

Unclassified

English - Or. English

23 October 2023

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

Working Party No. 2 on Competition and Regulation

Competition and Professional Sports – Note by Colombia

4 December 2023

This document reproduces a written contribution from Colombia submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

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

Ms. Federica MAIORANO
Federica.Maiorano@oecd.org

JT03529741

Colombia

Promotion of gender equity in sports

1. Introduction

1. The purpose of this contribution is to describe how the competition authority in Colombia could contribute to the debate on gender equity in some sports markets. This analysis will be based on the experience of the women's soccer case, which has been investigated at the Superintendence of Industry and Commerce since September 2023.
2. Competition protection in Colombia ensures free participation in the market, the welfare of consumers and the economic efficiency of markets. As will be shown, the guarantee that men and women have the same conditions in relation to the same indicator, far from sacrificing economic dynamism and growth, is a requirement for its efficiency.
3. The challenge that the Colombian competition authority is facing, like other authorities around the world, is to identify gender gaps as a relevant factor for free economic competition. Furthermore, for this important task, the authorities must overcome the problem of the lack of data identifying women's preferences in the markets, which could make gender inequality more evident.
4. For the development of this contribution, the document will be organized in four parts. First, an exposition will be made of the legal and constitutional framework that allows the intervention of the competition authority in markets where gender gaps could be evidenced. Second, there will be a brief analysis of the challenges faced by the authorities in relation to the intervention to reduce gender gaps. Third, the case of women's soccer in Colombia will be presented. Finally, the conclusions of the analysis will be presented.

2. Legal framework that allows an intervention in markets with gender gaps

5. In accordance with the Colombian Political Constitution, intervention in the economy seeks, among other objectives, the equitable distribution of opportunities¹. This purpose is directly connected to one of the fundamental rights of today's democracies: the right to equality². Under the perspective of this fundamental right, all persons must enjoy the same rights, freedoms and opportunities without any discrimination based on sex, race, religion, etc.
6. This means that in cases where there is evidence of a disparity in the distribution of opportunities, as in the case of a gender gap, state intervention is justified. This intervention could be made from various perspectives. At the legislative level, there have been various initiatives to combat gender gaps, such as the Quota Law, under which the participation of women in the executive levels of government bodies was regulated. At the administrative level, for example, the competition authority could direct its efforts in the fight against those gaps.

¹ Article 334 of the Political Constitution of Colombia.

² Article 13 of the Political Constitution of Colombia.

7. In the latter case, the Superintendence of Industry and Commerce has the responsibility to protect free economic competition. This protection encompasses the surveillance of free participation in the market, consumer welfare and economic efficiency³. With this regulatory basis, the competition authority has the power to analyze those cases in which a gender gap causes a negative effect on any of the three pillars it protects.

3. Challenges for the authorities in relation to the intervention to reduce gender gaps

8. One of the main challenges for competition authorities is to understand how a gender gap could be a problem related to free economic competition. Thus, in addition to analyzing the three pillars protected by the Superintendence of Industry and Commerce, we would also need to analyze the effects that agents' behaviors may have in relation to gender gaps in the markets. That is, as noted above, gender gaps may play an important role in market efficiencies. However, the identification of inefficiencies caused by gender discrimination is not so evident in all cases, as it may be the result of other behavior different from gender discrimination.

9. It is at this point that competition authorities must carry out investigative actions and complement the economic evidence related to the inefficiencies of a market, in such a way that it is possible to corroborate the cause of these externalities. This leads to another challenge faced by competition authorities. This is the lack of data regarding the participation of women in certain markets, which would allow to identify with greater certainty both the causes and the negative effects brought about by gender gaps.

10. In relation to this last challenge, Claudia Goldin, Nobel Laureate in Economics 2023, faced a similar problem. In carrying out her research work, she was faced with the challenge of the lack of data to determine the impact of women's participation in the labor market. Even in the case of Colombia, it was only until 2020 that the authority in charge of producing and disseminating official statistics conducted a study of employment in Colombia with data disaggregated by gender. However, this cannot be an impediment to analyze competition issues from a gender perspective. In this sense, all authorities, regardless of whether they are competition authorities, should look to analogous disciplines or evidence from other markets to find out whether the disparity is the result of gender bias and, of course, the effects it may have on a given market.

4. Case of the Women's Professional Soccer Market in Colombia

11. The Superintendence of Industry and Commerce initiated an investigation in September 2023 to analyze the women's professional soccer market in Colombia. The competition authority, by its own initiative, had identified several issues in this market, especially concerning the conditions of the players in the market. Although the general issue was publicly known and reported by the media before, the market signals up to that point did not indicate that the problem could be attributed to gender bias. The problem seemed to stem from the normal dynamics of the market, involving the interaction between supply and demand, specifically the lack of consumers for women's soccer.

12. Therefore, one of the challenges in this investigation, aligning with the issues faced by authorities worldwide, was the absence of data regarding women's participation in the

³ Paragraph 3 of Article 1 of Decree 4886 of 2011.

professional soccer market in Colombia. There is currently no study that compiles aggregated data, such as player conditions in terms of time and affiliation, for women's soccer. Consequently, the authority had to analyze approximately 1,274 labor contracts to obtain this data. Similarly, the effects of the market's conditions on competition dynamics had not been analyzed up to that point.

