

Unclassified

English - Or. English

4 November 2022

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from Colombia**

**- Session III -**

1-2 December 2022

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

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Please contact Ms. Lynn Robertson [E-mail: [Lynn.Robertson@oecd.org](mailto:Lynn.Robertson@oecd.org)], if you have any questions regarding this document.

**JT03506757**

## *Interactions between Competition Authorities and Sector Regulators*

### *– Contribution from Colombia –*

#### **1. Introduction**

1. In Colombia, the competition advocacy is a mechanism by which regulatory authorities and the Superintendence of Industry and Commerce<sup>1</sup> maintain a permanent dialogue about the effects of state intervention on free competition in the markets. This dialogue takes place, par excellence, within the framework of the competition advocacy's concepts issued for regulatory proposals. However, this dialogue also takes place through the economic studies that the Competition Authority prepares to provide guidelines for making regulatory decisions that protect the development of markets in conditions that favour free economic competition.

2. The preventive nature that features the competition advocacy role allows the consolidation of cooperative interaction between the Superintendence of Industry and Commerce and the regulatory authorities that generate pro-competitive effects in the markets. Indeed, the preventive approach that the Superintendence of Industry and Commerce inserts in the regulatory development process is fundamental to avoid implementing regulatory measures that unduly restrict market competition. In this context, the studies conducted by the Competition Authority play a decisive role in the stage of regulatory design. Furthermore, the monitoring and observance of the guidelines in these studies facilitate the regulatory authority in the construction of regulations that promote the competitive development of markets (OECD, 2013).

3. Although the Competition Authority can interact with the regulatory authority before regulation is issued, the studies strengthen this interaction in a phase before the regulation issuance. Indeed, the recommended guidelines in the economic studies prepared by the Superintendence of Industry and Commerce become a relevant element, as they allow the incorporation of a free economic competition standpoint from the beginning of such process. Studies provide the regulatory authority with the elements so that in the development of regulatory proposals, not only the fulfilment of the purpose of the measure is conducted, but also the protection of free competition in the markets subject to intervention becomes the guiding principle.

4. In this paper, the Superintendence of Industry and Commerce brings up two studies. The first deals with the Regulatory Experimentation Safe Space (hereafter, "**RESS**"), in which the Competition Authority proposes guidelines for the design of RESSs that guarantee their regulatory objective fulfilment in a context that favours free economic competition. The second study deals with Technical Regulation, in which the Competition Authority offers a theoretical framework to guide the regulator in designing technical regulations in different sectors. In this sense, the purpose of this paper is to show how the interactions between the Competition Authority and regulatory authorities, through these

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1 According to Article 6 of Law 1340 of 2009, the Superintendence of Industry and Commerce is the unique competent authority in Colombia, which is why it is called the "Competition Authority".

studies, lead to better regulatory decision-making insofar as they provide to the regulator with guidelines that guarantee pro-competitive interventions without affecting the objectives that those authorities seek through the regulatory instruments.

5. Therefore, this contribution is divided into four sections. The first section refers to the relationship between regulatory amendment and Competition Policy under the interaction between the Competition Authority and the regulatory authorities; the second and third sections will illustrate such interaction based on the economic study on RESS and the study on Technical Regulations, respectively. Finally, the last section provides the conclusions of the analysis.

## 2. The dialogue between competition authority and regulatory authorities as a bridge for regulatory reform

6. In accordance with the Organisation for Economic Co-operation and Development (hereafter "**OECD**"), regulatory policy effectiveness requires: **(i)** its adoption at the highest political level, **(ii)** the objectiveness of its regulatory quality standards<sup>2</sup>, and **(iii)** an ongoing regulatory management capacity<sup>3</sup> (OECD, 2013). These elements allow the improvement of regulatory quality and require tools whose use has been growing in OECD countries (OECD, 2019)<sup>4</sup>.

7. In Colombia, CONPES Document 3816 of 2014 laid the foundations for regulatory policy improvement. In this context, to ensure the regulatory policy effectiveness, the legal framework established the following purposes: **(i)** to command the enforceability of the RIA (Regulatory Impact Analysis) for high-impact regulatory purposes and to build evidence-based regulations that guarantee legal certainty; **(ii)** to strengthen the Single Regulatory Information System (hereafter "**SUIN Juriscol**" abbreviated in Spanish)<sup>5</sup> through the regulatory inventory management, and both transaction costs and regulatory burden reduction; and **(iii)** improve participation in consultation processes through the mandatory use of the Single Public Consultation System (hereafter "**SUCOP**" abbreviated in Spanish) (DAFP, 2019; Padilla, Montaño, Villarraga and Vargas, 2022).

