

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Colombia

-- 2016 --

21-23 June 2017

This report is submitted by Colombia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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

1.1. Introduction of free competition principles in the state liquor monopoly

1. Law 1816, issued during 2016, updates the regulation of the exercise of the constitutional state monopoly on the production, importation, distribution and commercialization of distilled spirits.
2. It introduces the principles of free competition and non-discrimination in the exercise of monopoly. In addition, it grants the SIC the power to impose an inability for two years to participate in the liquor market, to agents that violate the regime of free competition and unfair competition.

1.2. . Other relevant measures, including new guidelines

3. In 2016 the SIC did not issue any new guidelines or other relevant measure.

1.3. Government proposals for new legislation

4. As mentioned in last report, in 2014 SIC began the preparation of a 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. Last year, the Ministry of Industry and Commerce withdrew such proposal from the Congress in order enhance the bill. The preparation of the new version is still in process.

2. Enforcement of competition laws and policies

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

2.1.1. Summary of activities of the Competition Authority

5. In 2016, the number of complaints decreased in 315 compared to the ones received in 2015. In percentage, this represents a decrease of 38%.

Table 1. Complaints received and resolved 2015-2016

	2015	2016	Total
Complaints pending at beginning of period	428	620	N/A
New complaints received during period	831	516	1.347
Complaints resolved by dismissal	627	396	1023
Complaints resolved by opening a preliminary inquiry	12	12	24
Complaints pending at end of period	620	728	N/A

6. Table No. 2 contains information regarding the preliminary inquiries that were conducted since 2015 to 2016.

Table 2. Preliminary inquiries commenced and resolved 2015-2016 (ex officio and complaints)

	2015	2016	Total
Preliminary inquiries pending at beginning of period	68	68	N/A
New preliminary inquiries opened during period	14	12	26
Preliminary inquiries resolved by dismissal	8	4	12
Preliminary inquiries resolved by opening a formal investigation	6	9	15
Preliminary inquiries pending at end of period	68	67	N/A

7. The disposition of formal investigations since 2015 is shown in the following table:

Table 3. Competition cases resolved 2015-2016¹

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	2015	2016	Total
Formal investigations pending at beginning of period	23	19	N/A
New formal investigations opened during period	6	9	15
Formal investigations resolved by dismissal	4	4	8
Formal investigations resolved by orders/sanctions	6	8	14
Formal investigations resolved by settlement	0	0	0
Formal investigations pending at end of period	19	16	N/A

2.1.2. Description of significant cases

8. In 2016, the three first cases with leniency applications in Colombia were sanctioned: cartels in the scholar notebooks, toilet paper and disposable baby diapers sectors.

9. The imposed sanctions in the three cases –including companies and individuals sanctions- went up to COP 437.927.971.900 (USD 148.304.369)².

Toilet Paper:

10. In the Toilet Paper case, the statement of objections was issued on November 2014 against five companies: FAMILIA, KIMBERLY, PAPELES NACIONALES and CARTONES Y PAPELES DE RISARALDA, for fixing artificial prices of different products (toilet paper, napkins, kitchen paper towels, facial tissues and hand tissues). This conduct was performed by imposing minimum prices and sale quotas (direct price fixing) and determining discount percentages among the different distribution channels (indirect price fixing). The investigation also addressed 42 individuals (directors and former directors) who may have collaborated, authorised, tolerated and executed the anticompetitive conducts.

11. Three of the addressed companies applied for a Leniency Program within the investigation, confessing their participation in the alleged cartel and providing relevant

¹ The information only includes cases such as abuse of dominant position, cartels, unilateral conducts and cases sanctioning failure to notify merger transactions.

² All the conversions of this document were made using an exchange rate of COP\$ 2.961,78 per dollar.

evidence, such as e-mails, documents and statements, demonstrating the cartel's existence and its means of operation.

12. Once the formal investigation was finished, the Deputy Superintendent for the Protection of Competition recommended to sanction the investigated companies for the anticompetitive conducts.

13. Further to the recommendation made by the Deputy Superintendent for the Protection of Competition, the Superintendent of Industry and Commerce, with advice of the Advisory Council of Competition, issued Resolution No. 317139 of May 26, 2016 by means of which sanctioned the investigated parties.

14. The imposed sanction went up to USD 57.288.096, approximately, among the companies and the individuals involved in the anticompetitive conducts.

