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-- Contribution from Colombia --

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The attached document from Colombia is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session II at its forthcoming meeting to be held on 20-22 September 2021 via a virtual Zoom meeting.

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Session II: Efficiency analysis in Vertical Restraints

-- Contribution from Colombia –

1. Introduction

1. This contribution concerns the competition assessment by the Superintendence of Industry and Commerce (SIC) of agreements or practices that take place in the context of a vertical relationship, mostly those that occur between firms operating in different levels of the production chain. These agreements generally involve the imposition of conditions related to the goods and services that the parties either produce, purchase, sell, or resell.

2. Vertical restraints have come into the spotlight of the world's competition regimes because they can remove or significantly affect intra-brand competition (that between distributors of the same product or service); and even because they can sometimes have negative repercussions on inter-brand competition (that between different brands or producers). As regards to intra-brand competition, it can be affected because the vertical restrictions imposed by producers may limit the freedom of distributors to act and hence eliminate their incentive to compete with each other. It is therefore considered that the lack of competition among distributors may end up having an impact on prices, production, innovation, on or the variety or quality of the goods or services that reach the final consumer.

3. With respect to inter-brand competition, vertical restraints may, in turn, produce exclusionary effects, especially in limited distribution agreements where there is a refusal to supply to other distributors (distributor foreclosure); or in single branding agreements, where distributors refuse to purchase goods or services from other producers or upstream distributors (producer foreclosure); or facilitate the realization of collusive agreements upstream (between producers) or downstream (between distributors) in the market, especially in resale price-fixing agreements, because this type of agreement reveals to competitors the uniform commercialization conditions implemented in the vertical chain.

2. Assessment of vertical restraints - Legal and analytical framework

4. The major substantive provisions applicable for the assessment of vertical restraints in Colombia are Law 155 of 1959 and Decree 2153 of 1992. These laws constitute the competition regime, its provisions address agreements, abuse of dominance, unilateral acts and mergers. Article 3 of the Law 1340 of 2009 is also relevant, as it states that the activities carried out by the SIC should focus on achieving three specific objectives: “free participation of businesses in the market, economic efficiency, and consumer welfare.” The promotion of efficiency and consumer welfare are among the principal benefits that competitive markets are expected to yield; thus, the Colombian competition authority should consider when evaluating the market effects of a certain conduct the whether it advances any of the aforementioned benefits, and whether pro-competitive outcomes are promoted or achieved.

5. Article 1 of Law 155 of 1959, prohibits agreements or arrangements that "have the purpose of limiting the production, supply, distribution or consumption of raw materials, products, goods, or services (...), and in general, all kinds of practices, procedures or systems tending to limit free competition (...)". It covers both agreements and unilateral acts and conducts that have a purpose or an anticompetitive effect. Articles 47 and 48 of

Decree 2153 of 1992 specify the agreements and acts that are considered anti-competitive, and article 50 lists the conducts deemed to constitute an abuse of dominant position. It is important to note that the abovementioned provisions do not differentiate between vertical and horizontal agreements. In addition, law defines an "agreement" as "every contract, covenant, meeting of the minds, agreed, or consciously parallel practice between two or more businesses" (Article 45.1, Decree 2153/92).

3. Efficiency analysis in Vertical Restraints

6. The following case studies provide an overview of the agency's analytical approach to vertical agreements. For each of the cases presented below, the Superintendence will provide a general description of the facts of the case, a review of the issues assessed by the Authority with an emphasis on the review of potential efficiencies raised by the investigated parties, and finally, the logic behind the allocation of the burden of proof and its effect on the outcome of the case.

3.1. Ibope (2011)

7. The SIC sanctioned CARACOL, RCN, UCEP and IBOPE for entering into agreements tending to (i) limit the sources of supply and/or basic inputs and (ii) obstruct access to the market. These agreements constituted vertical restrictions because they occurred between agents involved in different levels of the chain within the television advertising market. Here is a very brief description of the agents involved:

- CARACOL and RCN: Television channels that provide the sale of advertising space.
- UCEP: Aggregates advertising agencies, which are intermediaries between advertisers and television channels in the purchase of advertising space and placement of advertising spots.
- IBOPE: Is the only agent in Colombia that carries out audience measurement studies and detailed monitoring of advertising investment in television media. These studies are a basic input for decisions on the purchase and sale of advertising by the participating agents.

