



International
Competition
Network

ANTI-CARTEL ENFORCEMENT
TEMPLATE

CARTELS WORKING GROUP

Subgroup 2: Enforcement Techniques

COLOMBIA
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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[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. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	<p>Law 155 of 1959 (article 1: general prohibition). Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38169 (Spanish)</p> <p>Decree 2153 of 1992 (article 47: anticompetitive agreements). Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38168 (Spanish).</p> <p>Law 1340 of 2009 (procedural provisions, leniency program and fines). Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36912 (Spanish).</p> <p>Decree 4886 of 2011 (powers of the SIC). Available on: http://www.secretariassenado.gov.co/senado/basedoc/decreto_4886_2011.html (Spanish).</p> <p>Law 599 of 2000 (article 410A criminal sanction of bid rigging) Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6388</p>
B. Implementing regulation(s) (if any): [name and reference number,	<p>Decree 1523 of 2015 (implements article 14 of Law 1340 of 2009 – Leniency). Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62539 (Spanish)</p>

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.

<p>availability (homepage address) and indication of the languages in which these materials are available]</p>	
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>“Frequent questions about the Competition Protection regime”. Available in Spanish on the following link: https://issuu.com/quioscosic/docs/preguntas_frecuentes_regimen_de_pro</p> <p>“Practical guidelines for fighting bid-rigging in public procurement”. Available in Spanish on the following link: http://issuu.com/quioscosic/docs/6._final_guia_practica_acuerdos_col</p> <p>“Guidelines on the Leniency Program” (pending for update). Available in Spanish on the following link: https://issuu.com/quioscosic/docs/guia_programa_beneficios_colaboraci/1</p> <p>“Guidelines on the application of competition rules regarding collaboration agreements between competitors”. Available in Spanish on the following link: http://sic.gov.co/drupal/sites/default/files/files/CARTILLA_ACUERDOS%2019-03-2015.pdf</p> <ul style="list-style-type: none"> - SIC’s answers to comments made by citizens about the content of this guidelines are available on the following link: http://www.sic.gov.co/drupal/recursos_user/documentos/cartilla_acuerdos_R.PDF <p>“Guideline on the application of competition rules regarding businesses associations and professionals associations or colleges”. Available in Spanish on the following link: http://www.sic.gov.co/drupal/recursos_user/documentos/CARTILLA_GREMIOS.pdf</p> <ul style="list-style-type: none"> - SIC’s answers to comments made by citizens about the content of this guidelines are available on the following link: http://www.sic.gov.co/drupal/recursos_user/documentos/RESPUESTA_CARTILLA_GREMIOS.PDF
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>SIC’s Leniency Program. This information can be consulted in Spanish on the following link: http://www.sic.gov.co/drupal/beneficios-por-colaboracion</p> <p>Anticompetitive practices. This information is available in Spanish on the following link: http://www.sic.gov.co/drupal/practicas-restrictivas-de-la-competencia</p> <p>Leniency promotional video. This video is available in Spanish in the following link: https://youtu.be/GqDI8zjW6YE</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Our law does not use the term “cartel”; instead, it uses the term “commercial restrictive practices” or “anticompetitive agreements”.</p> <p>Article 45 of Decree 2153 of 1992 defines the term “agreement” as “[a]ny contract, convention, arrangement, concerted or consciously parallel practice between two or more competitors”.</p> <p>In addition, Article 46 in harmony with Law 155 of 1959, prohibits conducts that can restrict free competition in markets, which, according to the Colombia Civil Code, are conducts with an illegal object.