

Unclassified

English - Or. English

18 May 2021

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

Working Party No. 3 on Co-operation and Enforcement

Competition Compliance Programmes – Note by Colombia

8 June 2021

This document reproduces a written contribution from Colombia submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/competition-compliance-programmes.htm>.

Please contact Ms Sabine ZIGELSKI if you have any questions about this document
[Email: Sabine.Zigelski@oecd.org].

JT03476655

Colombia

1. This document puts forward the Superintendence of Industry and Commerce's (henceforth, SIC) most recent developments regarding advocacy policies, including those aimed at promoting compliance programs. Our contribution to the present discussion is based on the SIC's experience supporting the designing and advising the development of the 2020 National Technical Standard for the establishment of best practices on the compliance of Colombian competition laws and policies, alongside the Colombian Institute of Technical Standards and Certification. Also, the document will provide an overview of some advocacy initiatives undertaken by the agency to raise awareness of competition compliance and promote a competition culture. Lately, the SIC's approach in this regard has been especially mindful of leveraging actual complementarities among the authority's workstream, advocating for a competition culture and compliance with a comprehensive and multi-stakeholder perspective will most certainly have an impact on its enforcement activities.

1. Introduction

2. This document puts forward the Superintendence of Industry and Commerce's (henceforth, SIC) most recent developments regarding advocacy policies, including those aimed at promoting compliance programs. Our contribution to the present discussion is based on the SIC's experience supporting the designing and advising the development of the 2020 National Technical Standard for the establishment of best practices on the compliance of Colombian competition laws and policies, alongside the Colombian Institute of Technical Standards and Certification. Also, the document will provide an overview of some advocacy initiatives undertaken by the agency to raise awareness of competition compliance and promote a competition culture. Lately, the SIC's approach in this regard has been especially mindful of leveraging actual complementarities among the authority's workstream, advocating for a competition culture and compliance with a comprehensive and multi-stakeholder perspective will most certainly have an impact on its enforcement activities.

2. The National Technical Standard

3. The SIC recently partook in the Technical Committee led by the Colombian Institute of Technical Standards and Certification – ICONTEC as known in Spanish–, that developed the first National Technical Standard (henceforth, NTS) containing minimum requirements for the establishment of best practices on compliance of competition laws and policies. The National Technical Standard is a non-binding norm, available to be adopted on a voluntary basis by any market agent, regardless of its legal form or nature.

4. The NTS was developed after conducting a review of the critical elements for effective competition compliance programs for businesses. Going from a global examination of the discussion being held by academics, competition authorities, practitioners, and multilateral organizations on the key components for effective compliance, to a local perspective, which entailed landing into our socioeconomic context; the SIC and ICONTEC tailored a norm which allowed the creation of compliance programs for any kind of market agent. For its development, the SIC studied many experiences from

other jurisdictions, academic papers, and the International Chamber of Commerce's Antitrust Compliance Toolkit for SMEs, and larger companies, among others. Most importantly, the NTS benefited in a great extent from the series of meetings and discussions held with different stakeholders, and from ICONTEC's expertise in the formulation of general compliance guides, which added valuable elements to the norm. As mentioned before, the ICONTEC holds a strategic role promoting, developing, and guiding the application of Colombian Technical Standards and other normative documents intended for achieving an optimal economy, improving quality, and facilitating customer-supplier relationships at the corporate, national, or international level.

5. This technical standard was designed in such a way that any type of company would be able to implement good practices for compliance of the Colombian competition regime. It benefited from representation of the multiple stakeholders who by having a seat on the table, provided input and shared the first instances of the creation of the tool. Indeed, the SIC saw a great opportunity in this collaboration, as issuing a tool especially designed for the promotion of self-regulation by market agents, would impact positively in the way they adapt their behavior to the requirements of the rules and principles provided in the regime. The SIC was mindful of the potential impact of having a self-regulation tool, that from an educational perspective, could influence positively the organizational behavior of firms. By providing the adequate tools for the prevention of anticompetitive behaviors, the SIC expected to help companies to set their own compliance programs, which in turn would contribute to the enhancement of a competition culture.

