

**Template pursuant to Section 3 (a) of the  
ICN Framework on Competition Agency Procedures  
Superintendence of Industry and Commerce, Colombia**

The following template is submitted by the **Superintendence of Industry of Commerce – Colombia** pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures (“CAP”).

**I. Introduction**

[The Superintendence of Industry and Commerce](#) (SIC) is a public authority and a technical agency attached to the Ministry of Trade, Industry and Tourism of Colombia. It is organized into six principal divisions (named “Deputy Superintendences”), each headed by a Deputy Superintendent: [Competition Protection](#), Consumer Protection, Personal Data Protection, Industrial Property, Technical Regulation and Legal Metrology, and Judicial Affairs.

The duties and faculties of the SIC are established in the [Decree No. 4886 of 2011](#), Article 1, some of the most important are:

Advise the Government and participate in the formulation of policies on all matters having to do with consumer protection, promotion and protection of competition, industrial property rights, personal data protection, legal metrology and technical regulations, and related areas.

As the National Competition Authority, ensure compliance with legal provisions related to this area in national markets.

Conduct claims or complaints by events that affect competition in all markets, and process those that are significant to achieve, in particular, the following purposes: free participation of enterprises in the market, consumer welfare and economic efficiency.

Impose, based on the law and in accordance with the applicable procedure, penalties for the violation of any of the provisions of competition protection and unfair competition, and for not complying with instructions issued in performance of its functions.

Order, as a precautionary measure, the immediate suspension of conducts that may be contrary to provisions on competition protection and unfair competition.

Order the modification or termination of the conducts that are contrary to provisions on competition protection and unfair competition.

Grant benefits for collaborating with the SIC under the Competition Protection Law (Leniency Program).

Submit, when deemed appropriate, a previous concept of State regulation projects that may have an effect on competition in the markets. (Competition Advocacy).

Decide, on the terms of law, mergers or acquisitions, whatever the economic sector or the legal form of the proposed operation is.

Exercise control and surveillance upon the Chambers of Commerce, their federations and confederations, in accordance to the existing provisions on the matter, and coordinate all issues related to the trade registry.

Ensure compliance with the provisions on consumer protection, and conduct those claims and complaints, whose jurisdiction has not been ascribed to another authority, in order to establish the corresponding administrative responsibilities and order pertinent measures.

Impose sanctions that according to law result from the violation of consumer protection laws, failure to comply with legal metrology, failure to comply with the technical standards whose supervision has been expressly assigned to the SIC, evaluation entities' failure to comply with technical standards' conformity, and failure to comply with the instructions issued in the performance of its functions.

Perform the functions established in Act 1335 of 2009 and those modifying, supplementing or substituting such Act, that concern advertising, packaging, and the prohibition to promote and sponsor tobacco and its derivatives.

Impose, after conducting an investigation and in accordance with the applicable procedures, sanctions for the violation of rules on consumer protection and the regime of protection of telecommunication services' users.

Ensure compliance with the provisions governing consumer protection in connection with postal services and the postal services' users, conduct the complaints and claims that may arise, and solve appeals or complaint that may be brought against decisions issued in first instance by the operators of such services.

Carry out administrative investigations related to the protection of tourist services users, because of the infringement of Act 300 of 1996 and the rules amending or regulating it. Organize and instruct the manner in which legal metrology shall operate in Colombia.

Exercise functions in connection with mandatory metrology at the national level.

Exercise, directly or in coordination with other national authorities, control over weight and measures.

Manage the National Industrial Property System and conduct and decide any issue related to it.

Issue the regulations that, consistent with supranational provisions, fall under the jurisdiction of the national industrial property office.

Carry out the judicial functions assigned by virtue of law, through its Deputy Superintendences, internal Working Groups or officers assigned for these purposes by the Superintendent of Industry and Commerce, guaranteeing their independence and autonomy.

Monitor operators, sources, and users of financial, credit, commercial and services' information, and information with the same nature coming from third countries regarding personal data management activities, pursuant to Act 1266 of 2008, notwithstanding the jurisdiction of the Superintendence of Finance.

Issue instructions on consumer protection, competition protection, industrial property, personal data management, and other areas under its supervision, establish the criteria to facilitate their compliance and define the procedures for their full application.

## II. **Laws, Regulations, and Policies relevant for the implementation of the CAP**

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate. Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

### b) **Non-Discrimination**

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The Superintendence Industry and Commerce does not apply a differentiated treatment nor does discriminate persons subjected to investigative and enforcement proceedings based on nationality.