8. Advertisers and intermediaries take into account the program's rating, coverage area, channel audience, among other factors resulting from IBOPE's studies in order to decide how to invest in advertising space. TV channels need the studies to identify their position in the market and to set the parameters for the sale of their advertising space. That is why agents consider IBOPE studies as a bargaining tool in the market.

9. The competition problem arose because CARACOL, RCN and UCEP financed IBOPE's studies for the most part and therefore had great bargaining power and influence. Under this condition, CARACOL, RCN, UCEP and IBOPE entered into contracts, which included the following terms that were considered restrictive:

- They required that prior to IBOPE supplying studies to other television channels, there had to be authorization from CARACOL, RCN and UCEP. This meant that third parties and international channels could not have access to studies, even when these were a necessary input for their participation in the market. This element evidences how a vertical agreement generated a horizontal restriction (among television channels).

- They increased and fixed new rates to be charged by IBOPE to third parties, so that CARACOL, RCN and UCEP managed the costs of the studies to be charged to competitors. In addition, most of the profits generated by the sale of the studio were received by the three sanctioned agents. The above, in addition to being part of a vertical agreement, generated a vertical restriction because (i) third channels were affected by these new prices and cost overruns and (ii) advertising agencies or advertisers not linked to UCEP were faced with higher costs to obtain the necessary input to participate in the market.

10. During the investigation, the defense alleged the following efficiency gains from the vertical agreements in question:

- The first alleged efficiency gain was that of preventing illegal agents from operating in the market due to the fact that they had the power to authorize who could or could not enter into a contract with IBOPE for the studies. However, the SIC pointed out that CARACOL, RCN and UCEP had no authority to determine the illegality or not of a third party, especially considering that it was their competitor. To support its position, the SIC used a minute from IBOPE that showed a particular interest in preventing access of international channels to the studios, an aspect unrelated to the efficiency argument.
- A second alleged efficiency gain was related to the correction of a free riding problem that was occurring as CARACOL, RCN and UCEP would be financing most of the studies while third parties would pay very little for them, thus benefiting from them. This argument was refuted by the SIC by pointing out that the potential free riding issue would not be caused by a regulator but by the actions of the participants themselves, so the solution would be given by corrections in the design of the mechanism that allowed defining the transactional relationship. The SIC's argument was theoretical.
- The last alleged efficiency gain lies in the fact that the increase in the costs of the studies for third parties, generated by the hiring of an auditor to improve the studies, would, in the long term, increase the supply with a better quality, beyond the fact that in the short term the supply would be restricted. This argument was also rejected by the SIC because the sanctioned parties did not provide enough evidence to prove that the same products were produced at lower costs, something different from the same cost or new technology that would have brought a sufficient change to generate efficiency. On the contrary, with evidence collected it was demonstrated that hiring the auditor increased the costs in the production of the study and that the higher price that third parties had to pay exceeded the value of hiring the auditor.

11. As shown in the previous section, the burden of proof with respect to the efficiencies analysis was mainly on the sanctioned parties. Thus, for example, SIC did not find proven the alleged efficiency gains because the agents did not provide sufficient arguments and evidence. Nevertheless, it should not be disregarded that in the same efficiency analysis the SIC considered evidentiary material that was collected during the course of the investigation to refute some of the efficiency allegations.

3.2. Televisores (2012)

12. On August 13, 2012, Resolution No. 48092 closed the preliminary investigation against Éxito, Ktronix, Fallabella, La 14, Grandes Marcas and IBG, for alleged price fixing on TV sets of references: SONY KVL 32BX300, PANASONIC, LG and SAMSUNG. The main objective of the investigation was to determine how the price of tv sets was established in the framework of negotiations between importers and supermarkets. The legal challenge was to determine whether resale prices were fixed with importers, and whether, taking into account the contractual power of each party, a vertical agreement was established in the terms of article 47(1) of Decree 2153/92; or an act tending to influence the decisions of local traders in violation of article 48(2) of Decree 2153/92, in such a way as to facilitate the configuration of a price agreement.

13. The SIC departed from an analysis of the possible effects of resale price fixing, and concluded that in some cases this conduct may be justified by generating pro-competitive effects that could outweigh the anti-competitive effects that price fixing would bring. For this purpose, the SIC based its argumentation on the jurisprudence of the Supreme Court of Justice of the United States and argued that although resale price fixing may restrict intra-brand competition, it also encourages inter-brand competition because:

- By controlling resale prices, the producer can avoid double marginalization.
- By controlling resale prices, competition from distributors in the provision of ancillary services related to the product is encouraged. Thus, better pre-sale and after-sale services, which are essential or necessary for certain products, are encouraged.
- By controlling resale prices, parasitic competition can be eliminated.
- Resale pricing allows for a more stable and wider network of distributors.
- Resale pricing can sometimes also affect the market and restrict the benefit of consumers.

