in the event of a collective infringement. For example, the Service initiated a voluntary collective procedure with Empresa de Servicios Sanitarios de Los Lagos SA as a result of the suspension of the drinking water supply in the city of Osorno. This case is described in more detail in the section on voluntary collective procedures.

E. SUMMARY

The consumer protection system in Chile has been reinforced and modernized by the establishment of the National Consumer Service. It has also been bolstered by the attribution of new powers to the Service, reflecting the country's comparative institutional strength, as described in the introduction to this report.

The legislative framework for consumer protection in Chile has been consolidated over time. The latest revision and amendments introduced under Act No. 21081, which strengthened the system, are especially important.

Possible areas of improvement can be identified at the constitutional level; for instance, enshrining consumer protection in the Constitution as a fundamental right would establish consumer protection as a cross-cutting public policy of the State.

The consumer protection laws broadly regulate consumer-supplier relations and are particularly advanced in terms of the powers that they confer for the defence of the supra-individual interests of consumers and the possibility of obtaining compensation for harm caused, including, as the law stands, moral harm.

From an examination of the legislation and the general and supplementary nature of Act No. 19496, it is clear that, while the Act constitutes the main legislative framework, there are other special laws which – as the Act itself stipulates – are of preferential application, with some exceptions. It would therefore be desirable to reaffirm the guiding principles of consumer law and their cross-cutting application to all relevant sectors.

The legislative framework is closely related to the public policies for consumer protection; a closer look at the application of these policies will allow for a better understanding of the Chilean system.

III. PUBLIC POLICY FRAMEWORK

Chile has an extensive public policy framework for consumer protection. This report examines initiatives in three areas of interest identified by Chile: (a) information mechanisms for better consumer decision-making; (b) the establishment of adequate infrastructure to develop, implement and monitor consumer protection policies; and (c) dispute resolution and consumer redress.

A. INFORMATION MECHANISMS FOR BETTER CONSUMER DECISION-MAKING

As a mechanism tasked with providing clear, timely information based on technical evidence, the National Consumer Service has devised various tools to provide information to consumers and assist them in their decision-making. These tools include interactive platforms, studies of specific markets, and product or service price databases. In 2019, the Service carried out 25 studies in areas such as telecommunications, financial services and products, product safety and quality, and advertising.

1. Interactive platforms

The National Consumer Service has developed several interactive platforms, which are digital tools designed to provide consumers with sufficient information to make decisions, allowing them to interact with relevant data or obtain answers on various subjects, with the possibility of creating special channels for the delivery of information. These platforms include:

- ✓ **A consumer credit comparison tool.**³¹ This tool makes it possible to compare the consumer loans (in terms of the total cost of the loan and the Annual Equivalent Cost) offered by different financial institutions, so that consumers can make better decisions in a complex market. To do this, consumers select a credit amount and the number of months in which they intend to repay it, with the option to include the cost of payment protection insurance in the comparison.

³¹ Available at <https://www.sernac.cl/app/comparador/>.

- ✓ **A bioequivalent drug pricing tool.**³² This tool allows consumers to compare the difference in price of bioequivalent drugs marketed by large pharmacy chains. It shows consumers the various alternatives with the same active pharmaceutical ingredient that can be found on the market, and the prices at which they are sold in geo-referenced pharmacies (prices are updated daily).
- ✓ **“Me Quiero Salir” (I want out).**³³ This is a tool designed to increase market transparency by providing a simple and quick way to terminate contracts, provided a reason is stated, in view of the barriers that consumers face in cancelling their telecommunications subscriptions. It is expected that the tool will be rolled out in other markets, such as financial services.

2. Consumer information optimization studies

The National Consumer Service has conducted experimental research on behavioural insights in order to encourage consumers to make better decisions and increase market transparency. Notable studies include those on:

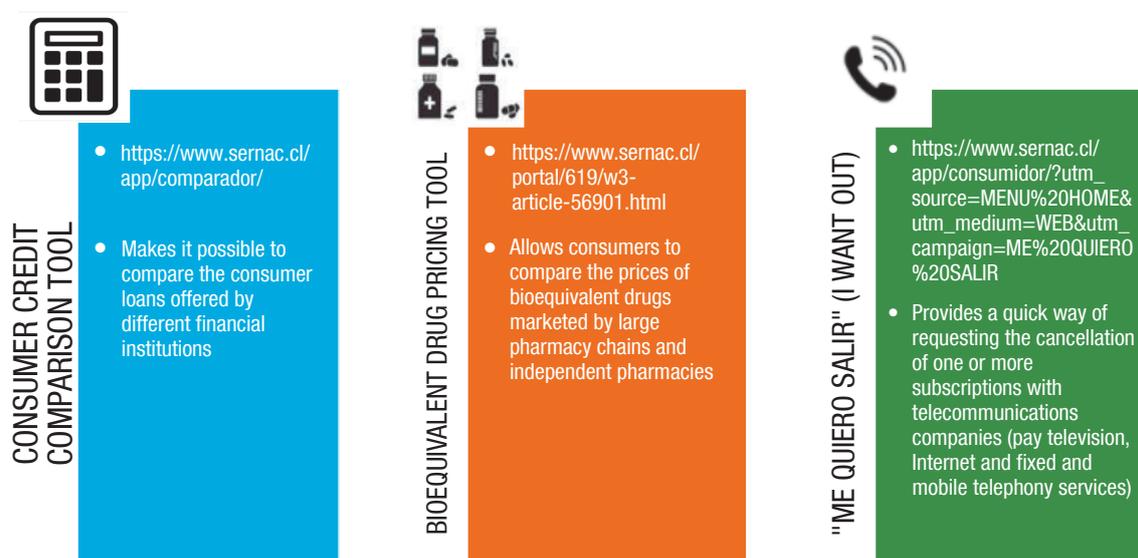
- ✓ **Clear electricity bills**

In 2016, the National Consumer Service, the Government Laboratory and the Office of the Superintendent of Electricity and Fuels prepared a report on the redesign, from the consumer’s point of view, of the electricity bills sent to their homes. A prototype was designed and led to the nationwide introduction of the new-style bills; the evidence shows that the redesign had a positive impact in terms of

³² Available at <https://www.sernac.cl/portal/619/w3-article-56901.html>.

³³ Available at https://www.sernac.cl/portal/618/w3-propertyvalue-66181.html?utm_source=SITIO%20WEB&utm_medium=BANNER&utm_campaign=ME%20QUIERO%20SALIR.

Figure 4. National Consumer Service: interactive platforms for consumer protection



Source: National Consumer Service.

a better understanding of the information provided, trust, clarity and transparency.³⁴

✓ Redesign of credit card statements

In January 2021, the National Consumer Service launched a public consultation on a second pilot study on the redesign of credit card statements,³⁵ which are received by more than 10 million consumers each month. The study was prepared by the National Consumer Service, the Complex Engineering Systems Institute of the University of Chile and the Ministry of Economic Affairs, Development and Tourism. The outcomes included statements that were clearer and easier to understand, an increased likelihood of consumers paying the billed amount and lower interest payments. The findings of the study will be used to formulate new draft legislation in this area.

✓ Redesign of mortgage statements

Another initiative in the sphere of behavioural economics was the redesign of the quarterly

mortgage statement, given that the current form of communication is of limited usefulness for borrowers, who have little understanding of the concepts used and do not perceive the statement as a tool used to promote new mortgage offers. This study was conducted by the National Consumer Service, Nuffield College of the University of Oxford, and the Centre for Experimental Social Science of the University of Santiago de Chile. The results of the experimental research were submitted for public consultation in August 2020.³⁶

In a pilot scheme, the redesigned format was found to deliver benefits such as making information clearer, improving consumers' financial decision-making and stimulating take-up of new mortgage offers. In quantitative terms, participants were 23 per cent more likely to take up a new mortgage offer. It is expected that legislative amendments will be proposed on the basis of these findings.³⁷

While efforts have concentrated mostly on the financial market, given its specific regulations and complexity,

³⁴ For more details, see https://www.lab.gob.cl/uploads/filer_public/be/1a/be1a1464-d681-4276-b491-0d9b047e91f1/proyecto_cuentas_claras.pdf.

³⁵ Available at https://www.sernac.cl/portal/619/articles-62180_archivo_01.pdf.

³⁶ https://www.sernac.cl/portal/619/articles-58737_archivo_01.pdf.

³⁷ For more details, see <https://www.SERNAC.cl/portal/619/w3-article-58737.html>.

it would be advisable to gradually extend behavioural studies to other sectors in which consumers may be suffering harm.

3. Studies of specific markets

The National Consumer Service has deepened its knowledge of various markets through the analysis and use of primary information on consumers and other relevant actors who are part of the consumer protection ecosystem that monitors market behaviour and identifies conduct that may contravene consumer regulations. These studies constitute valuable inputs for the Service's research, internal management analysis and decision-making

processes. The contents of some of these studies are summarized in figure 5.

4. Digital media and press tools and content

The National Consumer Service disseminates relevant consumer information through traditional media and social networks. As at November 2019, the Service had appeared or been mentioned 11,185 times in the national media (press, online media, radio, free-to-air television). The issues that received most coverage were those that the Service itself had pushed on to the public agenda.

Figure 5. National Consumer Service: studies of relevant markets

Study:	Study of powder detergent ingredients and labelling
Date conducted:	April 2019
Available at:	https://www.sernac.cl/portal/619/w3-article-55976.html
<p>This study found evidence of significant differences in the concentration of surfactants (among other parameters), an ingredient related to the detergent's ability to clean and remove dirt. Consequently, a working group was set up with the industry to reach a consensus on definitions of the essential ingredients of detergents, their cleaning power, and standards to be considered with respect to other variables or additional characteristics of these products. The need to update or rework the Chilean standard on household detergents was also discussed. The working group's activities are temporarily paused due to the impact of the COVID-19 pandemic on the market and in view of the conditions in which this joint work has to be carried out.</p>	
Study:	The pink tax
Date conducted:	May 2019
Available at:	https://www.sernac.cl/portal/604/w3-article-56135.html
<p>This prospective price study found that women can pay up to 30 per cent more than men for products with the same functions, such as baby items, toys and accessories, bedroom furniture and other bedroom items, adult personal hygiene and care products, and bags, backpacks and suitcases.</p>	
Study:	E-commerce analysis
Date conducted:	May 2019
Available at:	https://www.sernac.cl/portal/619/w3-article-56291.html
<p>A survey was conducted on the commercial practices of the main e-commerce companies in Chile.</p>	
Study:	Bioequivalent drug pricing
Date conducted:	September 2019
Available at:	https://www.sernac.cl/portal/619/w3-article-56901.html (link to price comparison tool)
<p>This study found significant differences in the price of drugs sold by different pharmacies, as well as failures to stock the cheapest drugs. A price comparison tool was developed so that consumers can review this information in detail.</p>	

Study:	Barriers to subscription cancellation in telecommunications
Date conducted:	December 2019
Available at:	https://www.sernac.cl/portal/619/w3-article-57783.html
This research identified 13 obstacles that telecommunications companies use to make it difficult for consumers to cancel their contracts. The study was carried out by sending requests for information to the companies, while interviews with company representatives were used to flesh out the initial results. The study led the National Consumer Service to launch the “Me Quiero Salir” platform.	
Study:	Market rankings and analysis
Date conducted:	January to December 2020
Available at:	https://www.sernac.cl/portal/619/w3-propertyvalue-65861.html https://www.sernac.cl/portal/619/w3-propertyvalue-20977.html
Various studies looked into complaints submitted to the National Consumer Service in two markets (entertainment, older persons) and rankings were compiled on the basis of complaints submitted by consumers in relation to their transactions with various companies (the telecommunications ranking was compiled jointly with the Office of the Undersecretary for Telecommunications).	

Source: National Consumer Service.

For example, in 2019, the topics that received most coverage were those related to: (a) the voluntary collective procedure initiated with Empresa de Servicios Sanitarios de Los Lagos SA (the ESSAL case) to obtain a prompt, comprehensive and transparent settlement for all consumers that this company had supplied with contaminated water; (b) the new legislative framework for consumer protection that gives greater powers to the National Consumer Service; and (c) the outcome of the collective mediation undertaken by the Service in the CMPC Tissue case.

Social networks have taken on increased importance for the National Consumer Service as a means of providing consumers with information and responding to their queries and complaints. In 2020, the Service handled 13,672 queries and complaints submitted through various networks, providing consumers with information or guidance or redirecting them to the web pages where they can submit formal complaints.

The information disseminated through the various platforms is intended to be instructive and easy -to-understand for consumers, and therefore includes:

- ✓ **Infographics.** These are visual tools that are used to provide information about the studies, surveys, press releases and other activities of the National Consumer Service. The format facilitates the quick understanding and sharing of information by social network users. An interactive version

of the infographics used on the Service's website has also been developed, allowing consumers to access different types of information to improve their knowledge.

- ✓ **Audio press releases.** Since 2020 the Service has issued audio press releases on its website in order to improve consumers' access to content. Notable audio press releases include those referring to the collection fees calculator ³⁸and the Financial Portability Act.³⁹

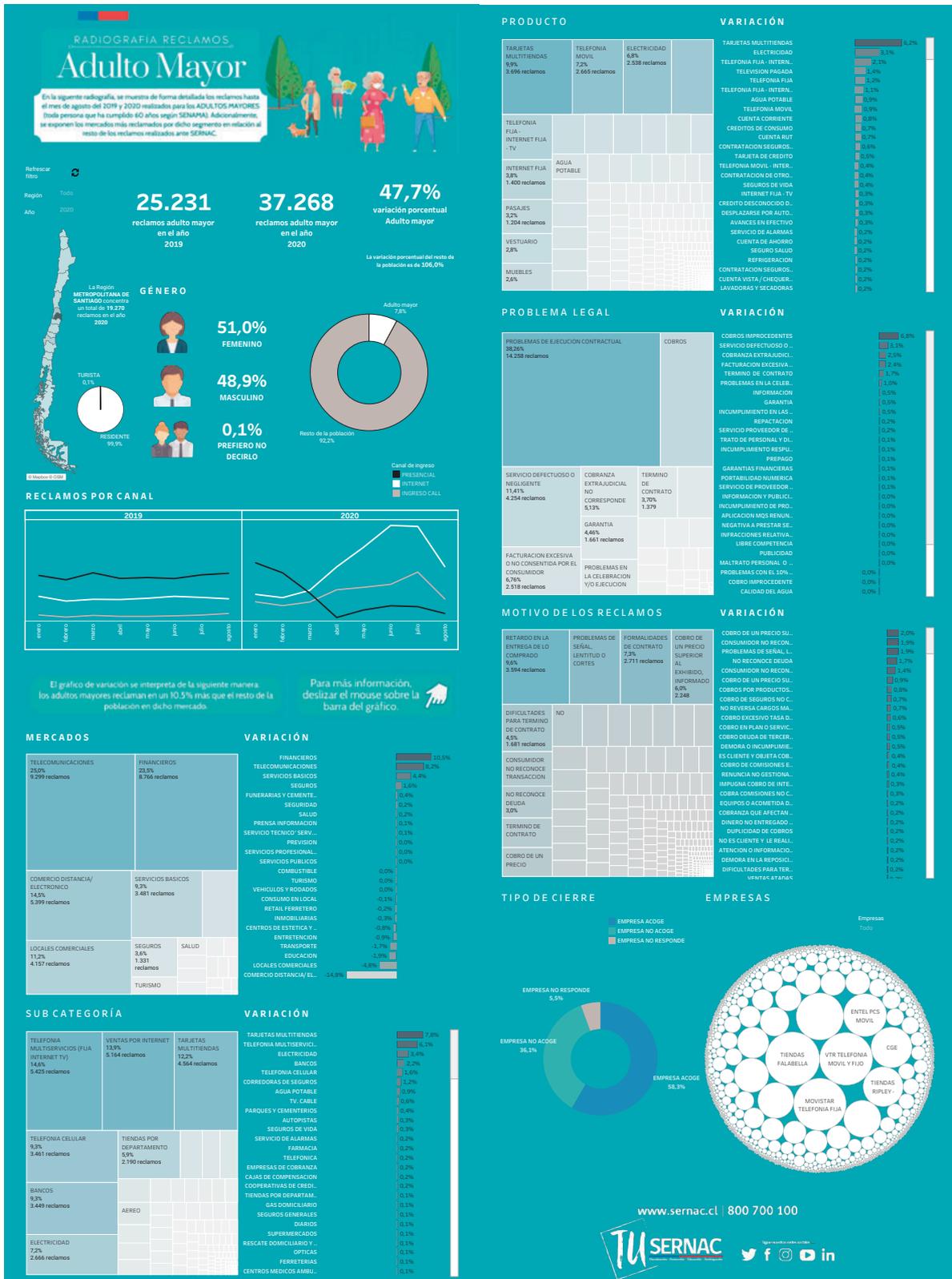
These dissemination strategies have boosted the Service's public image as a relevant and credible actor. This was corroborated by the institutions that were questioned during the drafting of this report and is also supported by: (a) a survey conducted by Cadem,⁴⁰ one of the leading market research and opinion polling companies in Chile, which periodically measures public perceptions of brands and institutional performance; in the last three years it has ranked the National Consumer Service among the top eight institutions with the highest approval ratings for performance (eighth in 2018, fifth in 2019 and seventh in 2020), even amid the general crisis of trust that followed the 2019 protests; and (b) the Access to

³⁸ Available at https://www.SERNAC.cl/portal/604/articles-59210_recurso_1.mp3.

³⁹ Available at https://www.SERNAC.cl/portal/604/articles-59174_recurso_5.mp3.

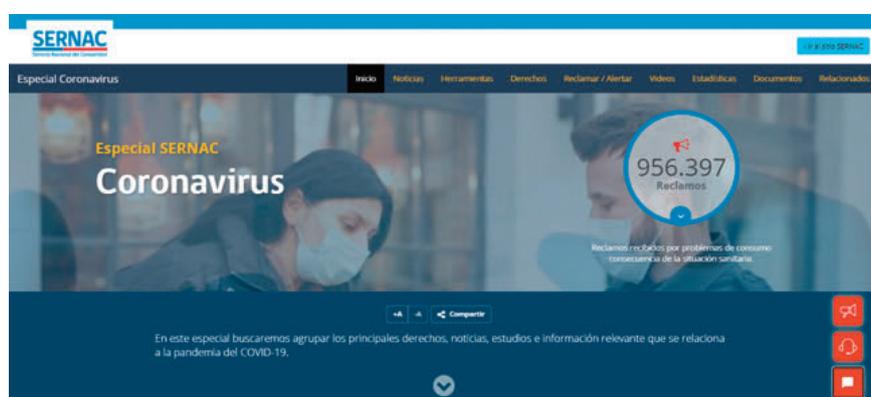
⁴⁰ See <https://www.cadem.cl/encuestas/>.

Figure 6. Interactive infographics



Source: National Consumer Service.

Figure 7. Coronavirus web page of the National Consumer Service



Source: National Consumer Service.

Information Barometer⁴¹ prepared by the National Press Association and Cadem, in which editors, publishers and journalists were asked to give their views on 62 public and private institutions; the National Consumer Service was ranked highly for attributes such as reliability of information, access to information and timeliness of information.

5. Access to information in the context of the COVID-19 pandemic

The National Consumer Service responded to the heightened uncertainty caused by the COVID-19 pandemic by producing relevant information on consumer problems related to the pandemic, including:

- ✓ **A web page dedicated to the coronavirus.**⁴² This gives details of the principal rights, news, studies and information related to the COVID-19 pandemic and allows users to monitor statistical information on the markets that elicit the most complaints.
- ✓ **A basic product-pricing tool.**⁴³ Introduced in April 2020, this comparison tool can be used by consumers to access information on 29 basic goods (in 865 varieties) that are in high demand and that are available in 2,619 stores

⁴¹ Access to Information Barometer 2019, p. 16. Available at www.cadem.cl/wp-content/uploads/2019/08/Informe-Bar%C3%B3metro-ANP-2019.pdf.

