

Unclassified

English - Or. English

8 October 2025

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

Latin American and Caribbean Competition Forum

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I: Competition
and Productivity**

- Contribution from the Andean Community -

7-8 October 2025

This Note his attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 7-8 October 2025 in Asunción, Paraguay.

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JT03572733

Session I: Competition and Productivity: linkages, measurement and policy implementation

– Contribution from the Andean Community¹ –

Executive summary

1. The 2025 Latin American and Caribbean Competition Forum (LACCF) aims to forge a deeper understanding of the relationships between competition and productivity. The present document seeks to invite discussion on how the Andean Community's (CAN in Spanish) evolving regulations on free competition have been applied or tested in strategic sectors, as well as in scenarios involving seeming distortions in production chains, revealing tensions, scope and limits according to the institutional and economic contexts of each regulatory phase.
2. To address this line of enquiry, this study takes as its point of departure the central premise of the World Bank report,² according to which sound and well-enforced competition policies boost business productivity, so long as they are accompanied by institutions capable of implementing them along with complementary regulatory frameworks.
3. Studying the CAN's experience of regulating free competition side by side with this premise reveals the complexity of and challenges involved in the process. Questions must be asked with regard to each stage of integration. Has the underlying spirit of legislation to protect and promote free competition made a consistent impact on business dynamics and subregional production chains? Has there been a homogeneous and sustained effect, or only a moderate one, subject to institutional and technical variations at each regulatory stage?

¹ This document was drafted by Laura Ardila Alarcón, lawyer in the free competition section of the General Directorate of Commerce (DG-COM in Spanish). The core aim of this study is to contribute to the Session I debate on competition and productivity of the 2025 OECD-IDB Latin American and Caribbean Forum on Competition, to be held from 7 to 9 October in Asunción, Paraguay. This study is based on an analysis of theory and its application to competition regulations and the Andean free competition system, in conjunction with the findings of investigations conducted into anticompetitive practices by the General Secretariat of the Andean Community (SGCAN) in the Andean subregion. Thus, this document is exclusively intended to enrich regional debate. It is not intended to replace or interpret the scope of the existing regulations.

² See the *Overview* report by the World Bank Group (2025, 15). It is important to point out that the General Secretariat of the Andean Community (SGCAN) has a specific body of regulations on free competition, whose interpretation – based on the preamble of the Cartagena Agreement and its substantive provisions – permits the clear identification of the guiding principles that underpin the CAN's activities: economic integration and consumer welfare. In this regard, progress toward a more explicit and better coordinated subregional competition policy requires, first and foremost, the recognition of these essential elements, which are present in the community's founding documents and widely understood by member countries. This recognition provides an opportunity to encourage each state, through the exercise of its competences, to design and formalise its own national competition policies in line with the community's objectives and international best practices.

4. To this end, the present document sets out to review the CAN's evolving regulation of free competition, *which was intended to form an autonomous discipline within the context of the Andean integration process*, revealing a process marked by regulatory phases that have given greater visibility to the principle of competition in a structural sense, albeit in a non-linear manner. Nevertheless, during its early stages, this endeavour was not based on an overarching concept of market efficiency. Instead, and as was foreseeable in a context of institutional development during an integration process, it was defined by the need for corrective measures.

5. This resulted in a symbiotic interaction between market competition, which on the whole sought to facilitate intraregional trade, and economic competition, which in turn was focused on correcting market failures, and thus incentivising productive efficiency. Regulatory measures were drawn up in a context in which it had become normal for economic actors to operate in the CAN subregion, which created a tension between regulatory efforts to impose order on the market and the economic reality of consolidated trade flows, which were laying the foundations for an integrationist approach based on import substitution.

6. As a result, the regulatory lesson learned from an Andean Community perspective is that the incorporation of a competition discipline into its economic architecture did not occur exclusively within a classic structural paradigm concerned with economic efficiency, but also had a corrective logic intended to redress trade distortions.

7. This raises questions concerning the genuine scope of competition rules as a tool capable of influencing productive development, as well as their ability to evolve into an autonomous discipline with the potential to combine regulatory effectiveness with a tangible impact on subregional productivity. This initial approach, though understandable in an integration context, points to the need for a subregional competition authority with the economic and technical capacity to influence markets to undergo a process of regulatory and political growth before becoming fully established.

8. Therefore, this contribution includes an historical overview and the analysis of emblematic cases (sugar, polypropylene resin, telecommunications) before drawing conclusions on the strengths and limitations of both the regulatory framework and its enforcement by the supranational competition authority. The analysis enables the evaluation and consideration of the extent to which the regulatory framework applicable at each integration stage, that is, the regulation in force at the time of case investigation, was adequate and sufficient to address the complexity of the scenarios that arose.

9. Nevertheless, it must be understood that information about the number and type of free competition cases overseen by the General Secretariat of the Andean Community (SGCAN in Spanish) does not by itself permit a direct assessment of their impact on subregional productivity levels. Likewise, it is not methodologically feasible to establish a linear causal link between community regulations and market efficiency, given that the results may have been influenced by multiple factors, including specific trade and competition policies adopted by member countries, as well as the degree of effectiveness with which these regulations were applied by each national authority.

10. Therefore, the cases analysed below – sugar, polypropylene resin and telecommunications services – are not explicitly linked to productivity indicators. Instead, this analysis focuses on a review of the institutional and regulatory architecture, and assesses to what extent community regulations could have been applied more effectively in response to the integration context within which they were implemented. To this end, it also examines the regulations' evolution and capacity to support coordination to protect the market, which in turn foregrounds the theoretical claims linking the existence of

competition rules with the better allocation of resources and, consequently, with higher productivity levels. In other words, this study attempts to understand whether the community regulations could have encouraged business decisions focused on efficiency, innovation and sustained investment with regard to relevant disputes over highly concentrated markets or strategic linkages for member countries.

11. This document does not aim to provide a retrospective critique of the decisions adopted by the Junta del Acuerdo de Cartagena (Board of the Cartagena Agreement)³ or the General Secretariat of the CAN in its role as supranational competition authority. Rather its purpose is to examine whether the regulatory architecture in place at each regulatory stage, and for the cases analysed in relation to its regulatory framework, offered effective tools to tackle the practices reported.

12. In doing so, it enables conclusions to be drawn regarding the extent to which competition regulations fulfilled their structural function, understood as their capacity to meet the intended objectives of each regulatory stage. In parallel, this study engages with the premise that competition legislation can have positive potential effects on productivity, provided that it is soundly designed and its application does not generate legal uncertainty.

13. Finally, this analysis seeks to clarify whether the legal and procedural instruments available to the CAN were capable of meeting the challenges posed by the markets analysed at each stage, within high concentration or strategically relevant contexts, and both in production sectors and in subregional production chains. It also considers whether these instruments contributed to the community's aim of promoting efficiency, equity and welfare through the integration process.

1. Introduction

14. This study employs an analytical review exercise to assess the extent to which CAN competition regulations were actually capable of responding to the challenges posed by different historical, political and sectoral contexts. Rather than offer retrospective judgments on specific decisions, its aim is to examine representative case studies for each regulatory stage in the free competition framework. It considers whether the framework offered effective tools to address the practices reported, as well as whether those tools were aligned with the structural aim of promoting efficient, productive and equitable markets at a subregional level.

15. The idea that competition can improve productivity is not mere theory: it is an acknowledgment that when companies are driven to innovate, optimise processes and differentiate themselves, the entire market becomes more dynamic. Competition acts as an incentive pushing actors to improve their quality standards, not just to remain in the market, but also to expand and/or add value.

16. However, this capacity to compete does not develop on its own: it requires an enabling environment, including clear rules, strong institutions and regulatory frameworks that sanction distortions, while also encouraging a level playing field. The challenge for the SGCAN, therefore, has not only been to engage with the idea of "competition" in an abstract sense, but also to rigorously review the instruments regulating free competition that have evolved since the beginning of the integration process.

