

Unclassified

English - Or. English

23 May 2022

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

## Annual Report on Competition Policy Developments in Colombia

-- 2021 --

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

JT03495853

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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. No new legal provisions concerning competition law were enacted in 2021.

##### ***1.1.1. National Development Plan, 2018 -2022: Pact for Colombia, Pact for Equity”***

2. 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 fixed line and mobile broadband internet connection and consumer credit and financial services were carried out in 2021, in order to identify possible anti-competitive practices and study the behavior of the markets.

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

3. Resolution No. 2751 of 2021: updated the second chapter of the Sole Circular of the SIC regarding the administrative procedure required for the approval of mergers and acquisitions, aligning the procedure with the fee, created by Article 152 of Law 2010 of 2019, applicable to merger control procedures (notifications and pre-evaluations).

4. Resolutions No. 83910 and 83911 of 2021: The Superintendence of Industry and Commerce issued two administrative acts for the creation of two working groups for the purpose of (i) adopting a culture of good compliance practices, through the implementation of strategies for the development and follow-up of outreach, promotion and training activities, and, (ii) monitoring the effective adoption of compliance programs that are established, either within the framework of guarantees accepted by the Superintendent of Industry and Commerce within investigations for antitrust violations or, within the framework of the imposition of conditions by the Superintendent of Industry and Commerce, when analyzing merger proposals. The groups will start operating as from January 1, 2022.

#### **1.3. Government proposals for new legislation**

##### ***1.3.1. Bill 341/20S - 369/21C***

5. The bill attempts to reinforce the sanction system by including the possibility of imposing higher fines by the competition authority, in addition to include new aggravating circumstances.

6. Likewise, the Bill clarifies the leniency program in relation to the confidentiality of the identity of the whistle-blower as well as of the evidence provided and the liability of whoever obtains total or partial exoneration of the fine to be imposed against third parties, in relation to the damages caused by the anticompetitive conduct.

7. Finally, the bill includes provisions that settle recurring discussions in administrative sanctioning processes for anti-competitive practices. Providing legal certainty for the parties.

## 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

8. In 2021, the number of complaints decreased in 15 compared to the ones received in 2020. This represents a decrease of 2.035%.

**Table 1. Complaints received and resolved 2020 – 2021**

Complaints pending at beginning of period	737	722	N/A
New complaints received during period	680	910	1.590
Complaints resolved by dismissal	507	544	1.051
Complaints resolved by opening a preliminary inquiry	12	15	27
Complaints pending at end of period	722	792	N/A

9. Table No. 2 contains information regarding the preliminary inquiries that were conducted from 2020 to 2021.

**Table 2. Preliminary inquiries commenced and resolved 2020 – 2021 (ex officio and complaints)**

	2020	2021
New preliminary inquiries opened during period	12	15
Preliminary inquiries resolved by dismissal	6	16
Preliminary inquiries resolved by opening a formal investigation	7	8

10. The disposition of formal investigations since 2021 is shown in the following table:

**Table 3. Competition cases resolved 2020 – 2021**

	2020	2021
Formal investigations pending at the beginning of the period	22	16
New formal investigations opened during period	7	12
Formal investigations resolved by dismissal	2	11
Formal investigations resolved by orders/sanctions	6	8
Formal investigations resolved by settlement	0	1
Formal investigations pending at the end of period	16	20

Table 4. Competition Law Enforcement Cases by Violation Type and Outcome 2021

Year	Formal Investigations	Horizontal agreements	Vertical Agreements	Abuse of dominance/ Unilateral conduct	Unreported mergers	Other conduct	Total
2021	Opened	8	0	0	0	4	12
	Dismissed	0	0	4	0	7	11
	Settled	0	0	1	0	0	1
	Orders/ sanctions	3	0	2	0	3	8
	Total monetary sanctions imposed	\$3.784.581.29 5 COP	0	\$5.323.551.576 COP	0	\$1.317.363.9 40 COP	\$ 10.425.496.811 COP

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

11. In 2021, the most significant cases with international implications sanctioned were “Factoring Schlumberger” the highest fine during the year for Anticompetitive restriction to commerce conducts with a total value of \$5.315.491.200 COP; and other significant cases were Miners, Galileo y ASE, which are described below:

#### *Factoring Schlumberger*

12. The case takes place within the factoring business. It concerns a financial transaction whereby a business (in this case Schlumberger's suppliers) sells its invoices to a third party (called factor) at a discount in exchange for immediate money with which to finance continuing business.

