

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

Cancels & replaces the same document of 19 May 2020

Annual Report on Competition Policy Developments in Colombia

-- 2019 --

10-12 June 2020

This report is submitted by Colombia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

JT03462194

Table of Contents

Colombia	4
1. Changes to competition laws and policies, proposed or adopted	4
1.1. Summary of new legal provisions of competition law related legislation	4
1.2. Other relevant measures, including new guidelines.....	6
1.3. Government proposals for new legislation	6
2. Enforcement of competition laws and policies.....	6
2.1. Action against anticompetitive practices, including agreements and abuse of dominant positions	6
2.1.1. Summary of activities of the Competition Authority	6
2.1.2. Description of significant cases, including those with international implications	7
2.2. Merger and acquisitions.....	10
2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;	11
2.2.2. Summary of significant cases.....	13
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	16
3.1. Relevant cases.....	16
3.1.1. Ministry of Mining and Energy.....	16
3.1.2. Ministry of Transportation	17
3.2. Achievements and challenges	18
4. Resources of competition authorities.....	19
4.1. Resources overall (current numbers and change over previous year):	19
4.1.1. Annual Budget (in your currency and USD).....	20
4.1.2. Number of employees (person-years)	20
4.2. Human resources (person-years):	21
4.3. Period covered by the above information:	21
4.3.1. Summaries of or references to new reports and studies on competition policy issues.....	22

Tables

Table 1. Complaints received and resolved 2018-2019	6
Table 2. Preliminary inquiries commenced and resolved 2018-2019 (ex officio and complaints)	7
Table 3. Competition cases resolved 2018-2019	7
Table 4. Merger applications reviewed by the SIC during 2019	11
Table 5. Merger applications and resolved pre-evaluations 2019	11
Table 6. Average duration of phase 1 merger review process 2018-2019	12
Table 7. Phase 2 merger reviews 2019.....	12
Table 8. Average duration of phase 2 merger review process 2018-2019	12
Table 9. SIC's Funds Available for Allocation: Amounts and Sources 2018 – 2019	19
Table 10. Competition Law Enforcement Cases by Violation Type and Outcome 2019	20
Table 11. Total SIC's budget for 2018 - 2019.....	20
Table 12. Total SIC's competition-related budget for 2019.....	20

Table 13. Staff at the authority who worked on competition enforcement - 2019.....	21
Table 14. Non-administrative staff who worked on competition enforcement - 2019.....	21
Table 15. Roles of non-administrative competition (NAC) staff - 2019.....	21
Table 16. Roles of non-administrative competition (NAC) staff who work in each area of the Deputy Superintendence for Competition Protection - 2019	21

Colombia

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

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

1. The following are 2019 Colombian Laws with an impact on free competition:
 - Law 1955 of 2019: “By which is issued the National Development Plan 2018 -2022 ‘Pact for Colombia, Pact for Equity’.”
2. The National Development Plan issued during Mr. President Iván Duque Márquez’ government, and approved by the Colombian Congress, includes the Article 146. By means of this article the Superintendence of Industry and Commerce (hereafter **SIC**) was granted with power of submitting a previous concept, upon request or *ex officio*, regarding any bill that may have incidence on free competition in the Colombian markets. The authorities must inform the **SIC** about the administrative acts they intend to issue. It must be bear in mind that the concept issued by the **SIC** is not binding. However when the respective authority deviates from this concept, it must expressly express the reasons for it.
3. Also, when referring to the members of the General Health and Social Security System, Article 243 of the aforementioned Law refers to the **SIC** as the entity in charge of ensuring free economic competition by prohibiting acts and behaviors of unfair competition.
 - Law 1966 of 2019: “By which management and transparency measures for the General Health and Social Security System are taken, and other provisions are issued.”
4. This Law creates an integrated control system of inspection and surveillance for the health sector of which the SIC is a part. This system is in charge of the inspection, control and monitor of competition promotion in the health sector by sanctioning certain violations as for example: restrictive commercial practices; unfair competition; mergers; and, abuses of dominant position, among others.
 - Law 1978 of 2019: “By which the information and communications technology sector is modernized (ICT), certain functions are distributed; a sole regulator is created, and other provisions are issued.”
5. Article 37 reiterates that the **SIC** is the sole authority for competition protection in the ICT sector. That means that the **SIC** will apply the inspection, surveillance and control regimen that has been established by means of the Law 1341 of 2009.
 - Law 2005 of 2019: "By which incentives are created to promote quality, consumption and commercialization of the *panela*, honeys and its derivatives, as well as the transformation and formalization of Colombian’s sugar mills, and other provisions are dictated."
6. The purpose of this Law is to create incentives to expand the demand for *panela* and honeys, as well as to diversify the production and commercialization of its derivatives. It also establishes a series of provisions with the purpose of protecting small and medium producers of *panela*.

7. Regarding the powers given to the **SIC**, Article 19 establishes certain obligations regarding its authority as the sole authority for free competition.

8. Within the next 6 months of entering into force, Article 19 orders the **SIC** to launch an inquiry into the panela market with the purpose of determining the existence of an oligopsony, or dominant position. If the **SIC** finds a violation of the free competition regimen in that market, it will be allow to impose the fines enshrined in current legislation.

- Law 2010 of 2019: "By which some standards are adopted for the promotion of: economic growth, employment, investment, strengthening of public finances and progressivity, equity and efficiency of the tax system, in accordance with the objectives promoted by Law 1943 of 2018, and other provisions are issued."