⁴² https://www.SERNAC.cl/portal/604/w3-propertyname-774.html#landing_relacionados.

⁴³ Available at <https://www.sernac.cl/portal/619/w3-article-58435.html>.

in 196 municipalities in all regions of Chile. The tool can find more than 290,000 product prices and can tell consumers if basic products are in stock in shops near their homes, so that they can plan their purchases and avoid crowds. The platform has reported more than 250,000 visits, mostly through mobile phones, from 121,923 users.

B. ESTABLISHMENT OF ADEQUATE INFRASTRUCTURE TO DEVELOP, IMPLEMENT AND MONITOR CONSUMER PROTECTION POLICIES

Paragraph 8 of the United Nations guidelines for consumer protection states that “Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies“. This section describes the National Consumer Service’s institutional response to challenges and contingencies and its relations with other agencies in these circumstances.

The current social and public health context poses a challenge for the implementation of initiatives that offer creative damage-mitigation solutions for the benefit of the general public. The aim of such initiatives, especially those conceived in response to the COVID-19 pandemic, is to better protect vulnerable consumers and curb the rise in unfair commercial practices and even criminal activity.

According to UNCTAD, State responses to the economic effects of the pandemic include introducing price controls on hygiene and health products (France, Greece, India, Italy, Kenya and Nigeria), cracking down on scams and unfair practices (see, for example, the work done by the European Union with online platform operators), tackling misleading advertising (Republic of Korea), developing consumer information mechanisms (Dominican Republic, France, Mexico, Morocco and Spain) and launching digital platforms for the real-time reporting of irregularities affecting consumers (Colombia).⁴⁴

The National Consumer Service has demonstrated a considerable capacity to generate rapid and innovative responses, through management evaluation and the implementation of institutional projects. For example, it shifted its in-person citizen services to digital platforms within a very short space of time. This was made possible by the organizational structure of the Service, and notably by the creation in 2019 of a dedicated institutional projects department.

The most important initiatives undertaken by the Service are the introduction of its remote support service, the “Me Quiero Salir” (I want out) and “No Molestar” [(Do not disturb)] platforms, and its interpretative circulars.

1. Remote support service

In response to the health crisis caused by the COVID-19 pandemic, during which consumers were unable to go to its offices in person, the National Consumer Service introduced a new remote support service for consumers, who can now schedule a video call through the Service’s website. Consumers are then able to access the same services as are offered in person, namely, assistance with queries, complaints, suggestions and disputes.⁴⁵

⁴⁴ UNCTAD, “COVID-19: Firmer action needed to better protect consumers” (2020). Available at <https://unctad.org/fr/node/2372>.

⁴⁵ To create the remote support service, teams from the National Consumer Service worked together, applying “design thinking” to develop a comprehensive solution. The service consists of a computer system, integrated with communications technologies, internal training and processes and protocols, allowing it to meet citizens’ needs and technical requirements such as the optimal protection of consumers’ personal data.

In the months following the introduction of this service, and at no additional cost to the institution, the Service was able to provide more than 1,000 consumers with access to its services, with an overall satisfaction rate of 80 per cent. The tool’s success has prompted other institutions, such as the Office of the Superintendent of Health, to adopt it.

The Chilean experience mirrors the trend in most of the countries of the world in that a decisive shift from in-person to virtual services has taken place.⁴⁶ However, while some countries have introduced remote support services specifically for pandemic-related issues (for example, the Republic of Korea set up call centres and Colombia launched an application to inform consumers about their rights), Chile has gone further by taking an approach that covers all consumer issues and not only those related to the pandemic.

2. “Me Quiero Salir” (I want out) platform

This initiative, which was part of the anti-abuse and fair treatment agenda⁴⁷ that the Government adopted in response to the 2019 protests, was designed to reduce perceptions of abuse by suppliers and promote the fair treatment of consumers. In that context, the National Consumer Service created “Me Quiero Salir”, a digital platform that allows consumers to request the prompt cancellation of service contracts.⁴⁸

The platform was launched to deal with contracts in the telecommunications sector, covering 144 registered telecommunications service-providers – equivalent to 98 per cent of the market. As at December 2020, more than 40,000 consumers had used it to request the cancellation of their telephone, Internet or cable television contracts. More than 90 per cent of them had their requests fulfilled without needing to make an in-store visit. The platform thus helps consumers overcome barriers to cancellation and contributes

⁴⁶ UNCTAD, “Competition and consumer protection in times of COVID-19”, April 2020 newsletter.

⁴⁷ Available at <https://www.gob.cl/agendantiabusos/consumidor/>.

⁴⁸ If the National Consumer Service finds that a company has infringed the law by refusing to comply with such a request, it refers the complaint to the Office of the Undersecretary for Telecommunications. All 115 cases referred to date have had favourable outcomes for the consumer.

Figure 8. Basic product-pricing tool of the National Consumer Service

Fecha actualización: 11 de marzo 2021, hora: 17:10

SERNAC PLAN DE ACCIÓN CORONAVIRUS COVID-19

COTIZADOR DE PRODUCTOS BÁSICOS

SERNAC dispone un cotizador con los precios de los principales productos consumidos por las personas en estos momentos. Los precios son informados por cada farmacia, supermercado o almacén y es responsabilidad de cada establecimiento la información oportuna respecto al cambio en su stock o producto.

Pasos para realizar la búsqueda:

1. Filtrar por "Comuna", "Producto" y "Formato".
2. Se mostrará una lista ordenada de los productos más económicos.
3. Al seleccionar el producto, el mapa arrojará la ubicación del establecimiento donde se vende.
4. La información ha sido dispuesta por las mismas empresas según su stock disponible al día anterior.

*Precios de lista diarios incluyendo ofertas universales de venta a público general sin considerar descuentos, promociones, convenios u ofertas especiales.

Si eres dueño de un almacén o farmacia que venda estos productos y quieres informar tus precios, contáctanos acá con el link del formulario [Ir al formulario](#)

Comuna Producto Formato

Source: National Consumer Service.

to the observance of public health measures in the context of the pandemic.⁴⁹

The National Consumer Service is in the process of improving the tool and is preparing to roll it out in other sectors.

3. "No Molestar" (Do not disturb) platform

This platform, created in 2013, allows consumers to easily and effectively exercise their right to stop suppliers sending unwanted promotional or advertising materials (spam), including calls, text messages and WhatsApp messages, to their email addresses or telephone numbers.

⁴⁹ Despite the context in which it was created, this initiative was designed and developed rapidly, with the creation of a technological solution within two months. After five months, the National Consumer Service was able to launch it publicly with the participation of all users: consumers, suppliers, sectoral bodies and the Service's officials. Now being expanded to other markets such as finance and education, "Me Quiero Salir" is one of the first consumer protection tools of its kind anywhere in the world.

During the platform's development, the National Consumer Service analysed the difficulties inherent in the process of eliminating records held by suppliers. It then set itself the task of finding a swift solution to this common problem, allowing consumers – quickly, remotely and free of charge – to state their express desire to be removed from suppliers' lists so that they would no longer receive unwanted promotional and advertising materials.

In 2019, the Service launched an optimized version of the platform that reduced the processing time of requests to 24 business hours, increased its capacity to process complaints from members of the public and improved the quality of its responses, and buttressed the formal complaints it filed with the courts.

Figure 9 provides a breakdown of "No Molestar" requests received between 2017 and October

Figure 9. Performance indicators of the “No Molestar” tool

Year	Number of requests	Number of consumers	Number of suppliers	Notices of non-compliance
2017	69 437	17 076	1 353	N/A
2018	159 932	35 295	2 304	N/A
2019	180 865	24 155	9 649	592
Jan–Oct 2020	68 848	16 003	6 573	675
Total	479 082	92 529	19 879	1 267

Source: National Consumer Service.

2020. During this period, 92,529 consumers submitted 479,082 requests to 19,879 suppliers.⁵⁰

Various international initiatives have been rolled out in relation to telemarketing and spam, with a variety of regulations. For example, in some countries consumers can subscribe to a list to be excluded from marketing practices (“opt-out” system), while, in others, it is up to companies to seek consumers’ acceptance (“default” option).

Chile uses an opt-out system that is similar to the following services:

- In the United States of America, the National Do Not Call Registry of the Federal Trade Commission, which administers the Telemarketing Sales Rule that governs call centres. The aim of this tool is to empower consumers, who, by signing up, can limit the number of offers or calls that they receive for unsolicited services. Furthermore, the Telemarketing Sales Rule places various restrictions on distance selling, such as: (a) establishing that telemarketers may call consumers only between 8 a.m. and 9 p.m.; (b) requiring telemarketers to first identify themselves and state the purpose of the

call; and (c) prohibiting misrepresentations concerning the product or service offered.⁵¹

- In Mexico, the Public Register for the Avoidance of Advertising,⁵² which is maintained by the Federal Consumer Protection Agency for consumers who do not want their information to be used for marketing or advertising purposes (Federal Consumer Protection Act, art. 18). Suppliers that are promoted in advertising are jointly responsible for handling consumers’ information when sending said advertising through third parties. Thus, under Mexican law, suppliers who benefit from such processes are not released from responsibility.⁵³
- In the United Kingdom of Great Britain and Northern Ireland, the Telephone Preference Service and the Call Prevention Service. The former is an opt-out system, operated by the marketing industry, in which penalties can be imposed by the Information Commissioner’s Office.⁵⁴ The latter is a service offered by a private company to consumers who do not wish to receive unsolicited calls, for an annual fee of £49.99.⁵⁵

An example of the default option can be found in the legislation of Peru, which, since September 2018, has banned suppliers from making calls, sending

⁵⁰ The platform can now be used to generate a “notice of non-compliance” whereby the consumer informs the National Consumer Service that the company is continuing to contact him or her despite the initial request to stop doing so. In 2020, 67 formal complaints of non-compliance were filed with the local police courts.

⁵¹ For more details see <https://www.donotcall.gov/>.

⁵² <https://repep.profeco.gob.mx/>.

⁵³ For more details, see https://www.gob.mx/cms/uploads/attachment/file/576911/INFORME_ANUAL_PROCURADURIA_FEDERAL_DEL_CONSUMIDOR_2019.pdf.

⁵⁴ <https://www.tpsonline.org.uk/tps>.

⁵⁵ <https://www.callpreventionservice.co.uk/>.

messages or engaging in any other commercial methods without the prior express consent of the consumer or citizen. The “Gracias, no insista” (Stop insisting) tool was therefore discontinued, in line with the Personal Data Protection Act.

4. Interpretative circulars

Article 58 (2) (b) of Act No. 19496 authorizes the National Consumer Service to prepare interpretative circulars and administrative rulings. The former are general interpretations of consumer protection legislation, while the latter are individual rulings on specific matters raised by citizens in the form of questions – they differ from circulars in that they contain the interpretation of consumer law in specific cases in simple terms.

In the context of the COVID-19 pandemic, the National Consumer Service produced four interpretative circulars:⁵⁶ on distance contracts;⁵⁷ on the suspension of terms of legal, voluntary and satisfaction guarantees;⁵⁸ on best practices of suppliers;⁵⁹ and on the protection of the health of consumers and alternative measures of fulfilment, suspension and termination of contractual obligations.⁶⁰ These administrative interpretations deal with the possible effects of the pandemic on consumer-supplier relations, focusing on the comprehensive protection, rights and safety of consumers. They also address the duties of suppliers and propose the development of good business practices to mitigate the effects of the pandemic.

It is therefore necessary to ensure, maintain and strengthen administrative interpretation through the timely issuance of appropriate and unambiguous interpretations, both in normal situations and in exceptional circumstances, contingencies and cases not explicitly addressed by the regulations, in order to provide the greatest possible legal certainty to the market.

⁵⁶ Available on the “Circulares interpretativas” page of the National Consumer Service website.

⁵⁷ Interpretative circular on distance contracts during the COVID-19 pandemic, Exempt Resolution No. 0326 of 6 April 2020.

⁵⁸ Interpretative circular on the suspension of terms of legal, voluntary and satisfaction guarantees during the COVID-19 health crisis, Exempt Resolution No. 0340 of 9 April 2020.

⁵⁹ Interpretative circular on best practices of suppliers during the COVID-19 pandemic, Exempt Resolution No. 0360 of 20 April 2020.

⁶⁰ Interpretative circular on the protection of the health of consumers and alternative measures of fulfilment, suspension and termination of contractual obligations during the coronavirus (COVID-19) pandemic, Exempt Resolution No. 371 of 23 April 2020.

C. SUPERVISION

As described in chapter II, Act No. 21081, amending Act No. 19496, strengthened the National Consumer Service by granting it new powers, including a supervisory role.

To perform this role and by virtue of its express legal mandate, the Service adopted a national supervisory policy to ensure that consumer relations are established in a context of transparency and information and with the full exercise of consumer rights, and thus contribute to improving people’s quality of life. Supervision therefore has both a preventive and a deterrent purpose. On the one hand, it seeks to prevent infringements and breaches of the duties and obligations set forth in the various laws that the Service applies. On the other, it seeks to deter not only the company being inspected – so that it does not repeat the infringement – but also other market players who are monitoring the outcome of the inspection and adapting their conduct to the regulations. The ultimate goal is to generate a cultural shift in companies, beginning with the recognition that consumers are key actors and that internal processes must be designed with their rights in mind, paying particular attention to the most vulnerable population groups.

Supervisory activities are carried out in person, remotely or through a hybrid arrangement and are organized according to the Annual Supervision Plan, which prioritizes activities that entail a higher level of risk for consumer rights, thus ensuring the rational use of resources.

In accordance with Act No. 21081, two annual supervision plans⁶¹ have been issued since its entry into force. To determine the risk to consumer rights, the Service uses a methodology that takes into account quantitative and qualitative aspects, as well as aspects considered to be of strategic importance for the Service, including complaints and alerts submitted by consumers to the Service. The methodology covers strategic markets, advertising, legislative changes and new consumer trends, among other things. The Annual Supervision Plan has a scheduled component, which is defined at the start of the calendar year, and an unscheduled component, which allows for

⁶¹ Annual Supervision Plan Guidelines 2020. Available at https://www.sernac.cl/portal/618/articles-55703_archivo_01.pdf.

the addition of new supervisory activities based on emerging or contingent needs.

In its supervisory role, the Service performed 529 inspections nationwide in 2019, focusing on commercial premises, transport (aircraft, buses and trucks), e-commerce, public health, electricity and telecommunications. These inspections led to over 100 legal actions. In 2020, the Service performed 1,065 inspections, focusing on markets of strategic importance for the Service and those most affected by the pandemic, such as: retail and e-commerce; basic services (electricity, sanitation, gas, telecommunications); transport; household hygiene products; extrajudicial debt collection; COVID-19 tests (quick tests and polymerase chain reaction (PCR) tests); “miracle cures”; sexist and gender-stereotyped advertising; green advertising; and stock-outs and prices of basic necessities in pharmacies and supermarkets.

D. DISPUTE RESOLUTION AND CONSUMER REDRESS

One of the priority areas identified by the National Consumer Service for this review is the legitimate interest of consumers, as recognized in the United Nations guidelines for consumer protection, in having an effective means of dispute resolution and redress in the event of damage or harm resulting from an infringement of consumer legislation.

To this end, the guidelines recommend the development of “fair, effective, transparent, and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution”.

For the purposes of this report, the National Consumer Service submitted for peer review: (a) protection mechanisms designed to protect individual interests (the Consumer Care Platform); and (b) mechanisms for the defence of the collective or common interest of consumers, i.e. voluntary procedures for the protection of the collective or common interest of consumers and class actions that also allow for collective or generalized compensation of the consumers affected. These mechanisms were improved through the recent reforms introduced by Act No. 21081, which entered

into force on 14 March 2019.⁶² This report also evaluates compensation reports and other dispute resolution mechanisms because of their importance in the area of dispute resolution and redress for Chilean consumers.

1. Consumer Care Platform

The National Consumer Service has been handling complaints since its creation as a public service, and has promoted the use of voluntary agreements between consumers and suppliers. The Consumer Service Platform was set up for this purpose, to handle complaints and offer guidance to consumers on their consumer problems.

The Consumer Service Platform has national reach and provides face-to-face and remote services. Face-to-face services are offered in each regional directorate of the National Consumer Service⁶³ and in the offices of 228 municipalities and other public service partners, such as the Social Security Institute, the National Tourism Service and the National Service for Older Persons, which receive queries⁶⁴ or handle complaints about suppliers.⁶⁵ The Service has three remote mechanisms in place: (a) an online office (www.ternac.cl); (b) remote support via videoconference;⁶⁶ and (c) a call centre.

The processing of complaints, in whatever form it takes, is free of charge for all consumers. The Consumer Care Platform is the mechanism most in demand from citizens. In 2019, for example, more than 370,000 complaints were received, and that

⁶² Available at <https://www.bcn.cl/leychile/navegar?idNorma=1123020>.

⁶³ The National Consumer Service is a decentralized body that has a presence in each of Chile's 16 regions. According to article 57 of Act No. 19946, “the National Consumer Service ... shall be a decentralized public service, with legal personality and its own assets, subject to the oversight of the President of the Republic through the Ministry of Economic Affairs, Development and Tourism”.

⁶⁴ Queries give consumers the opportunity to get information and guidance as to their rights and how to exercise them. In this way, consumers can get information on the legal principles and procedures for dealing with the complexities of the market. In 2019, the Service received more than 380,000 queries.

⁶⁵ In accordance with the principle of coordination among the agencies of the State Administration, provided for in article 5 (2) of the Organic Act establishing the Framework of the State Administration.

⁶⁶ For more details, see chapter III, section B.1, above.

Voluntary peer review of consumer protection law and policy: CHILE

figure was far exceeded in 2020 in the wake of the COVID-19 pandemic.

Figure 10. Chile: Complaints processed and closed by the National Consumer Service (2019)

Outcome: Complaints processed and closed (2019)	No. of complaints	Percentage
Supplier accepts complaint	193 140	51.7%
Supplier rejects complaint	130 770	35.0%
Supplier does not respond	39 156	10.5%
Supplier finds case is unfounded	7 035	1.9%
Insufficient background to process claim	1 260	0.3%
Complaints related to voluntary collective procedures	1 090	0.3%
Referred to another public agency	817	0.2%
Total number of complaints closed	373 268	100.0%

Source: National Consumer Service.

Once the National Consumer Service receives a complaint from a consumer, it seeks to find an extrajudicial solution to the problem raised, by bringing the matter to the attention of the supplier concerned.