13. **SCHLUMBERGER** was accused of having obstructed the sale of the suppliers' invoices. This restriction prevented suppliers from accessing factoring as a source of financing. The anticompetitive conduct was executed as follows:

14. **SCHLUMBERGER** required that factoring operations be carried out only with entities supervised by the **FINANCIAL SUPERINTENDENCE OF COLOMBIA**, excluding the possibility of carrying out this type of operations with other companies authorized by law.

15. **SCHLUMBERGER** rejected new factors registration in the company and directed the decision of its suppliers to carry out factoring operations with the factors of their preference.

16. The conduct carried out by **SCHLUMBERGER** prevented the free participation of its suppliers in the liquidity or finance supply market, thus violating one of the main objectives of free competition. Likewise, **SCHLUMBERGER**, by setting an artificial and illegal barrier of entry, prevented the access of new factors to this market, privileging those of its choice. This practice generated both exploitative and exclusionary effects in the market, causing a loss of efficiency and affecting innovative financing mechanisms such as factoring.

17. The fine imposed amounts to \$5.315'491.200 COP.

### *Miners*

18. The **SIC** imposed fines for more than \$2.000 million COP (\$2.162'032.476 COP) to 11 market agents (mining companies in the Meta Colombia region) and 9 individuals for cartel conduct between 2011 and 2016. It was demonstrated by the **SIC** that the investigated parties carried out anti-competitive agreements to fix prices and allocate supply quotas in the market to produce construction materials extracted from the riverbed in the municipalities of Guamal, Acacías and Castilla La Nueva in the department of Meta. The participation of various whistleblowers contributed to the dismantling of the cartel. The **SIC** ordered **ECOPETROL** to structure and/or strengthen an alert system that allows it to identify possible infringements to the rules of the free economic competition regime within the framework of its business activity, through the different actions it carries out in the different places of the national territory. Likewise, to communicate the decision to its respective contractors in the region as a warning about these situations.

### *Galileo*

19. The investigation was initiated as a result of a complaint filed by one of the bidders in Public Invitation No. 003 of 2016, who noticed a series of similarities and common inconsistencies in the proposals of **GALILEO INSTRUMENTS S.A.S.** and **ITAG SERVICIOS TOPOGRÁFICOS Y CIA S.A.S.**

20. The **SIC** found that **CARLOS AUGUSTO SABOGAL LEMUS, GALILEO INSTRUMENTS S.A.S.** and **ITAG SERVICIOS TOPOGRÁFICOS Y CIA S.A.S.** devised and executed a system that limited free competition in the Public Invitation No. 003 of 2016 carried out by the **UNIVERSIDAD PEDAGÓGICA Y TECNOLÓGICA DE COLOMBIA** with the purpose of contracting the lease of surveying equipment for the Colombian National Highway Institute (INVIAS). It was proven that **ITAG SERVICIOS TOPOGRÁFICOS Y CIA S.A.S.** and **GALILEO INSTRUMENTS S.A.S.** appeared to be autonomous and independent competitors and, taking advantage of the existence of competitive control by **CARLOS AUGUSTO SABOGAL LEMUS**, coordinated their behavior in the preparation and presentation of their proposals when competing in Public Invitation No. 003 of 2016. In execution of the anti-competitive system, they socialized their proposals, which allowed them to jointly determine the value of **GALILEO INSTRUMENTS S.A.S.**'s economic offer.

21. Likewise, these companies, after submitting their proposals to the **UNIVERSIDAD PEDAGÓGICA Y TECNOLÓGICA DE COLOMBIA**, shared sensitive information related to the response to the observations submitted by another competitor and the correction of the proposal of **ITAG SERVICIOS TOPOGRÁFICOS Y CIA S.A.S.**

22. The illegal strategy was aimed at manipulating the qualification method - arithmetic mean - used in Public Invitation No. 003 of 2016, which distorted the assignment of the score corresponding to "price" and allowed **GALILEO INSTRUMENTS S.A.S.** to increase its probabilities of being awarded Contract No. 118 of 2016.