</p> <p>Finally, Article 47 sets forth the different types of agreements which are deemed illegal in the Colombia competition regimen. These are the following:</p> <ol style="list-style-type: none"> 1. Those whose object or effect the direct or indirect fixing of prices 2. Those whose object or effect is to determine sales conditions or discriminatory marketing. 3. Those whose object or effect is market allocation between producers or distributors. 4. Those whose object or effect is the allocation of production or supply shares. 5. Those whose object or effect is the assignment, sharing or limiting of sources of supply of production inputs. 6. Those whose object or effect is to limit technical developments. 7. Those whose object or effect is to make the supply of a product subject to acceptance of additional obligations that by their nature were not the object of the business, without prejudice to other provisions. 8. Those whose object or effect is to refrain from producing a good or service or affect production levels. 9. Those whose object is the collusion in bidding or tendering or which have the effect of distributing contract awards, contests or distribution of fixing terms of the proposals. 10. Those whose object or effect is to prevent third parties access to markets or marketing channels.
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>Colombian legislation (specifically, Article 47 of Decree 2153 of 1992), does not distinguish between very serious or not serious cartel behaviours. In the same respect, it does not distinguish between either vertical or horizontal agreements.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions]</p>	<p>Although Colombian regulation lacks a distinction between hardcore or softcore cartels, the scope of Article 47 reaches the exceptions listed in Article 49. Thus, the exceptions to</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<p>and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>prosecute an agreement between competitors are the followings:</p> <ol style="list-style-type: none"> 1. Agreements whose aim is the cooperation for research and new technology developments. 2. Agreements about norms compliance, standards and measures that are not adopted as mandatory by the competent body when they do not limit the entry of competitors into the market. 3. Agreements referring to procedures, methods, systems and ways of using common facilities.
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>The Colombian Competition Authority, when enforcing competition rules, does not recognize an illegal rule per se. SIC decisions are based on a case by case analysis in which an assessment of the facts, their object in the market and their actual implications are the grounds to make a decision.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>In Colombia, participation in cartels is an administrative offense. Criminal offences will only be considered in the case established in number 9 of Article 47 of Decree 2153 of 1992 (bid rigging). It should be noted, however, that any person who considers that has been affected by a cartel might take civil actions against the undertakings involved in the illegal agreement. For this purpose, people can present class actions (articles 2 and 3 of Law 492 of 1998) or civil liability actions (article 2341 of the Civil Code) before civil judges.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>Both investigation and decision phases are conducted in the SIC. However, the first one is in charge of the Deputy Superintendence for Competition Protection, and the latter is in charge of the Superintendent of Industry and Commerce's Office. Therefore, the investigative division is the Deputy Superintendence for Competition Protection.</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Deputy Superintendence for Competition Protection Carrera 13 No. 27 – 00, Bogotá D.C. 10 th Floor Phone: +57 1 5870000, ext. 20001 Mail: contactenos@sic.gov.co or delprotecompetencia@sic.gov.co Webpage: www.sic.gov.co Language: Spanish</p>
<p>C. Information point for potential complainants:</p>	<p>The Entity has provided the following information points:</p> <ol style="list-style-type: none"> 1. At the premises of the Entity. 2. On the website: http://www.atencionvirtual.com/website/sicchat 3. By email: delprotecompetencia@sic.gov.co and contactenos@sic.gov.co