6. The NTS is based on the following elements, which are considered by the SIC as the foundation for effective compliance programs:

1. Commitment from the Company's senior management to building a competition compliance program with policies and procedures aimed at preventing and mitigating possible infringements of competition laws and fostering competition culture. This commitment works as an engine for cultural and organizational change.
2. Periodic assessment and evaluation of competition risks.
3. Creating and maintaining a compliance culture through example and training
4. Communicating the elements of the program throughout all the organization and raising awareness of competition compliance best practices
5. Identification of individual responsibilities for the implementation and oversight of the program
6. Training on the program's components and procedures to acquire relevant competencies for an effective implementation of the program
7. Continuous re-evaluation, upgrade and improvement of the program

3. Agency initiatives promoting competition compliance and culture

7. The following are some of the initiatives that the SIC has taken to foster a competition compliance culture among businesses and the society. The first initiative worth mentioning, adopted by the Colombian Competition Authority as a response to the challenges brought by the Covid-19 pandemic, was to send letters to trade associations and businesspeople inviting them to protect consumer rights and competition conditions in the markets; to avoid engaging in practices, procedures, and systems likely to limit competition or distort prices. This initiative was aimed at (i) preventing potential anticompetitive

behaviors amid the very challenging situations that emerged from the pandemic and (ii) raising awareness of the importance of growing a culture of competition and compliance with the laws. Also, the SIC emphasized the important role that business associations and professional associations play in modern economies, their activities benefit their members - especially the smaller ones - and can also benefit the overall efficiency of a market. In line with this initiative, the SIC issued the Resolution No. 20490 of May 11, 2020 to provide answers to concerns of Colombian businesses in respect to entering into collaboration agreements, specifically of those agreements that would be held within the state of economic, social, and ecological emergency. This resolution reiterates the standards established by the Authority to determine which types of collaboration agreements among competitors are legitimate and can occur in the national markets without implying a transgression to the competition regime.

8. Additionally, the SIC carried out two training sessions for the Federation of Departments and the Federation of Municipalities targeting 1100 municipalities and 32 departments, with the purpose of raising awareness of the importance of complying with the competition protection regime, as well as to inform about the consequences of its transgression. These sessions allowed the authority to promote competition protection among public procurement officials and raise awareness as to the important role that territorial entities play in the proper expenditure of public funds and in guaranteeing and promoting competition for efficient public procurement. The SIC also held 2 training sessions within the Congress, in which several reflections and discussions around competition took place with the purpose of encouraging a comprehensive and articulated understanding of competition policy and principles between the Competition Authority and the Legislative body. The SIC conducted an open public training for businessmen, academics and the government, with a view to promoting the application of the technical standard and delving into the benefits of the compliance culture and its impact on free economic competition.

9. Lastly, the SIC carried out the first contest for the promotion and protection of competition. The purpose of the initiative was to foster a competition and compliance culture among young generations of citizens. They were asked to answer through short videos to the question on “How competition can improve the life of Colombian citizens?” More than 60 videos were submitted, originated in different regions of Colombia, showing innovative and creative approaches to explaining the value of competition to society.

4. Conclusion

10. The SIC’s ultimate goal is to find that all market agents are compliant of antitrust law. Our rationale then was to deliver a clear message that involved both the benefits of competition to market agents, consumers and the overall society, and also, to foster a sound and long-term commitment to compliance of the competition regime. To the extent that a company is committed to properly implementing its compliance program, it can minimize its involvement in anticompetitive practices. If companies hold robust internal procedures, they increase the opportunities to self-report or adopt proactive measures to counter potential illegal conducts by their teams. Our approach is quite innovative in the sense that we resorted to the standardization of the minimum criteria to enable companies to build a program tailored to their needs, on the basis of their size and sector in which they operate, and most importantly, after identifying the risks of non-compliance to which they may be exposed. The alliance with the national standardization body would as well provide an additional and wide-ranging means of promotion of competition compliance.