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Competition and Consumer Policy in Digital Markets – Note by Colombia

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1. Institutional and Legal Framework: A Dual but Asymmetrical Model

1. The Superintendence of Industry and Commerce (SIC) is the authority with exclusive jurisdiction over infringements of the competition law¹ while also being responsible for protecting the public interest in consumer rights in those matters not specifically assigned by law to another authority.² Under this public enforcement design, the SIC, as an inspection, surveillance, and control authority, has been entrusted with protecting the dynamics of competition and consumption within the social market economy model and the collective rights developed under the Colombian Constitution.³ Finally, in the exercise of judicial functions, and within the individual dimension of consumer law grounded in the structural asymmetry between consumers and producers or suppliers, the Superintendence also includes consumer judges who resolve individual disputes aimed at guaranteeing consumer rights on a case-by-case basis. Although this element is important to mention, it will not constitute the focus of this contribution.

2. Now, although the SIC is entrusted with the protection of both constitutional and legal guarantees — a circumstance that facilitates consumers' ability to resort to a single authority in search of protection of their rights — it is important to emphasize that there are particularities in the institutional, regulatory, substantive, and procedural design that differentiate the competition and consumer protection regimes. These differences have posed significant challenges within the institution in achieving proper articulation between both public policies, as explained below.

3. **The first aspect relates to the institutional design and the role played by the Superintendent as head of the authority.** In matters of competition law, the Superintendent of Industry and Commerce is the official responsible for deciding administrative investigations concerning infringements of competition law, ordering interim or precautionary measures, and, where appropriate, terminating investigations early if the commitments offered by the investigated parties are deemed sufficient, as well as approving or rejecting merger transactions. Thus, as head of the authority, the Superintendent plays a decisive role in final decisions concerning competition law. However, it is the Deputy Superintendent for Competition Protection who acts as the investigating authority responsible for determining which administrative investigations merit formal proceedings.

4. In consumer protection matters, the situation is entirely different. In this case, the protection of consumer rights during the investigative stage and at first instance is entrusted to the Consumer Investigations Directorate and the Telecommunications User Protection Directorate, while the second instance rests with the Deputy Superintendent for Consumer Protection. Accordingly, the Superintendent does not exercise an equivalent level of involvement in consumer protection investigations, which are processed autonomously by the respective directorates. The Superintendent therefore retains a role of guidance and issuance of general instructions regarding consumer policy.

¹ Law 1340 of 2009. Article 6.

² Law 1480 of 2011. Article 2.

³ Political Constitution. Articles 78 and 333.

5. Accordingly, under the current institutional design of the Colombian authority, achieving adequate coordination between competition law and consumer protection requires coordination among at least five specific institutional functions and dependencies: the Office of the Superintendent, the Deputy Superintendent for Competition Protection, the Consumer Protection Investigations Directorate, the Telecommunications User Protection Directorate and the Deputy Superintendent for Consumer Protection. It is therefore necessary to examine the particularities of each regime.

6. The second aspect that must be highlighted concerns the principal and residual nature of the functions entrusted to the SIC in these matters, as well as the rules applicable to economic agents under competition and consumer law. In competition matters, the SIC exercises general jurisdiction over the entire national economy and is the exclusive authority competent to hear competition law matters, applying the relevant special competition rules. In consumer protection matters, however, the situation differs: the SIC hears consumer protection matters not specifically assigned by law to another authority, and the Consumer Statute applies as a general framework only insofar as a given consumer relationship is not regulated by a specific sectoral regime. This means that sectors such as financial services, transportation, and public utilities are primarily supervised by their own regulators, a design that leaves the SIC with residual jurisdiction over the broadest range of consumer complaints across the economy.

7. Accordingly, the existence of sectoral authorities in consumer protection matters and the presence of sector-specific rules have required the SIC, in its role as competition authority, to maintain constant communication with the regulators and/or supervisors of each economic sector in order to determine the scope of its jurisdiction and undertake concrete actions in each sector. This interaction has been strengthened by an advantage of the Colombian regulatory system: the SIC, as competition authority, is entrusted with the competition advocacy function in relation to draft regulations, which are generally issued by those same regulators that also exercise inspection, surveillance, and control functions over their sectors.

8. A third fundamental aspect concerns the procedural design and the investigative stages under both the competition protection regime and the consumer protection regime. This is relevant because competition law establishes a special procedure that includes specific mechanisms such as confidentiality during the preliminary stage, leniency programs, interim or precautionary measures, dawn raids and commitments, all of which differentiate the manner in which the pre-investigative stage is conducted by the competition authority as compared to the consumer authority.

