

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

SUPERINTENDENCE OF INDUSTRY AND COMMERCE (SIC) - COLOMBIA

28 February 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

Statutory Laws

A. Notification provisions	The applicable procedure is indicated by articles 9, 10 and 11 of Law 1340 of 2009 . This normativity can be found in Spanish following the link below: https://www.sic.gov.co/recursos_user/documentos/normatividad/Leyes/2009/Ley_1340_2009.pdf
B. Substantive merger review Provisions	Detailed information is found in Resolution No. 2751 of 2021 (previously Resolution No. 10930 of 2015), the text that regulates the provisions of Law 1340 of 2009. This normativity can be found in Spanish following the link below: https://www.sic.gov.co/sites/default/files/normatividad/012021/Resoluci%C3%B3n%202751%20de%2029%20de%20enero%20de%202021%20-%20Integraciones%20empresariales.pdf

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

C. Implementing regulations	<p>In addition to Law 1340 of 2009 (Notification provisions) and Resolution No. 2751 of 2021 (Substantive merger review provisions), Resolution No. 2103 of 2021 should be mentioned, which sets the fees charged for a merger review. This normativity can be found in Spanish following the link below: https://www.sic.gov.co/sites/default/files/normatividad/012021/2103%202021.pdf</p>
D. Notification forms or information requirements	<p>The information required depends on the modality under which merging parties report to the SIC based on what is established in Law 1340 of 2009. There are two modalities: Notification and pre-evaluation. For <u>notification</u>, the information requirements can be found in Resolution No. 2751 of 2021, numeral 3.2. For <u>pre-evaluation</u>, the information requirements are in the annexes 9.1. and 9.2. of the same Resolution.</p>
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<p>The OFFICIAL MERGER GUIDELINE describes the entire process carried out by the SIC including definitions, detailed procedure, calculations, etc. This document can be found in Spanish following the link below:</p> <p style="text-align: center;">https://www.sic.gov.co/sites/default/files/files/Proteccion_Competicion/Integraciones_Empresariales/2019/Gu%C3%ADa%20Integraciones%20Empresariales_agosto16_2019_%20(1).pdf</p>
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	<p>The OFFICIAL MERGER GUIDELINE describes the entire process carried out by the SIC including definitions, detailed procedure, calculations, etc. This document can be found in Spanish following the link below:</p> <p style="text-align: center;">https://www.sic.gov.co/sites/default/files/files/Proteccion_Competicion/Integraciones_Empresariales/2019/Gu%C3%ADa%20Integraciones%20Empresariales_agosto16_2019_%20(1).pdf</p>

G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	No.

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	<p style="text-align: center;">SUPERINTENDENCE OF INDUSTRY AND COMMERCE</p> <p>The Superintendency of Industry and Commerce, as the sole competition authority, is the entity in charge of review mergers.</p>
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	<p style="text-align: center;">SUPERINTENDENCE OF INDUSTRY AND COMMERCE</p> <p>Location: Bogota - Colombia Address: Carrera 13 No. 27 - 00 Telephone: (+57 1) 587 00 00 Email: contactenos@sic.gov.co Website (available in Spanish): https://www.sic.gov.co/</p>
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	<p style="text-align: center;">SUPERINTENDENCE OF INDUSTRY AND COMMERCE Merger Working Group</p> <p>Email: iempresariales@sic.gov.co Website (available in Spanish): https://www.sic.gov.co/las-integraciones-empresariales</p>

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	<p>In accordance with Law 1340 of 2009 and Resolution No. 2751 of 2021, <u>a merger, consolidation, acquisition of control or integration business operations, whatever the legal form of the planned operation, must be reported to the Superintendence of Industry and Commerce.</u></p> <p>The legal form of a merger refers to the modality or legal vehicle through which a change in the control situation of one or more companies, lines of business and / or assets materializes. It can be, for example, an acquisition of shares, purchase of assets, merger, spin-off, creation of a company, business alliances, franchise contracts, among others. All these operations can be analyzed by the Superintendence of Industry and Commerce if they meet the criteria and thresholds established by law.</p>
B. What is the geographic scope of transactions covered?	<p>In the terms of Resolution No. 2751 of 2021, the SIC analyses the mergers that their merging parties exercise the same economic activity or belong to the same value chain and that are part of a merger transaction that is planned to be carried out and may have effects on the <u>national market.</u></p>
C. If change of control is a determining factor, how is control defined and interpreted in practice?	<p>In the terms of numeral 4 of article 45 of Decree 2153 of 1992, control is defined as:</p> <p><i>“(...) the possibility of directly or indirectly influence the business policy, the initiation or termination of a company's activity, the variation of the activity to which the company is engaged or the disposition of the essential assets or rights for the development of the activity of the company”.</i></p> <p>The exercise of control can be direct or indirect, or there may even be joint control by two or more companies over a third party in the market.</p>
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-	<p>In accordance with Law 1340 of 2009 and Resolution No. 2751 of 2021, <u>a merger, consolidation, acquisition of control or integration business operations, whatever the legal form of the planned operation, must be reported to the SIC.</u></p>