14. The SIC added that in order to identify the anti-competitive effects of resale pricing, it is necessary to observe, among other things: (i) The structure of the market; (ii) The characteristics of the upstream agent; (iii) The nature of the good and the brand; (iv) The contractual relationship; and (v) The long-term effects of the conduct. Finally, the SIC noted that these price-fixing mechanisms between producers and distributors may in any case entail competition risks. Reasons are that they may be used as a means to organize price cartels at the level of producers or at the level of distributors who may ask the producer to fix the resale price and control compliance with the agreement. Also, the SIC stated that the proof of efficiencies derived from the conduct had to be provided by the investigated party.

3.3. Perfumes (2014)

15. The preliminary investigation took place between January and December 2014. The SIC investigated the motives behind the parity of prices of perfumes imported in Colombia of the same brand and reference among different distributors. The product of interest was characterized by including perfumes and lotions of different brands and references. Four classes of the product were found from low cost and mass production to higher cost and specialized production in the following order: (i) masstige, (ii) mid-range, (iii) prestige, and (iv) premium.

16. It was also found that the perfume and lotion value chain in Colombia started from the parent companies that supplied the product to the distributor, who in turn supplied the product to the internal marketers. The distributor had three types of commercial relationship to acquire the world-class products and introduce them to the domestic market: direct with the parent company, indirect with an international distribution group or local with an international distributor based in Colombia.

17. The main importer and distributor of the main perfume brands was LA RIVIERA, which belonged to the WISA GROUP and had direct commercial relations with the PUSH GROUP. LA RIVIERA had five main marketers to whom it sold the product to make it available to the end customer. The prices of the perfumes distributed by LA RIVIERA had the particularity of following the standardization of prices in the world market and stipulated by the parent company and the categories assigned to certain perfumes.

18. The vertical restriction that was assessed by the SIC came to its attention because of a preliminary investigation of a possible horizontal price agreement by the main marketers of perfumes and lotions in Colombia. However, the characterization of the market showed that there might exist price fixing at the level of the manufacturer. Therefore, a possible vertical restriction in the resale price fixing modality was analyzed. In this sense, the analysis was based on the possible restrictive effects that could exist due to a directive from the producer to agents that do not compete directly with each other but that could affect intra-brand competition. For this analysis it took into account three fundamental points: i) the brand and its positioning; ii) the commercial conditions in the distribution and commercialization contracts of perfumes and lotions, and; iii) inter-brand competition.

19. In order to analyze whether such conduct was restrictive or whether it generated efficiencies, the first consideration was that the positioning of the brand is of paramount importance in the market. The international parent companies intended to maintain their reputation, image and positioning in the perfume and lotion market. This was done by reinforcing the positive characteristics of their products, such as excellence in product manufacturing, presentation, price at which they are offered, selective product communication and even selective product distribution. Secondly, the commercial conditions of the parent companies with the authorized distributors were based on policies of quality, promotion and marketing of their brands with the possibility of establishing resale prices for their products. The levels of demand of the contracts were determined to the extent that the product had greater brand recognition, quality or exclusivity. For this reason, maintaining the brand's prestige implied determining prices by establishing and/or authorizing discounts and promotions, setting minimum prices and even profit margin percentages. Thirdly, the conditions of inter-brand competition could be improved, since fixing resale prices together with the requirement of other distribution conditions encouraged competition among marketers and improved the provision of complementary services for the sale of perfumes and lotions, while maintaining the prestige and reputation of the brands. Finally, the SIC analyzed the exclusivity contracts and found that the requirements in terms of service, quality and prices were consistent with the selective distribution system with which the parent companies sought to maintain their reputation in the market and their image before the consumer.

20. The market for the distribution and commercialization of perfumes and lotions in Colombia was based on the exclusive imports and distribution determined by the international parent companies of the main brands. This implied the existence of minimum resale price fixing conditions and strict discount and promotion policies. However, the Authority found that distribution could be carried out by any agent that complies with the requirements of the parent companies in terms of service and quality. Additionally, it was

concluded that the existence of exclusivity and selectivity clauses in the distribution and commercialization of perfumes had an economic justification related to the positioning that this type of products demand in the market. This is due to the fact that the market was determined by economies of scale, specifically at the multinational level, where factories and/or brands obtain an advantage at the international level. Firstly, fragrances can only be produced by these factories and, secondly, the originality and authenticity of the product increases local consumer preferences. For this reason, distribution by local companies could support profit margins without compromising the brand's prestige with prices below international standards.

