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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from El Salvador**

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This contribution is submitted by El Salvador under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/icar](https://oe.cd/icar).

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## *Interactions between Competition Authorities and Sector Regulators*

### *El Salvador's Competition Superintendence (SC) interaction with regulators*

#### **– Contribution from El Salvador–**

1. In a market economy, competition is a key component of the economic policy framework. Due to the cross-cutting nature of competition policy it is subject to interdependence with other members of the country's policy framework and their respective legislative mandates. Therefore, promoting competition as an essential value in economic activities becomes relevant to public authorities that face the complexity inherent to combine different public policy considerations in dynamic markets, but within the limits of their respective attributions. Competition agencies and regulators can bring each one's specialized knowledge towards fair competition conditions in regulated sectors, improving economic performance and efficient norms.
2. Even though the relationship among regulators and competition authorities might be useful for enforcement activities normally the relation strengthens thru advocacy activities such as competition opinions and recommendations to promote procompetitive alternatives to eliminate regulatory barriers.
3. The ICN Advocacy Working Group 2014 Benefits Project Report in its chapter "Explaining the Benefits of Competition to the Government and the Legislator" note that two important characteristics in setting the tone for the relationship between competition agencies and government bodies are impartiality and rationality to transmit the importance of competition and the role of competition agencies towards achieving governmental goals. The approaches competition agencies could use to engage in public policy discussions can vary depending upon its legal mandate. Among the sources of engagement with policymakers are market studies, the analysis of regulations from a competition policy perspective, dialogue and advise on possible impact over competition, competition assessments of different policies to motivate procompetitive policy alternatives, among other possibilities.
4. For instance, in El Salvador, the SC has the legal obligation to inform regulatory entities when the investigation of an anticompetitive practice determines that the cause or problem has its origin in the regulatory framework falling under the competence of other governmental entities, so that they take the corresponding measures.
5. In addition, the Competition Law (LC) entrusts the SC with the advocacy powers to: 1) issue non-binding opinions, upon request or *ex officio*, about ordinances or regulations which may limit, restrict, or significantly impede competition and with regards to public procurement procedures that may limit, restrict or significantly impede competition, 2) study markets from a competition perspective, 3) convey non-binding procompetitive public policy recommendations to other government institutions, including sectoral regulators, after assessing through market studies how their policies could impact competition, and 4) foster among the public and different relevant audiences an understanding about competition policy and Law through competition advocacy.

5) Inter-agency public procurement screening advocacy projects to encourage competition principles in public procurement Throughout the years, international technical cooperation has supported the development of some market studies and competition awareness efforts.

6. On the other hand, in some sectors, economic agents are subject to Competition Law and also to sectoral regulation. In El Salvador's case some sectoral regulation contain provisions that need an action of the SC to effectively enforce the regulation; reason why the interaction with regulator and the SC becomes vital to enforce the sectoral regulation provisions regarding to the promotion of competition, as the Electricity and Telecommunications Law (*Ley General de Electricidad*), the Civil Aviation Law (*Ley Orgánica de Aviación Civil*) and the Maritime Ports Law (*Ley Marítimo Portuaria*). Nonetheless, the SC has exclusive legal attributions for enforcing the Competition Law in all economic sectors, regulated or not and with regards to merger authorizations the SC decision is binding.

7. Naturally, well-developed trust ties between agencies are beneficial to foster more favorable scenarios for regulators to become aware of competition policy concerns. Since the SC started operations (January 1<sup>st</sup>, 2006) interagency relations have been a priority, nurturing professional relation among its institution that enable confidence in the other party's technical quality and enable closer cooperation through bilateral agreements.

8. From an agency effectiveness perspective, the SC has embraced opportunities to improve its cooperation and collaboration with other public entities, including regulators, by signing agreements as a more expedite mechanism for the exchange of non-confidential information, organizing capacity building activities and other competition advocacy initiatives in matters of interest of each party according with the agencies' mission.

9. To perform intra-government advocacy initiatives, the SC is adept to familiarize with the experiences in other jurisdictions by joining webinars and opportunities to exchange experiences enabling the identification of suitable approaches for competition advocacy in different policy process. In 2006, the SC hosted the Latin American and Caribbean Competition Forum, which included a roundtable discussion about the relationship between competition authorities and sectoral regulators.