³ Former executive body of the CAN. Subsequently, it changed its name to the General Secretariat of the Andean Community (SGCAN)

17. This review is key to ensuring instruments provide genuine guidance and promote a broader and more balanced participation by businesses, both at a national level and between CAN countries. It is only in this way that competition is able to fulfil its most ambitious promise: transforming productivity and, therefore, actual welfare.

18. In light of the above, this study takes as a point of departure the conclusion drawn by both the theoretical and empirical literature on the relationship between competition and productivity: competitive markets tend to stimulate innovation, and as result, they improve business efficiency and create favourable conditions for broader economic growth and competitiveness. Likewise, the apparent increase in the adoption of competition laws, rules and regulations signals a greater awareness of their role in and positive association with competition and productivity policies in Latin America.

19. According to the World Bank Group's *Overview* (2025: 15), competition plays a central role in creating a favourable environment for productivity growth, as it leads to the withdrawal of less efficient firms, thereby enabling those with higher productivity to continue operating and expand. Such dynamism has the capacity to incentivise innovation, while, in a counterfactual scenario, its absence may lead companies to operate with higher costs and without adopting more efficient technologies. Likewise, this highlights how limited competition tends to encourage rent-seeking, as companies with market power often allocate resources to maintaining or expanding power rather than channelling them into productive activities.

20. For example, the theoretical review by Flores et al. (2017)⁴ points to the existence of a consensus regarding the positive impact of competition on productivity. However, whether the same is true of competition policy remains unclear. According to the authors, the positive impact of competition can be identified in three areas: (i) eliminating less efficient companies; (ii) encouraging investment in cost reduction; and (iii) incentivising more efficient companies to enter the market.

21. With regard to the empirical evidence, research by Buccirossi et al. (2012)⁵ focused on estimating the impact of competition policy along with other components on total factor productivity (TFP) growth in a sample of 22 industries in twelve OECD countries between 1995 and 2005. Their research concluded that a well-designed and implemented competition policy can have a significant impact on TFP growth. Their findings offer clear support for the thesis that competition policy generates gross profits for a country's economy over the long term. However, to undertake a complete welfare evaluation, Buccirossi et al. also stress that these profits must be set against the cost of enforcing competition laws.

22. More recently, Wong and Petreski (2024) have argued that it is necessary to make an essential distinction between competition policy and competition rules or laws. In this sense, competition policy is understood as the myriad of national laws, rules and regulations that affect a market's structure and the conduct of companies within their domestic economy; it is thus a much broader concept than competition or antitrust law. Competition law is, however, a key instrument deployed within competition policy.

⁴ Flores Angulo, C. A. and J. D. Morocho Ruiz (2017), "Política de competencia y productividad: una breve revisión de la literatura teórica y empírica", *Revista de la Competencia y la Propiedad Intelectual*, ["Competition policy and productivity: a brief review of the theoretical and empirical literature", *Journal of Competition and Intellectual Property*], Vol. 13/24.

⁵Buccirossi et al. highlight the need for national competition authorities to increase accessibility by collecting and maintaining reliable data on competition policy enforcement. In this way, its effectiveness can be studied in greater depth.

23. The proposed distinction between competition policy and competition law enables the widening of the analytical framework within which subregional integration takes place. It is based on this specific understanding that the CAN has conceived of free competition as a structural instrument supporting economic integration. As stipulated by the Tribunal de Justicia de la Comunidad Andina (Court of Justice of the Andean Community, TJCAN in Spanish) in Case 3-AI-96:⁶

To ensure that subregional cooperation functions properly, it is essential that countries undertake to adhere to the ground rules compatible with trade operations within free competition contexts and to equality in their relationships with one another. Thereby, they fulfil the purpose of economic integration, which is to bring together the various markets of the member countries through the reduction or elimination of obstacles to reciprocal trade, and as a result the expanded market fulfils the functions of trade expansion, and improves the conditions of competitiveness across the region.

24. In light of the above, it is clear that the effectiveness of competition policy and/or competition regulations in the CAN depends not only on having clear and adequate rules, but also on their consistent, predictable and credible application. This institutional dimension is of key importance for generating regulatory confidence, reducing legal uncertainty and encouraging business decisions aimed at investment and innovation.

2. Theoretical premise and its comparison with the Andean experience

Cartagena Agreement:

Chapter X: Trade Competition.

Article 93.- the Commission, before 31 December 1971 and at the General Secretariat's proposal, shall adopt the essential provisions to guard against or correct practices that may distort competition within the subregion, such as dumping, improper price manipulations, manoeuvres to upset the normal supply of raw materials, and others with a like effect. In this respect, the Commission shall consider the problems that could be created by imposing duties and other restrictions on exports.⁷

25. The effectiveness of the community's free competition regulations must be analysed with regard to the different stages at which they were issued. As an integration bloc, the understanding of competition and its expression in a body of regulations was shaped by how the Andean legislator interpreted it in light of the aims of the integration process.

26. To the extent that integration has been consolidated through the progressive elimination of trade barriers, starting, for example, with tariff relief for the free movement of goods, and followed by industrial complementation agreements and the establishment of a common external tariff, a key question arises: how did the Andean legislator ensure the sustainability of a political, commercial and economic integration project amid external shocks, market distortions and the advance of open regionalism? Answers to this question

⁶ Court of Justice of the Andean Community (1997), "Proceso 3-AI-96" in *Gaceta Oficial* ["Case 3-AI-96" in the Official Gazette], No. 261 of 29 April, Andean Community, Quito.

⁷ Provision of Chapter X of the Cartagena Agreement.

are increasingly likely to point to the need to prevent and correct economic imbalances and ensure that trade conditions develop on the basis of clear rules. Clear rules that, in this context, should be understood as an effective competition framework for the beneficiaries of the integration process.

27. As conceived within the *Testimonio Comunitario (Community Testimony)* of the Andean Community, free competition is a collective right and an indispensable condition for the economic system to promote the greater good of the Andean Community.⁸ It is a clear expression of the principle of economic freedom enshrined in the constitutions of Andean Community member countries. The *Community Testimony* reminds us that this principle is not an abstract idea, but a collective guarantee that the market system serves to advance social welfare. When competition is distorted, whether through unfair practices, the abuse of a dominant position or collusion, it not only affects producers and consumers, but the very fabric of the community.

28. On this basis it is clear that the Andean legislator, with regard to their understanding of the integration project, sought, in each area of the Cartagena Agreement, to set out the mechanisms needed for integration to become a path towards equal development among member countries. In doing so, they sought the sustained improvement of living standards for the subregion's inhabitants.

29. It is this intention that signals the first connection to the notion of Andean consumers' welfare: not only as beneficiaries of integration policies, but also as agents beginning to experience the policies' effects on national consumption, through Andean-created industrial, agri-food and commercial models, and tariff elimination.

30. For these consumers, largely represented by an atomized production structure of small and medium-sized enterprises, deepening integration provided an opportunity to expand their economies of scale and strengthen production linkages with other Andean partners. Thus, the integration policy not only sought to facilitate trade, but also to enable the conditions for more equitable and competitive participation in the Andean market.

