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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN COLOMBIA

--2015--

15-17 June

This report is submitted by Colombia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 15-17 June 2016.

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ANNUAL REPORT ON COMPETITION POLICY – 2015 COLOMBIA SUPERINTENDENCE OF INDUSTRY AND COMMERCE - SIC

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

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

1.1.1 Amendments to the leniency program

1. On July 16, 2015 the President of Colombia enacted National Government Decree¹ 1523 that includes some amendments to the leniency program that was stated in Decree 2896 of 2010. Some of the most important amendments included in the Decree are the following: • Amnesty plus: to enable leniency applicants who are not the “first in” applying for leniency benefits to earn an additional 15% reduction in their fine by disclosing the existence of a different cartel. • the gap between the benefits granted to the first and second applicant for the leniency program was extended in order to increase the incentive to be the “first in” applying to this program. • Inclusion of a restrictive definition of what a ringleader means in order to enable more incumbents to participate in the program as we are convinced that this is a dynamic role in a long-term cartel. • Employees of an infringer may apply to leniency program regarding all anticompetitive practices (i.e. unilateral conducts, abuse of dominance and cartels). Legal entities are only enabled to apply to the leniency program in cartel cases.

1.1.2 Amendments to the merger regime - Resolution 10930 de 2015

2. This Resolution was issued by SIC on March 2015 with a proposed amendment to the merger regime, among other reasons, to address the concerns identified by the initial OCDE report received during the accession process.

3. The Resolution states that the only revenues or assets that will be counted when determining whether a merger must be notified or not would be the ones located in Colombia. If a party to the transaction has neither a subsidiary nor a branch in Colombia the SIC will consider the revenues or assets of the company located abroad.

4. The Resolution determines that the revenues and assets of non-merging firms that belong to the economic group of a merging party will be counted only to the extent that (i) those firms have a horizontal or vertical market relationship with the merging party, and (ii) the revenues or assets of those firms are earned or located in Colombia either as a result of a subsidiary, branch or exports.

5. Considering that law 1340 includes an abbreviated notification when merging parties, jointly, have less of the 20% market share, the new regulation sets forth that the SIC will review each notification and inform the parties if it has any concerns regarding the accuracy of the relevant market definition and its share calculation. In this case the parties may consider submitting a regular notification for approval of the transaction.

6. Finally it is important to mention that according to this new regulation SIC has ten (10) days after receiving the abbreviated notification of parties, to inform them about the concerns regarding the accuracy of market definition and its share calculation.

¹ National Government Decrees are the ones issued by the President of Colombia jointly with the Signature of the Minister and/or director of administrative department concerned with the subject of the regulation.

1.1.3 Amendments to Competition Advocacy regulation

7. On August 10, 2015 the President of Colombia issued the National Government Decree 1609 establishing that every National Government Decree must be submitted before the SIC in order to exhaust competition advocacy proceedings.

8. Section 2.1.2.1.9. states that according to section 7 of law 1340, 2009 the Ministry or the Administrative Department responsible for the National Government Decree project must submit before the SIC every draft regulation that could have any impact on free competition in the markets. For instance, those that could have as an object or as an effect the restriction of the variety or number of competitors in one or several relevant markets, firms' capacity to compete or free choice or available information to consumers in a specific market.

1.2 Other relevant measures, including new guidelines

1.2.1 Trade Association Guidelines

9. In March 2015, SIC published new Guidelines on Business and Professionals Associations, which outline SIC's rulings in the application of competition law in this regard. These Guidelines discuss both the pro-competitive and potentially anti-competitive activities of business associations. The guidelines emphasize the risk of sensible information exchange within the business association as it may lead to collusion between members.

10. Other topics addressed by the Guidelines included the risk of unlawful coordination among the associates as a result of price recommendations or other commercial terms made by the association. The Guidelines also referred to the risk of unlawful exclusion from the market that could be performed by associates or the association itself against non-members. These guidelines were published for comments that were taken into account by the SIC and were responded in a different document that is available in the website of SIC.

1.2.2 Collaboration Agreements Guidelines

11. In March 2015, SIC published new Guidelines on collaboration agreements. The document states that the starting point of SIC when analysing a collaboration agreement is to determine if the agreement's provisions are likely to generate anticompetitive effects or if, on the contrary, their effects in the market will likely be neutral. If according to the preliminary analysis of the SIC the agreement is likely to generate anticompetitive effects, the parties must prove that: (i) it produces efficiencies, (ii) the potential restriction is essential to achieve such efficiencies and, (iii) the anticompetitive effects are offset by the efficiencies and the consumers are better off.

