

Updates on Colombian Antitrust Regulations and Enforcement

Latin America Newsletter

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1. Introduction

It has been five years since we presented an overview of Colombian antitrust laws and regulations.³ This article provides updates on those laws and regulations, as well as some insights in enforcement and practice in Colombia.

2. Updates on Laws and Regulations

(1) Merger Control

As to merger control, the overall structure and framework has remained unchanged since 2018, with the exception that, since January 2021, the Superintendence of Industry and Commerce (“SIC”) has enacted a filing fee requirement. All participants in merger control procedures must pay a fee *before* filing. The fees vary depending on the merger control procedure to which the parties are applying (**Table 1**).

Table 1. SIC Merger Control Procedures and Respective Filing Fees

Procedure	Fee
Notification: Applies if the Parties, jointly or individually, have a market share of less than 20% in all markets affected by the transaction. ⁴	COP 3,129,500 (Approx. USD 782)
Full authorization: Applies if the Parties, jointly or individually, have a market share equal to or greater than 20% in any of the markets affected by the transaction. ⁵ Here, we must note that the pre-evaluation procedures are divided	Please see below.

¹ [Posse Herrera Ruiz Law Firm](#)

² Id.

³ [中南米ニューズレター2018年8月号 \(nishimura.com\)](#)

⁴ See. Article 9, Law 1340 of 2009.

⁵ Id.

into two Phases and, thus, fees may vary as follows: ⁶	
Phase 1	COP 16,962,750 (Approx. USD 4,240)
Phase 2	If during the financial year preceding the transaction the undertakings concerned had, individually or in the aggregate, operating income or total assets amounting to greater than 1,641,044.99 UVT ⁷ but less than 2x such value, the fee is COP \$31,249,550 (Approx. USD 7,812).
	If during the financial year preceding the transaction the undertakings concerned had, individually or in the aggregate, operating income or total assets amounting to or exceeding 2 x 1,641,044.99 UVT, the fee is COP 37,950,750 (Approx. USD 9,487).
	If during the financial year preceding the transaction the undertakings concerned had, individually or in the aggregate, operating income or total assets amounting to or exceeding 3 x 1,641,044.99 UVT, the fee is COP 44,651,900 (Approx. USD 11,162).

*Filing fees change every year.⁸ Figures are for CY 2023.⁹

(2) Regulations on Anticompetitive conduct

As to regulations on anticompetitive conduct, there have been some meaningful changes to be noted as follows.

a. Establishment of a Compliance Office

In January 2022, pursuant to Decree No. 92 of 2022, SIC created a compliance office in charge of (a) following up on guarantees¹⁰ accepted by SIC in order to close antitrust investigations; (b) monitoring compliance with remedies imposed by SIC while clearing mergers; and (c) monitoring compliance of orders issued to market agents as part of antitrust investigations.

b. Leniency programs

In February 2022, leniency programs were modified by the Colombian Government with Decree No. 253 of 2022. Key modifications thereof are as follows.

(a) The presumption that the leniency applicant was not the promoter or instigator of the anticompetitive

⁶ In Phase 1, parties must provide certain mandatory minimum information while SIC conducts a preliminary evaluation of the proposed transaction. During this phase, those operations that do not seriously affect the competitive process are usually approved. It has a maximum duration of 30 business days. Phase 2 is an additional stage where SIC conducts a detailed study of the proposed transaction. This phase has an additional duration of 3 months. However, this period may be suspended if SIC requests additional information and until all the requested information is received. The investigation of transactions that reach Phase 2 can take five to ten months to complete, counted from the time the clearance request is filed (including Phase 1 and Phase 2).

⁷ UVT (Unidad de Valor Tributario: Tax Value Unit) for 2023 is COP 42,412. See. Article 1, Resolution No. 1264 of 2022.

⁸ SIC publishes the Resolution whereby it sets filing fees for the year.

⁹ Resolution No. 632 of 2023

¹⁰ Guarantees are commitments presented by indicted market agents during an administrative investigation for SIC to close its investigation without issuing any sanction. Guarantees must be presented to the Superintendent of Industry and Commerce (the head of SIC) within 20 working days after SIC's issuing its indictment. It is at the discretion of the Superintendent of Industry and Commerce whether to accept such guarantees and close its investigation.

conduct was eliminated. Under the new regulation, all applicants must declare that they did not promote nor instigate any violation of the Colombian antitrust regime.¹¹ Further, if applicants disclose the identity of the promoter or instigator, they must prove their allegation.¹² It should be noted that neither the old regulation nor the new regulation allows for promoters or instigators to be eligible for a leniency program.