9. Unlike competition matters, in consumer protection, although dawn raids may be carried out, the preliminary stage is not confidential and follows the rules of a general administrative procedure. Although this distinction does not play a central role for purposes of coordination, it is worth noting that in competition matters the authority has a maximum term of five years from the execution of the last conduct to impose sanctions, whereas in consumer protection matters the authority has three years to issue the sanctioning administrative act, counted from the conduct, fact, or omission giving rise to the infringement in cases of instantaneous conduct. In the case of continuing infringements — that is, where the harm to the legally protected interest extends over time — the term is counted from the day following the cessation of the infringement. In any event, these timeframes influence the manner in which formal investigations must be conducted.

10. Thus, the fact that preliminary stage of competition law investigations remain confidential while consumer protection investigations do not, creates a disincentive for the Deputy Superintendence for Competition Protection to conduct joint proceedings, since doing so could lead to disclosure of its information gathered by the Consumer Protection

Investigations Directorate. Nevertheless, a fundamental aspect shared by both regimes is the possibility of issuing administrative orders, although their implementation occurs under different scenarios and assumptions. On the one hand, the Superintendent may, through interim or precautionary measures or in the final decision concluding an administrative investigation, adopt measures aimed to ensure the effectiveness of sanctions or order the modification or termination of conducts contrary to competition law.

11. This is precisely an institutional dimension that qualitatively distinguishes the SIC's consumer protection mandate from its competition mandate: the authority to issue administrative orders aimed at preventing harm or injury to consumers arising from violations of consumer protection rules. This power, exercised within the framework of the inspection, surveillance, and control functions inherent to administrative police powers, is grounded in subsections 6, 8, and 9 of Article 59 of Law 1480 of 2011 and subsection 8 of Article 12 of Decree 4886 of 2011, as amended by Decree 092 of 2022, and differs in its assumptions from the powers exercised under competition law.

12. Subsection 6 authorizes the SIC to order, as a definitive or preventive measure, the cessation of advertising that does not comply with legal provisions, as well as the measures necessary to prevent consumers from being misled again or to avoid or aggravate harm or injury to consumers. Subsection 8 authorizes the immediate and preventive suspension of the production or commercialization of products, for up to sixty renewable days, where there are serious indications that the product threatens the life or safety of consumers. Subsection 9, drafted in open-ended terms, broadens the authority's scope of intervention to any hypothesis involving a violation of consumer protection rules by empowering the SIC to order the measures necessary to prevent harm or injury to consumers arising from such violations — without limiting the type of measure or the scope of conduct — thus constituting a general enabling clause for preventive intervention by the authority.

13. These powers are essentially preventive in nature and do not, in all cases, require the existence of a sanctioning administrative proceeding in the strict sense. During the preliminary inquiry stage — discretionary, unilateral, and confidential in nature — the SIC may collect information and adopt administrative measures whenever the general interest in protecting consumer rights so justifies, provided that the principles of necessity, proportionality, and reasonableness are observed. By contrast, the Deputy Superintendence for Competition Protection does not possess an equivalent power to issue orders of this nature within the field of consumer protection, which reinforces the functional complementarity of the two mandates within the same institution and underscores the singular value of the consumer protection component in addressing conduct affecting digital markets.

14. A fourth fundamental aspect necessary for proper institutional coordination between the competition and consumer protection regimes is the understanding that must exist regarding the legally protected interests safeguarded by each regime, the existence of specific conducts under each framework, and the differing economic consequences imposed on infringers under both regimes.

15. In the Colombian case, each regime is governed by its own rules and entails its own sanctioning consequences. The principle of *non bis in idem* — the prohibition against double punishment for the same conduct — is materialized precisely through this dual but separate architecture: the same conduct may give rise to both a competition investigation and a consumer protection investigation because each seeks to protect a different legally protected interest. However, the investigated party may not be sanctioned twice for the same conduct under the same legal framework. This nuance is particularly relevant in the context of digital markets, where a single platform's conduct may simultaneously constitute, for example, a dark pattern affecting consumers and a self-preferencing practice

restricting competitors' access to the market, ultimately limiting consumers' ability to choose.

16. In this regard, it is important to note that competition rules tend to be broader, with a much wider catalogue of prohibitions, which allows the authority to analyze and assess new market phenomena and their potential impact not only on competitors but also on consumer interests. In this respect, it should be emphasized that Colombian competition law contains a general prohibition restricting the implementation of any practice, procedure, or system aimed at limiting free competition, as well as any conduct intended to limit the production, supply, distribution, or consumption of domestic or foreign raw materials, products, goods, or services to the detriment of consumers.⁴ Thus, the existence of a generic and open-ended prohibition enables the competition authority to address the various issues arising in traditional markets and now also in digital markets.

