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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN COLOMBIA

-- 2014 --

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This report is submitted by Colombia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.

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1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1. No new legislation was issued in 2014.

1.2 Other relevant measures, including new guidelines

2. No measures or guidelines were issued by the SIC in 2014.

1.3 Government proposals for new legislation

3. In 2014 and taking into account OECD's recommendations, the SIC began the preparation of two (2) new legislative proposals for the Congress. The draft proposals included amendments to the general competition regime (including Law 1340 of 2009) and some changes to the current the leniency program (Decree 2896 of 2010).

4. Although the referred proposals were submitted to the President's Office in 2015, their main topics were studied in depth and discussed during 2014. The following are some of the most important amendments:

1.4 Amendments to the general competition regime

- Increase of the amount of fines: the new proposal maintains the SIC's possibility to impose fines based on a percentage of the illicit profits, but doubles the maximum percentage from 150% to 300%. Besides, it allows the SIC to assess fines of up to (i) 20% of either the total turnover or the net worth of a company, whichever is greater, or (ii) in cases involving bid rigging in public procurement processes, 30% of the value of the contract affected. The proposal also includes a provision specifying that, in imposing sanctions for bid rigging in a government procurement proceeding, the SIC may also bar the sanctioned enterprise from contracting with any government agency for a period ranging up to three years, the period to be determined based on the particular circumstances of the cases and the affected market.
- More benefits for leniency applicants: the new proposal aims at the amendment of Article 27 of Law 1474 of 2011 (the Anti-corruption Statute) in order to introduce the possibility for a leniency applicant who obtains complete amnesty in a SIC's case to also obtain total amnesty from criminal sanctions. Besides, it proposes to protect parties cooperating with the SIC from civil liability for damages arising from the participation in the anticompetitive practice (where every participant of the cartel would be severally liable), by providing that a conspirator who receives leniency benefits from the SIC will be liable only for its own share of the damages.
- Improvement of the operation of the leniency program: Article 14 of Law 1340 of 2009 was proposed to be modified in order to: (i) delete the statutory requirement that states that a leniency recipient cannot be "the instigator or promoter" of the conspiracy; (ii) extend leniency benefits to individuals who reveal that they are facilitating anticompetitive unilateral conducts by associated enterprise; (iii) provide statutory protection against the disclosure to adverse third parties of the identities of leniency applicants and the evidence submitted by them during the course of the investigation, until a final decision finding an offense and imposing a fine is issued.

1.5 Amendments to the leniency program (Decree 2896 of 2010):

5. Decree 2896 of 2010 implements article 14 of Law 1340 of 2009, which gives the SIC the possibility to grant benefits to individuals or legal entities who have engaged in anticompetitive conducts, as long as they inform the competition authority of such conducts and/or cooperate providing information and evidence in this regard, including the identification of other participants. (Leniency Program).

6. Some of the most important changes that were discussed in 2014 and are now included in the legislative proposal are the following:

- Enable leniency applicants who are not the “first in” applying for leniency benefits to earn an additional 15% reduction in their fine by disclosing the existence of a different cartel.
- Revise the current leniency benefit schedule to increase the incentive economic agents to be the “first in” applying to this program. The revised schedule offers a reduction of 30% to 50% for the second applicant and up to 25% for any others.
- Simplify the procedure by which a leniency applicant obtains a “marker” to reserve its place on the application roster. The revised regulation allows an applicant to obtain a marker by means of a telephonic or written communication, in addition to an in-person meeting.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of:

2.1.1.1 Competition authorities

7. Regarding cases of abuse of a dominant position, cartels and unilateral anticompetitive behaviors:

- As shown in Table No. 1, the SIC has increased the number of new complaints received. This fact could be the consequence of the strengthening of the competition authority and the increase in sanctions for competition law violations. In fact, in 2014 there were 125 more complaints than those received in 2013, which represents an increase of 26,65% percent.
- More complaints were resolved by dismissal and the number of complaints resolved by opening a preliminary inquiry decreased. The reason is that the SIC is conducting a deeper analysis of all the cases it receives, so that preliminary inquiries are opened only when there is a big possibility of existence of an anticipative behaviour.

Table No. 1. Public complaints received and resolved 2013-2014, by outcome

	2013	2014	Variation
New complaints received during period	469	594	26,65%
Complaints resolved by dismissal	290	368	26,89%
Complaints resolved by opening a preliminary inquiry	42	10	-76,19%

- Table No. 2 shows important decreases in the number of preliminary inquiries that were opened, and those that were resolved by the opening a formal investigation. As stated before, it is a consequence of the SIC's emphasis on careful examination to assure that cases pursued represent worthwhile resource expenditures.
- It should be noted that the number of new preliminary inquiries opened does not correspond to the number of complaints resolved by opening a preliminary inquiry, because preliminary inquiries can also be opened *ex officio*.