12. Under the Guidelines, a joint venture in which the venture participants represent less than 20% of the relevant market is not expected to produce undue restrictions on competition. These guidelines were published for comments which were taken into account by the SIC and were responded in a different document that is available in the website of SIC.

1.3 Government proposals for new legislation

13. As mentioned in last report, in 2014 SIC began the preparation of a new legislative proposal for the Congress that included amendments to the general competition regime (including Law 1340 of 2009). The referred proposal was filed on August 4th, 2015 and published on August 6th of the same year and is still pending to be debated in the Congress.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominance

14. In 2015, the number of complaints increased in 237 compared with the ones received in 2014, which represents an increase of 39.8 percent. This is the consequence not only of the strengthening of SIC but of the promotion labor that it has developed for the last years.

Table No. 1. Complaints received and resolved 2014-2015

	2014	2015	Total
Complaints pending at beginning of period	212	428	N/A
New complaints received during period	594	831	1.425
Complaints resolved by dismissal	368	627	995
Complaints resolved by opening a preliminary inquiry	10	12	22
Complaints pending at end of period	428 ²	620	N/A

15. Table No. 2 contains information regarding the preliminary inquiries that were conducted since 2014 to 2015.

Table No. 2. Preliminary inquiries commenced and resolved 2014-2015 (ex officio and complaints)

	2014	2015	Total
Preliminary inquiries pending at beginning of period	65	68	N/A
New preliminary inquiries opened during period	17	14	31
Preliminary inquiries resolved by dismissal	10	8	18
Preliminary inquiries resolved by opening a formal investigation	4	6	10
Preliminary inquiries pending at end of period	68	68	N/A

16. The disposition of formal investigations since 2014 is revealed in the following table:

Table No. 3. Competition cases resolved 2014-2015³

	2014	2015	Total
Formal investigations pending at beginning of period	29	23	N/A
New formal investigations opened during period	4	6	10
Formal investigations resolved by dismissal	2	4	6
Formal investigations resolved by orders/sanctions	8	6	14
Formal investigations resolved by settlement	0	0	0
Formal investigations pending at end of period	23	19	N/A

² This number, because it includes complaints that have not yet been evaluated to determine whether they duplicate other pending complaints, overstates the true number of distinct investigative leads.

³ The information only includes cases such as abuse of dominant position, cartels, unilateral conducts and cases sanctioning failure to notify merger transactions.

2.2 *Description of significant cases*

2.2.1 *Scholar Notebooks*⁴

17. In the scholar notebooks case, the statement of objections was issued in February 2015 against three companies: KIMBERLY, CARVAJAL and SCRIBE, for allegedly price fixing by imposing minimum prices and determining discount percentages among the different distribution channels. Other anticompetitive conducts involved agreements regarding the marketing policies and strategies, financial policies and limitations of supply. The investigation also included 27 individuals who, in their condition of directors, may have collaborated, authorized, tolerated and/or executed the possible anticompetitive conducts.

18. This conduct may have produced negative effects on purchasers within the commercialization chain, and the final consumers, mainly primary school, high school and college students. According to SIC's calculations, based on information provided by the National Statistics Department (DANE), more than 3.7 millions of families on 2013 spent an important part of their salaries on school supplies, in which scholar notebooks are included.

19. It is important to highlight that two out of three investigated companies applied to the leniency program within the investigation, confessing their participation in the alleged cartel and providing relevant evidence, such as e-mails, documents and statements, demonstrating the cartel's existence and its means of operation.

2.2.2 *Security services*

20. The statement of objections in this case was issued on January 28th of 2015 – Resolution No. 2065- against eight private security services companies: GUARDIANES COMPAÑÍA LÍDER DE SEGURIDAD LTDA, COOPERATIVA DE VIGILANTES STARCOOP CTA, COBASEC LTDA, CENTINEL DE SEGURIDAD LTDA, EXPERTOS SEGURIDAD LTDA, COMPAÑÍA INTERAMERICANA DE SEGURIDAD Y VIGILANCIA PRIVADA INSEVIG LTDA, COOPERATIVA DE TRABAJO ASOCIADO SEJARPI CTA and SECURITY MANAGEMENT GROUP S.A.

21. The above for apparently bid rigging in 252 public procurement before 149 government entities in 2010, 2011 and 2012, which constitutes an infringement to the Colombian competition regime. The investigation also included 32 individuals who may have collaborated, authorized, tolerated and/or executed the possible anticompetitive conducts.

