



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 anti-competitive practices, particularly 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 and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law 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]

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

Decree 2153 of 1992 (article 47 and 49: anticompetitive agreements and exceptions). Available on: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38168> (Spanish).

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

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

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>Law 599 of 2000 (article 410A criminal sanction of bid rigging) Available on: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6388 (Spanish).</p> <p>Decree 1523 of 2015 (Leniency Programme). Available on: https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62539 (Spanish).</p>
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>None.</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><i>“Frequent questions about the Competition Protection Regime”</i>. Available in Spanish on the following link: https://www.sic.gov.co/sites/default/files/files/Nuestra_Entidad/Publicaciones/Preguntas_frecuentes_Regimen_de_Proteccion_de_la_Co_mpetencia.pdf</p> <p><i>“Practical guidelines for fighting bid-rigging in public procurement”</i>. Available in Spanish on the following link: https://www.sic.gov.co/sites/default/files/files/Nuestra_Entidad/Publicaciones/Guia_practica_acuerdos_colusorios_25_01_2016.pdf</p> <p><i>“Guidelines on the Leniency Program”</i> Available in Spanish on the following link: https://www.sic.gov.co/sites/default/files/files/Nuestra_Entidad/Publicaciones/Guia_Programa_Beneficios_Colaboracion_VF_Para_Publicar.pdf</p> <p><i>“Guidelines on the application of competition rules regarding collaboration agreements between competitors”</i>. https://www.sic.gov.co/sites/default/files/files/CARTILLA_ACUERDO_S%2019-03-2015.pdf</p> <p>SIC’s answers to comments made by citizens about the content of this guidelines are available on the following link: https://www.sic.gov.co/recursos_user/documentos/cartilla_acuerdos_R.PDF</p> <p><i>“Guideline on the application of competition rules regarding businesses associations and professionals associations or colleges”</i>. Available in Spanish on the following link: https://www.sic.gov.co/recursos_user/documentos/CARTILLA_GRE_MIOS.pdf</p>

	<p>SIC's answers to comments made by citizens about the content of this guidelines are available on the following link: https://www.sic.gov.co/recursos_user/documentos/RESPUESTA_C ARTILLA GREMIOS.PDF</p>
<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/beneficios-por-colaboracion</p> <p>Anticompetitive practices. This information is available in Spanish on the following link: http://www.sic.gov.co/practicas-restrictivas-de-la-competencia</p> <p>SICOMP Case Database – Decisions. This information is available in Spanish. http://www.sic.gov.co/sicomp</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,
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	<p>contests or distribution of fixing terms of the proposals.</p> <p>10. Those whose object or effect is to prevent third parties access to markets or marketing channels.</p>
<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.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</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 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 <i>per se</i>. 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 (collusive tendering or 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 (articles 1613, 1614 y 2341 of the Civil Code) before administrative or civil judges, respectively.</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.

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.

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: https://www.sic.gov.co/tema/proteccion-de-la-competencia 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. By email: contactenos@sic.gov.co
<p>D. Contact point where complaints can be lodged:</p>	<p>Complaints can be lodged:</p> <p>At the premises of the Entity (Carrera 13 No. 27 – 00, Bogotá D.C.</p> <ol style="list-style-type: none"> 1. - First floor) 2. Virtually by mail (contactenos@sic.gov.co)
<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>Article 113 of the Colombian Political Constitution establishes that all the Colombian state entities must collaborate between them. Such collaboration materialise within the signing of inter-administrave agreements. In this case, for example, some of the public authorities that provide assistance to the SIC, are:</p> <ol style="list-style-type: none"> 1. Office of the Attorney General (Fiscalía General de la Nación): Transfer of evidence; sharing special markets knowledge; specialized recollection of evidence; mantaining chain of custody. 2. National Police Forces (Policia Nacional): Special protection of the SIC's officers when carrying out a dawn raid. 3. National Intelligence Agency: This entity shares knowledge on research techniques. 4. Financial Information and Analysis Unit (UIAF, by its acronym in Spanish). 5. Public Ministry: Transfer of evidence; sharing special markets knowledge; specialized recollection of evidence; mantaining chain of custody. 6. National Statistics Department (DANE, by its acronym in Spanish): Transfer of information that could be an input in the framework of antitrust investigations by the Competition Authority.