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2 This refers to explicit and measurable quality. The feature 'explicit' concerns recognising that a regulatory authority can use different instruments to solve a public policy issue, only if the identified problem commands public interest (OECD, 2013).

3 The three elements mentioned above allow, among other things, to apply international practices for reviewing the regulatory inventory, which includes: (i) involving regulatory authorities in sustaining the intervention, (ii) measuring economic benefits, (iii) communicating to the general public, (iv) reviewing periodically as a preventive tool for regulatory inventory, among others (OECD, 2013).

4 Such tools include regulatory impact assessments (RIA), risk management, and improved consultation processes (OECD, 2019).

5 According to the official website, "(...) it allows you to find, quickly and free of charge, general and abstract norms such as the constitutions of 1886 and 1991, legislative acts, laws, decrees, presidential directives, resolutions, circulars, among others, from 1864 onwards, with their respective normative and jurisprudential effects. It is also possible to consult jurisprudence on the control of constitutionality and legality issued by the former Constitutional Chamber of the Supreme Court of Justice from 1910 to 1991, by the Council of State and by the Constitutional Court (...)". For further reference, please refer to the official website available at: <https://www.suin-juriscol.gov.co/index.html>.

8. Hence, the regulatory reform policy relies on guiding principles established by the OECD (2008)<sup>6</sup>, which, harmonised for the Colombian case<sup>7</sup>, are represented through the Regulatory Governance Cycle (hereafter "**RGC**") (DAFP, 2019). The RGC contains six steps: (i) *planning*, through the regulatory agenda; (ii) *design*, which requires the use of the RIA; (iii) *engagement*, through public consultation; (iv) *quality review*, based on previous concepts; (v) *publication* in the Official Journal and the SUIN Juriscol; and (vi) *evaluation*, which is done ex-post and may draw on regulatory simplification (DAFP, 2019). In line with the above, a regulatory instrument can comply with the OECD (2013) fundamental guideline: efficiency and competition promotion.

9. Besides that, competition policy is one of the aspects that effective regulation shall observe. To this end, within the framework of competition advocacy, the Competition Authority issues an ex-ante opinion on draft regulations (regulatory proposals) that may affect free competition in the markets<sup>8</sup>. All this through its Competition Advocacy Group (hereafter "**CAG**"). However, the GAC has not only utilised ex-ante opinions that include ex-ante pronouncements on draft regulations but also has used other instruments. For example, to promote interaction scenarios with the regulatory authorities, the GAC has deployed different tools, such as studies, which aim at strengthening regulatory quality.

10. For that matter, the studies allow the establishment of synergies between the Competition Authority and regulatory authorities. This is because of the regulatory exercise challenges. In addition, these synergies are possible in Colombia due to its regulatory system, which is marked by the possibility of separation of public-powers. In other words, regulatory and supervisory functions (the role of superintendencies) may be made by different entities or, sometimes, concentrated in the same entity (OECD, 2013). Therefore, the separation of the role is an opportunity for the Competition Authority to resort alternative means to warn about actions that may be detrimental to the proper market functioning and the adequate competition dynamics through support tools for the regulatory exercise.

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6 These are " [i] Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation (...), [ii] Asses impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment (...), [iii] Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory (...), [iv] Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy (...), [v] Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests (...), [vi] Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness (...), [vii] Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform" (OECD, 2008).

7 There are ten principles, including (i) effectiveness, (ii) efficiency, (iii) necessity, (iv) legal certainty, (v) transparency and public consultation, and (vi) simplicity and clear language (DAFP, 2019).

8 This is in accordance with Article 7 of Law 1340 of 2009 "Por medio de la cual se dictan normas en materia de protección de la competencia", whose mandate is reinforced through Decree 2897 of 2010 "Por el cual se reglamenta el artículo 7° de la Ley 1340 de 2009".