22. The alleged anti-competitive cartel apparently sought to achieve the adjudication of at least 252 public contracts, whose values exceeded COP \$320.000.000.000 (about USD \$112.119.771). The alleged behaviors would have concluded in submitting rigged bids on at least 100 bids of which they won 25 for a sum of about COP \$63.000.000.000 (about USD \$22.073.579).

⁴ Currently the formal investigation handled by the Deputy Superintendent for the Protection of Competition concluded with a complete report of the same addressed to the Superintendent of Industry and Commerce with a recommendation to sanction the involved companies for the anticompetitive conducts. It is pending for a final decision of the Superintendent.

23. The SIC has not determine yet the role of the companies and the individuals, due to the fact that there is still an investigation on. Therefore, after collecting the evidence, the Deputy for the Protection of Competition has to make a report with the results of the investigation and the respective recommendation to the Superintendent of Industry Commerce. The latter, is the one who expedites a final decision that could be a sanction or exoneration from the charges.

2.2.3 Sugar

24. By means of the Resolution No. 5347 of February 13, 2012 a statement of objections was issued against ASOCAÑA, CIAMSA and twelve (12) sugar traders and producers, because these companies were probably in an agreement to obstruct the access of third competitors' imports to the sugar market in Colombia (numeral 10, article 47 of the Statute 2153, 1992) and to allocate production and/or supply quotas of sugar in the country (numeral 3, article 47 of the Statute 2153, 1992).

25. Once that the formal investigation was finished the Deputy Superintendent for the Protection of Competition recommended to sanction the investigated companies for the agreement to obstruct the sugar's imports into Colombia. Also recommended to exonerate such companies for the allegedly agreement for the allocation of production and/or supply quotas of sugar.

26. Further to the recommendation made by the Deputy Superintendent for the Protection of Competition, the Superintendent of Industry and Commerce, with unanimous advice of the Advisory Council of Competition, issued Resolution No. 80847 of October 7, 2015 by means of which sanctioned ASOCAÑA, CIAMSA, DICSA and twelve (12) sugar traders and producers for the infringement of the competition regime.

27. The Superintendent of Industry and Commerce determined that the investigated companies had incurred in anti-competitive agreements to obstruct sugar imports to Colombia, mainly from other countries such as Bolivia, Guatemala, El Salvador and Costa Rica. The SIC dismissed the charge of allocation of production and/or supply quotas of sugar considering the exception of the competition law included in section 29, law 1340 of 2009⁵. Resolution No. 80847 of October 7, 2015 was confirmed by Resolution No. 103652 of December 30 2015 that also modified the sanctions imposed to ASOCAÑA, CIAMSA, and four individuals.

28. The obstruction of imported sugar was implemented through sugar trade associations by means of requiring international providers to obtain an authorization from them beyond customs or any other regulation. The strategy was complemented with a retaliation mechanism where sugar trade associations threatened the international providers with flooding their markets "*if they dared to export a grain of sugar to Colombian territory*".

29. The imposed sanction went up to USD \$91 million, approximately, among the sugar companies and the individuals involved in the anticompetitive conducts.

⁵ Cfr. "**SECTION 31. STATE INTERVENTION.** *the performance of the mechanisms of state intervention in the economy, as mandated under Articles 333 and 334 of the Constitution, provides a restriction to enforcement of competition law in terms of the intervention. The mechanisms of state intervention to restrict the application of the provisions of this law are: price stabilization funds, Parafiscal Funds for Agricultural Development, the establishment of minimum guaranteed prices, regulation of domestic markets for agricultural products provided by Decree 2478 of 1999, the string arrangements in the agricultural sector, the Regime of safeguard measures, and other mechanisms provided by Laws 101 of 1993 and 81 1988*". Free translation.

2.3. Mergers and acquisitions

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

30. Table No. 4 shows the information related to the volume of merger notifications and Phase 1 applications received, processed, and resolved for the years 2014 to 2015. As shown in the table, in 2015 the SIC received 20% less abbreviated notifications (i.e. 20% market share rule) than in 2014. Nevertheless in 2015 the SIC received 24% more applications in Phase 1 than the ones received in 2014:

Table No. 4. Merger Notifications and Phase 1 Applications 2014 – 2015

Year	Abbreviated Notifications (20% market share rule)	Phase 1 applications pending at beginning of period	Phase 1 applications received in period	Phase 1 applications resolved in period	Phase 1 applications pending at end of period
2014	105	5	40	41	4
2015	84	4	51	50	5
Total	189	N/A	91	91	N/A

31. Table No. 5 denotes that the average duration of Phase 1 review process was reduced to an average of 1.4 months approximately from 2014 to 2015.