31. In such a context, where integration seeks to enable the conditions for more equitable and competitive participation, an understanding of whether certain attributes of competition legislation, particularly those affecting business structure, are effectively

⁸ Court of Justice of the Andean Community (2004), *Testimonio Comunitario – Doctrina, Legislación Jurisprudencia [Community Testimony– Doctrine, Legislation, Jurisprudence]*, Court of Justice of the Andean Community, Quito: "The principle of economic freedom, as the foundation of the economic system, is a common denominator for the five Member Countries, so much so that in their respective political charters it is established with precision and clarity, using constituent formulas such as that which states that "economic activity and private initiative are free within the limits of the common good", or other similar and equally meaningful statements. This principle is complemented by the regulatory enshrinement, at the highest level, of free economic competition as a collective right of all parties; whereby it follows that the operation of the market system as established in these countries depends on three essential elements, namely: private property, free enterprise and the freedom of competition. For the system to work in society's favour, and not against it, not one of these elements should be distorted. Should such distortion occur, the system will not function well and social welfare, the ultimate goal of any economic and political system, becomes seriously compromised. Thus, when economic competition is not free, or is unfair or unjust, harm is inflicted upon certain producers of goods and services, or upon their respective consumers, and likewise the community as a whole. On the other hand, when competition is not beset by these flaws, that is, when it is free, fair and just, then the market, through the action of the forces of supply and demand, becomes efficient and provides its benefits to the community."

related to productivity improvement, is pertinent. What are the findings of empirical research, especially when controlling for company size?

32. With regard to the empirical evidence, Wong and Petreski's case study (2024) analyses the effects of competition laws and regulations on manufacturing companies' productivity in 14 countries in Latin America and the Caribbean (LAC).⁹ Their principal findings show that the relationship between the stringency of competition laws, their enforcement and productivity is complex and varies according to industry, company size and country. Certain characteristics of the legislation are found to be positively correlated to productivity, especially when controlling for company size. However, stricter enforcement of these laws can impair this positive relationship due to compliance costs and the legal uncertainty generated.

33. In parallel, our review of the *Community Testimony* reveals how the CAN, through Chapter VIII of the Cartagena Agreement (Article 109),¹⁰ established a preventive and corrective mechanism to respond to import surges harming domestic demand, factor prices, profits and employment. At the time, in order to implement these safeguards, the subregional authority had to measure the affected market's degree of competitiveness and make recourse to economic doctrine to address phenomena linked to changes in trade flows in different competition scenarios.¹¹ In this way, the concept of the effective degree of relationship to free competition issues is evident.

34. To understand how competition law affects productivity, it is important to highlight the role it plays within internal market dynamics. By sanctioning anticompetitive practices and ensuring a level playing field, regulations facilitate the reallocation of resources among heterogeneous companies. Based on the aforementioned premise, these regulations can thus potentially enable less efficient firms to exit the market or reduce their scale, while more efficient firms can enter or expand their presence. At the same time, the risk of penalties and exposure to a more competitive marketplace incentivises the companies that remain to invest in cost-reducing processes and technologies.

35. Therefore, competition and the establishment of rules favouring it operate as a mechanism for correcting imbalances, as set out in the Cartagena Agreement's chapter on

⁹ The authors highlight their use of firm-level data provided by the World Bank Enterprise Surveys (WBES) for 2006 and 2010 in their paper, along with competition law indicators developed by the Comparative Competition Law initiative.

¹⁰ Now Chapter XI, Article 97 of the Cartagena Agreement.

¹¹ Court of Justice of the Andean Community (2004), *Testimonio Comunitario – Doctrina, Legislación Jurisprudencia* [Community Testimony– Doctrine, Legislation, Jurisprudence], Andean Community, Quito: "In the context of a free competition market, industries would tend to meet foreign competition through measures such as lower prices, with a possible decrease in profits, as well as effects on employment in the event they were forced to limit their production, along with the possibility of companies withdrawing from the market. On the other hand, in a market characterised by the imperfect concurrence of productive industries, these will tend to maintain prices, especially if the industries are large and capital-intensive, and, according to specialists in the field, employment may be sustained. In any case, whatever the degree of competition in the previous scenario's affected industry, the compensation of production factors will tend to decrease, and if there are no sales possibilities in the foreign market, it will prove impossible to re-establish lost equilibrium. The above analysis leads, in the first instance, to the conclusion that the determination of the adverse effects or disturbances referred to in Article 79-A, which corresponds to the board (now the General Secretariat), it is necessary and relevant to measure the degree of competitiveness in the market of the affected country, except in the case of well-known manifestations of unfair competition or distortions deliberately caused by the market presence of monopolistic or oligopolistic industries."

trade competition, and also, more generally, the rules serve to drive business renewal and continuous productivity improvement.

36. Hence, it is clear that competition, understood as the effective opportunity for market contestability, is directly related to positive productivity scenarios when competition policy operates as a holistic framework combining law, enforcement and pro-competitive regulatory reforms.

37. The whole framework is necessary because competition policy is, itself, holistic in scope, due to it being founded on the aims set out in competition laws, as well as the regulations and state projects aimed at promoting and protecting an effective rivalry between those companies that may achieve potential profits from a market economy;¹² the relationship between policy and productivity is analysed in terms of institutional strength and the degree of legal certainty.

38. For its part, competition law is the body of regulations that defines and sanctions conduct that hinders the market from functioning efficiently, thus contributing to the design and implementation of competition policy. Its aims are of a structural nature, seeking to preserve the economic system's allocative and dynamic efficiency, while also being adaptable to the needs identified in specific markets. The actual form these rules take depends on the institutional and economic context in which they are implemented; therefore, their relationship to different forms of productivity is linked to the effectiveness of sanctions imposed in the markets under research.

39. With regard to the Andean integration process, the *Community Testimony* is characterised by a normative mission with high-level aims: firstly, the creation of a common market; and, currently, the redefining of the needs and degree of integration required by member countries to make progress in terms of productivity, equity and common welfare.

3. The evolution of free competition regulations in the CAN and structural tensions

40. With regard to the Andean integration process, the *Community Testimony* is characterised by a normative mission with high-level aims: firstly, the creation of a common market; and, currently, the redefining of the needs and degree of integration required by member countries to make progress in terms of productivity, equity and common welfare.

41. Having described the understanding of competition evident over the course of the integration process, valuable insights can also be obtained through a consideration of its normative development over time; this allows us to understand how competition acquired conceptual and operational autonomy within the Andean Community framework. This involves a recognition of the fact that the promotion of free competition was not incorporated immediately or uniformly, but emerged only gradually, over the course of a series of distinct stages during each decade.

42. The analysis of the CAN's various competition regulations reveals that, in some cases, between five and ten years elapsed between a competition regulation being issued and its first effective application, calculated from the time a resolution was issued in the

¹² According to Aydin and Büthe (2016), "A suitably implemented competition law and policy holds much promise. *Competition is necessary for the tremendous potential benefits of a market economy to be achieved – including economic growth and innovation that leads to greater variety, increased quality, and/or lower price – and makes it more likely that those benefits are widely shared.*"

context of an investigation. The cases analysed for each stage reveal that in productive sectors such as sugar, polypropylene resin and telecommunications, resolutions focused mainly on concentrated markets, or those where there were important productive linkages for the member countries.

43. These cases demonstrate the slow nature of the process of institutional consolidation, while other measures, such as those concerning dumping and safeguards, were implemented relatively quickly within the overarching framework of the Cartagena Agreement's chapter on Trade Competition. This was a result of the latter's direct link to visible distortions in intraregional trade.

44. This gradual maturing process has made it possible, over time, to clarify the definition of anticompetitive conduct and of the abuse of a dominant position, which has strengthened the community system's capacity for response. However, it is important to understand that early regulations were not entirely independent from broader trade and integration frameworks, and as a result a number of anticompetitive practices may have escaped institutional scrutiny.

45. Indeed, the decisions taken by the subregion's competition authority at each regulatory stage were conditioned by a regulatory framework that had not yet fully isolated itself from the corrective logic of trade. This framework was thus directed more towards the need to stabilise an emerging subregional market, than to support an autonomous competition discipline.¹³

46. In this regard, the present document provides a detailed analysis of the regulatory scope of free competition that guided the investigation procedures undertaken within the framework of the first community provisions: Decision 230 and then Decision 285, as well as their evolution up until Decision 608.

47. The influence of free competition regulations on business production and production linkages in the Andean subregion has been neither linear nor homogeneous, and instead has been conditioned by specific institutional and technical nuances at each regulatory stage.