11. On the other hand, according to OECD (2012), the Superintendence of Industry and Commerce adopts the characteristics of a supervisory body promoting regulatory quality through GAC's studies. The Competition Authority brings up two of these features: the first one relies on the pursuit of regulatory effectiveness, which implies that the supervisory authority can examine the potential of the regulatory instrument. Hence, the first feature is a mechanism that promotes the use of regulatory measures that comply with the need identified by the regulator. The second feature is about how supervisory authority can support the regulatory policy application's systematic improvement (OECD, 2012).

12. In line with the above, regarding the first feature, the Competition Authority has promoted the quality of the regulatory instrument through the development of the "Guide for the preparation of technical-economic studies in the framework of the competition advocacy process"<sup>9</sup> (Superintendence of Industry and Commerce, 2021a). This is because the Competition Authority gives a tool that provides the regulatory authority with a set of recommendations that aim at issuing regulatory proposals: (i) to seek efficiency and (ii) to implement rules following competition policy. On the other hand, regarding the second feature, the Competition Authority has two studies that contribute to the implementation of the regulatory policy. These documents, which will be covered in the following sections, have the particularity of constituting technical references that facilitate the implementation of regulatory proposals based on regulatory experimentation, as well as those regulatory instruments with a technical regulatory nature (technical regulation).

13. Thus, regarding the first feature, the Competition Authority has promoted the quality of the regulatory instrument through the development of the "Guide for the preparation of technical-economic studies in the framework of the competition advocacy process"<sup>[9]</sup> (Superintendence of Industry and Commerce, 2021a). Through this the Competition Authority gives a tool that provides the regulatory authority with a set of recommendations that aim at issuing regulatory proposals: (i) to seek efficiency and (ii) to implement rules following competition policy. On the other hand, regarding the second feature, the Competition Authority has two studies that contribute to the implementation of the regulatory policy. These documents, which will be covered in the following sections, have the particularity of constituting technical references that facilitate the implementation of regulatory proposals based on regulatory experimentation, as well as those regulatory instruments with a technical regulatory nature (technical regulation).

14. Finally, regulatory reform and competition policy have a link. This link is represented through the distinct roles of the Superintendence of Industry and Commerce, which are transversal in the RCC. In this regard, competition advocacy has been highlighted as a mechanism to prevent market damage and reduce the incidence of risks associated with free economic competition. Regarding competition advocacy, the Competition Authority, through CAG, offers an interactive environment between it and regulatory authorities. In the following sections, the Superintendence of Industry and Commerce exemplifies the use of studies as an opportunity for interaction.

### 3. Regulatory experimentation

15. Regulation has a call of permanence and rigidity that prevents it from being adjusted and updated as economic settings change. Indeed, regulatory authorities face the permanent challenge of responding assertively and promptly to rapidly varying economic

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<sup>9</sup> "Guía para la elaboración de los estudios técnico-económicos en el marco del trámite de abogacía de la competencia" in Spanish.

dynamics. This is because fluctuating behaviour may involve new modalities of exchange or interaction between agents and new products and services that do not find space within the current regulation. Thus, Regulatory Experimentation Spaces emerge as instruments that, while allowing regulatory authorities to assess the relevance and impact of their intervention, promote market developments mainly characterised by highly innovating processes, products, or services.

16. These spaces for regulatory experimentation are known as regulatory sandboxes. They are a structured scheme of regulatory relaxation or exemption that allows certain firms to test innovative products or services with few regulatory requirements. The regulatory sandboxes have emerged particularly in sectors such as finance, health, transport, legal services, aviation, and energy (OECD, 2020). Benefits associated with this kind of RESSs include: **(i)** reducing the time and cost of bringing innovative ideas to market, **(ii)** reducing regulatory uncertainty, and **(iii)** testing products and services that have the potential to enter the market (OECD, 2019).

17. Related to the above, the Competition Authority has highlighted the use of experimentation spaces in Colombia, with which it associates a broad potential to boost innovation in different economic sectors. Most notably, RESSs enable the development of new products and services that, due to their characteristics, could not enter a market without the requirement's relaxation and elimination that regulation makes (Superintendence of Industry and Commerce, 2020b). Additionally, according to the OECD, various authorities are using "Sandboxes" worldwide because they have proven to be an effective development in which companies can test innovative ideas in a controlled environment (2019). The Colombian regulatory landscape is no different. In recent years, the government has promoted regulatory experimentation initiatives within the country, both in the financial sector<sup>10</sup> and in other sectors of the economy<sup>11</sup>. Colombia is the first country to promote a RESS in communications services (CRC, 2020).