Table No. 5. Average duration of Phase 1 review process 2014-2015

Year	Days	Months
2014	45	1.5
2015	43	1.4

32. Table No. 6 shows the volume of mergers initiated, processed, and resolved under Phase 2 for the years 2014 to 2015.

Table No. 6. Phase 2 Merger Reviews 2014 – 2015

Year	Phase 2 mergers pending at beginning of period	New Phase 2 mergers initiated in period	Phase 2 mergers resolved in period	Phase 2 mergers pending at end of period
2014	2	25	20	7
2015	7	36	33	10

33. The average duration of Phase 2 merger review process in 2015 was 117 days, which represents a difference of 18 days more than the average duration in 2014.

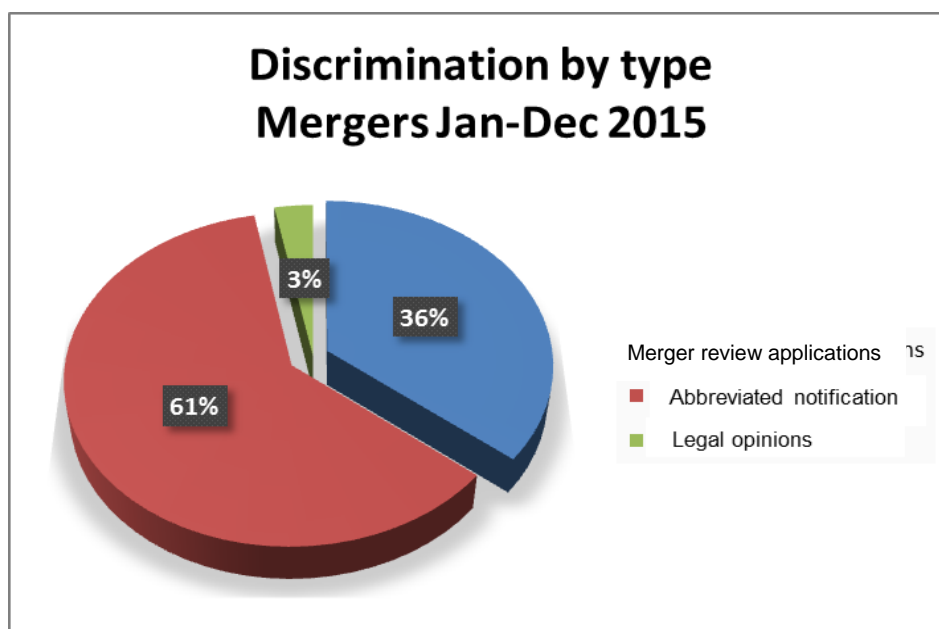
Table No. 7. Average duration of Phase 2 review process 2014-2015

Year	Days	Months
2014	99	3,3
2015	117	3,9

34. The following chart shows the types of assessment that were conducted by the Group of Mergers during 2015, with their respective participation:

Graphic No. 1.

Types of assessment conducted by the Mergers Group – 2015



35. The highest number of applications received by the SIC were abbreviated notifications (20% market share rule). Only 36% of applications referred to merger review applications.

2.3.2 Summary of significant cases

36. The following are the significant cases reviewed in 2015:

Table No. 8. Significant Merger Cases 2015

Firms to be merged	Market sector	Decision no.
POSTOBÓN / COMPAÑÍA CERVECERÍAS UNIDAS	Beer (<i>Heineken</i>)	Rad. 14-284787-6
TERPEL / EDS LAS VEGAS	Gas stations	Res. 30853/2015
TERPEL / AVIACOM	Aviation fuel	Res. 52117/2015
PEPSI / POSTOBÓN	Sports drinks and Cold tea (<i>Gatorade and Lipton Tea</i>)	Res. 79716/2015

- **Postobón-Compañía Cervecerías Unidas:**

Relevant Market: beer

Transaction: POSTOBON was planning to start the commercialization of the Heineken beer in Colombia immediately and to start domestic production in a 3 years timeframe. The transaction would have as effect the reduction of the dominant position of the current market leader Bavaria (SAB Miller), which holds a 98% of the relevant market.

Decision: authorized without remedies.

Importance: A new competitor POSTOBON entered into the alcoholic beverages business.