48. Between Decision 285 in 1991, which enabled the first supranational procedures, as in the 1997 polypropylene resin case, and Decision 608 in 2005, Article 36 of which extended the scope of oversight to state actions, the Andean regime has developed a regulatory framework with the potential to promote "more competition". However, in practice it is the investigations conducted and resolutions issued on the basis of these provisions that reveal their direct or indirect influence upon strategic productive sectors and their linkages within the regional integration process.

49. Drawing on this regulatory development and its differentiated application over time, a more detailed examination of the legal instruments that have given structure to the free competition regime in the Andean Community provides valuable insights.

¹³ In the future, it will be judicial decisions that act as modulators for the community's understanding. These will progressively chart an interpretative map of the scope and direction of free competition protection in the Andean subregion, and thereby reveal the limits of and possibilities for free competition regulations at each stage of integration.

3.1. Decision 45 of 1971: the pioneering ruling issued during the time of the Cartagena Agreement board

50. With regard to the Andean integration process, the *Community Testimony* is characterised by a normative mission with high-level aims: firstly, the creation of a common market; and, currently, the redefining of the needs and degree of integration required by member countries to make progress in terms of productivity, equity and common welfare.

51. One of the first regulations (hereafter, decisions) that marked the beginning of the prevention of anticompetitive practices in the Andean subregion is Decision 45 of 1971. After the signing of the Cartagena Agreement in 1969 and the introduction of the liberalisation programme in 1970, it took just one year for the Commission of the Andean Community to establish rules for preventing or correcting practices that could distort the aims of the community's integration process.

52. Decision 45 included a minimum number of indispensable rules, given that member countries did not yet have any experience legislating on the issue. A core definition provided by this decision related to the identification of subregional competition, which also included an initial illustration of what would henceforth be understood as subregional cooperation:

...with regard to these matters, a distinction must be drawn between situations arising within the territory of the member countries and those originating in the territory of a third country... it is necessary for member countries to act in a coordinated manner at an international level with regard to the establishment of competition rules consistent with subregional interests.

53. Given this was the Andean legislator's first attempt, Decision 45 integrated several issues, and its regulatory framework included practices such as dumping along with price manipulation. It should be noted that any investigative and sanctioning powers were preceded by a process of "direct settlement" between countries: the first expected recourse in a situation requiring corrective action. If this proved unsuccessful, the main recourse involved the application of corrective measures.

3.2. Decision 230 of 1987:

54. Sixteen years later, at the behest of the Cartagena Agreement board, Decision 230 was approved, which better defined the rules on free competition. Part of these new specifications, which were to characterise a new phase in tackling this issue, related to the inclusion of a causality criterion. Decision 230 of 1987 attempted to make the regulations more effective. However, it failed to establish a substantial distinction between the essential characteristics of, firstly, general distortions that could be caused by trade competition, such as those resulting from dumping or trade restrictions, and, secondly, distortions resulting from cartelisation between monopolistic companies in the subregion through price fixing; the latter example being more strictly related to the protection of free competition.

3.3. Decision 285 of 1991:

55. 1991 witnessed a new phase in the development and implementation of the community framework on competition. On this occasion, improvements were sought by differentiating practices restricting free competition, such as dumping and subsidies, including those arising in the context of export restrictions. Decision 285 laid the

foundations for how "implemented practices", "intervention", and the exceptions to competition as stipulated by the Cartagena Agreement board were understood in these specific situations. At that time, practices restricting free competition included agreements, parallel actions and concerted practices.

56. The basis for the theory of effects was also introduced. This meant that an analysis was undertaken of those effects that "... produce or may produce the effect of restricting, preventing or distorting competition."

57. Decision 285 also gave form to and differentiated between the two main modalities that typify anticompetitive behaviour: restrictive practices and the abuse of a dominant position. Although this framework was improved in relation to specialist practices contributing to the subregion's commercial and business dynamics, the board did not apply strictly economic sanctions. Instead, when unequivocal evidence-based proof was found, the board favoured issuing a declaration of prohibition concerning the conduct under investigation. The *Community Testimony*¹⁴ reveals how the legislator established a coherent systematisation of the principles and elements to be included in efforts to create a Latin American common market. It states:

One of the fundamental aims of the Cartagena Agreement is to construct an expanded subregional market — one which seeks "the gradual formation of a Latin American common market" —, having identified "the progressive harmonisation of economic and social policies and the approximation of national legislations in the relevant areas" as one of the appropriate mechanisms for achieving this. The steps taken by the commission to regulate, at a community level, aspects related to the freedom of the market within the community, by issuing community regulations, *such as Decision 285*, to prevent any infringement of the capacity of economic agents acting in it to compete freely, are wholly consistent with this aim.

3.4. Decision 608 of 2005: a construct based on the best international standards for CAN member countries

58. The refinement of this community regulation within the Andean integration process has aimed, and continues to aim, at harmonising economic policies and, with it, bettering efforts to protect and promote free competition in Andean subregional markets according to the highest comparative standards. The regulation is directed towards two objectives: the efficiency of economic actors and the welfare of Andean consumers.

59. In the wake of Decision 608, the SGCAN has prohibited and sanctioned any conduct that restricts competition. This fundamental step in the establishment of sanctions as one of the functions of the Subregional Competition Authority is wholly unique in nature. Therefore, the protection and promotion of the subregional competition process is based on the elimination of all restrictions that obstruct access to member country markets.

60. Having examined the principle rulings that have shaped the free competition regime in the Andean Community, a summary of its transition process is required, in order to offer a comparative overview of the regulatory changes and parallel developments implemented by member countries within their respective domestic frameworks. Particularly noteworthy is the case of Ecuador, where the application of Decision 208 of 2005 was considered to be the most ambitious in terms of institutional scope, with the decision serving as a reference

¹⁴ Court of Justice of the Andean Community (2004), *Testimonio Comunitario – Doctrina, Legislación Jurisprudencia* [Community Testimony – Doctrine, Legislation, Jurisprudence], Andean Community, Quito.

for domestic regulation between 2009 and 2011. Its example provides evidence of the interaction between community regulations and national competition systems during the process of legal appropriation.

61. It is also apparent that some countries had implemented competition laws prior to the existence of the Andean Group (Colombia and Chile), while it took others (Ecuador, Bolivia, Venezuela) decades to develop a specific body of law. Since the 1990s, all members (and former members) have adopted national competition laws, although with differences in scope, enforcement and articulation when compared to the community regulations.

62. The following table demonstrates the uneven nature of institutional development in relation to competition regulation, and that the CAN regulations have, in some cases, played a supplementary or catalytic role in the development of national frameworks.

Table 1. Regulatory transition relating to free competition in the Andean Community, and its integration into member countries' competition regulations¹⁵

Competition regulation	Prior to the Andean Group	Transition according to decade of the Subregional Integration Agreement (Cartagena Agreement)					
		I: 1969-1979	II: 1980-1989	III: 1990-1999	IV: 2000-2009	V: 2010-2019	Current: 2020-2025
CAN		Decision 45 of 1971	Decision 230 of 1987	Decision 285 of 1991	Decision 608 of 2005	608 in force	608 in force
Colombia	Decree 2061 of 1955, Law 155 of 1959				Law 340 of 2009		
Ecuador	No specific body of law	No specific body of law	No specific body of law	No specific body of law	Transitional application of Decision 608 of 2005 / through Decision 616 of 2005	Organic law for the regulation and control of market power (LORCPM in Spanish) issued Law of 2011	LORCPM in force
Chile	Law No. 13,305 of 1959	Decree Law No. 211 of 1973		Law No. 19,610 of 1999	Law No. 19,911 of 2003	Law No. 20,945 of 2016	
Peru				Legislative Decree 701 of 1991	Legislative Decree No. 1034 of 2008	Legislative Decree No. 1205 of 2015	Legislative Decree of 2008 and 2015 in force
Bolivia	No specific body of law	No specific body of law	No specific body of law	Law No. 1654 of 1995	Supreme Decree No. 29,519 of 2008	Decree No. 29,519 in force	Decree No. 29,519 in force
Venezuela	No specific body of law	Accession of Venezuela (1973)		Law to protect and promote the exercise of free competition (LPPLC in Spanish) of 1992	Announcement of Venezuela's withdrawal	Law of 2014	Law of 2014 in force

Source: SGCAN

63. It is also apparent that some countries had implemented competition laws prior to the existence of the Andean Group (Colombia and Chile), while it took others (Ecuador, Bolivia, Venezuela) decades to develop a specific body of law. Since the 1990s, all members (and former members) have adopted national competition laws, although with differences in scope, enforcement and articulation when compared to the community regulations. The table demonstrates the uneven nature of institutional development in relation to competition regulation and that CAN regulations have, in some cases, played a supplementary or catalytic role in the development of national frameworks.