Table No. 2. Preliminary inquiries opened and resolved 2013-2014, by outcome

	2013	2014	Variation
New preliminary inquiries opened during period	53	17	-67,92%
Preliminary inquiries resolved by dismissal	22	10	-54,54%
Preliminary inquiries resolved by opening a formal investigation	14	4	-71,42%

- Table No. 3 also shows reductions in the number of new formal investigations opened, which is also related to the selective position that the Deputy Superintendence has adopted.
- On the other hand, this table shows a decrease in the number of formal investigations resolved by dismissal and an important rise in the number of investigations that were resolved by orders or sanctions. This shows the effectiveness of the competition authority and the good results of its selectiveness regarding investigations.
- No formal investigations have been resolved by settlement agreements in the last two years.

Table No. 3. Non-merger competition cases¹ resolved 2013-2014, by outcome

	2013	2014	Variation
New formal investigations opened during period	14	4	-10%
Formal investigations resolved by dismissal	10	2	-80%
Formal investigations resolved by orders/sanctions	7	21	200%
Formal investigations resolved by settlement	0	0	0

- Table No. 4 shows the average case proceeding times. The times in processing formal investigations and issuing final decisions increase because the study and the analysis of the cases are deeper. Besides, the evidence phase of the cases now includes a big amount of electronic data that must be assessed by our Forensics Laboratory.

¹ "Non-merger cases" means all cases other than decisions on the merits of proposed mergers, and thus includes, for example, cases sanctioning failure to notify merger transactions.

Table No. 4. Average Case Processing Times 2013 – 2014 (months elapsed)

Year cases commenced	Preliminary investigation phase	Formal investigation phase	Decision phase	Total time elapsed
2013	14.4	11.6	8.2	34.2
2014	11.5	20.25	7.25	39.0

2.1.2 *Description of significant cases, including those with international implications (agreements and abuses of dominant positions)*

2.1.2.1 Investigations opened under the leniency program

- Disposable Baby Diapers

8. In the diapers case, the statement of objections was issued on August 2014 against five companies: TECNOSUR - TECNOQUÍMICAS (Winnies Ultratrim), FAMILIA (Pequeñín), KIMBERLY (Huggies) y DRYPERS (Baby Sec), for infringing the protection of competition regime by agreeing in artificial price fixing of disposable diapers, conduct that took place between 2001 and 2013. The anticompetitive agreements also involved product quality fixing and commercialization. The investigation also addresses 44 individuals who, in their condition of directors and employees of the companies involved, may have collaborated, authorized, tolerated and executed the presumed anticompetitive conducts.

9. Two of the addressed companies, so as their directors and employees, applied for a Leniency Program during the investigation, confessing their participation in the alleged cartel and providing relevant evidence, demonstrating the cartel's existence and means of operation. This constitutes the first case in the history of Colombia, in which the SIC subscribes leniency agreements with companies and individuals that decide to collaborate and expose the existence of a cartel. Consequently, the first lenient company will receive total immunity of the pecuniary fine to be imposed, while the second lenient will obtain partial immunity. It was agreed in the negotiation phase that the identities of the leniency applicants will remain confidential until the issuance of the reasoned report by the Deputy Superintendent for Competition. The investigated parties that are not leniency applicants have access to the information obtained and submitted under the leniency program, granting their right of defense.

10. Among the evidence collected with the dawn raids practiced by the SIC and the information submitted by the leniency applicants, this Entity collected about 700 e-mails, more than 30 statements and testimonies and proof of more than 20 meetings in which the undertakings agreed on the conditions needed to implement the cartel and the correspondent follow up mechanisms.

11. The disposable baby diapers market in Colombia has reported sales of 11,300 million of diapers for a proximate value of COP 7,7 Billion in the last 15 years.

- Toilet Paper

12. The investigation was opened in November 2014 against five companies: FAMILIA, KIMBERLY, PAPELES NACIONALES, CARTONES Y PAPELES DE RISARALDA, for an alleged price fixing agreement related to different products such as toilet paper, napkins, kitchen paper towels, facial tissues and hand tissues. The companies may have imposed minimum prices and sale quotas (direct price fixing) and determined discount percentages among the different distribution channels (indirect price

fixing). The investigation also addresses 42 individuals (directors and former directors) who may have collaborated, authorized, tolerated and executed the presumed anticompetitive conducts.

13. Three of the addressed companies applied for a Leniency Program within the investigation, confessing their participation in the alleged cartel and providing relevant evidence, such as e-mails, documents and statements, demonstrating the cartel's existence and its means of operation. Consequently, the first lenient company will receive total immunity of the pecuniary fine to be imposed, the second lenient will obtain a 50% reduction, and the third applicant a 30%.