17. From this perspective, the examination of the SIC's institutional design reveals an architecture that, far from being a mere organizational coincidence, has first-order functional consequences for enforcement in digital markets. The coexistence of both regimes under a single institutional roof does not in itself resolve the coordination challenges described above — indeed, the procedural, confidentiality-related, jurisdictional, and substantive asymmetries analyzed in this section demonstrate that proximity does not equate to automatic integration. Nevertheless, it creates a structural advantage that deserves emphasis: consumers are the SIC's primary point of contact with the market. Although the scope of action of the Deputy Superintendence for Competition Protection is broader because it covers all sectors of the national economy, it is the everyday consumer experience that most immediately and directly activates the SIC's inspection, surveillance, and control apparatus. Complaints filed by consumers nationwide and processed by the Deputy Superintendence for Consumer Protection through its Investigations Directorates, as well as by the Deputy Superintendence for Jurisdictional Affairs when specific disputes are to be resolved, do not merely describe individual harms to consumer rights: they frequently reveal underlying patterns of conduct that may constitute infringements of competition law.

18. Consumers are the first to experience the effects of anticompetitive behavior — in the form of high prices, reduced choice, deterioration in quality, or designs that limit their ability to choose — which makes their consumption experience a valuable source of information for detecting conduct simultaneously affecting consumer welfare, free entry and economic efficiency, which are precisely the legally protected interests safeguarded under the competition regime pursuant to Article 3 of Law 1340 of 2009.

19. Accordingly, having a team dedicated to protecting consumers through the resolution of individual and collective disputes, as well as from the perspective of market dynamics, not only facilitates interaction between the two regimes, but also projects to the public — in this case consumers — the existence of a single authority that emerges as the protector of collective rights against potential market abuses.

20. This logic has been recognized internationally. UNCTAD, in its 2025 Secretariat Note on maximizing synergies between competition and consumer protection⁵, states that authorities with dual mandates are better positioned to detect market conduct operating at the intersection of both regimes, precisely because information arising from consumer

⁴ Law 155 of 1959. Article 1.

⁵ United Nations Conference on Trade and Development (UNCTAD). (2025). Maximizing synergies between competition and consumer protection policies, Note by the UNCTAD secretariat. https://unctad.org/system/files/official-document/tdrbpcnf10d4_en.pdf

complaints constitutes a source of market intelligence to which pure competition authorities do not always have direct access. In this context, the complementary nature of both regimes in Colombia — which in the abstract could appear to be an institutional complexity — becomes an operational strength once it is understood that the consumer is not merely the final beneficiary of protection, but the first detector of market dysfunctions.

21. The practical manifestation of the foregoing is reflected in the possibility of conducting joint, concurrent, or even sequential investigations between the competition and consumer units, as has indeed occurred within the Superintendence. Although the following case remains pending decision, it is important to mention it in order to illustrate the interaction between the two regimes. In 2023, the Deputy Superintendence for Competition Protection initiated an administrative investigation for alleged violation of the general prohibition under competition law⁶, having preliminarily found that an operator in the telecommunications sector may have: (i) artificially inflated Mobile Number Portability (MNP) figures; (ii) unjustifiably rejected MNP requests submitted by users; (iii) obstructed access to interconnection and National Automatic Roaming (RAN) services; (iv) reduced the quality of RAN services; and (v) abusively used judicial and/or administrative actions aimed at preventing a competitor from consolidating its position in the market.

22. A reading of the statement of objections reveals that several of those allegations concern conduct prohibited under the framework protecting telecommunications users' or consumers' rights. However, the repeated presence of complaints and claims concerning number portability, as well as administrative investigations conducted by the Directorate for Investigations on the Protection of Communications Services Users within the Deputy Superintendence for Consumer Protection, led the competition authority to assess those behaviors as structural market conduct that no longer merely affected consumer interests in the abstract, but rather constituted conduct capable of affecting competitive dynamics. In practice, this situation resulted in exchanges of information and requests between both dependencies in order to strengthen the investigation conducted by the competition authority.

2. The Dual Model in the Face of Digital Markets: Potential, Tensions, and Enforcement Experience

23. Addressing overlapping conducts between competition and consumer protection in digital markets requires, as a starting point, recognition of a substantial asymmetry between the two regimes that is not merely procedural but ontological: the legal concepts with which each regime operates are not interchangeable. This distinction becomes particularly evident in the concept of the “digital platform,” which today constitutes the central arena for conduct raising simultaneous concerns under both frameworks.

2.1. The Problem of Defining Platforms in Competition and Consumer Protection

24. The competition regime operates with open-textured concepts. Law 1340 of 2009 applies to any person engaged in an economic activity or potentially affecting such activity, regardless of its legal form or nature, in relation to conducts that have or may have effects, totally or partially, on national markets, irrespective of the economic activity or sector. Under this premise, the Deputy Superintendence for Competition Protection does not need to define what a “platform” is in order to exercise its mandate: it suffices to verify whether the conduct under analysis affects the competitive dynamics of the relevant market. This

⁶ Resolution No. 61513 of 2023.

breadth constitutes a strength of the competition regime in the face of rapid technological change, as it enables the authority to deploy its tools against any actor or conduct with market impact, without the absence of a predefined legal category constituting an obstacle. In this sense, the competition authority recognizes and analyzes an economic phenomenon from the perspective of the market and the way in which it evolves.

