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

## Annual Report on Competition Policy Developments in Colombia

-- 2023 --

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

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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 and related legislation.

1. During the period of 2023, no new competition laws or related legislations have been enacted. Furthermore, the existing antitrust law has not been modified.

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

2. In 2023, the Superintendency of Industry and Commerce (SIC) issued the update booklet on collusions. In Colombian law, the term "collusion" refers to any anticompetitive conduct that occurs within a public purchase (a purchase made by the State). This can occur in a call for tenders, public auction, shortened selection process, or tendering. This information booklet compiles the possible conducts, sanctions, patterns of behavior, warning signs, increased risk factors, preventive actions, benefit programs offered in exchange for help, and some examples of prior cases. You can find the booklet at this link:

3. Actualización cartilla colusiones (Update Booklet on Collusions).  
[https://www.sic.gov.co/centro-de-publicaciones?field\\_global\\_topic\\_tid=8199&field\\_anos\\_p\\_value=All](https://www.sic.gov.co/centro-de-publicaciones?field_global_topic_tid=8199&field_anos_p_value=All)

#### 1.3. Government proposals for new legislation

4. In the Congress of the Republic (which serves as the regulatory body in Colombia), bills have been processed that may have or create a conflict with antitrust law. Regarding these bills, the Superintendence of Industry and Commerce as the competition authority issues statements aimed at modifying the proposed legislation to ensure it does not affect free competition.

5. Currently, the Congress of the Republic is processing some bills aimed at implementing regulatory frameworks in some industries of the country. In turn the SIC evaluates whether the implementation of these regulatory frameworks may impact the compliance with competition laws or its Enforcement.

**Table 1. The projects that the SIC considered should undergo an examination regarding possible competition concerns**

Institution	Draft legislation / bill	Date
Congress of the Republic	Bill No. 253 of 2022 Senate "Establishing the guidelines of public policy for the development, use, and implementation of artificial intelligence and enacting other provisions."	07 February 2023
Congress of the Republic	Bill No. 267 of 2022 Senate and 139 of 2021 Chamber "Recognizing cryptocurrency exchange platforms (PIC for its initials in Spanish) that offer exchange services for these virtual assets, establishing a regulatory framework, and enacting other provisions."	13 April 2023
Congress of the Republic	Bill No. 291 of 2023 Senate "Creating the Qualified Institute in Agricultural Marketing - ICMA- and enacting other provisions."	15 May 2023
Congress of the Republic	Senate Bill No. 063 of 2022 "Mandating the recognition, protection, provision of guidelines, and strengthening of family and community peasant economies, from an associative perspective, in order to promote the nations food security and sovereignty and enacting other provisions."	23 June 2023
Congress of the Republic	Bill No. 271 of 2022 S "Ensuring mechanisms for the protection of the right to community water management and enacting other provisions."	15 August 2023
Congress of the Republic	Bill No. 093/23 S "Regulating the provision of air services in Colombia and enacting other provisions."	25 August 2023
Congress of the Republic	Senate Bill No. 074 of 2023 "Ensuring informational pluralism and prohibiting exclusivity clauses in the open television advertising market."	11 September 2023
Congress of the Republic	Bill No. 065/23 S and 223/22 C "Establishing measures to protect financial consumers against crimes involving information and data in the financial sector and enacting other provisions."	03 October 2023
Congress of the Republic	Bill No. 144/23 C "Amending Law 69 of 1993 and enacting other provisions. Law 69/93 is about Agricultural Insurance in Colombia, the creation of the National Agricultural Risks Fund, and other provisions regarding agricultural credit."	09 October 2023
Congress of the Republic	Bill No. 154/23 S "Adopting measures to contribute to the well-being of the coffee sector, incentivizing domestic consumption, authorizing the creation of the 'Quiero a los cafeteros' donation program, declaring coffee as the national beverage, and creating the minimum social protection floor."	23 Octobre 2023
Congress of the Republic	Bill No. 159/23 S "Creating the national strategy for strengthening the commercialization of peasant, family, and community agriculture (ACFC for its initials in Spanish), incentivizing field productivity, and enacting other provisions."	25 Octobre 2023
Congress of the Republic	Legislative Act No. 091/23 C "Modifying Articles 333 and 334 of the Colombian Constitution."	02 November 2023

## 2. Enforcement of competition laws and policies

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

#### 2.1.1. Summary of activities of:

##### *Competition authorities*

6. The administrative procedure carried out by the SIC consists of three stages: preliminary inquiry, formal investigation, and (eventual) sanctioning. Initially, a preliminary inquiry is conducted to determine whether there are any indications of conduct contrary to competition laws. If such an indication is found, the process advances to the next stage, where a formal investigation takes place. Finally, through a resolution, the procedure is concluded, which may result favorably or unfavorably depending on the findings of the investigation.