14. Among the evidence collected with the different dawn raids practiced by the SIC and the information submitted by the leniency applicants, this Entity collected about 200 e-mails, more than 30 statements and proofs of more than 20 meetings conducted in which the undertakings agreed on the conditions needed to implement the cartel and the correspondent follow up mechanisms. These meetings were conducted both in Colombia and Venezuela, mostly in hotels, bars and restaurants, and a few of them in the companies' facilities.

2.1.2.2 Other important investigations

- Acuseo

15. The SIC finished the reasoned report of an investigation that was opened in 2013 against the company SERVICIUDAD and Mr. CARLOS ANDRÉS VEGA ORTIZ (who participate in the market of garbage trash removal and waste recycling). The investigation was opened based on the suspicion that the company possibly had abused of its position by not improving the interconnection servitude imposed by the CRA in favor of AQUASEO.

16. The SIC recommended to impose a sanction against SERVICIUDAD and CARLOS ANDRÉS VEGA ORTIZ because the conduct violated the provisions of paragraph 6, Article 50, of Decree 2153 of 1992, which qualifies as an abuse of dominant position "to obstruct or prevent others from accessing to the market or to the marketing channels."

2.1.3 Mergers and acquisitions

2.1.3.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

17. The volume of merger notifications and Phase 1 applications received, processed, and resolved for the years 2013 to 2014, is displayed in Table No. 5.

Table No. 5. Merger Notifications and Phase 1 Applications 2013 – 2014

Year	Notifications received in period under 20% market share rule	Phase 1 applications pending at beginning of period	New Phase 1 applications received in period	Phase 1 applications resolved in period	Phase 1 applications pending at end of period
2013	102	3	41	39	5
2014	105	5	40	41	4

18. As shown in Table No. 6, for the years 2013 and 2014 the average Phase I duration was 44 days and 45 days, respectively.

Table No. 6. Average duration of Phase 1 review process 2013-2014

	Days	Months
2013	44	1,5
2014	45	1,5

19. The volume of Phase 2 matters initiated, processed, and resolved for the years 2013 to 2014 is displayed in table No. 7:

Table No. 7. Phase 2 Merger Reviews 2013 – 2014

Year	Phase 2 matters pending at beginning of period	New Phase 2 matters initiated in period	Phase 2 matters resolved in period	Phase 2 matters pending at end of period
2013	2	25	20	7
2014	7	13	19	1

20. The SIC does not have reliable data showing the average duration of Phase 2 merger review procedures from initiation of the Phase until resolution of the case. However, it does have such data for the entire review process (Phase 1 and 2 combined) from submission of a pre-authorization application until resolution of the case.² In 2013, average total duration rose to 107 days, falling back to 91 in 2014. For the years 2013 and 2014, average duration of Phase 2 alone was 111 days and 99 days, respectively.

Table No. 8. Average duration of Phase 2 review process 2013-2014

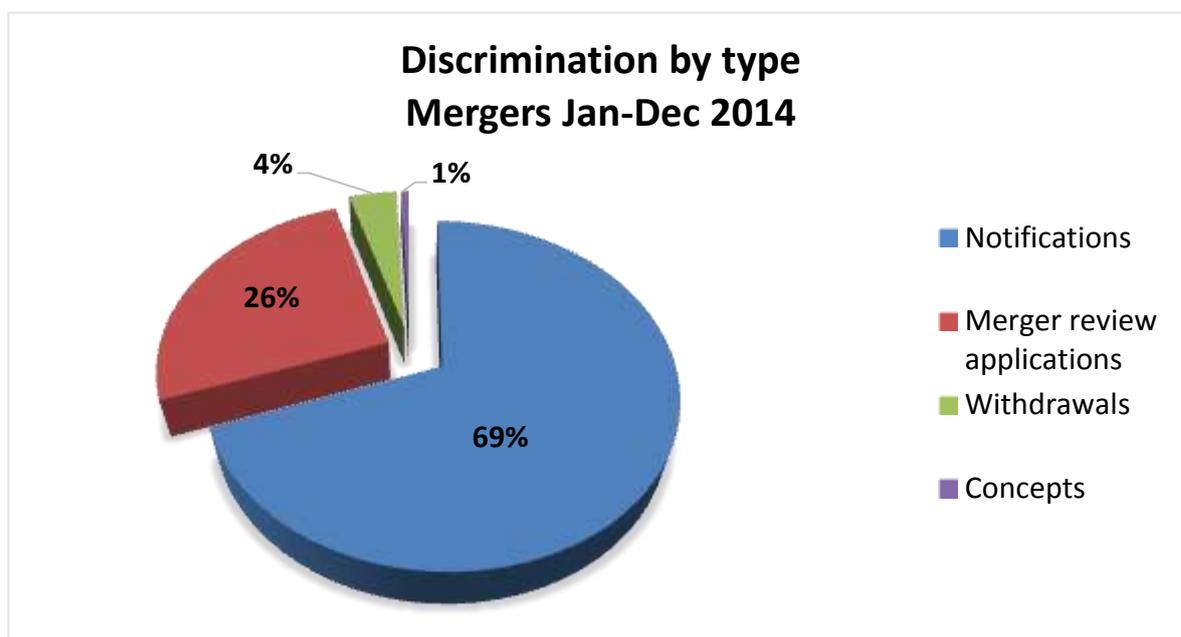
	Days	Months
2013	111	3,7
2014	99	3,3

Table No. 9. Average duration Merger review process (including Phases1 and 2) 2013-2014

	Days	Months
2013	159	5,3
2014	142	4,7

21. The following chart shows the types of assessments that were conducted by the Group of Mergers during 2014, with their respective participation:

² Data relating to Phase 2 processes do not include time expended for resolving petitions for reconsideration of the Superintendent's decision.