23. In a similar sense, evidence was found that, after the closing of Public Invitation No. 003 of 2016, an attempt was made to manipulate the allocation of the score corresponding to the item "use of equipment", replacing invoices that had been initially provided with the proposal of **ITAG SERVICIOS TOPOGRÁFICOS Y CIA S.A.S.**, by other false invoices in which the model of the topographic equipment offered was altered, for which there are different elements of judgment indicating that the illegal strategy even had a greater scope and also the participation of other persons, all directed to guarantee the awarding of the contract in favor of **GALILEO INSTRUMENTS S.A.S.**

24. The fine imposed amounts to \$ 665.688.279 COP.

#### *ASE*

25. The **SIC** found the existence of an illegal agreement between 8 market agents, whose purpose was to coordinate the participation of the largest number of "allied" companies in different State contracts carried out between 2015 and 2017. This agreement was developed and executed through a mechanism consisting of the following activities:

26. The coordination of the expressions of interest in several procurement processes advanced by different state entities, which in turn comprised several actions: (i) centralized search of the contractual selection processes; (ii) joint analysis of the respective bidding documents; (iii) determination of the companies that would submit expressions of interest and (iv) coordinated preparation and sending of the expressions of interest.

27. The fines-imposed amount to \$956'860.540 COP.

## **2.2. Merger and acquisitions**

28. It is important to consider that, in Colombia, when the parties to the 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.

29. 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 2022 the threshold is set at 60,000 monthly salaries at the minimum wage, which amounts to \$ 60.000.000.000 COP (roughly \$15.5 million USD). 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.

30. 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 SIC prior to the closing. 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.***

31. In 2021 the SIC reviewed and resolved 184 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 2021 there were 3 of such concepts issued by the

SIC. Table 5 summarizes the merger reviews approved, conditioned, objected or dismissed for the year 2021.

**Table 5. Merger applications reviewed by the SIC during 2021**

Type of procedure	Authorized without remedies or conditions	Authorized with remedies or conditions	Objected	Desisted	Total
Notifications	141	N/A	N/A	5	146
Pre-evaluation Phase 1	26	N/A	N/A	0	26
Pre-evaluation Phase 2	5	2	2	0	9
Concepts to SFC	3	N/A	N/A	0	3
<b>Total</b>	<b>175</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>184</b>

32. Table No. 6 shows the information related to the volume of merger applications (pre-evaluations) received, processed, and resolved for 2021 (We included the concepts issued to the SFC as phase 1 pre-evaluations).

**Table 6. Merger applications and resolved pre-evaluations 2021**

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
2021	8	43	29	9	13

33. Table No. 7 shows a slight increase in the average duration of phase 1 merger review processes, with an average of 40 days in 2021 as opposed to 39 days in 2020. However these timeframes are under the goal the SIC has established for phase 1 reviews (42 days). 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 7. Average duration of phase 1 merger review process 2020-2021**

Year	Days	Months
2019	48,1	1,60
2020	39,1	1,30
2021	39,8	1,33

34. Table No. 8 shows the volume of mergers initiated, processed, and resolved under Phase 2 for the year 2021.



**Table 8. Phase 2 merger reviews 2021**

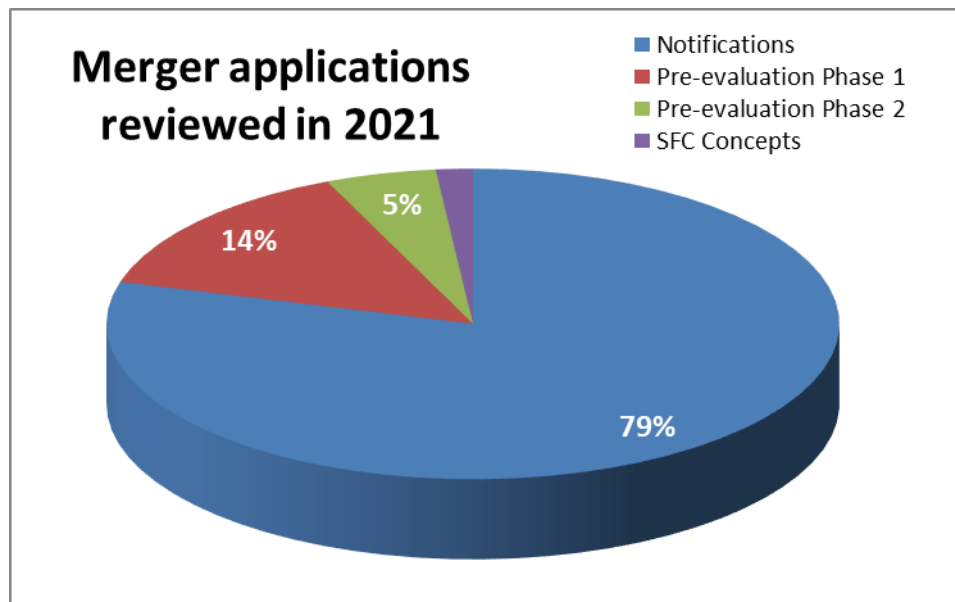
Year	Phase 2 pre-evaluations pending at beginning of period	Phase 2 pre-evaluations initiated in period	Phase 2 pre-evaluations resolved in period	Phase 2 pre-evaluations pending at end of period
2021	4	7	9	2