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>Both, investigation and decision stages, 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 process is in charge of the Superintendent of Industry and Commerce.</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>Office of the Superintendent of Industry and Commerce Carrera 13 No. 27 – 00, 10th Floor Bogotá D.C. – Colombia 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</p>
<p>C. Contact point for questions and consultations:</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.sic.gov.co/asesoria-en-linea 3. Facebook or twitter @sicsuper. 4. By email: superintendente@sic.gov.co and contactenos@sic.gov.co <p>By phone: +57 1 592 0400, +571 5870000 or 01 8000 910 165</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>The SIC may begin an administrative proceeding on its own initiative (<i>ex officio</i>), by a leniency application or as the result of a complaint submitted to the Deputy Superintendence for Competition Protection. The Deputy initiates investigations <i>ex officio</i> 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 or a public authority, 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 point 3 of Article 1 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>A preliminary inquiry, whether commenced <i>ex officio</i> or in response to a private party or a public authority 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 Deputy 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</p>

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

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 Deputy to determine the possible occurrence of an anticompetitive behaviour; or (ii) resolution of openness, if the evidence in the record allows the Deputy 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.

The Superintendent, assisted by his 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.

If the Superintendent finds an offense, based on the evidence, the motivated report and the comments precedent by the defendants and the third parties, 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. It should be noted that the Superintendent must hear the Advisory Council's non-binding opinion before imposing a sanction. If the Superintendent agrees with the Deputy that no violation occurred, the Superintendent issues a Resolution explaining why there has been no violation. If the Superintendent closes the case despite a Deputy recommendation for sanctions, the Resolution closing the case fully explains the case, the facts, the law, the alleged theory of harm, the arguments included in the reasoned report, and describes why there has been no violation.

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

<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>In Colombia, concerted practices in public procurement are the only antitrust behaviours 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 the Deputy Superintendence for Competition Protection evidence that the facts under investigation may constitute the criminal conduct described in Article 410A, in the Statement of Objections the Deputy will notify the Attorney General's Office, in order to proceed with a prosecution. The Deputy Superintendent can transfer evidence to such Office if this is required.</p>
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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 <i>ex officio</i>, by complaint, based on leniency information, or even because of notifications or alerts given by other authorities. If the SIC receives a complaint, 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 point 3 of Article 1 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 <i>ex officio</i>.</p> <p>If a preliminary inquiry is opened, the Deputy Superintendence for Competition 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 this moment they get linked to the administrative proceeding as investigated parties.</p>
<p>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</p>	<p>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 for Competition Protection also receives anonymous</p>

requirement to complete a specific form, please, indicate its location (website address).]	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?]	The complaints have to be “significant” for the purposes of maintaining competitive markets or promoting efficiency and consumer welfare.
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.]	Yes. The Deputy Superintendence for Competition Protection attends all the complaints presented, and only significant complaints related to competition regime are evaluated as a possible antitrust case, 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.
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. Nevertheless, the Deputy produce a technical preliminary report about the complaint. This document is confidential, and it is saved in the file of the case. However, if the closing happens during the “preliminary inquiry” stage, the Deputy Superintendence must issue a resolution explaining why such decision was taken.
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.