7. On one side, in 2023, the SIC found indications, through preliminary inquiries, that 15 of the cases subject to such inquiries involved conduct contrary to competition laws, leading to formal investigations.

**Table 2.**

23 -60295	Resolution No. 6065 of February 20 <sup>th</sup> , 2023	Olimpia
18-73379	Resolution No. 41052 July 19 <sup>th</sup> , 2023	PAE Cauca
19-166037	Resolution No. 49644 August 22 <sup>nd</sup> , 2023	ANI 1
23-307308	Resolution No. 50732 August 25 <sup>th</sup> , 2023	ANI 2
20-9765	Resolution No. 46189 August 4 <sup>th</sup> , 2023	Comcel-Subsidios
22-276929	Resolution No. 56062 September 20 <sup>th</sup> , 2023	Fútbol Femenino
22-266216	Resolution No. 54292 September 8 <sup>th</sup> , 2023	Agregadores de pago (Visa)
23-328318	Resolution No. 54294 September 8 <sup>th</sup> , 2023	Agregadores de pago (Mastercard)
21-450907	Resolution No. 61513 October 6 <sup>th</sup> , 2023	Comcel-Portabilidad
18-16839	Resolution No. 71410 November 15 <sup>th</sup> , 2023	Petrodecop
20-419818	Resolution No. 72167 November 15 <sup>th</sup> , 2023	Electrohulla
23-332940	Resolution No. 71453 November 17 <sup>th</sup> , 2023	Jardín Botánico II
20-22841	Resolution 69003 of 2023	Corredores viales
22-398406	Resolution No. 79939 of 2023	Ditra
23-548757	Resolution No. 79939 of 2023	OTI

8. On the other side, for the same year there were only two cases that got to the sanctioning stage, and those are:

**Table 3.**

21-116378	AVINCO S.A.S	Resolution No. 74335 of November 29 <sup>th</sup> of 2023 <sup>1</sup>	Unfavorably – Fine to AVINCO
17-150510	OTI	Resolution No. 54472 of September 11 <sup>th</sup> of 2023 <sup>2</sup>	Unfavorably - Fine to OTI

**Table 4. Court cases**

Case ID & Process ID	Legal action taken	plaintiff	Decision
18-32019 25000234100020170101200	nullity & re-establishment of law	TECNOQUÍMICAS S.A	Unfavorably - The performance of the Superintendency during the preliminary investigation stage complied with the law.
21-433474 52001333300220190023700	nullity & re-establishment of law	JORGE ANDRÉS CHARFUELAN MORENO	Unfavorably - The violation of due process was not proven.
23-62548 25000234100020230001700	Compliance	AMERICANA DE BLINDAJE	The compliance action is deemed inadmissible.
21-51281 25000234100020190095300	nullity & re-establishment of law	SERVICIOS POSTALES NACIONALES S.A	Unfavorably
16-267662 25000234100020150240500	nullity & re-establishment of	ORGANIZACIÓN ROA FLOR HUILA S.A.	Unfavorably