Graphic No. 1. Types of assessment conducted by the Mergers Group – 2014

22. Mergers among financial institutions under the jurisdiction of the Superintendence of Finance (SFC) are remitted to that agency by virtue of Article 9 of Law 1340. That provision establishes the prior notification requirements applicable to mergers, and states that that SFC must decide upon mergers that exclusively involve entities subject to its control. Before reaching a decision, the SFC is required to request the SIC's opinion concerning the transaction's competitive effects, and the SIC may suggest conditions designed to ensure the effective preservation of competition. The SIC's opinion is non-binding, but the SFC must explain its reasons if it chooses to reject the SIC's advice.

23. The law does not establish the time period within which the SIC must respond to the Superintendence of Finance. In 2014, the SIC's average time for rendering opinions to the Superintendence of Finance on proposed mergers was 15.5 days.

2.1.3.2 Summary of significant cases.

24. The most important merger cases are listed in Table No. 10 and are described afterwards:

Table No. 10. Merger Cases Resolved with Conditions 2013 – 2014

Year	Firms to be merged (Resolution No.)	Market Sector
2013	Essilor Óptica International Holding y Servioptica SAS - Superlens SAS (Resolution 13466/ 2013)	Ophthalmic products
2013	Nestlé S.A. - Pfizer Inc. (Resolution 20968 / 2013)	Nutrition products
2013	Holcim (Colombia) SA - Concretera Tremix SAS (Resolution 42497/2013)	Cement and concrete
2014	Grupo Argos, Celsia SA, Empresa de Energía del Pacífico (Resolution 525 / 2014)	Electrical energy
2014	Fresenius Kabi Colombia Sas Y Mix Supplier Sa Y Mix Supplier Bogotá S.A. (Resolution 4516 / 2014)	Pharmaceutical products and medical equipment
2014	Empresa de Energía de Bogotá- Isagen S.A. (Resolution 5545 / 2014)	Public utilities
2014	Une EPM Telecomunicaciones S.A E.S.P y Colombia Móvil S.A. E.S.P (Resolution 24527 / 2014)	Telecommunications
2014	Yara Internacional y Abonos de Colombia Abocol (Resolution 54049/2014)	Agricultural products
2014	Almacenes Éxito S.A. y Comercializadora Giraldo Gómez & CIA S.A. (Resolution 54416 de 2014)	Retail grocery stores

- Essilor/Servióptica - Superlens

25. This merger operation in particular had both horizontal and vertical effects: i) Horizontal: the two companies were participants in the ophthalmic laboratories market; ii) vertical: the companies involved in the transaction also participated in the markets of lens manufacturing and specialized equipment for lens. The only concern by the SIC was in respect to the vertical merger, because of the possible negative effects that the operation would have generated within the value chain, such as restriction of supply to competing laboratories and limited access to other distributors. Consequently, the SIC imposed behavioral conditions plus the issuance of a quarterly report by the involved parties during the next three years after the SIC's Resolution conditioning the merger.

26. Behavioral conditions imposed to the parties involved in the merger transaction are the following: i) maintain the supply contracts for the affected products in the Colombian Market, at least for three years; ii) abstain from subscribing exclusivity contracts for sale or supplying that involve the affected products; iii) abstain from including exclusivity clauses that could give a preferential treatment to SERVIOPTICA over other clients; on the contrary, give those other clients equal and non-discriminatory conditions regarding quality, quantity, prices and other commercial conditions for the involved products; iv) abstain from demanding information about supplying conditions that the clients are negotiating with other suppliers; v) abstain from demanding clients the acquisition of lens and equipment through third party suppliers; vi) to elaborate and subscribe a confidentiality protocol regarding information that is obtained by the supply relationship with the clients.

- Nestle-Pfizer

27. In this case, which was an horizontal merger, the proposed transaction consisted in a buying of assets and shares between the two companies, so that would have gave Nestle the entire nutrition line for children of Pfizer. The SIC found an undue restriction to competition as consequence of the high levels of participation that Nestle would have acquired in the market, creating high entry barriers for other

competitors. The main condition imposed by the SIC, among others, was for Pfizer to give up its child nutrition line of business to a third party separated from the two companies involved in the merger transaction.