¹⁵ In 1969, the member countries that made up the so-called "Andean Group" were Bolivia, Colombia, Peru, Chile and Ecuador. Then, in 1973, Venezuela acceded and joined the integration process, and in 1976, Chile denounced the treaty and ended its membership of the group. Venezuela left the Andean Community in 2011, due to the growing bilateralism of its Andean partners in the global context.

64. The CAN's regulatory development demonstrates significant advances towards a more sophisticated legal framework. However, it also points to the importance of good quality implementation, and not just regulatory design, in making competition policy effective. Credible, consistent and predictable enforcement are key factors in generating regulatory confidence, reducing legal uncertainty and encouraging business decisions aimed at investment and innovation.

4. An analysis of emblematic cases and the issue of regulatory sufficiency

65. The methodology employed below is based on an analytical exercise that combines a theoretical review and the interpretation of legislation with an empirical analysis of specific cases addressed by the CAN over a number of years. It takes as its point of departure a theoretical premise supported by the publications and documents of international organisations, which demonstrate a positive relationship between well-designed competition policies and rules and business productivity.

66. On this basis, the analysis that follows looks at how evolving CAN free competition regulations have been applied during different periods, in light of their respective institutional, economic and political context.

67. The cases analysed below show that trade integration rules such as rules of origin and the Common External Tariff (CET), when in force, have generated dependencies upon critical inputs concentrated in a few suppliers. In this scenario, the absence of effective competition can lead to production bottlenecks and overall vulnerability to supply shocks and restrictive practices.

68. The CAN's experiences provide valuable lessons concerning the modification of a specific competition rule that, within the framework of trade and economic integration policy, incorporates prevention and correction mechanisms designed to protect competitive dynamics, while also fostering the resilience and efficiency of subregional value chains.

69. Although this survey of free competition cases overseen by the CAN does not provide sufficient evidence to directly measure the impact of competition rules on regional productivity, it does provide an opportunity to review the community's methodological approaches and strengthen links between competition policy and productive development.

70. None of these cases were challenged through invalidity proceedings brought before the Court of Justice of the Andean Community, which means no assessment can be undertaken of the impact of such proceedings on encouraging productivity and investment, nor of whether, on the contrary, they resulted in protectionist measures.

Table 2. Analysis of sugar, resin and telecommunications services cases

Market analysis according to conduct under investigation	CASES		
Identification of implicit competition issue	<p>The Board of the Cartagena Agreement (JUNAC) identified distortions in the Venezuelan sugar market, which were attributed to public intervention policies in the form of price control, as opposed to corporate collusion. Although this finding did not result in a sanction, it highlights a feature of the competitive environment that could be systematised and used in regional analysis.</p>	<p>Although no anticompetitive practice was formally identified, the case file reveals a high concentration of supply in the subregional polypropylene resin market, and with only two key suppliers (Propilco and Propilven). Although their refusal to sell and the fact they set significantly higher prices than those of extra-regional suppliers did not constitute an abuse under Decision 285, it did reveal a structural asymmetry that affected bargaining power relating to biaxially oriented polypropylene (BOPP) and, as a result, other dependent industries.</p> <p>In the production chain applicable to this case, the basic input is polypropylene resin (subheading 3902.10.00 of the Common Tariff Nomenclature for the Andean Community, or NANDINA in Spanish). It is transformed into BOPP (NANDINA subheading 3920.20.00), which is the end product. Polypropylene resin is, therefore, the base chemical component used for the extrusion and orientation processes required to produce BOPP film. In its absence the supply chain's downstream operations come to halt.</p>	<p>Although the use of fibre optics for high voltage electrical infrastructures represented only 9% of the national total, it was of strategic value for subregional connections between Colombia, Ecuador and Peru.</p>
Evidence of vertical tensions and contractual constraints	<p>Although there was no collusion identified, mention was made of restrictive clauses, refusal to sell and price differences. These issues could have been investigated as possible instances of vertical restriction or market segmentation, which would have gone beyond the standard of evidence required by Decision 285.</p>	<p>Possible repeated, selective refusals to sell and potentially abusive sales conditions, as well as structural dependence generated by rules of origin. It is likely that in this case, as it concerns highly concentrated markets, the impossibility of negotiating reasonable conditions indicates the exploitation of a dominant market position.</p>	<p>Denial of access to strategic infrastructure, the breach of contractual obligations, the strategic use of a resource with influence over the market, exclusionary intent and non-economic obstacles.</p>
Interaction between competition and trade defence	<p>The request for suspension of the CET introduced a trade policy component that partially diverted the course of investigation. This regulatory interference suggests that, in similar cases, it would be advisable to distinguish more clearly between each instrument's aims and prevent them from undermining one another.</p>	<p>Ecuador's inclusion of resin in the list of exceptions to the CET generated a critical level of dependence on subregional inputs in order to ensure a supply with a community origin.</p> <p>This obligation increased the market power exercised by regional suppliers, turning a commercial decision into a regulatory externality that affected competition.</p>	<p>Unlike the cases in which requests were made to suspend the CET (as occurred with IMEZUCAR, see below), on this occasion a formal trade defence instrument was not activated. However, the conclusions drawn in the case file left open the possibility of reviewing the Andean competition regime to incorporate procedures that support a balance between strategic control and effective competition, especially for sensitive industries such as telecommunications.</p>

Potential disciplinary impact of the investigation	Although no corrective measures were imposed, the mere fact of having investigated and highlighted the reported practices may have led to adjustments in commercial relations, as well as encouraging the actors involved to implement greater transparency and engage in strategic adaptation.	Dependence on subregional inputs not only affected BOPP, but also a range of industrial sectors, including plastic processing, flexible packaging, food and agroindustry.	The exclusion of competitors not only affects the complainant companies, but also the diversity and quality of digital services across the subregion. In a context of technological convergence, the boundary between physical infrastructure and intangible assets is often unclear, and thus requires a more sophisticated approach to investigating competition concerns.
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Source: SGCAN

4.1. Case summary

4.1.1. Case 1: Sugar¹⁶

Table 3. Case 1

Regulatory framework applied	Decision 285 of 1991
Resolution	391 and 420 of 1996
Product	Sugar
Sector	Agroindustry
Country requesting investigation	Venezuela
Conduct under investigation	Concerted practices restricting free competition

a. Case details

71. In 1996, the Venezuelan company IMEZUCAR S.A., which imports and exports sugar, filed a complaint with the Cartagena Agreement board. The company alleged that practices restricting free competition in the Venezuelan sugar market, dating back to 1992, could be attributed to Venezuelan sugar plants and Colombian sugar mills linked to the trading company CIAMSA.

