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Minority Shareholding and coordinated effects – Note by Ecuador

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Ecuador

1. Introduction

1. Minority equity shareholdings are instruments of investment and corporate organisation that may serve legitimate financing, cooperation and innovation purposes. Their relevance to competition law arises when the rights and relationships associated with them may alter incentives to compete, facilitate access to commercially sensitive information or enable influence over other economic operators' strategic decisions. Their assessment therefore requires distinguishing the existence of a corporate relationship from its possible competitive consequences.

2. In Ecuador, Article 7 of the Regulation implementing the Organic Law on the Regulation and Control of Market Power refers, among other sources, to the criteria on corporate links and economic groups[1] established in securities-market legislation. This reference helps characterise relationships between economic operators, but does not replace an assessment of their competitive autonomy[2] or proof of the constituent elements of a potential infringement of the LORCPM.

3. This contribution examines these criteria and their usefulness in analysing the possible impact of minority shareholdings on coordination between economic operators[3]. From the standpoint of restrictive practices, it distinguishes three questions: identification of corporate relationships; assessment of the possible mechanisms through which they may affect competition; and determination, where appropriate, of legally prohibited conduct. This approach seeks to avoid both automatically attributing illegality to a minority investment and ruling out its relevance merely because it does not confer control.

2. An Overview of Collusive Practices in Ecuador

4. The analysis of collusive practices requires identification of the type of conduct under examination and the conditions governing its prohibition. In the context of this contribution, the issue is to determine when relationships arising from a minority shareholding may facilitate coordinated conduct between economic operators that retain competitive autonomy, without confusing that possibility with proof of an infringement.

> *"As regards the concept of an agreement, the Court of First Instance observes, first, that it is merely another way of referring to coordinated/collusive conduct restrictive of competition, or even a cartel in the broad sense, involving at least two distinct undertakings that have expressed their common intention to conduct themselves in a particular way on the market. Moreover, for there to be an agreement within the meaning of Article 81(1) [of the European Commission], it is sufficient for an apparently unilateral act or conduct to be the expression of a*

[1] For the purposes of this analysis, an economic group consists of several legal persons subject to a relationship of common control.

[2] For the purposes of this analysis, competitive autonomy means an economic operator's ability to determine its market conduct independently.

[3] OECD, Minority Shareholdings and Interlocking Directorates, DAF/COMP (2008)30, 2009, executive summary and background note.

concurrence of wills between at least two parties; the form in which that concurrence is expressed is not, in itself, decisive"[4].

5. When examining a collusive practice, the objective nature of the conduct must be considered, since the parties' intention is not a necessary factor in determining whether an agreement has an anticompetitive object.[5]

6. In Ecuador, the LORCPM[6] distinguishes horizontal from vertical collusive practices and determines whether they are assessed by object or by effect. In particular, it classifies the horizontal practices listed in points (a) to (e) as restrictions by object, whereas the remaining horizontal practices and vertical practices must be assessed by their effects. This distinction determines the applicable legal and evidentiary analysis.

"Article 11 – Collusive practices. – All agreements, decisions by associations or concerted practices between two or more economic operators which have as their object or effect the prevention, restriction, distortion or elimination of competition in all or part of the national market, as provided in this Article, constitute collusive practices and are therefore prohibited"[7].

7. To examine a possible infringement of Article 11 of the LORCPM, it is necessary to identify the economic operators involved, the form of conduct alleged and the applicable elements of the prohibition, taking account of whether the restriction is by object or by effect and the Law's territorial scope. The assessment must distinguish the constituent elements of the conduct from factors which, from an economic perspective, may facilitate or explain how it operates, without requiring proof of actual effects when the applicable legal regime does not so require.

8. First, it is necessary to establish whether the entities under examination qualify as economic operators under Article 2 of the LORCPM[8] and, subsequently, whether they retain competitive autonomy in determining their conduct on the market.

9. In competition law, the terms "economic operator", "economic agent" and "undertaking" are used to identify entities engaged in economic activities. The concept of

[4] Court of First Instance of the European Communities, judgment of 8 July 2008, AC-Treuhand AG v Commission of the European Communities, Case T-99/04, ECLI:EU:T:2008:256, paragraph 118.

[5] European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, 2023/C 259/01, paragraph 29.

