



COMPETITION REGIME

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What should I know regarding competition law in Colombia?

It seeks to protect free economic competition, which guarantees economic conditions such as efficiency, the consumers' well-being, and the possibility to participate in the market under freedom and equality conditions. The Colombian legal norms contain various norms, whose purpose is guaranteeing the protection of such values.

In strict terms, the free competition regime in Colombia is composed of:

- Law 155 of 1959, which establishes a general prohibition regarding anti-competitive practices.
- Decree 2153 of 1992, which contains a non-comprehensive list of unilateral acts and agreements considered unfair competition, as well as conducts that are considered an abuse of the dominant position in the market.
- Law 256 of 1996, whose purpose is protecting free and fair competition, contains a list of unfair competition practices, coupled with a general prohibition to incur in such practices.

- Law 1340 of 2009, contains the main objectives of the right to competition and regulates the benefits for collaboration programs, as well as the norms for controlling corporate integrations, among others.

Which is the highest authority regarding competition regime?

The Superintendence of Industry and Commerce (SIC) is the highest authority in terms of free economic competition. In case of non-compliance of the regime, there are some sanctions whose charges have been increased after the issuance of Law 1340 of 2009:



- Currently, sanctions can be up to 100,000 minimum legal monthly salaries, or if it is a greater sanction, up to 150% of the offender's profits.
- Natural persons may also be sanctioned in case of violations to the competition regime without prejudice to a sanction imposed to the offending company consisting of pecuniary fines of up to

2,000 minimum monthly salaries, which cannot be paid by the company.

- These sanctions can be applied notwithstanding the existence of additional criminal sanctions.

Collusions in tenders and contracting processes with the State are anti-competitive practices and offenses against the public administration.

What are and how do the restrictive competition practices work?

In general, the regime prohibits all types of practices, procedures, or systems aimed to

limiting free competition and setting unfair prices. The above is commonly known as the general prohibition. However, the competition regime also contains a non-comprehensive list of unfair practices. They are classified into agreements, practices, and abuse of the dominant position.

Agreement

All contracts, agreements, arrangements, arranged practices, or practices consciously parallel among two or more companies. Despite the term "company" being used, the free competition regime also includes natural persons, who may be subject to monetary sanctions.

There are various types of agreements:





• **Explicit:** Agreements and understandings such as contracts or arrangements, according to which two or more competitors reach an explicit agreement to eliminate risks inherent to market competition. The above could occur through emails exchange, trade union meetings involving competitors, by executing collaboration agreements, etc.



• **Tacit:** Coordinated behaviors that cannot be explained by economic reasons other than the existence of coordination activities among competitors, as would be the case in a scenario in which a product becomes scarce and a company decides not to increase their prices.



• **Conscious parallelism:** Practices showing that two companies acted in a conscious and synchronized manner, not competing and generating a uniform behavioral pattern.

Upon investigating a practice, the SIC also considers issues additional to explicit agreements among the competitors.



• **Horizontal:** Agreements amongst competitors at the same level of the productive chain.



• **Vertical:** Agreements between companies belonging to different levels of the productive chain.

• **Agreements against free competition (listed in article 47 of Decree 2153 of 1992):**

- Direct or indirect price setting.
- Determination of discriminatory sales conditions with third parties.
- Market distributions among producers or distributors.
- Assignment of production or supply quotas.
- Assignment, distribution, or limitation of the supply sources of productive raw materials.
- Limitation of technical developments.
- Conditioning a product's supply to the acceptance of

additional obligations that, due to their nature, were not included in the original deal.

- Not producing a good or not providing a service, or affecting their production levels.
- Collusions in tenders and contracting processes resulting in the distribution of contract awards, competitions or establishment of the proposal terms.
- Preventing third parties from accessing markets or trading channels.

Act

Practices of those performing economic activities. Despite including a broad definition, only three practices are considered acts contrary to free competition. However, it should be noted that this is a non-comprehensive list since other acts could violate such general prohibition.

• **Acts against free competition (listed in article 48 of Decree 2153 of 1992):**

- Violations of norms related to advertising, as contained in the consumer protection regulation.
- Influencing a company to increase their product or service prices or to desist in their intention to lower them.
- Refusing to sell or provide services to a company, should this be considered a retaliation to its price policies.

Abuse of the dominant position

In Colombia there are no norms prohibiting a company from having a dominant position in the market. What is sought is preventing the company having such position from abusing it.



- **Practices that can be considered an abuse of the dominant position (as contained in Decree 2153 of 1992:**

- Decreasing prices below the production costs to eliminate one or several competitors or prevent their entry or expansion.
- Use of discriminatory conditions to equivalent operations, placing a consumer or a supplier in a disadvantageous condition compared to other consumers or suppliers with similar characteristics.
- Those whose purpose or effect is to condition the supply of a product to the acceptance of additional obligations that, due to their nature, had not been included in the original deal, notwithstanding what has been established by other norms.