18. In December 2021, the CAG published an economic study entitled "Recommendations for the Design of Regulatory Experimentation Safe Spaces to Guarantee Free Economic Competition in Markets". The objective of this study was to analyse the relationship between free economic competition, as an economic situation capable of generating consumer benefits and bringing economic efficiency to the market, and RESSs (Superintendence of Industry and Commerce, 2021b). As stated in the aforementioned objective, the Superintendence of Industry and Commerce recognises a relationship between free economic competition and RESSs that deserves to be addressed in depth by the Competition Authority to provide tools to the regulator to design spaces for regulatory experimentation that protect the principles of free economic competition.

19. Accordingly, and based on the Competition Authority's position, this study proposes a guideline on which it is desirable to frame the RESSs development to ensure free economic competition in the markets under experimentation. In accordance with the Competition Authority, this guideline consists of three phases, in which a vision of free competition in line with the market context and the objectives to be achieved with the regulatory experiment is essential.

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10 In the financial sector, the Arenera, a mechanism adopted by the Financial Superintendence of Colombia (FSC) for testing technological innovations applied to financial services, the stock market, or insurance, in a controlled and supervised space, is currently operating (FSC, 2020).

11 In the communications sector, the Communications Regulatory Commission has been tasked with structuring a "regulatory sandbox" for innovation in communications services.

20. The first phase concerns the definition of the objective of the experimentation. This definition shall follow the principles of the promotion of innovation and competition in the market. The second phase corresponds to the design of the experiment, which must guarantee, among others: **(i)** a participants' choice that ensures representativeness of the economic agents that will participate in the future market; **(ii)** a period that allows for the relevant tests; and **(iii)** adequate governance that guarantees compliance with the previously defined rules. Finally, the third phase, associated with the implementation of the RESS, refers to the correct functionality of the experiment and, consequently, it should include the performance evaluation of the products or services that participated in the experimentation following the indicators designed for this purpose (Superintendence of Industry and Commerce, 2021b).

21. The Competition Authority considers that the observance of free competition generates, among others, two significant benefits in the design and development stages of the experiment. First, it ensures that economic agents see entering a RESS as a new opportunity to participate in the market. Secondly, it allows interaction between economic agents who will have the incentive to captivate a possibly new market due to the advantages granted by the experimentation space. The latter translates into benefits for consumers, who will benefit from the innovation of the products and services offered there because consumers know they are in a space for experimentation (Superintendence of Industry and Commerce, 2021b).

22. Likewise, the Competition Authority considers that regulatory proposals can achieve their public policy objectives effectively and efficiently through regulatory projects that emerge as a product of a successful RESS that includes the promotion of economic competition during all its phases. However, the Competition Authority notes that at the stage of finalising regulatory experimentation, it is essential to ensure, in turn, free economic competition. Moreover, the design stage of new regulation must ensure the proper functioning of products or services inside and outside the experiment without limiting or affecting competitive dynamics (Superintendence of Industry and Commerce, 2021b).

23. Although the Superintendence of Industry and Commerce published the RESS study in December 2021, the guidelines are consistent with the analyses and recommendations that the Competition Authority has issued in various competition advocacy concepts on regulatory proposals related to regulatory experimentation spaces in different sectors. To illustrate, in March 2020, the Superintendence of Industry and Commerce issued a competition advocacy concept on a draft resolution whose purpose was to adopt a regulatory sandbox. Based on this experiment, the Communications Regulatory Commission (hereafter "**CRC**") would authorise providers to assess products, services and solutions under a flexible regulatory framework or through a set of regulatory exemptions for a limited time and geography.

24. On this occasion, the Superintendence of Industry and Commerce stressed that in selecting initiatives to enter the experimentation, it was essential that the entry criteria used by the regulator and the duration of the experimentation phase be objective in order to promote a competitive environment. In this context, the Superintendency recommended that the regulator, among other aspects: **(i)** carry out an objective selection process, indicating in a transparent manner which criteria were mandatory for the evaluation of RESS admission, and **(ii)** provide feedback to those who were not selected, with due explanation of the reasons for rejection (Superintendence of Industry and Commerce, 2020).