6. Leniency policy⁵

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	The Colombian leniency program is established in the competition regimen through article 14 of Law 1340 of 2009 and is regulated by Decree 1523 of 2015. The official name of this is “ <i>Programa de Beneficios por Colaboración</i> ” (see the link to the document under 1/A).
B. Does your jurisdiction offer full leniency as well as partial	Yes, it does. According to Articles 2.2.2.29.2.2 of Decree 1523 of 2015, the Superintendence is able to award both: full or

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>leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>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 of Decree 1523 of 2015 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 of Decree 1523 of 2015), 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 of Decree 1523 of 2015), 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 following the indications of the Deputy Superintendent for Competition Protection. <p>The opportunity (deadline) 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 of Decree 1523 of 2015, 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>It is important to clarify that the leniency program in Colombia is not only designed for natural or legal persons involved in an anticompetitive agreement. It is also extended to any anticompetitive conduct and in particular, in an abuse of dominance case, only the natural person could receive the benefits of a leniency application.</p> <p>It is important to note that the instigator of an anti-competitive agreement cannot be a beneficiary of the Leniency Program.</p>
<p>F. What are the conditions of</p>	<p>Number 1 of Article 2.2.2.29.2.3. of Decree 1523 of 2015 establishes that the condition of availability for full leniency for</p>

<p>availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>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:</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) involved in it and the participants. <p>Our law prohibits to grant any type of benefits to the instigator or promoter of the conduct (ringleader).</p>
<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 of Decree 1523 of 2015, 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 has 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 of Decree 1523 of 2015, the benefits can be eliminated if the applicant:</p> <ol style="list-style-type: none"> 1. Controverses, 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 of 2015 of Decree 1523, the application can be made:</p> <ol style="list-style-type: none"> a. By a written document presented at the premises of the Entity. b. By Email: delprotecompetencia@sic.gov.co, delacion@sic.gov.co c. By a meeting with the Deputy Superintendent for Competition Protection. <p>Any type of application must fulfil the requisites of Article 2.2.2.29.2.3 of Decree 1523 of 2015.</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 of Decree 1523 of 2015.</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 of Decree 1523 of 2015. 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</p>

	<p>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 of Decree 1523 of 2015.</p> <p>The opportunity (deadline) 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>
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 of Decree 1523 of 2015, 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 of Decree 1523 of 2015, leniency is granted on the basis of a leniency convention / agreement signed by the Deputy Superintendent.
M. Do you have a marker⁶ system? If yes, please describe it.	Yes, we do have it. Article 2.2.2.29.2.3 of Decree 1523 of 2015 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 Deputy Superintendent 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 signed by the officer.
N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]	<p>Yes, it does. Article 2.2.2.29.4.1 of Decree 1523 of 2015 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 other markets. (<i>Leniency plus</i>).</p> <p>In the same track, Article 2.2.2.29.4.1 of Decree 1523 of 2015 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.</p>
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 of Decree 1523 of 2015, 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	No, there is not.

⁶ A marker protects an applicant’s place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ 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.

appealing an agency's decision rejecting a leniency application?	
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	<p>The phone number is: +57 1 5870000, Hours: 8:00 to 17:00</p> <p>Competent officer: Juan Pablo Herrera Saavedra - Deputy Superintendent of Competition Protection.</p> <p>Email address: delprotecompetencia@sic.gov.co, delacion@sic.gov.co</p>
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 of Decree 1523 of 2015, the awarded benefits can be revoked:</p> <ol style="list-style-type: none"> 1. When the leniency applicant questions the facts acknowledge in the leniency program during the investigation. 2. When the leniency applicant does not allow to carry out testimonies to his/her employees. 3. When the leniency applicant does not answer the information requirements made by the Superintendence of Industry and Commerce. 4. When the leniency applicant destroys, alters, or obstructs the access to information or importance evidence regarding the presumed restrictive agreement. 5. When it has been proved the leniency applicant was the instigator or promoter of the restrictive agreement, and 6. When the leniency applicant 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 legal framework 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 testimony) 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 which parts are protected and what does protection actually mean.	<p>Article 2.2.2.29.4.3 of Decree 1523 of 2015 states that confidentiality can be awarded to the leniency procedure according to the rules set forth in paragraph 2 of Article 15 of Law 1340 of 2009. Such provision refers to the identity of the applicants.</p> <p>Nowadays, confidentiality is given by connecting the nature of the material received to legal criteria that allows to keep it apart (in other file) from public information (i.e. business secrets).</p>