35. The average duration of phase 2 merger review processes in 2021 was 151 days, which represents 33 days more than the average duration in 2020. The complexity of some cases (like UFINET – ETB which lasted 205 days) contributed to the increase of the average duration of pre-evaluation processes during 2021.

**Table 9. Average duration of phase 2 merger review process 2020-2021**

Year	Days	Months
2019	188	6.3
2020	118	3.9
2021	151	5.0

36. The following chart shows the types of assessment that were conducted by the Mergers and Acquisitions Working Group during 2021, with their respective percentage:

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

### 2.2.2. Summary of significant cases.

37. 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 2021:

*BAVARIA – COCA-COLA – INDEGA:*

38. **Intervening Companies:** BAVARIA & CIA S.C.A., INDUSTRIA NACIONAL DE GASEOSAS S.A. AND COCA-COLA BEBIDAS DE COLOMBIA S.A.

39. **Proposed transaction:** Strategic alliance which will be focused on the distribution and sale of their respective products, as well as in activities like purchase of goods, services, raw materials and supplies, among other aspects.

40. **Relevant Market:** Alcoholic beverages (premium and popular beers); Non-alcoholic beverages (isotonic, tea-based, carbonated, fruit juices, bottled water, energy drinks and malt-based).

41. **Decision:** Objected.

42. For the distribution activities, by completing the intended operation 2 out of the 3 biggest non-alcoholic beverages and beer distribution networks would merge, leaving only two (2) main agents in the market, **BAVARIA – COCA-COLA** (the merged entity) and **POSTOBÓN**. The consolidation of the distribution network, although it will reduce the costs in logistics due to the increase of volume in its distribution centers, will increase barriers to entry and expansion for current and potential competitors, who wouldn't be able to achieve such low costs with their current capacity. In the mid-term, this could generate possible **price increases** by the merged entity as competitors exit the market.

43. Regarding production and purchase of raw materials and supplies, the **SIC** found that after completing the alliance, the merged entity would have more production and storage centers, reducing transportation costs, since the production centers would be closer to the consumers. Although this might reflect a reduction in prices, it would also cause the exit or non-entry of market agents who don't have the capacity to establish a similar production facilities network and who don't have the same purchase capabilities as the merging parties.

44. As for marketing activities, it was evidenced that the merging parties have used strategies such as exclusivity contracts with commercial establishments. If this strategy is applied in a joint manner, the risk of blocking the entry to competitors and impose commercial restrictions to the establishments will increase, which may stop or make more expensive the launch or development of new competition brands, grabbing more advertising space at sale points.

45. Additionally, this Competition Authority concluded that the consolidation of a portfolio of brands as important as **BAVARIA** and **COCA-COLA** would allow them to have a greater bargaining power over commercial establishments. This way, the intended operation will limit the entry of competitors in these markets as well as restrict the possibility of new agents to offer their products to sale points where **BAVARIA** and **COCA COLA** have contractual exclusivities.

46. Regarding exclusivities and brand positioning, it was found that combo-packaging and tied sales strategies of high positioned products could be applied, making the bargaining capacity of the merged entity something very hard to counter.

47. On the other hand, the possible benefits of economies of scale, resulted from the synchronization of many of their productive processes, might not offset the strengthening of barriers to entry, which implies that the proposed alliance, although favoring consumers in the short term, may be harmful in the long term by impeding the rise or entry of competitors in the markets affected by the merger.

48. Finally, it is worth to note that based on the analysis of the previous points, the Colombian Competition Authority determined that the remedies proposal presented by the

merging parties does not mitigate the concerns regarding the loss of competition as a result of the operation.