[6] Organic Law on the Regulation and Control of Market Power, Article 11, as worded in the partial presidential objection published in the Seventh Supplement to Official Gazette No 333 of 24 July 2026, in compliance with Judgment No 43-24-IN/26 of the Constitutional Court of Ecuador: "Article 11 – Collusive practices. – All agreements, decisions by associations or concerted practices between two or more economic operators which have as their object or effect the prevention, restriction, distortion or elimination of competition in all or part of the national market, as provided in this Article, constitute collusive practices and are therefore prohibited."

[7] Ibid.

[8] LORCPM, "Article 2 – Scope. – All entities carrying out, or potentially carrying out, economic activities are subject to this Law, regardless of their legal form or method of financing; that is, this Law applies to all economic operators, whether natural or legal persons, public or private, profit-making or non-profit, domestic or foreign, which engage or may engage in economic activities throughout or in part of the national territory, and to those which engage in such activities abroad insofar as they produce or may produce effects within Ecuadorian territory. Economic activity shall include, inter alia, any activity involving the exchange of goods and/or services on the market, whatever its form or designation, including activities performed by State entities through public procurement or other means. The conduct or acts of an economic operator shall be attributable to that operator and to the operator controlling it where the former's conduct has been determined by the latter and it is demonstrated that they act as a single economic entity."

an undertaking is examined below from the perspectives of Ecuadorian law and comparative law.

10. In Ecuadorian law, the concept of an enterprise is set out in Article 14 of the Commercial Code[9] as follows: "*(...) the economic unit through which personal, tangible and intangible elements are organised to carry on a particular commercial activity*".

11. In comparative law relating to agreements and restrictive practices, European Union case law defines an "undertaking" as "any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed"[10], and defines "economic activity" as "any activity consisting in offering goods or services on a given market"[11].

12. For the purposes of Ecuador's competition regime, identification of an economic operator must begin with the functional test in Article 2 of the LORCPM: the actual or potential pursuit of economic activities, irrespective of legal form or method of financing. References to the Commercial Code and comparative law help contextualise this concept, but do not replace the test established in competition legislation or, by themselves, determine the competitive autonomy of the entities examined.

13. Identifying operators with competitive autonomy helps delineate the entities between which coordinated conduct may be examined. That plurality does not, however, establish an infringement in itself. It is also necessary to assess whether the elements of an agreement, a decision by an association or a concerted practice prohibited under Article 11 of the LORCPM are present. Corporate links and membership of an economic group are relevant to this assessment, but their consequences must be substantiated by reference to actual decision-making relationships and the conduct under investigation.

3. Competitive Autonomy, Corporate Links and Economic Groups

14. For an agreement to exist, it is sufficient for an apparently unilateral act or conduct to express the concurrence of wills of at least two parties, the manner in which that concurrence is manifested not being decisive[12]; in other words, what matters is the existence of two or more genuine, distinct wills with sufficient autonomy from one another.

> *"The criteria of coordination and cooperation laid down by the case-law of the Court, which in no way require the drawing-up of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that each economic operator must determine independently the policy which it intends to adopt on the common market"*[13].

[9] Commercial Code, Official Gazette No 497 of 29 May 2019, amended on 13 October 2025.

[10] Court of Justice of the European Communities, judgment of 23 April 1991, Klaus Höfner and Fritz Elser v Macrotron GmbH, Case C-41/90, ECLI:EU:C:1991:161, paragraph 21; judgment of 18 June 1998, Commission of the European Communities v Italian Republic, Case C-35/96, ECLI:EU:C:1998:303, paragraph 36.

[11] Ibid.

[12] Court of Justice of the European Communities, judgment of 13 July 2006, Commission of the European Communities v Volkswagen AG, Case C-74/04 P, ECLI:EU:C:2006:460, paragraph 37.

[13] Court of Justice of the European Communities, judgment of 16 December 1975, Coöperatieve Vereniging "Suiker Unie" UA and Others v Commission, Joined Cases 40–48, 50, 54–56, 111, 113 and 114/73, ECLI:EU:C:1975:174, paragraph 173; Court of Justice of the European Union, judgment of 4 June 2009, T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit, Case

15. In this context, the relationships of ownership, management or control between operators must be identified and their relevance to competitive autonomy established. Corporate links and membership of an economic group are not necessarily mutually exclusive: links may exist both between companies subject to common control and between operators that retain independent decision-making. Such relationships must therefore be characterised before, but not instead of, analysing the conduct under investigation.