- Holcim S.A. - Concretera Tremix

28. This case constituted an horizontal merger related to the production and commercialization of pre-mixed concrete that the two companies operated within the Bogota area and close municipalities. The proposed merger consisted in the sale by Holcim to Tremix of 2 manufacturing plants and the subsequent incorporation of a new company in which Tremix would have had the 91% of the shares and Holcim the 9%. Additionally, there would have been a supply contract between the new company and the two parties involved in the transaction.

29. Although the proposed merger did not produce a rise on market concentration by itself, the SIC found that the operation could generate coordinated effects between the involved parties due to their commercial relationship and the homogeneous conditions of the particular market, where the number of competitors was limited. The SIC ordered Holcim to not have any access to sensitive information (prices, quantities and frequency of production, list of clients etc.) of Tremix and the new company. In addition, the parties involved in the transaction could not demand to their clients any information about other suppliers.

- Argos

30. The Argos case constituted an horizontal merger. The SIC, based on a study conducted by applying the Mc Rae & Wolak Model, conditioned the operation by ordering the merged company to disinvest part of its assets in generating plants, in order to neutralize the potential anticompetitive effects of the transaction.

- Fresenius Kabi/ Mix Supplier - Mix Supplier Bogotá

31. This case constituted a vertical operation with effects over the value chain of mixed products for parenteral nutrition. The SIC found that the merger would have produced anticompetitive effects, consisting in the restricted access for manufacturers different to the involved companies, to the required inputs and medicines to produce the parenteral nutrition mixtures.

32. The SIC, as one of the main conditions, ordered Fresenius Kabi to attend equally the purchase orders made by companies different to the companies involved in the transaction. Additionally, Fresenius Kabi was obliged to not have any access to sensitive information (prices, quantities and frequency of production, list of clients etc.) of Mix Supplier and Mix Supplier Bogotá.

- Empresa de Energía de Bogotá (EEB)-Isagen

33. In the Empresa de Energía de Bogotá (EEB)-Isagen case had both horizontal and vertical effects. The SIC found that the proposed merger would have generated the following effects on competition: i) Risk of horizontal effects, because the two companies simultaneously participated in the market of generation and distribution of energy at the national level; ii) The EEB was a common shareholder in other companies (CODENSA, EMGESA and ISAGEN), situation that reduces the incentive to compete among these market participants; iii) The operation would have generated a vertical integration between the activities of gas transportation and gas generation, which is prohibited by article 7 of Resolution CREG 071 of 1998 (TGI was a gas transportation firm owned by EEB, while Isagen also executed the activity of gas generation).

34. Consequently, the SIC ordered the following conditions: i) Isagen had to disinvest its assets for gas generation (gas generation plant) in order to neutralize the prohibited vertical integration; and ii) The EEB had to eliminate many of its political rights over EMGESA and CODENSA. Also, the share participation of EEB over EMGESA had to be reduced to a 29% of the shares.

- UNE EPM-Colombia Movil

35. This case had both horizontal and vertical effects: i) Horizontal: the two companies were participants in the six relevant markets covered by the merger operation; ii) vertical: both companies operated as lessors of spaces and telephone poles, and UNE operated TIGO's network under the Mobile Virtual Network Operator figure (MVNO).

36. The SIC conditioned the transaction because it would have overcome the maximum allowed for the radio electric spectrum, which is 85 MHz, with a concentration of 135 MHz. The SIC ordered the two companies to give back the spectrum surplus to the government, having a term of 2 years and 4 months since the issuance of the Resolution to do so.

37. Yara Colombia-Abonos Colombianos

38. In this case, which had both horizontal and vertical effects, the SIC found that the proposed merger would have reduced competition and produced high levels of concentration in some of the relevant markets, restricting the distribution of the affected products at the national level. Consequently, the SIC imposed the following behavioral conditions: i) Not tying the sale of fertilizers to the service of technical assistance; ii) Not restricting the channels of distribution; and iii) mitigate the risk of reduction to distribution of the affected products at the national level.

- Almacenes Exito - Comercializadora Giraldo

39. In this case, which was an horizontal merger in the retail and grocery stores market within the city of Cali, the SIC found that the two companies had a simultaneous participation in 23 markets that were determined by applying the Isochrones map model. Once the 23 markets (or Isochrones) were defined, the level of concentration on each was measured and the SIC calculated the possible variation caused by the merger operation. The SIC concluded that the proposed merger would have caused a high concentration in 6 of those markets.

40. Consequently, the SIC imposed conditions by ordering the sale of some establishments located in these 6 areas, plus some behavioral conditions towards the suppliers to mitigate the potential vertical effects of the merger.

2.2 *The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies*

41. The period from July 24, 2009, the effective date of Law 1340, to December 31, 2014, the SIC issued 158 advocacy opinions to 22 agencies under Article 7 (26 in 2013 and 51 in 2014).