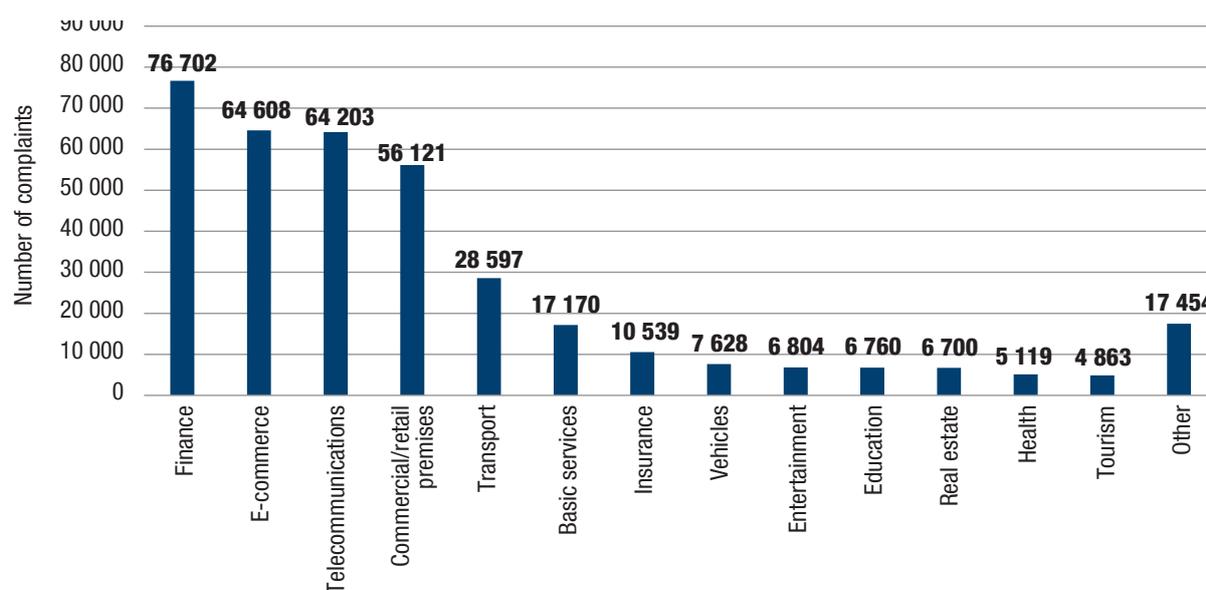
The processing of complaints can end in one of the following ways: (a) the supplier accepts the complaint, in cases where it fully or partially agrees

to the consumer's request; (b) the supplier rejects the complaint, where it does not agree with the consumer's claims; (c) the supplier does not respond, which, as the term indicates, means that it does not give a formal response to the consumer before the deadline for processing the complaint is reached; or (d) the supplier replies that there is no case to answer, when it believes that the consumer's complaint is unfounded.

As can be seen in figure 10, which uses 2019 figures, more than half of the cases (51.7 per cent) were accepted by companies; in 35 per cent of cases, the supplier rejected the complaint; in 10.5 per cent of cases, there was no response; and 1.9 per cent of cases were closed as being unfounded.

In 2019, the markets with the highest number of complaints were: the financial market, with more than 76,700 complaints; e-commerce, with more than 64,600; telecommunications, with almost as many (64,200); and retail, with more than 56,100. As this type of data shows, and as can be seen throughout this report, complaints are an important source of data for the National Consumer Service, serving, for instance, as a starting point for activating collective dispute resolution mechanisms.

Figure 11. Chile: Complaints, by market (2019)



Source: National Consumer Service.

Voluntary peer review of consumer protection law and policy: CHILE

The pandemic saw a significant rise in the number of complaints owing to the suspension of services, changes in consumer behaviour, increased online shopping and the increase in the use of services such as telecommunications, among other factors. As illustrated in figure 12, between January and October 2020, some 747,100 complaints were processed, more than double the total number of complaints in the previous year.

Figure 12. Chile: Complaints received (January–October 2020)

Total incoming complaints, January–October 2020	No. of complaints	Percentage
Complaints closed	724 980	97%
Complaints being processed	22 205	3%
Total number of complaints received by the National Consumer Service	747 185	100%

Source: National Consumer Service.

As can be seen in figure 13, 59.4 per cent of complaints in this period were concluded favourably for the consumer; 27.5 per cent were rejected by suppliers; 11 per cent received no response; and 0.3 per cent were received by the National Consumer Service and referred to other public agencies with competence in the matter (mainly corresponding to the markets for telecommunications and basic services such as electricity and drinking water supply).

Figure 13. Chile: Complaints processed and closed, by type of outcome (January–October 2020)

Outcome (complaints processed and closed)	No. of complaints	Percentage
Supplier accepts complaint	430 579	59.4%
Supplier rejects complaint	199 240	27.5%
Supplier does not respond	79 839	11.0 %
Supplier finds case to be unfounded	11 443	1.6%
Referred to another public agency	2 065	0.3%
Insufficient background to process claim	1 606	0.2%
Complaints related to voluntary collective procedures	208	0.0%
Total number of complaints closed	724 980	100.0%

Source: National Consumer Service.

In 2020, unlike in 2019, the market with the highest number of complaints was e-commerce, with more than 240,000 complaints, thanks to the explosive growth in purchases of products and services by this route because of the pandemic. Next highest were commercial premises, with some 136,000 complaints, followed by telecommunications, with more than 109,000, and financial services, with more than 86,000.

In addition to collecting data on the markets with the highest number of complaints from citizens, the National Consumer Service believes it is important to identify the consumers who use this mechanism. According to the available information, and as shown in figure 15, in 2020, approximately 54.64 per cent of complaints were filed by women, as compared with 45.22 per cent by men.

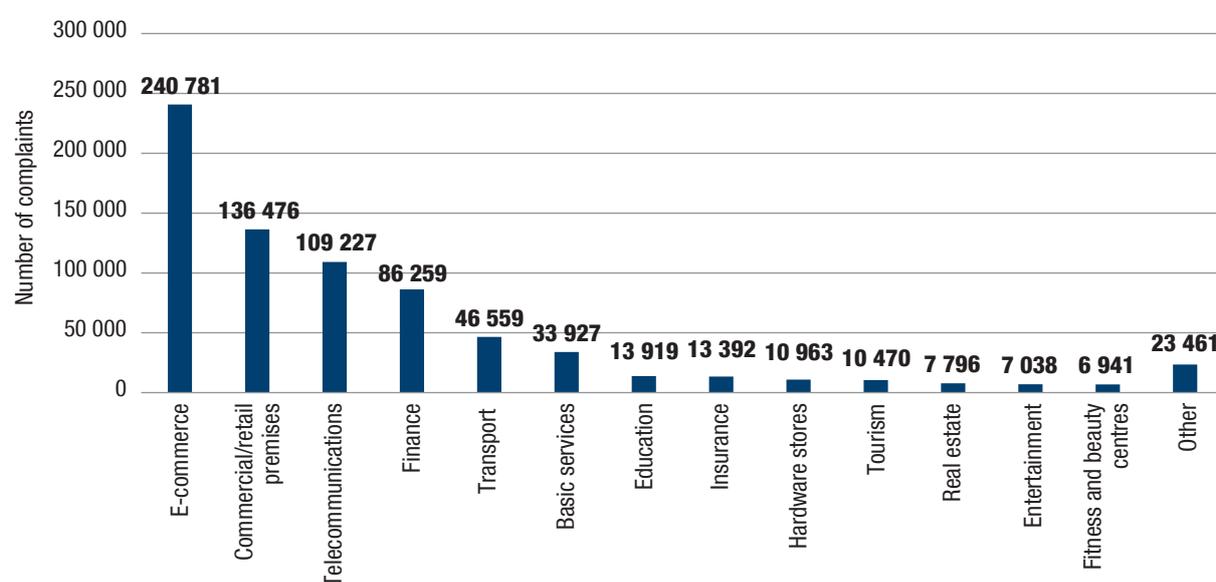
It is also possible to obtain data on the geographic concentration of consumer complaints. According to figure 16, during the period January–October 2020, 58.5 per cent of complaints were concentrated in the Santiago Metropolitan Region, followed by the Valparaíso Region (9.9 per cent), and, in third place with 6.6 per cent, the Biobío Region.

Considering the huge reach of this dispute resolution mechanism and the proportion of positive outcomes for consumers, it can be concluded that it is an effective instrument for the protection of consumer interests. The figures reviewed show that the processing of complaints has protected, and continues to protect, the individual interests of users. However, there is still a significant percentage of consumers whose complaints have been rejected or remain unanswered, so this instrument should be reinforced with a view to increasing the proportion of solutions provided to consumers and enhancing the public perception of its usefulness.

For this reason, since 2019, the National Consumer Service has been proposing various improvements, the most important ones being:

- Make it compulsory for suppliers to respond, through the exercise of the power of inspection
- Expand the means of access
- Strengthen cooperation with sectoral bodies

Figure 14. Chile: Complaints processed, by market (January–October 2020)



Source: National Consumer Service.

- Reduce processing times and improve system usability and user experience
- Integrate online dispute resolution mechanisms into this complaints platform, including individual consumer complaints resolution mechanisms such as online consumer mediation and arbitration systems

2. Voluntary collective procedures

Voluntary procedures for the protection of the collective or common interest of consumers are extrajudicial administrative tools that seek to solve a collective or generalized consumer problem.⁶⁷ Between 2019 and 2020, these procedures accounted for a total amount of more than 32 billion Chilean pesos (approximately US\$ 44 million) in compensation for 1,351,796 consumers, in 17 successful cases.⁶⁸

The forerunner of the collective voluntary procedure was the so-called “collective mediation” procedure; under this procedure, informal administrative bodies

were set up by the National Consumer Service to work with suppliers to provide compensation for consumers.⁶⁹ This mechanism was enshrined in law by the recent amendment to Act No. 21081, which introduced a new paragraph 4 (arts. 54 H–54 S) to title IV of the Act, “Voluntary procedure for the protection of the collective or common interest of consumers”. In other words, before the Act was amended, the collective mediation procedure was not legally recognized.

The voluntary collective procedure is an administrative procedure conducted by the supplier and the National Consumer Service with the aim of reaching a prompt, comprehensive and transparent settlement for all affected consumers in the form of indemnities, compensation or refunds. As it is only a compensatory mechanism, it does not imply recognition of any acts as constituting an infringement of the regulations.

The basic principles regulated by voluntary collective procedures are consumer indemnification, economy of procedure, openness to the public, integrity and due process.⁷⁰ A collective voluntary procedure can

⁶⁷ National Consumer Service (2019). “Guía Informativa para el inicio del Procedimiento Voluntario Colectivo a solicitud de las empresas o por denuncia fundada de una asociación de consumidores” (Information guide on initiating a voluntary collective procedure at the request of a company or on the basis of a well-founded complaint from a consumer association). Available at <https://www.sernac.cl/portal/618/w3-article-55750.html>.

⁶⁸ <https://www.sernac.cl/portal/604/w3-article-62188.html>.

⁶⁹ The collective mediation procedure was recognized in rulings of the Office of the Comptroller-General of the Republic (No. 94206 of 4 December 2014 and No. 71055 of 4 November 2013).

⁷⁰ National Consumer Service (2019). Interpretative circular on voluntary procedures for the protection of the collective or common interest of consumers. Available at www.sernac.cl/portal/618/articles-56542_archivo_01.pdf.

Voluntary peer review of consumer protection law and policy: CHILE

Figure 15. Chile: Number of complaints filed, by entry point and gender (January–October 2020)

Entry point	Female	Male	Rather not say	Totals	Percentage
Web	323 948	275 195	952	600 095	80.31%
Phone call	673 29	47 170	33	114 532	15.33%
Face-to-face	16 952	15 524	29	32 505	4.35%
Other	21	31	1	53	0.01%
Total	408 250	337 920	1 015	747.185	100.00%
Percentage	54.64%	45.22%	0.14%	100.00%	

Source: National Consumer Service.

be initiated: (a) ex officio, by resolution of the National Consumer Service; (b) at the request of the supplier; or (c) on the basis of a well-founded complaint by a consumer association.

Figure 16. Chile: Complaints processed, by region (January–October 2020)

Consumer's region	No. of complaints	Percentage
Santiago Metropolitan Region	437 334	58.5%
Valparaíso	74 117	9.9%
Biobío	49 243	6.6%
Libertador General Bernardo O'Higgins	26 136	3.5%
Maule	24 170	3.2%
Coquimbo	23 312	3.1%
Antofagasta	21 437	2.9%
Los Lagos	20 868	2.8%
Araucanía	17 860	2.4%
Tarapacá	8 873	1.2%
Atacama	8 811	1.2%
Los Ríos	8 379	1.1%
Ñuble	7 763	1.0%
Arica y Parinacota	6 772	0.9%
Magallanes and the Chilean Antarctic	5 350	0.7%
Abroad	3 962	0.5%
Aysén del General Carlos Ibañez del Campo	2 798	0.4%
Overall total	747 185	100.0%

Source: National Consumer Service.

An essential aspect of voluntary collective procedures is the fact that participation is voluntary. Suppliers are not obliged to submit to the procedure and, even once it has started, can express their wish not to continue.

The National Consumer Service can also decide at any time during the procedure not to continue with the negotiations.

Another of the characteristics and advantages of these procedures lies in their limited duration. This is limited to a maximum of three months, which may be extended once by up to three months, either at the request of the company or as determined by the National Consumer Service, when an extension is justified by the advanced stage of negotiations or the need for more time to review background information or to examine the proposals made.

To ensure that the compensation reaches all the consumers affected, the legislator envisaged giving *erga omnes* effect to the agreement signed by the National Consumer Service and the company under this procedure, much like the procedure in class actions.⁷¹

Successful experiences with collective mediation and collective voluntary procedures. Based on the National Consumer Service's experience in the use of extrajudicial mechanisms for the protection of the collective or common interest of consumers and the awarding of compensation to the citizens affected, two relevant cases are presented below.

- ✓ **ESSAL case (2019): National Consumer Service with Empresa de Servicios Sanitarios de Los Lagos SA (ESSAL).** On 11 July 2019, this company suspended the supply of drinking water in the city of Osorno, located in the region of Los Lagos, due to contamination of the water with fuel. The case

⁷¹ Act No. 19496, art. 54 Q: "For the agreement contained in the resolution issued by the Service to have *erga omnes* effect, it must be approved by the civil court judge corresponding to the supplier's domicile."

was settled with the payment of compensation to 47,519 consumers in the amount of 63,250 pesos per person affected. The supplier also agreed to compensate consumers who had filed complaints with the National Consumer Service for a total amount of US\$ 10.4 million.

✓ **Tissue paper collusion case (2017–2020).**

A second successful case processed under the collective voluntary procedure ended in the conviction, in one of the biggest cases of collusion ever detected in Chile, of the companies CMPC Tissue and SCA Chile. After the antitrust authority and the Supreme Court had ruled on the case, proceedings were opened to obtain compensation for the consumers affected. The National Consumer Service initiated a collective mediation procedure with the members of the cartel. Only CMPC Tissue decided to participate in this procedure; SCA Chile rejected the proposed framework. This led the National Consumer Service to file a class action lawsuit seeking compensation from the supplier for all affected consumers.

Under the collective mediation framework, the National Consumer Service and two of the consumer associations reached an agreement with CMPC Tissue that is considered historic; it provided for the return of the surcharge paid by consumers affected by the tissue paper collusion.

Under the collective mediation framework, the results of studies and econometric reports prepared by the National Consumer Service and those provided by the supplier were analysed, and were decisive in calculating the surcharge paid by 13,347,740 people, which was estimated at 97,647 million pesos (US\$ 150 million). Each consumer received at least 7,000 pesos (about US\$ 10), which meant that a family with three or four adults received between 21,000 and 28,000 pesos (between US\$ 30 and US\$ 40).

Some 75 per cent of the affected consumers (about 10 million people) received the compensation directly, either by bank transfer to holders of an RUT account (a deposit

account associated with an individual's tax number) or with pension payments from the Social Security Institute. In other words, this agreement benefited more than two thirds of the population of Chile.

The United Nations guidelines for consumer protection recommend that States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses (para. 40). Chile's voluntary collective procedure implements this recommendation in a satisfactory manner in that it provides a system that is transparent, inexpensive and accessible – more so, in fact, than most of the collective procedures for consumers in other countries.

The participation of the National Consumer Service in voluntary collective procedures is unique to Chile and unheard of in most other countries, and undoubtedly makes it impossible to impose collective sanctions administratively. This alternative to the judicial process not only brings about the cessation of conduct that is harmful to consumer rights – which it ensures by monitoring compliance plans – but also wins compensation for consumers without the need for judicial intervention. By comparison with other countries, such agreements are usually reached when the law permits the regulator to impose fines on companies, as in the countries of the Southern Common Market (MERCOSUR)⁷² or the United States, where this is the practice of the Federal Trade Commission.⁷³

The success of voluntary collective procedures is underpinned by another pillar of collective proceedings in Chile, namely, class actions. This is because, when it initiates a voluntary collective procedure, the National Consumer Service can make a “credible threat” at any stage of the negotiation to terminate it and resort to a class action lawsuit against the offending company. This serves as an incentive for the company not only to participate in the procedure, but also to be proactive in the negotiations.

⁷² Brazilian Consumer Protection Code, art. 56 et seq.; Argentine Consumer Protection Act, art. 45 et seq.

⁷³ <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.

3. Class action lawsuits

Class actions are another mechanism for the protection of the collective or common interest of consumers. They are provided for in article 51 et seq. of Act No. 19496, which provide that a judgment of the court can offer a uniform solution to all consumers affected by the conduct of a supplier.

Class actions are a type of lawsuit that allows for the processing and resolution, in a single trial before the same court, of wrongful acts committed by suppliers that affect in a similar way a group of consumers who, in view of the amounts involved and the costs associated with an individual trial, presumably would not sue individually.

A class action, like a voluntary collective procedure, produces an *erga omnes* effect,⁷⁴ which means that the sentence handed down by the court, or the agreement reached within the framework of such action (conciliation, settlement or transaction), will benefit all consumers affected by the same acts, without the need for them to become a party to the proceedings or even to file a complaint with the National Consumer Service. This effect applies to all consumers unless they lodge a “reservation of rights”; to do this, the interested parties must make a formal

submission to the court where the class action lawsuit is being heard, requesting that the outcome should not apply them, either because they want to sue on their own account or for other personal reasons.⁷⁵

A class action lawsuit may be filed by: (a) the National Consumer Service; (b) a consumer association formed at least six months prior to the filing of the suit and duly authorized by its board of directors to do so; and (c) a group of no fewer than 50 affected consumers, who must be duly identified.

As a judicial proceeding, it consists of at least three stages, as follows:

Stage 1 – Admissibility

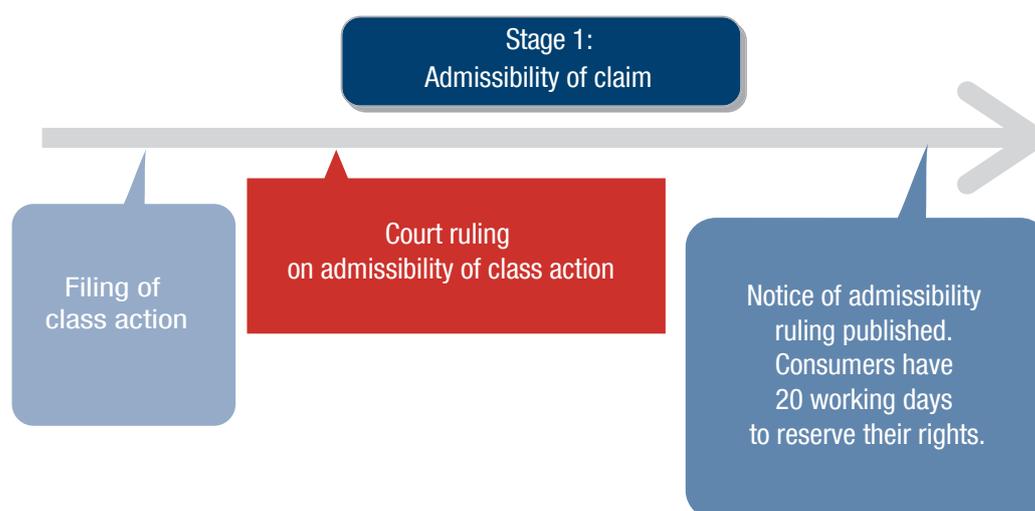
This is the first phase of a class action, in which the court rules on the admissibility of this type of procedure, checking that the formal requirements have been met, making this a purely formal stage.