3.1. Minority Shareholdings, Corporate Links and Economic Groups in Ecuador

16. In Ecuador, acquiring and holding minority equity shareholdings is, as a general rule, a lawful form of investment. From the perspective of competition law, their relevance depends not only on the percentage of capital acquired but also on the rights attached to the shareholding and the relationships it may create between economic operators. It is therefore necessary to distinguish share ownership, corporate links and the exercise of control, without automatically treating any of these circumstances as conduct restrictive of competition.[14]

3.2. Conceptual Distinctions

17. Article 7 of the Regulation implementing the Organic Law on the Regulation and Control of Market Power[15] (hereinafter, the RALORCPM) refers, among other sources, to the definitions and criteria for corporate links and economic groups in the Securities Market Law and the resolutions of the Monetary and Financial Policy and Regulation Board. This reference provides a basis for identifying relationships between operators but does not establish an exhaustive list: the RALORCPM permits the Superintendence of Economic Competition to consider other factors through the corresponding generally applicable technical regulations.

18. Identifying these relationships is a separate question from determining whether an infringement of the LORCPM exists. Accordingly, these criteria help characterise the nature and extent of links between operators, while any anticompetitive relevance must subsequently be determined under the requirements and standards laid down in the LORCPM.

19. In this context, a minority shareholding is generally understood to be one which does not, in itself, represent a majority of a company's share capital. The percentage of shares does not, however, necessarily reflect the allocation of voting rights or powers to intervene in corporate decisions. From a functional perspective, a distinction may be drawn between predominantly financial holdings and holdings carrying rights of representation, information, approval or veto, without that distinction in itself determining their anticompetitive relevance. Nor does the legal framework examined establish a single percentage at which a minority shareholding, a corporate link and control can be equated. These are different categories which must be assessed according to their respective legal requirements.[16]

C-8/08, ECLI:EU:C:2009:343, paragraph 32.

[14] OECD Competition Committee, COMP/2026.084, "Minority Shareholdings and Coordinated Effects", call for contributions, 7 August 2026, p. 1.

[15] Regulation implementing the LORCPM, Article 7, replaced by Executive Decree No 1193 (Official Gazette No 341, Supplement, 1 December 2020). Text published by the SCE: https://www.sce.gob.ec/sitio/wp-content/uploads/2023/01/RLORCPM.pdf.

[16] Codification of Monetary, Financial, Securities and Insurance Resolutions, Book II "Securities Market", Title XVIII, Chapter I, Section I, Article 2. Version published by the Monetary and Financial Policy and

20. Article 192 of the Securities Market Law recognises control where a person, individually or together with others with whom that person has an agreement to act in concert, can exercise determining influence over a company's decisions, or secure a majority of votes and elect a majority of its directors or managers. The provision covers express or tacit agreements to act in concert and, in determining whether such agreements exist, takes account of representation or family relationships, simultaneous shareholdings in other companies and coinciding votes. Control may therefore arise from rights or agreements that go beyond formal share ownership.[17]

21. The Codification of Monetary, Financial, Securities and Insurance Resolutions develops these criteria in Book II (hereinafter, Securities Market), Title XVIII, Chapter I, Section I. Article 2 defines a corporate link by reference to direct or indirect relationships of direction, management, control or capital, and refers to "systematically concerted conduct". That expression forms part of a definition specific to securities-market regulation and does not, in itself, establish an anticompetitive concerted practice under the LORCPM. The Codification also distinguishes representative shareholdings, indirect shareholdings, economic groups, control and significant influence, concepts serving different legal purposes.[18]

22. For the identification of a representative shareholding, Article 2(3) of the Codification uses a threshold of at least 10% of share capital, subject to the aggregation rules established therein. For natural persons, the holdings of relatives covered by paragraph 4 are also counted: relatives up to the fourth degree of consanguinity, second degree of affinity, spouses or members of a legally recognised de facto union. For legal persons, the specific rule in Article 2(3) applies, taking account of holdings by natural persons, their relatives or other legal persons within the corporate structure described in that provision.