10. The SC intra-government advocacy efforts and its interaction with sectoral regulators were assessed in the 2008 OECD Peer Review on Competition Law and Policy and more recently in the second OECD Peer Review (2020). The latest Peer Review sustains the SC has actively used its intra-governmental advocacy role by carrying out market monitoring, opinions and market studies that nurture public policy recommendations in different economic sectors and it noticed that recommendations that have been implemented have led to pro-competitive reforms and to an increased coordination between the Superintendency and relevant regulators.

The collaboration of regulatory entities is essential to support the technical analysis carried out by the Superintendency in different acts. Although the concrete collaboration varies, its aimed at gathering information from its primary sources and working to promote procompetitive public policies. The SC is also adept to grasp a great understanding about regulated sectors through proactively approaching relevant public entities and experts to deepen the knowledge of the subject matter.

11. The SC interacts more frequently with the following regulators: the General Superintendence of Electricity and Telecommunications (SIGET), the Superintendence of the Financial System (SSF), the Central Reserve Bank (BCR), the Civil Aviation Authority (AAC). Other cooperation relations occur within interagency feedback exercises. For instance, regulators and public institutions, in general, ask the SC for its opinion from a competition perspective about regulatory reforms, design and implementation of public

procurement processes, among other aspects where they require support or advice. The SC has also proactively raised awareness about competition among most public entities is vital for those actions regarding promotion of competition. in the country and executed two.

12. The SC has developed internal criteria and tools that allows it to be efficient when identifying relevant sectors to conduct market studies. When developing these studies, technical reports and opinions the SC requests information gathered by the regulators with regards to the economic agents participating in the markets, their regulatory decisions and the regulations that guide the performance of market participants (for instance, the criteria and procedures to grant operating licenses or authorizations, order the suspension or cease of activities, fix rates, granting incentives and subsidies, among others). For this activity, qualitative and quantitative information is obtained from interviews, documentary sources and sectoral statistics, as available. The information is used to evaluate competition conditions in the markets under study and to identify public policy recommendations that promote more effective rivalry.

13. Before concluding a market study, the SC shares its preliminary results with competent agencies, including regulators, to receive its feedback with regards to market aspects and the proposed recommendations to be considered by the SC Board of Directors.

14. Besides designing effective procompetitive policy recommendations, the SC has also reinforced its tools to permanently monitor its implementation with the creation of a team to follow-up the applicability of said recommendations. The SC follow-up to procompetitive public policy recommendations entails carrying out interviews or meetings with public institutions and documentary information requests to favor the implementation of said measures.

15. Even though recommendations and opinions are non-binding the SC has been effective in promoting procompetitive regulatory reforms pursuant market studies findings as well as intra-governmental projects and internationally recommended best practices to foster competition in public procurement through training, intergovernmental projects, and publications that assist public procurement officials to internalize the value of competition as well as the usual red flags for collusive tendering.

16. The SC success in interacting with sectoral regulators can be illustrated through three examples:

- **In the wholesale electricity market (WEM)**, the results of a 2007 market study on competition conditions allowed the SC to identify measures to favor competition jointly with the electricity market regulator (SIGET). Afterwards, the regulator modified the methodology for its operations and the applicable regulation to replicate the behavior of a competitive WEM, favoring lower prices. These changes were applied in August 2011. In 2017, the SC assessed the competition conditions and findings confirmed the reform to the norms and its application achieved the intended objective, decreasing the market power of incumbents and incentivizing more dynamism among market participants.
- **In telecommunications**, in 2019 the SC issued an opinion in response to a request made by the regulator (SIGET) about the possibility of assigning, through a contest, a surplus 20 MHz in the PCS band (located between 1,850 –1,860 MHz and 1,930 –1,940 MHz) to telecommunications operators that did not have spectrum in said frequency. The SC opinion recommended alternatives for designing terms of reference for the concession of spectrum. In particular, the SC suggested the allocation of the surplus of the PCS band to promote a more equitable distribution of spectrum resources, level its distribution among market participants and, in this

way, influence the possible increase of competitive pressures in the market. This recommendation was effectively implemented by the sectoral regulator, which allowed strengthening rivalry in the telecommunications markets.

- Regarding **passenger air transport**, the SC has issued different opinions on regulations. The SC has promoted the effective application of the open skies policy in the government's five-year plan, confirming the presence of the elements that promote access of new operators to the market when they involve air transport services that include El Salvador and third nations' territory as part of the flight routes.