³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	4. Video Call: http://epmcc-webserver.atencionvirtual.com/SIC/ 5. By phone: +57 1 5920400 or 018000910165
D. Contact point where complaints can be lodged:	Complaints can be lodged physically at the premises of the Entity (first floor) or virtually by mail (contactenos@sic.gov.co).
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<ol style="list-style-type: none"> Office of the Attorney General (Fiscalía General de la Nación): Transfer of evidence; knowledge sharing in special markets; specialized collecting of evidence. National Police Forces (Policia Nacional): Protection of the staff when carrying out a dawn raid. <p>Assistance is given as a consequence of interinstitutional agreements between the agencies.</p>

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Both investigation and decision phases are conducted in the SIC. However, the first one is in charge of the Deputy Superintendence for Competition Protection, and the latter is in charge of the Superintendent of Industry and Commerce's Office. Therefore, the decision division is the Office of the Superintendent of Industry and Commerce.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Office of the Superintendent of Industry and Commerce Carrera 13 No. 27 – 00, Bogotá D.C. 10 th Floor Phone: +57 1 5870000, ext. 10004 or 10005 Mail: contactenos@sic.gov.co or superintendente@sic.gov.co Webpage: www.sic.gov.co Language: Spanish
C. Contact point for questions and consultations:	The Entity has provided the following information points: <ol style="list-style-type: none"> At the premises of the Entity. On the website: http://www.atencionvirtual.com/website/sicchat By email: superintendente@sic.gov.co and contactenos@sic.gov.co Video Call: http://epmcc-webserver.atencionvirtual.com/SIC/ By phone: +57 1 5920400 or 018000910165
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The SIC may begin an administrative proceeding on its own initiative (ex officio) or as the result of a complaint submitted to the Competition Protection Division. The Division initiates investigations ex officio based on information derived from a variety of sources, including news and alerts received from other government agencies. If the SIC receives a complaint from a private party, the Deputy Superintendent for Competition Protection reviews it and determines whether to open a preliminary inquiry or to dismiss the complaint. In making this decision, the Deputy is guided by Article 1.3 of Decree 4886 of 2011, which instructs the SIC to pursue only

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

those claims that are “significant” for the purposes of maintaining competitive markets or promoting efficiency and consumer welfare.

A preliminary inquiry, whether commenced ex officio or in response to a third party complaint, is conducted by the Deputy Superintendence for Competition Protection. There is no public announcement or notice to the suspected parties (this stage of the proceeding is confidential). During this phase, the Division is authorized by law to collect all the evidence that is related to the facts that are subject to inquiry, in order to verify the facts, determine which persons were involved in the alleged competition infringement and define if the conduct would effectively constitute a restrictive practice of competition.

The preliminary inquiry stage ends with the issuance of one of two types of administrative acts: (i) closing resolution, if the evidence in the record does not allow the Division to determine the possible occurrence of an anticompetitive behaviour; or (ii) formal investigation resolution, if the evidence in the record allows the Division to infer that the restrictive behaviour (by object or effect) was performed by the suspected parties. If a formal investigation is opened, suspected parties get linked to the administrative proceeding as investigated parties.

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 exercises his right of defence and gives and asks for evidence. 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.

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

	<p>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.</p> <p>Once the Superintendent has rendered a decision, the parties (including third parties) have 10 business days to request that the Superintendent reconsider the decision.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>In Colombia, bid rigging is the only antitrust behaviour that has criminal consequences. It is a criminal offense punishable by imprisonment (up to 12 years), fines, and disqualification (up to 8 years) from future procurement proceedings. However, the enforcement of this conduct is in charge of the General Attorney's Office, and the final decision has to be taken by Criminal Judges.</p> <p>When bid-rigging cases are conducted by the Deputy Superintendence, it must inform to the General Attorney's Office the opening of the corresponding investigation. The Deputy Superintendent may give evidence to such Office when it is required.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>SIC's administrative proceedings may initiate ex officio, by complaint, based on leniency information, or even because of notifications or alerts given by other authorities. If the SIC receives a complaint from a private party, the Deputy Superintendent for Competition Protection reviews it and determines whether to open a preliminary inquiry or to dismiss the complaint. In making this decision, the Deputy is guided by Article 1.3 of Decree 4886 of 2011, which instructs the SIC to pursue only those claims that are "significant" for the purposes of maintaining competitive markets or promoting efficiency and consumer welfare.</p> <p>In a first stage, the Deputy Superintendent for Competition Protection must determine whether to open a preliminary inquiry or to dismiss the complaint or the initial information collected ex officio.</p> <p>If a preliminary inquiry is opened, the Deputy Superintendence is authorized by law to collect all the evidence that is related to the facts that are subject to inquiry, in order to verify the facts, determine which persons were involved in the alleged competition infringement and define if the conduct would effectively constitute a restrictive practice of competition.</p> <p>A formal investigation will be opened only if the evidence in the preliminary record allows the Deputy Superintendence to infer that the restrictive behaviour (by object or effect) was performed by the suspected parties. When a formal investigation is opened, suspected parties get notice about the case (before this stage the case is confidential), and from</p>
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	this moment they get linked to the administrative proceeding as investigated parties.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	Complaints must be made in writing, but no application form or formality is required. The name of the complainant can be confidential when solicited. The Deputy Superintendence also receives anonymous complaints.
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	None.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	No. Only significant complaints are processed, according to Decree 4886 of 2011. As a consequence, the Superintendence has been given the faculty to allocate its resources to those agreements that are more likely to affect a specific economic market, as well as conducts that are of general interest. The purpose of this is to safeguard the free participation in the market, wellbeing of consumers and economic efficiency. Although the Deputy Superintendence does not take action on all the complaints, the division acknowledges receipt of all of them and answers the corresponding queries, when feasible.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	None of the regulations obliges to adopt a decision and explain the reasons why a complaint is closed. The Superintendence usually issues a communication explaining the reasons why the decision was taken before the preliminary inquiry” stage. However, if the closing happens during the “preliminary inquiry” stage, the Deputy Superintendence must issue a resolution explaining why such decision was taken. Once the closing resolution of a preliminary inquiry is issued, the complainant may request that the Deputy Superintendent reconsider the decision.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	According to Article 27 of Law 1340, 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”.

