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

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ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Colombia --

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

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COLOMBIA

1. Current Institutional Arrangements

1. The Superintendence of Industry and Commerce (hereinafter SIC) is a Government agency that performs three types of functions: (i) administrative functions (inspection, supervision and control); (ii) registration functions; and (iii) judicial functions. As the Organisation of Economic Co-operation and Development (hereinafter OECD) Accession review on Colombia's Competition Law and Policy rightly summarises, *"the SIC exercises administrative functions in five areas: competition law, consumer protection, technical regulation and metrology, personal data protection, and surveillance of chambers of commerce. The SIC exercises registration functions in the area of industrial property; granting trademarks, patents, and denominations of origin. Finally, the SIC exercises judicial functions to resolve particular disputes in three areas: consumer protection, industrial property, and unfair competition. In this latter capacity, the SIC acts as a judge and not as an administrative authority."*

2. The SIC is organised into six divisions, each headed by a Deputy Superintendent: the Competition Division (which also exercises the functions of surveying chambers of commerce); ii) the Consumer Protection Division; iii) the Technical Regulations and Legal Metrology Division; iv) the Data Protection Division; v) the Industrial Property division; and vi) and the Jurisdictional Affairs Division.

3. At the top of these six divisions is the Office of the Superintendent of Industry and Commerce, which heads the Institution and decides the competition cases investigated by the Consumer Protection Division (the Division tries investigates the case and the Office of the Superintendent decides it). The Superintendent does not study or decide cases from Divisions different than the Competition Division. The Superintendent is appointed and removable at will by the President of the Republic. Also, the Superintendent appoints and removes at will the Deputy Superintendent in charge of the Competition Division.

2. Future Institutional Reforms

4. The Colombian Government is undertaking a reform to Colombia's competition law and policy as part of the country's accession process to the OECD. The reform is being conducted in accordance with the preliminary recommendations issued by the OECD as part of the OECD's Accession Review on Colombia's Competition Law and Policy.

5. These reforms, as of today, do not include the divestiture of policy functions from the SIC. In the SIC's experience, being a multi-function competition authority has brought several institutional benefits:

- First, **it allows the agency to integrally protect consumers.** Indeed, most of the functions that the SIC performs today are directly or indirectly related to the protection of consumers, i.e. receive lower prices, better quality, complete information on products (including its content), not receiving communications or emails from companies to which personal data has not been delivered, etc. As citizens cannot clearly differentiate between conducts which constitute a violation to antitrust laws, conducts which constitute a violation to consumers laws, conducts which constitute violations to unfair competition laws, data protections laws, etc., the fact that one single agency handles all these violations makes it easier for the state to give an effective answer to citizens. They are not the ones who must know which law was violated by a given conduct; this burden switches to the Agency, which will assign the issue to the appropriate division within the agency.
 - Second, **it allows the agency to design holistic policies and campaigns** towards protecting consumers without duplicating efforts or costs.
 - Third, **it promotes a dynamic communication between the Agency and citizens.** One of the consequences of being a multifunction authority is that citizens recognise the SIC as an agency that protects consumers, reason why they know where to go when they face an antitrust, consumer protection or data protection problem. In addition, since the Consumer Protection Division produces day to day decisions that, although may not impact the economy as an antitrust case, are attractive for newspapers, TV news programs, etc., this allows the SIC to position itself in the mind of citizens, regardless of whether such positioning comes from an antitrust case, a consumers case, or any other function.
 - Fourth, **it avoids conflicts of competence.** When two state agencies share related functions, it is not unusual for conflicts of competence to rise, whether positive conflicts (both think they are competent) or negative conflicts (neither thinks it is). Being a multifunction agency which covers tasks that are ultimately related to the protection of consumers helps to prevent these conflicts.
 - Fifth, having an Industrial Property Division and a Competition Protection under the same Agency **gives the SIC economic independence from the Government.** Indeed, the more than 50% of the SIC's resources for the functioning of all Divisions come from the fees charged by the IP Division for the registration of patents and trademarks. This means that dependence from the executive or Congress for budget is reduced.
6. Moreover, being a multifunction authority has not brought relevant downsides for the SIC, reason why a divestiture of functions does not seem to be appropriate in the near future.
7. On the other hand, the Government of Colombia does plan to undertake a reform to grant further independence to the SIC. Indeed, the Government plans to propose the passing of a law establishing a fix period for the Superintendent of Industry and Commerce, a public officer that today is appointed and removed at will by the president. This period should be a minimum of four years and should not coincide with the President's term. Although it is not common that Presidents intervene in the SIC's decisions, and even though the SIC has complete independence to set its enforcement

priorities, a fixed period of office would definitely grant further independence and avoid attempts of political pressure.

8. There has been much discussion in Colombia on whether the SIC should be a single person entity or a collegial body. So far the government has decided to maintain the SIC as a single person entity for several reasons: i) although the SIC requires some institutional adjustments, it has functioned fairly well during the last ten years, and is one of the most effective and respected Agencies in the country; ii) Colombia has had negative experiences with some collegial bodies which have ended up being headed by non-technical persons; iii) collegial bodies in Colombia, tend to make the appointees less visible, not only at the moment of their election, but also during their whole time in office; iv) collegial bodies in Colombia sometimes reduce the accountability of its members in comparison with the accountability assumed by a single person entity; v) collegial bodies in Colombia sometimes demand lengthy agreements to design or execute a policy, something that may delay appropriate decisions.

9. Although designing an agency as a collegial body does have strong institutional benefits for the enforcement of competition law, Colombia has decided to maintain a single person entity for the reasons stated above. Nonetheless, it should be noted that before imposing a sanction for an antitrust violation, the Superintendent must hear the opinion of an Advisory Council composed by five independent Members of the highest academic and professional qualities. Although the opinion of the Council is not binding, no Superintendent has ever disregarded its advice. Accordingly, even though Colombia had opted for a single person entity model, it does provide for a collegial decision making system when it comes to determining whether an antitrust infringement has occurred.