<p>standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p>The legal form of a merger refers to the modality or legal vehicle through which a change in the control situation of one or more companies, lines of business and / or assets materializes. It can be, for example, an acquisition of shares, purchase of assets, merger, spin-off, creation of a company, business alliances, franchise contracts, among others. All these operations can be analyzed by the SIC if they meet the criteria and thresholds established by law.</p>
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<p>4. Thresholds for notification</p>	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>In terms of numeral 2.1.2., article 1 of Resolution No. 2751 of 2021, the objective assumption refers to the threshold, measured in operating income or total assets of the merging parties, from which the obligation to report a merger arises. There are two requirements, noting that it is only necessary to meet one of them to satisfy the objective element:</p> <p>a) That the merging parties, jointly or individually considered, have obtained during the fiscal year prior to the projected transaction, operating incomes higher than the amount established by the SIC in legal monthly minimum wages, or</p> <p>b) That, at the end of the fiscal year prior to the projected transaction, the merging parties, collectively or individually, have total assets greater than the amount established in minimum wages by the SIC.</p> <p>The amount in minimum wages is established by the SIC annually, depending on the value in Colombian pesos of the minimum wage and the performance of Colombian economy. In 2021, the amount was established in 60.000 minimum wages (COP\$ 54.511.560.000) with Resolution No. 77896 of 2020.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining</p>	<p>In terms of numeral 2.1.2., article 1 of Resolution No. 2151 of 2021, to determine the operating income and total assets, only those obtained in the national territory will be</p>

<p>relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>considered, both by merging parties and by those companies that (a) are linked by virtue of a control situation with the merging parties; and (b) develop the same economic activity or are in the same value chain of the participating companies.</p> <p>“Control” is defined in numeral 4 of article 45 of Decree 2153 of 1992. This definition is discussed previously.</p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>In terms of numeral 2.1.2., article 1 of Resolution No. 2151 of 2021, to determine the operating income and total assets, <u>only those obtained in the national territory will be considered.</u> If these values are required for further analysis, they will be verified at the merger study stage.</p>
<p>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>Yes. In terms of numeral 2.1.2., article 1 of Resolution No. 2151 of 2021, the Authority verifies the threshold of total assets and operating income of the merging <u>parties jointly or individually considered.</u></p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Yes, the aeronautical sector should not notify an operation to the SIC. In terms of numeral 2.1.2., article 8 of Law No. 1340 of 2009, <u>the Civil Aeronautical Special Administrative Unit will retain its competence for the authorization of all commercial operations between aircraft operators consisting of code-sharing contracts, joint operation, use of aircraft in charter, exchange and blocking of space in aircraft.</u></p>
<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>No.</p>
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the</p>	<p>No, in administrative processes executed by the SIC Merger Working Group.</p>

acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	No. According to Law 1340 of 2009 , the SIC can only examine those mergers that meet the established thresholds.
I. Are current notification criteria catching relevant transactions related to digital markets?	No.

Calculation Guidance and related issues

J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>The threshold is measured according to the relevant turnover (operating income) and assets. The SIC uses the IRFS definition to establish if the merger must be analyzed by the Authority.</p> <p>Operating income (revenue): those that come only from the ordinary activity of the company before applying taxes and interest.</p> <p>Assets: resources controlled by the entity because of past events; and from which the entity expects to obtain, in the future, economic benefits.</p> <p>These values are examined by the SIC from the financial statements of the previous fiscal year of the merging parties.</p>
K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?	<p>In terms of numeral 2.1.2., article 1 of Resolution No. 2151 of 2021, to determine the operating income and total assets, only those obtained in the national territory will be considered, both by merging parties and <u>by those companies that (a) are linked by virtue of a control situation with the merging parties; and (b) develop the same economic activity or are in the same value chain of the participating companies.</u></p>