*UFINET LATAM – ETB:*

49. **Intervening Companies:** UFINET LATAM S.L.U. and EMPRESA DE TELECOMUNICACIONES DE BOGOTÁ S.A. E.S.P.

50. **Proposed transaction:** The operation consists on the creation of a NewCo by ETB (Internet carrier) and UFINET PARTICIPACIONES (provider of passive infrastructure). This NewCo would be a neutral operator, without exclusivities, who acts as a wholesale provider of FTTH services.

51. **Relevant Market:** Fiber optics infrastructure and landline Internet service.

52. **Decision:** Objected.

53. If the operation was completed as presented, as the NewCo would be the only company that offers illuminated fiber optics access, it would be able to determine prices, speed, services and qualities, and there would be incentives to block the access to competitors to the infrastructure under ETB's control. ly, it is worth to note that based on the analysis of the previous points, the Colombian Competition Authority determined that the remedies proposal presented by the merging parties does not mitigate the concerns regarding loss of competition as a result of the operation.

54. Additionally, it's worth mention that the District of Bogotá controls **ETB**. The role of the former in regulating telecommunication policies creates a distortion in competition and increases the barrier entries to any carrier willing to deploy their own fiber optics network.

55. Although the merging parties stated that the network would remain neutral so other carriers could have access to it, the operation presents only one alternative for accessing the illuminated fiber optic network. Thus, this merged entity could establish restrictive conditions for the carriers who wish to use the infrastructure, which in the end will affect the final consumers negatively.

56. Moreover, UFINET COLOMBIA has signed a contract with ENEL CODENSA regarding the management of the latter's electric infrastructure. This could pose high barriers to entry on those carriers who wish to deploy their telecommunication networks using this electric infrastructure.

*GLENCORE – ANGLO AMERICAN – BHP GROUP:*

57. **Intervening Companies:** GLENCORE PLC., ANGLO AMERICAN, PLC. and BHP GROUP LIMITED

58. **Proposed transaction:** GLENCORE would acquire full control over Carbones del Cerrejón Limited, Cerrejón Zona Norte S.A. and CMC Coal Marketing Company DAC. (Target companies).

59. **Relevant Market:** Thermal coal production.

60. **Decision:** Conditioned.

61. The **SIC** concluded that **GLENCORE** could exert negative control over **FERROCARRILES DEL NORTE DE COLOMBIA S.A. (FENOCO)**, by exercising a veto power over decisions on the proper operation of the railway that connects Chiriguana and Santa Marta. It was a source of concern that **GLENCORE**, in its new role as controller of the target companies and with the eventual withdrawal from the mining titles of La Jagua

and Calenturitas, may lose interest in keeping in optimal conditions **FENOCO**'s railway, altering the conditions to access to the rail infrastructure to third party coal producers that depend on that railway to export their product.

62. It was also concluded that some situations informed by **DRUMMOND LIMITED (SUCURSAL COLOMBIA)** and Colombia's Superintendence of Transportation may lead to a potential affectation on **FENOCO**'s railway, despite the regulations, public service protections and contractual obligations by **FENOCO**. These situations can arise by the nature of **GLENCORE**'s veto power.

63. By the reasons exposed above, the SIC decided to approve the merger subject to behavioral remedies regarding **GLENCORE**'s voting rights, aiming to prevent negative control and veto power over **FENOCO**.

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

64. 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.

65. In addition, the Competition Advocacy Group is ready to provide legal advice for requests made from the Congress with the purpose of averting potential anticompetitive effects from pending legislation.

66. 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

67. **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

68. **Competition concerns:** At the request of the Ministry, the Superintendence of Industry and Commerce, as National Competition Authority, presents its opinion regarding some elements of the regulation of the proposal: (i) General considerations of the regulatory proposal; (ii) Customer 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 in 60 processed foods prioritized by the Ministry, as well as the compliance deadlines for the reduction of their sodium content.

69. Regarding 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 an 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.

70. 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 comply with maximum limits. The foregoing, since the imposition of these limits is supported and justified from a technical and market point of view.

71. On the other hand, compared to the second element, the SIC 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 issue, 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.

72. Finally, regarding the transitory provisions, the Superintendence considered that the proposition 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 frame and agrees 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.