- **Terpel-EDS (gasoline service station) las Vegas:**

Relevant Market: liquid fuels for vehicles (gasoline)

Transaction: TERPEL would acquire a gasoline service station in the city of Bucaramanga.

Decision: authorized without remedies.

Importance: In this opportunity the SIC recognized that an upstream company may exercise control under competition law over the downstream company through a distribution agreement.

- **Terpel-Aviacom**

Relevant Market: Aviation liquid fuels

Transaction: TERPEL would acquire 3 gasoline service stations located in Villavicencio, Yopal and San Jose del Guaviare's airports.

Decision: Blocked

Importance: The SIC recognized that TERPEL was dominant in the upstream market and that it has the widest airport station network in Colombia. Thus, the SIC was concerned about unilateral effects starting with elimination of competitors and portfolio effects in the short run and price increases in the long run.

- **Pepsi-Postobon**

Relevant market: isotonic drinks and tea based drinks (*Gatorade* and *Lipton Tea*)

Transaction: POSTOBON would acquire the license to produce and commercialize the products owned by PEPSI and identified with the trademarks Gatorade and Lipton Tea.

Decision: authorized with remedies.

Importance: Quantitative tools, such as diversion ratios and upward pricing pressure index (UPPI) were used to disregard risks of unilateral effects. Remedies imposed by the SIC included the obligation to implement a compliance program on competition rules to overcome concerns related to vertical restraints.

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

37. As from July 24, 2009 to December 31, 2015 (when competition advocacy role started), SIC has issued 220 advocacy opinions to 25 agencies under Section 7 of Law 1340 of 2009. In 2014, SIC created a specific division with this responsibility that also had the initiative to inform government entities about the obligation to submit the regulation projects to the SIC. The advocacy opinions increased significantly in 2014 and 2015.

Table No. 9. Legal opinions 2009-2015

Year	Number of legal opinions
2009	6
2010	38
2011	30
2012	18
2013	26
2014	51
2015	51

38. In 2015, 15 of the advocacy opinions included a recommendation because SIC considered that there were concerns related to competition. In 12 of these cases, the corresponding regulator has already issued the regulation, adopting the recommendation made by SIC in 5 cases and not adopting it in the remaining 7.

3.1. Relevant cases

3.1.1 Ministry of Mines and Energy

- **Technical regulation on cylinders and tanks for liquid petroleum gas**

39. Ministry of Mines and Energy proposed a resolution aiming to modify the Technical Regulation applied to cylinders and tanks for liquid petroleum gas. The project wanted to incorporate a “Security Device”, which should warrantee the security requirements and wanted to update national standard according to international technical standards.

40. SIC considered that increasing the standards without a monitoring mechanism could reduce the efficacy of the security mechanism and unduly increase the costs to consumers. In fact, SIC identified that in the short run there was only one provider of such device. Additionally, SIC noted that some of the requirements included were vague and that could hamper the enforcement of the regulation. SIC recommended the Ministry to adjust the projected regulation by reducing the ambiguity in the requirements and by ensuring an effective monitoring. The Ministry adopted the recommendation.

- **Energy and Gas Regulatory Commission (CREG for its Spanish acronym)**
- **Indexation formula of natural gas contracts**

41. Energy and Gas Regulatory Commission (CREG for its Spanish acronym) proposed a resolution that wanted to modify the formula to index prices in long term natural gas contracts.

42. SIC was concerned because the proposal enabled the agents to negotiate the formula to index the prices for future years, which set a risk to competition because the two main suppliers could exercise market power. The SIC recommended to set a regulated price indexation formula with exogenous variables that could not be manipulated by natural gas suppliers. The CREG adopted the recommendation.

3.1.2 Ministry of Commerce, Industry and Tourism

- **Reduction of Sugar Customs Duty Rate**

43. The Ministry of Commerce, Industry and Tourism, along with the Ministry of Finance and Public Credit and the Ministry of Agriculture and Rural Development, proposed to reduce the maximum sugar customs duty rate from 117% to 70%, and would gradually be reduced to reach 40% in a three-year period.

44. SIC considered that the reduction of the sugar customs duty rate would be positive in the short-run, but that in the medium-term and long-term, it would not have a significant effect. The SIC recommended the regulators to introduce a larger reduction, in order to allow importers to exert a real competitive pressure on national producers and marketers. The regulators did not adopt the recommendation.