<sup>1</sup> Resolution No. 74335 del 29 de November de 2023

<sup>2</sup> Resolution No. 54472 del 11 de September de 2023

	law		
11-66637 25000232400020110017001	nullity & re-establishment of law	INGENIO PROVIDENCIA S.A. Y OTROS	Unfavorably
19-68214 25000234100020180076400	nullity & re-establishment of law	COOPERATIVA DE VIGILANTES STAR COOP CTA	Denying some of the claims and granting others.
19-118813 25000234100020180070600	nullity & re-establishment of law	JORGE ARTURO MORENO OJEDA	Denying some of the claims and granting others.
20-405965 11001333400220190031800	nullity & re-establishment of law	MARTÍN ALEJANDRO RESTREPO ATUESTA	Unfavorably
20-39560 25000234100020180072500	nullity & re-establishment of law	MARTHA MARLEN IFARIAS DE ORTIZ	Unfavorably
19-121940 25000234100020190024000	nullity & re-establishment of law	DIEGO FERNANDO BRAVO BORDA	Denying some of the claims and granting others.
18-332642 11001333400620180032200	nullity & re-establishment of law	CARLOS EDUARDO DÍAZ HERNÁNDEZ	Unfavorably
19-235479 13001333301320180024501	nullity & re-establishment of law	JAIME RICARDO RAMÍREZ PIÑEREZ	Favorably - Due to false motives.
19-296385 17001233300020190037600	nullity & re-establishment of law	RODRIGO LÓPEZ ARANA - DICONSULTORÍA S.A	Unfavorably - Denying the claims
16-41417 11001333400120150038401	nullity & re-establishment of law	GINO ALEXANDER GONZÁLEZ RODRÍGUEZ	Favorably - Due to false motives.
17-263160 25000234100020160155600	nullity & re-establishment of law	INGENIO PROVIDENCIA S.A	Unfavorably - Denying the claims
21-322085 11001333704020210013901	nullity & re-establishment of law	COLOMBIA MÓVIL S.A.E.S.P	The Court upheld the lower court's judgment, maintaining that the SIC acted against the principle of non reformatio in pejus and due process.
19-161054 25000234100020190024900	nullity & re-establishment of law	BUREAU VERITAS COLOMBIA LTDA. and TECNICONROL S.A.S.	Unfavorably - Denying the claims
17-329668 11001333400320170012500	nullity & re-establishment of law	DIEGO HUMBERTO QUIJANO REISNER	Unfavorably - Denying the claims
19-290507 25000234100020170065100	nullity & re-establishment of law	EGC COLOMBIA S.A.S.	Expiration.
19-285028 11001333400320170012500	nullity & re-establishment of law	VANESSA HATTY BENAVIDES	Unfavorably - Denying the claims
18-68716 25000234100020170076500	nullity & re-establishment of law	PAPELES NACIONALES S.A	Unfavorably - Denying the claims

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

9. The two most significant cases in 2023 were the football case and the Visa and Mastercard case, both of which are in the formal investigation stage, which is the second stage as described in the previous answer. In this stage, the SIC, as the national authority for competition, will determine whether the behaviors under examination ultimately affect free competition or not.

*Football Case*

Investigated parties:

- Federación Colombiana de Fútbol (**FCF**)
- División Mayor del Fútbol Colombiano (**DIMAYOR**)
- 29 professional Colombian football clubs.

Charge:

10. Developed a system aimed at limiting economic free competition in the market of the Women's Professional League in the country from 2017 to the present.

Investigation:

11. The behaviors under investigation consist of four actions: (i) standardizing the contractual model for the hiring of players in aspects such as contract duration and the exploitation of image rights; (ii) reaching an agreement on the values of players' salaries to keep them as close to the minimum as possible; (iii) reluctance to receive public funds for the development and promotion of the women's professional league; and (iv) signing a contract for the broadcasting of the Women's Professional Football League under conditions that would discourage the development of that market.

*Visa and Mastercard Cases*

Investigated parties:

- VISA
- MASTERCARD

Charge:

12. Implemented strategies aimed at hindering the participation of payment aggregators in the market, who facilitate Colombian consumers' access to products and services from foreign merchants by allowing payments in Colombian pesos and choosing the number of instalments they wish to defer their payment to.

Investigation:

13. The strategies developed by VISA and MASTERCARD would have had the potential to generate obstructive, exploitative, and exclusionary effects. Regarding obstructive effects, the Superintendency established that their programs-imposed conditions that would limit the operations of payment aggregators. They would also have discouraged the use of alternative models in e-commerce, which would affect consumer welfare. Regarding exploitative effects, it would have been evidenced that these were aimed at capturing the profits obtained by the model used by the aggregators and transferring them to programs controlled by the franchises. Exclusionary effects would be explained based on the disincentive generated for maintaining commercial relationships between banks and payment aggregators. Also, in making the operation of the payment aggregator business model more expensive.

**2.2. Mergers and acquisitions.***2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws.*

14. It is important to emphasize that under the Colombian antitrust law, every merger or acquisition needs to be analyzed by the competition authority and, in very specific cases, it needs to

also be approved by this authority. The SIC as the national competition authority intends to take care of the different markets that might get affected by the combination and execute the analysis. Companies engaged in the same economic activity or participating in the same value chain will be required to inform the SIC about operations they plan to carry out for the purpose of merging, consolidating, acquiring control, or integrating, regardless of the legal form of the projected operation, if they have operational income or total assets exceeding 69.600.000.116<sub>COP</sub> for 2023 (January 1<sup>st</sup> to December 31<sup>st</sup>).

15. Operations to be notified: When the parties involved in the operation meet the economic threshold but individually or jointly have a share of less than 20% in any of the relevant markets affected by the operation, it must be notified.