If the claim is declared inadmissible, the National Consumer Service may file a request for reconsideration with subsidiary appeal, so that, if the request for reconsideration is not accepted, the appeal may be heard by the appropriate appeal court, with the aim of overturning the initial court ruling. To challenge the

⁷⁴ National Consumer Service, “Juicios colectivos y demandas” (Class actions and lawsuits). Available at <https://www.sernac.cl/portal/618/w3-propertyvalue-14688.html>.

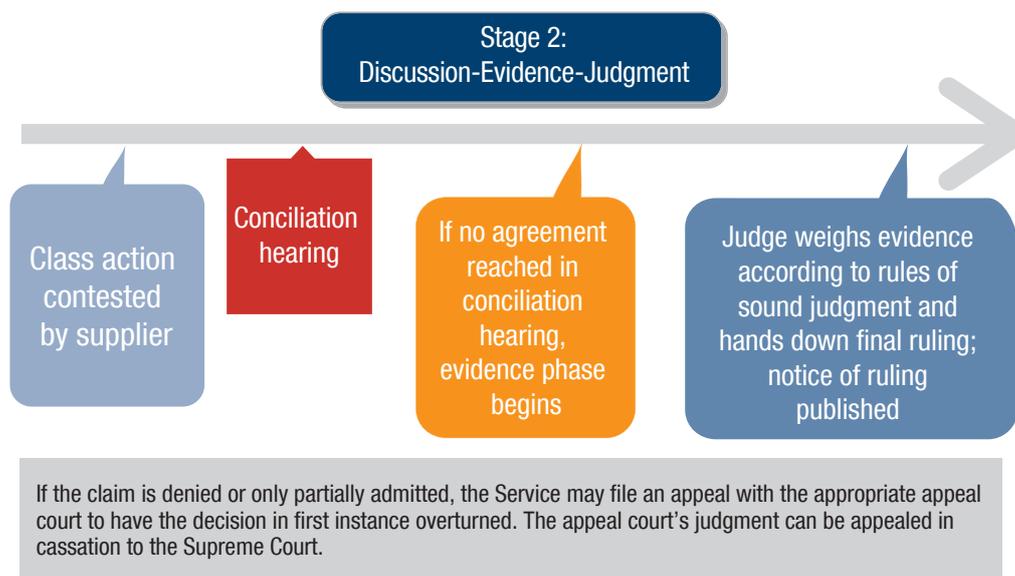
⁷⁵ Consumers must exercise the reservation of rights after publication of the notice of admissibility of the class action or after publication of the notice of the final judgment or enforceable settlement agreement, i.e., when there are no further procedural remedies pending.

Figure 17. Stage 1. Class actions: admissibility



Source: National Consumer Service.

Figure 18. Stage 2. Class actions: discussion, evidence and judgment



Source: National Consumer Service.

judgment of an appeal court, an appeal in cassation, either on procedural grounds or on the merits, may be lodged with the Supreme Court.

Stage 2 – Discussion, evidence and judgment

At this stage of the procedure, the defendant company has the right to challenge the claim. The judge must then schedule a conciliation hearing to allow the parties to reach an agreement. If no agreement is reached, the evidentiary phase proceeds.

Stage 3 – Execution of the final judgment or settlement agreement

In cases where the final judgment or conciliation agreement awards compensation to consumers, the latter may exercise their rights or reserve them.

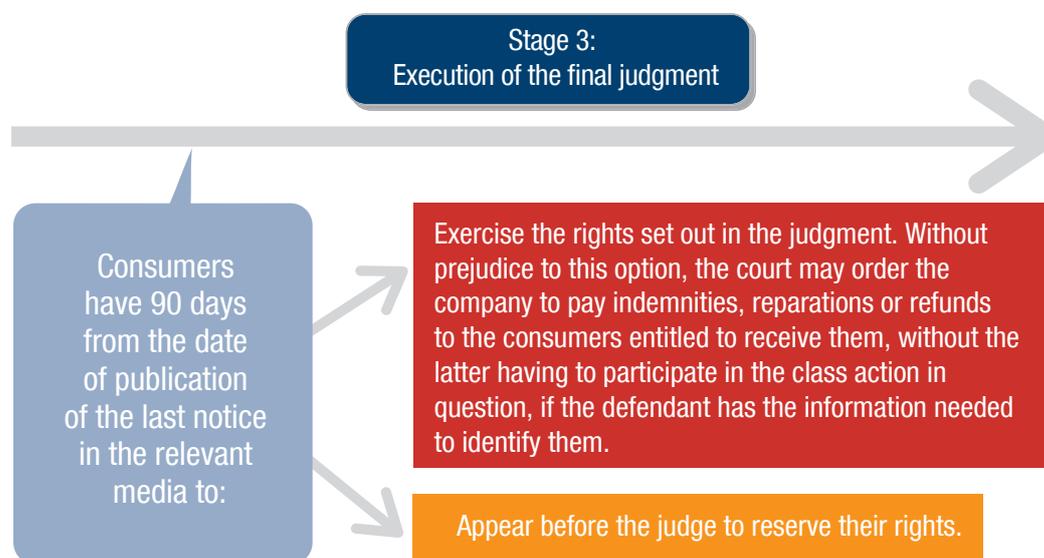
From 2005 to date, the National Consumer Service has brought more than 200 class action lawsuits, obtaining more than US\$ 670 million in compensation. Examples of successful class actions handled by the Service include the Cencosud, Banco de Chile and Pharmacies cases, which resulted in significant and substantial compensation being awarded to consumers.

- ✓ **Cencosud case (2013): “National Consumer Service with Cencosud Administradora de Tarjetas SA.”**. In 2006, the supplier Cencosud Administradora de Tarjetas SA unilaterally increased the fees for its “Jumbo Más” credit

card account, from 460 pesos per month (US\$ 0.61) to 990 pesos per month (US\$ 1.32). As a result, in 2007, the National Consumer Service filed a class action lawsuit against the supplier based, broadly speaking, on the unilateral modification of the above contract, raising the fixed amount of the monthly fees without obtaining the consent of the cardholders. In 2013, the Supreme Court ruled that the company had unilaterally increased the card fees and so had to refund the money mischarged to about 608,000 consumers, in addition to annulling the clauses that allowed the company to make such modifications and that established broad and blank mandates. The award amounted to nearly 33 billion pesos in compensation, the equivalent of approximately US\$ 70 million.

- ✓ **Banco de Chile case (2018): “National Consumer Service with Banco de Chile”**. In 2014, the National Consumer Service sued Banco de Chile after finding that, when consumers used its “Agreed overdraft facility”, the bank charged double fees, consisting of a semi-annual fee and a monthly fee, which had no justification or legal basis in the rules on the maximum legal interest rate. The National Consumer Service obtained compensation for 140,000 customers of Banco de Chile in a class action lawsuit in which the bank undertook

Figure 19: Stage 3. Class actions: execution of the final judgment



Source: National Consumer Service.

to directly compensate a group of account-holders for a total of 19,311 million pesos.

As a result of the class action, a settlement agreement was reached during the trial. Two additional aspects of the agreement deserve to be noted: first, it was established that the supplier, Banco de Chile, should pay a fine of 50 monthly taxation units (UTM) (US\$ 3,361), payable to the Treasury, for contravening consumer regulations, specifically the regulation establishing the consumer's right to receive information on the total cost of the financial product or service. Second, it was agreed that the conduct would cease: Banco de Chile declared that it had stopped offering the financial product "Agreed overdraft facility" and that it had initiated a process of termination through a progressive closure plan. Subsequently, extrajudicial agreements for mass restitution to clients were signed with six other banking institutions that had engaged in similar conduct.

- ✓ **Pharmacies case.** An exemplary case from the viewpoint of the National Consumer Service in terms of consumer compensation was the "Pharmacies case", which was

brought under the class action procedure.⁷⁶ In this case, the Service sued for damages caused by anticompetitive and illicit collusion in setting the prices of prescription medicines in 2007 and 2008. As a result of this class action, brought in 2013, an agreement was reached in 2020 between the National Consumer Service, the consumer associations CONADECUS, ANADEUS and CDS, and the pharmacy chains Salcobrand and Cruz Verde.⁷⁷ The relevance of this case lies in the particular and innovative way in which compensation would be paid to the so-called "diffuse" group of consumers, meaning those consumers who stopped purchasing the product due to the collusive overpricing.⁷⁸

In consideration of the particularity of this diffuse group and the difficulty in identifying the beneficiaries of the compensation, the parties to the agreement opted for an alternative

⁷⁶ Class action brought before the 10th Civil Court of Santiago, case No. C-1940-2013, entitled "National Consumer Service with Farmacias Ahumada SA, Farmacias Cruz Verde SA and Salcobrand SA".

⁷⁷ Farmacias deberán compensar a cerca de 53.000 consumidores y desembolsar casi 1.400 millones de pesos tras colusión de medicamentos" (Pharmacies must compensate 53,000 consumers and pay out almost 1.4 billion pesos after medicine collusion). Available at <https://www.sernac.cl/portal/604/w3-article-60046.html>.

⁷⁸ Ibid.

mechanism for the distribution of compensation, in accordance with the interpretative circular issued by the National Consumer Service on alternative mechanisms for the distribution of indemnification, reparations, refunds and compensation for damage caused to collective or common interests.⁷⁹

Both for the proposed solution and for the elaboration of the aforementioned circular, the guidelines of the “Cy Pres” distribution doctrine were followed.

The Cy Pres doctrine, according to the Competition Centre of Adolfo Ibáñez University, seeks to provide a tool that will enable the effective and efficient distribution of compensation when the recipient is undetermined or undeterminable, on the basis of mechanisms for the indirect distribution of funds awarded in a class action, either under a settlement agreement or by judgment of the court.⁸⁰ In the case in question, the funds would be distributed according to certain prioritization criteria intended to ensure the compensation reached particularly vulnerable consumers.⁸¹

As a corollary of this proposed solution, it was determined that the amount awarded to this diffuse group (about 205 million pesos) would be allocated to the Fundación de Ayuda al Niño Oncológico Sagrada Familia (Holy Family Foundation for Children with Cancer), an institution that, in addition to this amount, will receive the remainder of any compensation not claimed by consumers who were overcharged, that is, those who suffered harm as a result of consequential damage caused by the collusion.

Experience in these cases shows what a big impact class actions have had in Chile, with large total

compensation payouts. This reflects the effectiveness of a general preventive approach as a way to ensure the effective enforcement of consumer protection legislation. In this sense, Chilean practice is close to that of the United States in that it brings litigants together and achieves large awards that ultimately lead to little or no repeat offending by the companies. In contrast, Brazil has more individual actions heard by small-claim courts and class actions brought by the Public Prosecutor’s Office, apparently with less effectiveness.⁸²

In the United States, class actions are distinctly private in nature, since they are not conducted by the Federal Trade Commission but by private individuals and a private general attorney before a court of law. In this procedure, after legal proceedings to analyse the background and listen to the other interested parties, the claimant becomes a kind of class leader, since the results of his or her actions will be valid for the whole group (with very few possible exceptions).⁸³ Civil procedure in the United States has a preliminary discovery stage in which the evidence is shared by the parties and which can lead to agreements, precisely to reduce the information asymmetry that affects the parties. In Chile, voluntary collective procedures play this role.

The reasons for the use of class actions in the United States are linked to procedural and economic efficiency; equitable treatment of the class; and the creation of incentives to protect individual rights and small claims which, when added up, are significant at the level of society. Class actions thus play an important role in building behavioural incentives to

⁷⁹ Interpretative circular, Exempt Resolution No. 759 of 6 November 2020. Available at https://www.sernac.cl/portal/618/articles-59259_archivo_01.pdf.

⁸⁰ “Indemnización por colusión del ‘Caso Farmacias’: más vale tarde que nunca” (Compensation for collusion in the “Pharmacies case”: better late than never), Competition Centre, Adolfo Ibáñez University. Available at <https://centrocompetencia.com/indemnizacion-caso-farmacias/>.

⁸¹ *Ibid.* Criteria for prioritization and application of Cy Pres distribution or fluid recovery by the National Consumer Service: (a) primacy of direct reparation; (b) proximity; (c) non-infringement of article 11 bis; and (d) an exceptional and subsidiary nature.

⁸² Carpena, Heloisa, “Questões atuais sobre as ações coletivas de consumo” (Current questions about consumer class actions). Available at <http://www.tjrj.jus.br/documents/10136/3543964/questoes-atuais-sobre-aco.es.pdf>.

⁸³ Class actions are governed by rule 23 of the Federal Rules of Civil Procedure, which establishes four general requirements for all such actions: (a) (1) The class is so numerous that joinder of all members is impracticable; (2) There are questions of law or fact common to the class; (3) The claims or defences of the representative parties are typical of the claims or defences of the class; and (4) The representative parties will fairly and adequately protect the interests of the class. In addition, class actions fall into one of three categories, each with its own specific requirements. The first of these (para. (b) (1)) focuses on (A) avoiding adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class, and (B) adjudications favourable to individual class members that, as a practical matter, would jeopardize the rights of the other members.

comply with the law (and act as a deterrent to non-compliance).⁸⁴

According to a report by the United States Federal Trade Commission,⁸⁵ the main causes of complaint in class action lawsuits were instances of improper payment (30 cases)⁸⁶ and misrepresentation⁸⁷ (29 cases),⁸⁸ in what appears to be a parallel with the situation in Chile.

However, according to research conducted by Cornerstone Research, there has been an increase in the number of litigants who are opting out of class actions in order to pursue their rights individually.⁸⁹ In 2018, the percentage of litigants who opted out was 13.2 per cent, up from 3.2 per cent in 2014. No such trend has been identified in Chile, although it is important to be alert to possible trends of this kind in order to assess the adequacy of existing procedures.

Criticisms of class actions in the United States relate to conflicts of interest between lawyers and their clients, which derive from a problem of agency and information asymmetry (agency costs). There is no such problem in Chile because the National Consumer Service acts on behalf of consumers and in the general interest, so it is possible to affirm that the Chilean model is particularly transparent and fair, as recommended in the United Nations guidelines.

Since the National Consumer Service is not the only party that can bring an action, a legislative amendment to regulate and set costs awarded to parties with legal standing could be considered an improvement to the system, by promoting transparency and avoiding possible conflicts of interest. Likewise, there is a need to regulate the maximum percentages that litigants

can receive in the event of a favourable judgment or conciliation agreement, based on the compensation obtained for consumers. These amounts should be in line with the actual costs of the litigation, and should not amount to unjustified enrichment, in order to properly incentivize competent judicial action by the relevant institutions.

Similarly, this and other measures could be adopted with the aim of eliminating disincentives in negotiations and establishing mechanisms for the distribution of indemnities and compensation awarded to the parties affected, either through a judgment or a conciliation agreement, under the special procedure in defence of the collective and common interests of consumers.

It can then be expected that those with legal standing in whom the law has placed a special duty of consumer protection and fairness will act purely in defence of the public interest, that is, collective and common interests, and not for any other motives. Accordingly, reasonable costs should be representative of expenses commensurate with and sufficient for the conduct of a trial, depending on its complexity and duration.

In view of the analysis carried out, it is recommended that consumer protection institutions be continuously strengthened so that they can offer a swift and effective means of protecting not only collective rights, but also individual rights. In this regard, both the local police court judges interviewed for this report and comparable experiences studied by UNCTAD suggest the following actions: (a) continue to provide training in consumer protection at the Judicial Training School, both for local police court judges and civil judges (for class actions); (b) prioritize action to support and train local police court judges in municipalities with fewer human or financial resources; (c) take full advantage of agreements with legal assistance agencies and push for agreements with public and private bodies that provide free legal assistance, so that consumers with little money who go to the local police courts to exercise their legal rights can stand up to suppliers, and challenge the ongoing asymmetry between consumers who receive no legal assistance and businesses; and (d) systematize and disseminate the judicial decisions of most relevance to consumer protection, for example through the registration of judgments.

⁸⁴ Yeazell, Stephen C., *From Medieval Group Litigation to the Modern Class Action*, New Haven, Yale University Press, 1987; Issacharoff, Samuel, "Class action conflicts", *UC Davis Law Review*, vol. 30, 1997; Hazard, Geoffrey B., "The effect of the class action device upon the substantive law", *F.R.D.*, No. 58, 1973, p. 307.

⁸⁵ *Consumer and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, Federal Trade Commission Staff Report, 2019, p. 20.

⁸⁶ "Improper payment" is understood to mean payments charged incorrectly by businesses to consumers.

⁸⁷ Misrepresentation, in this case, corresponds to situations in which the company does not deliver the product with the characteristics and on the conditions described.

⁸⁸ *Consumer and Class Actions*, p. 19.

⁸⁹ <https://www.pionline.com/courts/more-plaintiffs-opting-out-class-action-settlements-pursue-their-own-report>.

4. Compensation reports

For each of the above-described protection mechanisms, the National Consumer Service's Subdirectorates of Economic Studies and Education⁹⁰ prepares compensation or indemnification reports, using economic models to estimate the damages suffered by consumers affected by breaches of contract, unfair terms and, in general, any conduct that infringes consumer rights legislation.

In this way, the Service has tried to parameterize and make transparent the criteria it uses to determine indemnities and compensation, providing certainty to the different market actors, whether they be consumers or suppliers, on how to identify and quantify the financial harm, emphasizing that the model must be practical and duly supported by economic theory and empirical evidence.

As noted above, the compensation model describes the guidelines used by the National Consumer Service to estimate the financial harm suffered by consumers as a result of violations of Act No. 19496. The guidelines are designed to help calculate the refund due to the consumer for pecuniary or material damages (consequential damage and loss of profits) and extra-pecuniary or moral damages.

A compensation report may be prepared in response to the initiation of a "collective investigation", which is a procedure to gather all relevant legal and economic information in order to elucidate violations of Act No. 19496 and other legislation.⁹¹ A report of this type may also be prepared in connection with a voluntary collective procedure or class action.

The compensation reports prepared by the National Consumer Service use economic models to estimate the harm suffered by consumers affected by breaches of contract, unfair terms or, in general, any conduct that infringes consumer rights legislation, and are a powerful tool for achieving the objectives pursued through voluntary collective procedures and class

actions. These reports are a plus in that they allow for more accurate and consistent calculations while taking account of the economic theory of antitrust actions and civil liability.⁹² In accordance with this theory, economic actors make cost-benefit calculations with respect to compliance with the law; the precise quantification of damages is crucial to ensuring the dissuasive effect of the law.

From the above, it is clear that the National Consumer Service's initiatives in the area of dispute resolution and consumer compensation are effective. In the context of chapter V, section F, of the United Nations guidelines, the results achieved so far and the move towards consensual conflict resolution methods can be considered as points of reference.

5. Other means of dispute resolution

The United Nations guidelines for consumer protection recommend that States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses (para. 40). In 2018, UNCTAD noted a certain "normative scepticism" that involved the desire to move away from judicial redress towards out-of-court dispute resolution mechanisms⁹³ in order to facilitate "access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses" (para. 37). With the increased use of e-commerce platforms, this has led many countries to prefer online dispute resolution (ODR), which includes a variety of mechanisms that are easily accessible using electronic communications and other information and communication technologies.⁹⁴

Alternative dispute resolution mechanisms have proven to be a means of improving consumers' access to justice, helping to effect a paradigm shift in the consumer-supplier relationship, from confrontation to collaboration. They are also a great help in decongesting the ordinary courts of justice. As a rule, consumers resort to them only once the

⁹⁰ The office responsible for coordinating and providing technical advice on economic matters to the subdirectorates of the National Consumer Service, in order to implement the institutional strategy on protection, information and education. The Department of Economic Monitoring and Research, the Department of Consumer Education and the Department of Studies and Intelligence report to it.

⁹¹ Subsequently, depending on the outcome of the investigation, the case may lead to a collective action such as a voluntary collective procedure or a class action lawsuit.

