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Latin American and Caribbean Competition Forum

Session III: Ex officio Investigations

- Contribution from Colombia -

9-10 October 2024

The attached document from Colombia is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 9-10 October 2024 in Santo Domingo, Dominican Republic.

Mr. Marcelo Guimarães, Competition Expert - Marcelo.Guimaraes@oecd.org

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Session III: Ex officio investigations

– Contribution from Colombia –

1. The Superintendence of Industry and Commerce (SIC), in its role as the National Competition Protection Authority of Colombia, serves to promote and protect free economic competition in the national markets by implementing preventive (*ex ante*) and corrective (*ex post*) functions.

2. Through its preventive functions, SIC focuses on implementing measures to foster a culture of compliance with free economic competition in Colombia. These measures aim to raise awareness of the importance and benefits of complying with free economic competition policies. The main preventive functions of SIC are competition advocacy, monitoring business integrations and the policy of good business practices.

3. SIC carries out its corrective functions when it detects that behaviour that restricts free economic competition in the market may have taken place. Thus, the Colombian competition law (Act 1340 of 2009) empowers SIC to privately carry out administrative investigations, impose fines and take other administrative decisions for infringement of the competition protection requirements.

4. In accordance with the procedure for determining whether there is an infringement of the competition rules (Article 25, Decree 2153 of 1992), there are two ways to initiate the preliminary proceedings to determine the need for investigation: *ex officio* or at the request of a third party (complaint or report). They may also be initiated under the Collaboration Benefit Programme (leniency or informant programme) (Article 14, Act 1340 of 2009).

5. The *ex officio* operations carried out by SIC are a key tool for detecting behaviour that infringes free competition in Colombia. This type of operation is important due to the change in the way in which actors are behaving, and the difficulty in detecting this behaviour using traditional tools. They are also essential for detecting anti-competitive behaviour in remote regions where access to information is difficult or where the authorities have not previously reached.

6. SIC uses various tools to initiate official preliminary proceedings. These tools and their results so far are as follows:

7. **Publicly available information:** SIC uses specialised press reviews and sectoral reports from other authorities, and monitors government contracting processes in the public system established for this purpose (SECOP in Spanish), among other sources of information. In particular, reviewing news in the media has proven to be a useful tool for detecting anti-competitive practices. In this regard, it is worth noting two *ex officio* investigations that SIC recently opened based on this type of information.

- On 26 April 2024, SIC opened an investigation against three companies in the hydrocarbon sector for alleged tailor-made specifications in selection processes for over COP 417 billion (Colombian pesos). During this operation, it investigate the potential commission of anti-competitive behaviour in at least six selection processes for the provision of helicopter transport services opened between 2011

and 2023.¹ This operation was opened ex officio based on information published in the newspaper Portafolio, which detailed potential irregularities in a state contracting process.

- On 25 June 2024, SIC opened an investigation into potential anti-competitive behaviour in at least six selection processes opened by Hospital Militar Central in Colombia between 2015 and 2022. The processes sought to provide medical services, supplies and materials. This operation was opened ex officio based on a series of journalistic notes published by W Radio Colombia warning of potential irregularities in these contracting processes.²

1.1. **Co-operation with other authorities:** SIC is working with the regulatory bodies, and oversight and control authorities from the country's different economic sectors. To this end, it has signed specific collaboration agreements with some of these bodies, such as the Attorney General's Office, the National Infrastructure Agency, the Communications Regulation Commission and the National Health Superintendence, among others. The purpose of these agreements and working groups is to establish continuous and harmonious communication channels for transferring knowledge and information to facilitate, in the case of SIC, the detection of anti-competitive behaviour.

8. In this regard, it is worth highlighting two investigations that were recently opened ex officio thanks to co-operation with other authorities.

- On 24 June 2024, SIC opened an administrative investigation into potential anti-competitive behaviour in at least four contracting processes. These processes sought to provide services to support logistical, technical and operational activities to help implement various state bodies' communication and dissemination strategies. This operation was initiated based on a document sent by the National Health Superintendence informing SIC of observations made as part of its selection process.³
- On 24 June 2024, SIC opened an investigation into potential unfair pricing behaviour of the drug Remodulin, used primarily to treat pulmonary arterial hypertension.⁴ Although this process was initiated by a report made by a stakeholder in this market, the administrative investigation was made possible as a result of the work carried out within the framework of the Integrated Monitoring, Inspection and Surveillance System for the Health Sector (Article 2, Act 1966 of 2019). This system provides for specialised and co-ordinated action between SIC, the Financial Superintendence, the Superintendence of Companies and the National Health Superintendence.