72. According to IMEZUCAR, these practices included direct and indirect price-fixing, imposing destinations on products, limiting exports, refusing to sell, and abusively exploiting a dominant market position. The company requested that the board adopt corrective measures and suspend the Common External Tariff on sugar imports.

b. Conduct

73. The reported practice consisted of an alleged cartelisation between sugar producers and traders, which affected competition in Venezuela. IMEZUCAR argued that CIAMSA along with Colombian sugar mills and Venezuelan sugar plants collaborated to restrict

¹⁶ Junta del Acuerdo de Cartagena (1996), Resolution 391 (*Solicitud de Imezucar S.A., de Venezuela, para la imposición de medidas correctivas a la importación de azúcar, para corregir las distorsiones generadas por prácticas restrictivas de la libre competencia [Request by Imezucar S.A of Venezuela to impose corrective measures on the import of sugar, to correct distortions generated by practices restricting free competition]*), Andean Community, Quito; Junta del Acuerdo de Cartagena (1996), Resolution 420 (*Investigación solicitada por la empresa IMEZUCAR, por supuestas prácticas restrictivas de la libre competencia [Investigation requested by IMEZUCAR for alleged practices restricting free competition]*), Andean Community, Quito.

market access, control prices and limit competition. The evidence presented included restrictive contractual clauses, the refusal to sell to IMEZUCAR, and significant differences between export prices and domestic prices for refined sugar.

c. Market analysis undertaken by the SGCAN

74. It is important to point out that, due to the way in which Decision 285 was developed, the investigation was based on a specific methodology applicable to trade defence, structured as follows: (a) practices restricting free competition; (b) damages or the threat of damages; and (c) the cause and effect relationship between the practices and the damages or the threat of damages.

75. It should be noted that the three aforementioned elements had to be cumulatively present in order to authorise the adoption of corrective measures intended to eliminate or mitigate the distortions that prompted the complaint.

76. The market, understood according to the geographic and product definitions required by conventional competition analysis, was exclusively limited to the following analysis, in which the board "considered that the grouping of Colombian sugar mills and refineries within a commercial relationship, through the creation of a trading company, as well as their representation via a common proxy for this proceeding, did not in themselves constitute, with regard to community law, actions intended to restrict, prohibit or distort subregional competition."

77. Resolution 420, issued for the case, also stated that "with regard to for the Venezuelan sugar plants, the board also found no evidence that they act in collusion or in a concerted manner among themselves, nor that there is any concerted action at a subregional level. *Finally, the existence of concerted action between the accused Colombian trading company and the Venezuelan sugar plants, led by Central El Palmar, was not proven. However, it may be argued that there is a relationship of direct competition between the defendant companies, and that the participation of some of the defendant companies amounts to a total of more than 50% of the Venezuelan market for white or refined sugar sellers, which means they could take up a leading position in the market...*"

d. Analysis:

78. The board applied the regulatory framework set out in Decision 285 of the Andean Community, which regulates practices that restrict free competition. This framework requires the cumulative verification of three elements: the existence of concerted practices, the threat of or actual damages, and a causal relationship between the two. The board assessed these elements while undertaking its investigation, and concluded that there was no proof of the existence of concerted action between the reported companies. The creation of CIAMSA and recourse to shared legal representation were not considered sufficient evidence of collusion. There was also no evidence of price manipulation, nor unjustified restrictions on sugar distribution.

79. The actions undertaken by the board as an authority consisted of the review of contracts, business relationships and market structure. It concluded that the distortions in the Venezuelan sugar market were mainly due to public intervention policies, such as maximum price controls, rather than anti-competitive practices undertaken by the reported companies. In addition, it was considered that the Colombian exports responded to the need to compensate for shortages in the Venezuelan market, for which it exploited its refinery capacity. The board also noted that IMEZUCAR had difficulties in adapting to market conditions, and that this explained its lower profitability compared to other competitors.

80. However, in light of the facts, the authority's investigation could have been more thorough had a more comprehensive standard been available. Although the existing regulatory framework was applied, the structural dynamics of the market and possible vertical restrictions were not explored with sufficient rigour. The inclusion of specific trade defence elements, such as the request for tariff suspension, may have shifted the focus from competition analysis to trade policy concerns. The latter point raises the question as to whether the interplay between competition and trade defence had an impact on effectiveness of the investigation.

81. Although no formal infringement was established, the review of this case shows that the absence of sanctions does not necessarily imply the absence of any market distortion. The credibility of enforcement is undermined if the latter is not reflected in corrective measures that address concentrated market structures, giving contradictory signals to the production sector, while also discouraging investment and entrenching dominant positions.

4.1.2. Case 2: BOPP-Polypropylene Resin¹⁷

Table 4. Case 2

Regulatory framework applied	Decision 285 of 1991
Resolution	484 and 011 of 1997
Product	Polypropylene resin
Sector	Plastics industry
Country requesting investigation	Ecuador
Conduct under investigation	Undue manipulation of prices and practices aimed at disturbing the normal supply of raw materials and others with an equivalent effect; abuse of a dominant position

a. Case details

82. In 1997, the Ecuadorian company Polipropileno Biorientado del Ecuador Cía. Ltda., which manufactures BOPP, requested that the General Secretariat of the CAN investigate alleged anticompetitive practices committed by the Venezuelan company Propilven and the Colombian company Propilco.

83. The complaint focused on an alleged abuse of market dominance in the subregional market for polypropylene resin (NANDINA subheading 3902.10.00), which is an essential input for the production of BOPP (NANDINA subheading 3920.20.00), and is a key export product for Ecuador.

84. The complainant company alleged that, since 1996, it had repeatedly faced restrictions on resin supplies from the aforementioned reported companies, and they refused to supply its orders, or offered prices significantly higher than those of extra-regional suppliers. This situation was aggravated by the fact that, due to the inclusion of resin on the list of exceptions to the Common External Tariff (Decision 370, Annex 4), the only way to confer a community origin on BOPP produced in Ecuador was to acquire the necessary raw material within the subregion.

85. The SGCAN activated the procedure stipulated in Decision 285; it sent surveys to the parties involved and convened a direct meeting on 26 August 1997. Although the

¹⁷ Junta del Acuerdo de Cartagena (1997), [Resolution 484](#) and Resolution 011, Andean Community, Quito.

companies in question expressed a willingness to negotiate, no commercial agreement was ever reached. The technical investigation concluded that Propilco had indeed regularly supplied other Ecuadorian companies, and that its refusal to sell to Polipropileno Biorientado del Ecuador Cía. Ltda. was not due to discriminatory conduct, but to a lack of consensus on the terms of sale, especially the price.

b. Conduct

86. In the request it was claimed that there had been an undue manipulation of prices and practices aimed at disrupting the normal supply of raw materials and others that had an equivalent effect. Resolution 011 of 1997 specified that the alleged restrictive practices concerning competition took place or were consistent with the abuse of a dominant position in the subregional polypropylene resin market, and this harmed Ecuadorian exports of BOPP.

c. Market analysis undertaken by the SGCAN

87. The board identified polypropylene resin (NANDINA subheading 3902.10.00) as a relevant product, because it is an essential input for the production of BOPP. The market in question is defined as subregional, as it encompasses CAN member countries. This definition is justified on the basis that: the requirement concerning product origin applies exclusively within the subregion; the investigated companies (Propilco and Propilven) operate in Colombia and Venezuela, respectively; and the complainant company (Polipropileno Biorientado del Ecuador Cía. Ltda) depends on regional sourcing to maintain the origin of its end product.

d. Analysis

88. This case illustrates the challenges of applying the concept of dominance in subregional markets with a high concentration of suppliers, and it reveals how rules concerning product origin and tariff exceptions can generate critical dependencies that exacerbate the impact of restrictive conduct. It also demonstrates the SGCAN's role in facilitating direct solutions, although lacking any powers of enforcement in the absence of an agreement between the parties. The case file focused on concertation and did not explore other forms of abuse, such as the indirect imposition of commercial conditions or selective exclusion.

89. However, it is interesting to note that, despite the prices offered by the reported companies being significantly higher than those of suppliers from outside the subregion, and their characterisation as monopolistic companies in the subregion with a high concentration of supply, an investigation concerning prices could not subsequently be undertaken. The impossibility of reaching commercial agreements between companies does not, in its own right, constitute an alleged anticompetitive practice; on the contrary, it is part of good business faith between parties.

