

Unclassified

English - Or. English

26 May 2021

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

## Annual Report on Competition Policy Developments in Colombia

-- 2020 --

This report is submitted by Colombia to the Competition Committee FOR INFORMATION.

JT03477080

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## *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 2020 Colombian Laws with an impact on free competition:
  - **Law 2046 of 2020**, which establishes mechanisms to promote the participation and culture of local farmers into the public food procurement markets.
2. Through the article 13, the law reiterates that the Superintendence of Industry and Commerce (hereafter **SIC**) is the sole authority for competition protection in the public food procurement markets. That means that the **SIC** will apply the inspection, surveillance and control regime that has been established by means of the Law 1340 of 2009.
  - National Development Plan, 2018 -2022: Pact for Colombia, Pact for Equity”
3. 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 pharmaceutical sector and the fuels market in Colombia were carried out in 2019, in order to identify possible anti-competitive practices and the behavior of the markets.
4. Decrees with the rank of law, in response to the Covid-19 Crisis, with an impact on free competition:
  - Decree 507 of 2020
5. Through the Decree 507 of 2020, the government adopted measures to promote access to essential goods, drugs and medical devices. Among others, the Decree stated that the **National Administrative Department of Statistics (NADS)** will take on the role of monitoring the prices of the list of basic goods and inputs required for their production. The **NADS** will also identify significant and atypical variations of those products on the basis of their historical behavior, and will further submit a weekly report to the **SIC** which, in turn, will: first, exercise control and surveillance activities to ensure compliance with competition provisions; and second, submit a report of those activities and findings to the **Ministry of Agriculture and Rural Development**, the **Ministry of Trade, Industry and Tourism**, and to the **National Commission on the Prices of Drugs and Medical Devices**.

#### 1.2. Other relevant measures, including new guidelines

6. **Related to compliance program:** The **SIC** developed, in conjunction with the Colombian Institute of Technical Standards and Certification (**ICONTEC**), the Colombian Good Practices Technical Standard (**NTC 6378: 2020**). This Standard looked to promote markets agents’ compliance of economic competition practices. The main objective of this document has been to encourage all the companies participating on the national economy to strengthen their organizational policies and practices in a way that promotes the compliance of the economic competition practices, defined by Colombia’s legal system.

7. ***Related to Co-operation between competitors in the time of COVID-19.*** The SIC issued the Resolution No. 20490 of May 11, 2020 which reiterates the standards established by the Authority in 2015 to determine which types of collaboration agreements among competitors are legitimate and can occur in the national markets without implying a transgression to the competition regime.

8. As defined in this Resolution, the prohibition to carry out agreements restrictive of competition in the terms of article 1 of Law 155 of 1959 and article 47 of Decree 2153 of 1992 is maintained. However, collaboration agreements between competitors that do not generate anticompetitive effects in the market and that unequivocally comply with the following conditions may be authorized: (i) they generate efficiency gains, (ii) they are indispensable to achieve these efficiencies, (iii) they produce benefits for consumers from the transfer of the efficiencies achieved by the agreement and, (iv) they do not promote the elimination of competition in that market. Based on the above, the agents that carry out this type of agreement must inform the SIC of their conclusion, content and characteristics. This is so that the authority can closely monitor them. In this way, the intervention of the Superintendence will consist of two tasks: first, to verify compliance with the above mentioned requirements for the reported collaboration agreements; and second, to permanently monitor the execution of the agreements under the terms reported by the parties.

### 1.3. Government proposals for new legislation

9. 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

10. In 2020, the number of complaints decreased in 129 compared to the ones received in 2019. This represents a decrease of 15,94%.

**Table 1. Complaints received and resolved 2019 - 2020**

	2019	2020	Total
Complaints pending at beginning of period	898	737	N/A
New complaints received during period	809	680	1.489
Complaints resolved by dismissal	607	507	1.114
Complaints resolved by opening a preliminary inquiry	16	12	28
Complaints pending at end of period	886	722	N/A

11. Table No. 2 contains information regarding the preliminary inquiries that were conducted from 2019 to 2020.

**Table 2. Preliminary inquiries commenced and resolved 2019 – 2020 (ex officio and complaints)**

	2019	2020	Total
Preliminary inquiries pending at the beginning of the period	31	29	N/A
New preliminary inquiries opened during period	28	12	32
Preliminary inquiries resolved by dismissal	4	6	16
Preliminary inquiries resolved by opening a formal investigation	4	7	14
Preliminary inquiries pending at end of period	29	17	N/A

12. The disposition of formal investigations since 2019 is shown in the following table:

**Table 3. Competition cases resolved 2019-2020**

	2019	2020	Total
Formal investigations pending at the beginning of the period	21	22	N/A
New formal investigations opened during period	15	7	22
Formal investigations resolved by dismissal	5	2	7
Formal investigations resolved by orders/sanctions	19	6	25
Formal investigations resolved by settlement	0	0	N/A
Formal investigations pending at the end of period	22	16	38

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

13. In 2020, the most significant cases sanctioned were “Ruta del Sol II” the highest fine in the history of the Superintendence for cartel conducts with a total value of COP 295 086 710 061, Ticketing Cartel and Military rations for the Logistics Agency for the Military Forces of Colombia.