7. Settlement

A. Does your competition	The recognition of the liability of an investigated party could imply a reduction of the fine in the final decision. According to
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<p>regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>point 15 of Article 4 of Decree 2153 of 1992 modified by the Article 25 of Law 1340 of 2009 the conduct of the investigated in the framework of the procedure could be taken as an attenuation of the fine.</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 practices contained in Article 47, 48 and 50 of Decree 2153 and in the Article 1 of Law 155 of 1959 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>A reduction of the fine.</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 of the fine and a leniency reward are exclusive instruments.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>No, the only possible case to consider a settlement is the recognition of the infringement by the investigated party.</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>Please refer to Number 7-A.</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>As the presumed offender must recognize the anticompetitive behaviour, this tool allows the Entity to use its resources in an efficient way in order to protect free economic competition.</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>Yes, the settlement imply a confession or an admission of the illegality of the conduct.</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>No, they cannot.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</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 resolve 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>
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<p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Decree 2153 of 1992: http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38168 (Spanish). Law 1340 of 2009: http://www.sic.gov.co/sites/default/files/normatividad/Ley_1340_2009.pdf (Spanish)</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>All the restrictive practices contained in Article 47, 48 and 50 of Decree 2153 and in the Article 1 of Law 155 of 1959 are subject to a commitment. Actually, the provision applies to “violations of commercial restrictive practices”.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>There is not a formal criteria to determine the cases which are suitable for commitments. Nevertheless, in a case by case analysis the Competition Authority identify a structural solution that can remove the anticompetitive effects in the markets.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>Structural commitments are the possible ones that are subject to be considered by the Colombian Competition Authority. In fact, the Agency does not consider that behavioural commitments could be admitted as a substitute of a formal antitrust investigation.</p>
<p>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.]</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>The opportunity to offer a settlement 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>I. Does a commitment decision necessitate that</p>	<p>The anticipated closure of the investigation, without incurring penalties and without admitting a violation.</p>

<p>the parties acknowledge their liability for the violation?</p>	
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	<p>If a commitment is breached, the SIC will consider it as an infringement of the competition regime and sanctions can be imposed. Prior to the imposition of a sanction, the SIC will request an explanation from 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.</p> <p>When the Superintendence of Industry and Commerce established guarantees (in case of mergers) or accepted any kind of guarantees during an investigation of anti-competitive conduct, the competition authority has several mechanisms to follow the accomplishment of that guarantees by the market agents. The tools or mechanisms depend on the conditions established by the Superintendence and the information that is required to verify the fulfillment of the guarantee's conditions. In this sense, the Competition Authority has three particular mechanisms to verify the guarantees accomplishment.</p> <p>First, in the cases that the Superintendence established to the market agent an obligation to make reports related to guarantees implementation. In this case, the Authority can review the information reported by the market agent and verify the fulfillment of all the conditions as commercial, contractual, financial, technological, corporate, pedagogical, advertising measures, among others. Second, the Competition Authority can require information from the market agent with the objective to verify all kind of aspects related to the market and the guaranties. Finally, the Superintendence can implement dawn raids with the objective to obtain additional information.</p> <p>It is important to have in mind that if the Competition Authority identify the non-fulfillment of guarantees conditions by the market agent, the Superintendence can start an administrative procedure with the objective to sanction the violation.</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	<p>No, they cannot.</p>