9. By means of the Article 152 of the so-called the new Law on Financing and Economic Growth, the **SIC** is in charge of stablishing a new fee for the prior control of mergers. The criteria established the fee must take into account the following:

- In accordance with the provisions of Articles 9 and 10 of Law 1340 of 2009, the value of the fee will to be charged must be proportional to the type of procedure carried out to adopt the final decision;
- The overall amount will correspond directly to the costs associated with the provision of the service.

10. The annual adjustment of the rates set in Article 152 will not exceed the percentage by which the consumer price index varies.

- Law 2014 of 2019: "By means of which the penalties for those convicted for corruption and crimes against the public administration are regulated, as well as the unilateral administrative assignment of the contract for acts of corruption, and other provisions are issued."

11. The purpose of this law is to adopt measures to punish crimes committed against the public administration; the administration of justice; and which affect the State's assets, eliminating criminal benefits and modifying the regime of inabilities to contract with the State, provided that acts of corruption were proven.

12. The provision orders that when the commission of corruption is demonstrated, they will disqualify to contract with the State.

13. This Law seeks to guarantee the constitutional principle of equality and transparency. It is emphasized that among the list of crimes this Law acknowledges, all forms of restrictive agreements are included and they will not receive any benefits such as amnesties or reduction of fines.

- National Development Plan, 2018 -2022: Pact for Colombia, Pact for Equity"

14. According to the National Development Plan 2018-2022, the **SIC** is in charge of monitoring eight markets with the purpose of preventing any violation of the free economic competition regime. Studies on the markets of digital matching platforms for tourist accommodation services and the aeronautical sector in Colombia were carried out in 2019, in order to identify possible anti-competitive practices and the behavior of the markets.

1.2. Other relevant measures, including new guidelines

15. The Congress of Colombia currently holds a series of legislative initiatives or bills in relation to the free economic competition regime. The following are the legislative initiatives:

16. **Bill 083/2018 - Chamber - 236/19 Senate:** This Bill intends to add a ground for disqualification to participate in the contractual processes of entities subject to the General Contracting Statute from the Public Administration. This in order to tackle any form of anti-competitive agreements.

17. **Bill 181/2018 Chamber– 185/19 Senate:** This bill aims to develop the promotion of free competition, by adopting a series of measures that protect natural and legal persons who are subject to contractual conditions burdensome in relation to the procedures and terms of payment and billing of its commercial operations, incorporating the obligation of Payment in Fair Terms. Currently, its legislative process is pending approval in Third and Fourth Debates.

18. **Bill 292 / 19C:** The purpose of this Bill is to regulate the private transport service which is intermediate in digital platforms. Its provisions and explanatory statement have a direct impact on free economic competition, since it attempts to regulate the collaborative economy that characterizes digital markets and the competition dynamic. This initiative was submitted in November, 2019 and currently it is expected to begin its legislative process (First Debate) in March, 2020.

1.3. Government proposals for new legislation

19. To date there are no new relevant proposals regarding competition protection.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuse of dominant positions

2.1.1. Summary of activities of the Competition Authority

20. In 2019, the number of complaints increased in 100 compared to the ones received in 2018. This represents an increase of 14,10%.

Table 1. Complaints received and resolved 2018-2019

	2018	2019	Total
Complaints pending at beginning of period	547	898	N/A
New complaints received during period	709	809	1518
Complaints resolved by dismissal	544	607	1151
Complaints resolved by opening a preliminary inquiry	1	16	17
Complaints pending at end of period	898	886	N/A

21. Table No. 2 contains information regarding the preliminary inquiries that were conducted from 2018 to 2019.

Table 2. Preliminary inquiries commenced and resolved 2018-2019 (ex officio and complaints)

	2018	2019	Total
Preliminary inquiries pending at the beginning of the period	43	31	N/A
New preliminary inquiries opened during period	4	28	32
Preliminary inquiries resolved by dismissal	12	4	16
Preliminary inquiries resolved by opening a formal investigation	10	4	14
Preliminary inquiries pending at end of period	31	29	N/A

22. The disposition of formal investigations since 2018 is shown in the following table:

Table 3. Competition cases resolved 2018-2019

	2018	2019	Total
Formal investigations pending at the beginning of the period	23	21	N/A
New formal investigations opened during period	10	15	25
Formal investigations resolved by dismissal	4	5	9
Formal investigations resolved by orders/sanctions	12	19	31
Formal investigations resolved by settlement	1	0	N/A

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

23. In 2019, the most significant cases sanctioned were Chlorine & Caustic soda, Concrete Pipes for Sewage System, Contact Lenses, and Colombia's National Attorney Supply Case.

24. The four sanctions imposed amounted to a total of COP \$139.919'307.476 (USD 42.644.126)¹.

Chlorine & Caustic soda

25. In 2017 **BRINSA** filed a leniency application in order to be granted with the first "marker" as beneficiary of the program.

26. Due to the information handled by **BRINSA**, the Deputy Superintendence for Competition Protection was able to: (i) reveal that the company was engaged in multiple restrictive practices of free competition among their competitors; (ii) disclose the nature of the conducts discovered (market allocation and general prohibition); (iii) identify the industry and products involved, and finally (iv) point out the affected consumers.

27. The investigation involved four companies **BRINSA**, **QUIMPAC**, **TRICHEM** and **MEXICHEM**. Each of them participated in different markets and conducts:

¹ All the conversions of this document were made using average exchange rate for 2019 of COP \$3.281,09 per dollar.

MARKET	COMPANY	CONDUCT
CHLORINE	BRINSA and QUIMPAC	MARKET ALLOCATION
CAUSTIC SODA	BRINSA, QUIMPAC, TRICHEM and MEXICHEM	GENERAL PROHIBITION
CHLORINE	BRINSA and QUIMPAC	MARKET ALLOCATION

28. The investigation also addressed 13 individuals (directors and former executives) who may have collaborated, authorized, tolerated and executed the anticompetitive conducts.