23. Accordingly, 10% is a threshold for a "representative shareholding" under this regulatory framework, not a general presumption of control or a threshold of unlawfulness under competition law. For example, if a person holds 7% of a company's capital and that person's spouse holds 4%, the combined holding may reach 11% for this purpose, provided the statutory conditions are met. This does not, without further evidence, establish control over the company or anticompetitive coordination.[19]

3.3. Criteria for Corporate Links: Ownership, Management and Presumption

24. Article 3 of the Codification governs links arising from ownership. Such a link exists where a natural or legal person holds, directly or indirectly, a representative shareholding in the capital or assets of another legal person. The provision also covers cases where a relative of a company shareholder or member has a representative direct or indirect shareholding in another company. The analysis therefore extends beyond direct

Regulation Board, updated 7 September 2026; available in the "Codifications" section of the Central Bank of Ecuador website: https://www.bce.fin.ec/junta-de-politica-y-regulacion-financiera-y-monetaria/resoluciones/codificaciones/.

[17] Securities Market Law, Article 192, "Control and agreements to act in concert" (Book II of the Organic Monetary and Financial Code). Institutional edition issued by the Superintendence of Companies, Securities and Insurance: https://www.supercias.gob.ec/bd_supercias/descargas/mv/Ley_MV.pdf.

[18] Codification cited above, Article 2(2), (3), (5), (7), (8) and (9). The expression "systematically concerted conduct" appears in paragraph 2.

[19] Codification cited above, Article 2(3) – (5). Numerical example for illustrative purposes only, based on the family-aggregation rule in that provision.

investments to indirect holdings and the family relationships expressly specified in the regulation.[20]

25. Links arising from management, governed by Article 4, concern relationships between persons serving on the governing or management bodies of different companies. The situations covered include a person performing management functions in both companies, holding certain offices during the preceding year, or a member of management holding a representative shareholding in another company. The provision also takes account of certain family relationships between managers. A management link may therefore exist even if neither company holds shares in the other.[21]

26. Article 5, for its part, establishes presumed links based on commercial or financial relationships. They include transactions with a customer or supplier representing 30% or more of a legal person's total purchases or sales in the most recent financial year; the existence of the same guarantee securing obligations of two or more persons; and certain cases in which more than 50% of a company's obligations are guaranteed by another non-financial legal person or constitute receivables owed to that person. These circumstances enable links to be identified under the regulation, without thereby presuming a competition-law infringement.[22]

27. Different types of link may coexist. If A owns 15% of B's capital, an ownership link may arise; if the two companies have the same member of management, a management link may also exist. Likewise, if transactions between C and B account for 35% of B's total sales in the last financial year, the threshold for that category of presumped link would be met. None of these facts, taken in isolation, establishes that A, B and C belong to the same economic group or have engaged in anticompetitive conduct.[23]

3.4. Economic Groups, Significant Influence and Control

28. The Codification distinguishes linked companies from an economic group. Under Article 2(7), the latter comprises a set of legal persons controlled by a parent company or under the control of at least one natural person; the definition also covers financial groups on the terms laid down therein. Consequently, shared shareholders, directors or commercial relationships may establish links, but do not necessarily demonstrate the common control required to characterise an economic group.[24]

> *"The key in each case is to establish whether, alongside the parties' formal legal autonomy, there are in substance autonomous and distinct wills (and an agreement can therefore be said to exist), or whether there is in fact only one will: that of the undertaking organised as a group, which organises itself internally through formal agreements between its separate legal entities. The issue to be resolved is therefore whether that single will is established in each specific case. It may be manifested through ownership of all, a majority or even a minority of the share capital (which, for example, may suffice for control if the remaining capital is dispersed among many small shareholders), through the right to appoint members of the management body (or a majority of them), and so forth. Nor should the fact that the parent company grants its subsidiaries a greater or lesser margin of autonomy*

[20] Codification cited above, Article 3(1) – (2), on links arising from ownership.

[21] Codification cited above, Article 4(1) – (3), on links arising from management.

[22] Codification cited above, Article 5(1) – (4), on presumed links.

[23] Hypothetical example based on the rules in Articles 2(3), 3, 4 and 5 of the Codification cited above.

[24] Codification cited above, Article 2(7) (economic groups).

prevent such a finding, since that may itself be a form of group organisation and does not eliminate the underlying reality of a single will"[25].