25. Subsequently, the Superintendence of Industry and Commerce issued a competition advocacy concept on a Financial Superintendence of Colombia (hereinafter "**FSC**")

Circular draft in June 2021. This draft sought to provide instructions related to the Controlled Testing Space (hereinafter, "CTS") for financial innovation activities. In this concept, the Competition Authority recommended to the FSC, among others, the following: (i) to define the entry criteria to the proposed RESS through the use of positive and negative indicators that allow for clear evidence of the selection criteria for participants; and (ii) to adopt the necessary tools to prevent RESS participants from disclosing sensitive commercial information (Superintendence of Industry and Commerce, 2021d).

26. Then, a draft decree of the Ministry of Commerce, Industry and Tourism (hereafter "MinCIT") was issued in November 2021, whose objective was to establish a complementary regulation so that National Government entities could create exploratory regulatory innovative business models-oriented mechanisms in regulated industries. On this occasion, the Superintendence of Industry and Commerce reminded the MinCIT of the need for regulatory entities to guarantee economic concurrence and free competition within the RESS, as well as the required technical capacity and human talent of each interested party to participate in the experimentation space (Superintendence of Industry and Commerce, 2021e).

27. Finally, after the publication of the RESS study (December 2021), the Competition Authority issued a concept in July 2022 on a draft resolution establishing the general conditions and procedure for obtaining the authorisation of proposals in the framework of the regulatory sandbox of the MinCIT and the sectoral regulatory sandbox<sup>12</sup>. In this concept, the Superintendence of Industry and Commerce referred on several occasions to the content of the economic study on RESS and, among other aspects, recommended the regulatory authority incorporate the figure of competition advocacy concerning the project or projects of acts of authorisation to enter the MinTIC Sandbox or Sectoral Regulatory Sandbox, respectively (Superintendence of Industry and Commerce, 2022f).

28. As can be seen, the economic study prepared by this Superintendence responds to a context in which RESSs are beginning to play a more prominent role in Colombia. In this sense, this study publication comes at an opportune moment to strengthen regulatory capacities in the design of RESSs that favour both innovation and the competitive development of markets. Consequently, this study evidences the Competition Authority's prospective approach which, recognising the potential of the RESSs to boost innovation, the creation of new markets, or their transformation, is concerned with guiding the regulatory authority in the creation of experimentation spaces that promote pro-competitive dynamics in the markets.

29. Therefore, this economic study is one of the different ways in which the Competition Authority interacts with regulatory authorities. It is an interaction that takes place before regulatory design, with a dual purpose: first, to encourage pro-competitive practices during the experiment and, second, to promote future decision-making that foments free economic competition. To this extent, besides promoting the RESSs creation as regulatory instruments conducive to fostering innovation in markets, it guides the regulatory authority to ensure that RESSs' design and implementation nurture free economic competition. Thus, relying on the aforementioned study, the Superintendence of Industry and Commerce aims to introduce a leading role for free competition throughout the regulatory exercise, which means the introduction of a competition perspective in the pre-experiment, experiment, and post-experiment stages.

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12 This is the term adopted by the MinCIT to refer to the space for regulatory experimentation in the communications sector.



#### 4. On technical regulations

30. Technical regulations constitute a mechanism through which the regulatory authority conducts market intervention within those markets where the freedom to offer or provide services is required to be restricted. Since the definition of technical regulations, it is possible to point out the feature aforesaid. Technical regulations are defined as those documents, of mandatory application, in which the features of a product or the processes and production methods related to them are established. Such documents may contain provisions referring to symbols, technical features of the product, packaging, marking, or labelling, and terminology, among others, which are applicable to the product or the production methods. This is in accordance with Numeral 85 of Article 2.2.1.1.7.2.1. of Decree 1074 of 2015.

31. Although technical regulations establish limitations on market suppliers' freedom regarding the features of their products or services, there are mechanisms through which the regulatory authority can reduce the impact of technical regulations regarding the cost structure agents and the free competition in markets. Therefore, under this scenario it is a permanent and fluid interaction between the regulatory authorities and the Competition Authority in order to reduce the anti-competitive effects of the regulatory authorities' intervention and, if possible, develop favourable environments for free economic competition in the intervened markets.