29. In this regard, the SIC found that, between 2002 and 2014, **BRINSA** and **QUIMPAC** executed a market allocation agreement in order to provide chlorine to the aqueducts nearby their production plants. The allocated clients paid the higher concerted chlorine prices in history. **BRINSA** and **QUIMPAC** managed to eliminate competition among the firms.

30. This agreement allowed the firms engaged in the restrictive conduct to stabilize the chlorine and caustic soda production level and obtain bigger profits.

31. On the other hand, **BRINSA**, **QUIMPAC**, **TRICHEM** and **MEXICHEM** concerted numerous restrictive conducts in order to organize Colombia's caustic soda market.

32. The agreement included to: (i) eliminate **MEXICHEM** as a caustic soda agent in Colombia; (ii) increase **QUIMPAC**'s, **TRICHEM**'s and **MEXICHEM**'s market share; (iii) stabilize the price of the product and (iv) increase the companies' profits.

33. Some of the conducts implemented by these firms where:

- **MEXICHEM** would stop importing caustic soda and selling the product in Colombia.
- The caustic soda imported by **MEXICHEM** to Colombia would be bought and imported by **TRICON ENERGY INC –TRICHEM's head office–**.
- **BRINSA** and **TRICHEM** would only import caustic soda to Colombia through **TRICON ENERGY INC**.
- **BRINSA** and **TRICHEM** would use **QUIMPAC**'s and **MEXICHEM**'s operational infrastructure in Colombia in order to stock the imported caustic soda and pay them a rent fee.
- **BRINSA** and **TRICHEM** would allocate soda caustic consumers attended by **MEXICHEM**.

34. The SIC based its sanctioning decision on evidence collected by the Deputy Superintendence for Competition Protection, such as e-mails, documents, expert opinions and statements of employees of sanctioned companies. The imposed fines went up to COP \$125.527.479.512 (USD \$ 38.257.859) approximately, among the companies and the individuals involved in the anticompetitive conducts.

Concrete Pipes for Sewage System

35. Due to the investigation carried out by the Superintendence of Industry and Commerce, it was determined that **AMERICAN PIPE**, **TITAN** and **TUBOX** engaged in a restrictive practice for at least 10 years. During this period, **AMERICAN PIPE**, **TITAN** and **TUBOX** simulated to be competitors, when in reality they acted in a coordinated and

concerted manner to distribute between themselves the concrete pipes for sewerage market according to each of their own interest.

36. The **SIC** was able to establish that **AMERICAN PIPE**, **TITAN** and **TUBOX** identified potential concrete pipes for sewerage buyers in Bogota and other surrounding areas in order to distribute them to each company in accordance to their specific interest. The distribution was carried through a discount system implemented by each company. The distribution would be in accordance with each of the companies' locations and/or headquarters.

37. **AMERICAN PIPE** became part of the Leniency Program and collaborated with the competition authority throughout the investigation. This company and the executives involved benefited from the exemption of the sanction.

38. The **SIC** based its sanctioning decision on evidence collected by the Deputy Superintendence for Competition Protection and provided by **AMERICAN PIPE**, such as e-mails, documents, receipts and statements of employees of the sanctioned companies. The investigation also addressed 5 individuals (directors and former executives) who collaborated, authorized, tolerated and executed the anticompetitive conducts.

39. In **TUBOX's** case, the investigation was closed since the authority's sanctioning faculties prescribed due to the fact that the company's involvement lasted until 2012, whereas **AMERICAN PIPE** and **TITAN** continued to engage in the restrictive conducts until 2014.

40. The imposed fines went up to COP \$9.836.361.848 (USD \$ 2.997.931) approximately, among the companies and the individuals involved in the anticompetitive conducts.

Contact Lenses

41. In December 2019 the **SIC** issued a decision against the **COLEGIO FEDERACIÓN COLOMBIANA DE OPTÓMETRAS – FEDOPTO**, an Association of optometrists, and nine persons who held administrative positions in the association. The Superintendence fined them for engaging in anticompetitive conducts.

42. The facts of the case are as follows. In 2013, online commerce was introduced to the market for mass-produced contact lenses in Colombia as a novel commercialization channel. Online commerce allowed the costumers to enter the website of their choice, select the product according to their needs and preferences, upload or attach the respective optometric formula and, finally, pay for the purchased lenses.

43. This new business model raised concerns among traditional market players. It encouraged **FEDOPTO** to plot against the online commerce sellers of the product to counter the observed threat. **FEDOPTO** organized a campaign against those sellers, consisting in a series of actions aimed at discrediting and discouraging the marketing of contact lenses over the Internet and thereby preventing the entry and development of e-commerce in the market.

44. Throughout the investigation proceedings, the Deputy Superintendence for Competition Protection identified two types of conducts to achieve the abovementioned goal. The first type consisted of activities aimed at spreading false and inaccurate information about the unlawfulness of online commerce and the alleged risk to health that resulted from buying contact lenses over the internet. The

second type of activities meant to break and prevent any kind of commercial relationship between companies selling contact lenses over the Internet and final consumers, distributors, allied opticians, and third parties.

45. The Superintendence considered that this behavior caused economic inefficiencies in the relevant market and affected the general interest of contact lens consumers. FEDOPTO's conduct hampered the entrance of e-commerce's agents and also the operation of the channel itself. The latter considering that some of the relevant agents in the market stopped supplying lenses to e-sellers for periods longer than a year. As to the consumers best interest, FEDOPTO's conduct denied consumers the benefits of online shopping, for instance access facilities, a wider coverage and lower prices.