- Sale to a buyer under different conditions from those offered to other buyers, should the intention be to reduce or eliminate competition in the market.
- Sale of a product or provision of a service anywhere within the Colombian territory at different prices to those offered in other parts of the Colombian territory, should the intention or the effect of this be to reduce or eliminate the competition in that area and should the price not correspond to the structure of transaction costs.
- Obstructing or preventing third parties from accessing the markets or the trade channels.

What are and how do corporate integrations work?

Corporate integrations involve an operation carried out under a le-

gal mechanism through which two or more companies will be subject to the same control body resulting in the loss of their independence to permanently act in the market as independent economic entities.

The free competition regime in Colombia also includes a system to control corporate integrations. Such mechanism requires certain companies to inform the relevant authority, or request its authorization, to implement an integration operation, provided that the companies carry out the same economic activity or participate in the same productive chain.

The SIC may authorize the operation unconditionally, or authorize under certain conditions whose purpose could be to diminish or eliminate the competition risks that such operation could involve. It may also object the operation should it find that its purpose is affecting free competition.

A 'Gun Jumping' situation will be deemed to exist should the parties integrate themselves before the SIC authorizes such integration. In this case, the SIC will not only be authorized to apply a pecuniary sanction but to order that the operation be reverted.



What are the Superintendence of Industry and Commerce exceptions as the integration control authority?

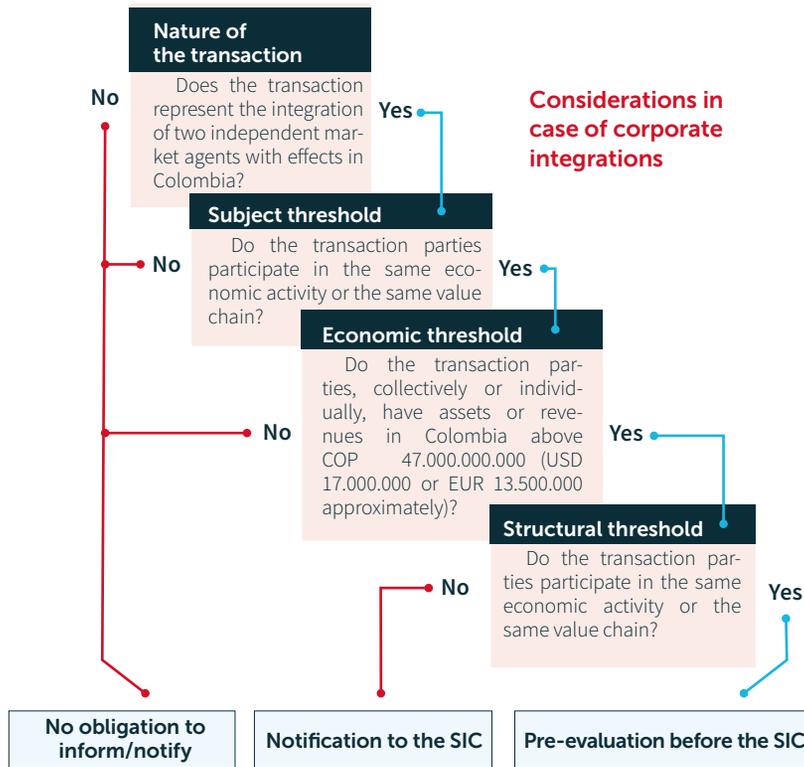
- Integration operations exclusively among companies subject to the surveillance of the Superintendency of Finance (SFC).
- Operations exclusively among entities under the surveillance of the Civil Aeronautics Administrative Units (Aerocivil).

What is and how does the unfair competition regime work?

The purpose of this system is to protect the healthy business practices, the commercial good faith, industry and trade honest practices, and the consumers' freedom of choice. Law 256 of 1996 contains a non-comprehensive list of conducts considered unlawful competition.

- Clientele diversion acts.
- Unlawful disorganization acts.
- Confusion acts.
- Deception acts.
- Discredit acts.
- Comparison acts.
- Imitation acts.
- Exploitation of a third





- party reputation.
- Secrecy infringements.
- Acts leading to contractual terminations.
- Violation of norms.
- Unlawful exclusivity pacts.

Requirements:

For any of the above practices to take place, the objective scope of application, the subjective scope of application and the territorial scope of application should be considered.

- **Objective scope of application:** Requires that the conduct
 - be carried out within the market,
 - be carried out with competitive purposes, which are assumed should the act be adequate to maintain or increase the market participation of those who perform it, or of a third party.
- **Subjective scope of**

application: Means that the unfair competition norms do not apply exclusively to the traders but to every market participant. It also means that for an unfair competition practice to exist it is not necessary to have a competitive relationship between the offender and the affected person.

- **Territorial scope of application:** Unfair competition norms apply to acts mainly affecting the Colombian market. As such, it is possible that the practice may have an origin outside the national territory, nonetheless, unfair competition norms will be applicable.




More information on this topic