25. One example is the recent decision adopted by the Deputy Superintendence for Competition Protection in the Apple case.⁷ In that matter, the authority developed the notion of two-sided markets and, consequently, the existence of two-sided or multi-sided platforms capable of generating direct or intra-group network effects and indirect or inter-group network effects.

26. In this regard, the Deputy Superintendence preliminarily recognized that direct network effects in platforms occur when the actions of one user directly affect the welfare of another user located within the same group or side of the market, which may generate greater attraction and facilitate higher levels of transactions without rivalry in consumption. It also recognized the possible existence of indirect network effects when the actions of one user affect the welfare of another user in a different group or on another side of the market, thereby promoting the growth of the other groups.

27. Accordingly, the competition authority stated that platforms may reduce transaction costs associated with incomplete contracts and information asymmetries, even contributing to matching between groups, reducing search costs, mediating dispute resolution, among other functions. In this particular case, the Deputy Superintendence stated that Apple, through its iOS and iPadOS digital ecosystems, operates as an intermediary between two distinct groups: developers as application suppliers, and users as demand-side participants. According to the authority's preliminary assessment, Apple connects both groups through its digital platform and creates value by facilitating interaction between them.

28. The consumer protection regime, by contrast, operates with normatively delimited and stricter concepts. Article 5 of the Consumer Statute — Law 1480 of 2011 — establishes express definitions linking the legal characterization of market actors to their obligations and responsibilities toward consumers. With respect to platforms, Law 1480 of 2011 does not contain an express definition of “digital platform” in the general sense, but rather regulates two specific figures: the electronic commerce portal (Article 50) and the contact portal (Article 53), to which was added the definition of “contact portal” formally incorporated into subsection 18 of Article 5 by Law 2439 of 2024. This normative precision follows its own logic: the consumer protection regime must determine with precision who within the commercialization chain assumes obligations relating to information, warranty, safety, and liability vis-à-vis consumers, which requires more precise identification criteria than those required for analyzing market effects under competition law.

29. This conceptual divergence is consistent with what the OECD⁸ itself has observed regarding digital platforms. The organization notes that there is no single, universally accepted definition of the concept; that the term encompasses a wide variety of services — marketplaces, search engines, social media, content distribution channels, app stores, communication services, payment systems, and collaborative economy platforms, among others — and, particularly relevant for consumer protection analysis, that not all participants on online platforms are “consumers” within the meaning employed by consumer protection authorities. The OECD further concludes that the very notion of an

⁷ Resolution No. 60099 of 2025.

⁸ OECD. (2019). What is an 'online platform'? In *An Introduction to Online Platforms and Their Role in the Digital Transformation*. OECD Publishing, Paris. <https://doi.org/10.1787/19e6a0f0-en>

“online platform” is more an analytical construct than a natural and immutable category, and that any static definition may rapidly become obsolete in light of the evolution of digital business models.

30. This warning has direct implications for the SIC: the approach adopted by the Deputy Superintendence for Consumer Protection beginning with Resolution No. 50536 of 2015 — in which the SIC analyzed MercadoLibre’s business model and developed functional criteria to determine when a digital intermediary actively participates in the consumer relationship, rather than aspiring to a general ontological definition of platform — is not only legally sound but also analytically more robust in the face of the dynamics of digital markets. In consumer protection matters, the SIC is not constructing a universal taxonomy of digital platforms: it is identifying the indications that make it possible to determine when a digital intermediary has crossed the threshold of mere intermediation and become an active participant in the commercialization chain — at which point the Consumer Statute becomes fully applicable, together with all the obligations arising therefrom.

31. The criteria developed through the SIC’s consumer protection line of decisions — including obtaining a percentage of the transaction value, participation in payment processing, issuance of own and partner advertising, the power to modify publicly displayed price information, determination of warranty eligibility, being the only visible interface vis-à-vis the consumer, direct handling of petitions, complaints, claims, and requests (PQRS), and assumption of responsibility for payment reversal procedures, among others — do not constitute an exhaustive or closed definition of a digital platform. Rather, they constitute a set of indications of active intermediation, influence over the transaction, and capacity to affect the consumer transaction, the verification of which in each specific case determines the scope of the intermediary’s responsibilities vis-à-vis consumers.