46. The imposed fines went up to COP 233.528.712 (USD \$ 71.174) approximately, among the companies and the individuals involved in the anticompetitive conducts.

Colombia's National Attorney Supply Case

47. In 2016 the Office of the Attorney General submitted a complaint after noticed an unusual behavior from three bidders in the framework of the FGN-IPSE-038 DE 2016 tender. Based on that information an investigation was opened and additional companies and participants were involved.

48. The Colombian Competition Authority gathered and used evidence such as e-mails, chats and files that documented agreements to suppress bids, present complementary bids, and recognize payments for the anticompetitive agreement, as well as other anticompetitive practices to alter market prices.

49. The National Tax and Customs Office provided important information by helping to track those payments and linking them to the investigation at hand.

50. The Colombian Competition Authority imposed COP \$4.321.937.404 (USD \$ 1.317.226) fine on 32 companies and participants that incurred in bid-rigging and other anticompetitive practices in over 10 public tenders related to the supply of stationery products and inflatables.

2.2. Merger and acquisitions

51. It is important to take into account that, in Colombia, when the parties to a transaction are engaged in (i) the same economic activities (horizontal overlap); or (ii) the same value chain of a relevant market (vertical effect), they may be subject to merger control.

52. The **SIC** establishes a threshold to review these mergers depending on the interested parties' assets and/or operational income for the previous year. This threshold varies each year, being based in the minimum wage rate for the country. For 2020 the threshold is set at 60,000 monthly salaries at the minimum wage, which amounts to \$ 52.668.180.000 Colombian pesos (roughly USD \$16 million). In case that the assets or operational income held by the companies (individually or jointly) equals or exceeds this amount, the transaction must be reviewed.

53. There are two kinds of merger applications the **SIC** reviews, namely:

- **Notifications:** Mergers in which the interested parties jointly hold less than 20% of market share. In this case the transaction is considered authorized and the parties need only to provide notice of the transaction to the **SIC** prior the closing. Normally, the **SIC** issues a letter within ten (10) business days that “acknowledges receipt” of the notice. In the letter the **SIC** states that it reserves the right to review the information presented.
- **Pre-evaluations:** Mergers in which the interested parties jointly hold 20% or more of market share. This procedure is divided in two stages: ‘phase 1’ and ‘phase 2’ (in depth analysis), and may take between 2 – 9 months depending on the complexity of the transaction. Additionally, the parties are subject to a standstill obligation, which means the transaction cannot close before the **SIC** issues authorization.

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

54. In 2019 the **SIC** reviewed and resolved 201 merger applications. These include notifications and pre-evaluations (phase 1 and phase 2). Also, whenever there is a merge that affects the financial market, the **SIC** releases a non-binding concept to the Colombian Superintendence of Finance (SFC by its acronym in Spanish). In 2019 there were 12 of such concepts issued by the **SIC**. Table 4 summarizes the merger reviews approved, conditioned, objected or dismissed for the year 2019.

Table 4. Merger applications reviewed by the SIC during 2019

Type of procedure	Authorized without remedies or conditions	Authorized with remedies or conditions	Objected	Desisted	Total
Notifications	143	N/A	N/A	2	145
Pre-evaluation Phase 1	25	0	0	0	25
Pre-evaluation Phase 2	16	2	1	0	19
Concepts to SFC	12	N/A	NA	0	12
Total	184*	2	1	2	201

* This total value does not take into account the concepts send to Financial Superintendency.

55. Table No. 5 shows the information related to the volume of merger applications received, processed, and resolved for the year 2019 (We included the concepts issued to the SFC as phase 1 pre-evaluations).

Table 5. Merger applications and resolved pre-evaluations 2019

Year	Pre-evaluations pending at beginning of period	Pre-evaluations received in period	Pre-evaluations resolved in phase 1	Pre-evaluations resolved in phase 2	pre-evaluations pending at end of period
2019	12	57	37	19	13

56. Table No. 6 shows an increase in the average duration of phase 1 merger review processes, with an average of 48 days in 2019 as opposed to 44 days in 2018.

Table 6. Average duration of phase 1 merger review process 2018-2019

Year	Days	Months
2018	43,9	1,46
2019	48,1	1,60

57. Table No. 7 shows the volume of mergers initiated, processed, and resolved under Phase 2 for the year 2019.

Table 7. Phase 2 merger reviews 2019

Year	Phase 2 pre-evaluations pending at beginning of period	Phase 2 pre-evaluations initiated in period	Phase 2 pre-evaluations resolved in period	Phase 2 pre-evaluations pending at end of period
2019	4	18	19	3