	<p>“Control” is defined in numeral 4 of article 45 of Decree 2153 of 1992. This definition is discussed previously.</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p>If it is an investment fund operation, it must be examined by another entity. In accordance with Article 9 of Law 1340 of 2009, operations that concern the financial sector must be reviewed by the Financial Superintendence of Colombia.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>The values are required in Colombian pesos. If any financial statement is presented in a foreign currency (USD or EUR), the SIC uses the annual average of the exchange rate of the fiscal year in which the reports are presented. The authority uses the average reported by the Banco de la República, the country's monetary and exchange authority. More information: https://www.banrep.gov.co/es/estadisticas/monedas-disponibles.</p>
<p>5. Pre-notification</p>	
<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</p>	<p>If the thresholds are met, there are only two procedures in the legislation. (a) Notification: when the joint market share does not exceed 20%; and (b) Pre-evaluation: when the joint market share exceeds 20%</p> <p>The merging parties may request the SIC, before submitting the pre-evaluation request, to hold a preliminary meeting to review the conditions of the transaction and the required documentation. The foregoing, to provide guidance and facilitate the subsequent presentation of the merger, to initiate a pre-evaluation process. The preliminary meeting does not exempt companies from complying with the provisions of the Pre-evaluation.</p>
<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>Non applicable</p>

6. Notification requirements and timing of notification	
<p>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</p>	<p>Yes. The companies that plan to carry out a merger, regardless of its legal form, must inform the SIC, when the assumptions provided in article 9 of Law 1340 of 2009 are met. These are:</p> <p>Subjective assumption: The subjective element is related to: (i) Those market participants who carry out the same economic activity, that is, if they produce or market the same goods, or provide the same type of service; and (ii) those participants that belong to the same value chain, in the terms provided in these Guidelines.</p> <p>Objective assumption: Test of assets and operating income according to the threshold discussed previously.</p>
<p>B. If parties can make a voluntary merger filing when may they do so?</p>	<p>The process is <u>voluntary</u>, initiated by the participants. It cannot be started from the SIC.</p>
<p>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</p>	<p><u>There is no precise time to report a merger.</u> This request is always ex-ante, motivated by the companies involved.</p>
<p>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>Only the assumptions discussed above must be met. This request must be ex-ante.</p>
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please</p>	<p>No. The moment in which the merger is reported is the decision of the companies. In any case, this process must be carried out ex ante since it seeks to avoid harmful or</p>

<p>describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>damaging effects on competition. Therefore, the duty of information or notification of the merger must be carried out before its initiation and not simultaneously or after the transaction.</p>
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<p>7. Simplified Procedures</p>	
<p>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</p>	<p>If the thresholds are met, there are only two procedures in the legislation. (a) Notification: when the joint market share does not exceed 20%; and (b) Pre-evaluation: when the joint market share exceeds 20%.</p> <p>When the merging parties jointly hold 20% or more of the relevant market, they will have the duty to inform the transaction to the SIC through the pre-evaluation process to be able to integrate. Otherwise, although the transaction is understood to be authorized, the companies must inform the SIC of the transaction in advance through the notification process.</p> <p>The notification process is detailed in numeral 3, article 1 of the Resolution No. 2751 of 2021.</p>
<p>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</p>	<p>When the merging parties jointly hold 20% or more of the relevant market, they will have the duty to inform the transaction to the SIC through the pre-evaluation process to be able to integrate. <u>Otherwise, although the transaction is understood to be authorized, the companies must inform the SIC of the transaction in advance through the notification process.</u></p>

<p>8. Information and documents to be submitted with a notification</p>	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>The types of documents that parties must submit with the notification can be found in numeral 3.2., article 1 of the Resolution No. 2751 of 2021. The documents in the pre-evaluation process are in the annexes 9.1. and 9.2. of the same Resolution.</p>