9. Investigative powers of the enforcing institution(s)⁸

<p>A. Briefly describe the investigative measures available to the enforcing</p>	<p>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</p>
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⁸ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<p>agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>and/or dawn raids, including emails, computers, or any electronic device; receive testimonies under oath; among others.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Private locations different from places related with the investigated economic activity 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.</p> <p>The Constitutional Court through Constitutional Statement 165 of 2019 established that the Superintendence of Industry and Commerce is faculty to request information and practice dawn raids without prior judicial authorization or subsequent legality control.</p>
<p>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain.</p>	<p>No. The faculties to request information and practice dawn raids exists exclusively within the national territory. This, considering that the Superintendence of Industry and Commerce competence are only referred to the national territory.</p>
<p>D. May evidence not falling under the scope of the 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>No, they cannot. The evidence collected for one case is used exclusively in it. However, rules from the Procedure Civil Code allow the transfer of evidence from one case to another when they result useful. Such transfers must be done using certified copies.</p>
<p>E. 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> <p>The Constitutional Court through Constitutional Statement 165 of 2019 established that the Superintendence of Industry and Commerce is faculty to request information and practice dawn raids without prior judicial authorization or subsequent legality control.</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</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
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⁹ “Searches/raids” means all types of search, raid or inspection measures.

<p>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>Authority.</p> <ol style="list-style-type: none"> 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. 9. Right to be protected in their privacy and intimacy.
<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? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply.</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 behavioural 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? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply.</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>
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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. <p>Imposition of fines to some of the investigated parties, closing of the investigation in favour of some others (because there is no evidence to prove the commission of the restrictive agreement by them), and by offering to the SIC satisfactory “guarantees”.</p>
<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>Yes they are. The Superintendence of Industry and Commerce can be decreed Precautionary Measures related to the immediated suspension of the conducts against the competition regime.</p>
<p>C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</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>

¹⁰ 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].

¹¹ Only for agencies which answered “yes” to question 2.B. above

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"> - Point 4 of Article 1; Point 11 of Article 3; and point 12 of Article 8 of Decree 4886. - Points 15 and 16 of Article 4 of the Decree 2153 of 1992 modified by the 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 (Point 15 of Article 4 of the Decree 2153 of 1992 modified by the article 25 of Law 1340) and natural persons (Point 16 of Article 4 of the Decree 2153 of 1992 modified by the 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 an anticompetitive conducts or 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>In accordance with article 25 of Law 1340 of 2009 the criteria to graduate the sanction to legal persons are the following:</p> <ol style="list-style-type: none"> 1. The impact that the behaviour has on the market. 2. The size of the affected market. 3. The benefit obtained by the offender with the behaviour. 4. The degree of participation of the offender.

	<p>5. The procedural conduct of the party under investigation</p> <p>6. The market share of the infringing company, as well as the part of its assets and / or its sales involved in the infringement.</p> <p>7. The assets of the offender.</p> <p>On the other hand, in accordance with article 26 of Law 1340 of 2009 the criteria to graduate the sanction to natural persons are the following:</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>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes, they are. According to Point 15 of Article 4 of the Decree 2153 of 1992 modified by the Article 25 for legal persons the maximum sanction is up to COP\$ 87.780.300.000¹² or if more, up to 150% of the gross is profit of the conduct.</p> <p>For natural persons, according to point 16 of Article 4 of the Decree 2153 of 1992 modified by the 26 of Law 1340 that sactions will be up to COP\$ 1.755.606.000¹³.</p>

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 concerted practices in public procurement, contemplated in point 9 of 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</p>	<p>Point 15 of Article 4 of the Decree 2153 of 1992 modified by the 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.

¹² The legal provision establishes that the sanction amount is up to 100.000 statutory monthly minimum wages. The statutory monthly minimum wages for 2020 is \$877.803.

¹³ The legal provision establishes that the sanction amount is up to 2.000 statutory monthly minimum wages. The statutory monthly minimum wages for 2020 is \$877.803.