Colombian Competition Authority follows all through its activities a set of principles and rules established primarily by the Colombia's Constitution of 1991. Particularly, Article 13 considers all individuals equal before the law and promotes the conditions so that equality may be real and effective. This principle applies thoroughly to the enforcement proceedings conducted by the SIC. Therefore, the nationality, residence, or origin of a person being investigated is irrelevant to the enforcement of the competition laws, procedural rules and policies, in terms of treatment, considering that to enforce competition laws it is only relevant that the conduct has or is likely to have effects on national markets regardless of the economic activity or sector ([article 2 of the Law 1340 of 2009](#)).

### c) **Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

All antitrust laws and regulation are publicly available. The Superintendence of Industry and Commerce follows applicable procedural rules in investigations and enforcement proceedings.

The following are the Colombian competition Laws, regulations and procedural rules that apply to investigations:

Law 155 of 1959 (article 1: general prohibition). Available on: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38169> (Spanish)

Decree 2153 of 1992 (article 47: anticompetitive agreements). Available on: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38168> (Spanish).

Law 1340 of 2009 (procedural provisions, leniency program and fines). Available on: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36912> (Spanish).

Decree 4886 of 2011 (powers of the SIC). Available on: [http://www.secretariasenado.gov.co/senado/basedoc/decreto\\_4886\\_2011.html](http://www.secretariasenado.gov.co/senado/basedoc/decreto_4886_2011.html) (Spanish).

Law 599 of 2000 (article 410A criminal sanction of bid rigging) Available on: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6388>

Decree 1523 of 2015 (Leniency Programme). Available on: <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62539> (Spanish).

In addition, the Colombian Competition authority makes available on its website various interpretative guidelines, case database and statements on substantive and procedural matters related to the enforcement of the antitrust laws:

SIC's Leniency Program. This information can be consulted in Spanish on the following link: <http://www.sic.gov.co/beneficios-por-colaboracion>

Anticompetitive practices. This information is available in Spanish on the following link: <http://www.sic.gov.co/practicas-restrictivas-de-la-competencia>

SICOMP Case Database – Decisions. This information is available in Spanish. <http://www.sic.gov.co/sicomp>

The merger control guide, document which details the merger procedures. This information is available in Spanish. [https://www.sic.gov.co/sites/default/files/files/Proteccion\\_Competencia/Integraciones\\_Empresariales/2019/Gu%C3%ADa%20Integraciones%20Empresariales\\_agosto16\\_2019\\_%20\(1\).pdf](https://www.sic.gov.co/sites/default/files/files/Proteccion_Competencia/Integraciones_Empresariales/2019/Gu%C3%ADa%20Integraciones%20Empresariales_agosto16_2019_%20(1).pdf)

#### **d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide*

*reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

When a formal investigation is opened, suspected parties get noticed about the case (before this stage the case is confidential), and from this moment on they get linked to the administrative proceeding as investigated parties. Defendants and recognised third parties can challenge the investigation resolution during 20 working days after its communication.

In this stage, the Deputy Superintendent opens the probationary period, which term will be given by the volume of evidence that is collected and the amount of proofs that must be controverted and/or practiced. In this stage, the investigated parties have the opportunity to request and provide evidence to the Competition Authority. It is worth noting that in this kind of procedures not only the facts under investigation must be evaluated, but also the market involved and its dynamics and particular characteristics. After the probationary period ends, the Deputy Superintendent summons the parties to a final hearing where investigated and recognized third parties verbally present their arguments about the investigation.

Finally, the Deputy Superintendent sends a non-binding motivated report to the Superintendent of Industry and Commerce, which presents the results of the investigation and suggests to impose a sanction to the investigated parties or to close the case. Defendants and recognised third parties can submit comments about the reasoned report during 20 working days after its communication.

The Superintendent, assisted by a team comprised of lawyers and economists who have not participated in the investigation, analyses of the Deputy's report, the record, and the submissions of the defendants and third parties, and may either accept the recommended decision or reach a different result.

If the Superintendent finds an offense, either in accord with or contrary to the Deputy's recommendation, the Superintendent's ruling will include an opinion detailing the facts and analysis supporting the conclusion. The ruling may impose a fine and order the unlawful conduct to be terminated or modified. It should be noted that the Superintendent must hear the Advisory Council's non-binding opinion before imposing a monetary sanction. If the Superintendent agrees with the Deputy that no violation occurred, the Superintendent issues a Resolution explaining why there has been no violation. If the Superintendent closes the case despite a Deputy recommendation for sanctions, the Resolution closing the case fully explains the case, the facts, the law, the alleged theory of harm, the arguments included in the reasoned report, and describes why there has been no violation.

Once the Superintendent has rendered a decision, the parties (including third parties) have 10 working days to request that the Superintendent reconsider the decision.