#### *Ruta del Sol II*

14. Gabriel García Morales was the whistleblower in the SIC’s investigation, where he confessed to his participation in antitrust practices during the structuring, adjudication and implementation of “RUTA DEL SOL II”, which is a part of one of the most important infrastructure projects of the Decade in Colombia.

15. The SIC’s investigation corroborated the evidence that was presented by Odebrecht within its Plea Agreement with the USA’s Department of Justice (21 December 2016). The investigation proved the complex corruption scheme and its impact within the Colombian jurisdiction; which ran for over a decade and resulted in the payment of hundreds of millions of dollars in bribes in different countries via their ‘Division of Structured Operations’, which served as an independent bribery department, reporting to the highest levels of the company to authorize the payment of bribes via a complex network of shell companies, off-the-books accounting, and off-shore bank accounts.

16. The SIC also uncovered an anti-competitive agreement between Odebrecht, Corficolombiana and Episol, that facilitated anti-competitive practices to guarantee that the concession contract was effectively awarded to the concessionary company; and subsequently manipulated contracts to secure different reimbursements and irregular payments that enabled them to divide the costs of the antitrust agreement, and at the same time to establish a compensation scheme in order to extract as much money as possible from the “RUTA DEL SOL II” project.

17. Odebrecht, Corficolombiana and Episol identified that Gabriel García Morales had a privileged and advantageous position for the anticompetitive scheme, as he was able to influence decisions taken in the ‘RUTA DEL SOL’ project. For such, the members of the agreement focused their efforts on bribing him and securing his participation in the implementation of their anti-competitive practices. This led to a series of secret and illegal meetings held with the purpose of defining the dynamics of the anti-competitive agreement, which also resulted in the award of the concession to the concessionary company without any competitive pressures in the evaluation of its financial proposal, thereby, hampering the free participation of other competitive bids.

18. Once agreeing on the deal with Gabriel García Morales, Odebrecht and Corficolombiana planned that the implementation of the contract using the construction consortium Consol would allow for the costs of the agreed economic remuneration, a sum which amounted to six and a half million dollars (USD 6 500 000), which was initially paid by Odebrecht. The payments to Gabriel García Morales for his participation in the anti-competitive bidding agreement were scheduled between March and September using a codename “*costeño*”. These payments were made via Enrique Ghisays Manzur and the company Lurion Trading Inc. and were wired by Odebrecht’s ‘Division of Structured Operations’ using unaccountable, offshore funds. This demonstrated that Odebrecht’s modus operandi during the first stage of the anti-competitive system was deployed using a highly sophisticated and illegal model that conveniently made use of the pre-established company structure, which allowed for the specific allocation of roles and responsibilities for the purposes of conducting a series illegal conducts unequivocally linked to antitrust violations.

19. Further anti-competitive practices were revealed to have occurred following the award of the contract. The SIC demonstrated a series of reimbursements and irregular payments, alongside a compensation strategy based on additional contracts, all of which were dependent upon the success of the contract being awarded to concessionary company. Odebrecht, Corficolombiana and Episol used different, unjustified contracts to divert resources from the implementation of the contract, as a form of reimbursement for the payment made to Gabriel García Morales for the anti-competitive agreement, which was made via the Spanish company Dcs Management through payments made by Consol.

20. The SIC also uncovered that between 1 August 2010 – 10 November 2017, the managers of Consol and the “Comptroller” of the concessionary company identified irregular, unjustified and unsupported payments with regard to ‘additional studies’ in the preparation of the bid in the first phase - Dcs Management – and subsequently, once the contract had been awarded, for works not associated with the implementation of the project. Information about these payments were made known to José Melo Acosta, President of Corficolombiana at the time.

21. Plans to ensure the successful addition of clauses to the contract were also uncovered, which led to further investigation of the various reimbursements and irregular payments by Odebrecht, Corficolombiana and Episol during the second phase of their anti-competitive activity. They had deployed a similar strategy to that used during the bidding process for the contract aimed at illegally exploiting additions to the contract in order to ensure maximum financial gain from the “RUTA DEL SOL II” project. Specifically, the strategy was focused on successfully adding the “Transversal Rio de Oro-Aguaclara-Gamarra, Corresponding To Phase 8 of Sector 2 Of The Ruta Del Sol roads project”, which was entrusted to Otto Bula Bula to manage and secure, ensuring that the concessionary company would be granted the work without being required to participate in a freely competitive public bid. It was agreed that Otto Nicolás Bula would receive reimbursement equivalent to 1% of the value of the addition, amounting to four million six hundred thousand dollars (USD 4 600 000). As was the case with the payment to Gabriel García

Morales in the first phase, the payments were made into the accounts of foreign companies using unaccountable, offshore funds.

22. Finally, the SIC uncovered a series of meetings between the main protagonists of the anti-competitive system sought to devise new strategies to conceal the payments to Gabriel García Morales, thereby ensuring the continuation of their anti-competitive practices – which were still in full swing. The SIC’s decision was taken following an exhaustive investigation by its Antitrust Division, which was subsequently presented to its Advisory Board. At all times, the rights of those being investigated were respected, upheld and guaranteed, due process was followed and following the presumption of innocence was applied. All of the evidence was collected and assessed as a whole, including the denunciation and collaboration of Gabriel García Morales.

### *Russia 2018 FIFA World Cup Qualifiers - Ticketing Cartel*

23. In 2017 Comercializadora De Franquicias S.A.S. (TICKETSHOP) filed the Leniency Program request to obtain the first “marker” as beneficiary of the program.