2.2.1 *Relevant cases*

2.2.1.1 No undue anticompetitive restriction

- Ministry of Housing, City and Territory -Biosolids

42. The Ministry of Housing, City and Territory proposed a Decree for regulating the use of biosolids, which are solids obtained in the wastewater treatment processes. The objectives pursued by the Ministry were: i) to regulate the use of biosolids by avoiding them to terminate in landfills; ii) to promote the proper use of biosolids in activities such as the improvement of soils; and iii) to protect the environment through the reuse of those products.

43. The SIC considered the proposed regulation to be positive for competition because it would help to promote the development of a new emerging market while protecting the environment.

- Ministry of Mines and Energy – Non-conventional deposits

44. The Ministry of Mines and Energy proposed a Resolution to establish proceedings and technical requirements for the exploration and exploitation of hydrocarbons in non-conventional deposits. The objectives of the Ministry were: i) to establish technical requirements for the infrastructure related to non-conventional deposits; ii) to lay down proceedings; ii) to make stricter the requirements in the construction of wells in order to reduce the environmental impact; and iv) to determine the way in which water must be re-injected to the underground.

45. The SIC analyzed the documents and concluded that the proposed regulation was eminently technical, and posed no threat to competition. This conclusion was reinforced after analyzing the comments from stakeholders, which were centered only on technical aspects.

- Communications Regulatory Commission (CRC) - Market approval of terminal equipment

46. The Communications Regulatory Commission proposed a Resolution to update and simplify the proceeding for the permission of selling mobile devices in Colombia. The punctual changes introduced by the resolution were: i) eliminate the mandatory visits to commercial establishments by the Ministry of Information and Communications Technologies; ii) unify the authorization processes before the Ministry and the operators; iii) allow the Ministry to notify the Authorization Decision by electronic means; among others. The SIC concluded that the proposed regulation was positive for competition because it reduced barriers to entrance.

47. Communications Regulatory Commission (CRC) -Television Stickers TDT

48. The Communications Regulatory Commission proposed a resolution aiming to impose sellers and distributors of televisions and Set Top Box (STB), the obligation to place a sticker over devices and packages that clearly states if the television has a decoder for the Terrestrial Digital Television compatible with standard DVB-T2. The SIC considered it to be a pro competitive measure, due to the fact that the sticker permits consumers to be better informed.

2.2.1.2 Undue anticompetitive restriction

- Communications Regulatory Commission (CRC)
 - Mobile Banking

49. The Communications Regulatory Commission proposed a resolution aiming to intervene the price charged for SMS by the mobile operators to content and application providers. The main intention of the regulation was to extend the use of mobile banking.

50. The SIC considered that price regulation is an intervention in the market that must be the exception. For that reason, if the public policy justification behind the measure is the promotion of e-banking, then the price regulation should apply exclusively to the price charged by mobile operators to banks and not to the rest of providers. Moreover, the SIC considered that extending the price reduction to other content and application providers (different to banks), could have the effect of increasing the number of unsolicited SMS to consumers. Thus, the SIC recommended the regulator to analyzed the impact of extending the rate to nonbank providers.

51. In the definitive resolution, the Commission reduced the price of SMS for every content and application provider, not accepting the recommendation of the SIC, arguing principles such as technological neutrality and no discrimination.

52. Specifically, The CRC considered that the SMS termination rates should be reduced for all content and application providers and technology integrators, and not only for financial providers, due to: i) the principle of nondiscriminatory treatment provided in article 50 of Law 1341, 2009 (better known as the IT Law); ii) the efficient costs parameter, given that it was not possible for the regulator to introduce any criteria allowing differentiation according to the type of content; and iii) the technological neutrality principle, according to which the State must allow the free adoption of technologies to foster the efficient provision of services, contents and applications that use the information and communication technologies (Section 2 of Law 1341, 2009).

– Roaming essential facility

53. The Communications Regulatory Commission proposed a resolution aiming to define the general conditions for the public offer of the essential facility of national automatic roaming, which would be applicable to all telecommunications providers of networks and services that use the radio spectrum allocated to terrestrial mobile services. The draft established the obligation for mobile providers of network and telecommunication, to provide other suppliers the essential facility of national automatic roaming. This installation would allow users to receive roaming services without their direct intervention.

54. The SIC considered that the although the project was improving the accessibility to the use of information technologies, it was important for the regulator to emphasize in the monitoring mechanisms to market conditions in technical and quality aspects, among others, in order to ensure an effective competition between operators.

55. The CRC welcomed the comments of SIC and so expressly stated it in the final resolution, in which adopted as a measure to follow the recommendation, the commitment of requiring a new information report concerning the traffic and values associated with the use of roaming by the providers of telecommunications networks and services that make use of this essential facility.