16. Operations to be reported: When the parties involved in the operation meet the economic threshold greater than 20% in individual or joint shares in any of the relevant markets affected by the operation, it must be reported. This requires submitting a pre-evaluation request. It is necessary to wait for the authority to pronounce itself before continuing with the integration. Depending on the analysis and the terms of the pronouncement made, these cases might go just to face 1 or through face 1 & 2.

17. In the following table, the total number of corporate integration operations attended to during the period from January 1<sup>st</sup>, 2023, to January 26<sup>th</sup>, 2024, is shown:

**Table 5.**

Total number of corporate integration operations attended		Status		Total operations (by type)
		Handled	In process	
Operation type	Notified	156	6	<b>162</b>
	Pre-evaluation (F1)	29	8	<b>37</b>
	Pre-evaluation (F2)	7	1	<b>8</b>
	Notion by the SFC	2	1	<b>3</b>
<b>Total Operations (by status)</b>		<b>194</b>	<b>16</b>	<b>210</b>

### 2.2.2. Summary of significant cases.

#### *Telefonica vs.Tigo*<sup>3</sup>

Parties (Intervening Parties):

- Colombia Telecomunicaciones S.A E.S.P BIC (TELEFÓNICA)
- Colombia Móvil S.A E.S.P (TIGO)

Market:

18. Access to spectrum usage permits; Construction, administration, and maintenance of infrastructure elements and radio access networks.

Operation:

19. The operation involves the materialization of an agreement between TELEFÓNICA and TIGO for the sharing of network infrastructure and the rights to use the radio spectrum, of which each party is the holder. This agreement is limited to the sharing of mobile access network and radio

<sup>3</sup>[https://www.sic.gov.co/sites/default/files/files/2023/COLOMBIA%20TELECOMUNICACIONES%20-%20COLOMBIA%20M%C3%93VIL%20\(P\).pdf](https://www.sic.gov.co/sites/default/files/files/2023/COLOMBIA%20TELECOMUNICACIONES%20-%20COLOMBIA%20M%C3%93VIL%20(P).pdf)

spectrum. Despite this collaboration, both TELEFÓNICA and TIGO will remain competitors in the wholesale and retail markets for the provision of telecommunication networks and services. They will continue to independently fulfill all wholesale, retail, and access obligations as required by regulation. This integration will primarily affect the process related to the design, construction, administration, and maintenance of the access network, while both parties will maintain their status as independent entities in other market segments.

### *Puerto Bahía*

Parties (Intervening Parties):

- Sociedad portuaria puerto bahía S.A. (SPPB)
- Inversiones GLP S.A.S. E.S.P. (IGLP)

Market:

20. LPG Production; Provision of port operation services in the "Liquid Bulk" mode; Wholesale marketing of LPG; Distribution of LPG in cylinders and tanks (TE); Retail marketing of LPG

Operation:

21. The parties involved will collaborate in jointly designing, constructing, operating, and commercially exploiting an infrastructure for receiving, cooling, storing, pressurizing, and loading liquefied petroleum gas into tanker trucks on lands of the maritime terminal granted in concessions to SPPB. This projected operation is not expected to lead to concentration among the parties, as they will continue to operate independently in the market, thus preserving competition in the relevant markets. Additionally, the capacity of the new import and storage infrastructure does not provide IGLP with sufficient market power to impose restrictions on free competition.

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

### 3.1. e.g. regulatory reform, trade and industrial policies

22. This Superintendence, within the framework of its advocacy functions, provides recommendations to authorities interested in implementing regulations in various industries. In this regard, the SIC has issued advocacy opinions in the following sectors:

**Table 6.**

Mines and Energy (13)	Ministry of mines	10
	CREG	2
	ANH	1
Telecommunications (11)	Ministry of Telecommunications	6
	CRC	5
Finance and Public Credit (6)	Superintendence of Finance	2
	DIAN	2
	The Ministry of Finance and Public Credit	2
Commerce, Industry and Tourism (5)	Minister of Trade, Industry and Tourism	2
	SIC – the office of the Delegate of technical regulations	2
	INM	1
Health and Social Protection (3)	Department of Health	3
Shipping (3)	Ministry of Transport	3

strategic planning (3)	DNP	1
	ANCP - CCE	2
Environment and sustainable development (2)	Ministry of environment and sustainable development	2
Justice and law	Superintendency of Public Notaries	1
animal husbandry, fishing, and rural development	ICA	1
Interior	interior and justice ministry	1
<b>Total</b>		<b>49</b>

## 4. Resources of competition authorities<sup>4</sup>

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

#### 4.1.1. Annual budget:

23. The Deputy Superintendent's Office of Industry and Commerce annual budget for 2023 was \$9.319.233.177 COP.

24. Considering the Representative Market Rate of December 31<sup>st</sup>, 2023, (\$3.822,05 COP for \$1 USD), the annual budget for 2023 was \$2.438.281,34 USD.<sup>5</sup>

<sup>4</sup> If there is more than one authority, please give details for each. However, only Central Government competition authorities should be included, not State or provincial bodies. Local offices should be included where these are part of the central authority.