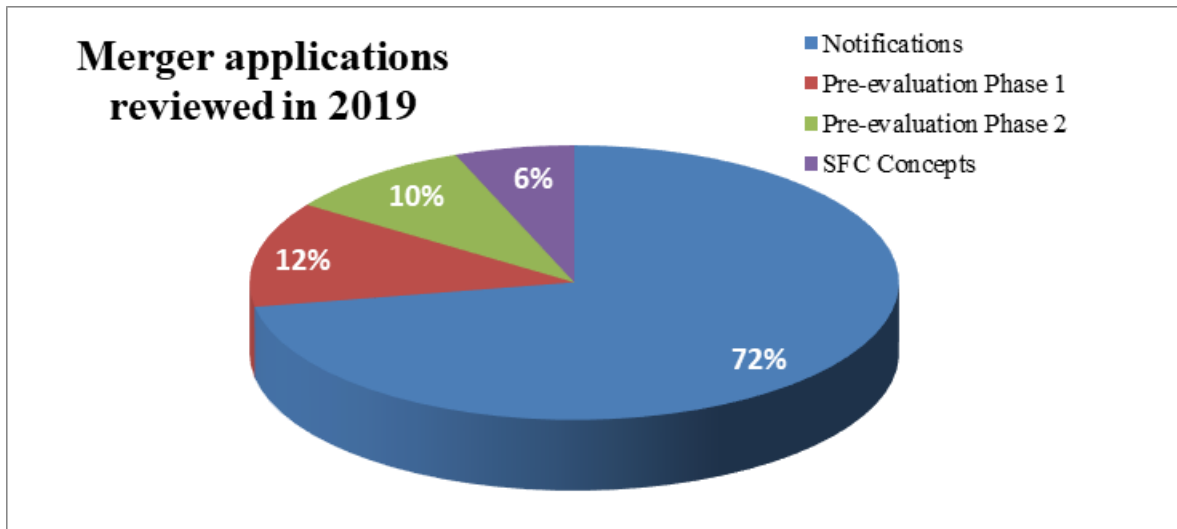
58. In 2019, the average duration of phase 2 merger review processes was 188 days, which represents 6 days more than the average duration in 2018. The complexity of some cases (like CMA CGM – PUERTO BAHÍA which lasted 325 days) contributed to the increase of the average duration of pre-evaluation processes during 2019.

Table 8. Average duration of phase 2 merger review process 2018-2019

Year	Days	Months
2018	182	6.1
2019	188	6.3

59. The following chart shows the types of assessment that were conducted by the Mergers and Acquisitions Working Group during 2019, with their respective percentage:

Figure 1. Types of assessment conducted by the Mergers and Acquisitions Group



2.2.2. Summary of significant cases

60. Due to the size of the companies, market share and potential impact to the consumers, the SIC highlights the following 3 merger applications as the most significant in 2019:

QUIMPAC - MEXICHEM:

61. **Intervening Companies:** QUIMPAC DE COLOMBIA S.A. and MEXICHEM DERIVADOS COLOMBIA S.A.

62. **Proposed transaction:** QUIMPAC would acquire 100% of MEXICHEM shares.

63. **Relevant Market:** MEXICHEM and QUIMPAC jointly participate in the Colombian chemical industry, in different production and commercialization links of the chlorine-soda chain, particularly in the following 4 markets: (i) Chlorine production; (ii) Commercialization of caustic soda; (iii) Production and commercialization of ferric chloride; and (iv) Production and commercialization of sodium hypochlorite, nationwide.

64. **Decision:** Objected.

65. In the production and commercialization of ferric chloride and sodium hypochlorite markets, the increase in the merged entity market share deepens the difference between it and its competitors.

66. Concerns about the vertical relationship between MEXICHEM (client) and BRINSA S.A. (current supplier and only competitor of QUIMPAC) arose in the chlorine production market.

67. In the commercialization of caustic soda market, the change in market share is marginal. However, QUIMPAC is already the market leader with the possibility of being the dominant agent.

68. The operation supposes an additional risk resulting from the intervening companies' relationship through the chlorine-soda production chain combined with the high market share QUIMPAC would possess. This, given the fact that the effects in

downstream scenarios could be even graver and significant changes could be presented in the structure of the markets as a consequence of a market closing.

69. There are important barriers to entry in the analyzed markets that constitute themselves in disincentives or substantial additional costs that might difficult the entry of new agents and potential competitors, in the short and medium term.

70. There is a low reaction capacity from clients and competitors, insufficient to discipline a possible restrictive commercial practice done by the merged entity.

71. Due to the intrinsic features of the affected markets (market transparency, product homogeneity, existence of significant barriers to entry, homogeneity of the companies, stability or the possibility to predict demand, low innovation levels in the market, stability in the number of participant companies, existence of sub-hiring frames in this market or in relation with other markets and multi-market interaction) there is a high probability (80%) of coordinated effects to be produced between the merged entity and BRINSA. S.A.

72. The Superintendence concluded that by completing the projected operation, there is a substantial risk of materializing exploitative or exclusory effects in the analyzed markets that may jeopardize the free economic competition, therefore objected the merger operation between QUIMPAC and MEXICHEM.

CMA CGM – BANANERAS – PUERTO BAHÍA:

73. **Intervening Companies:** AGRÍCOLA SANTAMARÍA S.A.S., COMERCIALIZADORA INTERNACIONAL BANACOL DE COLOMBIA S.A., SOCIEDAD DE COMERCIALIZACIÓN INTERNACIONAL BANAFRUT S.A., C.I. TROPICAL S.A.S., C.I. UNIÓN DE BANANEROS DE URABÁ S.A. (jointly BANANERAS), CMA CGM COLOMBIA S.A.S. (CMA CGM), PUERTO BAHÍA COLOMBIA DE URABÁ S.A. (PUERTO BAHÍA) and PUERTOS INVERSIONES Y OBRAS S.A.S. (PIO)

74. **Proposed transaction:** The intended operation consisted on the creation of a joint company that controls PUERTO BAHÍA, in a transaction that allows each company to exert competitive control over this society. PUERTO BAHÍA counts with a port concession to build, manage and operate a multi-purpose port facility in Urabá's harbor zone.

75. **Relevant Market:** the operation would have horizontal and vertical effects, since the activities performed by the BANANERAS coincide in the production and international commercialization of banana and plantain. In addition, the operation intends to integrate international freight shipping (through CMA CGM) and port operation (port and inter-port infrastructure, through PUERTO BAHÍA and PIO) to minimize the costs associated with international shipments that currently the BANANERAS face.