32. This approach has received express endorsement from the administrative courts. In its judgment of April 16, 2026⁹, the Administrative Tribunal of Cundinamarca upheld the legality of the sanctioning resolutions issued by the SIC against RAPPI S.A.S., specifically validating the functional analysis methodology adopted by the Deputy Superintendence for Consumer Protection. The Tribunal rejected RAPPI’s claim to be classified as a contact portal and concluded that, regardless of the formal designation of its business model, the platform operates as an electronic commerce intermediary insofar as it intervenes directly and actively in all stages of the consumer relationship: a remuneration structure based on sales commissions, authority to modify prices (mark-up), exclusive control over commercial information, direct management of PQRS and refunds, administration of own payment methods, and functional direction of delivery logistics. The Tribunal expressly stated that the intermediary’s legal classification does not depend on its intention or formal designation, but rather on the evidentiary reality of its operations — which constitutes direct judicial validation of the methodology the SIC has consistently developed and applied since the MercadoLibre case in 2015. The Tribunal clarified that the SIC did not impose a business model on RAPPI, but rather required compliance with the regulatory framework applicable to the operation it actually conducts, in protection of the public interest and consumer rights.

33. By contrast, for purposes of competition law, as discussed above, the same platform may be analyzed from different market roles, and its characterization as a supplier or contact portal may be irrelevant for purposes of assessing its conduct and the consequences

⁹ Administrative Tribunal of Cundinamarca, First Section, Sub-Section A. (2026, 16 April). Rappi S.A.S. v. Superintendencia de Industria y Comercio, Case No. 25000234100020210114400 (Nullity and reinstatement of rights action). Reporting Judge: Luis Manuel Lasso Lozano.

of potentially anticompetitive behavior. This reflects the fact that both regimes formulate their own judgments based on the legally protected interests entrusted to them, and that the lack of uniformity between Law 1340 of 2009 and Law 1480 of 2011 in this regard is not a defect of the system but a logical consequence of the difference in their respective objects of protection.

2.2. Structural Tensions and Coordination Experience: The Current State of the Dual Model

34. Although there is constant communication between the competition and consumer protection areas, to date the SIC has not conducted investigations in which the Deputy Superintendencies for Consumer Protection and Competition Protection have jointly investigated conducts with simultaneous impact under both regimes in digital markets. This absence does not reflect a lack of conduct that could potentially warrant such action, but rather the combined effect of the structural tensions described in the previous section, which in practice have operated as real disincentives to joint enforcement.

35. The most significant of these tensions is the incompatibility between the confidential nature of the preliminary stage of competition investigations and the public nature of consumer protection proceedings. Any mechanism for information-sharing between the two deputy superintendencies during the stage prior to the formal opening of a competition investigation faces the risk of compromising the confidentiality required under the competition regime at that stage — confidentiality that serves an investigative effectiveness function, insofar as it prevents the investigated party from destroying evidence or modifying its conduct before the authority has gathered sufficient elements to formally open the investigation. Although manageable through appropriate internal protocols, this risk has not yet been the subject of a formal procedural solution within the SIC, beyond restricting access to the case file to specific officials.

36. These tensions are compounded by differences in limitation periods — three years in consumer protection matters versus five years in competition matters — differences in the evidentiary standards required under each regime, and the institutional culture of each deputy superintendence, which historically has developed its analytical capabilities independently. The result is that the SIC's dual model, from an institutional design perspective, creates the conditions for an integrated response to digital conduct with simultaneous effects under both regimes.

37. The SIC's experience suggests that placing two mandates under the same institutional roof is a necessary but insufficient condition for integrated enforcement: it additionally requires the development of internal protocols capable of resolving the identified procedural incompatibilities, the construction of shared technical capabilities for digital markets, and the institutional willingness to treat digital markets as a domain requiring a cross-cutting response.

38. Although there is no specific experience involving digital markets, for the authority it is important to highlight the results of the joint investigation conducted in connection with the organization of COP16, which enabled the authority to project a message of institutional presence and resource efficiency, including through the participation of the entity's forensic team. Within the framework of these joint inspection visits, the SIC identified and consequently initiated investigations into possible conduct affecting both competition and consumer dynamics. This arose in response to repeated consumer complaints concerning unusual price increases in accommodation bookings during COP16.

39. From the competition law perspective, the Deputy Superintendence for Competition Protection preliminarily identified the alleged existence of a collaborative environment for sharing strategic data related to accommodation rates, occupancy percentages, sales volumes, among other information, which may have reduced competitive uncertainty among the various tourism service providers. It also preliminarily identified the alleged existence of an explicit agreement among several hotels in Cali to coordinate their rates during periods of high demand, such as COP16¹⁰, a situation that even led to the adoption of interim or precautionary measures.