6. Leniency policy⁵

⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>The Colombian leniency program is regulated by Decree 1523 of 2015. The official name of it is <i>“benefits for collaboration regime”</i>.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes, it does. According to Articles 2.2.2.29.2.2. of Decree 1523, the Superintendence is able to award both: full and partial leniency, depending on certain conditions.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Article 2.2.2.29.2.2. establishes that full leniency will be granted to the first applicant who comes forward.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>There are conditions to define the entry moment to the program (Article 2.2.2.29.2.3.), which are:</p> <ol style="list-style-type: none"> 1. To accept the participation in a restrictive agreement. 2. To provide, at least, briefly information about the existence of the agreement, its operation, the product(s) involved in it and the participants. <p>Anyone wishing to be part of a leniency program can do so regarding an unknown cartel by the authority, or in connection with a cartel which is under investigation.</p> <p>There are also conditions to subscribe the convention to receive benefits for collaboration (article 2.2.2.29.2.6.), which are</p> <ol style="list-style-type: none"> 1. To recognize the participation in the cartel. 2. To provide information or useful evidence about the existence of the agreement and its operation, including aspects such as objectives, principal activities, functioning, name of the participants, level of participation, location, service or product involved, affected geographical area and estimated duration of the agreements informed. 3. To follow and obey SIC’s requirements and instructions during the negotiation of the convention. 4. To finish the participation in the cartel. <p>The opportunity to submit the application to the program is after an investigation has been opened and before the end of the 20 days given to the offender to provide or request evidence of the commission of the presumed infraction.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>According to Article 2.2.2.29.1.1., the Superintendence of Industry and Commerce can award benefits to natural or legal persons who have participated as market agents or facilitator in a restrictive agreement.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution,</p>	<p>Number 1 of Article 2.2.2.29.2.2. establishes that the condition of availability for full leniency for a natural or legal person is to be <u>the first one</u> in fulfilling the entrance requirements to the Program, which are the following Our law prohibits to guarantee benefits to the institutor or promoter of the conduct.</p>