73. **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

74. **Proposed regulatory draft:** The draft required by the Superintendence to the MEPU, in the framework of its *ex officio* capacity, aims to the 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.

75. **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.

76. The Superintendence 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 the SIC, MEPU must have clear control mechanisms that guarantee that no information may be transmitted between bidders.

77. 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, which 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.

78. Finally, the last aspect analyzed by the SIC was related to the procedure for proposals and counterproposals. As established in the regulatory proposal, when only one valid economic offer is submitted, the frame for counterproposals 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 the 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.

79. **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 states: "*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 counteroffers will only be possible for other previously qualified bidders and not any third party, as it is currently stated in the Project.
- Adopt an adequate term in accordance with the technical justifications for the preparation and presentation of the counteroffers.
- 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

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

81. **Competition concerns:** The Superintendence 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 Superintendence 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.

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

- Establish explicitly in the regulatory proposal if the entities supervised by the Superintendence of Financial Institutions, 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 Superintendence of Financial Institutions 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.
- In 2020, the Competition Advocacy Group 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 2020 and 2021:

**Table 10. SIC's Funds Available for Allocation: Amounts and Sources 2020 – 2021**

Year	2020	2021	Percentage variation
	COP Thousands of millions	COP Thousands of millions	
SIC Total Funds	216.633	232.872	7.5%
Competition-related budget	32.573	34.842	7%

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

84. The total SIC's budget for 2021 was \$232.872.994.123 COP. This budget was distributed in two main areas. The first one is the "Investment Budget" which is approximately \$129.821.937.552 COP and the second one is the "Functioning Budget" that is approximately \$103.051.056.571 COP.

**Table 11. Total SIC's budget for 2020 - 2021**

Year	2020	2021	Percentage variation
	COP Thousands of millions	COP Thousands of millions	
SIC Total Funds	216.633	232.872	7.5%

85. The total SIC's competition-related budget for 2021 was COP\$ 34.842.010.975. This budget was distributed in two main areas. The first one is the "Competition Investment Budget" which is approximately COP \$19.805.390.005 and the second one is the "Competition Functioning Budget" that is approximately COP \$15.036.620.970.

**Table 12. Total SIC's competition-related budget for 2021**

Year	2020	2021	Percentage variation
	COP Thousands of millions	COP Thousands of millions	
Competition-related budget	32.573	34.842	7%



#### 4.1.2. Number of employees

86. The following charts show the number of employees and contractors who work on competition enforcement at the SIC<sup>1</sup>:

**Table 13. 4.1.2. Number of employees (person-years)**

Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	91	57	148

**Table 14. Non-administrative staff who worked on competition enforcement - 2021**

Office / Division	Contractors	Employees	TOTAL
Deputy Superintendence for Competition Protection	73	47	120

#### 4.2. Human resources (person-years)

**Table 15. Roles of non-administrative competition (NAC) staff – 2021**

Role	Lawyers	Economists	Data Scientist	Others (engineers, business managers, public counters)	TOTAL
Deputy Superintendence for Competition Protection	77	31	2	10	120

**Table 16. Roles of non-administrative competition (NAC) staff who work in each area of the Deputy Superintendence for Competition Protection – 2021**

Area	Contractors	Employees	TOTAL
Mergers	0	8	8
Anti-cartel and dominance-related issues	66	38	104
Advocacy	7	1	8
TOTAL	73	47	120

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

87. January 2021 – December 2021

<sup>1</sup> \*The SIC is not only a competition protection agency. We are also national authority for consumer protection, data protection, industrial property, and legal metrology. With additional competences on jurisdictional affairs.

Thus, we are excluding some offices of the SIC that that work with all the different Deputy Superintendencies, and we are only going to include the information related to the Deputy Superintendence for Competition Protection.

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

88. During 2021, the Economic Studies Working Group produced the following sectorial studies:

### **5.1. Mobile Telecommunication Infrastructure in Colombia: Evidence for the period 2015-2020.**

89. This document carries out a descriptive analysis of mobile telecommunication infrastructure in Colombia. The results indicate that the number of towerco has grown significantly in the last five years and, also, that they have diversified their participation in different economic activities. Furthermore, the operator's participation in terms of antennas differs from those of subscribers and income. Finally, this document carries out an Industrial Organization analysis in terms of concentration and dominance. The results show high concentration and dominance levels in voice and mobile internet.