90. However, it is important to note that the reasons that gave rise to a report of apparent abuse of a dominant position are not minor ones. For example, in order to comply with the product origin requirement as stipulated by the integration process for trade purposes, the raw material must be acquired in the subregion, and this demonstrates the Ecuadorian company's productive dependence on subregional inputs. Otherwise, it would have been excluded from the benefits of trade integration, that is, it would have had to pay the higher costs associated with acquiring materials from outside the bloc.

91. In the request made for this investigation, it is stated that Resolution 306 of 1991 established, as a specific requirement for product origin, that BOPP must be made with propylene produced in the subregion. If imported inputs are used, then the CET must be paid to uphold the condition concerning product origin. This makes the upstream input the object of a mandatory regulatory requirement, reinforcing its structural power.

92. Since resin was excluded from the CET by Ecuador, the only way to uphold the condition of product origin was to acquire it within the subregion, which increased company vulnerability to dominant suppliers. In addition, since there were only two subregional suppliers (Propilco and Propilven), this obligation increased their market power and reduced the Ecuadorian company's bargaining power. This would not only affect the complainant company, but also the entire flexible packaging sector, as well as downstream industries, such as food, agroindustry and exports.

93. By 1997, in the middle of the third decade of the Andean integration process, economic liberalisation and the liberalisation of goods posed new challenges in relation to international competition. The CAN took this as an opportunity to promote production linkages and integrate subregional value by offering support for strategic industrial policies, for example, in the automotive sector. In this context, Ecuador experienced a period of industrial growth fostered by the opportunities offered by regional integration.

94. The case illustrates this by revealing the structural tension created when integration rules, such as those concerning product origin and the CET, require reliance on subregional inputs, potentially resulting in production bottlenecks in the absence of effective competition. It is thus debatable whether, in light of Article 5 of Decision 608, greater emphasis should have been placed on the issue of an abuse of a dominant position through improper manipulation, or the indirect imposition of prices or other marketing conditions.

95. By excluding polypropylene resin from the CET, Ecuador reinforced the need to purchase it within the subregion to preserve benefits linked to product origin. As a result, this input was converted into a structural element of the trade integration process and, therefore, into a critical input with a high concentration of supply.

96. It should be noted that, in 1997, polypropylene resin was not only an important industrial input: it also played a strategic and critical role in Ecuador's plastic manufacturing industry, especially in the context of the rules concerning product origin and the Andean integration process. Its availability influenced access to subregional trade benefits, and the concentration of its supply among a small number of companies gave rise to structural risks for free competition and productivity. By the 1990s, the plastics industry in Ecuador had already become a key manufacturing sector, and had significant linkages to food, agroindustry and exports.

97. Although no formal infringement was established, the review of this case shows that the absence of sanctions does not necessarily imply the absence of any market distortion. The credibility of enforcement is undermined if the latter is not reflected in corrective measures that address concentrated market structures, giving contradictory signals to the production sector, while also discouraging investment and entrenching dominant positions.

*Case 3: Internexa and Transnexa*¹⁸**Table 5. Case 3**

Regulatory framework applied	Decision 608
Resolutions	1827 of 2016 and 1935 of 2017
Product	Access to Ecuador's fibre optic network
Sector	Telecommunications
Country requesting the investigation	Colombia and Peru
Conduct under investigation	Denial of access through abuse of a dominant position

a. Case details

98. The public company CNT EP was reported by INTERNEXA PERÚ S.A. and TRANSNEXA S.A. EMA to the competent authority for allegedly restricting free competition by refusing to allow access to the fibre optic network installed on Ecuador's high voltage electrical infrastructure.

99. Within the framework of the Negocio de Transporte Regional (Regional transport business, NTR) this network is essential in transporting data, and includes the transfer of data through (but without terminating in) Ecuador, as well as traffic terminating and originating in Ecuador. It expressly excludes internal data transfer.

100. Access to this infrastructure had previously been agreed in the Acuerdo Global Compromisorio, signed on 22 August 2007 between INTERNEXA S.A., TRANSELECTRIC S.A. and TRANSNEXA S.A. EMA, and according to which TRANSELECTRIC undertook to lease eight fibre optic cables running between Ecuador's northern and southern borders, in order to connect the sections installed under previous agreements. The agreement included the obligation to sign specific contracts for the use of the infrastructure, and to do so in accordance with previously established prices.

b. Conduct

101. The conduct investigated focused on two aspects: (i) CNT EP's refusal to contract the infrastructure lease with TRANSNEXA S.A., and (ii) the alleged impediment or difficulty competitors encountered trying to access the carrier services market, for reasons unrelated to economic efficiency. According to the complainants, there were clear indications of exclusionary intent, which were demonstrated by the unjustified refusal to approve necessary investments, the failure to comply with contractual obligations to provide access, and the opposition to accepting free equipment to activate dark fibre cabling.

*c. Market analysis undertaken by the SGCAN*¹⁹

102. The SGCAN based its investigation on the standard methodology for market definition applied by the OECD and the European Union, by verifying whether supply and demand side substitutes exist for products or services provided by a competitor with a

¹⁸ General Secretariat of the Andean Community (2017), [Resolution 1935](#), Andean Community, Quito.

¹⁹ In this case, it is stated that the contracts the parties submitted to the SGCAN denoted a value for data transmission or infrastructure lease between two geographical points and stipulated minimum operating costs, but they did not indicate the infrastructure through which the service would be provided.

seeming position of dominance. The SGCAN's analysis of the value chain was informed by Decision 462, which defines telecommunications as "any transmission, emission or reception of signs, signals, writings, images, sounds, data or information of any nature via physical cables, radioelectric media, optical media or other electromagnetic media." Subsequently, based on information submitted by Ecuador's telecommunications authority (Arcotel), it identified that the majority of the 21 carrier service providers used a range of media,²⁰ with 18 using fibre optics, 15 using copper cables, two using coaxial cables and 17 using wireless media.

103. The SGCAN described the telecommunications market value chain as being composed of content access, application access and telecommunications access services, and comprising international data transfer, national transfer, retail and local access, and end users. The wholesale market is composed of international and national data transfer, while the retail market is represented by Internet Service Providers (ISP) and local data transfer or service providers who use the networks, usually referred to as the "last mile".

104. The international data transfer strata was singled out for the SGCAN's investigation into how the market was affected from a community perspective. In this context, the upstream market was defined as that providing access to infrastructure for international data transmission; infrastructure that can be built by the telecommunications company with its own resources, or accessed through indefeasible rights of use (IRU) agreements, fibre leases, exchange agreements or border-to-border carrier service contracts with wholesale operators.

105. Regarding the issue of substitutability on the demand side in this case, the SGCAN determined that the service provided by fibre optic cables installed on electrical infrastructure is equivalent to a fibre optic service provided through other means, such as submarine cables. On the supply side, a reading of the contracts presented by the complainant led to the conclusion that optical fibre installed on electrical infrastructure is not complementary to, but rather a substitute for, other networks.

106. The definition of the relevant market in this case was: Upstream market: provision of access to the fibre optic infrastructure in Ecuador for international data transfer. Downstream market: international data transfer service originating in, transiting through or terminating in Colombia, Ecuador or Peru.

107. The SGCAN concluded that the fibre optic network did not constitute an essential input to the national infrastructure and that submarine cable alternatives were available. In light of the above, the Ecuadorian state-owned company was not found to hold a dominant position in the upstream market.

d. Analysis

108. This case poses key questions concerning the strategic use of essential infrastructure in telecommunications markets, the scope of contractual obligations within regional integration contexts, and the analysis of dominance in sectors in which physical access to networks may condition effective competition. It also reveals how the exclusion of competitors in critical connectivity segments can affect not only the companies involved, but also the quality and diversity of digital services across a subregion.