– Roaming Rates

56. On September 2014, one of the new entrants contacted the SIC to report a regulation intended to be issued by the CRC, which initial purpose was only to reduce termination rates to a new efficient cost estimated by the regulator (equivalent to COP\$8) effective as from 2016 and to leave roaming rates unchanged (at COP\$42). This reduction benefited only incumbents³ and not entrants because the latter

³ It is important to clarify that the reduction did not benefit the dominant incumbent because Colombia currently has in force asymmetric rates. Nevertheless, for the sake of simplicity, the issue related to asymmetric rates will not be mixed with roaming rates because that mix could create more confusion than clarity to the problem.

could only render voice services through roaming. Thus, incumbents were to pay among themselves a termination rate of COP\$8 cents while the entrants were to pay to incumbents a roaming rate COP\$42. This situation could have spoiled the efforts made by the SIC in the recent years aiming to promote entry.

57. The CRC issued a new version of the regulatory project that proposed to reduce: i) termination rates to the new efficient cost in a 4 years glide path; and ii) roaming rates in the same 4 years glide path. Thus, this new version aimed to set equal the termination rates and the roaming rates. Under this scenario, incumbents and entrants were to be placed in a more leveled playing field but there was no advantage in favor of new entrants⁴. Moreover, under this scenario new entrants were to be displaced from the more advantageous position that they have gained after their participation in the 4G-spectrum allocation, given that previous roaming rates were substantially lower than termination rates.

58. The SIC recommended that roaming rates should be remunerated at efficient costs by new entrants, given that the roaming is considered an essential facility. At efficient costs, the new entrants could compete more effectively in the market⁵.

59. The Result was that the regulator adopted the recommendation made by the SIC and the roaming rates were set at the efficient cost estimated by the CRC.

- Potable Water and Basic Sanitation Regulatory Commission (CRA for its Spanish acronym)
 - Agreement for sweeping and cleaning

60. The Potable Water and Basic Sanitation Regulatory Commission proposed a resolution tending to adopt a methodology to organize streets allocation agreements in the sweeping and cleaning component of the waste management public service, in cases in which several companies coexist in the same area. The regulation was aiming to obey a previous Decree.

61. The main preoccupation of the SIC was the risk that in the framework of the sweeping and cleaning agreements providers could share sensitive information that could be used to collude in other activities of the waste management public service.

62. This was discussed with the regulator, and several meetings were held, and those inter-institutional efforts permitted to find a way in which the specific activity of sweeping and cleaning could be organized and at the same time the communications between incumbents would be restricted to that goal, avoiding the exchange of other sensitive information that could lead to antitrust practices.

63. The regulator accepted the comments made by the SIC to the extend that the competition advocacy concept was transcribed on the recitals of the definitive resolution.

⁴ The notion of time to market was very important for considering that new entrants should benefit from a roaming rate equivalent to efficient costs.

⁵ It is important to remark that the regulation established that roaming rates between incumbents were free to be negotiated among incumbents because extending the remuneration at efficient costs to incumbents could have created incentives to free ride. The SIC and the CRC agreed on this regard.

- National Agency of Hydrocarbons (ANH for its Spanish acronym)
 - Gas royalties

64. The National Agency of Hydrocarbons proposed a regulation that adopted a model to collect and invoice royalties generated by oil production, which facilitated the exchange of sensitive information between competitors and, therefore, the economic coordination among them.

65. The draft resolution sought to design a mechanism that leads competitors to exchange sensitive information between them. Specifically, the draft resolution provided that a single part on the collaboration agreement was in charge of gathering all the operation information from the other producers concerning the weighted average selling price, and submit it to the ANH in order to reduce transaction costs in benefit of the regulator. Certainly, the regulator was looking forward to create an efficient model to compile information for liquidate royalties, nevertheless the SIC identified that the alternative chosen facilitated the exchange of information and constituted a plus factor for collusion.

66. The ANH received and incorporated the recommendations and decided to eliminate the initial proposed scheme y and so stipulated it in the final text and quoted the SIC's recommendation.

- Energy and Gas Regulatory Commission (CREG for its Spanish acronym):
 - Statute in case of risk of shortage

67. The CREG proposed a resolution that sought to establish a mechanism to be activated in case of risk of energy shortage in order to guarantee the supply of energy demand.

68. On this behalf, the SIC considered that the project was unnecessary since there was already a mechanism designed for this purpose (Reliability Charge), and therefore, creating an alternative system would lead to increased costs unreasonably, harming consumers in a direct way.

69. Although the recommendation made by the Superintendence was not adopted, the Agency, presented sufficient reasons explaining the grounds for depart from the recommendations submitted by the SIC in the recitals of the final regulation. On this regard, the regulator argued that the Shortages Statutes was helpful to prevent situations of high impact that are not covered by the Reliability Charge.