### **e) Timing of Investigations and Enforcement Proceedings**

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

The Superintendence of Industry and Commerce always endeavors to conclude investigations and enforcement proceedings within a reasonable time period. Particularly, Article 27 of Law 1340 of 2009 states that the lapsing of the legal action is 5 years from the date of the termination of the infringement or from the occurrence of the last event related to the conduct under investigation. The latest event is called “continued misconduct”.

### **f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In Colombia there are public laws that determine which information is considered as confidential (Article 24. Law 1437/2011, Articles 18-19. Law 1712 de 2014). Some of the information protected with confidentiality is justified in the fact that its disclosure might infringe private rights such as privacy when regarding personal information, or because it regards business secrets, commercially sensitive information, and information covered by professional privilege.

The Andean Community Decision 486 of 2000 is relevant to protect confidential information such as industrial secrets that may be used for any productive, industrial, or commercial activity (Article 260). The reason of the protection of this kind of information is the fair competition provided that the protection is limited to prevent the unfair use in the market of such information.

In respect to competition law enforcement procedures, Article 15. Law 1340/2009 allows the parties subjected to an investigation to request confidential treatment to the information relative to their business secrets. In that scenario, the person who is interested in obtaining a reserved treatment of their information should present a free access summary to be included in the public part of the file so to guarantee both the protection of the information as well as the publicity regarding its existence. The latter intends to guarantee the right of the parties to know (but not to access) what information rests on the file. Some other information, if exposed, might jeopardize public interest such as national security, international relationships, justice administration or macroeconomic stability.

The relevance of the protection of this type of information is not minor. The consequence established by Colombian legislation for those cases in which confidential information is wrongfully disclosed, is that the staff member that was responsible for the disclosure can be disciplined for a serious offence. The protection of these kinds of information must be carefully

analysed by the competition authority. In fact, the SIC has stated that if some information identified as reserved reaches the market, to competitors and other relevant market agents, the impact and the damage in the legitimate interest of some actors could be at risk. The harm to the owner whose information was wrongfully disclosed may certainly affect its performance in the market.

The Colombian Competition Authority takes into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information. In *Brinsa et al v Sic (2018)* (Brinsa et al v Sic , 2018), for instance, one of the investigated parties requested to access the entirety of the information contained in the case file (meaning both public and confidential books of the file) claiming that it was necessary for the exercise of its right of defence. However the SIC granted a partial access to the information, leaving aside the confidential books of the other parties that were also its competitors. The competition authority motivated its decision on the fact that the information contained in those confidential books was not considered as evidence for the accusation.

#### **g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

The [Code of Administrative Procedure and Administrative Disputes](#) defines rules to ensure that officials, including decision makers, are objective and impartial, and to prevent any conflicts of interest. Article 11 states that officials who must carry out an administrative proceeding or investigation must be excluded from working on a case if they have a close relationship to the subject matter of the proceeding. Some of the grounds for declaring a conflict of interest are: (i) when the official has a particular and direct interest in the case decision; (ii) when the matter of the dispute has been known by the official in a previous opportunity; (iii) when the official is married to the person interested in the matter; (iv) when the public official, his spouse or relatives have filed a criminal complaint against the parties under investigations or their attorney; (v) when the official, his spouse or any of his relatives is going to inherit from one of the parties under investigation; (vi) when one of the official relatives is interested in the matter.

#### **h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

*requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

i) The Colombian Competition Authority conducts an administrative proceeding in order to determine whether to impose a sanction pursuant to applicable Competition Laws. During the preliminary stage of the proceeding and if the Authority finds enough merits to carry on an investigation it has to inform the parties subjected to the investigation and third parties about its decision to open a formal investigation. The decision will indicate, with precision and clarity, the facts that originate it, the natural or juridical persons subject to the investigation, the provisions presumably violated and the sanctions or measures that proceed.

When an investigation is ordered to be opened, the investigated party shall be personally notified so that within the following twenty (20) working days parties under investigation may request or submit the evidence they intend to assert. During the investigation, the requested evidence and the evidence deemed appropriate by the Deputy Superintendent for the Protection of Competition shall be practiced.

Once the investigation has been conducted, the Deputy Superintendent for the Protection of Competition will summon to a hearing where the investigated parties and third parties recognized within the process will present verbally the arguments that they intend to assert with respect to the investigation.

Once the oral hearing has taken place, the Deputy Superintendent shall submit to the Superintendent of Industry and Commerce a reasoned report as to whether there has been an infraction. Such report shall be transferred for twenty (20) working days to the investigated party and to the interested third parties so that they can either challenge the decision or submit comments.

ii) The Superintendence of Industry and Commerce grants the right to access to information as a part of the right to defense, however this right is limited to the evidentiary material and to the public information contained in the case file. This right does not comprehend the access entirety of the information possessed by the SIC (Participant), for instance the access to confidential information different from that confidential information contained in those confidential books that is not considered by the Authority as evidence for the accusation.

iii) Reasonable opportunities to defend, to be heard and to present, respond to and challenge evidence:

Persons subject to an Administrative Proceedings will have the ordinary defense mechanisms in the framework of the administrative sanctioning procedure, pursuant to the provisions of article 52 of Decree 2153 of 1992, modified by article 155 of Decree 19 of 2012.