15. It is important to mention that only two of the three applicants obtained the discounts previously agreed with the Deputy Superintendent. In this case CARTONES Y PAPELES DE RISARALDA received a discount of 30% of the imposed fine and KIMBERLY received a discount of 100%. FAMILIA lost the benefits of the leniency program because the SIC found that this company did not comply with the commitments acquired in the collaboration agreement subscribed with the Deputy Superintendent for the Protection of Competition.

Disposable Baby Diapers

16. In the diapers case, the statement of objections was issued on August 2014 against five companies: TECNOSUR - TECNOQUÍMICAS (Winny Ultratrim), FAMILIA (Pequeñín), KIMBERLY (Huggies) and DRYPERS (Baby Sec), for infringing the protection of competition regime by fixing artificial prices of disposable diapers, conduct that took place between 2001 and 2013. The anticompetitive agreements also involved product quality fixing and commercialization. The investigation also addressed 44 individuals who, in their condition of directors and employees of the companies involved, may have collaborated, authorized, tolerated and executed the anticompetitive conducts.

17. Two of the addressed companies, so as their directors and employees, applied for a Leniency Program during the investigation, confessing their participation in the alleged cartel and providing relevant evidence, demonstrating the cartel's existence and means of operation. This constitutes the first case in the history of Colombia, in which the SIC subscribes leniency agreements with companies and individuals that decide to collaborate and expose the existence of a cartel.

18. Once the investigation finished, the Deputy Superintendent for the Protection of Competition issued a report with the results of the investigation. In the same, recommended to sanction three of the five companies investigated: TECNOQUÍMICAS, FAMILIA and KIMBERLY.

19. Consequently, the Superintendent of Industry and Commerce, with advice of the Advisory Council of Competition, issued Resolution No. 43218 of June 18, 2016 by means of which sanctioned TECNOQUÍMICAS, FAMILIA and KIMBERLY and 16 individuals related with these companies for the infringement of the competition regime.

20. The imposed sanction went up to USD 70.404.709, approximately, among the companies and the individuals involved in the anticompetitive conducts.

21. It is important to mention that the applicants obtained the discounts previously agreed with the Deputy Superintendent. In this case, FAMILIA received a discount of 50% of the imposed fine and KIMBERLY received a discount of 100%.

Scholar Notebooks:

22. By means of Resolution No. 7897 of 2015, the SIC issued the statement of objections against three companies that participated in the scholar notebooks market: KIMBERLY, CARVAJAL and SCRIBE, for an alleged price fixing performed 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, authorised, tolerated and/or executed the anticompetitive conducts.

23. 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.

24. Once the formal investigation was finished, the Deputy Superintendent for the Protection of Competition recommended to sanction the investigated companies for the agreement to fix the prices of the scholar notebooks. Also recommended to sanction such companies for the other anticompetitive conducts regarding the marketing policies and strategies and financial policies.

25. Further to the recommendation made by the Deputy Superintendent for the Protection of Competition, the Superintendent of Industry and Commerce, with advice of the Advisory Council of Competition, issued Resolution No. 54403 of August 18, 2016 by means of which sanctioned KIMBERLY, CARVAJAL and SCRIBE and 27 individuals related with these scholar notebooks producers for the infringement of the competition regime.

26. The imposed sanction went up to USD 20.054.158, approximately, among the scholar notebooks producers and the individuals involved in the anticompetitive conducts.

27. It is important to mention that the applicants obtained the discounts previously agreed with the Deputy Superintendent. In this case SCRIBE and KIMBERLY received a discount of 100% of the imposed fine.

2.2. Mergers and acquisitions

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

28. Table No. 4 shows the information related to the volume of merger notifications and Phase 1 applications received, processed, and resolved for the years 2015 to 2016.

Table 4. Merger Notifications and Phase 1 Applications 2015 – 2016

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
2015	84	4	51	50	5
2016	80	5	41	43	3
Total	164	N/A	92	93	N/A

29. Table No. 5 denotes that the average duration of Phase 1 review process was reduced to an average of 1.3 months approximately from 2015 to 2016.