<p>violation]</p>	<ol style="list-style-type: none"> 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 equity of the offender. <p>In addition, Point 16 of Article 4 of the Decree 2153 of 1992 modified by the 26 of Law 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 <p>The degree of participation of the offender.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>According to Point 15 of Article 4 of the Decree 2153 of 1992 modified by the 25 of Law 1340 , for legal persons the maximum sanction is up to COP\$ 87.780.300.000¹⁴ or if more, up to 150% of the gross is profit of the conduct.</p> <p>For natural persons, point 16 of Article 4 of the Decree 2153 of 1992 modified by the 26 of Law 1340 establishes that sanctions will be up to COP\$ 1.755.606.000¹⁵.</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. However, the Superintendence of Industry and Commerce is currently working in a guideline on calculation of fines.</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>

15. Possibilities of appeal

A. Does your law provide for an According to article 74 of Law 1437 of 2011, there is no appeal

¹⁴ The legal provision establishes that the sanction amount is up to 100.000 statutory monthly minimum wages. The statutory monthly minimum wages for 2020 is \$877.803.

¹⁵ The legal provision establishes that the sanction amount is up to 2.000 statutory monthly minimum wages. The statutory monthly minimum wages for 2020 is \$877.803.

<p>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>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>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Yes. Any person who considers that has been affected by a cartel might take civil actions against the undertakings involved in the illegal anticompetitive conduct. 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 administrative or civil judges, respectively.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>Law 472 of 1998 (Regulate the exercise of class actions). Available on: http://www.secretariasenado.gov.co/senado/basedoc/ley_047_2_1998.html (Spanish)</p> <p>Law 84 of 1873 (Article 2341 and those following: Non-contractual liability and civil actions). Available on: http://www.secretariasenado.gov.co/senado/basedoc/codigo_civil_pr073.html#2341 (Spanish).</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>No.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private</p>	<p>The private competition enforcement may be made in relation to any anticompetitive conduct. In that sense, the class actions may be initiated by a group of people that considers exists a harm to the free competition as a collective right. On the other</p>

actions available?	hand, the civil actions may be initiated by anyone who has suffered damage because of an anticompetitive conduct.
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	There is not necessary a finding of infringement by a competition agency required to initiate a private antitrust action. In that event the plaintiff must prove the anticompetitive behaviour, and the damages suffered because of that. If exist a finding of infringement by a competition agency the judge must make an evidentiary assessment for the conclusions of the authority, as well as evidence material assess.
F. Are private actions available where there has been a criminal conviction in respect of the same matter?	The private claims in the framework of a criminal conviction has a specific stage in the criminal process. This stage is named as Integral Remediation Incident and allows therepair of the damage caused with criminal conduct. This stage is regulated by the Chapter IV of Law 906 of 2004 (Criminal Procedure Code).
G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?	No. The Decree 1523 od 2015 do not have a provision in that sense.
H. Name and address of specialised court (if any) where private enforcement claims may be submitted to	The is not a specialised Court for antitrust issues. However the private claims can be presented to Administrative or Civil judges. The class and civil actions must be presented before de distribution centre of the judicial branch.
I. Information about class action opportunities	The class actions, according to article 11 of Law 492 of 1998, may be promoted during the time that the threat or danger to the right and collective interest subsists.
J. Role of your competition agency in private enforcement actions (if at all)	According to article 275 of the General Procedure Code, the judge in the judicial procedure could request to the Competition Authority a report about the administrative investigation. Also, the judge could request documents or information belongs the investigation files. In that case, according to article 27 of Law 1437 of 2011, the Competition Authority may not enforce against the judge the confidentiality of the information but this last have the duty to preserve de confidentiality.
K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?	In a class or civil action, the plaintiff must prove all the damages that pretended to be repair (loss of profit, costs incurred, etc.). The Competition Authority do not quantify the damages in the final decision.

<ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>According to article 275 of the General Procedure Code, the judge in the judicial procedure could request, ex officio or because the plaintiff request, to the Competition Authority a report about the administrative investigation. Also, the judge could request documents or information belongs the investigation files. In that case, according to article 27 of Law 1437 of 2011, the Competition Authority may not enforce against the judge the confidentiality of the information but this last have the duty to preserve de confidentiality.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>The class and civil actions must be initiated by the group of people, or the victim, respectively, that have suffered the damage directly. This confers the legitimacy to take part in the procedure as a plaintiff and prove the relation among the anticompetitive practice and the damage.</p>