24. The investigation involved four companies Federación Colombiana De Fútbol (FCF), Ticketshop and Tu Ticket Ya.Com S.A.S (TICKET YA).

25. The investigation also addressed 17 individuals (directors and former directors) who may have collaborated, authorized, tolerated and executed the anticompetitive conducts.

26. the **SIC** found fully accredited the illegal agreement reached by the FCF, TICKET YA and TICKETSHOP through which they designed and executed a conduct that limited free competition in favor of TICKETSHOP in the award of the ticket sale contract bid for the World Cup qualifiers Russia 2018, and thus massively divert the ticket office for resale purposes at overprices of up to 350%.

27. The anti-competitive conduct was designed at the time the Fifa Gate scandal was exposed worldwide. Due to the concerns that arose the international scandal the FCF directors decided to conduct a process in order to select the ticketing agency for the Russia 2018 World Cup qualifiers, with the aim of simulating a tender of operators with multiple bidders, even though they had selected TICKETSHOP as the winner agency.

28. Once the cartelists secured the ticketing contract, TICKETSHOP and TICKET YA entered into a joint venture agreement<sup>1</sup> with the purpose of hiding the illegal dynamics they implemented for the massive diversion of tickets.

29. Under this contract TICKETSHOP massively diverted tickets to TICKET YA in the qualifying matches for the Russia 2018 World Cup that the Colombian national team played at home against Peru, Argentina, Ecuador, Venezuela, Uruguay, Chile, Bolivia and Brazil.

30. As a consequence of the anti-competitive agreement TICKET YA executed the resale of tickets at prices much higher than those originally established by the FCF. As an example, in the Colombia vs Brazil match a ticket with an established value of sixty thousand Colombian pesos (COP 60 000) was sold for at least for two hundred and seventy thousand Colombian pesos (COP 270 000) which represented an increase of 350% for the consumer interested in acquiring a ticket for that match.

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<sup>1</sup> In the form of a contract of participation accounts.

31. On order to guarantee the anticompetitive purpose and keep it in absolute secrecy the cartelists deployed several strategies. To this end the FCF, despite multiple complaints and disagreements during the execution of the ticketing contract, omitted to carry out an audit and, on the other hand, TICKETSHOP announced on its website false information and misleading advertising regarding the existence of tickets available for sale to the public.

32. SIC based its sanctioning decision on evidence, such as e-mails, documents, expert opinions, and testimonies of employees of sanctioned companies.

33. The imposed fines went up to COP 18 352 773. 582 approximately, among the companies and the individuals involved in the anticompetitive conducts. Finally, the Superintendence of Industry and Commerce exonerated TICKETSHOP and its associates from 100% of the fine imposed on them, for their compliance with the leniency program.

#### *Military rations for the Logistics Agency for the Military Forces of Colombia*

34. Colombia's competition authority punished four food suppliers for rigging bids to provide the country's military with food for ration packs and, for the first time, imposed the maximum fine on an individual for violating competition law.

35. The SIC fined Industrias Alimentos y Catering (Catalinsa), La Huerta De Oriente (LHO), Iberoamericana De Alimentos y Servicios (Ibeaser) and Productora y Distribuidora De Productos Lácteos y Comestibles (Prolac) a combined COP 6.4 billion (USD 1.7 million) for colluding between January 2011 and March 2018.

36. It also fined 10 individuals a combined COP 1.8 billion (USD 487 000) for their roles in the collusion and, for the first time, imposed the maximum penalty of COP 1.76 billion (USD 476 000) on Ibeaser's director, Juan Carlos Almansa Latorre, for his role in the cartel.

37. The four companies, which manufacture and distribute prepackaged food and long-life bakery products, agreed between themselves who would win each of 18 tenders that the military's logistics agency placed on Colombia's Mercantile Exchange, the enforcer said in a decision dated 29 July 2020.

38. The companies kept an Excel spreadsheet tracking which supplier was designated to win each tender, which they hid among nonsensitive information. It said the cartelists shared the spreadsheet among themselves using marketing agents and brokers.

39. A factor contributing to the cartel's success was that two family groups – the Almansas and the Villaloboses – controlled three of the four companies.

40. The Almansa and Villalobos families shared the same stockbroker, Javier Caparoso Hoyos, who helped carry out the cartel while representing the companies before the mercantile exchange, the authority said. It fined the stockbroker COP 16.6 million (USD 4 500), but his employer firm escaped liability because the enforcer found it had not failed to control or monitor his activities.

41. While the enforcer did not consider the military logistics agency to be a part of the cartel, it admonished the organization for providing the cartelists with an opportunity to collect and share information.

42. The agency hosted meetings with the four companies before each tender procedure began to explain exactly what the military was looking for, which gave the bidders an opportunity to identify their rivals and get an edge on the competition.



## 2.2. Merger and acquisitions

43. 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.

44. 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 2021 the threshold is set at 60 000 monthly salaries at the minimum wage, which amounts to COP 54 511 560 000 (roughly USD 15.5 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.

45. 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*

46. In 2020 the **SIC** reviewed and resolved 167 merger applications. These include notifications, phase 1 and phase 2 pre-evaluations. 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). In 2020 there were 8 of such concepts issued by the **SIC**. Table 1 summarizes the merger reviews approved, conditioned, objected or dismissed for the year 2020.