Table 5. Average duration of Phase 1 review process 2015-2016

Year	Days	Months
2015	43	1.4
2016	40	1.3

30. Table No. 6 shows the volume of mergers initiated, processed, and resolved under Phase 2 for the years 2015 to 2016.

Table 6. Phase 2 Merger Reviews 2015 – 2016

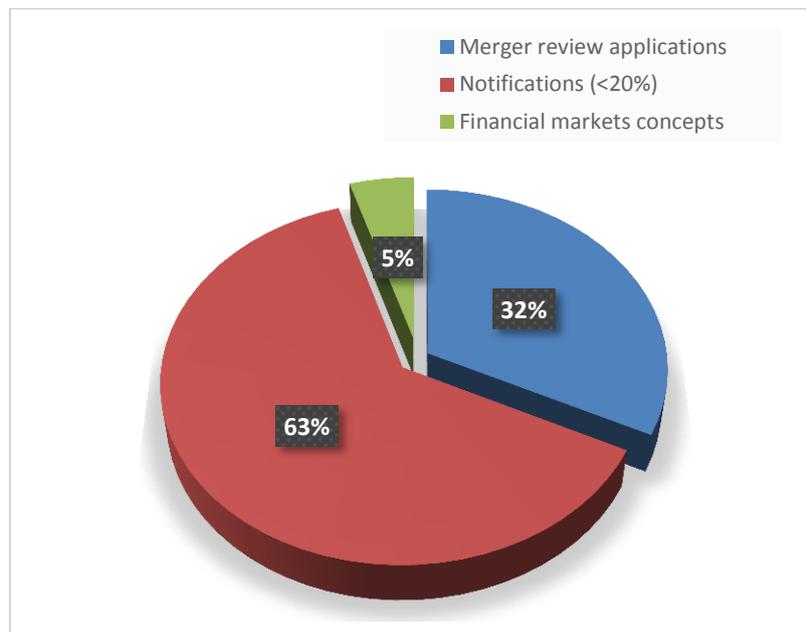
Year	Phase 2 mergers pending at beginning of period	New Phase 2 mergers initiated in period	Phase 2 mergers resolved in period	Phase 2 mergers pending at end of period
2015	7	36	33	10
2016	10	23	25	8

31. The average duration of Phase 2 merger review process in 2016 was 113 days, which represents a difference of 4 days less than the average duration in 2015.

Table 7. Average duration of Phase 2 review process 2015-2016

Year	Days	Months
2015	117	3.9
2016	113	3.8

32. The following chart shows the types of assessment that were conducted by the Mergers Working Group during 2016, with their respective participation:

Figure 1. Types of assessment conducted by the Mergers Group – 2016

33. The highest number of applications received by the SIC were abbreviated notifications (20% market share rule). Only 32% of applications referred to merger review applications.

2.2.2. Summary of significant cases.

34. The following are the significant cases reviewed in 2016:

Terpel – Airplan

35. Market: aviation fuel supply.

36. Proposed transaction: Airplan wanted to sign an operation contract with Terpel (vertical integration), for the fuel distribution network in the second most important airport in Colombia (Jose Maria Cordoba).

37. Decision: blocked.

38. Case: Terpel is a dominant fuel supplier at the Jose Maria Cordoba airport, so the SIC determined that the proposed transaction would give Terpel unmatched market power, as the distribution network is a natural monopoly and an essential facility for any competitor. No divestiture or behavioral remedy could compensate nor mitigate the competition concerns, as each activity (supply and network operation) is executed using only one main asset, and the vertical integration would give Terpel such advantage over its competitors, that they would easily disappear in the short run.

AB Inbev – SabMiller

39. Market: beer.

40. Proposed transaction: AB Inbev would acquire SabMiller global business.

41. Decision: conditioned.

42. Case: SabMiller was a dominant firm in the beer supply market in Colombia. The proposed transaction would affect particularly the “premium beer” market, even though AB Inbev had a marginal (nearly none) market share. This conclusion was supported by the fact that the only competitor that could eventually match SabMiller’s financial capacity was AB Inbev, as it was the largest brewery in the global market, and in the strengthening of the merged party portfolio.

43. In alignment with the divestitures imposed in EU and USA markets, the SIC accepted the divestiture of several important premium brands in the Colombian market such as *Miller Lite*, *Miller Genuine Draft*, *Peroni Nastro Azzurro*, and *Grolsch*.

3. The role of competition authorities in the formulation and implementation of other policies

44. The Competition Advocacy Group of the SIC is focusing its advocacy strategy on two main goals: (i) to promote a competition culture by educating society on the benefits of economic competition; and (ii) to reach more regulators by explaining them the importance of informing to the SIC all regulatory drafts with potential anticompetitive effects on the markets, so the SIC can issue advocacy legal opinions to prevent anticompetitive regulations.

45. During 2016, the SIC issued 54 (3 more in comparison to year 2015) advocacy opinions for 16 administrative agencies and governmental bodies under article 7 of Law 1340/09 and Decree 2897/10, which together comprise the main regulations regarding the Competition Advocacy in Colombia.

46. From the 54 advocacy opinions, 29 of them included recommendations with respect to potentially anticompetitive regulatory drafts. However, only in 15 opportunities, the administrative agencies and governmental bodies introduced modifications to their regulations based on the SIC’s.