3.4. Casyp (2014)

21. In this case the SIC examined the possible configuration of a vertical agreement between CASYP and CHEVRON. These agents belonged to different levels of the fuel supply chain at the San Andres International Airport. CASYP was the concessionaire in charge of the administration of the airport and CHEVRON was the provider of the fuel supply service to the aircraft transiting the airport. The possible vertical agreement would have consisted of CHEVRON and CASYP agreeing to pass on to the aircraft a price or cost (also called runway access fee) for the supply of fuel at the airport. This price would have been set at the amount of $1200 pesos M/CTE for each gallon supplied and, once collected, would be passed on in its entirety to CASYP. As consideration, CHEVRON would have the exclusive right to distribute fuel at the San Andres airport. However, the Superintendency failed to prove the existence of the vertical agreement to transfer this price to fuel consumers and, consequently, ruled out the configuration of a vertical agreement in this case.

22. Initially, the Deputy Superintendence expressly accredited the existence of a vertical price-fixing agreement through a set of documentary evidence. First, through an offer sent by CHEVRON to CASYP for the renewal of the fuel supply contract at the airport. In this offer, CHEVRON undertook to discriminate in the invoices the amount corresponding to the runway access fee and the amount of fuel supplied to the aircraft separately. This discrimination would make it possible to easily identify the amounts related to the runway access fee, in order to transfer them to CASYP within a certain period of time. Secondly, there were emails exchanged between the legal representatives of the agents under investigation. Through these e-mails, the Delegation justified that CASYP had suggested to CHEVRON that, in case it was not willing to pay the runway access fee, other competing agents would be willing to make this payment. The purpose of these hints was to pressure CHEVRON to proceed with the collection of the fee from the aircraft, in order to transfer it to CASYP once it was collected. The Delegation also submitted e-mails related to CHEVRON's intention to condition the collection of the fee on obtaining the exclusivity of fuel supply at the airport.

23. The Superintendent of Industry and Commerce concluded that there was no vertical agreement between the parties whose purpose was to transfer the price or fee to the airlines. The evidence provided in the investigation only showed that CHEVRON made a unilateral business decision to pass on an operating cost to the consumer. For the Superintendent, the separation of costs on the invoice was a completely normal business decision. The discrimination of costs allowed customers to be informed about the value of CHEVRON's access rights and the value of the fuel. In sum, the evidence did not allow concluding the existence of an agreement between CASYP and CHEVRON to pass on the fee to consumers. On the contrary, the evidence showed that the transfer of the fee to the airlines was a decision adopted unilaterally by CHEVRON and that this commercial decision was outside the scope of CASYP's contractual obligations.

24. Additionally, the Superintendence concluded that the existence of an agreement with the purpose of transferring the runway access fee was unreasonable. A rational economic agent would only enter into agreements in those cases where it is not legally or economically feasible for it to unilaterally engage in conduct that would have the same effect. Therefore, if CHEVRON could decide to shift the fee on its own, it made no sense for CASYP to intervene to agree this conduct with CHEVRON.

25. In examining the effects of CHEVRON's unilateral conduct, the Superintendence also concluded that the pass-through of the fee to consumers had a valid basis from a commercial point of view. Such conduct was not reproachable, since in a market economy the businessman passes on his operating costs to the consumers; and if he did not do so, he could sell his products or services below cost. In this sense, the transfer of the fee to its customers is not reproachable as long as it is part of a unilateral commercial decision. On the contrary, this transfer is the product of the rational decision of an agent that participates in the market and that, of course, must cover the operating costs it incurs (pp. 71).

26. In this decision the Superintendence describes a methodology for examining the pro-competitive or anti-competitive effects of a vertical agreement. To apply this methodology, the Superintendency indicates that, once it has been "proven that there is a vertical agreement in which prices are fixed (...) or any other that limits competition, it will be the investigated parties who will have the burden of proving that, although the agreement tends to produce restrictions to competition, it is justified in efficiency reasons that eliminate its competitive nature" (Superintendency of Industry and Commerce, pp. 64).