1.2. **Data analytics tools:** Since 2022, SIC has developed data analytics tools. By systematising the analysis and processing of information to validate large volumes of data

¹ SIC. Resolution 20884 of 26 April 2014. Available at:

<https://www.sic.gov.co/sites/default/files/Apertura%20Helico%CC%81pteros%20260424.%20Versio%CC%81n%20pu%CC%81blica%20firmada%201.pdf>

² SIC. Resolution No. 32498 of 25 June 2024. Available at: <https://www.sic.gov.co/sites/default/files/documentos/062024/20240624%20Resolucio%CC%81n%20apertura%20HM%20pu%CC%81blica.pdf>

³ SIC. Resolution No. 32418 of 24 June 2024. Available at: <https://www.sic.gov.co/sites/default/files/Resoluci%C3%B3n%20apertura%20SS%20versi%C3%B3n%20p%C3%BAblica%20firmada.pdf>

⁴ SIC. Resolution No. 32373 of 24 June 2024. Available at: [https://www.sic.gov.co/sites/default/files/documentos/062024/Resoluci%C3%B3n%20No.%2032373%20de%202024%20\(Apertura\)%20VP.pdf](https://www.sic.gov.co/sites/default/files/documentos/062024/Resoluci%C3%B3n%20No.%2032373%20de%202024%20(Apertura)%20VP.pdf)

produced by consumers or users, it seeks to streamline the implementation of monitoring, inspection, and surveillance functions.

- **Sherlock:** This tool supports data analytics through monitoring public procurement processes, in order to generate detection alerts for alleged anti-competitive practices in public procurement processes. Sherlock collects data from public portals where state bodies publish their selection processes, along with the information supporting public procurement. The Sherlock tool is useful for identifying processes that have not been reported to SIC and that, additionally, have some conditions that make it difficult for the authority to know about these cases. These conditions include, for example, public procurement selection processes in regions where access to information and technology is unstable. It is also possible to identify selection processes in places where people do not usually report anti-competitive practices for security reasons or because they are unaware of competition regulations. Processes can also be identified in remote regions or places where the authorities have not previously reached.
- **Sabueso [Hound]:** Sabueso detects the behaviour of prices in 1) products marketed by large supermarkets and 2) airline tickets offered by stakeholders in the passenger airline market.
- **Inspector:** Alerts the group responsible for competition advocacy about regulatory projects that may be examined from the standpoint of free economic competition.
- **Búho [Owl]:** Supports and facilitates the identification of news published by different digital media that may relate to potential infringements of the system of free economic competition.

1.3. **Market research:** SIC also carries out economic studies to provide an insight into the various markets' characteristics and structures, and the problems they may face in terms of free economic competition. Over the last year, SIC conducted the following market studies:

- Market study of travel agencies selling plane tickets and other tourism services in Colombia during the last four years
- Regulatory projects: national Government, with recommendations for promoting free and fair economic competition in technical regulation in Colombia
- Assessment of the intensity of economic competition in the Colombian market for libranza loans (automatically deducted from payroll)
- Insurance market in Colombia
- Free economic competition policy, financial inclusion and gender equity in Colombia.

9. **Results of preventive functions:** As previously mentioned, the main preventive functions carried out by SIC are competition advocacy,⁵ monitoring of business

⁵ As part of its competition advocacy function, SIC gives an advance view, upon request or officially, on government regulation projects that may have an impact on free competition in the markets (Article 7, Act 1340 of 2009).

integrations⁶ and the policy of good business practices.⁷ While carrying out these functions, SIC may come across information that allows for potential anti-competitive practices in the market to be detected ex officio. These functions allow SIC to have direct contact with the various markets, and the stakeholders and authorities involved in them.

10. For example, on 26 April 2024, SIC officially opened an administrative investigation against Adidas Colombia Ltda. and Fashion Fitness Colombia S.A.S. for allegedly carrying out a business integration operation and violating the duty to report it during pre-evaluation. This investigation was opened after the group responsible for monitoring business integration warned of potential unreported integration between the stakeholders under investigation.⁸

11. The procedure followed by SIC in preliminary proceedings and investigations that are initiated ex officio does not differ from that followed in the event of a complaint by a third party. Thus, when SIC identifies the potential commission of an anti-competitive behaviour, it may initiate a preliminary proceeding to collect the information required to determine whether there are sufficient grounds to open a formal administrative investigation (statement of objections). In order to collect this information, SIC carries out administrative inspection visits at companies, requests information, takes statements and consults public databases, among other actions. In addition, information obtained through the tools described in this document (data analytics, market studies, information provided by other authorities, etc.) is also used.

12. In terms of results, SIC is currently conducting 18 administrative investigations initiated ex officio. Of these, seven are related to anti-competitive practices in public procurement processes. In addition, from a preventive standpoint, SIC has issued a series of guidelines to promote a culture of free competition compliance in Colombia. Among these, it is worth highlighting the practical guide to combat collusive agreements in state contracting processes, the guide to implementing compliance programmes in competition law, and the booklet on good practices in contracting goods and services.⁹

⁶ SIC monitors business integrations in order to avoid them unduly restricting free competition through concentrations of economic power in the market that destabilize the balance of competition (Articles 9, 10 and 11, Act 1340 of 2009).

⁷ Through the Compliance Directorate, SIC carries out dissemination, promotion and training activities related to promoting and building a culture of compliance in terms of free economic competition. It also supports companies to adopt compliance programmes effectively (Article 5, Decree 92 of 2022).

⁸ SIC. Resolution No. 21089 of 26 April 2024. Available at:

<https://www.sic.gov.co/sites/default/files/Resolucio%CC%81n%20de%20Apertura%20ADIDAS.%20Versio%CC%81n%20PUBLICA%20firmada.pdf>

⁹ All SIC guides and publications can be consulted via the following link: https://www.sic.gov.co/centro-de-publicaciones?field_global_topic_tid=8199&field_anos_p_value=All