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

Purchasing Power and Buyers' Cartels – Note by Colombia

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This document reproduces a written contribution from Colombia submitted for Item 4 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

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1. In Colombia, since the beginning of the 21st century, the Competition Authority has analyzed cartels between competitors for the purchase of products. The most relevant cases have occurred in the farming sector. Agricultural products are raw materials that require processing for its subsequent commercialization. The affected products to which we will refer in this contribution are sugar, rice and cocoa. The Superintendence evidenced the existence of an oligopsony when analyzing the sugar, rice and cocoa' relevant market.
2. The Superintendence applies the same standard of proof regardless of the type of cartel. The authority applies the same analysis: in price fixing cartels for the supply of products and in cartels in which the purchase price is fixed. There is only one difference in the analysis of those two types of cartels. Whereas in the agreements in which the selling price is fixed, and generally the price increases and affects, mainly, the consumers; in the cases of purchase price fixing, the prices decrease and the main affected are the producers.
3. In analyzed cases, the Superintendence imposed sanctions on the cartelists because it proved that there was coordination in price fixing. Although an analysis of the possible effects of the investigated conduct can be made, this analysis is not an indispensable element to sanction this type of conduct.
4. Finally, in those cases one of the biggest challenges faced by the Competition Authority was to obtain direct evidence of the existence of the agreement. In the rice and cocoa cases, the Superintendence found the existence of a conscious parallelism between the buyers. This situation underlines that the biggest challenge is to find direct evidence in scenarios where there are few agents and the information is easily known by the agents, which could lead to tacit agreements.

1. Cocoa Case

5. In 2009 the Superintendence sanctioned two firms (NACIONAL DE CHOCOLATES S.A. and CASA LUKER S.A.) for having a conscious parallel behavior which fix the purchase prices of cocoa beans at national level¹. The two companies investigated were the purchasers of 98% of the cocoa beans produced in Colombia. This raw material is used to produce chocolate, chocolate bars, candies and other products such as cocoa liquor. In this case the Superintendence was able to establish that the average price per kilo paid by the two companies was identical for the period between January 2005 and February 2006. These prices coincided both in variation and magnitude.
6. The similarity in purchase prices were mainly detected in the regions in which the two companies acquired cocoa. For example, the Superintendence found that, in June 2005, the average purchase price in the geographic areas in which the two companies participated differed only by 0,14% Colombian pesos. Therefore, the difference between the prices paid by the two companies did not exceed 0,54% in any month and on average the variation was 0,16%.

¹ Resolution No. 4946 of 2009

7. The Superintendence included the economic indicators to prove the agreement on the purchase price of cocoa. In addition the agency used memorandums sent independently by the two companies to their customers. In these memorandums, the Competition Authority identified that the purchase strategy was very similar. Besides the purchase price at which each competitor would acquire the cocoa were alike. All these findings proved the will of the investigated companies to act in a harmonious and coordinated manner.

8. It is important to point out that the investigated firms argued that they established their purchase price according to the New York Stock Exchange. However, the Superintendence established that the cocoa price set in the New York Stock Exchange was significantly different from the price fixed by the undertakings.

2. Sugar Case

9. In 2010 the Superintendence sanctioned a group of sugar mills for having agreed to fix the purchase prices of sugar cane in Colombia². Sugar cane is an indispensable input to produce sugar and fuel alcohol, an activity in which the sanctioned companies were engaged. At the time, the sugar mills demanded 99.7% of the sugar cane production. They used it to produce sugar and fuel alcohol. The anticompetitive agreement, which is explained below, corresponds to an agreement on the demand side of this product.

10. This case was about an anticompetitive agreement whereby sugar cane growers, suppliers of sugar cane, were affected. The suppliers were not receiving different offers. Therefore, there was no increase or competition in the purchase price. This situation reduced the possibility of obtaining better clients, conditions and prices.

11. The Superintendence inferred the existence of the agreement base on two findings. First, the cartelists offered a fixed price to the suppliers of sugar cane (sugar cane growers). In this case, the cartelists set a fixed price to the sugar cane suppliers. Consequently, the price on the demand side was the result of an anti-competitive agreement.

12. Second, the cartelists fixed the price to be paid for the sugar cane to produce fuel alcohol. In a concerted manner the companies fixed formulas that determined the purchase price of this input. The Authority found that within the framework of the executed agreement, there were scenarios in which the cartelists exchanged sensitive information. The information was related to the remuneration strategies to be used in the negotiation with the suppliers. They also exchanged information related with the distilleries' cost structure. Additionally, the Competition Authority found that the identity in the purchase prices of sugar cane did not respond to any economic justification other than the agreement between the agents.

3. Rice Case

13. In 2010 the Superintendence sanctioned the rice mills (MOLINOS ROA S.A., MOLINOS FLORHUILA S.A., ARROZ DIANA S.A., UNIÓN DE ARROCEROS S.A. and PROCESADORA DE ARROZ LTDA.) for fixing purchase prices of green paddy rice in two regions of Colombia³. Green paddy rice is processed to obtain white rice for human

² Resolution No. 6839 of 2010

³ Resolution No 22625 of 2015

consumption. The anticompetitive agreement, which is explained below, corresponds to a conscious parallelism in the purchase price of green paddy rice.

14. This conduct was detected from analyzing the symmetry in the purchase prices of green paddy rice of each of the mills, between January and June 2004. Additionally, it was evidenced that the prices were not changing although this is a seasonal market and prices are supposed to respond to season. In this case, there was not an economically rational explanation to the decrease in the purchase price of paddy rice. Furthermore, this decrease in the purchase price didn't pass on to the final consumer, since at that time the price of white rice did not show significant variations.

15. The Superintendence determined that: i) there was an identity in the purchase prices of paddy rice by the investigated mills; ii) the investigated agents registered a similar, almost identical, movement in the purchase prices of green paddy rice. In almost all cases, the mills made variations on the same date and at the same values (raising or lowering prices). It is worth noting that these facts were not denied by any of the investigated parties.

16. The mills' defense argument was based on the fact that the structure and dynamics of the market could explain the similarity in the purchase price. The Superintendence studied this argument and concluded that there was no market explanation for these behaviors. This was supported by the lack of relation between the prices and the demand variation. In this market, the purchase prices of paddy rice were fixed by the mills, which allowed them to exercise their power to maintain low prices and to reduce the demand.

17. In addition, the Authority verified that this symmetry in prices did not correspond to the seasonality of the harvest, nor to risks of shortages, among other alleged arguments related to the market structure. For the Superintendence, the symmetry in prices, as well as in the timing of price variations, was attributed to a deliberate coordination of the undertakings. This was confirmed by the fact that there was no economic rationality to explain this behavior.