(b) The conditions under which applicants may obtain leniency benefits have been changed.¹³

<Old regulation>

Under the old regulation, leniency benefits were as follows:

Timing	1 st applicant	2 nd applicant	3 rd applicant
Until the term of 20 working days granted by SIC for commenting on its indictment elapses	Total exoneration of the applicable sanction	Exoneration between 30% and 50% of the applicable sanction	Exoneration of up to 25% of the applicable sanction

<Current regulation>

Timing	1 st applicant	2 nd applicant	3 rd applicant
Until the day before the date on which SIC issues its indictment	Total exoneration of the applicable sanction	Exoneration between 30% and 50% of the applicable sanction	Exoneration of up to 25% of the applicable sanction
On or after the date of issuance of SIC's indictment	Exoneration up to 30% of the applicable sanction	Exoneration up to 20% of the applicable sanction	Exoneration up to 15% of the applicable sanction

(c) Among the causes for the loss of leniency benefits is "*not having ceased participation in the denounced anti-competitive conduct immediately after the application*" was added.¹⁴

c. Sanctions

In January 2022, sanctions for anticompetitive wrongdoing were modified.¹⁵ However, in March 2023, such modifications were ruled unconstitutional by the Colombian Constitutional Court and invalidated; therefore, the sanctions stay the same as stipulated under Law no. 1340 of 2009.

d. Norma Técnica Colombiana

The Norma Técnica Colombiana (Colombian Technical Standards) on free competition ("NTC") was published by ICONTEC on January 29, 2020. ICONTEC is an NGO which develops guides on best practices and certifies their adoption by private organizations. Though not a regulatory modification, organizations have adopted the NTC as a mechanism to preempt anticompetitive wrongdoing. More so, SIC has encouraged companies to adopt NTC¹⁶ and even ordered its adoption as a remedy in merger control cases and as part of antitrust investigations.

¹¹ Albeit no further evidence is required for such declaration, if SIC finds during the proceeding that the applicant is the promoter or instigator, such applicant will be immediately excluded from the leniency program.

¹² See. Decree 253 of 2023, Article 1.

¹³ Id.

¹⁴ Id.

¹⁵ Law 2195 of 2022.

¹⁶ See SIC's [Guide for the Implementation of Antitrust Compliance Programs](#) (November 2022).

1. Enforcement trends

Looking back over the last several years, during the previous administration (under the presidency of Iván Duque Márquez; 2018 – 2022), SIC was very active in investigations, especially between 2018 and 2019. In comparison, under the current administration (under the presidency of Gustavo Petro since August 2022), the SIC has been relatively inactive. Through both administrations, SIC's cooperation with foreign competition authorities has not been intense.

In May 2023, President Gustavo Petro appointed María del Socorro Pimienta Corbacho as Superintendent of Industry and Commerce. She started her career at SIC in 1991 and has focused on IP-related practices. For the second half of 2023, SIC is expected to reactivate its investigative activity. SIC is expected to initiate a considerable number of investigations related to the telecommunications sector and, especially, with regards to a number of restrictive competition practices carried out by the dominant player in the mobile services market. On the merger control side, SIC has adopted a positive attitude towards mergers. SIC hasn't blocked any mergers and has only imposed remedies on one transaction out of 248 transactions filed during 2022.

2. The way forward

In 2022, Colombia showed an increase in growth rate of real GDP by 7.5% over the previous year. The export value has been substantially boosted as well, and the value of inward direct investments was 17,048 million USD, which was the maximum amount in recorded history for the country.¹⁷ Following the peace agreement with FARC in 2016, the Colombian government has achieved considerable results in terms of social stability, including tentative cease-fire agreements with several armed organizations in January 2023 (cease-fire period: Jan. to Jun. 2023), and with ELN in June 2023 (cease-fire period commenced in August 2023). Together with the end of long-lasting pandemic, and new developments such as the December 2022 tax reform, it would be a good time for more Japanese companies to think about entering the Colombian market.

As shown above, in the area of Colombian competition law, there have been meaningful developments since 2018. Compliance with competition law has been of growing importance, which is clear from the facts such as publication of the NTC, SIC's proactive attitude in terms of NTC implementation and adoption, and establishment of the Compliance Office. Given that we may see a more active enforcement trend in the second half of this year, taking a closer look into these and other unfolding developments is advisable.

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¹⁷ [コロンビアの貿易と投資 | コロンビア - 中南米 - 国・地域別に見る - ジェトロ \(jetro.go.jp\)](#)