29. To understand this distinction, Article 2 of the Codification differentiates control—"the ability to direct the activities of a legal person"—from significant influence—"the ability to participate in its administrative, financial and operational policy decisions". The distinction is particularly relevant to minority shareholdings: participating in particular decisions does not necessarily amount to directing the company. Classification requires examination of the rights and powers actually attached to the holding in accordance with the applicable legal criteria.[26]

30. Article 6 provides for two situations in which control of an economic group is presumed. Under the first, a person holds more than half the voting rights at shareholders' or members' meetings through direct or indirect holdings, usufruct or pledge agreements, trusts or other shareholder arrangements. The assessment therefore cannot be limited to the percentage of shares registered in a person's name: it must take account of the voting rights that the person actually holds by virtue of these legal relationships.[27]

31. The second situation applies even without a majority of votes, where significant influence is exercised, directly or indirectly, both over management and over decisions to appoint or remove a majority of the members of governing bodies. The provision therefore requires these powers to be assessed jointly. Mere board representation or the ability to intervene in an isolated decision is not, by itself, sufficient to establish this presumption of control.[28]

32. Lastly, Article 7 of the Codification identifies relationships constituting links within an economic group, including those involving natural persons who participate in its control, legal persons belonging to it and persons serving on its management bodies, as specified in the provision. Taken together, Articles 2 to 7 permit two separate determinations: identifying existing links and subsequently establishing whether the elements of control necessary to recognise an economic group are present.[29]

33. The criteria examined do not establish an automatic equivalence between shareholding percentages, corporate links and membership of an economic group. A representative shareholding is identified by the threshold of at least 10%, in accordance with the applicable calculation and aggregation rules. This criterion is not confined to holdings of up to 50%, nor does it mean that investments below the threshold are irrelevant because of other management, influence or control relationships.

34. Identification of an economic group requires examination of the statutory elements of control. Account must be taken of voting rights actually held, shareholder agreements and powers to intervene in management and in the appointment or removal of governing bodies. The analysis cannot therefore be reduced to the nominal percentage of capital or the coincidence of shareholders within particular percentage ranges.

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[25] Galán Corona, Eduardo, Tratado de derecho de competencia: Unión Europea y España. Prohibición de prácticas colusorias (I): Visión general, 2nd edn, Spain: Bosch, pp. 249–250 [title retained in the original Spanish].

[26] Codification cited above, Article 2(8) – (9) (control and significant influence).

[27] Codification cited above, Article 6(1) (majority voting rights through securities, shareholdings or agreements).

[28] Codification cited above, Article 6(2) (significant influence over management and decisions concerning a majority of the members of corporate governing bodies).

[29] Codification cited above, Article 7, on links within an economic group.

35. Under competition law, these determinations must be supplemented by an assessment of the operators' competitive autonomy and, where appropriate, the conduct under investigation. The existence of a representative shareholding does not establish an infringement, just as the absence of majority ownership does not rule out control, influence or possible mechanisms of coordination.

4. Coordinated Effects Between Linked Economic Operators

36. Corporate and economic links between operators may become relevant to competition when they affect decision-making autonomy, alter incentives to compete or facilitate the exchange of commercially sensitive information. The existence of these relationships does not, however, constitute a restrictive practice in itself or support a presumption that the operators concerned have adopted a concerted commercial strategy.

37. From this perspective, the analysis requires two situations to be distinguished. The first concerns internal relationships between operators forming part of a single economic unit and lacking competitive autonomy vis-à-vis one another. The second concerns relationships between operators that retain independent decision-making capacity, despite corporate, personal or commercial links, and may coordinate their behaviour on the market.

38. This distinction is decisive for the application of Article 11 of the LORCPM, as it makes it possible to establish whether the acts examined are decisions taken within a single economic unit or whether evidence exists of an agreement, a decision by an association or a concerted practice between economically independent operators. The existence of economic conditions that may facilitate coordination or a coordinated outcome is not, in itself, evidence of a punishable concerted practice, which requires verification of the legal elements laid down in Article 11 of the LORCPM.

39. Membership of an economic group must not automatically be equated with the absence of competitive autonomy for every act under examination. The scope of the single economic unit must be substantiated by reference to the actual relationships of direction and decision-making. Moreover, even where certain companies form part of the same economic unit, this does not exclude an assessment of possible coordination with external operators. In that case, the group's internal relationships, its conduct towards third parties and the relevant grounds for attribution of liability must be distinguished.