3.1.3 *Communications Regulatory Commission (CRC)*

- **Television broadcast network infrastructure**

45. Communications Regulatory Commission proposed a resolution tending to facilitate access to television broadcast network infrastructure. The SIC was concerned because the regulation established that the owner of the essential facility had to finance the installation costs and to perform any investment required to grant effective access to competitors to its essential facility. This proposal raised a concern to the SIC because the investments, if required, were under the control of the owner and that could facilitate dilatory strategies.

46. SIC recommended that the regulation should also give the alternative to the interested party in gaining access to the essential facility to make the investment if it finds it convenient. The Regulator did not adopt the recommendation.

3.1.4 *Ministry of Transportation*

- **Transportation services through technological platforms**

47. Ministry of Transportation proposed a National Government Decree aiming to modify the regulation of the taxi service in order to create a luxury segment to be provided by means of technological platforms. Nevertheless, the luxury service had to be provided by the same taxi companies with the licenses already granted.

48. SIC considered pro-competitive the creation of a new product. However, the SIC mentioned that a situation of scarcity could arise either in the luxury or the basic segment, because the number of authorized taxis is limited and no new licenses were going to be granted.

49. SIC concluded that such restrictions could inhibit the development of disruptive innovations that could solve market failures. The regulator did not adopt the recommendation.

3.1.5 *National Public Procurement Agency (Colombia Compra Eficiente - CCE, by its Spanish acronym)*

- **Framework agreement for public procurement of private security services**

50. CCE sent to SIC the specifications for the framework agreement for public procurement of private security services. The SIC was concerned about the risk of bid rigging in regions where few suppliers were present and recommended auction strategies aiming towards the reduction of such risk, namely: grouping of regions for increasing the number of competitors and justification requirement for joint bidding. The regulator has not issued the regulation.

4. Resources of competition authorities

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

51. The following table presents the Annual Budget of the SIC and its Competition Division⁶.

⁶ Conversions made at the Market Representative Rate (TRM in Spanish) of May, 2016. Exchange rate: COP\$ 2.854,59 per dollar

Table No. 10. SIC's Funds Available for Allocation: Amounts and Sources 2014 – 2015⁷

Year	SIC Total Funds		Competition-related budget	
	COP thousands of millions	USD million	COP thousands of millions	USD million
2014	102.269	35.8 (100%)	18.655	6.5 (18.15%)
2015	125.521	43.9 (100%)	22.897	8.0 (18.22%)

Table No. 11. Competition Law Enforcement Cases by Violation Type and Outcome 2015⁸

Year	Formal Investigations	Case Types		Abuse of dominance	Unreported mergers	Other conduct	Total
		Horizontal agreements	Vertical agreements				
2015	Opened	3	0	1	1	1	6
	Dismissed	0	0	0	1	3	4
	Settled	0	0	0	0	0	0
	Orders/sanctions	3	0	1	1	1	6
	Total monetary sanctions imposed	USD 113.7 million	0	USD 0.38 million	USD 0.04 million	USD 11.8 million	USD 125.9 million

4.2 *Human resources (person-years) applied to:*

4.2.1. *Annual budget (in your currency and USD):*

52. In 2015, the competition-related budget was USD 8.0 million, approximately (exchange rate: COP\$ 2.854,59 per dollar).

4.1.2. *Number of employees (person-years):*

53. In 2015, there were ten (10) people working in the Competition Protection Division as administrative personnel, and eighty one (81) as non-administrative personnel which sum a total of ninety one (91) people by the referred year.

54. The non-administrative personnel in the Division are discriminated by roles as shown below:

Table No. 12. Competition Protection Division non-administrative personnel discriminate by roles.

	Contractors	Employees
Economists	5	21
Lawyers	16	27
Others (engineers, business administrators, public accountants)	8	4
Total	29	52

⁷ Conversions made at the Market Representative Rate (TRM in Spanish) of May, 2016. Exchange rate: COP\$ 2.854,59 per dollar

⁸ Conversions made at the Market Representative Rate (TRM in Spanish) of May, 2016. Exchange rate: COP\$ 2.854,59 per dollar

55. On the other hand, the Division has 85.2% of its personnel working in enforcement against anticompetitive practices; the 8.6% in merger review and 6.2% in advocacy efforts.

Table No. 13. Competition Protection Division Personnel by dependency.

	Contractors	Employees
Mergers	0	7
Anti-cartel and dominance-related issues	34	35
Advocacy	1	4
Total	35	46

4.2 *Period covered by the above information:*

56. January 2015 – December 2015

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

57. The Economic Studies Group produced the following academic study in 2015: i) a micro econometric model for the merger analysis in the market of isotonic drinks.