13. However, within the investigative action carried out by the competition authority in Colombia, some factors that served as indicators of the lack of promotion and development in the market were found. It was suggested that the obstruction of market growth was a result of the actions of key market players rather than being a natural consequence of market dynamics.

4.1. Facts

14. On February 17, 2017, the first Women's Professional Soccer League in Colombia began. The league's inception was a condition imposed by CONMEBOL for male professional soccer teams in order to allow them to participate in international tournaments. Since then, seven women's leagues have been held in which various obstacles to women's participation as professional athletes have been identified.

15. Based on the description in various media outlets, the Superintendence of Industry and Commerce conducted information requests to investigate the causes of the slow growth in the market. The competition authority, at least preliminarily, found that market obstruction was the result of coordinated behaviors rooted in gender stereotypes (the belief that women cannot play soccer). The following are brief summaries of the investigated behaviors:

1. The agreement to standardize two clauses in the contracts of women players affiliated with the teams, particularly regarding the duration of women player contracts and their individual image rights. Regarding women player affiliation, they agreed that the contract duration would be equal to the duration of the league, which historically ranged from 1 to 4 months. Women players were not contractually bound to the club for the remaining time. Concerning individual image rights, teams stipulated that women players would not receive additional compensation for the use of their image, which, in many cases, represented additional income for them.
 2. The agreement to fix the salary of women players affiliated with the teams. Professional clubs, which affiliated the women players, agreed on a salary scale that determined the remuneration of each player based on their experience. The range varied between \$237 and \$1,000 USD.
 3. The reluctance of professional soccer executives to accept money from the Colombian government to promote the sport, due to the potential state controls it could impose on the flow of funds to the teams. This was despite one of the main arguments for the lack of market promotion being the absence of economic resources, according to the professional clubs.
 4. The signing of a contract for the exploitation of television and tournament broadcast rights with unfavorable conditions for the development of the Women's Professional Soccer League. This contract stipulated that only one women's league match should be broadcast, which could, in any case, be replaced by any other match, including matches from men's competitions.
16. Collectively, these behaviors appeared to demonstrate that market growth obstruction had been a result of a conscious action by the agents participating in it.

Furthermore, this action had resulted from gender stereotypes⁴. At this point in the investigation, there was evidence that, as a rule, executives in women's soccer believed that this activity was an economic burden for the teams and was only justified due to the obligation they had if they wished to participate in international tournaments, such as the Copa America. Consequently, players could not expect better conditions.

4.2. Potentially Anticompetitive Effects of the Behaviors

17. At this point, the competition authority in Colombia analyzed why the described behaviors would have impacted free economic competition. In summary, three possible anticompetitive effects were described.

18. Firstly, there would have been a lack of incentives for women to enter and stay in the Women's Professional Soccer League. The alleged coordination among professional soccer leaders in Colombia would have translated into the unification of the behavior of market competitors. It is important to recognize that all clubs are competitors, not only on the field but also in the acquisition of human talent, which in this case, are the female players. In normal competitive conditions, professional clubs must compete to acquire the best players, and this is achieved by offering better conditions than the competition. However, if player conditions are standardized, particularly regarding income levels (such as contract duration, individual image rights, or salary amounts), there would be insufficient incentives for new talent to enter or for player mobility to occur, leading to market stagnation.

19. Secondly, it was evident that the supply (players and their human talent) and demand (professional soccer teams) dynamics of the market were inefficient. In the analyzed case, capital was not being distributed in accordance with natural market dynamics but rather because of agreements among competitors.

20. Finally, the behavior of professional soccer executives in Colombia, influenced by gender stereotypes, hindered the promotion and growth of women's professional soccer as it perpetuated beliefs such as women having lower athletic performance than men. With these arguments as a basis, it would be difficult for the market to overcome the inefficiencies it faces.

5. Conclusions

21. Competition authorities worldwide face a significant challenge. Despite the existence of gender gaps, particularly regarding women's participation and compensation in the sports labor market⁵, decisions like those of the Superintendence of Industry and Commerce enable a broader perspective on the issue. Thus, the implications of gender gaps are not analyzed in isolation but within the broader context of market dynamics. It becomes clear that the issue involves not only women, but all stakeholders interested in a stable, efficient, and equitable economy.

22. In this regard, it is important for more competition authorities to engage in the analysis of various markets from a gender-disaggregated perspective. This is important not only because it is not always evident that market inefficiencies are due to gender gaps,

⁴ According to the Office of the United Nations High Commissioner for Human Rights (hereinafter ACNUDH), a gender stereotype "is a generalized view or preconceived idea about the attributes or characteristics, or the roles that women and men possess or should possess or play."

⁵ TJCA, 02-IP-2019, (2020): Abuse of dominance in the form of predatory litigation, para. 6.19.

making remedies indirect and, therefore, less efficient. It is also important because taking this approach to market analysis would allow women and their issues to be included in the solutions to the inefficiencies present in certain markets.