40. From the consumer protection perspective, the same joint operation led to the opening of eleven administrative investigations¹¹ against tourism services providers in the city of Cali, through the filing of charges for alleged infringements of both the consumer protection regime and the tourism regime. The alleged conduct included the dissemination of promotions through digital channels — including websites and social media profiles — without disclosing all essential conditions of the offers, in alleged violation of Article 33 of Law 1480 of 2011; the establishment of no-show penalties exceeding the limits permitted by law, implemented directly through the establishments' digital booking interfaces, in alleged violation of Article 65 of Law 300 of 1996; and the inclusion of abusive clauses in lodging contracts that presumed the consumer's consent to assume payments without clear settlement parameters, in alleged violation of Articles 42 and 43 of Law 1480 of 2011. It is worth noting that in several of these cases, evidence was collected through inspection visits to the investigated parties' digital channels — websites and Instagram accounts — pursuant to the powers established in subsection 4 of Article 59 of the Consumer Protection Statute, demonstrating that the SIC's consumer protection enforcement already incorporates digital environments as a direct object of supervision.

41. This case illustrates with precision what the SIC's dual model is capable of offering when its two mandates are activated in a coordinated manner. Each deputy superintendence contributed what the other could not provide on its own: the competition unit contributed the analysis of the effects on market structure and operators' incentives, while the consumer protection unit contributed the capacity to intervene in the specific conduct affecting consumers of accommodation services, including conducts materialized through the establishments' digital channels. That complementarity, demonstrated in a non-digital context, is precisely what the SIC has both the mandate and the institutional architecture to develop more systematically in response to the challenges posed by digital markets.

3. Decision-Making Criteria: when to Apply the Competition Regime, the Consumer Protection Regime, or Both

42. A necessary premise for addressing the decision-making criteria between the two regimes is to recognize that the question itself has changed in nature. For years, asking whether conduct should be treated as a competition matter or a consumer protection matter made sense because “digital markets” constituted a limited segment distinguishable from the rest of the economy. Today, that distinction has lost operational value. Digitalization has permeated all market relations — production, distribution, commercialization, and consumption — to the point that nearly every market now has a relevant digital dimension.

¹⁰ Resolution No. 62110 of 2024.

¹¹ Resolutions No. 98166 of 2025, 101917 of 2025, 101923 of 2025, 101918 of 2025, 101927 of 2025, 101915 of 2025, 103410 of 2025, 103405 of 2025, 103407 of 2025, 103412 of 2025 and 103416 of 2025.

Consequently, the question is no longer when to apply enforcement criteria in digital markets, but rather how to apply them in an economy that is, as a whole, progressively digital.

3.1. What Is a Digital Market from the Consumer Protection Perspective?

43. The normative starting point in Colombia for delimiting the scope of application of the consumer protection regime in digital environments is Article 49 of Law 1480 of 2011, which defines electronic commerce as “the performance of mercantile acts, transactions, or operations concluded through the exchange of data messages transmitted telematically between suppliers and consumers for the commercialization of products and services.” This definition is complemented by that contained in subsection (b) of Article 2 of Law 527 of 1999, which extends the concept to any relationship of a commercial nature, whether contractual or not, structured through the use of one or more data messages, encompassing supply and exchange operations involving goods or services, distribution agreements, financial and stock exchange transactions, among others.

44. What these definitions reveal is that, for purposes of consumer protection in Colombia, the determining criterion is not the nature of the good or service being transacted, but rather the means through which the consumer relationship is materialized: the exchange of data messages through communication networks. From that perspective, a “digital market” for purposes of the Consumer Statute is any transactional space in which the relationship between supplier and consumer is articulated totally or partially through electronic means — which in today’s economy includes everything from large electronic commerce platforms to sales through text messages, instant messaging applications, email, or any other digital interface serving as a commercialization channel.

45. This breadth has a direct institutional consequence: the universe of conduct capable of generating simultaneous competition and consumer protection concerns in digital environments is not limited to large technology platforms, but potentially encompasses all markets in which suppliers use digital means to interact with consumers. The SIC, as the enforcement authority under both regimes, therefore, faces a challenge of scale: it is not a matter of developing specialized capabilities for a market segment, but rather of incorporating the digital dimension as a cross-cutting variable throughout all of its activities.

46. From the competition perspective, the notion of a digital market does not have an express legal definition under Colombian law, and its delimitation is constructed on a case-by-case basis through relevant market analysis, following the methodology inherent to competition law. What distinguishes these markets is not the commercialization channel but rather their particular economic characteristics: direct and indirect network effects, economies of scale without mass, the generation and intensive use of user data, and high switching costs that discourage consumer mobility between rival platforms — all documented by the OECD¹² as common economic features of online platforms distinguishing them from other business models. Where these characteristics converge, digital markets tend toward concentration and generate conditions conducive to anticompetitive conduct that is difficult to detect through traditional enforcement tools, which has led the OECD to document that digitalization presents a multifaceted challenge for competition authorities that goes beyond the application of conventional analytical categories.

¹² OECD (2019), An Introduction to Online Platforms and Their Role in the Digital Transformation, DOI: <https://doi.org/10.1787/19e6a0f0-en>

47. The absence of convergent definitions between the two regimes for delimiting what constitutes a “digital market” replicates, at a more general level, the same conceptual divergence described in Section 2 regarding the concept of platform: each regime defines its scope of application according to the legally protected interests it safeguards, and that difference is structural rather than a remediable defect.