#### ***5.1.1. Analysis of the Steel sector chain in Colombia: Evidence for the period 2015-2020 (Part I).***

90. This study aims to analyze the dynamics of the steel production in Colombia from 2015 to 2020. First, it presents a characterization of the economic agents and different products related to this sector, followed by a descriptive analysis that shows the national and international context for the steel product. The data reported by the firms are also reported to carry out a traditional Industrial Organization analysis from a supply perspective.

#### ***5.1.2. Analysis of the dairy sector in Colombia: Evidence for the period 2010-2020***

91. The objective of this study is to provide a complete analysis on the composition and operation of the dairy sector in Colombia between 2010 and 2020. For this purpose, the present study considers a complete characterization of the above-mentioned sector, including a legal review. Then, based on official sources information, it presents an analysis in aggregate and industrial organization terms for the formal milk collection chain.

#### ***5.1.3. Economic analysis of ten pharmaceutical active principles market in Colombia: Evidence from 2015 to 2019.***

92. Pharmaceutical markets have heterogenous dynamics in the market structure, a situation that, according to its application, generates economic welfare gains or losses. This study contributes to the evidence generation of these markets by analyzing ten active principles between 2015 and 2019, whose indication is the treatment of chronic diseases and represent 70% of the Superintendence of Industry and Commerce sanctions.

#### ***5.1.4. Collective Management Societies: A first approximation for the Colombian case.***

93. Considering the qualitative and quantitative information provided by each Collective Management Society, through a descriptive statistical analysis, it was evidenced that, for the period 2010-2020, and despite the effects generated by the COVID-19 pandemic, the aforementioned companies have registered a stable behavior in terms of collection, expenses and distribution profits.

### 5.1.5. *Entrepreneurial Colombian framework Atlas.*

94. This document analyses the Colombian business network from density perspective, the atomization or structure of the market according to the size of the companies and the coverage of economic sectors also known as business diversity. The results indicate low business density in Colombia, which is more notable in small municipalities, accompanied by high presence of firm's with fewer than ten workers and the concentration of business units in trade, professional services, and manufacturing activities.

### 5.1.6. *Markets Studies*

95. During 2021, the Deputy Superintendence for Competition Protection produced the following market studies:

*Market study: Fixed and mobile internet in Colombia: the impact of the pandemic and the entry of WOM in terms of competition.*

96. The purpose of this study is to analyze the dynamics of competition in Internet access in Colombia. To this end, it (i) evaluates the effect of the COVID-19 pandemic in terms of competition, prices, and coverage in the fixed internet market and (ii) studies the impact of WOM on deconcentrating the mobile internet market. Regarding fixed internet, this study finds a warning signal in terms of competition in the departments of Antioquia, Caquetá, Chocó, Guainía, Risaralda and La Guajira. On the other hand, regarding the entry of WOM in the mobile internet market, this study shows that this entry has reduced the Herfindahl-Hirschman concentration index by nearly 100 points.

*Market study: The consumer and regular credit market in Colombia*

97. The purpose of the sectoral study was to diagnose and evaluate the dynamics of competition in the consumer and regular credit market in Colombia. To this end, the study (i) evaluated the structural indicators of the industry to identify anomalous patterns of behavior and (ii) estimated the Panzar Rosse H indicator for the consumer and regular credit segments. The study identified anomalies in the behavioral dynamics of the regular commercial credit segment, the development of the deposit interest rate and warns about the low intensity of competition in the credit card segment.

*Gyms and sport centers (Ex – post market study)*

98. The general objective of the study was to examine the conditions of competition in the market of gyms and sports centers that provide medical and fitness services in Colombia. The review was conducted from 2018 to 2021. The study aimed to measure the impact of the COVID-19 pandemic on the competitive conditions of the mentioned market. Within the analysis, the types of services offered by the different market players, their market shares and the effects that the COVID-19 pandemic had on the sector were studied.

99. This study sought to conduct an analysis to establish the substitutability relationship (if any) between virtual and face-to-face services. After reviewing the information provided by the different agents that are active in the market of gyms and fitness centers, it was found that there is no substitutability relationship between virtual and face-to-face services. However, it was established that there is a complementary relationship between them.

100. The COVID-19 pandemic had as immediate effect the total closure of its facilities between March and August 2020, in accordance with the measures established by the National Government. As a result of the study, it was found a profound negative effect in

revenues and number of gym memberships. In the other hand, a short-term price decline in gym memberships was also found.