<p>etc.]</p>	<ol style="list-style-type: none"> 1. Recognize the participation in the restrictive agreement. 2. At least provide briefly information about the existence of the agreement, its operation, the product(s) involve in it and the participants.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>Numbers 2 and 3 of Article 2.2.2.29.2.2. establish that the condition for partial leniency is providing useful information or evidence that adds significant value to the information that the Superintendence already knows. Including the information given by other applicants. The degree of exemption will depend on the order of arrival to the program.</p>
<p>H. Obligations for the beneficiary after the leniency application have been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>According to Article 2.2.2.29.3.1., the benefits can be eliminated if the applicant:</p> <ol style="list-style-type: none"> 1. Controvers, in the course of the investigation, the facts that were already acknowledged in the application process. 2. Does not facilitate the collection of testimonies of his/her employees or directors. 3. Disregards the requirements made by the Superintendence for the verification or ratification of the information provided and the facts acknowledged. 4. Destroys, alters or impedes access to information or relevant evidence relating to the alleged restrictive agreement. 5. When it is proved that the informer has the status of instigator or promoter of the restrictive agreement; and 6. Breaches any of the obligations under the Convention.
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>According to Article 2.2.2.29.2.4. of Decree 1523, the application can be made:</p> <ul style="list-style-type: none"> - By a written document presented at the premises of the Entity. - By Email: delprotecompetencia@sic.gov.co - Orally. <p>Any type of application must fulfil the requisites of Article 2.2.2.29.2.3.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>Yes, there are. The first one is the moment of entrance to the program which must fulfil the requisites set forth in Article 2.2.2.29.2.3.</p> <p>5 days after the application has been submitted to the Superintendence, the competent officer will analyse if the application fulfils the requirements of Article 2.2.2.29.2.3. If the requirements are completed, the officer will issue a certification informing the applicant about his/her position in the program.</p> <p>The subscription of the convention between the competent officer and the applicant will be made after the officer has verified the fulfilment of the requisites set forth in Article 2.2.2.29.2.6.</p> <p>The opportunity to submit the application to the program is after an investigation has been opened and before the end of the 20 days given to the offender to provide or request</p>

	evidence of the commission of the presumed infraction.
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	According to article 2.2.2.29.3.1., in the administrative act which decides the case, the Superintendent of Industry and Commerce decides if the benefits for collaboration agreed in the convention will be finally conceded.
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	Article 2.2.2.29.2.6., leniency is granted on the basis of a convention / agreement, whose certainty is given with the final decision that is made by the Superintended of Industry and Commerce.
M. Do you have a marker system? If yes, please describe it.	Yes, we do have it. Article 2.2.2.29.2.3. establishes that the moment to determine the entrance to the leniency program is when it is verified that the application meets the requirements of that article. Additionally, the certification issued by the official contains the order in which each applicant has presented and therefore the benefits h/she/it will received. So, the marker system is based on the certifications issued by the officer.
N. Does the system provide for any extra credit⁶ for disclosing additional violations? [e.g. a hardcore cartel in another market]	Yes, it does. Article 2.2.2.29.4.1. enables leniency applicants who are not the “first in” applying for leniency benefits to earn an additional 15% reduction in their fine by disclosing the existence of a different cartel in another market. (<i>Leniency plus</i>) In the same track, Article 2.2.2.29.4.1. states that “facilitators” may receive extra benefits when revealing the existence of a restrictive practice, different from a cartel. A “facilitator” is any person who collaborates, facilitates, authorizes or tolerate anticompetitive practices.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	According to Article 2.2.2.29.4.3., the applicant will be granted with confidentiality in accordance with the second paragraph of Article 15 of Law 1340 of 2009, when in consideration of the Authority, the whistle-blower may suffer business retaliation from other competitors.
P. Is there a possibility of appealing an agency’s decision rejecting a leniency application?	No, there is not.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code,	The phone number is: +57 1 5870015, Hours: 8:00 to 16:00 Competent officer: Jorge Enrique Sánchez Medina

⁶ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

plus out of hours contacts (if any)]:	Email address: delprotecompetencia@sic.gov.co
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	<p>Yes, it does. By virtue of Article 2.2.2.29.3.1., the awarded benefits can be revoked:</p> <ol style="list-style-type: none"> 1. When the whistle-blowers questions the facts acknowledge in the leniency program during the investigation. 2. When the whistle-blower does not allows to carry out testimonies to h/her employees. 3. When the whistle-blower does not answer the information requirements made by the Superintendence of Industry and Commerce. 4. When the whistle-blower destroys, alters, or obstructs the access to information or importance evidence regarding the presumed restrictive agreement. 5. When it has been proved the whistle-blower was the instigator or promoter of the restrictive agreement, and 6. When the whistle-blower breaches any of the obligations set forth in the leniency agreement.
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	<p>The regulations do not establish anything in that regard. However, when there is some certainty about the existence of a cartel, the staff undertaking some proceedings (i.e. a dawn raid or a testominy) can advise the person to participate in the program or may give information about its functioning and benefits.</p>
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.	<p>Article 2.2.2.29.4.3. states that confidentiality can be awarded to the lenience procedure according to the rules set forth in paragraph 2 of Article 15 of Law 1340 of 2009. Such provision only refers to the identity of the applicants.</p> <p>Considering that documentary confidentiality can only be given by law, the National Government presented a Bill before the Congress of the Republic, which is aimed at amending the general competition regime. Such Bill proposes to include a Paragraph No. 2 to Article 14 of Law 1340 of 2009, stating that the existence of the whistle blower, h/her identity within the administrative action, and the evidence supplied under the leniency program are reserved.</p> <p>Nowadays, confidentiality is given by connecting the nature of the material received to legal criteria that allows to keep it apart from public information (i.e. business secrets).</p>