²⁰ The same decision defines telecommunications services as the "set of functions, offered by a supplier, which are supported by telecommunications networks in order to satisfy user needs."

109. The SGCAN concluded that the asset of which CNT EP acquired control was not an "essential input" since only 9% of the country's fibre runs through high voltage networks. However, it is interesting to note that, if analysed as a subregional market, this asset could be considered to have strategic implications for certain international sections, as well as for the Colombia-Ecuador-Peru interconnection.

110. The investigation leaves the issue of defining the relevant market open: by extending it to include fibre optic infrastructure in Ecuador rather than limiting it to that installed on high voltage networks, a distinct analysis of market power was obtained. As has been noted throughout this document, within a framework of economic integration, the investigation may highlight tensions where an exclusive right is granted to a strategic resource for subregional connectivity, and a refusal of access may threaten to upset the balance between protecting exclusive rights and guaranteeing non-discriminatory access.

111. This is especially relevant in telecommunications, where technological convergence makes the boundary between physical infrastructure and protected intangible assets increasingly blurred.

112. It also flags up the issue of how the theoretical basis used to analyse conduct, such as a denial of access or use of infrastructure, can lead to interpretation errors. Such misinterpretations can in turn lead to a failure to make the new investments needed for companies to offer their services. If it is considered sufficient for a company to have made investments in the past, others could take advantage of their infrastructure without making any such investment, merely acting as free riders. This could discourage business investment and affect productivity.

113. The resolution issued for this case considered as evidence the fact that there is a cheaper alternative to the state-owned company and it responds to competition, whereby it concluded that there was no independent behaviour indicative of market dominance. The price indexes linked to this case are consistent with a process of dynamic competition, one that is compatible with increased investment in networks and technological improvements to maintain participation. However, low prices alone do not prove the absence of income extraction; price reductions before entry might be temporary and may not necessarily give rise to innovation-based competition. TRANSNEXA's innovation in the area of infrastructure, but limited participation in the national market with comparable prices, may have been due to unremunerated investment externalities, such as a risk of free riding, or that the regulations did not acknowledge its contribution.

114. Although no formal infringement was established, the review of this case shows that the absence of sanctions does not necessarily imply the absence of any market distortion. The credibility of enforcement is undermined if the latter is not reflected in corrective measures that address concentrated market structures, giving contradictory signals to the production sector, while also discouraging investment and entrenching dominant positions.

5. Conclusions

115. Although no formal infringements were established, the review of the cases above shows that the absence of sanctions does not necessarily imply the absence of any market distortion. The credibility of enforcement is undermined if the latter is not reflected in corrective measures that address concentrated market structures, giving contradictory signals to the production sector, while also discouraging investment and entrenching dominant positions.

116. The overlap between trade defence and competition, as observed in the early stages discussed above, has permitted an analysis of how the CAN's free competition regulations were established based on a logic of trade integration, in which trade defence instruments, including the CET, tariff exceptions and rules of origin, played a central role.

117. This initial basis made it difficult to establish a conceptual distinction between anti-competitive practices and legitimate trade measures, which could have resulted in the instrumentalisation of trade rules for the purpose of consolidating market positions.

118. Regarding the persistence of commercial logic within enforcement: even after Decision 285 was adopted, and prior to the implementation of Decision 608 in 2005, enforcement remained anchored in a rigid evidence-based logic centred on explicit agreement. As the resin case shows, a high market concentration and regulatory dependence on the input were not treated as indications of abuse. Rather, they were taken to be existing commercial conditions, thus revealing the structural limitations of the investigation undertaken.

119. Decision 608 thus represents a qualitative leap: it incorporated international best practices, broadened the analytical framework and recognised more subtle forms of abuse. However, as this document outlines, the case of the fibre optic telecommunications market analysed with reference to this standard did not result in a sanction. This was not due to a lack of substantive merit, but instead the lack of any formal verification of the contested conduct. This suggests that weaknesses in enforcement are not a result of the regulation, but instead of the institutional capacity to apply it with sufficient structural depth.

120. In addition, there is a risk that regulatory capture becomes a structural phenomenon arising from earlier CAN regulations (1971, 1987 and 1991); risk of capture is not limited to a specific case of manipulation, but results from the interaction between trade regulations that reinforce dominant positions and the failure of enforcement efforts to dismantle them.

121. As Aydin and Büthe (2016) warn, dominant players can exploit regulatory gaps and analytical weaknesses to exclude competitors without the need for formal collusion. In the case of resin, the obligation to purchase the input in the subregion in order to meet origin requirements, along with the existence of just two suppliers, created an environment in which exclusion was structural but not behavioural.

122. However, the CAN's regulatory experience in the area of competition cannot be evaluated solely in terms of direct impact, but should be viewed as a process with a differentiated application across strategic productive sectors, in which each regulation — in its historical context — led to different results. The 1997 polypropylene resin case, regulated by Decision 285, illustrates the limitations of a regulatory framework that failed to comprehensively address the abuse of a position of dominance, especially in highly concentrated markets.

123. As was shown, the procedure used was more aligned with a logic of trade defence, akin to anti-dumping approaches. This reveals a structural tension: while the integration process sought to facilitate access to intraregional inputs, the concentration or monopolisation of certain industries prevented these resources from being distributed equitably. In this context, the competition regulations were not sufficient to address the restrictions imposed by dominant suppliers.

124. On the other hand, the case concerning access to the fibre optic network in the telecommunications sector, which by that time was regulated by Decision 608, demonstrates significant regulatory progress. This regulation provides more robust tools for addressing behaviour. However, the analysis of the case reveals that the definition of

the relevant market, and its technical delimitation, continues to be the critical factor influencing the effectiveness of any intervention. Even the most ambitious regulations encounter difficulties when market definition fails to adequately capture the dynamics of power and access in key sectors.

125. Although this analysis of free competition cases overseen by the CAN does not provide a sufficient basis for directly measuring any impact on regional productivity, it does offer an opportunity to review the methodological approaches used, as well as to strengthen the links between competition policy and productive development.

126. It is also possible to draw the following conclusions:

- Business productivity and market efficiency do not depend exclusively on regional action, such as that undertaken by the CAN, but may also be determined by:
 - specific competition policies adopted by each member country, which address their own economic realities
 - the degree of effectiveness with which national competition agencies enforce the rules, which can vary significantly between countries.
- Andean competition law developed primarily as an instrument to strengthen trade competition, rather than as an autonomous technical discipline, and this delayed its institutional consolidation, as well as its capacity to have a direct impact.
- When considered from the perspective of the effectiveness competition rules can foster, any impact on productivity and productive linkages has been uneven, and has been conditioned by the institutional capacities and political contexts of the integration process.
- CAN's regulatory history reveals a progressive change from a corrective and trade-oriented approach to a more structural economic model, one whose development has been gradual and conditioned by the institutional and regional context.
- The coexistence of commercial and economic objectives has generated a hybrid framework that has bestowed visibility upon competition, yet also limited its capacity to generate structural transformations in the markets.
- The degree of maturity ascribed to competition regulations along with their ability to have a direct or indirect impact on productivity are determined by two fundamental factors: the technical independence of the authority that applies them, and its ability to respond effectively to the dynamics of and challenges presented by strategic markets.
- The analysis of specific cases has shown that the competition regulations in force during the different stages of CAN's development were insufficient to address the conduct under investigation. Aside from the debate over evidence and the findings in the cases related to the sugar, polypropylene resin and telecommunications services markets, the facts described in each investigation did not receive an entirely adequate regulatory treatment, above all with regard to aspects such as identifying the abuse of a dominant position and defining the scenarios in which this can occur. Nevertheless, valuable lessons can be drawn from the above experiences in order to strengthen the competition regime, consolidating its effectiveness as a tool for promoting productive development and welfare within the framework of Andean integration.