3.2. Determining Factors for the Choice of Regime or Joint Enforcement

48. Where conduct in a digital market raises concerns under both regimes, the decision regarding which enforcement tool to deploy — or whether simultaneous action is appropriate — is determined by the concurrence of the following factors:

49. The first is **the legally protected interest affected**. The competition regime protects the proper functioning of the relevant market — competitive structure, free entry, economic efficiency, and consumer welfare as an aggregate outcome — pursuant to Article 3 of Law 1340 of 2009. The consumer protection regime safeguards the effectiveness of consumer rights — including the right to information, quality, safety, free choice and contractual protection — pursuant to the Consumer Statute. This distinction determines not only the applicable procedural framework but also the type of analysis required: the former requires definition of the relevant market and assessment of effects on competitive dynamics; the latter requires verification of the supplier’s compliance with its obligations toward consumers within the specific consumer relationship.

50. The second factor is **the evidentiary standard**. Competition investigations require evidence regarding the relevant market, the anticompetitive conduct, and possible anticompetitive effects — a technically demanding standard involving specialized economic analysis and longer investigative timeframes. Consumer protection investigations operate under more accessible standards, grounded in consumers’ documented experiences and the verifiable breach of the supplier’s legal obligations. This difference is particularly relevant in digital markets, where evidence of consumer harm is frequently more visible and immediate than evidence of anticompetitive effects.

51. The third factor is **the urgency and speed of the required response**. Digital markets are characterized by the speed with which conduct may cause harm on a massive scale. The consumer protection regime, due to its procedural flexibility and the SIC’s authority to issue preventive administrative orders pursuant to subsections 6, 8, and 9 of Article 59 of the Consumer Statute — including the cessation of misleading advertising, suspension of the production or commercialization of unsafe products, and any measure necessary to prevent harm or injury to consumers — allows for a faster response to conduct requiring immediate intervention (these orders must be fully motivated and therefore count with robust evidentiary support). The competition regime, although it includes the Superintendent’s authority to order interim or precautionary measures, operates under more structured procedures involving longer response times, because the issuance of such measures requires, in all cases, ensuring the collection of information regarding the allegedly anticompetitive conduct in order to avoid loss of evidentiary elements.

52. The fourth factor is **the type of remedy available**. The competition regime provides broader structural and behavioral remedies — including the reversal of mergers, the imposition of access conditions, and the modification or termination of anticompetitive conduct — capable of addressing the structural causes of market distortion. The consumer protection regime provides remedies aimed at ceasing immediate harm and repairing the affected consumer — including the temporary or permanent closure of establishments or temporary blocking of platforms, the prohibition on producing or distributing products, and

the destruction of products harmful to health and safety — which could be more effective to interrupt ongoing harmful conduct than at modifying market structures.

53. The sixth factor, and one of particular relevance to the SIC’s institutional design, is **the difference in the deterrent effect of sanctions**. The competition regime provides for sanctions for 100,000 monthly minimum legal wages with the additional possibility of imposing sanctions of up to 150% of the profits derived from the conduct where such profits are quantifiable, pursuant to Article 25 of Law 1340 of 2009. The consumer protection regime provides for fines of up to 2,000 monthly minimum legal wages for legal entities, with successive fines of up to 1,000 monthly minimum legal wages for failure to comply with orders while the infringer remains in contempt, pursuant to Article 61 of Law 1480 of 2011. In matters concerning protection of communications services users, the ceiling is 15,000 monthly minimum legal wages for legal entities, pursuant to Law 1341 of 2009.

54. For large digital platforms operating in Colombia — with operating revenues that may amount to several hundreds of billions of pesos — the maximum fine available under the consumer protection regime may be insufficient as a compliance incentive, whereas sanctions under the competition regime may reach significantly larger amounts. This asymmetry has a direct consequence for the SIC’s enforcement architecture: despite its greater speed and flexibility in terms of the matters that must be proven (namely, the provider’s non-compliance with its legal obligations under consumer law), the consumer protection regime may be insufficient as a deterrence tool against actors with substantial economic power in digital markets. In such cases, complementarity between the two regimes is not merely desirable, but necessary: the consumer protection regime acts swiftly to interrupt ongoing harm (through the issuance of administrative orders) and protect affected consumers, while the competition regime provides the structural deterrent effect that the former cannot achieve on its own. This complementarity is, precisely, one of the most concrete advantages of the SIC’s dual model compared to systems in which the two mandates are institutionally separated.