7. Settlement	
<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public</p>	<p>Yes. 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.” 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.</p> <p>Decree 2153 of 1992: http://www.sic.gov.co/drupal/recursos_user/historico/d2011sic5215.htm</p>

<p>availability (link to the relevant rules, guidelines, etc.).</p>	<p>Law 1340 of 2009: http://www.sic.gov.co/drupal/sites/default/files/normatividad/Ley_1340_2009.pdf</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>All the restrictive agreements contained in Article 47 of Decree 2153 are subject to a settlement. Actually, the provision applies to “violations of commercial restrictive practices”.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>The anticipated closure of the investigation, without incurring penalties and without admitting a violation.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>The Colombian competition regime does not provide an express provision in this regard. However, SIC precedents have established that a reduction for settling and a leniency reward are exclusive figures. In the first, the applicant does not accept his/ her participation in an illegal agreement; on the other hand, the leniency program requires the applicant to accept his/ her participation in a cartel. Therefore, both figures are not compatible with each other from the starting point.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>There are no explicit criteria. However, Paragraph 1 of Article 52 of Decree 2153 of 1992 and Article 16 of Law 1340 of 2009 say that the SIC will accept settlements or “guarantees” if it finds that the alleged infringers offer enough commitments to guaranty the ending or modification of the conduct by which is being investigated. In addition, the offender must present the commitments before the deadline to provide evidence to the Authority.</p>
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>Paragraph 1 of Article 52 of Decree 2153 of 1992 and Article 16 of Law 1340 of 2009 establish that the investigated party must offer to the Authority a settlement in order to close an investigation in advance. The Superintendent of Industry and Commerce will analyse if the alleged offender offers sufficient guarantees that s/he will suspend or modify the conduct for which s/he is being investigated. The presumed offender can present this offer before the term granted by the Superintendence of Industry and Commerce expires to provide evidence.</p>
<p>F. Describe the</p>	<p>As the presumed offender must present the offer before the term to provide evidence expires, this tool allows the Entity to use its resources in more</p>

procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	complex and important investigations.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	The settlement does not imply a confession or an admission of the illegality of the conduct.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	No, they cannot.

8. Commitment	
A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	If the “guarantees” referred before are accepted, they become binding commitments, and a failure to comply with them can be sanctioned as if a SIC order has been violated. Therefore, in practice, there is no forma distinction between settlements and commitments.
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there commitments which are excluded from the commitment possibility?	Bearing in mind that settlements and commitments are the same figure, all of the agreements set forth in Article 47 of Decree 2153 of 1992 are eligible for commitments.
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	Bearing in mind that settlements and commitments are the same figure, there are no criteria.
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural /	The Colombian competition regime does not establish any type of commitments.

structural]	
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	Please refer to Number 7, F.
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	Please refer to Number 7, G.
J. Describe how your authority monitors the parties' compliance to the commitments.	If a commitment is breached, the SIC will consider it as an infringement of the competition regimen and sanctions can be imposed. Prior to the imposition of a sanction, the SIC will request an explanation to the committed party. The Deputy Superintendence has the faculty to monitor the compliance of the commitments, by revising the resolutions and commitments agreed between the authority and the offender. Visits to the companies can be made as well. Articles 25 and 26 of Law 1340 of 2009 will be applied in case of non-compliance.
K. Is there a possibility for parties to appeal a commitment decision at court?	Please refer to Number 7, H.