<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>No.</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>No.</p> <p>In accordance with Article 12 of Law 1340 of 2009, the merging parties can demonstrate, with studies based on methodologies of recognized technical value, that the beneficial effects of the operation for consumers exceed the possible negative impact on competition, and such effects cannot be achieved by other means. In this event, the commitment that the beneficial effects will be transferred to consumers must be accompanied.</p> <p>However, there is no list of documents that must be attached.</p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>Law 1340 of 2009 does not establish the information that must be provided in cases in which the target company is experiencing financial insolvency. However, the SIC, through its jurisprudence, has indicated that in the cases in which the argument of a company in crisis is presented, the following conditions must be proven:</p> <ol style="list-style-type: none"> 1. The company supposedly in difficulty must be condemned, because of its financial problems, to leave the market in the near future 2. There is no other real or achievable alternative or project less anti-competitive 3. The damage to competition generated by the operation is comparable to that which would cause the assets of the company in crisis to exit the market

	The conditions indicated must be met jointly and not exclusively. The development of each one can be particular to each operation, by virtue of the different characteristics of the companies and markets involved.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	No. In these cases the general process is followed, managing requests to the "passive party". These are actions allowed by law.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	According to the Commercial Code and the Civil Procedure Code, a document that is not in Spanish must meet legalization requirements such as an official translation from a recognized translator, apostille and authorization from the Consulate and Ministry of Foreign Affairs (in the event of requiring).
G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	There are no exceptions.
H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	The Authority may request information from third parties at any time. It is specified that in the pre-evaluation process, once the operation is published on the portal (or in a newspaper with national circulation), any person can submit useful information.
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	The intervening parties must provide the information enshrined in the Law and the respective annexes. There is no limitation for merging parties to present other types of information.
J. Are there different forms for different types of transactions or sectors?	Within the SIC, there are no differences.

<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>(i) There is no specific requirement applicable to investment funds in that matter. According to the Resolution No. 2751 of 2021, every merging party must inform if it is controlled by other entity and if it controls other entities.</p> <p>(ii) Yes to both questions.</p> <p>(iii) No. The information requested in the form must be presented in every merger proposed.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Spanish only.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p>	<p>Only documents in Spanish are accepted. Full translations are required, performed by a certified translator. Additional requirements can be consulted in article 251 of the General Process Code and article 480 of the Commercial Code.</p>

<p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	
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10. Review Periods	
<p>A. Describe any applicable review periods following notification.</p>	<p>The SIC, at the time the established thresholds are reached, establishes two different modalities depending on whether the merger exceeds 20% of the market. For notification (when it does not exceed 20%), From the moment the transaction is presented, the SIC has <u>10 business days</u> to make a pronouncement. For pre-evaluation, in the preliminary stage (phase 1), the Authority has <u>30 business days</u>. If the SIC finds points that could damage competition in the market, the Authority transfers the case to a background study (phase 2). At this point, the SIC has <u>three months</u> to authorize, condition or prohibit the merger.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>There are no procedures to extend periods by the merging parties. The periods may be suspended, prior to the SIC making information requests to the merging parties.</p>
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<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>Non applicable.</p>

<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>The procedure is only suspended when not all the information has arrived from the interested companies. The SIC does not have the authority to suspend periods unless it has a court order from a competent authority.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>The SIC, at the time the established thresholds are reached, establishes two different modalities depending on whether the merger exceeds 20% of the market. For notification (when it does not exceed 20% and it is not problematic), from the moment the transaction is presented, the SIC has <u>10 business days</u> to make a pronouncement. For pre-evaluation, in the preliminary stage (phase 1) when it exceeds 20%, the Authority has <u>30 business days</u>. If the SIC finds points that could damage competition in the market, the Authority transfers the case to a background study (phase 2). At this point, the SIC has <u>three months</u> to authorize, condition or prohibit the merger.</p>
<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p>According to numeral 2.5.4., Article 1 of Resolution No. 2751 of 2021, in the last phase of analysis, the proposal of remedies does not suspend or interrupt the procedure.</p>

<p>11. Waiting periods / suspension obligations</p>	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>The procedure is only suspended when not all the information has arrived from the interested companies. The SIC does not have the authority to suspend periods unless it has a court order from a competent authority.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>No. However, the response time available to the SIC is tied to the moment in which the merging parties respond to the requirements.</p>

<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	<p>No. The periods are established by the standards mentioned above.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. If the authority does not respond about the merger, the parties are authorized to close the transaction. This is called positive administrative silence, regulated by Resolution No. 2751 of 2021.</p> <p>The companies are not authorized to close the transaction within the period established for the SIC to respond.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Non applicable.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Non applicable.</p>
<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>Non applicable.</p>