**Table 4. Merger applications reviewed by the SIC during 2020**

Type of procedure	Authorized without remedies or conditions	Authorized with remedies or conditions	Objected	Desisted	Total
Notifications	116	N/A	N/A	2	118
Pre-evaluation Phase 1	32	0	0	0	32
Pre-evaluation Phase 2	7	1	0	1	9
Concepts to SFC	8	N/A	NA	0	8
<b>Total</b>	<b>163</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>167</b>

47. Table No. 5 shows the information related to the volume of merger applications (pre-evaluations) received, processed, and resolved for the year 2020 (We included the concepts issued to the SFC as phase 1 pre-evaluations).

**Table 5. Merger applications and resolved pre-evaluations 2020**

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
2020	13	44	40	9	8

48. Table No. 6 shows a decrease in the average duration of phase 1 merger review processes, with an average of 39 days in 2020 as opposed to 48 days in 2019. Since most applications were attended virtually (due to COVID-19 pandemic restrictions), the process of sending and receiving information was sped up in contrast with physical mail.

**Table 6. Average duration of phase 1 merger review process 2019-2020**

Year	Days	Months
2019	48,1	1,60
2020	39,1	1,30

49. Table No. 7 shows the volume of mergers initiated, processed, and resolved under Phase 2 for the year 2020.

**Table 7. Phase 2 merger reviews 2020**

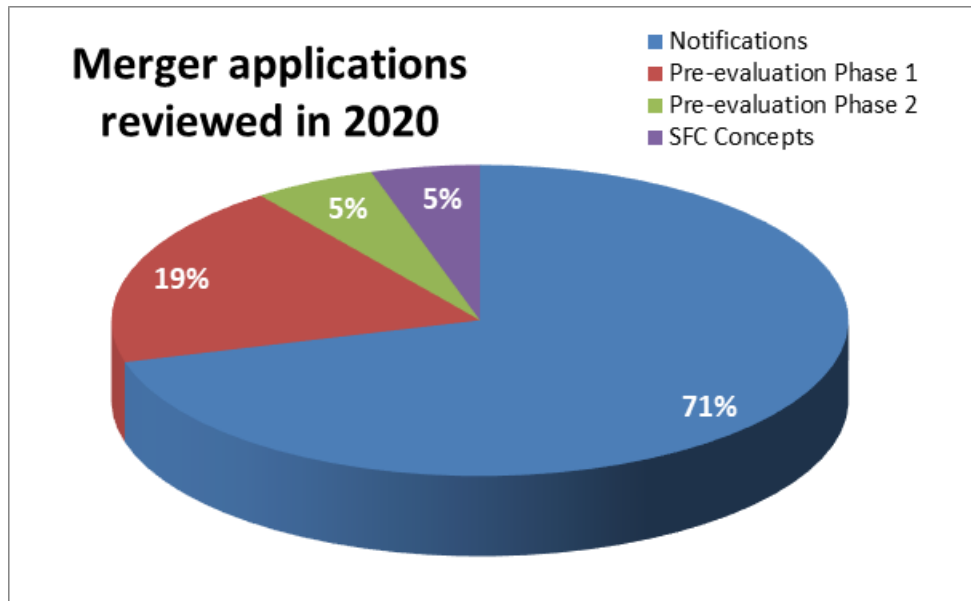
Year	Phase 2 pre-evaluations pending at beginning of period	Phase 2 pre-evaluations initiated in period	Phase 2 pre-evaluations resolved in period	Phase 2 pre-evaluations pending at end of period
2020	3	10	9	4

50. The average duration of phase 2 merger review processes in 2020 was 118 days, which represents 70 days sooner than the average duration in 2019. Virtuality caused by COVID-19 contributed to the decrease in the average duration of pre-evaluation processes during 2020, as communications were delivered faster by email than by traditional mail.

**Table 8. Average duration of phase 2 merger review process 2019-2020**

Year	Days	Months
2019	188	6.3
2020	118	3.9

51. The following chart shows the types of assessment that were conducted by the Mergers and Acquisitions Working Group during 2020, with their respective percentage:

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

### 2.2.2. Summary of significant cases

52. Due to the size of the companies, market share and potential impact to the consumers, the SIC highlights the following merger applications as the most significant in 2020:

#### *COLORQUÍMICA - BIOFLORA:*

- **Intervening Companies:** COLORQUÍMICA S.A.S and BIOFLORA S.A.S.
- **Proposed transaction:** Purchase by COLORQUÍMICA of 100% of the issued and outstanding shares of BIOFLORA.
- **Relevant Market:** Production and commercialization of flower paints and dyes by absorption and by aspersion, as well as flowers feeding and hydrating treatments, nationwide.
- **Decision:** Conditioned.

53. The market structure was analyzed taking the intervening companies' report, as well as the answers provided by market competitors and clients to the requirements issued by the SIC. About the market of flowers feeding and hydrating treatments, it was determined that BIOFLORA's market share doesn't exceed 1%, so there were no greater risks to market competition.

54. Regarding the production and commercialization of flower paints and dyes, it was found that the market share of the merged entity would exceed 80% in both the absorption and aspersión lines of business, which may result in restricting effects to competition, such as unilateral price increases or the limitation of the customers' choice possibilities.