32. However, the Superintendence of Industry and Commerce has observed an increment in the issuance of technical regulations. For better reference, between 2021 and 2022, at least twenty (20) opinions have been issued regarding regulatory initiatives associated with technical regulations<sup>13</sup>. In this regard, the Competition Authority has identified that some aspects included within the draft of administrative rules associated with technical regulations are worrisome from the point of view of free economic competition. This is even though the current regulations contain a set of guidelines technical regulations must comply with. This, with the purpose of avoiding that technical regulations become an entry barrier to the regulated markets, among other consequences that have been warned by the Competition Authority<sup>14</sup>.

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13 Opinions identified under serials 18-265334, 18-045842, 18-101764, 18-118426, 18-207672, 18-62498, 21-114877, 21-168457, 21-308063, 21-347433, 21-401429, 21-404668, 21-460681, 21-513400, 21-92948, 22-177581, 22-201220, 22-201645, 22-74487 y 22-295810 were issued by the Superintendence of Industry and Commerce (2018a, 2018b, 2018c, 2018d, 2018e, 2018f, 2021c, 2021g, 2021h, 2021i, 2021j, 2021k, 2021l, 2021m, 2022b, 2022c, 2022d, 2022e, y 2022f)

14 As a result of the opinions issued by the Superintendence of Industry and Commerce, the authority has observed how the regulatory authority has embraced the recommendations issued. This means that the regulatory authority has made amendments to the regulatory projects that were sent to the Superintendence of Industry and Commerce. This illustrates the dynamic interaction between the regulatory authority and the Competition Authority. Among the highlighted examples is the opinion identified under the serial number 21-513400 (Superintendence of Industry and Commerce, 2021l) pursuant to the project of resolution 202230400585 dated as of August 1st, 2022 issued by the Ministry of Transportation "Whereby the technical regulation applicable to braking systems and their components for use in motor vehicles, trailers, semi-trailers, their installation processes, complementary systems and other provisions are issued"

33. According to the above, regarding the technical regulations with adverse effects on free economic competition, the Superintendence of Industry and Commerce has issued a series of recommendations that can be summarised as follows:

- Importance of taking different international standards with respect to the rules adopted in the technical regulation.
- Importance of having enough technical grounds to support the adoption of the technical regulation.
- Importance of including transition periods for market agents to adjust to the new technical regulation. (Superintendence of Industry and Commerce 2022c)

34. Under this scenario, the Superintendence of Industry and Commerce is preparing a study entitled "Recommendations for the promotion of free economic competition in technical regulation in Colombia", which is intended to be a teaching tool for regulators in the exercise of their functions. The study is a response from the Superintendence of Industry and Commerce to the numerous recommendations it has made in the exercise of its competition advocacy role with respect to technical regulation projects. It is hoped that regulators will take special attention to the need to guarantee free economic competition in the design process of technical regulations and not exclusively on the procedural or formal aspects that must be followed for their issuance.

35. The study begins with the presentation of the state of the art in regard to technical regulations, including a comparative view of what a technical regulation means and its teleology. It also presents the institutional framework within which technical regulations are designed, issued, and enforceable. The study also shows the direct link between technical regulations and free competition, framing this relationship in the Agreement on Technical Barriers to Trade, which refers to the so-called technical and non-technical barriers to trade, placing technical regulations in the first category.

36. It is on these foundations that the study reinforces good practices in technical regulation that allow the regulator to reduce the risks of market distortion that may result from regulation, i.e., to reduce the possibility of an intervention materializing in a regulatory failure (de la Torre, 2014). In addition, this complementary tool to the opinions consolidates in a single body the desirable elements in a regulation of this sort, from which it is possible to comply with the regulatory objective and guarantee the protection of free economic competition.

37. As a result of the recommendations made by the Superintendence of Industry and Commerce, the proposed educational activity, and the applicable standards on technical regulations (regarding the design and issuance of this type of regulatory instrument), a series of fundamentals and best practices have been consolidated that should be considered in the process of issuing and monitoring technical regulations, and which have been incorporated into local legislation through Resolution 3742 of 2001 of the Superintendence

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In the aforementioned opinion, the Superintendence of Industry and Commerce recommended to the regulator - in general terms - the need to adequately support the measures adopted in the project. The above is in consonance with the requirements established in the regulatory framework to avoid the creation of distortions by the regulator at the time of adopting the regulatory instruments for the considered purposes. Within the recitals of the referred resolution, the regulator embraces such a recommendation, which resulted in the corresponding amendments to the regulatory project and its supporting documents.