<p>12. Responsibility for notification / representation</p>	
<p>A. Who is responsible for notifying – the acquiring</p>	<p>A single party can notify the operation with the respective power of attorney. It is not</p>

company(ies), acquired company(ies), or both? Does each party have to make its own filing?	necessary for each party to notify the transaction.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	No. A merger can be reported by the legal representatives of the companies with the documents that certify their condition. If a lawyer is consulted, it is enough that he is registered with the Superior Council of the Judiciary (in Spanish, Consejo Superior de la Judicatura).
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?	It is required the power of attorney that must meet legalization requirements such as an official translation from a recognized translator, apostille and authorization from the Consulate and Ministry of Foreign Affairs (in the event of requiring). Additional requirements can be consulted in article 251 of the General Process Code and article 480 of the Commercial Code.

13. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	Yes. According to Resolution No. 2103 of 2020 , there is a fee depending on the process requested from the SIC. For notification, the fee corresponds to COP \$ 2.620.000 (USD\$ 798). For pre-evaluation in its preliminary stage the fee is COP \$ 14.200.000 (USD\$4.328), while in the in-depth study phase the sum is staggered depending on the level of assets and operational income of the merging parties. This last fee is between COP\$ 26.160.000 (USD\$7.973) and COP \$ 37.380.000 (USD\$11.393). <i>[The SIC used the annual average of the exchange rate of 2019 to calculate the value in USD (USD\$1 = COP\$3.281)]</i>
B. Who is responsible for payment?	The merging parties or the entity that informs the merger to the Authority.

C. When is payment required?	In accordance with article 4 of Resolution No. 2103 of 2020 , the fee must be paid prior to the filing of the request for the respective procedure, to which the payment receipt will be attached.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	<p>The payment must be made by deposit (in person) in the name of the Superintendencia of Industry and Commerce in the following account:</p> <p>Banco de Bogotá Cuenta Corriente: 062-75438-7 Titular: Superintendencia de Industria y Comercio NIT: 800.176.089-2</p> <p>When they have the receipt of the consignment, it should be sent to the emails: contactenos@sic.gov.co and iempresariales@sic.gov.co, indicating the filing number or the merging parties involved in the transaction.</p>

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	<p>For pre-evaluation, when the market shares of the merger exceed 20%, there are two phases. In phase 1, This stage has a maximum duration of 30 business days, counted from the business day following the date of submission of the complete pre-evaluation request by the merging parties. Once the request is filed, the SIC has 3 business days, counted from the day following receipt of the request, to order the publication of the merger transaction presented on the Entity's website, as long as it considers that the information provided is complete, in the terms of numeral 2.2 of Resolution No. 2751 of 2021. Once the publication process on the Entity's website has been completed, whoever considers it pertinent will have ten (10) business days to submit to the Entity the respective observations or comments that may arise regarding the merger that is intended to be carried out. The previous terms do not interrupt the term for the final pronouncement of the Entity.</p>

	<p>If, within the thirty (30) business days provided for the first phase, the SIC does not have sufficient elements that allow granting authorization without conditions to a merger transaction, either because the information collected does not allow to rule out potential undue restrictions on competition arising from the transaction, or because possible competition concerns arise from the evidence collected, the SIC will give way to the second phase of the procedure and will communicate it to the merging parties. This phase is planned for the SIC to collect additional information, which may be considered useful to deepen the analysis of the projected transaction. The term envisaged for the second phase is three (3) calendar months from the date on which all the information requested in the official letter where the participants are informed of the start of the second phase sent by the SIC has been received.</p> <p>In the event that during the in-depth study of a merger transaction the SIC deems necessary to request additional information to the merging parties, an information request could be made by the authority, meaning that the three (3) calendar months that the SIC has to decide on the merits of the initiated process will start after its complete response. Notwithstanding the foregoing, the SIC may make additional information requirements during the study of a merger, both to the merging parties and to third parties. These additional requirements will not interrupt or restart the term of three (3) months that the SIC has to decide on the merits of the process initiated.</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>Particularly to evaluate whether a merger could reinforce or create a dominant position, some indicators are used that describe both the number and relative market power of the agents. The commonly used index is the Herfindahl-Hirschman Index (IHH), and other concentration indices used like Number of Equivalent Companies (NEE), the LEADER, CR2 and CR4 indices. Additionally, the SIC also uses the KWOKA asymmetry index and the STENBACKA dominance index, among others.</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>Although various theories of harm are used based on the peculiarities of each case, the most important ones used by this Authority are: Foreclosure effects, coordinated and</p>