101. This Superintendence observed that the COVID-19 pandemic could have acted as a natural experiment from which the asymmetry of substitutability between face-to-face and virtual services was evidenced for consumers, being the pandemic a mechanism for the revelation of consumer preferences, which would be progressively returning to face-to-face training to the detriment of the use of virtual services.

102. Finally, based on the information collected and assuming a similar path to that estimates up to March 2021, it was estimated that the sector would reach pre-pandemic levels in terms of revenues between September and November 2022, and in terms of members between January and March of the same year.

103. You can read the full study (in Spanish)<sup>2</sup>.

#### *Effectiveness competition advocacy (Activity report)*

104. In December 2021, the Superintendence of Industry and Commerce issued a report addressing in detail the effectiveness of its competition advocacy activity. As part of the report, the SIC conducted an in-depth analysis on the approach of state entities to advocacy opinions and individual recommendations issued by the SIC between September 20th, 2018, and December 14th, 2021.

105. The report studied two different types of data: (i) the approach given by regulators to competition advocacy opinions, in which regulators could fully incorporate recommendations, partially incorporate recommendations or fully depart from the recommendations issued in each individual opinion and (ii) the approach given by regulators to individual recommendations, where regulators could either incorporate or depart from each individual recommendation, regardless of the approach given to the corresponding advocacy opinion as a whole.

106. The proposed strategy was designed in order to confront several issues identified by the Agency regarding the role of competition advocacy. Among these issues, the SIC identified a need to attract more State entities in order for regulators to conduct a more in-depth assessment of their compliance with the legal competition advocacy procedure. In addition, the use of data analytics and AI were set forth as valuable assets that should be further implemented internally by the Agency, in order to optimize its competition advocacy function. Likewise, the Competition Authority determined that, through competition advocacy, the SIC needed to develop additional strategies in order to engage emerging markets, as well as new ways of allocating resources.

107. These issues were published in a 2021 academic article authored by the Deputy Superintendent for Competition Protection regarding competition advocacy in the information and communication technologies. The article was included in a book titled “*ICT’s and Digital Society: Twelve years after the Law*”, published by Universidad Externado de Colombia and the Council of State.

108. The report also provided a comprehensive outlook of the role of competition advocacy in Colombia, based on the review of data on advocacy opinions issued from 2009 to 2021. The results showed that until December 14th, 2021, a total 536 advocacy concepts had been issued since the creation of the Competition Advocacy Working Group in 2009, 189 issued during the current administration. Similarly, some of these results showed a

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<sup>2</sup> [https://www.sic.gov.co/sites/default/files/files/2021/Estudio%20Gimnasios%20\(versi%C3%B3n%20p%C3%BAblica\).pdf](https://www.sic.gov.co/sites/default/files/files/2021/Estudio%20Gimnasios%20(versi%C3%B3n%20p%C3%BAblica).pdf)

34% increase in the average monthly issuance of competition advocacy opinions in the current administration, when compared to the previous administrations. Likewise, 71 advocacy opinions were issued from January 1st, 2021, to December 14th, 2021, the highest number when compared to previous years.

109. The results underscore the impact of competition advocacy on regulatory process, and identify reasons considered by regulators to depart from the recommendations, as well as distinguish those who most frequently departed from them. Thus, one of the most significant findings regarding the approach given by regulators to individual recommendations (regardless of the approach given to advocacy opinions as a whole), was the fact that there was a 74% acceptance rate of individual recommendations out of the 282 recommendations issued from January 1st, 2021, to December 14th, 2021. The reasons not to include most individual recommendations in the final text of regulation fell under the category of “Cause not described”, since the reasons for opting to depart from 23 out of the 73 individual recommendations were unspecified in the final text of the regulations. This represented 32% of all recommendations not incorporated in the final text of the regulation. Likewise, the report’s findings have informed the adoption of new strategies by the SIC to attain higher efficacy rates for competition advocacy functions, also to make regulatory authorities more receptive to competition issues.<sup>3</sup>

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<sup>3</sup> [https://www.sic.gov.co/sites/default/files/documentos/012022/Informe-Analisis-de-efectividad\\_Dic14-2021-FINAL\\_.pdf](https://www.sic.gov.co/sites/default/files/documentos/012022/Informe-Analisis-de-efectividad_Dic14-2021-FINAL_.pdf)