40. Assessment of these situations requires consideration, in combination, of the nature and extent of the links, the rights attached to equity shareholdings, the market's structure and operation, mechanisms that could facilitate coordination, and the available evidence of operators' conduct.

41. Corporate, economic or management links between operators may affect their competitive incentives and conduct even where they do not entail control or the formation of a single economic unit. In particular, minority equity shareholdings and common member of management may create conditions facilitating the exchange of commercially sensitive information, reducing uncertainty about competitors' strategies or favouring coordination of their commercial decisions.

> *"[…] the exchange of confidential commercial information may facilitate coordination between undertakings and give rise to restrictions of competition. First, information exchanges may facilitate collusion if they enable an undertaking*

> *to indicate to its competitors, by any means, the conduct it would like them to adopt or the conduct it would itself adopt in response to its competitors' behaviour"*[30].

42. Likewise, the European Commission's Guidelines state that information exchange may facilitate the implementation of a cartel by enabling undertakings to monitor compliance with the conditions agreed by its participants.[31]

43. Generally speaking, information exchange between economic operators may reduce strategic uncertainty regarding competitors' behaviour and, in certain circumstances, facilitate the formation of convergent expectations conducive to coordination of their commercial decisions.

44. Minority shareholdings may facilitate coordination between competitors and affect its stability and sustainability. The economic conditions explaining the success of a cartel must not be confused with the legal requirements for establishing an infringement.

> *"Under certain conditions, structural links between competing undertakings, such as direct or reciprocal minority shareholdings, may facilitate explicit or tacit collusion. A minority shareholder has access to information about the target undertaking, which facilitates collusion or enables the shareholder to check whether it is adhering to the agreed course of action. As with unilateral effects, minority shareholdings may alter the performance of the undertakings involved or their respective incentives to deviate from a collusive agreement or to initiate a price war to penalise deviation. Investments in competing undertakings may also signal to the rest of the market an intention to compete less aggressively. This may encourage an entire industry to reduce competitive pressure and foster a collusive equilibrium to the detriment of consumers"*[32].

45. A minority shareholding may affect the formation, monitoring or sustainability of coordination. Economic analysis may examine whether it facilitates a common understanding, changes incentives to deviate, enables deviations to be detected or reduces competitive pressure from operators outside the coordination. These factors help explain how coordination works and how stable it may be; they are not, in themselves, cumulative legal requirements for an infringement. In particular, the shareholding need not be shown to guarantee both the permanence and the success of a cartel. The legal conclusion must rest on the type of conduct examined and the elements established by the applicable rule.[33]

46. From an economic perspective, the assessment must identify the mechanism through which rights attached to a minority shareholding might facilitate the formation of convergent expectations about commercial conduct, improve the observability of rivals' decisions, alter incentives to depart from a coordinated strategy or increase the ability to respond to such deviations. The relevance of each mechanism depends on the rights actually attached to the shareholding, their impact on competitive incentives and the available evidence; identifying a mechanism does not justify presuming anticompetitive conduct.

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[30] European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, 2023/C 259/01, paragraph 377.
[31] Ibid., paragraph 417.

[32] OECD, Minority Shareholdings and Interlocking Directorates, DAF/COMP (2008)30, Paris, 23 June 2009, executive summary, p. 9.

[33] Harrington, Joseph E., Jr, The Practical Requirements of a Successful Cartel, working paper, 5 March 2021, p. 1, available on SSRN: https://ssrn.com/abstract=3798852.

47. Whether a minority shareholding may facilitate the monitoring of coordinated outcomes depends on the market's structural and dynamic conditions. Transparency regarding competitive variables, the frequency of interaction between operators, stable demand and the availability of timely information may facilitate the detection of deviations from coordinated conduct. In this context, information or representation rights attached to a minority shareholding could increase the ability to observe other operators' commercial strategies. Nevertheless, the content, scope and actual exercise of such rights must be examined, without presuming that their existence entails anticompetitive information exchange or unlawful coordination.