27. Additionally, the Superintendency points out that a vertical agreement may be classified as procompetitive or anticompetitive depending (i) on the circumstances in which they have been formed; (ii) on their effects; and (iii) on whether the investigated parties manage to demonstrate that there are sufficient efficiency reasons to enter into them and to compensate the potential restrictive effect on the market (pp. 65).

28. In the particular case, the Superintendency respects the order of verification mentioned above. First, it points out the inexistence of a vertical agreement between CHEVRON and CASYP. Then, it analyzes the effects of passing on the fee to consumers as a rational sharing of the agent acting unilaterally in the market. And finally, it dismisses an analysis on efficiencies. Regarding efficiencies, the Superintendency considers it unnecessary to analyze them. The investigated parties did not have to prove them in the present case due to the non-existence of a vertical agreement and to the fact that the examined conduct does not generate harmful effects in the market or contrary to the rules of free economic competition (pp. 71).

29. After ruling out the existence of a vertical agreement between CASYP and CHEVRON, the Superintendency chooses to conclude that CASYP incurred in the conduct of fixing unfair prices. This conduct is accredited to the extent that CASYP disregarded the market rules and the economic and financial projections of the concession contract when setting the price to be paid for the runway access fee.

30. The Superintendence found that CASYP increased its revenues exponentially. From 2010 to 2011 it presented an increase of 1,705% (a little more than 17 times higher). And by 2012 it increased its revenues up to 2,611% (a little more than 26 times higher). Therefore, the burden on the investigated parties to prove that this increase was justified by efficiency criteria had no valid support to disprove the disproportionate profit margin in favor of both parties.

3.5. Molinos arroz (2015)

31. Pursuant to Resolution 16562 of April 2015, a sanction was imposed on Molinos Roa and Molinos Florhuila for infringement of the competition protection regime in the matter of Article 48(2) of Decree 2153. As in the resolutions mentioned above, in this decision the SIC made a brief analysis of what should be considered as vertical relationships and their possible anticompetitive or procompetitive effects. The SIC cited CASYP case and established that "...if after the SIC demonstrates the existence of a restriction derived from a vertical agreement (such as for example the establishment of minimum resale prices to distributors) the investigated parties prove that the same is justified in serious efficiency reasons that are sufficient to counteract the restriction, the Superintendency could not consider that the conduct is illegal and punishable, reason for which it could not affirm that it falls under the prohibition of numeral 1 of Article 47 of Decree 2153 of 1992."

32. The SIC proved that the investigated companies MOLINOS ROA and MOLINOS FLORHUILA exercised acts of influence on several of their clients or commercial allies, so that they increased the price of white rice sold to the public and matched it to the price offered in the wholesale market places of the cities where they were located. This is because there were agreements between the producers and their respective commercial clients in which the distributors committed themselves not to fix sales prices to the final consumer different from those agreed upon. Likewise, there was evidence of acts of influence so that the clients of the investigated companies did not transfer the discounts granted to the price to the public, thus preventing the price from being lower than the price imposed by said companies. The above constitutes an interference in the pricing policy of other economic agents, without valid reasons to justify it.

33. No efficiency analysis was performed. The market power of the White Rice mills was taken into account, based on their share (33%), the effect of the ROA brand on the consumer and the existence of entry barriers to new competitors. Regarding the Conduct, it was flatly considered that the investigated companies imposed to several of their clients to maintain a parity in the prices to the final consumer, as well as sanctions in case of non-compliance with such agreement, conduct that in the opinion of the entity seriously violates the rules of free competition. This is because consumers would be deprived of the possibility of buying from whoever offers the best conditions in the market and benefit from the plurality of suppliers in terms of price, quality, service, among other aspects (Pp 59). The investigated companies imposed to their customers the retail prices of their products by establishing: (i) a maximum in pesos of difference with the market place; (ii) absolute parity with that one; or (iii) limiting the application of the discounts granted by those to the retail prices. The resolution emphasizes that the rule has a preventive nature "that seeks to sanction even the proposed behavior to increase prices or to desist from lowering them". (pp16).

34. The evidence in the file shows that the commercial practices of the investigated companies MOLINOS ROA and MOLINOS FLORHUILA were aimed at influencing and controlling the setting of prices that their clients established for the final consumer. It was proved that such practices were accompanied by a strict monitoring and follow-up by the investigated companies that contemplated sanctions as retaliation for the non-compliance with the guidelines on resale prices that they imposed. It points out that after the SIC demonstrates the existence of a restriction derived from a vertical agreement it is possible for the investigated companies to demonstrate that the same is justified "in serious efficiency reasons" the Superintendency could not consider that the conduct is punishable (pp 17). In the specific case, the defense of the investigated parties did not present such justifications.