of Industry and Commerce<sup>15</sup>. Specifically, Article 2 et seq. of the aforementioned regulation establishes that the technical regulations:

- Must not grant less favourable treatment to products originating from a member state of the World Trade Organization.
- Must specifically determine the addressees of the technical regulation. Their interpretation must be restrictive.
- Must be based on existing international standards or whose issuance is imminent or on Colombian technical standards.
- Must guarantee that it is technologically feasible and does not generate significant restrictions to trade or competition.
- Must be issued in compliance with the formally established procedure

38. In turn, the study prepared by the Superintendence of Industry and Commerce, referred to in previous paragraphs, presents a series of cross-cutting recommendations to all regulatory authorities, which include the regulatory precepts, as well as the experience derived from the interaction between the regulatory authority and the Competition Authority. This provides a broad context to the applicable legal framework, allowing for a pro-competitive regulatory process. Among the recommendations included in the study are the following:

- The importance of technically and economically justifying the exceptions contained in the proposed technical regulation, to avoid unjustified differential treatment.
- The need to choose the conformity assessment procedures based on the analysis of the level of risk, leaving a record in the supporting documentation of the technical and economic reasons considered for the risk analysis and how this relates to the chosen procedure.
- Adopt international standards in the technical regulation process, indicating, if applicable, in what sense the internal technical regulation should be adjusted in harmony with the international one for its adequate implementation in the Colombian context. For the purposes of competition advocacy, it is essential that the regulatory authority gives an account of the reasons why such a standard or its referencing is appropriate for the respective market.
- Define transition periods based on a market study to ensure that agents can adjust their production process to the new requirements of the regulation within a reasonable time period.

39. Thus, there is a close and interactive relationship between the regulatory authority and the Superintendence of Industry and Commerce through the exercise of the competition advocacy function, the purpose of which is to ensure a healthy balance between regulatory purposes and free economic competition. In this way, it seeks to ensure that intervention is necessary to correct market failures identified by the regulator authority.

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15 “Por la cual se señalan criterios y condiciones que deben cumplirse para la expedición de Reglamentos Técnicos”. Such regulation defines the main criteria which shall be followed before the issuance of any technical regulations.

## 5. Conclusion

40. Regulatory reform is a strategy that aims the improvement of quality in regulatory instruments. This is possible because a set of tools is compiled and recommended by entities such as the OECD, besides these tools were obtained from the experiences in the regulatory exercise. The OECD's recommendations seek, among other things, to ensure that regulation produces the desired effects without being detrimental to efficiency and competition. Therefore, OECD established the guiding principles adopted by the OECD's members in pursuit of their regulatory interventions were aligned with the policy of regulatory improvement.

41. In this regard, Colombia has developed regulatory reform initiatives, such as the incorporation of the Superintendence of Industry and Commerce's competition advocacy within the RGC. The previous initiative allows the Competition Authority to establish a dialogue with regulatory authorities through competition advocacy ex-ante opinions and economics studies. Concerning the latter, the Competition Authority address them as guidelines for the regulatory authorities so that regulatory proposals do not generate distortions in free competition.

42. Although each of the studies arises in different contexts, the purpose of the Superintendence of Industry and Commerce is the same: offer guidelines to the regulator to ensure that its interventions favour the development and consolidation of markets under conditions of free economic competition. Bearing this in mind, the Competition Authority presented two study documents: the first one is associated with the RESS, whose content comes from an incipient regulatory experimentation environment. The second study involves technical regulation, and the SIC has developed it from a recurrent intervention environment.

43. Consequently, the Superintendence of Industry and Commerce's pedagogical tools have resulted in a dynamic dialogue with regulatory authorities. These recurrent interactions are possible within the framework of competition advocacy because the Competition Authority has a toolkit at its disposal to build up the risk prevention approach: (i) the competition advocacy's concepts and (ii) the economic studies. In other words, the SIC competition-advocacy- toolkit enables a cooperative interaction between the Competition Authority and the regulatory authorities. Their results benefit the market because regulatory proposals resulting from the aforementioned interactions contain competition problems' mitigation provisions. In this way, the Competition Authority's recommendations and guidelines seek to have an effective regulation that reduces the possibility of regulatory failures and competition concerns.

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