48. The sustainability of a coordinated outcome also depends on operators' incentives to maintain it, the possibility of responding to deviations and the competitive pressure exerted by third parties. Entry or expansion by competitors, customers' ability to respond, changes in market conditions and the independent actions of particularly competitive operators may destabilise that outcome. The assessment must therefore determine whether, and through what economic mechanism, a minority shareholding significantly alters these conditions. These are factors for analysing the plausibility and stability of coordinated effects; they are neither cumulative legal requirements nor substitutes for proof of prohibited conduct under the applicable legislation.[34]

49. In light of the foregoing, the main mechanisms through which minority shareholdings may affect competitive conditions can be summarised in three dimensions: incentives, information and influence.

50. Incentives. – Where an operator has a financial interest in a competitor, it may internalise part of that competitor's returns, potentially altering its incentives to compete aggressively or depart from a coordinated outcome. This possibility must be assessed in light of the investment structure and market conditions. A competitor's shareholding in another competitor must also be distinguished from common ownership by an investor: in the latter case, the shareholder's interests cannot automatically be attributed to the commercial decisions of the investee companies; the mechanism by which those interests might affect those decisions must be explained.

51. Changes in incentives to compete may generate unilateral effects; identifying reduced rivalry therefore does not suffice to establish a coordinated effect. To support the latter hypothesis, the analysis must explain how the shareholding changes the conditions for reaching, monitoring or sustaining coordination. The direction and magnitude of that effect must not be presumed solely from the percentage acquired.

52. Information. – The rights attached to a minority shareholding may provide access to commercial plans, capacity decisions, customer information, investment strategies or other competitively sensitive data. Their relevance depends on the information's content, recency and granularity, the conditions of access and its capacity to reduce strategic uncertainty or facilitate monitoring of other operators' conduct. The analysis must not be limited to reciprocal exchanges: a one-way flow may also be relevant. In all cases, the legal ability to access information, actual access established by evidence and any subsequent use must be distinguished.

53. Where these matters are examined in administrative enforcement proceedings, the conduct attributed to operators and the relevance of the information flow to its legal

[34] European Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, 2004/C 31/03, paragraphs 41–57; OECD, Minority Shareholdings and Interlocking Directorates, DAF/COMP (2008)30, section 3.3.2.

characterisation must be specified. The existence of a corporate-law information right does not, in itself, establish an anticompetitive information exchange or its holder's participation in a concerted practice.

54. Influence. – A minority shareholding may be accompanied by rights of representation, consultation, approval or veto enabling intervention in particular strategic decisions. It is necessary to examine whether these powers are confined to ordinary investment protection or could affect the investee undertaking's ability to expand, innovate, enter new markets or compete independently. The competition concern arises not from the formal label attached to the right but from its scope and possible impact on commercial conduct.

55. In assessing coordinated effects, it is particularly important to determine whether such powers may limit the investee undertaking's ability to disrupt coordination through independent decisions on expansion, entry, investment or innovation.

56. The assessment must distinguish coordinated outcomes that may arise from oligopolistic interdependence from legally prohibited forms of conduct. A minority shareholding might alter incentives or market conditions and favour particular economic outcomes without thereby automatically establishing an agreement or concerted practice. Administrative liability requires identification of conduct falling within the applicable prohibition and proof of its constituent elements through a comprehensive, reasoned assessment of the evidence. Tacit coordination, as an economic category, must therefore not automatically be equated with a cartel punishable under Article 11 of the LORCPM.

57. In the European Union, Council Regulation (EC) No 139/2004[35] links merger control to the acquisition of control, understood as the possibility of exercising decisive influence over an undertaking. Consequently, minority shareholdings that do not confer control do not, on that ground alone, fall within the scope of that Regulation. Nevertheless, certain relationships or conduct associated with such shareholdings may be examined under Articles 101 and 102 of the Treaty on the Functioning of the European Union, provided their respective legal requirements are met. The European Commission examined this distinction in its 2014 White Paper[36], in which it put forward proposals addressing possible competition risks arising from non-controlling minority shareholdings, without that document itself amending the legal framework then in force.

58. In the United States, Section 7 of the Clayton Act allows acquisitions of shareholdings, including minority shareholdings, to be examined where their effects may substantially lessen competition, without necessarily requiring an acquisition of control. Consistent with this approach, the 2023 Merger Guidelines of the Federal Trade Commission and the Department of Justice identify, among the possible mechanisms of competitive harm, the ability to influence the investee undertaking's decisions, changes to incentives to compete and access to commercially sensitive information. This structural assessment differs from the application of provisions governing anticompetitive conduct, whose prohibitions and liability requirements are determined by their respective legal regimes.[37]

[35] European Commission, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, Article 3.