55. The Superintendence concluded that approving the merger operation as it was presented would pose substantial risks of exploitative or exclusory effects that jeopardize free competition. Therefore, this Superintendence approved the merger operation conditioned to the compliance of behavioral remedies, such as keeping existing brands independent within the market, issuing periodic reports to the SIC of price ranges for their main products, among others. These remedies will be in force for a period of two years, extendable for one more year if the market conditions are maintained.

#### *AVIATUR – TRAVEL AGENCIES:*

- **Intervening Companies:** AGENCIA DE VIAJES Y TURISMO AVIATUR S.A.S (AVIATUR) and VIAJES Y TURISMO CLAUDIA RAMIREZ S.A.S., ABORDOFAST S.A.S., MARS TRAVEL S.A.S. and THG TRAVEL HOLDING GROUP S.A.S. (Jointly THE AGENCIES), respectively.
- **Proposed transaction:** The intended operations consist on the execution of a Business Collaboration Contract, through which AVIATUR will provide back office services for sales management, whereas THE AGENCIES would develop commercial management, visit and acquisition of clients, negotiations and other commercial activities proper of its business purpose.
- **Relevant Market:** The intended operations correspond to horizontal mergers, since the firms participate in the travel agencies market in Colombia, specifically in the following markets: (i) commercialization of international plane tickets; (ii) commercialization of national plane tickets, and (iii) commercialization of tourist packages and services.

Moreover, the SIC established a vertical relation between the tourist services providers such as airlines, hotels, wholesale agencies (AVIATUR GROUP, VIAJES FALABELLA, VIAJES ÉXITO, among others) and travel agencies, since THE AGENCIES participate in the link of commercialization of tourist services within the value chain.

- **Decision:** Approved.

56. Regarding the horizontal effects of the operations, the Superintendence concluded that the mergers wouldn't modify significantly the structure of the aforementioned markets, since the merged entity would attain less of 20% of market share in all cases.

57. As for the vertical effects, the Competition Authority determined that these are not a source of concern, since the possibility of limiting the access to AVIATUR competitor travel agencies is not feasible; THE AGENCIES don't have the capacity to exert market power to restrict competition along the value chain.

58. Finally, the SIC was able to determine the existence of strong competitive pressure exerted by providers of products and services commercialized by THE AGENCIES (airlines, transportation companies, hotels, tourist attractions, among others), who, by having direct contact with the final user, may easily counter any attempt by the merged entity of restrict competition.

*HOCOL – CHEVRON:*

- **Intervening Companies:** HOCOL S.A. (HOCOL) and CHEVRON PETROLEUM COMPANY (CHEVRON).
- **Proposed transaction:** The intended operation consists on the purchase by HOCOL of CHEVRON's participation in in the Association Contract regarding the extraction of natural gas in the fields of Chuchupa and Ballena, in the department of La Guajira; a contract CHEVRON shares with ECOPETROL S.A.
- **Relevant Market:** Wholesale distribution of natural gas in Colombia's northern coast region.
- **Decision:** Approved.

59. The market structure was analyzed under two (2) scenarios: 1st scenario, where the market share of each gas field on the northern coast was analyzed, in order to determine the importance of Chuchupa and Ballena gas fields; and 2nd scenario, in which it was determined the market share of the participating firms within the defined relevant market, based on the Total Production Available for Sale (TPAS).

60. Regarding the 1st scenario, this Superintendence concluded that although the Chuchupa and Ballena fields' market share was over 40% in 2019, this participation will decrease from now to the year 2028, in line with the reduction of the supply of national natural gas and the beginning of operations of the Mamonal regasification plant, in Bolivar.

61. As for the 2nd scenario, the SIC determined that, even with HOCOL's market share reaching 23% (according to 2019 data), this wouldn't produce concerns, since its average market share would be below 20% from now to 2028, according to gas production statements issued by Colombia's Ministry of Mines and Energy. In addition, there is a market leader, namely GRUPO CANACOL, who would get an average market share of 63% for the 2019-2028 period.

62. Therefore, the SIC concluded that, by completing the intended operation, the merged entity wouldn't generate restrictive effects on competition in the analyzed markets.

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

63. The SIC's Competition Advocacy Group focuses its advocacy strategy on three 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. and (iii) to ensure that regulatory drafts be consistent with the competition law through the exercise of *ex officio* advocacy legal opinions.

64. 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.

65. The following are three relevant advocacy opinions issued by the Colombian Competition Authority last year. These opinions are classified below by agencies and governmental bodies.

### 3.1. Ministry of Health

66. **Proposed regulatory draft:** The draft establishes the technical regulation that defines the maximum sodium content of processed foods prioritized within the framework of the National Sodium Reduction Strategy

67. **Competition concerns:** At the request of the Ministry, the Superintendence of Industry and Commerce as National Competition Authority, presents its opinion regarding the elements of the regulation of the proposal: (i) General considerations of the regulatory proposal; (ii) the second; Costumer Protection, and (iii) Transitional arrangements (terms and deadlines for marketers and/or importers of prioritized products to apply the regulation). According to the regulatory proposal, the maximum sodium content was defined of 60 processed foods prioritized by the Ministry, as well as the compliance deadlines for the reduction of their sodium content.

68. About the first element, the Superintendence found that, the maximum sodium content ranges that the Ministry intends to set for the 60 processed foods have the potential to constitute a potentially anticompetitive barrier to entry into the Colombian market. Therefore considers it important to mention the technical procedures carried out to support the calculation of the maximum sodium levels established for each of the 60 foods prioritized in the Project or in the Regulatory Impact Analysis.