	unilateral effects, efficiencies, etc.
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	The application of the process described above depends on the effects of the transaction being analyzed.
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	The merger analysis is lead by competition considerations only. There has not existed any merger decision in which non-competition issues have overridden a finding based on competition issues.
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	In the notification process, the merger is approved. In the pre-evaluation process, the merger can be authorized in phase 1. In phase 2 or in-depth study, the operation can be authorized, conditioned or prohibited.
G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?	According to the type of merger that occurs, the effects on competition differ. Thus, the remedies imposed on each merger transaction must be designed to preserve the conditions of competition and maintain the efficiencies that the transaction generates. The remedies may be structural or behavioral , depending on the case. They may also be structural and be accompanied by behavioral commitments to reinforce compliance with the former. The SIC has no preference for any remedy. The process is regulated by numeral 2.5.4., article 1 of Resolution 2751 of 2021.

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	All mergers analysed by the SIC are public. In the pre-evaluation process, in accordance with numeral 2, article 10 of Law 1340 of 2009 , there is an obligation to publish the entire operation, except those that affect public order duly supported.

<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes. At any time the parties can have access to the public and reserved file by communicating with the authority.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Any person or entity has access to public information, not confidential or reserved. It is only accessible to the information reserved by the merging parties. An entity may have access to confidential information with the order of a competent authority, only for the exercise of functions with the duty to maintain confidentiality.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>According to numeral 2.2.3., article 1 of Resolution No. 2751 of 2021, the confidentiality of the information is determined by the Constitution and the Law. In this scenario, the parties must request the confidentiality of those documents they consider. A non-confidential summary must be attached with that request.</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>According to numeral 2.2.3., article 1 of Resolution No. 2751 of 2021, the SIC may deny the confidentiality of some information. If the parties or the authority do not agree on the status of the information, the confidentiality decision will be made by the respective Administrative Court.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The SIC publishes the public versions of its decisions on its website. There are practices to prevent the leakage of confidential information. Primarily, confidential information is hidden or not visible in the public versions of documents issued by the SIC.</p>

16. Transparency

<p>A. Does the agency publish an annual report with</p>	<p>Yes. The Merger Working Group issues an annual report with the operations analyzed by the entity. T</p>
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information about mergers? Please provide the web address if available.	report can be downloaded at the following link: https://www.sic.gov.co/las-integraciones-empresariales .
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	Yes. The SIC issues a Bi-monthly newsletter that is sent by email to fellow competition authorities. This is done by the SIC's International Group. There is no website to access such newsletters at the moment. There is an ongoing project to create a page to present all press releases issued by our Competition Authority.
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	Yes. All administrative acts carried out by the Merger Working Group are public. Links by case can be found in the following file: https://www.sic.gov.co/sites/default/files/files/integracion_empresarial/excel/Estadistica_Integraciones.x
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	Yes. All the statistics can be consulted in the following file: https://www.sic.gov.co/sites/default/files/files/integracion_empresarial/excel/Estadistica_Integraciones.x

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	According to numeral 2.2.3., article 1 of Resolution No. 2751 of 2021 , the confidential information of a merger case cannot be shared with any other foreign authority, unless the parties authorize its disclosure.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	Yes, the SIC has signed several MOUS like: <ul style="list-style-type: none"> - MOU with Competition Bureau of Canada in 2017 - MOU with the Department of Justice and the Federal Trade Commission of the United States in 2014 - MOU with Superintendencia del Control de Poder de Mercado of Ecuador in 2020 MOU with INDECOPI from Peru in 2011 Those agreements permit the exchange of information but only related to non-confidential information.