<sup>5</sup> It is important to mention that this was the lowest value that the representative market rate (TRM for its initials in Spanish) had during 2023.

**Table 7.**

Annual budget	COP	USD
2023	\$9.319.233.177	\$2.438.281,34

**4.1.2. Number of employees (person-years):****Table 8.**

There are two types of contracts within the Deputy Superintendent's Office of Industry and Commerce.

Economists:	25
Lawyers:	83
Other professionals:	21
Support staff:	18
<b>All staff combined:</b>	<b>147</b>

**4.1.3. Human resources (person-years) applied to:****Table 9.**

Enforcement against anticompetitive practices <sup>6</sup> :	130
Merger review and enforcement:	7
Advocacy efforts:	10

Period covered by the above information: The year 2023

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

25. In 2023 the SIC made several market Studies and market monitoring investigations which led to developments in the way the current competition policies are applied. Those studies were regarding these markets:

1. Definition of the relevant market for Chronic Kidney Disease in Colombia
2. Characterization of the solar panel market in Colombia
3. Free competition in the financial system
4. Market Monitoring: Price Differentiation in Personal Care and Hygiene Products by Gender
5. Evolution of the liquor market in Colombia 2021-2022

26. Regarding the first one, this study has two general motivations. On the one hand, it explores the need for the Competition Authority to assess the conditions under which business integration operations in national markets were evaluated, which could result in high impact. On the other hand, it aims to be a reference framework for defining the relevant market in future business integration operations related to the provision of services associated with Chronic Kidney Disease.

27. The second study provides a general review of the behavior of the solar energy sector in Colombia. It primarily includes the following sections: (i) a review of the evolution of solar energy on the international level, (ii) a description of the sector in Colombia concerning the projects currently present in the country; (iii) a description of possible entry barriers to the activity in the country, and

<sup>6</sup> Excluding unfair or misleading practices which fall under consumer protection provisions of the law, where these exist.

(iv) an international review of possible anticompetitive practices related to solar energy activity. The information obtained from the required companies allowed the identification of the main barriers regarding the adoption of solar energy projects. Challenges are evident regarding regulation, norms, and connection processes, as well as obstacles in the relationship with network operators.

28. About the third study, the study aims to demonstrate how economic competition policy is fundamental in designing strategies to promote financial inclusion in the country, particularly for micro-businesses as key players in the Colombian economy. Undoubtedly, free competition will not be the only path to achieving this goal, but it can certainly serve as a reference point to ensure this valuable purpose. In this context, the Superintendence suggested the expansion of credit information systems and collateral registries, considering them as a comprehensive strategy to enhance financial inclusion for micro-businesses in Colombia. This recommendation, which underscores the importance of a robust and accessible financial infrastructure, directly addresses information asymmetries and challenges related to collateral that often restrict access to credit for micro-businesses.

29. The Hygiene Products Price by Gender Market Monitoring will first characterize the market for production, marketing, and distribution of these products. Secondly, the methodology used to analyze the evolution of prices, segregated by gender, will be described, along with details of the database used. Thirdly, the results obtained in the analysis of final consumer prices will be presented. Finally, corresponding conclusions will be addressed. In summary, there is evidence of a difference in prices by gender in the analyzed sample. However, this differentiation does not exclusively disadvantage a specific gender, as it is not distinguished that a single gender consistently bears the highest price in the five evaluated products.

30. And the last study shows that in that market, departmental monopolies aim to collect economic resources from activities related to the production and importation of distilled liquors, specifically allocated for financing healthcare and sports in each department, as mandated by the Political Constitution in Article 336 and Law 1816 of 2016. These monopolies, defined under a legal framework, ensure departments a stable source of economic resources collected through the production and introduction of various distilled liquors and potable alcohol. This document is structured into four sections: an introduction, a brief overview of the national market, an analysis by product segment, and an analysis of the market by department. While the market exhibits high concentration figures at both national and departmental levels, there are differences based on the level of disaggregation.