69. In fact, this would prevent the sodium targets to be set from being considered as a limitation to the number or variety of companies in one or several relevant markets of the Colombian industry, by conditioning their capacity to offer a certain product to compliance with maximum limits. The foregoing, due to since the imposition of these limits is supported and justified from a technical and market point of view.

70. On the other hand, compared to the second element, the Superintendency evidenced that the proposal aims to protect the consumer by providing in Article 5 the obligation to declare the sodium content on the labels of prioritized processed foods. With this disposition, the proposal seeks to avoid that the consumer incurs in error and deception regarding the declared sodium content of prioritized foods, ensuring that the amount of sodium and the value of the daily percentage of reference is included in their labels. On this point, the Competition Authority reiterated that regulations must be sufficiently clear so that economic agents have certainty as to how they should properly comply with the rules.

71. Finally, regarding the transitory provisions, the Superintendency considered that the proposed does not limit the possibility for companies to distribute or market their products, nor does it limit the freedom of companies to choose their production processes or their form of industrial organization. On the contrary, it contemplates a time analyzed and agreed with the technological capacity of the industry so that natural or legal persons engaged in the processing, commercialization and/or importation of the 60 processed foods prioritized for their sodium content, comply with the maximum sodium contents established by the Project.

72. **Recommendations:** The Colombian Competition Authority recommended: (i) Incorporate in the Proposed Draft, the technical procedures that led to the prioritization of 60 processed foods; and (ii) Include in the Project's recitals, the technical procedures carried out to support the calculation of the maximum sodium levels established for each of the 60 prioritized foods, as well as those carried out to establish the deadlines for natural or legal persons involved in the processing, marketing and/or importation of the 60 prioritized processed foods.

### 3.2. Mining and Energy Planning Unit – MEPU

73. **Proposed regulatory draft:** The draft required by the Superintendence, in the framework of *ex officio* faculty, to the MEPU aims to Selection of an investor for the provision of LNG storage, regasification and natural gas transportation services and associated services for the Pacific gas import infrastructure consisting of a regasification plant in the Buenaventura Bay as well as a gas pipeline between Buenaventura and Yumbo.

74. **Competition concerns:** According to the regulatory draft it was a two-stage auction of first price in closed envelope. In this type of auction, the successful bidder is the one who offers the lowest price (in this case the lowest expected annual income), with the possibility of presenting a counter-proposal in a second stage.

75. The Superintendency analyzed the Project and found four issues that have an impact on the competition dynamic. Firstly, the regulatory proposal provides that it is possible to modify the operation date of the project prior to the start date of execution. This could be configured as an incentive to modify these conditions once the winning bidder has been selected, giving greater bargaining power to the latter. A second element is related to the technological platform through which bidders may submit their proposals. For this Superintendency, MEPU must have clear control mechanisms that guarantee that no information may be transmitted between bidders.

76. The third aspect analyzed was the possible transmission effect of the exchange risk of the TRM to the tariff received by the final consumers of natural gas. The foregoing, due to a maximum of 42% of the expected annual income to be received by the successful bidder may be in US dollars using the TRM of December 31 of the previous year. However, the liquidation of these monthly payments will be made using as a reference the TRM of the last calendar day of the service rendered.

77. Finally, the last aspect analyzed by this Superintendency was related to the procedure for proposals and counter-proposals. As established in the regulatory proposal, when only one valid economic offer is submitted, the space for counter-proposals is opened for any third party to submit an offer lower than the economic offer that had been initially valid. This provision does not respond to what is contemplated in Resolution CREG 107 of 2017 of Energy and Gas Regulatory Commission and may generate incentives to submit artificially high proposals to be improved later in the counterproposal stage, or even the incentive of concerted action among several bidders to eliminate another and compete later in the counterproposals could be presented.

78. **Recommendations:** The Colombian Competition Authority recommended:

- Create more precise conditions establishing the restrictions under which the UPME would endorse the modifications in the FPO (Official Start-Up Date) and in the technical conditions of the regulatory proposal.
- Expressly indicate in the proposed regulatory draft rigorous control mechanisms in conjunction with the external auditor, either operational or technological, that guarantee that during the award process no information associated with the proposals may be transmitted among the bidders, in order to minimize the risk of concerted action among participants.
- Define *ex ante* the mechanisms through which any technological or operational contingency would be addressed during the process of submission of proposals and disclosure of the results in order to prevent the possible negative effects derived from a situation of this nature, and at the same time provide certainty in the development of the award process.

- Refer this advocacy concept to the CREG (Energy and Gas Regulatory Commission), to incorporate in the other complementary regulations to the regulatory proposal, instruments to mitigate the exchange risk that may be transferred to natural gas consumers, in line with the provisions of paragraph 3 of Article 8 of Resolution CREG 107 of 2017, which provides: *"Paragraph 3. The CREG may rule on the selection documents when it deems it necessary to make adjustments to the selection documents to increase concurrence, or when it considers that the criteria of economic efficiency in the choice of projects are not met"*.
- Indicate in accordance with the mandate of Resolution CREG 107 of 2017, that the presentation of counter-offers will only be possible for other previously qualified bidders and not any third party, as it is currently consigned in the Project.
- Adopt an adequate term in accordance with the technical justifications for the preparation and presentation of the counter-offers.
- Adopt a tie-breaking mechanism based on technical criteria, and not on the speed with which the bidders submit their bids.