<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN’s model waiver of confidentiality in merger investigations form.</p>	<p>According to numeral 2.2.3., article 1 of Resolution No. 2751 of 2021, the confidential information of a merger case cannot be shared with any other foreign authority, unless the parties authorize its disclosure.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Only by order of the competent authority for the exercise of its functions.</p>

<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency?</p>	<p>(i) Failure to file a notification could constitute an unauthorized merger and could be sanctioned with a fine (article 25 of Law 1340 of 2009). The fine for legal persons may amount to a maximum of 100.000 minimum wages or COP\$90.852.600.000 (USD\$27.690.521). Moreover, if the merger generated an undue restriction to competition, SIC could order the reversion of the transaction (article 13 of Law 1340 of 2009).</p> <p>(ii) SIC analyses all the information the merging parties present in the procedure and put it to the test to determine its reliability. If SIC has any motive to consider that the information presented by the merging parties is incorrect or misleading, SIC could request new information or develop investigative actions in order to reveal the failures of the one initially supplied. The law applicable to the merger procedure does not include a specific sanction or penalty for presenting incorrect or misleading information. Nevertheless, that conduct could configure a criminal infraction.</p> <p>(iii) If the merging parties fail to comply with information requests for more than 2 months since the filing of the requirement, the merger procedure is terminated without a decision. So, the merging parties fail to obtain the authorization needed to carry on the merger transaction. If the entity that fails to comply with the information request is a</p>

	<p>third party, it could be sanctioned with fines (article 51 of Law 1437 of 2011).</p> <p>(iv) The imposition of a waiting period is carried on by the imposition of remedies. The sanction or penalty for that conduct will be explained in the number (vi) below.</p> <p>(v) There is no interim measures applicable in the merger procedure. SIC is enabled to impose such a measure just in its investigation for anticompetitive practices.</p> <p>(vi) The breach of a remedy or the delay on its implementation could be sanctioned with a fine (article 25 of Law 1340 of 2009). The fine for legal persons may amount to a maximum of 100.000 minimum wages or COP\$90.852.600.000 (USD\$27.690.521). Moreover, if the breach or the merger generated an undue restriction to competition, SIC could order the reversion of the transaction (article 13 of Law 1340 of 2009).</p> <p>(vii) If the merger is prohibited by SIC and anyway it is carried out by the parties, they could be sanctioned with a fine (article 25 of Law 1340 of 2009). The fine for legal persons may amount to a maximum of 100.000 minimum wages or COP\$90.852.600.000 (USD\$27.690.521). Moreover, if the merger generated an undue restriction to competition, SIC could order the reversion of the transaction (article 13 of Law 1340 of 2009).</p> <p><i>[The SIC used the annual average of the exchange rate of 2019 to calculate the value in USD (USD\$1 = COP\$3.281)]</i></p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>(i) The merging parties.</p> <p>(ii) The party who presented the incorrect or misleading information.</p> <p>(iii) The termination of the merger procedure without a decision affects all the merging parties.</p>

	(iv) and (vi) The party obliged to comply with the remedy. (vii) The merging parties.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	SIC can directly impose the sanctions and the orders. But its decision could be reviewed by the judicial authorities.
D. Are there any recent or significant fining decisions?	Yes. The SIC implemented some sanctions regarding unreported mergers. During the last five years the Authority sanctioned two cases for this reason: <ul style="list-style-type: none"> • In 2015 ALFARES S.A. and other companies in the pharmaceutical sector were sanctioned with COP\$113.393.000 (USD\$34.560) through Resolution No. 52782 of 2015. • In 2016 LABORATORIO INTERNACIONAL DE COLOMBIA S.A.S., GRÜNENTHAL COLOMBIANA S.A. and GAIN CAPITAL S.A.S were sanctioned with COP\$77.908.302 (USD\$23.745) through Resolution No. 38973 of 2016. <i>[The SIC used the annual average of the exchange rate of 2019 to calculate the value in USD (USD\$1 = COP\$3.281)]</i>

19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No.
B. What are the grounds for such ministerial	

intervention?	
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	Non applicable.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	For notification: 10 business days. Por Pre-evaluation: <i>Phase 1:</i> 30 business days. <i>Phase 2:</i> 3 months.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	There are practices to prevent the leakage of confidential information. Primarily, confidential information is hidden or not visible in the public versions of documents issued by the SIC.
C. Are there any limitations on the time during which an appeal may be filed?	By law, the parties have 10 business days to appeal, after notification of the final decision in the last stage of the pre-evaluation process.

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	No.

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension	No.

of the deadline to close?	
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22. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	Yes. In a transaction that was approved but with conditions, the Authority may open some type of investigation if there are non-compliance with the conditions imposed.
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	The Authority does not carry out ex-post studies. However, from different groups in the SIC, sectoral studies are carried out to identify the current state of the markets. More information: https://www.sic.gov.co/estudios-economicos-sectoriales .