The following are the opportunities granted to the parties:

(i) After the Competition Authority issues the formal investigation resolution, they challenge the decision, as well as request and provide evidence.



(ii) During the investigation phase, in the event that the Authority decides to have as evidence the material collected during preliminary inspections, the persons subject to proceedings have the opportunity to discuss the validity of those means of evidence.

(iii) In the course of the probationary stage, the claimant shall have the opportunity to dispute the evidentiary material in question;

(iv) The plaintiff may make allegations at the oral hearing that, in the terms of article 52 of Decree 2153 of 1992, will take place at the closing of the evidentiary stage.

(v) If the Authority issues a reasoned report recommending the imposition of a sanction based on the evidentiary material collected, the investigated party may present observations against the conclusions of the reasoned report submitted by the Competition Division to the Superintendent of Industry and Commerce.

(vi) In the event that the Superintendent of Industry and Commerce decides to impose a sanction, the investigated parties may challenge the act by which that decision was adopted.

Finally, for the purpose of discussing the final decision adopted by the Superintendent of Industry and Commerce, the investigated parties may appeal to the contentious-administrative jurisdiction.

#### **i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Colombian antitrust laws do not expressly state the need to be represented by a qualified legal counsel. Therefore, parties under investigation do not have any restriction to exercise their right of defense and contradiction by themselves. Notwithstanding, Colombian antitrust laws provides the opportunity to be represented during investigation through a qualified counsel.

Any information obtained by the Superintendence of Industry and Commerce will only be used for the purpose of its functions. Thus, the Deputy Superintendence for the Protection of Competition will always guarantee professional secret.

In this context, this Deputy considers it is necessary to filter the information collected. Therefore, that evidence collection is limited only to information related to the facts under examination and guarantees due respect for professional secrecy and due process.

In order to filter the electronic information, this Deputy requires the list of each of the files, documents, e-mails that are considered professional secrecy, all with the purpose that this Delegation can determine if such information deserves to be excluded or not from the investigation.

## **j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

i.) The formal investigation resolution as well as the motivated report are written acts that contained all the findings of facts and conclusions of law that support the decision. Moreover the final section of these decisions describes the sanctions imposed on companies or persons who have participated as market agents or facilitators of any anticompetitive behaviour.

If the Superintendent finds an offense, either in accord with or contrary to the Deputy's recommendation (motivated report), the Superintendent's ruling will include an opinion detailing the facts and analysis supporting the conclusion.

In case that the Superintendent agrees with the Deputy that no violation occurred, the Superintendent issues a written Resolution explaining why there has been no violation. If the Superintendent closes the case despite a Deputy recommendation for sanctions, the Resolution closing the case fully explains the case, the facts, the law, the alleged theory of harm, the arguments included in the reasoned report, and describes why there has been no violation.

To ensure that all final decisions are publicly available, [article 3 of the Code of Administrative procedure and Administrative Disputes](#) states that under the principle of transparency, administrative activity is in the public domain. Therefore every person can know the actions of the administration, except when there is a legal reserve. According with this principle, the administrative authority shall communicate to the public and interested parties (without any request) the acts and resolutions issued by the administration.

In particular [article 17 of the Law 1340 of 2009](#) states that the Superintendence of Industry and Commerce shall take into account the particular conditions of the market and the interest of consumers, to order the publication of an announcement in a daily newspaper informing about the following actions: (i) opening of an antitrust investigation (ii) the beginning of a merger review process and (iii) the settlements or guarantees accepted by the SIC.

ii.) Paragraph 1 of Article 52 of Decree 2153 of 1992, which was amended by Article 16 of Law 1340 of 2009, establishes that a party may settle a case by offering to the SIC satisfactory “guarantees.” The guarantees are presented in writing before the term to provide evidence expires. If the guarantees are accepted, they become binding commitments, and a failure to comply with them can be sanctioned as if a SIC order has been violated. The Colombian Competition Authority as noted in the previous point can make public the commitments through a closing resolution describing the basis for the competition concerns and the reasons of the commitments.

**k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Each decision adopted by the Competition Authority is subjected by judicial review.

For the purpose of discussing the final decision adopted by the Superintendent of Industry and Commerce, the investigated parties may appeal to the contentious-administrative jurisdiction.