- Bimonthly firm gas contracts

70. The Energy and Gas Regulatory Commission proposed a resolution introducing a new mechanism in which supply and demand would interact in the gas market through bimonthly contracts, in both primary and secondary markets with simultaneous transactions. The project defined who could be buyer and seller in that market. The goals of the draft resolution were: i) to allow agents to sign supply contracts in the short run to meet the new demand; ii) to find an alternative to market gas surplus to avoid distortions; and iii) to establish requirements to reduce the risk of exercise of market power.

71. The SIC identified two risks: i) the producers could extract rents; and ii) intermediaries and non-regulated users could manipulate the equilibrium price in the auction by fixing a floor price. This Entity considered necessary to mitigate the first of those risks, and recommended the Commission to include a text expressly prohibiting the first conduct.

72. The regulator analyzed the comments made by the SIC and adjusted the final resolution.

- Ministry of Mines and Energy
 - Liquid transportation fuels in border areas

73. The Ministry of Mines and Energy proposed a resolution aiming to regulate the transport of liquid fuels in three locations: i) border areas; ii) zones under the control of the National Council of Narcotics; and iii) the Magdalena Medio region. Moreover, the regulation established that companies should implement a tracking system to avoid smuggling.

74. The intended regulation included a 6 months period of transition only to companies located in border areas. In this regard, the SIC recommended the regulator to extend the period of transition not only to companies located in border areas, but also to companies located in the zones under the control of the National Council of Narcotics and the Magdalena Medio region.

75. The Ministry accepted this recommendation and amended the final version.

3. Resources of competition authorities

3.1 Resources overall (current numbers and change over previous year):

3.1.1 Annual budget (in your currency and USD):

76. The following table presents the Annual Budget of the Superintendence and its Deputy Superintendent for the Protection of Competition⁶:

Table No. 11. SIC Funds Available for Allocation: Amounts and Sources 2013 – 2014

Year	SIC Total Funds Available for Allocation		Funds from National Budget (% of total funds available)	Funds from SIC Sources (% of total funds available)				
	COP	USD		Fees	Fines	Yields	Contributions	Other
2013	207.4 billion	87.2 million	7%	20%	54%	3%	2%	14%
2014	138.9 billion	58.4 million	2%	56%	20%	9%	4%	9%

77. The table below displays the SIC's law enforcement activities over the past two years. The "Other conduct" column covers the following four types of activity: (i) unilateral anticompetitive acts violating Article 48; (ii) failures to comply with a settlement guarantee adopted in a conduct case; (iii) failures to comply with a condition adopted in a merger review proceeding, and (iv) failures to comply with any other SIC order or instruction, such as a compulsory process order.

⁶ Conversions made at the Market Representative Rate (TRM in Spanish) of May, 2015.

Table No. 12. Competition Law Enforcement Cases by Violation Type and Outcome 2013-2014

Year	Formal Investigations	Case Types					Total
		Horizontal agreements	Vertical agreements	Abuse of dominance	Unreported mergers	Other conduct	
2014	Opened	3	0	0	0	1	4
	Dismissed	0	0	1	1	0	2
	Settled	0	0	0	0	0	0
	Orders/sanctions	1	0	0	4	3	8
	Total monetary sanctions imposed	COP 5.9 billion USD 2.48 million	0	0	COP 1 billion USD 0.42 million	COP 89.4 billion USD 37.5 million	COP 96.3 billion USD 40.4 million
2013	Opened	8	0	2	4	0	14
	Dismissed		0				
	Settled	0	0	0	0	0	0
	Orders/sanctions	4	0	4	0	1	9
	Total monetary sanctions imposed	COP 31.1 billion USD 13million	0	COP 98.6 bill USD 41.4million	0	COP 6.2 million USD 2,523	COP 129.7 billion USD 54.5 million

78. The SIC's Competition Protection Division presently has a staff of 119, 42 per cent of whom are contractors. An important surge in personnel (up 48%) occurred over the last two years, associated with additional increases in both the SIC's workload and its budget.

Table No. 13. Competition Protection Division Personnel 2013 – 2014

Year	2013	2014
Contractors	5	18
Employees	75	74
Total	80	92

79. The percentage of personnel represented by contractors has fluctuated substantially over the past seven years, rebounding to 20% in 2014.

4. Summaries of or references to new reports and studies on competition policy issues

80. Market studies at the SIC are conducted by two groups -- the Mergers Group in the Competition Protection Division and the Economic Studies Group attached to the Superintendent's office. In 2012, the Mergers Group produced nine studies, two in the financial sector and seven in other markets, including tobacco, energy, travel agencies, construction, private label products, and public health firms. The Economic Studies Group (ESG) issued reports in 2012 on the automotive industry, telecommunications, coffee, cocoa, and housing⁷.

81. The Economic Studies Group produced the following studies in 2014: Appliance of legal metrology, use of credit cards by regions and commercial activities, and Debit Cards.

⁷ The ESG's study topics for 2013 include credit and debit cards, beer, sugar cane, and mass transit in Bogota.