9. Investigative powers of the enforcing institution(s)⁷

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁸, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	According to numbers 62, 63 and 64 of Article 1 of Decree 4886 of 2011, the SIC, without any court warrant, has the faculty to request information; practice all type of searches and/or dawn raids, including emails, computers, or any electronic device; receive testimonies under oath; among others.
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Private locations cannot be inspected. However, mobile phones used for business purposes can be searched. The consent of the mobile phone's owner must be given. Our investigation powers are given by law and they are not subject to a court order.
C. May evidence not falling under the scope of the	No, they cannot. The evidence collected for one case is used exclusively in it. However, rules from the Procedure Civil Code

⁷ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁸ “Searches/raids” means all types of search, raid or inspection measures.

<p>authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>allow the transfer of evidence from one case to another when they result useful. Such transfers must be done using certified copies.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>Our investigation powers are given by law and they are not subject to a court order. Bearing this in mind, we have not had any amendment of modifications to the use of investigative measures. The last amendment was made on 2011 by the Decree 4886.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>The Colombian regime has a relevant rights of defence in cartel cases:</p> <ol style="list-style-type: none"> 1. Right to provide evidence or request from the enforcing Authority. 2. Right to challenge administrative acts containing a final decision. 3. Right to access documents in the possession of the enforcing authority, apart from the confidential ones. 4. Right to know the written recommendation report issued by the Deputy Superintendent for the Protection of Competition against the offender. 5. Right to legal representation before the enforcing authorities. 6. Right to not self-incriminate. 7. Right to present be notify by the enforcement authority. 8. Right to be heard by the enforcing authority regarding the oppositions to the charge imposed.
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>Article 15 of Law 1340 of 2009 does not make a difference regarding whether the protection granted is provided under a compulsory legal order or under informal co-operation. This Article establishes that the party under investigation can request the Superintendence to award confidentiality to those documents that contain a business secrets or those on which a rule has giving it that status.</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</p>	<p>5 years from the date of the termination of the infringement, according to Article 27 of Law 1340 of 2009. When the investigation is based in a “continued misconduct” the Superintendence of Industry and Commerce’s sanctioning power is counted from the moment of cessation of the conduct being analysed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</p>	<p>According to Article 27 of Law 1340, an order imposing sanctions must be issued not later than 5 years after the occurrence of the unlawful act (or the occurrence of the last in a series of unlawful acts).</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>According to Article 76 of the New Code of Administrative Procedure, the offender party will have 10 days since the date of notification to challenge the commencement or completion of an investigation or a decision regarding sanctions.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>The types of decisions in a cartel investigation are:</p> <ul style="list-style-type: none"> - Imposition of fines. Sanction decisions also orders to end the infringement. - Closing of the investigation. This option can be given, either because there is no evidence to prove the commission of the restrictive agreement, or because settlements have been accepted. - Imposition of fines to some of the investigated parties and closing of the investigation in favour of some others (either because there is no evidence to prove the commission of the restrictive agreement by them, or because they have been recognized as beneficiaries of the leniency program).
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>None.</p>
<p>C. Can interim measures⁹ be ordered during the proceedings in cartel cases? (if different measures for</p>	<p>According to Article 18 of Law 1340 of 2009, the Superintendent of Industry and Commerce can order interim measures when, without them, the effectiveness of a future decision is in risk.</p>