### 3.3. Financial Regulatory Studies and Regulatory Projection Unit

79. **Proposed regulatory draft:** The draft regulation seeks to modify Decree 2555 of 2010 regarding low value payment systems.

80. **Competition concerns:** The Superintendency of Industry and Commerce analyzed the following elements from the perspective of free economic competition: (i) operation of the Low Value Payment System (LVPS) based on the regulatory proposal, (ii) operation of the LVPS as a two-sided market, (iii) conditions for participants that exercise the acquiring activity, (iv) requirements for companies not supervised by the Superintendency of Financial Institutions that participate in the LVPS, (v) restriction to the Low Value Payment System Management Companies to exercise the acquiring activity, (vi) setting of the exchange rate in the LVPS, (vii) the disclosure of sensitive information of the agents participating in the system, (viii) the risk of materialization of possible individual anti-competitive practices such as tied sales or exclusivity in contractual matters in the LVPS ecosystem and (ix) the authorization to credit institutions, financial services companies, capitalization companies and companies specialized in electronic deposits and payments on the control of the Low Value Payment System Management Companies.

81. **Recommendations:** The Colombian Competition Authority recommended:

- Establish explicitly in the regulatory proposal if the entities supervised by the Superintendency of Financial in order to exercise the activity of acquisition, must comply with additional or different conditions to those required by Law for their incorporation, and in case of being affirmative, draft these requirements explicitly in the Project.
- Evaluate the restrictive potential of the requirements imposed on companies not supervised by the Superintendency of Financial to engage in the acquiring activity and implement complementary alternatives that allow the participation of this potential universe of excluded agents.
- Include in the regulatory proposal some mechanism, such as those referred to in numeral 4.6.1, that prevents an excessive upward variation of the interchange fee that could potentially have a harmful effect on the costs paid in the system and thus on the welfare of consumers and businesses.



- Eliminate the figure of the committees for the determination of the interchange fee in the scheme proposed in the Project.
- Evaluate the possibility of including in the regulatory draft an explicit restriction to prevent franchises from conditioning access to the payment system to the acceptance of all their product or service offerings.
- Review the option of setting a limit to the shareholding that credit institutions, financial services companies, capitalization companies and companies specialized in electronic deposits and payments may have in the Low Value Payment System Management Companies.

82. In 2020, the Competition Advocacy Group were issued 55 advocacy concepts, of which 32 had a recommendation. Out of the 32 recommendations, 26 regulatory standards have been issued, which have been accepted by 21 regulatory authorities, 14 completely 7 partially. Therefore, the Competition Advocacy Group effectiveness was of 80,7%

#### 4. Resources of competition authorities

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

83. The following table presents the Annual Budget of the SIC and the SIC's Competition Division in 2019 and 2020:

**Table 9. SIC's Funds Available for Allocation: Amounts and Sources 2019 – 2020**

Year	SIC Total Funds		Competition-related STAFF	
	COP Thousands of millions	USD Million	COP Thousands of millions	USD Million
2019	197.919	60.3 (100%)	31.916	9.7 (16,12%)
2020	216.633	58.6 (100%)	32.573	8.8 (15,04%)

**Table 10. Competition Law Enforcement Cases by Violation Type and Outcome 2020**

Year	Case Types						Total
	Formal Investigations	Horizontal agreements	Vertical Agreements	Abuse of dominance	Unreported mergers	Other conduct *	
2020	Opened	2	0	1	0	4	7
	Dismissed	1	0	1	0	0	2
	Settled	0	0	0	0	0	0
	Orders/sanctions	4	0	0	0	2	6
Total monetary sanctions imposed	COP 26.894.964.096	COP 0	COP 0	COP 0	COP 0	COP 295.665.751.095	COP 322.560.715.191
	USD 7.282.135,15 **					USD 80.055.059,76**	USD 87.337.194,90**

\*\*Among "Other conduct" we include some practices that mix different behaviors as unilateral conduct, vertical restrictions, horizontal agreements, and excessive pricing. The other cases that were sanctioned were based on the general prohibition expressed in Art. 1 of Law 155 of 1959.

\*\* This conversion were made using an average exchange rate for 2020 of COP \$3.693,28 per dollar.

#### 4.1.1. Annual Budget (in your currency and USD)

84. The total SIC's budget for 2020 was COP 216 633 835 728. This budget was distributed in two main areas. The first one is the "Investment Budget" which is approximately COP 139 153 678 332,29 and the second one is the "Functioning Budget" that is approximately COP 77 480 157 395,56.