3.1. Relevant cases

47. The following are six of the most relevant advocacy opinions issued by the SIC last year. These advocacy opinions are classified below by agencies and governmental bodies:

3.1.1. Ministry of Commerce

48. **Proposed regulatory draft:** *Free Trade Zones Reform*.

49. **Competition concerns:** (i) potential anticompetitive effects as to the possibility for free trade zones beneficiaries to develop up to 40% of the productive process outside the free trade zone, which would undermine the true purpose of the proposed regulation, by creating an anticompetitive differentiation with respect to competitors located outside the free trade zone; and (ii) apparently “*custom-made*” dispositions that presumably were reachable only for some companies with respect to the possibility to obtain recognition of “*special permanent port services free zones*”.

50. **Recommendations:** (i) To evaluate regulatory alternatives in order to discourage the full use of the percentage of authorised productive process that could be undertaken outside the zone; and (ii) to clarify the ambiguous dispositions regarding the recognition of “*special permanent port services free zones*” and to consider the elimination of the

disposition exonerating potential beneficiaries of this special port zones of complying with the regular requisites to become a free trade zone beneficiary.

3.1.2. Ministry of Transportation

51. **Proposed regulatory draft:** Price Regulation on Freight Fares
52. **Competition concerns:** According to the proposed regulation, the Ministry was trying to solve an information asymmetry problem regarding lack of information of freight fares in the market.
53. **Recommendations:** The SIC was very emphatic in pointing out that price regulations should be an exceptional regulatory tool, because of its potential for producing market distortions. In addition, the SIC criticised price regulations as a means to deal with information asymmetry problems. The SIC argued that such a market failure should be solved by providing transparent and reliable information and not through price fixing.
54. **Proposed regulatory draft:** Technological Transportation Platforms. The Ministry of Transport aimed to determine specific features and requirements for technological transportation platforms to obtain authorization for operating. Additionally, the Ministry of Transportation included in the proposed regulation additional prerequisites regarding driver's training and service indicators as previous requirements to get the authorization.
55. **Competition concerns:** The SIC found no relation between the many requisites and the authorization as a Technological Transportation Platform. The SIC identified this regulatory formulation as a "micro-regulation", which was rigid, inflexible and unnecessary to reach the proposed regulatory goals. The SIC deemed these requisites as an anticompetitive barrier to enter the transportation market.
56. **Recommendations:** The SIC recommended eliminating excessive and/or unjustified technical requirements not related to the public policy principles pursued by the regulation, and by this means, as a tool to avoid unnecessary micro-regulation, which may be an obstacle to enter the market and a hindrance to develop disruptive innovations.
57. Additionally, the SIC recommended eliminating the necessity to demonstrate a business relationship with a transportation company in order to be authorised as a technological platform. Furthermore, the SIC emphasised on allowing vehicle owners and drivers to provide their transportation services through any technological platform.

3.1.3. Ministry of Defense and Ministry of Transport

58. **Proposed regulatory draft:** Issuance of Aptitude Certificates for Drivers.
59. **Competition concerns:** (i) Compulsory use of a specific patent by Conformity Assessment Bodies in order to be able to issue the correspondent aptitude certificate for drivers; and (ii) setting a fixed number of Conformity Assessment Bodies. For the SIC, both regulatory alternatives were deemed as anticompetitive for restricting market access.
60. **Recommendations:** The SIC considered that both, the regulation requiring the use of a specific patent and the fixed number of Conformity Assessment Bodies should be removed. However, if the specific patent was indispensable to achieve legitimate regulatory goals based on technical studies, the SIC suggested the inclusion of regulatory measures to prevent the abuse of dominant position from the patent holder.

3.1.4. National Commission for Medicine and Medical Devices Prices

61. **Proposed regulatory draft:** Price regulation methodology for medicines declared of Public Interest.

62. The Commission proposed a price regulation methodology for medicines previously declared of public interest and for which the “direct price control mechanism” had been chosen as the mean to neutralise the cause that motivated a public interest declaration. The maximum price was determined by using an international reference pricing from a pool of 17 countries.

63. **Competition concerns:** The SIC pointed out three (3) competition concerns: a) it was unclear if the chosen price would be based on an international comparison between patented products, or between generic medicines; b) the proposed regulation did not determine a specific price regulation term, which according to the SIC was required in order to prevent an unreasonable use of this exceptional measure as a permanent interventionist health policy; and c) a price indexation mechanism was not included.