⁹ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<p>hardcore cartels please describe both¹⁰.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	
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13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>The following provisions regulate the sanctions that can be imposed due to procedural breaches:</p> <ul style="list-style-type: none"> - Numeral 4 and 23 of Article 1; Numeral 11 of Article 3; and numeral 12 of Artículo 8 of Decree 4886. - Articles 25 and 26 of Law 1340 of 2009 (fines applicable, which are the same that apply for anticompetitive practices). <p>The offender or a requested company can be subject to a sanction for procedural breaches when:</p> <ul style="list-style-type: none"> - The requested information is provided late. - The provision of the information is false or incomplete. - Some information has been destroyed. - Refuses to provide information. - Lacks of notice or disclosure <p>In general, when there are obstructions to the investigation by refusing, delaying or challenging the powers of the Authority to carry out investigative measures.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>These are pecuniary and administrative sanctions.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Sanctions can be imposed to legal persons (article 25 of Law 1340) and natural persons (article 26 of Law 1340).</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>The provisions regarding imposition of sanctions are the same in the event of a restrictive agreements or a procedural breaches. Therefore, the criteria for imposing sanctions does not change for any infringement.</p> <p>What is certain is that the law allows taking into account the good or bad procedural behaviour to mitigate or aggravate the fine.</p>
<p>E. Are there maximum and / or</p>	<p>Yes, they are. According to Article 25 and 26 of Law 1340 the</p>

¹⁰ Only for agencies which answered “yes” to question 2.B. above

minimum sanctions / fines?	<p>same limits to those established for imposing a fine when sanctioning a restrictive practice will applied.</p> <p>According to Article 25, for legal persons the maximum sanction is up to 100.000 statutory monthly minimum wages or if more, up to 150% of the gross is profit of the conduct.</p> <p>For natural persons, article 26 establishes that sactions will be up to 2.000 statutory monthly minimum wages.</p>
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14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Sanctions in cartel cases have an administrative nature.</p> <p>They can be imposed to legal persons (article 25 of Law 1340) and natural persons (article 26 of Law 1340). Both of them are pecuniary sanctions (only bid rigging may have criminal sanctions, but such penalties are not imposed by the SIC but by the Attorney General's Office).</p> <p>The sanctions can be imposed on any person who collaborates, facilitates, authorizes, executes or tolerates infringements of the competition regime. This includes businesses, companies associations or individual companies.</p> <p>Criminal sanctions can be imposed what it refers to bid rigging, contemplated in article 47 of Decree 2153 19992.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>Article 25 of Law 1340 establishes the following criteria:</p> <ol style="list-style-type: none"> 1. The impact that the conduct has on the market. 2. The size of the relevant market. 3. The benefit obtained by the offender's conduct. 4. The degree of participation involved. 5. The procedural conduct of the investigation. 6. The market share of the offending company, as well as some of its assets and/ or sales involved in the infringement. 7. The patrimony of the offender. <p>In addition, Article 26 establishes the following criteria:</p> <ol style="list-style-type: none"> 1. The persistence of the offending conduct. 2. The impact of the conduct in the market. 3. The repetition of the prohibited conduct. 4. The procedural conduct of the offender, and 5. The degree of participation of the offender.
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>According to Article 25 of Law 1340 of 2009, for legal persons the maximum sanction is up to 100.000 statutory monthly minimum wages or if more, up to 150% of the gross is profit of the conduct.</p> <p>For natural persons, article 26 establishes that sactions will be up to 2.000 statutory monthly minimum wages.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are no guidelines in this regard.</p>

<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>No, it does not have a suspensory effect.</p>
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<p>15. Possibilities of appeal</p>	
<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>According to article 74 of Law 1437 of 2011, there is no appeal against decisions of ministers, directors of administrative departments, superintendents, among others officials. Therefore, people do not appeal against SIC's competition decisions - there is not a second administrative instance to do so.</p> <p>Final decisions of the SIC can only be challenged by reconsideration petitions, which can be presented before the same person who issued the decision (i.e., the Superintendent of Industry and Commerce).</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>In SIC cases, any party (including recognized third parties) is able to seek judicial review before the Administrative Tribunals through the action of "Declaration of Nullity and Restoration of Rights".</p> <p>Additionally, as a matter of constitutional law, a party (or any other affected person) may immediately seek a judicial writ (Acción de Tutela, or "tutela") against an agency's act or omission that violates or threatens to violate the petitioner's fundamental constitutional rights, if effective protection of the right would be prejudiced by awaiting resolution of the underlying case.</p>