⁹² Marmolejo, Crispulo, *Elementos de Derecho y Regulación Económica* (Essentials of law and economic regulation), Valparaíso, Edeval, 2015. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782055. Bullard, Alfredo, *Análisis Económico del Derecho* (Economic analysis of law), Lima, Fondo Editorial PUCP, 2019.

⁹³ TD/B/C.I/CPLP/11.

⁹⁴ A/CN.9/WG.III/XXXII/CRP.3.

complaints process has been completed, i.e. in cases where companies do not respond to or do not accept the consumer's request, as defined on the Consumer Care Platform.

Usually, online dispute resolution consists of a series of steps aimed at resolving the dispute raised on the Platform, which constitute, in a way, mutually exclusive consequential stages in the process, to the extent that success in one stage precludes moving on to the next. The first stage is an attempt to facilitate agreement between the parties using the platform; this process is led by an impartial third party called a facilitator, whose job is not to intervene so much as to oversee a free discussion between the parties until they reach agreement. If the facilitation stage is unsuccessful within a given period of time, the parties usually move on to a more complex stage in which they must put the resolution of their dispute into the hands of an impartial third party other than the facilitator – usually someone with greater expertise who takes a more active role, in the form of mediation or arbitration.

A successful example of online dispute resolution in Latin America is the Brazilian Government's consumidor.gov.br platform, a free public service that allows direct communication between consumers and suppliers. The service is monitored by the National Consumer Secretariat, the consumer protection agencies known as Procons, public defenders, public prosecutors, regulatory agencies and others, as well as by society at large. Since it went live in June 2014, it has enabled the registration of 2.5 million complaints and has a user base of 1.8 million registered users and more than 600 business subscribers. It reports that 80 per cent of complaints registered by companies are resolved within an average of 6.5 days (2019). In 2019, the most complained-about activities using this tool were telecommunications (with a resolution rate of 90.6 per cent), banking and finance (78.7 per cent) and e-commerce (72.5 per cent).

This type of tool provides the State with essential information for the development and implementation of public policies for consumer protection and promotes competition in the market, improving the quality of products, services and customer service. At the operational level, the information supplied by consumers generates a public database that provides society with important information on the companies, issues and problems that are the subject of complaints on the platform. This information feeds into indicators

that are published on the website, in addition to being available to any interested party regardless of the nature of their own request, in an open format, in accordance with the guidelines on access to information and proactive transparency.

Consumer dispute resolution systems generally include mediation and arbitration. In Chile, arbitration is reserved for the financial sector, through the so-called National Consumer Service Seal, which is regulated and in use.⁹⁵

It is recommended that arbitration and mediation be fully regulated for all consumer sectors, which would allow for the introduction of more efficient and economical alternative dispute resolution mechanisms.

Spain and Portugal provide good examples of consumer arbitration legislation and practice. In Spain, there is a certificate attesting to membership of the Consumer Arbitration System that resembles a quality seal for suppliers. In 2018, the Andalusian Consumer Arbitration Board handled 1,821 consumer arbitration cases, in an average time of three months.⁹⁶ In Portugal, the Porto Consumer Arbitration information Centre has already resolved more than 4,000 arbitration cases, in an average time of 23 days.⁹⁷ France, for its part, recently introduced the use of mediation and arbitration in consumer matters (Act No. J21 on the

⁹⁵ The National Consumer Service Seal is a public policy tool established by Act No. 20555, amending Act No. 19496 and commonly referred to as the "National Consumer Service Financial Act". The Seal is a certification or distinguishing mark that the Service grants for the standard contracts of banks and financial institutions, commercial establishments, insurance companies, compensation funds, savings and loan cooperatives and other providers of credit, insurance and, in general, any financial product, when such entities file a request and demonstrate compliance with certain conditions provided for by law. The Seal was devised as a way to certify compliance with the law in the drafting of the respective contracts, that is, as a preventive action considered as the best safeguard against the use of unfair terms. In the context of the Seal, expert financial mediators and arbitrators are called upon to hear disputes between a consumer and a financial institution that has the Seal when the consumer is not satisfied with a decision of the customer service department.

⁹⁶ *Memoria de Actividades de la Junta Arbitral de Consumo de Andalucía, 2019* (Activities Report of the Andalusian Consumer Arbitration Board, 2019). Available at https://www.consumoresponde.es/sites/default/files/articulos/Memoria%20de%20Actividades%20JACA%202019_0.pdf.

⁹⁷ *Estatísticas: maio de 1995 a dezembro de 2018* (Statistics: May 1995 to December 2018). Available at <https://www.cicap.pt/cicap/estatisticas/>.

modernization of the justice system, 2016).⁹⁸ In South America, Argentina has recent experience in this area⁹⁹ and Brazil is considering including mediation and arbitration in its consumidor.gov.br platform.¹⁰⁰ International organizations interested in consumer protection policies recommend making greater use of amicable settlements and developing online platforms. For example, the OECD recommendation on consumer protection in e-commerce points unambiguously to alternative means of dispute resolution.¹⁰¹

In 2018, UNCTAD identified quality criteria for assessing and regulating methods of dispute resolution and consumer redress; these may serve as a guide for future Chilean practice.¹⁰² As noted, it is important to keep a close watch on market practices in alternative dispute resolution procedures. To do this, it is common practice to require alternative dispute resolution entities to publish annual activity reports, which are of special interest to government policymakers and enforcers in devising consumer protection policies or monitoring business practices.

E. VOLUNTARY COMPLIANCE PROGRAMMES

Voluntary compliance programs are an important development intended to encourage full compliance with consumer regulations by giving suppliers the possibility of submitting their plans to the National Consumer Service. Act No. 21181, amending

Act No. 19496, introduced compliance plans for the protection of consumer rights as tools for the prevention of infringements; these plans must contain, at least, the elements set out in article 19 of the regulation establishing the voluntary procedure for the protection of the collective or common interest of consumers, adopted by Decree No. 56 of 2019.¹⁰³

The compliance plan prescribed in article 24 (4) (c) of Act No. 19496 allows the company to analyse and evaluate the risk of contravening consumer regulations, in order to establish measures for prevention, detection and, where appropriate, correction of the situations of risk detected. Preventive plans, by their nature, should be integrated into all activities and processes of the organization and should be forward-looking in providing for evaluation and continuous improvement. This tool, when properly implemented, can become an important conflict prevention mechanism.

The preventive compliance plan established in the law on consumer rights protection should be submitted by suppliers to the National Consumer Service. The latter will subject it to a detailed and regulated approval procedure that guarantees its impartiality and transparency, as well as its efficiency and effectiveness, even before an infringement occurs. It should be noted that the approval of a plan does not imply an advance waiver by the National Consumer Service of the exercise of its supervisory and protective powers in the event of a violation after such approval, but it does allow for a claim of mitigating circumstances under the provisions of the aforementioned law.

⁹⁸ Vuchot, Alexandre, Marion Barbier, Djazia Tiourtite and Benjamin Znaty, "Médiation obligatoire des litiges de consommation: mode d'emploi" (Compulsory mediation in consumer disputes), 2016. Available at <https://www.twobirds.com/fr/news/articles/2016/france/mediation-obligatoire-des-litiges-de-consommation-mode-d-emploi>. See also Moreaux, Anne, "J21: l'arbitrage enfin ouvert aux consommateurs" (J21: arbitration finally open to consumers), *Affiches parisiennes*, November 2016. Available at <https://www.affiches-parisiennes.com/j21-l-arbitrage-enfin-ouvert-aux-consommateurs-6750.html>.

⁹⁹ <https://www.argentina.gob.ar/produccion/consumidor/sistema-nacional-de-arbitraje-de-consumo>.

¹⁰⁰ Casado Filho, Napoleão, João Victor Porto Jarske and Daniel Mendes Bioza, "As virtudes da arbitragem nas relações de consumo" (The benefits of arbitration in consumer relations), *Consultor Jurídico*, February 2021. Available at https://www.conjur.com.br/2021-fev-11/opiniao-virtudes-arbitragem-relacoes-consumo#_ftn4.

¹⁰¹ OECD, *Consumer Protection in E-commerce: OECD Recommendation*, 2016. Available at <https://www.oecd.org/sti/consumer/ECCommerce-Recommendation-2016.pdf>.

¹⁰² TD/B/C.I/CPLP/11.

¹⁰³ Article 19: Compliance plans.

"The favourable termination resolution that establishes the agreement may envisage the submission by the supplier of a compliance plan, which shall contain, at least, the following elements:

(a) The designation of a compliance officer, who shall serve as a liaison with the National Consumer Service; (b) The identification of corrective or preventive actions or measures, and a plan for their implementation; (c) The deadlines for implementation; (d) A protocol aimed at avoiding the risk of non-compliance, including mechanisms for detecting and reporting non-compliance with consumer protection regulations; (e) Internal mechanisms for staff training. The proposed compliance plan must be approved by the supplier's board of directors or governing body, as the case may be. The National Consumer Service, exercising its prerogative to interpret consumer protection rules, may issue one or more interpretative circulars on the meaning and scope of the compliance plans, which will be published on its website."

Meanwhile, during the negotiation that takes place in the context of a collective voluntary procedure, as prescribed by article 54 P (3) of Act No. 19496, agreement may be reached on the submission of a compliance plan that contains at least the designation of a compliance officer, the identification of corrective or preventive actions or measures, the deadlines for their implementation and a protocol aimed at avoiding the risks of non-compliance.

Given the recent entry into force of the regulation on voluntary compliance plans, it is difficult to make a value judgment, except to point out that they are at the forefront of international efforts to get the commitment of companies to good practices in consumer protection, and that the cooperation of companies operating in markets that are strategic from the viewpoint of consumer protection, such as mass, asymmetrical or risky markets, should be sought.

F. PRIORITIZATION OF PROTECTION MECHANISMS

Taking into account the large number of markets and industries in which the National Consumer Service has the power to investigate, the growing number of complaints it receives from consumers who feel they have been harmed by the actions of a supplier, the large number of existing suppliers and the finite resources at its disposal, the National Consumer Service has had to prioritize its actions in order to obtain better results while bearing in mind the potential deterrent effect in markets. In doing so, it has also taken into consideration the OECD Consumer Policy Toolkit.¹⁰⁴

The National Consumer Service has therefore devised a strategy to develop and disseminate guiding principles in the selection of cases and the discretionary use of consumer protection tools whose purpose is to bring together the different criteria that will allow the Service to define the sectors it needs to prioritize if it is to adequately discharge its public function – i.e. the protection of consumer rights – as well as to establish a future administrative interpretation of the protection tools in order to determine the best definition, scope and sphere of protection of each one of them.

In accordance with these guiding principles for the selection of cases, institutional action should

be directed as a matter of priority at preventing or repressing conduct that could potentially cause greater detriment to consumers, with a view to increasing the social well-being of consumers.

On the basis of this analysis, and without being exhaustive, the National Consumer Service groups its criteria into three broad categories: particularly sensitive markets; seriousness of the conduct; and strength of the case.

(a) Particularly sensitive markets. There are as many kinds of markets as there are goods or services on offer; their differences lie not only in the type of good or service offered, but also in the consumers and suppliers involved and the type of contracts entered into. This leads to an increased likelihood of non-compliance by suppliers in certain markets, such as medicines, which can even result in the death of consumers.

Therefore, as part of the prioritization process, the National Consumer Service determines the sensitivity of the market based on the complaints received and focuses on those markets that are more heavily regulated, such as the financial, basic services and telecommunications markets.

(b) Seriousness of the conduct. The importance to be attributed by the National Consumer Service to the cases it studies varies according to the seriousness of the supplier's conduct, for which it distinguishes between two types of criteria:

→ *Legislative criteria.* Referring to the legal definition in Act No. 19496 of conduct attributable to the supplier that causes harm to consumers, the National Consumer Service establishes four subcriteria:

- Nature of the affected consumers;
- Fines, which increase with the seriousness of the offence;
- Hidden or highly technical infringements, since some infringements are more complex to detect, quantify or prove and therefore require greater attention from the Service;

¹⁰⁴ OECD, *Consumer Policy Toolkit*, Paris, 2010. Available at <https://doi.org/10.1787/9789264079663-en>.

- Recurrent infractions, since some types of conduct give rise to more complaints to the National Consumer Service and can therefore be considered to be more serious; these include problems related to contract performance, guarantees and unwarranted charges.
- *Factual criteria.* Article 24 of Act No. 19496 includes factual circumstances that may cause a certain conduct of the supplier to be more onerous for consumers. The following have been identified:
- Aggravating circumstances, understood as circumstances that increase the liability of the offending supplier, and hence the amount of the fine. Act No. 19496 provides for four subcriteria: recidivism; serious damage to consumers' property; damage to the physical or psychological integrity or dignity of consumers; and consumer safety.
 - Other criteria, such as information asymmetry (minors, older adults and people with cognitive disabilities are among the particularly vulnerable); the duration of the conduct (the longer the duration of the conduct, the greater the harm to consumers, so it could be considered an aggravating factor); and the financial capacity of the supplier.
- (c) Strength of the case.** This criterion relates to the technical complexity of the case, the likelihood of obtaining a favourable outcome and the cost to the National Consumer Service, taking account of:
- Resources: the information and financial resources available;
 - Case strategy: whether there is the possibility of coordination with other State agencies or with a sectoral regulator, and whether there is sufficient evidence;
 - Room for discretion: depending on whether landmark cases have been won before and the potential positive effects on the market.

The case selection mechanisms are implemented through two committees, a monitoring committee and an advisory committee, which are made up of officials

at the second level of the National Consumer Service's hierarchy. While the first committee is focused on the detection of possible cases involving a violation of consumer legislation, the second is oriented towards the determination of the collective protection mechanism applicable to the specific investigation and its subsequent implementation.

Several countries publish their prioritization strategies in order to provide predictability and legal certainty to market operators. Ireland, for example, uses the criteria of level of economic or physical harm, likely impact on agency action, strategic importance and risk, resources and costs.¹⁰⁵ The United Kingdom sets out its criteria according to impact, strategic importance, risks and resources.¹⁰⁶ Australia not only determines the prioritization criteria but also publishes annually the markets or types of conduct to be prioritized.¹⁰⁷ France determines the ultimate objective of prioritization in its annual national research programme; in 2021, for example, this was to contribute to the ecological transition for the benefit of consumers, identify emerging risks, support the development of new economic models, maintain consumer confidence, ensure a stronger presence in strategic economic sectors for vulnerable consumers, and contribute to economic efficiency.¹⁰⁸

The highly technical prioritization of actions by the National Consumer Service clearly captures the spirit of the OECD recommendations on the design of consumer protection policies and is implemented in accordance with a number of sound criteria that provide predictability and clear guidelines and allow for immediate replication by the entire Service and, where appropriate, by other related entities.

Accordingly, the recommendation is to publish and disseminate the objective criteria used to set priorities in order to promote practices that prevent further harm to consumers, pursue their indemnification and ensure effective protection of their rights in addition to

¹⁰⁵ <https://www.ccpc.ie/business/about/decide-take-action/>.

¹⁰⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885956/prioritisation_principles_accessible_v.pdf.

¹⁰⁷ Australian Competition and Consumer Commission (2021), 2021 Compliance and Enforcement Policy and Priorities. Available at https://www.accc.gov.au/system/files/Compliance%20and%20Enforcement%20Policy%20and%20Priorities%202021_0.pdf.

¹⁰⁸ Directorate-General for Competition Policy, Consumer Affairs and Fraud Control (2020), National Research Programme.

fostering transparent decision-making and an efficient use of protection tools.

G. E-COMMERCE

The growth of e-commerce, which accelerated during the pandemic, brought to the fore once again the need for countries to have a regulatory framework that fosters confidence in electronic transactions, providing consumers with the transparent and effective protection afforded to them in traditional forms of commerce.

In this context, it is noteworthy that the United Nations guidelines for consumer protection, which are fully applicable to both e-commerce and traditional commerce, contain explicit recommendations on consumer protection in the digital economy.¹⁰⁹ The guidelines urge States to work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce. It also invites States to review existing consumer protection policies to accommodate the special features of electronic commerce. To this end, it is also necessary to bear in mind the OECD recommendations, such as the one issued in 2016 on consumer protection in e-commerce¹¹⁰ and the one on cross-border cooperation to comply with legislation on spam.¹¹¹

According to The *UNCTAD B2C E-Commerce Index 2020*, which measures countries' e-commerce readiness based on indicators of banking and Internet use, Chile ranks 59th out of 152 countries, leading the Latin American and Caribbean region, confirming the need for regulation at the earliest opportunity.¹¹²

In view of all this, the National Consumer Service has adopted various measures to supplement existing e-commerce regulations. For example, on 6 April 2020, it adopted an interpretative circular that focuses on the special situation engendered by the pandemic¹¹³ and that supplements the one published in 2019 on good practices in e-commerce.¹¹⁴

Likewise, during 2020, the National Consumer Service worked with the Ministry of Economic Affairs on an e-commerce regulation, which is awaiting the signature of the President of the Republic. The regulation addresses certain relevant aspects of the process of contracting services and purchasing products within the framework of e-commerce, granting consumers the same protection that they enjoy when entering into a contract face-to-face or through some hybrid arrangement. As regards its scope of application, the regulation states that it will apply not only to suppliers and advertisers offering goods or services on websites or other digital platforms in exchange for a price or fee, but also to the owners of such platforms if they do not belong to the suppliers or advertisers.

It is recommended that the regulations should reflect international practices consistent with UNCTAD and OECD standards for e-commerce, such as the following:

- (a) Ensure that the security measures implemented are commensurate with the payment-related risks, including those resulting from unauthorized access or use of personal data, fraud and identity theft;
- (b) Ensure that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, and the steps needed to complete the transaction, especially for new payment mechanisms, are clear and unambiguous;
- (c) Ensure that existing provisions on advertising using new online practices such as personalized pricing, drip pricing and influencer endorsements are fully effective, so that due regard is paid to the interests of consumers

¹⁰⁹ Guidelines, chap. V, sect. I (Electronic commerce).

¹¹⁰ OECD, *Consumer Protection in E-commerce: OECD Recommendation*, 2016. Available at <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>.

¹¹¹ OECD, *OECD Recommendation on Cross-Border Cooperation in the Enforcement of Laws against Spam*, 2006. Available at <http://www.oecd.org/sti/ieconomy/oecdrecommendationoncross-borderco-operationintheenforcementoflawsagainstspam.htm>.

¹¹² The *UNCTAD B2C E-commerce Index 2020: Spotlight on Latin America and the Caribbean*. Available at https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf.

¹¹³ Interpretative circular on remote contracting during the COVID-19 pandemic.

¹¹⁴ Interpretative circular on good practices in electronic commerce, Exempt Resolution No. 0184 of 21 March 2019.

and that businesses act in accordance with fair advertising and marketing practices;

- (d) Ensure that there are satisfactory liability regimes for digital intermediaries, with lower levels of liability for intermediaries that merely display catalogues, products and services than for those that add value to the underlying good or service and exercise effective control over it;
- (e) Ensure that the laws are effectively applied to suppliers (including digital intermediaries) that do not have a physical presence in the country;
- (f) Strengthen cross-border international cooperation in the enforcement of consumer protection laws.

It is also recommended that the regulations should include rules relating to:

- (a) Consent;
- (b) The right to receive and the duty to provide online information (in respect of the supplier: the goods or services offered; the contracting process itself; stock and availability of the products and services; date of dispatch and delivery; the right to withdraw; contact and support; the availability of standard contracts and continuing-performance contracts; and information on financial matters);
- (c) The transaction confirmation process;
- (d) Inclusion of publicity materials in the contract, advertising and business practices.