76. **Decision:** Conditioned.

77. In regards to the port services market (infrastructure), the operation would have pro-competitive effects, since the supply of such services will increase in the already high concentrated markets of container cargo, bulk cargo different than coal and general cargo. This, provided that non-discrimination is guaranteed in the provision of services related to the entire value chain of production and international marketing of banana and plantain, including the provision of port (intra-port) operation services.

78. The Superintendence found evidence of enough competition in the markets of container cargo in the Mediterranean, Northern Europe and North America routes that would difficult CMA CGM to perform restrictive commercial practices.

79. In the market of production and international marketing of banana and plantain, it was identified that, considering the agents individually, there is enough competition. However, the intended operation could pose risk of market closure to the competitors in this market who don't have direct relationships with PUERTO BAHÍA and CMA CGM.

80. As for the supply of intra-port operation services, there could be a potential market closure due to the existence of a sole operator, as intended by PUERTO BAHÍA in the present merger operation.

81. For the reasons exposed above, the SIC concluded that after completing the intended operation, undue restrictions to competition in the aforementioned markets would be generated, making it necessary to take precautionary measures in order to discourage them or impede their realization. Thus, the Superintendence approved the merger operation conditioned to the compliance of eight (8) behavioral remedies.

GLAXOSMITHKLINE – PFIZER:

82. **Intervening Companies:** GLAXOSMITHKLINE COLOMBIA S.A. (GSK) and PFIZER S.A.S. (PFIZER).

83. **Proposed transaction:** GSK would acquire exclusive control over PFIZER's Consumer Healthcare Business. The latter will provide its Consumer Healthcare business channels to GLAXOSMITHKLINE CONSUMER HEALTHCARE HOLDINGS LIMITED in order to form a combined business channel.

84. **Relevant Market:** Commercialization of pharmaceutical products for pain management (painkillers) identified with codes ATC3: M01A, N02B and N02C; and cold and flu treatments classified with code ATC3 R5A.

85. **Decision:** Conditioned.

86. The Superintendence found that in the cold and flu treatments market, the intended operation would not grant GSK a position that allows it to affect competition variables.

87. In regards to the painkillers market, the SIC found that by estimating the market share using the sales values, GSK would strengthen its position significantly, substantially widening the breach between the market leader and its next competitor.

88. However, by analyzing the market share calculating the sales volume, GSK would not get a market share that pose threats to competition. Although the parties acknowledged that calculating the market share using sales volume is the best way to do so, the variable used is not the best, due to the wide variety of commercial presentations for painkillers.

89. The Competition Authority concluded that there are not significant obstacles to discourage or impede the entry of new competitors to the painkillers market. Brand recognition, in special of those products offered by the intervening companies, plays an important role in the market, and is a variable that consumers take into account when taking their consumption decisions.

90. In this sense, the SIC determined that by completing the intended merger, GSK would strengthen its position in the painkillers market, by having in its portfolio two of the most recognized brands in the market, namely DOLEX and ADVIL, so there is a substantial

risk of the materialization of exploitative or exclusive effects that jeopardize free economic competition.

91. For the reasons exposed above, the **SIC** concluded that after completing the intended operation, undue restrictions to competition in the pharmaceutical products for pain management market would be generated, making it necessary to take precautionary measures in order to discourage them or impede their realization. Thus, this Superintendence approved the merger operation conditioned to the compliance of behavioral remedies.

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

92. The SIC's Competition Advocacy Group focuses its advocacy strategy on two main goals: (i) to promote a competition culture by educating society on the benefits of economic competition, (ii) to reach more regulators by explaining them the importance of informing the **SIC** all regulatory drafts with potential anticompetitive effects on the markets, in order to allow the **SIC** to issue advocacy legal opinions. In addition, the Competition Advocacy Group is attentive to provide legal advice the all forms of requests made from the Congress with the purpose of averting potential anticompetitive effects from pending legislation.

3.1. Relevant cases

93. The following are two relevant advocacy opinions issued by the Colombian Competition Authority last year. The first case corresponds to the auction developed by the Ministry of Mining and Energy to assign the generation of energy using non-conventional renewable sources. The second case is an opinion about the auction developed by the Ministry of Transportation to the modification of the current scheme to allow the initial registration of new cargo vehicles with Gross Vehicle Weight - PBV greater than 10,500 kilograms.

3.1.1. Ministry of Mining and Energy

94. **Proposed regulatory drafts:** the analyzed project is based on two drafts. The first draft defines and implements a mechanism to promote long-term electricity contracts regarding non-conventional renewable energy sources. The second draft calls for the auction of long-term contracts for electricity generation projects and defines the parameters for their development.

95. **Competition concerns:** The first draft establishes a voluntary two-pronged reverse auction mechanism with simultaneous bids in a sealed envelope, i.e., sellers (generators) and buyers (distributors) submit their willingness to sell and buy energy for the time slots into which the day was divided by Colombia's Ministry of Energy (henceforth, the "Blocks"). Bids correspond to 0.5 MW "packages" of energy generated using non-conventional renewable energy sources, and sellers and buyers can submit as many bids for each package contained on each Block.

96. The second draft establishes a period of 15 years for the duration of the contracts. In addition, this draft allows the administered allocation of the remaining target demand defined in the corresponding administrative act.