[36] European Commission, White Paper: Towards more effective EU merger control, COM (2014) 449 final, Brussels, 9 July 2014, paragraphs 39–41.

[37] US Department of Justice and Federal Trade Commission, Merger Guidelines, 18 December 2023, Guideline 11; Clayton Act, Section 7, 15 USC § 18.

59. These experiences illustrate the importance of distinguishing an assessment of competition risks associated with a shareholding structure from proof of prohibited conduct. For Ecuador, their value lies in providing analytical references to identify the mechanisms through which a minority shareholding might facilitate coordination, without automatically importing foreign legal tools, powers or standards. In relation to collusive practices under the LORCPM, the existence of corporate links is a factor to be considered alongside operators' competitive autonomy, the conduct investigated and the available evidence; it does not replace proof of the elements required by Ecuadorian law.

60. Accordingly, an assessment of minority shareholdings must identify the concrete mechanisms through which their associated rights could alter competitive conditions and facilitate possible coordination between economic operators. The assessment must consider the characteristics of the shareholding, market conditions and the available evidence, without treating the existence of a corporate link as grounds for presuming prohibited conduct.

61. The assessment requires relating the shareholding's characteristics to the identified competitive mechanism and the available evidence. Depending on the circumstances, relevant materials may include the ownership structure, shareholder agreements, powers of management bodies, minutes, board papers, information-sharing protocols and strategic documents. A link must be treated as a factor for analysis, not a predetermined conclusion about the conduct.

62. From an analytical perspective, the assessment may be organised into five stages: (i) characterising the shareholding and its economic, governance and information rights; (ii) determining relationships of control, influence and competitive autonomy between operators; (iii) identifying the mechanism through which the shareholding could alter incentives to compete or the conditions for coordination; (iv) assessing market characteristics against which the plausibility of that mechanism can be tested; and (v) comprehensively evaluating the available evidence, including alternative explanations and exculpatory material. This sequence is an analytical tool, not a presumption of illegality, an additional statutory requirement or a reversal of the burden of proof.

63. Proof of a possible infringement must rest on a comprehensive and reasoned assessment of the available evidence, including relevant direct or circumstantial evidence. Neither category of evidence must mechanically be required alongside the other, nor may the assessment be replaced by presumptions based solely on shareholding structure. Exculpatory evidence and alternative explanations consistent with independent conduct must also be considered.

64. The evidence must be placed within the period under investigation, identifying when the shareholding, governance rights and information channels arose or changed. Its assessment must be related to relevant competitive conditions, including concentration, entry or expansion opportunities and the ability of other operators to exert competitive pressure. Where appropriate to the type of analysis, the observed situation should be compared with a reasonable counterfactual without the link or specific right under examination. These elements help assess the competitive hypothesis; they are not additional cumulative requirements or a general obligation to demonstrate actual effects in restrictions by object.

5. Conclusions

65. The assessment of minority shareholdings requires distinguishing share ownership, corporate links, significant influence and control. These categories help characterise

relationships between operators, but do not automatically determine their competitive autonomy or establish an infringement.

66. In Ecuador, the securities-market criteria considered by virtue of Article 7 of the Regulation implementing the LORCPM provide a basis for identifying relationships of ownership, management and control. Their use must preserve the distinction between characterising a corporate relationship and proving conduct prohibited by competition law.

67. The competitive relevance of a minority shareholding depends on its characteristics and associated rights, as well as its possible impact on incentives, access to sensitive information and influence over strategic decisions. Thus, neither the absence of control necessarily rules out a competition concern nor does the existence of a representative shareholding, in itself, establish unlawful coordination.

68. Where a minority shareholding is alleged to facilitate coordination, its relationship to the identified competitive mechanism and the available evidence must be explained. This explanation does not replace proof of the elements of an infringement or make the existence of an equity shareholding an additional requirement for applying Article 11 of the LORCPM. The analysis must avoid both presuming the illegality of corporate links and using them as a substitute for evidence of the conduct. From Ecuador's perspective, the challenge is to integrate an assessment of ownership structures, actual relationships of influence and the economic conditions for coordination, while preserving the distinction between competition risks and legally prohibited conduct. This approach may contribute to the international exchange of criteria for proportionate, evidence-based competition-law enforcement.