Finally, it must be borne in mind that, notwithstanding the National Consumer Service's efforts to improve consumer protection in e-commerce, preventive and supervisory action with regard to e-commerce will be more effective if the role of the Service is promoted and strengthened and international cooperation in relation to digital markets is enhanced, given the fact that, today more than ever, such platforms operate globally.

H. SUMMARY

Chile's public policy instruments for consumer protection form a coherent and effective whole. They consist of information mechanisms for better consumer decision-making, an infrastructure conducive to the formulation, implementation and monitoring of consumer protection policies, supervisory activities, dispute resolution and consumer redress mechanisms, voluntary compliance programmes, prioritized protection mechanisms and e-commerce instruments.

In summary, Chile has made remarkable progress in refining these instruments, although it could go further still in relation to alternative means of dispute resolution such as mediation, arbitration and online dispute resolution. It could also give consumer protection in e-commerce the higher priority it deserves in light of today's consumer relations; there is a need for an effective regulatory framework like the one currently under discussion.

IV. INSTITUTIONAL FRAMEWORK FOR CONSUMER PROTECTION IN CHILE

Consumer protection policy is cross-cutting in nature and its success requires the support of a variety of institutions, both public and private. This chapter focuses on the Chilean consumer protection body, the National Consumer Service, and on its activities, as well as on its relations with other public institutions, suppliers, civil society and international counterparts. The chapter also describes the forums set up to facilitate inter-institutional coordination, especially in the areas of financial services and product safety.

A. NATIONAL CONSUMER SERVICE

In accordance with article 57 of Act No. 19496, the National Consumer Service is a decentralized public service with legal personality and its own resources. Its mandate is to inform, educate and protect consumers and promote compliance with legislation through the monitoring and inspection of markets. It operates within a technical framework that allows it to take effective and efficient action and promote balance and transparency in consumer relations, as a modern, agile agency at the service of the population.

The Service reports to the President of the Republic, through the Ministry of Economic Affairs, Development and Tourism. However, it operates independently, as reflected in the regulations governing the process for the removal of the head of the Service and other legal provisions. It is decentralized into regional directorates and its top managers and their deputies are appointed in accordance with the selection process for senior public servants established pursuant to Act No. 19882.

The National Consumer Service is the legal successor to other bodies: the first institution in Chile responsible for consumer affairs was the General Commissariat of Subsistence and Prices, established in 1932 to prevent monopolies, resolve complaints and set quality standards, among other things. The year 1953 saw the establishment of the Office of the Superintendent of Supply and Prices, which was replaced in 1960 by the Directorate of Industry and Commerce. The Directorate was attached to the Ministry of Economic Affairs, Development and Reconstruction and had the power to carry out inspections, set prices, receive

and investigate consumer complaints and, where appropriate, sanction offenders. In the 1970s, however, following the establishment of a free market economy in Chile, the Directorate of Industry and Commerce lost its supervisory and price-fixing powers.

In 1990, the Directorate of Industry and Commerce was replaced by the National Consumer Service, which was presented with the major challenge of establishing an institutional system to provide legal guidance and promote consumer education and developing the first ever legal framework for protecting basic consumer rights, which led to the enactment, in 1997, of Act No. 19496 on the protection of consumer rights.

The National Consumer Service's strategic objectives¹¹⁵ for the period 2019–2022 are as follows:

- Strengthen consumer rights protection by taking measures to facilitate the compensation of victims, the imposition of sanctions, behavioural change, an increase in the transparency of market practices and the establishment of fair consumer relations that directly benefit the population
- Reduce information asymmetries through the dissemination of consumer studies, research and tools that promote balanced consumer-business relations and more transparent markets
- Promote responsible and sustainable consumption by taking effective educational measures and raising financial literacy levels, thereby reducing knowledge gaps and promoting consumer knowledge
- Ensure and increase compliance with consumer rights protection legislation through continuous, effective and efficient inspections

¹¹⁵ National Consumer Service, Strategic Definitions Form 2019–2022 (Form A1). Available at http://www.dipres.cl/597/articles-203404_doc_pdf.pdf.

aimed at detecting, preventing, deterring and correcting unlawful behaviour

- Promote and facilitate compliance with consumer rights protection legislation by issuing clear and timely guidance in that regard, thereby creating legal certainty for market actors
- Strengthen internal management by improving processes and optimizing and increasing efficiency in the use of organizational resources with a view to providing a high-quality service for users

In order to achieve these objectives, the Service's strategic outputs are organized around: (a) protection, legal advice and guidance; (b) market and consumer information; (c) consumer education; (d) oversight of matters related to consumer rights protection; (e) administrative interpretation in matters related to consumer rights protection; and (f) initiatives promoting citizen participation.

According to the data made available to UNCTAD, the Service has an annual budget of approximately US\$ 19 million and a total of 354 employees. Its average annual budget over the period 2017–2019 was US\$ 18.1 million, below that of similar institutions in other countries in the region, such as Colombia and Mexico, where the average equivalent budget over the same period was US\$ 63 million and US\$ 56.8 million, respectively. It is also well below the equivalent average budget in other OECD member States, such as Australia, where it was US\$ 200 million, France, where it was US\$ 276 million, and the United Kingdom, where it was US\$ 87 million.¹¹⁶ In Chile, per capita spending on consumer protection, calculated by comparing the Service's budget against the number of inhabitants, stands at US\$ 1, lower than in Colombia (US\$ 1.20), the United Kingdom (US\$ 1.30), France (US\$ 4.10), and Australia (US\$ 7.80).¹¹⁷

According to the non-governmental organization Observatorio Fiscal, the National Consumer Service is in the top 7 per cent of public institutions when it

comes to spending transparency, based on the level of competition in its public tenders.¹¹⁸

Regarding the number and nature of the companies subject to inspection, the National Consumer Service has a total of 35,860 suppliers on its books. New companies and companies that are not yet registered in the Service's databases are also subject to inspection. However, in 2020, it was able to inspect only 1.8 per cent of registered companies (656 of the total 35,860), despite doubling its inspection activity compared to 2019. This indicates that, even with the most effective prioritization methods, the Service needs more resources in order to expand its inspection coverage, in line with paragraph 15 of the United Nations guidelines for consumer protection, which says that Member States should work towards ensuring that consumer protection agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases.

Other public agencies with oversight powers over a much smaller number of auditees have double or triple the staff of the National Consumer Service. In Chile, there are various sectoral agencies, in addition to the National Consumer Service, involved in the oversight of regulated activities or markets; these agencies employ more than 3,000 officials and have a total budget exceeding 250 billion pesos but, together, cover only a portion of the markets subject to inspection by the Service. For reference, the Internal Revenue Service has a register of auditable companies comparable to that of the National Consumer Service but employs approximately 5,000 officials and has a budget of 198 billion pesos.

This information points to a need to increase the Service's budget in order to allow it to expand the scope of its oversight activities and take additional preventive measures, while focusing on vulnerable consumers and developing means of understanding and profiling their needs, including, for example, by reinforcing the mandate of the Behavioural Economics Unit.

¹¹⁶ World Consumer Protection Map. Available at <https://unctadwcpm.org/answers.html>.

¹¹⁷ World Bank. Available at <https://datos.bancomundial.org/indicador/SP.POP.TOTL>.

¹¹⁸ In the section listing indicators by institution, under the indicator on competition, the National Consumer Service ranks in the top 60 out of a total of 903 institutions, with an index of 54.5 per cent. See https://redflags.observatoriofiscal.cl/Instituciones?orden=4&filtro=&Anio=2020&FK_Cat2=1.

Figure 20. Chile: Institutions involved in consumer protection, their staffing levels and annual budgets

Body	Ministry	No. of staff in 2019 ¹	Budget (thousands of pesos) ²
Office of the Superintendent of Sanitation Services	Public works	204	10 709 035
Office of the Superintendent of Electricity and Fuel	Energy	386	14 494 813
Office of the Superintendent of Social Security	Labour and social security	326	14 825 195
Office of the Superintendent of Health	Health	336	14 855 910
Office of the Superintendent of Education	Education	909	32 584 814
Office of the Undersecretary for Telecommunications	Transport and telecommunications	314	65 964 847
Financial Market Commission	Public finances	652	97 038 116
Total		3 127	250 472 730

¹ Budget Directorate of the Ministry of Finance. See <https://www.dipres.gob.cl/598/w3-article-190248.html>.

² Budget Directorate of the Ministry of Finance. See <http://www.dipres.gob.cl/597/w3-multiropertyvalues-15149-25190.html>.

Source: National Consumer Service.

According to studies of the National Consumer Service's coverage, while it has high name-recognition in urban areas, where 7 out of 10 consumers recognize it as the consumer protection body, it is less well known in lower socioeconomic population segments, and nearly half of all consumers (47.5 per cent) view the Service as difficult to access. Moreover, the Service is better known among consumers for its reactive role than for its proactive role in educating and continuously promoting consumer rights and responsibilities.¹¹⁹ An increase in the Service's capacity would allow it to better serve consumers in rural areas, where around 12.2 per cent of the population resides, especially consumers in regions such as Ñuble, Araucanía, Los Ríos, Maule, Los Lagos and Libertador General Bernardo O'Higgins, where more than a quarter of the local population lives in rural areas, according to the 2017 census.

The situation described above could be improved by reinforcing the public resources allocated to the National Consumer Service with a view to strengthening its territorial reach and capacity to reach particularly vulnerable consumers.

¹¹⁹ National Consumer Service, Final Report on Consumer Analysis, 2019.

B. CONSUMER PROTECTION RELATIONS

The success of consumer protection policy depends on the involvement of multiple stakeholders. This section focuses on initiatives that aim to promote institutional relations between public entities and relations with suppliers and civil society.

1. Institutional relations

The National Consumer Service is developing a strategy to strengthen its institutional relations, understood as the ensemble of communication and other activities that it carries out with its peers and stakeholders through various means and mechanisms. It is also rolling out a liaison strategy to identify and promote good practices, gauge areas of influence and develop initiatives that contribute to a culture of responsible consumption. The following activities, which are currently under way, are set out in the workplan:

- ✓ Mapping and evaluating the Service's institutional relations with its peers

- ✓ Designing an institutional relations model and policy
- ✓ Analysing the perception of key actors with which the Service interacts
- ✓ Surveying forums and identifying influential actors
- ✓ Establishing new relationships and connections with key actors
- ✓ Designing communication initiatives and products aimed at key actors

From the interviews conducted for the present report, it is clear that there is a need to build a stronger national presence with the support of the municipalities through a process of continuous improvement and ongoing training for municipal officials involved in consumer protection, under the leadership of the National Consumer Service.

2. Relations with suppliers

The National Consumer Service's approach to relations with suppliers is guided by its vision of itself as an institution capable of working with various market actors to reduce asymmetries affecting the consumer. This approach is set out in an interpretative circular on institutional relations with companies and key stakeholders,¹²⁰ which reflects the recommendations contained in the United Nations guidelines for consumer protection, the OECD Guidelines for Multinational Enterprises and the International Organization for Standardization (ISO) standard 26000 on social responsibility.

The National Consumer Service considers it important to develop relations with suppliers in the following areas:

- **Enforcement of consumer rights:** These rights are set out Act No. 19496 and other consumer rights protection norms.
- **Objective and impartial communication, marketing, advertising and information:** In accordance with the principles of legality, respect for personal dignity, truthfulness, integration of publicity materials, availability

of and access to information, authenticity, autonomy and sociability.

- **Quality and safety of products and services:** Responsible companies with good practices are those that take a preventive approach in addition to complying with legal obligations to fix unsafe products and anticipating conflicts and collective protection procedures. They also provide adequate information on technical compliance, based on relevant studies and reports, to demonstrate the quality and safety of their products and participate in working groups to facilitate improvements in national regulations and industry practices.
- **Sustainable education and information:** Companies must assume their role in shaping consumer culture and its environmental, social and economic impacts; the National Consumer Service therefore encourages companies to develop a culture that promotes sustainable consumption based on clear and timely information.
- **Consumer service and resolution of complaints and disputes:** It is essential for suppliers to put in place efficient aftersales mechanisms in the event of disputes with consumers, to avoid the need for the intervention of State administrative or judicial bodies.
- **Financial products and services:** The National Consumer Service is the administrative authority responsible for overseeing financial consumer protection standards in Chile and is therefore responsible for monitoring compliance with the standards governing the consumption of financial products and services. In view of the general complexity of financial services, the Service is also working on developing and redesigning information tools such as financial statements for the benefit of financial consumers, using studies and proposals for regulatory improvement based on input from behavioural economics and experiments conducted in partnership with leading academics.
- **Protection and privacy of consumer data:** The National Consumer Service promotes compliance with Act No. 19628 on the

¹²⁰ https://www.sernac.cl/portal/618/articles-57940_archivo_01.pdf.

protection of personal data in the context of consumer relations. In exercising its various powers, particularly the monitoring of information on the processing of personal data by suppliers and the pursuit of collective action, the Service conducts investigations and pursues compensation for consumers who have been harmed as a result of their personal data being processed in a manner that violates current legislation.

- **Promotion of compliance plans:** The National Consumer Service encourages companies to implement compliance plans as self-regulatory tools to prevent and address violations of consumer protection standards.

In accordance with the aforementioned circular, the mechanisms used by the National Consumer Service to promote relations with companies and other key actors are:

- The Lobbying Act (No. 20730).
- Working groups: These are public-private working groups whose purpose is to undertake preventive work when an area requiring improvement is identified in respect of a particular market or supplier. They operate full-time to facilitate the processing and resolution of requests (including queries, claims and alerts) associated with the public consumer support services offered by the National Consumer Service.
- Interoperability: This is a unified and ongoing process intended to facilitate the processing and resolution of requests received by the National Consumer Service, on the basis of several fundamental principles including: (a) the digital processing of requests; (b) the central role of suppliers in receiving complaints; (c) transparency in exchanges of information with suppliers; and (d) a commitment to continuous improvement in consumer rights protection.
- The Civil Society Advisory Council: The Council is part of the National Consumer Service; companies participate in it through six trade associations active in areas within the Service's

remit, according to the functions and powers described above.

- Awareness-raising events, such as seminars, talks and meetings.
- Inspections to monitor compliance with Act No. 19496 and other consumer rights protection norms, in application of the power to inspect suppliers' premises, summon their representatives, managers and collaborators to give statements, and request information for monitoring purposes.

3. Relations with civil society

Chile has a dynamic network of associations that are active in the field of consumer protection. The National Consumer Service interacts with consumer associations and groups through the coordination of public policy and participatory mechanisms and provides support for their activities, in line with paragraph 5 of the United Nations guidelines, on the freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting their legitimate interests.

(a) Coordination with civil society

The above-mentioned Civil Society Advisory Council was established in 2011. The Council is consultative by nature and pluralist in composition, and its output is non-binding.

The Council is composed of 12 permanent civil society representatives (6 representing consumer associations and 6 representing suppliers). Its chair is elected each year from among its members by a majority vote of those present. The representatives are appointed by the bodies they represent, on the basis of a call for candidates issued by the National Directorate of the National Consumer Service. They serve on a voluntary basis for a term of two years and may be reappointed for one additional term.

The National Consumer Service provides the Council with a technical secretariat that is responsible for its organization and activities.

The purpose of the Council is to provide expert guidance and opinions to facilitate the implementation of consumer policies. It does this by:

- i. Presenting and discussing proposals for improvements to public policy on consumer rights;
- ii. Analysing high-impact issues relating to consumers and the defence of their interests and proposing initiatives to address such issues within the legal framework;
- iii. Proposing initiatives to promote citizen participation in consumer protection activities, particularly through consumer associations;
- iv. Proposing initiatives for national and regional sectoral consultations between suppliers and consumers with a view to establishing mechanisms that facilitate consumer relations.

Similar initiatives can be found in other countries:

- In Brazil, the National Consumer Secretariat is responsible for coordinating national consumer protection policy and organizing the National Consumer Defence System. Since 2020, there has also been a National Consumer Protection Council, which is responsible for preparing and directing policy and proposing recommendations to members of the Consumer Defence System, including the Procon network of consumer protection agencies.
- In Colombia, there is the National Council for Consumer Protection, which comprises representatives of the State, the Colombian Confederation of Consumers and local consumer protection councils.
- France has a National Consumer Council, a joint consultative body bringing together consumer and employers' associations. Its mandate is to discuss issues of interest to consumers, issue opinions on draft legislation and public policy, and facilitate agreements between consumer and employers' associations.
- In Peru, the National Council for Consumer Protection acts as a forum for inter-institutional coordination among the representatives of civil society, the State and suppliers that participate

in the National Integrated Consumer Protection System, led by the consumer authority.

In the Chilean context, while the National Consumer Service has made efforts to promote the participation of civil society in consumer affairs, there remains a pressing need to expand the scope for citizen participation in the discussion of public policy. A good example of a model in this regard is the Australian Competition and Consumer Commission, which organizes an annual national consumer congress bringing together consumer groups, community organizations and government bodies to discuss issues impacting consumers and develop strategies to improve consumer justice and welfare.¹²¹

b) Support for consumer associations

The United Nations guidelines for consumer protection highlight the importance of consumer associations in assisting Member States in the implementation of pro-consumer measures.¹²² The guidelines provide that Member States should encourage consumer organizations to undertake educational and informational programmes for the benefit of low-income consumer groups in rural and urban areas.¹²³

In 2005, following the entry into force of Act No. 19955, a competitive fund was established to finance initiatives proposed by consumer associations. The fund is managed by an independent board of directors, with coordination and technical advice provided by the National Consumer Service. Thanks to this fund, consumer associations are able to carry out projects relating to their various functions and objectives, including initiatives with regard to consumer queries and claims, consumer rights awareness-raising campaigns, educational activities and studies. As of the 2020 call for proposals, the fund is also open to initiatives aimed at helping individual consumers who file claims with the National Consumer Service to pay for legal representation.

The competitive fund is vital for consumer associations, since they are not reimbursed for the legal expenses and costs incurred during class actions. Accordingly, there is a need to expand the fund, but also a more

¹²¹ Australian Competition and Consumer Commission, National Consumer Congress. <https://www.accc.gov.au/about-us/conferences-events/national-consumer-congress>.

¹²² Guidelines, para. 5 (h).

¹²³ Guidelines, chap. V, sect. G (Education and information programmes).

urgent need to introduce legislation giving consumer associations the power to recuperate adequate and proportionate costs or a proportion of the compensation awarded if they obtain a favourable ruling in a court case; this would cover the costs of the often long and complex class action lawsuits, with a view to rewarding the associations for the important private prosecution activity that they carry out, promoting transparency and avoiding possible conflicts of interest with affected consumers.

Details of the budget allocated to the competitive fund, which has steadily increased over the years, and the projects awarded funding over the last five years (amounting to over 2.1 billion pesos for a total of 212 projects) are provided in figure 21.

Figure 21. Chile: Competitive fund and consumer associations' projects awarded funding

Year	Annual budget of the fund (in pesos)	Change in size of the fund (%)	No. of projects awarded funding
2016	394 214 000	-	54
2017	406 040 000	+3.0	44
2018	416 597 000	+2.6	36
2019	427 004 000	+2.5	35
Jan-Oct 2020	492 870 000	+15.4	43
Total	2 136 725 000		212

Source: National Consumer Service.

The National Consumer Service also works to strengthen consumer associations, in view of their role as independent public interest organizations that protect, inform and educate consumers and defend their rights. It does this by:

- Providing technical advice on their set-up and operations
- Promoting their participation in citizen participation forums, including discussion groups, participatory dialogues and, above all, national and regional civil society advisory councils
- Supporting the development of the competitive fund to provide support with financing and offering guidance and assistance

As of November 2020, there were 133 consumer associations registered with the Ministry of Economic Affairs, Development and Tourism, of which 44 had an active governing body. Active associations were present in 14 of the country's 16 regions.