4. Coordination, Parallel Enforcement, and Institutional Design: Balance and Perspectives

55. In digital markets, where conduct may generate simultaneous concerns from both competition and consumer protection perspectives, the possibility of conducting parallel or coordinated actions between both functions acquires particular relevance. A coordinated approach may offer significant benefits: a more comprehensive view of risks, greater effectiveness in intervention, and the possibility of designing responses that address both market failures and direct harm to consumers. However, as documented throughout this contribution, coordination is neither automatic nor free from tensions — and accurately recognizing those tensions is a necessary condition for overcoming them.

56. The SIC’s institutional design offers both concrete opportunities and limitations in this regard. The coexistence of competition and consumer protection functions within a single authority facilitates proximity between teams, information-sharing, and the progressive development of knowledge concerning complex market dynamics. However, the existence of differentiated legal frameworks, the functional separation between deputy superintendences, and the differences in evidentiary standards, response times, and institutional culture within each area may hinder fully integrated coordination.

4.1. Existing Coordination Mechanisms

57. The SIC has coordination mechanisms which, although they have not been subject to comprehensive procedural formalization, have demonstrated their usefulness in practice. The most immediate is the joint inspection visit during the preliminary inquiry stage, which allows both deputy superintendences to simultaneously collect information relevant to each of their respective mandates without necessarily compromising the confidentiality of the preliminary stage of competition proceedings. The action undertaken in connection with COP16 illustrates the concrete scope of this mechanism: eleven consumer protection investigations and the identification of potential infringements of the competition regime arising from a single coordinated field operation.

58. The telecommunications number portability case illustrates a different but equally relevant modality: sequential coordination, in which complaints processed and investigations initiated by the Directorate for Investigations for the Protection of Communications Services Users, within the Deputy Superintendence for Consumer Protection, provide the market intelligence enabling the Deputy Superintendence for Competition Protection to identify a pattern of conduct with structural implications. What from the consumer protection perspective appeared to be repeated non-compliance with number portability regulations and the imposition of fines of up to 15,000 monthly minimum legal wages, from the competition perspective was recharacterized as conducts aimed at obstructing the entry and consolidation of a rival in the market, through a series of potentially structured and coordinated behaviors intrinsically connected to one another. This sequentiality may be managed and leveraged through information-sharing protocols clearly establishing when and how information generated in one proceeding may be transferred to the other without compromising their respective procedural guarantees.

59. Additionally, the competition advocacy function exercised by the SIC with respect to regulatory proposals constitutes an indirect but relevant channel of coordination with sectoral regulators exercising consumer protection functions within their respective areas, thereby generating a form of integration between the two perspectives operating at the level of regulatory policy and not solely at the enforcement level.

4.2. Structural Limitations and Institutional Development Agenda

60. The most significant limitations to systematic coordination have already been identified throughout this contribution. The incompatibility between the confidentiality of the preliminary stage of competition proceedings and the public nature of consumer protection proceedings is the most relevant, and managing it requires internal protocols establishing clear rules regarding the handling of information collected during joint actions. Such protocols do not require legislative amendments — they may be adopted through internal administrative acts — but they do require institutional commitment and a deliberate effort in procedural design.

61. This is compounded by the challenge of capabilities. Digital markets require expertise in platform economics, data analysis, and understanding of algorithmic architectures that go beyond the traditional profiles of competition and consumer protection enforcement. The appropriate response to this challenge is not the creation of a specialized digital markets unit — which would reproduce the fragmentation that the system seeks to overcome — but rather the development of cross-cutting capabilities enabling officials from each deputy superintendence to understand the effects of digital conduct simultaneously from both perspectives. This implies cross-training, interdisciplinary teams

in relevant investigations, and the development of analytical methodologies integrating the criteria of each regime without dissolving their legal distinctions.

4.3. Future Perspectives: International Cooperation and Reflection on the Model

62. International cooperation constitutes an additional lever for the SIC's institutional development. Its active participation in the OECD, UNCTAD, ICPEN, ICN and FIAGC has been an important source of learning regarding best practices in digital enforcement. Looking ahead, that cooperation may be deepened in two directions: the exchange of specific experiences concerning internal coordination mechanisms between competition and consumer functions — in which the Colombian experience, with both its achievements and limitations, has something genuinely valuable to contribute — and active participation in the development of international standards integrating the perspectives of both regimes, such as the one the OECD is currently building through this roundtable.

63. Regarding the underlying question posed by this roundtable — whether the bifurcated model is sufficiently robust to address digital harms or whether a more unified model is required — the SIC's experience suggests a nuanced answer. The bifurcation of legal regimes is not the problem: the distinction between the legally protected interests safeguarded by each regime is structurally necessary and should not be dissolved. The problem is the institutional bifurcation that, in many systems, prevents the intelligence generated by each regime from flowing into the other. In that regard, the SIC's dual model points in the right direction: not toward the merger of the two regimes, but toward the construction of institutional bridges enabling their complementarity to translate into enforcement that is more effective, more coherent, and better equipped to respond to the complexity of digital markets.