64. **Recommendations:** The SIC recommended selecting one of two alternatives: i) to adopt the lowest international price only if the price comparison was to be done exclusively on the base of patented medicines; or ii) if patented and generic medicines would be compared, the Commission should apply the twenty-fifth (25) percentile from the international price lists.

65. In addition, the SIC recommended to evaluate the possibility of conditioning the price control to periodic price revision mechanisms, in order to analyze if the motivation of the public interest declaration should remain or not. Finally, the SIC recommended establishing a price indexation mechanism.

3.1.5. Energy and Gas Regulatory Commission (CREG for its Spanish acronym)

66. **Proposed regulatory draft:** *Guidelines in the natural gas supply plan.* The Colombian Commission for the Regulation of Energy and Gas proposed a regulation including a set of mandatory guidelines for every public procurement process belonging to the natural gas supply plan.

67. **Competition concerns:** The regulatory draft included limited possibilities for bidders to demonstrate their financial capacity.

68. **Recommendations:** The SIC recommended broadening the possibilities to demonstrate financial capacity and to give the chance for bidders to prove their suitability for participating in the public procurement process.

4. Resources of competition authorities

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

69. The following table presents the Annual Budget of the SIC and the SIC’s Competition Division in 2015 and 2016:

Table 8. SIC's Funds Available for Allocation: Amounts and Sources 2015 – 2016

Year	SIC Total Funds		Competition-related budget	
	COP thousands of millions	USD million	COP thousands of millions	USD million
2015	125.521	43.9 (100%)	22.897	8.0 (18.22%)
2016	133.833	46.8 (100%)	25.664	8.9 (19.17%)

Table 9. Competition Law Enforcement Cases by Violation Type and Outcome 2016

Year	Formal Investigations	Case Types					Total
		Horizontal agreements	Vertical agreements	Abuse of dominance	Unreported mergers	Other conduct	
2016	Opened	6	0	1	1	1	9
	Dismissed	1	0	1	0	2	4
	Settled	0	0	0	0	0	0
	Orders/sanctions	5	0	1	1	1	8
	Total monetary sanctions imposed	COP 437.990.708.210 USD 148.325.551	0	COP 1.516.801.000 USD 512.135	COP 77.908.302 USD 26.305	COP 541.911.630 USD 182.971	COP 440.127.329.142 USD 149.046.962

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

4.2.1. Annual budget (in your currency and USD)

70. The competition-related budget is approximately US\$ 12.5 million dollars. This budget is distributed in two main “costs branches”. The first one is the Deputy Superintendence for Competition Protection, which has an own budget of US\$ 9 million dollars, approximately (including functioning -US\$ 5.6 million- and investment -US\$ 3.4 million-, approximate values). This budget includes a special budget for the Forensics Laboratory.

71. The second cost branch involves other areas different from the deputy superintendence, which also perform competition activities: the Office of the Superintendent of Industry and Commerce and the Economic Studies Working Group. The budget for these areas comes from the functioning budget of the SIC, and is estimated in US\$ 3.5 million dollars, approximately).

4.2.2. Number of employees (person-years)

72. The following charts show the number of employees and contractors who work on competition enforcement at the SIC:

Table 10. Staff at the authority who worked on competition enforcement - 2016

Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	37	55	92
Superintendent's Office	1	10	11
Economic Studies Working Group	1	4	5
IT Forensics Lab	5	1	6
TOTAL	44	70	114

Table 11. Non-administrative staff who worked on competition enforcement - 2016

Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	35	47	82
Superintendent's Office	1	7	8
Economic Studies Working Group	1	4	5
IT Forensics Lab	5	1	6
TOTAL	42	59	101

Table 12. Roles of non-administrative competition (NAC) staff - 2016

**Staff of the Deputy Superintendence for Competition Protection, Superintendent's Office, Economic Studies Working Group and IT Forensics Laboratory, discriminated by roles*

Role	Contractors	Employees
Economists	6	23
Lawyers	31	32
Others (engineers, business managers, public counters)	5	4
Total	42	59

Table 13. Staff of the Deputy Superintendence for Competition Protection discriminated by areas – 2016

Dependency	Contractors	Employees
Mergers		0
Anti-cartel and dominance-related issues		32
Advocacy		3
Total		35

*The NAC staff of the Superintendent's Office, the Economic Studies Working Group and the IT Forensics Laboratory is not divided by areas. They work in all of them.

4.3. Period covered by the above information

73. January 2016 – December 2016

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

74. The Economic Studies Working Group produced the following academic studies in 2016: i) a general review of the ports market in Colombia and ii) a study of the oil palm and palm kernel market in Colombia.