3.6. General motors (2018)

35. The Superintendence issued a statement of charges against GENERAL MOTORS COLMOTORES S.A. (hereinafter GM) for allegedly violating the provisions of Article 1 of Law 155 of 1959. The basis of the accusation was the fact that GM would be preventing the companies holding the concession contracts from setting up new and independent corporate entities and/or commercial establishments through which the distribution and/or separate commercialization of new motor vehicles of brands other than CHEVROLET in the Colombian territory would be carried out.

36. The exclusivity required by GM in the concession contracts would have been suitable to prevent, limit or delay the entry and/or consolidation of brands other than CHEVROLET in the distribution and commercialization market of new vehicles in Colombia. The effects of this conduct would be exacerbated by the fact that those who are already distributors and sellers of vehicles in Colombia are the agents with the greatest incentive and opportunity to market other brands of vehicles, taking into account the technical knowledge they have about them.

37. The concession contracts signed by GM for the distribution and marketing of CHEVROLET vehicles included a vertical exclusivity restriction, which imposed the obligation on the dealer to request GM's prior written consent for the marketing and distribution of products and/or services other than those agreed in the contract -i.e., other than the CHEVROLET brand-. By virtue of these exclusivity clauses, dealers marketing the CHEVROLET brand would not only be prohibited from marketing other brands of automobiles in these establishments, but also from incorporating other separate companies or separate commercial establishments to market vehicles of other brands.

38. In its recommendation, the Authority indicated that, according to the evidentiary material collected, GM's conduct did not prevent the entry or expansion of its competitors. It was evidenced that since the 90's the motor vehicle market in Colombia has had an exponential growth, both of the agents that were already participating as well as of new participants in the market. At the same time, GM's participation had decreased. It also pointed out that there was no market dominance on the part of the investigated agent. From the analysis of the concentration and dominance indexes, it was evidenced that the structure of the new automotive vehicle market at national level has reflected a low concentration structure and a tendency to greater competition. It was also evidenced that the reduction in the number of brands available in the new motor vehicle market that occurred in 2011 and 2012 was generated by causes other than the behavior attributed to GM.

39. In addition, the Delegation pointed out that GM's behavior generated efficiencies in the market that could have been transferred to consumers. Since the exclusivity clause guaranteed that the resources invested by GM, to improve the performance of its dealers, would be used to increase the sales of CHEVROLET brand vehicles and to improve customer service. This efficiency would be aimed at preventing free riding. Avoiding this type of behavior enables suppliers to make investments in services valued by consumers, such as improving customer service or the availability of after-sales service. On the other hand, the Office of the Superintendent of Industry and Commerce decided to close the investigation against GM.

40. However, regarding the efficiencies presented by GM, the Office rejected the conclusion of the Deputy Superintendence and pointed out that they were not valid. It stated that both its marketing model -mono-brand- and the multi-brand model offered benefits to dealers such as investments in advertising, training, transmission of information on new models, among others.

41. In respect to GM's market position, it was proven that in some market segments and categories it had a representative leadership. Yet, this did not imply that GM held a position in the new motor vehicle market in Colombia that allowed it to influence the competition variables of the market (absence of CHEVROLET's leadership in some segments, effective competition from other brands, loss of CHEVROLET's share over time, low entry barriers). About the conduct, the Authority concluded that although there was a vertical restriction of exclusivity: i) GM distributors were able to turn to other suppliers to continue in the market. ii) The duration of the exclusivity agreements was prudential and there were no non-competition clauses. iii) The restriction did not prevent the entry or expansion of competitors. iv) There were no significant entry barriers. There were no significant entry barriers iv) This behavior could be attributed to a different economic sense. Such conduct could derive from the purpose of protecting GM's investments and guaranteeing the improvement of the brand.

4. Conclusion

42. The SIC’s analytical approach to vertical restraints has evolved with time. It has changed from considering such restrictions as inherently anti-competitive, to admitting the possibility of efficiency gains derived from certain agreements or practices. In the second scenario, the justification provided by the investigated parties of the alleged efficiencies plus the Authority's assessment, has been decisive to conclude their illegal character and the proceeding of a sanction.