4. International relations

At the international level, Chile has worked actively, through the National Consumer Service, to deepen its relations with key actors by means of: (a) sustained action in international forums and organizations; (b) participation in bilateral cooperation forums; and (c) the provision of technical assistance for the development of other consumer protection agencies, based on the priorities detailed below:

- a) Encouraging and disseminating the use of mechanisms to protect the collective and common interests of specific consumer groups through the International Consumer Protection and Enforcement Network (ICPEN) and the Ibero-American Forum of Consumer Protection Agencies (FIAGC);
- (b) Promoting the development and coordination of international behavioural economics networks;
- (c) Conducting joint work with the International Consumer Protection and Enforcement Network on the digital economy;
- (d) Promoting cross-border information exchange to prevent infringements by suppliers domiciled abroad;
- (e) Supporting coordinated product safety measures throughout the continent.

With regard to international networks, the National Consumer Service participates in, and is part of, around 11 high-level bodies, including: (a) the Group of 20; (b) the International Consumer Protection and Enforcement Network; (c) OECD; (d) the Ibero-American Forum of Consumer Protection Agencies; (e) the Consumer Safety and Health Network of the Organization of American States; (f) the Asia-Pacific Economic Cooperation forum; (g) MERCOSUR (as a guest); (h) the Pacific Alliance; (i) the UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy; (j) the Consumers International Summit; and (k) the Aflatoun Annual

Conference. The Service often makes contributions at the international level that enrich the debate around various aspects of consumer protection, and has been particularly dynamic in this regard during the pandemic period.

In terms of technical assistance for development and bilateral cooperation, the Service is part of the Chile-Peru Binational Commission and exchanges best practices through the South-South cooperation programme of the Chilean Agency for International Cooperation for Development.

The Service has structured its institutional relations on the basis of the elements mentioned above, creating links with other sectors, the media, consumers, formal bodies for coordination in specific areas (product safety and financial education committees) and international actors.

C. INSTITUTIONAL COORDINATION FORUMS FOR CONSUMER PROTECTION

This section presents an analysis of the institutional framework for the coordination of public policies on consumer protection and, in particular, forums and opportunities for liaising and collaborating with stakeholders with a view to the development and implementation of public policy, taking into account the multisectoral scope of consumer protection, with a particular focus on financial services and product safety.

Public policy and policy coordination mechanisms allow for the cross-cutting application of consumer protection in different sectors with a view to the systematic identification and prioritization of issues that need to be addressed through coordinated and effective action by various government agencies and civil society. This approach facilitates the effective application of the United Nations guidelines for consumer protection.¹²⁴

In Chile, public policy on consumer protection is formulated mainly by the National Consumer Service, in accordance with the mandate conferred on it by law. However, there are other agencies with different competencies that have an impact on consumers.

¹²⁴ Guidelines, chaps. III and V, sect. A.

This is why it is necessary to assess the development of national consumer policy aimed at coordination among the relevant public services and the leadership role attributed to the Service in this area.

A review of the Service's institutional operations reveals that it has made efforts to promote consumer protection in each of the 16 regions of Chile through coordination with municipalities. However, this coordination has not been homogeneous, given the specificities of the Chilean territory.

Relevant comparable examples exist. Notwithstanding the differences in the models used, consumer protection at the municipal level is also the practice in Brazil, through the consumer protection agencies known as Procons, and in Spain, through the municipal offices for consumer information, which aim to bring consumer protection closer to the population by focusing on local issues.

Under the Chilean model, inter-institutional relations are facilitated by formal coordination bodies dedicated to specific topics, such as product safety and financial services.

Given the budgetary limitations of the National Consumer Service and its limited geographical reach, a stronger national presence should be built up, for example, by appointing a focal point in each municipality and organizing more training for municipal officials involved in consumer affairs, in order to raise awareness of consumer rights, prevent violations and contribute to consumer empowerment.

1. Financial Education Committee

The Financial Education Committee is an important forum set up pursuant to Presidential Decree No. 954 of November 2014 establishing the Advisory Commission for Financial Inclusion. It is led by the Ministry of Finance with the support of a technical secretariat and includes various representatives of public, private and civil society bodies, including the National Consumer Service, the Central Bank, the Financial Market Commission, the Office of the Superintendent of Pensions, the Ministry of Education and the Solidarity and Social Investment Fund. Its work is aimed at developing a public policy on financial education and has resulted in the adoption of the National Strategy for Financial Education.

Since 2017, the Committee has been working with the Ministry of Education on cross-cutting pedagogical material highlighting the need to incorporate financial education into the school curriculum. Students have been prioritized as a target group in view of the need to provide them with the tools they need to make wise financial decisions early on. In addition, financial education should reflect the standards recognized by OECD in its recommendation on financial literacy relating to the inclusion of educational content on consumer protection in the school curriculum in primary and secondary education. From a legislative standpoint, Chile incorporated a financial literacy component into its compulsory education programme in 2018 pursuant to Act No. 21092.

The work of the Financial Education Committee is aligned with one of the pillars of the United Nations guidelines,¹²⁵ which urges Member States to adopt measures to reinforce and integrate consumer policies concerning financial inclusion, financial education and the protection of consumers in accessing and using financial services and recommends incorporating financial education into the school curriculum.

The work carried out in the area of financial education should be replicated by incorporating general pedagogical material on consumer protection into the primary and secondary education curriculum. Training in consumer issues for teachers should be organized as a matter of priority.

2. National Product Safety Committee

The United Nations guidelines for consumer protection provide extensive guidance to assist countries in achieving and maintaining adequate protection of their population as consumers, bearing in mind that consumers are entitled to have access to products that are not dangerous.¹²⁶ They establish that the protection of the physical safety of consumers should be a priority for Member States, which should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or

¹²⁵ Guidelines, chap. V, sects. G (Education and information programmes) and J (Financial services).

¹²⁶ Guidelines, chap. V, sects. B (Physical safety) and D (Standards for the safety and quality of consumer goods and services).

international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

In this regard, Chile has a coordination body composed of representatives of various public and private bodies, the purpose of which is to guide and coordinate measures at the national level with a focus on consumer safety and the safety of products available in the marketplace. This market surveillance is carried out through coordinated action by the agencies involved in the safety of non-food products, the promotion of a culture of consumer safety and improvements to the technical and legal framework.

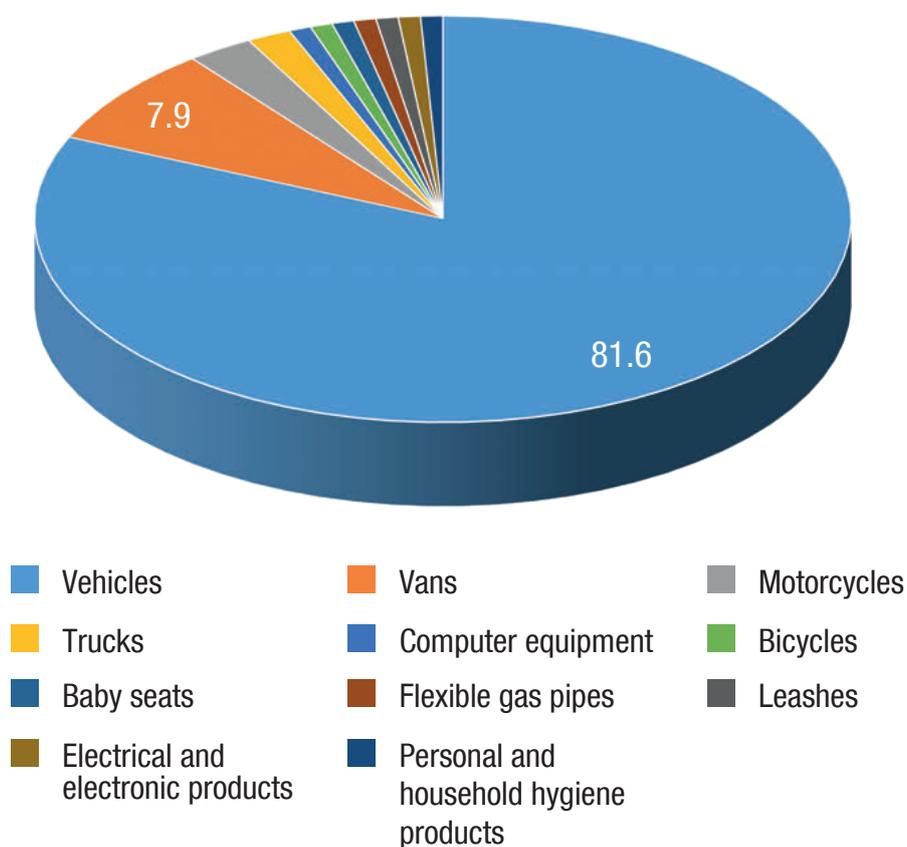
The National Product Safety Committee is currently composed of representatives of the following public bodies: (a) the Office of the Superintendent of Electricity and Fuel; (b) the Ministry of Health; (c) the Institute of Public Health; (d) the National Institute of Standards; (e) the Office of the Under-Secretary for Transport; (f) the Investigative Police; (g) the National Customs Service; and (h) the Office of the Under-Secretary for International Economic Relations. It is coordinated and chaired by the National Consumer Service. Although the Committee has been meeting since November 2011, it was officially established by way of an agreement in March 2014 and has since been meeting on a monthly basis.

The right to safely consume goods and services and to the protection of one's health and the environment is a substantive right under Act No. 19496.

In Chile, 114 safety alerts were issued in 2019, mainly concerning product recall¹²⁷ notifications with regard to cars, vans, motorcycles and trucks, which accounted for 93.6 per cent of the total number of alerts issued by the National Consumer Service, as shown in figure 22.

¹²⁷ Product recall is the procedure whereby the supplier, upon noticing a defect in a product it manufactures or markets that is no longer in its safekeeping, calls on everyone in possession of the product to return it and have it exchanged (Isler Soto, Erika, "El retiro de productos en la Ley 19496", *Revista Foro Derecho Mercantil*, No. 39, April–June 2013, pp. 15–41). Product recall is not regulated in an organized or systematic manner, although it is provided for in articles 46, 48 and 49 (2) of Act No. 19496.

Figure 22. Chile: Safety alerts issued in 2019, by product type (%)



Source: National Consumer Service.

While product safety is governed by general regulations and certain specific provisions, there is a clear need to develop specific regulations on the safety of products and services, to strengthen and institutionalize coordination forums under the leadership of the National Consumer Service and to make the exchange of information between stakeholders compulsory.

One important proposal that needs to be implemented in Chile consists of a set of draft product safety regulations; these would establish minimum safety requirements and procedures for suppliers and explain how they relate to the right of consumers to consume safely and to be given accurate and timely information.

A review of the draft regulations reveals that they contain necessary measures for more effectively protecting the safety and health of consumers and

provide clarity to suppliers regarding the obligations incumbent upon them.¹²⁸

Generally speaking, when the work of these two committees is reviewed, and in light of the importance of institutional relations, it would be a good idea to establish a council for intersectoral relations in consumer affairs tasked with drawing up and implementing public policy. This would create a space

¹²⁸ These include requirements relating to general product safety labelling that identifies the product and the supplier; safety information; special instructions and warnings; the content and location of information and labelling; advertising and product safety; specific obligations of suppliers in respect of product safety, including product information, notifications, warnings and corrective or risk reduction measures, the duty of professionalism, and the expected lifespan of the product; preventive product safety measures relating to the role of suppliers and the National Consumer Service; and corrective or risk reduction measures.

for formal intersectoral coordination as well as for the development and implementation of national policy along the lines described above.

D. SUMMARY

Chile has forums for interaction with the general public on the subject of consumer protection, such as the Civil Society Advisory Council, which could be backed up by involving citizens in discussions on public policy.

The process of getting consumer associations involved in public policymaking by offering financial incentives (from the competitive funds that have been expanding over time) is of particular interest.

Public policy instruments, as well as spaces and opportunities for coordination between the different actors involved in consumer protection in Chile, need to be reinforced and developed, given the large number of agencies with powers in areas impacting consumers.

To this end, it will be necessary not only to strengthen existing bodies but also to establish new spaces, allocate greater resources and develop norms that better regulate interstate coordination, taking into account the idiosyncrasies of the country, its characteristics and the special situation of the most vulnerable consumers.

V. CONCLUSIONS AND RECOMMENDATIONS

Chile is the first State member of OECD to have undergone a voluntary peer review of consumer protection law and policy conducted by UNCTAD. Such reviews use the United Nations guidelines for consumer protection as a framework for analysis, although other international instruments and initiatives commonly recognized as best practices are also referenced.

This review aims to provide an external assessment of the effectiveness of consumer protection law and policy, as well as to identify the challenges to be addressed and the areas to be improved in the legal and institutional frameworks, with a view to enhancing the quality and efficiency of consumer protection regimes. The objectives of the review are to assess the consumer protection awareness of relevant stakeholders regarding consumer protection and their contributions in this area. An additional objective is to formulate and recommend appropriate measures in line with the economic and developmental particularities of each country.

This report, which serves as the basis for the voluntary review of Chile, addresses areas considered as priorities by Chile. These priority areas are: the effectiveness of dispute resolution and redress mechanisms; access by consumers to adequate information to enable them to make informed choices; and adequate infrastructure to develop, implement and monitor consumer protection policies, while taking special care to ensure that consumer protection measures are implemented for the benefit of all consumers, including specific guidelines for those identified as vulnerable.

UNCTAD has found, based on its analysis, that considerable progress has been made in the area of consumer protection in Chile, especially in recent years, thus demonstrating the country's willingness to consolidate a robust system and the relevance of consumer protection as an issue on the public agenda.

The country's interest in consumer protection issues was made clear during the extensive debate generated by the proposed amendment to the Consumer Protection Law and subsequent review by the Constitutional Court and the Comptroller-General's Office.

The regulatory analysis highlights the establishment of the National Consumer Service as the agency mandated to enforce consumer protection standards. It underlines the Service's coordinating role in the implementation of public policy, through cooperation with other public institutions and the maintenance of close relationships with key actors, such as consumer associations and businesses.

Institutionally speaking, the National Consumer Service is an innovative and flexible entity, capable of adapting to the different needs of consumers and to changing environments. It is effective in carrying out its duties, such as providing information to consumers, ensuring the collective defence of consumers' rights and obtaining compensation for consumers; as a result, the Service has become a benchmark for other agencies. Indeed, it has established a prestigious public profile among the general public and consumers and supported the role of Chile as a leading country in the region, generating certain expectations within OECD in terms of consumer protection.

The results of the analysis are positive overall. A number of areas for improvement have been highlighted for the strengthening of consumer protection, and recommendations have been formulated in that regard. The following paragraphs provide an overall assessment, summarizing the analysis contained in the report. The results are presented in the form of a table at the end of the chapter which lists the target audience for each recommendation.

A. LEGISLATIVE FRAMEWORK

The main legal framework on consumer protection is Act No. 19496 (published in March 1997), which establishes consumer protection standards. This law mandates the National Consumer Service to enforce consumer protection standards.

Act No. 19496 establishes the basic rights and duties of consumers; freedom of choice in goods and services; truthful and timely information on goods and services; the safe consumption of goods and services; environmental protection; the right to redress and adequate compensation; and education on responsible consumption. In addition,

the Act establishes specific rights for consumers of financial products and services, among others. Particular emphasis is placed on protection against discrimination and the protection of consumer health, with a special focus on the link between consumer protection and the fundamental rights of individuals.

March 2019 marked the major regulatory landmark of the last 20 years in Chilean consumer affairs: the strengthening of the National Consumer Service through the amendment of Act No. 19496. The Service was attributed powers of oversight and administrative interpretation; it was further empowered to propose regulatory amendments, to conduct voluntary collective procedures, to refer individual cases for free legal assistance to legal assistance agencies and consumer associations and to evaluate compliance plans and programmes. These and other powers have contributed to the gradual strengthening of consumer protection in Chile, a process which is expected to continue in the future.

Although the importance of consumer protection as part of national law has been recognized by the high courts of justice and even the Constitutional Court, such protection is not yet enshrined in the Constitution, as it is in some other countries of the region and States members of OECD. The Constitutional Convention could therefore consider the inclusion of consumer protection in the future Constitution, ideally with the support of the National Consumer Service, which has the technical know-how to lead such a process.

In addition, throughout the report, regulation at the regulatory level is recommended, with respect to product safety, e-commerce, the award of reasonable costs to parties who have legal standing as claimants and greater coverage by the mechanism through which indemnities, compensation and reparations are awarded in collective procedures.

B. PUBLIC POLICY FRAMEWORK

The Chilean public policy framework is extensive, covering all the areas recommended in the United Nations guidelines for consumer protection (para. 14 ff.). It provides for information mechanisms to help consumer decision-making and adequate infrastructure to develop, implement and monitor consumer protection policies. It also ensures oversight and dispute resolution and consumer redress and

provides for compliance programmes and the prioritization of protection mechanisms and electronic commerce.

Chile should, as a priority, adopt a strategy that is coordinated across the various State consumer protection agencies and that affords special attention to vulnerable consumers as part of State policy, in a way that is closely tied to the institutional framework described later in this report.

Before taking any action, evidence should be collected and information asymmetries should be resolved to the extent possible. In the future, consideration should be given to the identification or consolidation of primary information sources (for example, household surveys that are representative of both urban and rural areas and that encompass different social groups). This in turn will make it possible to target specifically those services and sectors that are not covered by the policy and to include them in initiatives. In addition, behavioural studies should be enhanced, by creating consumer profiles that reflect different social classes, nationalities and geographical places of residence and by planning initiatives that have a direct impact on the different consumer groups. This will make it possible to focus efforts on the most disadvantaged or vulnerable groups of consumers who, owing to lack of knowledge or resources, have not been able to register their complaints or sound the alert regarding the violation of their rights as consumers.

Cost is the greatest barrier to carrying out a survey of consumption habits. In addition to the submission of a budget request, therefore, a strategic alliance involving various organizations could prove useful. Such organizations could include governmental institutions like the Central Bank, the National Institute of Statistics or the Ministry of Social Development and Family, to supplement the social and economic survey, as well as universities, which would benefit from the data collected.

In terms of consumer information and education, the activities of the National Consumer Service include contract comparison and management tools, behavioural insight studies, interactive platforms, market studies, interpretative circulars and remote support services.

With the entry into force of Act No. 21081, the National Consumer Service was attributed oversight powers; it is now recognized as a supervisory institution. As

part of this process, the national supervisory policy, which is designed to be preventive and dissuasive, was rolled out.

The Service carried out 529 inspections in 2019 and 1,065 in 2020, focusing on strategic markets and those hardest hit by the COVID-19 pandemic, such as retail and e-commerce; basic services (electricity, sanitation, gas and telecommunications); transport; household hygiene products; extrajudicial debt collection; COVID-19 tests (quick tests and PCR tests); “miracle cures”; sexist and gender-stereotyped advertising; green advertising; and stock-outs and prices of basic necessities in pharmacies and supermarkets.

The National Consumer Service set up a task force in order to be able to carry out all these supervisory activities. However, as the Service has only recently taken on supervisory responsibilities, a number of steps remain pending, including hiring authorized inspectors for each region of the country; improving the planning and analysis of inspection results; improving the management of knowledge in the area of oversight, so as to be able to apply such skills to more complex matters; becoming equipped with integrated computer platforms for the systematic processing of information and creation of a profile for each business; and making procedural adjustments so as to be able to respond efficiently to contingencies and manage citizen alerts regarding potential violations.