97. On this basis, the **SIC** analyzed the following aspects of the projects:
- The need for implementing auctions as the allocation mechanism regarding electricity using non-conventional renewable energy sources.
 - The buyer and sellers' characteristics allowed them to participate in the auction.
 - The effect on competition of the timeframe in which the Ministry had to publish the documents ruling the auction, some of which are the specifications, contracts, and terms of competition.
 - The product to be auctioned (energy blocks).
 - The terms of the contracts.
 - The compliance with Article 296 of Law 1955 of 2019 (National Development Plan).
 - The possibility of administered allocation for the remaining energy target.
98. **Recommendations:** The **SIC** recommended the following:
- To analyze the structuring and issuance of the administrative acts expected to regulate other aspects associated to the auction, in order to guarantee the participation of a plurality of agents in the auction mechanism.
 - To evaluate the possibility of making subsequent competitive allocation processes, with the purpose of satisfying current and future demand of energy, according to the expectation of the authority.
 - To limit the percentage of energy that each participant can acquire through the auction. This percentage is required to fulfill Article 296 of Law 1955 of 2019.
 - To prioritize other alternatives different from the managed allocation of the remaining target demand. This means that if for some reason, the auction does not meet the conditions of competition, concentration and/or dominance defined by the competent authorities, the allocation of the remaining energy target should be developed reflecting clear conditions of competition.

3.1.2. Ministry of Transportation

99. **Proposed regulatory draft:** The project proposes a modification of the current scheme to allow the initial registration of new cargo vehicles with Gross Vehicle Weight - PBV greater than 10,500 kilograms. On one hand, the regulation contemplates that for registering a new vehicle it is necessary to show that an existing vehicle has been disassembled, stolen or lost. On the other hand, it is possible to register a new vehicle by paying an additional 15% of its price. The money collected from this additional percentage will be destined to the program of modernization of the cargo vehicle fleet.

100. **Competition Concerns:** The **SIC** found that the requirement of paying an additional percentage to allow the registration of a new vehicle constitutes a restriction to the entry of cargo vehicles into the Colombian market. Furthermore, it is not clear what effect the payment of this additional value may have on the decision of potential buyers of this type of vehicle. The Ministry of Transportation did not provide sufficient information or evidence to determine the possible effect from the perspective of price effect over the demand of cargo vehicles or from the point of view of consumer psychology.

101. Finally, it could not be determined whether the payment of the additional value would effectively dissuade buyers from disassembling old vehicles to modernize the fleet. Regarding economic competition, it is important to evaluate other alternatives policies that could effectively incentivize the disassembly of 20 years or older vehicles. In addition, it is important that the regulation promotes the entry of new and more efficient vehicles with new technologies, and that provide better road safety conditions in the cargo transport operation.

102. **Recommendations:** The SIC recommended the following:

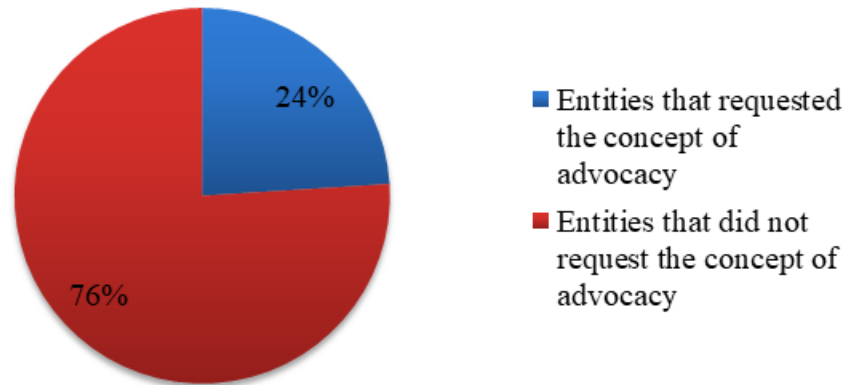
103. To assess the competitive effect of setting a tax of 15% of the vehicle's commercial value for the initial registration of a new domestic or imported vehicle, in order to determine if this policy would promote or discourage the disassembly of 20 years or older freight vehicles.

104. To consider the relevance of including in the draft other incentives, in addition to the benefit of the 15% exemption of the payment for the initial registration of new vehicles.

3.2. Achievements and challenges

105. In 2019, the Competition Advocacy Group were issued 51 advocacy concepts, of which 34 had a recommendation. Out of the 34 recommendations, 25 regulatory standards have been issued, which have been accepted by 23 regulatory authorities. Therefore, the Competition Advocacy Group effectiveness was of 92.

106. During 2019, 20 regulatory authorities out of 84 requested a prior competition advocacy concept. As can be seen in figure 2, from the 84 entities, it was possible to reach approximately 24% of the regulatory authorities. The future challenge is to reach the other entities of the national order, which are part of the remaining 76%. This allow us to show them the benefits for the national economy derived from the exercise of competition advocacy.

Figure 2. Challenges by the Competition Advocacy Group

4. Resources of competition authorities

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

107. The following table presents the Annual Budget of the SIC and the SIC's Competition Division in 2018 and 2019:

Table 9. SIC's Funds Available for Allocation: Amounts and Sources 2018 – 2019

Year	SIC Total Funds	Competition-related budget	Year	SIC Total Funds
	COP Thousands of millions	USD Million		COP Thousands of millions
2018	172.234	58.3 ² (100%)	2018	32.971
2019	197.919	60.3 (100%)	2019	11.152 ³ (19,14%)
				9.7 (16,12%)

² This conversion were made using an average exchange rate for 2018 of COP \$2.956,43 per dollar.

³ This conversion were made using an average exchange rate for 2018 of COP \$2.956,43 per dollar.