**Table 11. Total SIC's budget for 2019 - 2020**

SIC's Investment and functioning Budget	2019	2020	Var. (%)
	COP 197.919.907.836	COP 216.633.835.728	+9%

85. The total SIC's competition-related budget for 2020 was COP 32 573 014 657. 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 2020**

Deputy Superintendence for Competition Protection – Investment and functioning	2019	2020	Var. (%)*
	COP 31.916.164.763	COP 32.573.014.657	+2%

#### 4.1.2. Number of employees (person-years)

86. 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 - 2020**

2020			
Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	80	55	135
Superintendent's Office	5	9	14
Economic Studies Working Group	5	4	9
TOTAL	90	68	158

**Table 14. Non-administrative staff who worked on competition enforcement - 2020**

Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	72	46	118
Superintendent's Office	4	5	9
Economic Studies Working Group	5	4	9
TOTAL	81	55	136

**4.2. Human resources (person-years):****Table 15. Roles of non-administrative competition (NAC) staff – 2020**

Role	Lawyers	Economists	Others (engineers, business managers, public counters)	TOTAL
Deputy Superintendence for Competition Protection	78	28	12	118
Superintendent's Office	8	1	-	9
Economic Studies Working Group	-	8	1	9
Total	86	37	13	136

**Table 16. Roles of non-administrative competition (NAC) staff who work in each area of the Deputy Superintendence for Competition Protection - 2020**

Dependency	Contractors	Employees
Mergers	0	8
Anti-cartel and dominance-related issues	66	37
Advocacy	6	1
Total	72	46

**4.3. Period covered by the above information:**

87. January 2020 – December 2020.

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

88. During 2020, the Economic Studies Working Group produced the following sectorial studies: i) Sunscreens market in Colombia; ii) Analysis of the postal money orders and express courier markets in Colombia from the role of the Superintendence of Industry and Commerce; iii) Chlorine-soda chain market: functioning and costs of cartelization in the sector, iv) A study of the development of companies in Colombian municipalities v) Liquor market characterization in Colombia: Evidence for the period 2016-2019.

89. The sectorial studies are available in Spanish here: <https://www.sic.gov.co/documentos-elaborados-por-el-grupo-de-estudios-economicos>.

90. In addition, the group conducted the following academic studies: (i) The role of mayors in the development of markets; (ii) Taxation in Colombia: a theoretical and empirical approach of the Laffer Curve.

91. The academic studies are available in Spanish here: <https://www.sic.gov.co/content/estudios-acad%C3%A9micos-2020>.

#### 4.4. Markets Studies:

92. During 2020 the Deputy Superintendence of Competition Protection produced the three following market studies:

##### 4.4.1. Market study: *The Colombian pharmaceutical sector.*

93. The objective of this study aims to characterize the Colombian pharmaceutical sector and to analyze the possible strategies used in the face of an introduction of the maximum pricing regime for medicines. In the first place, the regulatory framework for the medicines is analyzed, as well as the economic interrelationships between the market agents and the competitive dynamic of the sector.

94. Secondly, a quantitative analysis of the evolution of the Fisher index of prices it is made. Followed by an econometric to quantify the price response of unregulated medicines at the entry of the price control regime, based on a Structural Vector Autoregressive model (SVAR) during 2013 and 2019. The results indicate that: i. the pharmaceutical sector is made up of more than 600 drug-title laboratories, however this does not necessarily translate into a deconcentrated market. It is evident the existence of monopolistic and highly concentrated markets at the active substance level. ii. It is evident that two laboratories (out of five analyzed) may be establishing compensation mechanisms.

95. The market study is available in Spanish here: <https://www.sic.gov.co/sites/default/files/documentos/032021/ES-Sector-Farmacologico-en-Colombia.pdf>.

##### 4.4.2. Market study: *The fuel market*

96. The objective of this study aims to characterize the wholesale and retail distribution of petroleum-derived liquid fuels in Colombia and to propose a methodological strategy to monitor the intensity of competition in retail fuel markets. In the first place, a review of the institutional regulatory framework was carried out to contextualize and identify potential impacts on the free economic competition regime.

97. Then a methodological approach is presented for a preliminary measure of the intensity of competition in retail markets. Finally, it was concluded: first, the condition for public service is related to rigidities in the structure of the formation of the price to the final consumer, therefore, the gasoline does not move according to the rhythm of the international price of oil. Secondly, the infrastructure of the derivatives distribution network and the dynamics of price formation between wholesalers allows the characterization of supply markets with differentiated price behavior. Thirdly, the retail markets are atomized, however they are strongly linked to the structural dynamics of the wholesales markets.

98. Finally, to periodically assess the risk of anti-competitive behaviors in the retail market, a monitoring methodology was designed allowing simultaneous monitoring the geographic markets of retail distribution of current gasoline (583 municipalities), ACPM (646 municipalities) and Extra gasoline (167 municipalities).

99. The market study is available in Spanish here: <https://www.sic.gov.co/sites/default/files/documentos/032021/ES-Mercado-de-combustibles-en-Colombia.pdf>.

#### ***4.4.3. Market study: Ready to Drink -RTD- Isotonic beverages and tea and fruit juice beverages in Colombia (2009 - 2019)***

100. The purpose of the study was to determine the impact of the remedies in the merger case PEPSI COLA COLOMBIA LTDA. and POSTOBÓN S.A., in the markets of RTD isotonic beverages and RTD tea-based beverages and fruit juices in Colombia. For this purpose, The Deputy Superintendence of Competition Protection reviewed the competition conditions of the referred markets, mainly for the last four (4) years (2016 to 2019). This ex-post assessment of the market allowed the Group of Economic Studies to conclude that the earlier conditions imposed by the Superintendence of Industry and Commerce within the merger review were efficient, with the conditions no undue restrictions of competition were generated upstream of the value chain (suppliers) nor within the supply of raw materials for the manufacture of isotonic drinks and tea-based beverages.

101. The market study is available in Spanish here: <https://www.sic.gov.co/sites/default/files/documentos/042021/Estudio-Economico-bebidas-Isotonicas-y-tesGTIE.pdf>.