Dispute resolution and redress is one of the pillars of consumer protection policy in Chile. As has already been stated, the National Consumer Service is empowered to enforce compliance with the legal and regulatory provisions on the protection of consumer rights and may become a party to suits claiming a violation of the general interests of consumers, according to the procedures established by general regulations or special laws. The National Consumer Service also has the power to report potential cases of non-compliance to judicial bodies or authorities and to become a party to suits involving the general interests of consumers.

The activities of the Service over the years have made a positive impact, making it a benchmark for other agencies, for example, in terms of conflict resolution (individual suits and class actions) and compensation mechanisms involving out-of-court negotiations of supra-individual interests. The Consumer Care

Platform has been successful in providing an alternative, consensual method of dispute resolution which allows consumers themselves to file complaints with the National Consumer Service when they believe that their rights as consumers have not been respected. Updating and enhancing the Platform would undoubtedly have a positive impact on its performance and effectiveness.

The Consumer Care Platform provides a good solution for individual users, as evidenced by the high percentage of positive responses (51.7 per cent of complaints are accepted by businesses). It can therefore be considered an effective instrument that has proved particularly useful for handling the consumer issues that have arisen during the COVID-19 pandemic.

The use of voluntary collective procedures and their incorporation into domestic law represent progress towards the development of a system of consumer rights protection based on negotiation, given the consensual nature of the procedure and the speed at which cases are processed, while ensuring the due protection of consumer rights. These are extrajudicial administrative procedures offering a means to settle collective or mass consumer claims.¹²⁹

In relation to class action lawsuits, Chilean laws and the actions of the National Consumer Service have followed the international trend towards seeing the protection of collective and common rights as a deterrent and, consequently, as a mechanism to prevent unlawful acts and conflicts, in addition to promoting good business practices.

Since 2005, the National Consumer Service has brought more than 200 class action suits and secured more than US\$ 670 million in compensation for consumers. The valuable experience of the National Consumer Service in the collective defence of consumer rights makes Chile an international benchmark in terms of mechanisms aimed at granting compensation and indemnities to consumers; such collective defence

¹²⁹ National Consumer Service (2019). “Guía Informativa para el inicio del Procedimiento Voluntario Colectivo a solicitud de las empresas o por denuncia fundada de una asociación de consumidores” (Information guide on initiating a voluntary collective procedure at the request of a business or on the basis of a well-founded complaint from a consumer association). Available at <https://www.sernac.cl/portal/618/w3-article-55750.html>.

may be considered a feasible practice to be replicated by other consumer protection agencies.

The National Consumer Service prepares robust compensation reports, using economic models to estimate the damages suffered by consumers affected by breaches of contractual conditions, unfair terms or, more generally, conduct contrary to consumer rights legislation. These reports make a valuable contribution to the achievement of the objectives pursued through voluntary collective procedures and class action lawsuits.

It is true that there is room for improvement with regard to other alternative means of dispute resolution. For example, Chile could invest more decisively in online dispute resolution mechanisms, which allow for the prompt and efficient resolution of consumer problems, especially in the context of e-commerce. The best practices in this area reflect the following principles: transparency, in that public information serves a general preventive function; availability at no cost to the consumer, which enhances access; and State oversight, so that the results serve as inputs for taking decisions and designing public policies. Chile could also extend consumer arbitration to other sectors besides the financial sector.

Furthermore, public policy on dispute resolution can and should be framed as facilitating access to justice. In addition to the recommendations set out later in this report with regard to the institutional framework, it is important to take full advantage of agreements with legal assistance agencies and to push for agreements with public and private bodies that provide free legal assistance, so that consumers with little money who go to the local police courts to exercise their legal rights can stand up to suppliers, and to challenge the ongoing asymmetry between consumers who receive no legal assistance and businesses. The National Consumer Service could systematize and disseminate the judicial decisions of most relevance to consumer protection, for example through the registration of judgments.

As for the effectiveness of consumer protection tools, the National Consumer Service has established, in line with international trends, criteria for prioritizing initiatives and objectives that allow for greater and better intervention in the market, through the efficient and effective use of available resources. The work of the National Consumer Service has benefited from the

effective management of consumer protection tools, through enhanced planning and the targeted use of such tools according to the requirements of each case. The Service should publish and disseminate the prioritization criteria it uses to determine relevant areas of intervention in order to efficiently direct research efforts and the different public policy measures to be implemented.

It is also essential to increase transparency vis-à-vis the general public, specifically individual citizens and those subject to inspections. Therefore, the publication and dissemination of the criteria used to prioritize some or all of the Service's activities would be a major step forward. This is also true with regard to the decision not to prosecute or the application of the principle of opportunity, where it is necessary to justify the exclusion of or failure to investigate matters that could be of public interest.

The recent regulations introduced regarding voluntary compliance programmes for businesses (both preventive and corrective) are part of the international trend to get businesses to take an unambiguously proactive approach to consumer protection. This trend should be reinforced, especially among suppliers operating in mass, asymmetric or risky markets from the perspective of consumer rights protection.

Finally, one of the main focuses of public policy for consumer protection in Chile is financial education, based on the work of the Financial Education Committee. It is recommended to incorporate financial education into the school curriculum, in line with OECD recommendations, to include educational content on consumer protection in primary and secondary education and to promote training for teachers in financial education and consumer protection so that these subjects can be integrated into the different study programmes and educational resources can be created. Guidelines on financial literacy and education should be developed.

C. INSTITUTIONAL FRAMEWORK

The National Consumer Service takes the lead role in the institutional framework for consumer protection in Chile, setting the national agenda and policies in defence of consumer rights. This role has come to prominence in recent years against a background of high consumer expectations, periods of social

upheaval and the state of disaster declared in response to the COVID-19 pandemic.

Public consumer protection policies in Chile are formulated by the National Consumer Service under the powers granted to it by law. However, there are multiple bodies with diverse mandates that affect consumers, which is why it is pertinent to evaluate the implementation of a national consumer policy, to set out a long-term vision and to define the main lines and guiding principles of the State's action in this field, under the leadership of the National Consumer Service and with a clearly defined role for each key actor and clarity on the expected improvements in consumer welfare.

In the meantime, there are opportunities to improve coordination between the different actors so as to better implement public policy in light of the multisectoral scope of consumer protection. These improvements should take into account the existing inequality gap in order to serve the most vulnerable consumer groups, and a decentralized approach should be taken when action is taken. Thus, it is proposed to set up a council to coordinate public policies across all bodies involved in consumer protection, with top-level participation by the public bodies with the closest links to consumers (including regulatory agencies, ministries and the offices of superintendents of public services), as well as representatives of consumers and businesses. It is recommended that this council should be of an advisory nature, that participation should be compulsory, that its functions should be clearly established, and that it should be chaired by the National Consumer Service.

It is important, in particular, to build a stronger national presence for the Service and to strengthen its coordination with the municipalities through a process of continuous improvement and ongoing training for municipal officials involved in consumer protection, under the leadership of the Service.

Within the framework of public policy, Chile has set up forums such as the Civil Society Advisory Council to liaise with citizens in the area of consumer protection. This forum could be consolidated by boosting participation and enlarging its sphere of competence in order to strengthen the relationship between the National Consumer Service and citizens. This would make it possible to learn sooner and at first hand about the various problems affecting them.

Comparisons with other countries give examples of national conferences attended by representatives of the State, businesses and consumers that allow for the exchange of ideas and information and provide input for public policymaking.

In order to do all this, the National Consumer Service is currently developing a strategy to strengthen institutional relations, highlighting the relationship with suppliers that is actively pursued through mechanisms such as: (a) the Lobbying Act (No. 20730); (b) working groups; (c) permanent interoperability arrangements to facilitate the processing and resolution of inquiries received by the Service (e.g. complaints, queries, alerts); (d) promotion of compliance plans (preventive and corrective) as self-regulatory tools, with a view to avoiding infringements of consumer protection standards; and (e) an advisory council.

With regard to its relations with consumer associations, the National Consumer Service organizes training workshops, discussion groups and participatory dialogues on consumer matters, promoting access to funding through the competitive fund, which, as noted above, has been growing year by year. Between 2016 and 2020, thanks to the fund, 212 projects were implemented; they mainly concerned consumer queries and complaints, campaigns to publicize rights, educational activities and the conduct of studies.

The process of getting consumer associations involved in public policymaking by establishing competitive funds is of particular interest. As of November 2020, there were 133 consumer associations in Chile registered with the Voluntary Sector Division of the Ministry of Economic Affairs, Development and Tourism, of which 44 had an active governing body. Active associations were present in 14 of the country's 16 regions. Notwithstanding these efforts, there seems to be a need to improve the Service's relations with consumer associations, as well as to increase the resources allocated to them through competitive funds, in order to expand access to consumer justice through such associations.

One of the principal actors in the field of consumer protection is the judiciary, which, together with a number of other institutions, ensures that consumers can turn to the courts to resolve their disputes and obtain the compensation they deserve.

Based on the analysis carried out, it is recommended that these institutions be constantly strengthened so

Voluntary peer review of consumer protection law and policy: CHILE

that they constitute a rapid and effective channel for the defence of both collective rights and individual rights. In this regard, both the local police court judges interviewed and a study of comparable experiences by UNCTAD suggest the following actions: (a) continue to provide training in consumer protection at the Judicial Training School, both for local police court judges and civil judges (for class actions); and (b) prioritize action to support and train local police court judges in municipalities with fewer human or financial resources.

In the international arena, the National Consumer Service participates and plays a leading part in a number of high-level bodies, including the Group of 20, the International Consumer Protection and Enforcement Network, OECD, the Ibero-American Forum of Consumer Protection Agencies, the Consumer Safety and Health Network of the Organization of American States, the Asia-Pacific Economic Cooperation forum, MERCOSUR (as a guest), the Pacific Alliance, the UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy, the Consumers International Summit and the Aflatoun Annual Conference.

The National Consumer Service has exhibited a high capacity for reactivity, innovation and flexibility through diverse actions (as permitted by its legal framework) that are broadly aligned with the United Nations guidelines for consumer protection. One highlight of the Service's work is its administrative interpretation of the consumer rights protection standards set out in Act No. 19496. Its interpretative circulars help ensure the uniform application of these standards, thereby affording greater legal certainty to consumers and suppliers.

It is important to consider increasing the Service's budget in order to boost its oversight capacity; assist consumers who are vulnerable on account of where they live or their digital illiteracy; produce more behavioural studies on financial matters and expand the scope of such studies to other markets; and promote access to justice for the defence of individual consumer interests. All of this is designed to put the National Consumer Service on a par with other agencies in Latin America and in other OECD countries.

Recommendations

Subject matter	Recommendations	Target audience
Legislative framework	Consider including consumer protection in the Chilean Constitution.	Constitutional Convention
	As part of the constituent process, provide technical background as to the advisability of enshrining consumer rights as fundamental guarantees, based on comparable constitutional arrangements and the particularities of the national system.	National Consumer Service
	Reaffirm the guiding principles of consumer law and their cross-cutting applicability to all sectors that have or may have an interest in this matter, especially in the relationship between the provisions of Act No. 19496 and the special laws that affect the protection of consumer rights, ensuring minimum common standards for all sectors.	Legislative and executive branches
	Participate in the creation and development of consumer regulations, identifying needs in unregulated or underregulated sectors. In this connection, and in view of the contents of the report, develop specific regulations on product safety and e-commerce that take into account the relevant recommendations of OECD and UNCTAD.	Legislative and executive branches/National Consumer Service
	Propose a legislative amendment that provides for an expansion of the mechanisms for the distribution of indemnities, compensation and reparations awarded within the framework of the special procedure for the protection of collective and common consumer interests.	Legislative and executive branches
	Propose a legislative amendment to regulate the award of reasonable costs to parties other than the National Consumer Service who have legal standing as claimants and who obtain favourable rulings in class action lawsuits, thereby promoting transparency and preventing possible conflicts of interest.	Legislative and executive branches

Voluntary peer review of consumer protection law and policy: CHILE

Subject matter	Recommendations	Target audience
Public policy framework	Pursue a strategy coordinated among the various State consumer protection agencies that is focused on vulnerable consumers as part of State policy.	Executive branch
	Further develop primary sources of information, so that data for profiling purposes can be obtained directly from consumers and priority groups can be targeted. In addition, conduct more studies on consumer behaviour in order to develop solutions and improvements within the framework of regulatory proposals.	National Consumer Service
	Facilitate access to justice for individual consumers, implementing mechanisms for verifying compliance with the provisions of Act No. 19496 concerning the duty of legal assistance agencies to assist consumers who do not have the economic means to pay for their defence, by providing them with the resources necessary for this purpose.	Judicial and executive branches
	Ensure, maintain and strengthen administrative interpretation through the timely issuance of appropriate and unambiguous interpretations, both in normal situations and in exceptional circumstances, contingencies and cases not explicitly addressed by the regulations, in order to provide the greatest possible legal certainty to the market.	National Consumer Service
	Disseminate the content of the National Consumer Service's interpretative circulars among suppliers, consumers and key stakeholders, with special emphasis on the judiciary, so that the circulars can be considered administrative protection criteria, including for appraisals under the criterion of sound judgment. In this connection, develop publications that help to generate a critical mass of consumer law.	
	Publish and disseminate, in an interpretative circular, the objective criteria used to prioritize the collective prosecution of conduct that violates consumer protection norms. The aim should be to promote practices that prevent further harm to consumers, encouraging them to pursue indemnification and ensuring effective protection for their rights, in addition to fostering transparent decision-making and an efficient use of protection tools.	
	Strengthen individual dispute resolution mechanisms, promoting the use of consumer arbitration and mediation in areas other than finance and ensuring that arbitration decisions are binding on suppliers. In this connection, support the establishment of online dispute resolution mechanisms that would also allow for the involvement of foreign suppliers.	Legislative and executive branches
	Strengthen the promotion of good business practices, voluntary certification and compliance mechanisms among suppliers, with emphasis, in the latter case, on the benefits for consumer rights protection of compliance plans for suppliers operating in mass, asymmetric or risky markets.	National Consumer Service
	Encourage the incorporation of financial education into the school curriculum, include educational content on consumer protection in the school curriculum at primary and secondary level, promote training for teachers in financial education and consumer protection so that these subjects can be integrated into the different study programmes and educational resources can be created, and develop guidelines on financial education and literacy, all of this bearing in mind the recommendations on financial education of the OECD Council and other international experience.	Executive branch

Voluntary peer review of consumer protection law and policy: CHILE

Subject matter	Recommendations	Target audience
Institutional framework	Strengthen and implement inter-institutional coordination mechanisms by creating a body to coordinate the public policies of all government agencies, with participation at the highest functional level of those responsible for consumer and user protection. Such a mechanism could also benefit from the participation of civil society organizations and businesses.	Legislative and executive branches
	Build a stronger national presence through coordination with municipalities and through a process of continuous improvement and ongoing training for municipal officials involved in consumer protection, under the leadership of the National Consumer Service.	National Consumer Service
	Following an approach based on geographical decentralization, continue creating forums for citizen participation in the discussion of public policies so that proposed legislative amendments reflect the sociocultural reality of the country and the needs of consumers.	National Consumer Service
	Strengthen the regular training in consumer protection matters provided for the judiciary by the Judicial Academy (the training school for the judiciary) and the Institute of Local Police Court Judges, paying special attention to judges in municipalities with limited human and financial resources and drawing, to the extent possible, on the support of academia.	Judiciary/National Consumer Service
	Increase the Service's budget in order to boost its oversight capacity; assist consumers who are vulnerable on account of where they live or their digital illiteracy; produce more behavioural studies on financial matters and expand the scope of such studies to other markets; and promote access to justice for the defence of individual consumer interests.	Legislative and executive branches

BIBLIOGRAPHY

- Banco Mundial (2020). *Chile Panorama general*, <https://www.bancomundial.org/es/country/chile/overview#1>
- Banco Mundial (2018). *Connecting to Compete 2018 Trade Logistics in the Global Economy The Logistics Performance Index and Its Indicators*, <https://openknowledge.worldbank.org/bitstream/handle/10986/29971/LPI2018.pdf>
- Cornell University, INSEAD y OMPI (2020). *The Global Innovation Index 2020. Who Will Finance Innovation?*, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2020.pdf
- FMI (2020). *IMF DataMapper*, <https://www.imf.org/external/datamapper/profile/CHL>
- Gobierno de Chile (2020). *Proceso Constituyente*, <https://www.gob.cl/procesoconstituyente/#cronologia>
- The Heritage Foundation (2020). *Index of economic freedom*, <https://www.heritage.org/index/download>
- Huawei (2019). *Global Connectivity Index*, <https://www.huawei.com/minisite/gci/en/country-rankings.html>
- Instituto Nacional de Estadísticas de Chile (2020), <https://www.ine.cl/estadisticas/sociales/censos-de-poblacion-y-vivienda>.
- Ministerio de Desarrollo Social y Familia de Chile (2019). *Informe de Desarrollo Social*, http://www.desarrollosocialyfamilia.gob.cl/storage/docs/Informe_de_Development_Social_2019.pdf
- Naciones Unidas (2016). *Directrices de las Naciones Unidas para la Protección del Consumidor*, https://unctad.org/es/system/files/official-document/ditccplpmisc2016d1_es.pdf
- OCDE (2016). *Consumer Protection in E-commerce OECD Recommendation*, <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>
- OCDE (2006). *OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam*, <http://www.oecd.org/sti/ieconomy/oecdrecommendationoncross-borderco-operationintheenforcementoflawsagainstspam.htm>
- OMC (2015). *Examen de las Políticas Comerciales. Informe de Chile*, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=s:/WT/TPR/G315R1.pdf&Open=True>
- PNUD (2016). *Panorama general sobre el desarrollo humano 2019. Más allá del ingreso, más allá de los promedios, más allá del presente: desigualdades del desarrollo humano en el siglo XXI*, http://hdr.undp.org/sites/default/files/hdr_2019_overview_-_spanish.pdf
- Regional Innovation and Entrepreneurship Research Center (2020). *The Global Entrepreneurship Index 2019*, https://thegedi.org/wp-content/uploads/2020/01/GEI_2019_Final-1.pdf
- Social Progress Imperative (2020). *Social Progress Index Explore Map*, <https://www.socialprogress.org/?code=CHL>
- UNCTAD (2020). *Fortalecimiento de la protección del consumidor y de la competencia en la economía digital*, https://unctad.org/system/files/official-document/tdrbpconf9d4_es.pdf
- UNCTAD (2019). *UNCTAD B2C E-commerce Index 2019*, https://unctad.org/system/files/official-document/tn_unctad_ict4d14_en.pdf
- UNCTAD (2019). *World Consumer Protection Map, Contribution by Chile*, <https://unctadwcpm.org/docs/CHL.pdf>
- WEF (2019). *The Global Competitiveness Report 2019*, http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

ANNEX

INSTITUTIONS INTERVIEWED FOR THE REPORT

Public bodies

Financial Market Commission
National Economic Prosecutor's Office
Institute of Local Police Court Judges
Ministry of Economic Affairs, Development and Tourism
National Consumer Service
Office of the Superintendent of Insolvency and Restructuring
Office of the Superintendent of Sanitation Services
Office of the Undersecretary for Telecommunications

Business, company and professional associations

Chilean Supermarkets Association
BMS Abogados
National Council of Advertising Self-Regulation
GMD Abogados
Fundación ProBono
Retail Financiero

Civil society

Centro de Bicultura
Asociación de Consumidores de Osorno (ACO)
Corporación Nacional de Consumidores y Usuario (CONADECUS)

Study centres, academy and media

University of Talca
University of Valparaíso
Adolfo Ibáñez University
University of Chile
Mega television channel



Printed at United Nations, Geneva
2106896 (E) – September 2021 – 406

UNCTAD/DITC/CPLP/2021/1

United Nations publication
Sales No. E.21.II.D.12

ISBN 978-92-1-113001-0