Table 10. Competition Law Enforcement Cases by Violation Type and Outcome 2019

Year	Case Types						Total
	Formal Investigations	Horizontal agreements	Vertical Agreements	Abuse of dominance	Unreported mergers	Other conduct *	
2019	Opened	5	0	0	0	10	15
	Dismissed	0	0	1	0	4	5
	Settled	0	0	0	0	4	4
	Orders/sanctions	10	0	0	0	9	19
	Total monetary sanctions imposed		COP 201.440.045.116	0	COP 0	COP 201.440.045.116	COP 201.440.045.116
		USD 61.394.245**		USD 0	USD 0	USD 8.998.882**	USD 70.393.128**

* Among “Other conduct” that were sanctioned are the following: Three for unilateral conduct in public bidding; one for an anticompetitive behaviour of an association in the contact lenses market; and, five sanctions for failures to comply with SIC’s instructions.

** This conversion were made using an average exchange rate for 2019 of COP \$3.281,09 per dollar.

4.1.1. Annual Budget (in your currency and USD)

108. The total SIC’s budget for 2019 was COP\$197.919’907.836. This budget was distributed in two main areas. The first one is the “Investment Budget” which is approximately COP \$124.873’189.356 and the second one is the “Functioning Budget” that is approximately COP \$73.046’718.480.

Table 11. Total SIC’s budget for 2018 - 2019

SIC’s Investment and functioning Budget	2018	2019	Var. (%)
		COP \$172.234.837.713	COP \$197.919.907.836

109. The total SIC’s competition-related budget for 2019 was COP\$ 31.916’164.763 This budget was distributed in two main areas. The first one is the “Competition Investment Budget” which is approximately COP \$20.839’217.434 and the second one is the “Competition Functioning Budget” that is approximately COP \$11.076’947.329.

Table 12. Total SIC’s competition-related budget for 2019

Deputy Superintendence for Competition Protection – Investment and functioning	2018	2019	Var. (%)*
		COP \$32.971.061.215	COP \$31.916.164.763

* This variation is a result of infrastructure decisions inside of the Agency.

4.1.2. Number of employees (person-years)

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

Table 13. Staff at the authority who worked on competition enforcement - 2019

2019			
Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	82	54	136
Superintendent's Office	4	16	20
Economic Studies Working Group	4	4	8
TOTAL	90	74	164

Table 14. Non-administrative staff who worked on competition enforcement - 2019

2019			
Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	73	44	117
Superintendent's Office	4	5	9
Economic Studies Working Group	4	4	8
TOTAL	81	53	134

4.2. Human resources (person-years):

Table 15. Roles of non-administrative competition (NAC) staff - 2019

Staff of the Deputy Superintendence for Competition Protection, Superintendent's Office and Economic Studies Working Group, discriminated by roles 2019		
Role	Contractors	Employees
Economists	21	18
Lawyers	53	33
Others (engineers, business managers, public counters)	7	2
TOTAL	81	53

Table 16. Roles of non-administrative competition (NAC) staff who work in each area of the Deputy Superintendence for Competition Protection - 2019

2019		
Dependency	Contractors	Employees
Mergers	0	8
Anti-cartel and dominance-related issues	67	35
Advocacy	6	1
Total	73	44

4.3. Period covered by the above information:

111. January 2019 – December 2019

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

112. During 2019, the Economic Studies Working Group produced the following sectorial studies: i) Challenges and perspectives for Competition Policy in Creative and Cultural Economy; ii) Competition in the Orange Economy: The advertising industry in Colombia; iii) Diagnosis of the Liquor Market in Colombia 2017-2018, iv) Diagnosis of competition in the financial credit mortgage market, and v) Study of medicines used in the diagnoses of higher mortality recorder during the 2015-2018 period in Colombia.

113. In addition, the group updated the document developed in 2019 known as the study about Relationship between Competition and Innovation.

Markets Studies:

114. During 2019 the Deputy Superintendence of Competition Protection produced the two following market studies:

Market study: digital matching platforms for tourist accommodation services

115. The SIC was interested on the tourism market which has changed with the new digital era, as some new business models and agents have entered the market changing the traditional structure and dynamism. In this regard, the Superintendence started a market study for digital matching platforms for tourist accommodation services.

116. Digital matching platforms have been a subject of news worldwide. In other competition authorities for being considered a possible restriction to competition, due to their price parity clauses. In some countries, these platforms have to comply with some conditions in order to continue to participate in the market.

117. The Superintendence selected the most relevant platforms operating in Colombia that match users with tourist accommodation services and that work as a two sided market.

118. The relevant market was limited geographically and temporarily to metropolitan areas, in which the cities selected were: Armenia, Bogotá, Cartagena, Medellín, San Andrés Island, and Santa Marta. The established period of time was 2013 to 2018. According to the defined criteria, the selected platforms were: *Almundo, Atrápalo, Booking, Despegar, Expedia, Éxito, Falabella, Price Res* and *South Net*.

119. The SIC, based on the information collected from the platforms, was able to describe the platforms' market entry process, their relationship with the accommodation facilities, the search algorithms used, as well as the price parity clauses and their possible effects.

120. The market study also included a statistical description of the relevant variables, which covers a concentration and dominance levels analysis in the market, and a two-stage ordinary least squares regression, that analyzes the structural relationship between the market share variation of the dominant platform and the changes in commissions set by its competitors.

121. In this regard, the Superintendence found that: (i) there is a high concentration in the matching platforms market for tourist accommodation services; (ii) Booking might have a dominant position on the market; (iii) competition authorities worldwide have warned about the possibility of anti-competitive effects of price parity clauses on this market; and (iv) the price parity clauses might be reducing competitive pressures between platforms via commissions.