



Colombian Competition Authority Imposed Historical Fines in the Sugar Sector by an Anticompetitive Agreement to Impede Imports

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Intro by Iratxe Gurpegui (OECD, Competition Expert)².

With its decision of 6 October 2016, the Colombian competition authority (SIC) has sent a clear message to companies active in the highly protected agricultural sector. The SIC imposed the highest total fine on companies participating in a cartel agreement in the sugar sector. The SIC has also made it clear that, despite not been able to intervene in relation to funds initially designed to stabilize prices in the agricultural sector, it is not acceptable that they allow unjustified anticompetitive conducts.

According to the International Sugar Organization, Colombia is the 14th most important producer of sugar in the world, representing 1.4% of the worldwide production. The sugar sector in Colombia has been one of the most protected agricultural sectors by the government. In 2001, the country adopted a mechanism to stabilize prices through a centralized fund (Fondo de Estabilización de Precios del Azúcar, FEPA).

The main trade partners of Colombia are Brazil, Peru, Bolivia, Chile and the USA. Nevertheless, this has changed over the time, especially during the last decade. For example, Bolivia went from representing 90% of the total sugar imports of Colombia in 2009, to 0% in 2011.

On 6th October 2015, the Colombian Competition Authority (Superintendencia de Industria y Comercio, SIC) issued a decision imposing a total sanction of COP \$320.000 million (which is equivalent to USD\$94.11 millions)³ to 14 enterprises active in the sugar production sector. This group includes an association and two enterprises in charge of distribution and commercialization of the product who acted as intermediaries within the collusive scheme.

The administrative investigation was opened based on two anticompetitive conducts: the allocation of production market shares in the national market and the restriction of sugar imports resulting from an agreement among competitors to maintain conditions of the market and to avoid the entry of sugar from Bolivia, Costa Rica and Guatemala. This agreement was materialized through threats against foreign sugar producers.

During the investigation, the SIC found physical and electronic evidence confirming the existence during more than a decade of an anti-competitive agreement between the Colombian sugar companies to prevent imports of sugar from foreign suppliers. One example is a meeting held by the Colombian sugar producers with the Bolivian sugar producers with the exclusive purpose of avoiding the import of Bolivian sugar into the Colombian market. The electronic evidence, gathered by the IT forensic experts, and the statements of the CEOs of the stakeholders (including sugar companies and third parties from the food industry) were enough to prove the infringement. The collusive scheme was coordinated by several intermediaries, i.e. the sugar producers association (ASOCAÑA), the distributor (CIAMSA⁴) and the trader (DICSA⁵). In particular, SIC found evidence of meetings and communications held

by these intermediaries with different sugar associations from the above mentioned countries.

The other anticompetitive conduct that was analyzed relates to the allocation of market shares within the FEPA framework. The FEPA was conceived in 1993 by the government in an environment of low international sugar prices that were significantly affecting the income from sugar exports in Colombia and the incentives of the sugar firms to produce.

The fund was created with the purpose of defining a compensation mechanism when the selling price was lower than a reference price. If the opposite happened (i.e. the selling price was higher than the reference price) sugar producers had to pay a contribution to the fund. The reference price is calculated, by the technical secretariat of the fund, as a weighted average of international representative prices⁶.

The SIC concluded that FEPA's compensation and contribution mechanisms were by definition anticompetitive. An economic analysis of the functioning of the fund, allowed the SIC to conclude that the mechanism for designing the compensation and contribution resulted in market share allocation because under such mechanisms sugar producer had no incentive to deviate from their historical market share.

The Colombian Competition Act does not allow the SIC to act in relation to conducts occurring within the framework of a tool of public policy intervention like the FEPA⁷. This is the reason why the SIC could not impose any financial fine for the market share allocation conduct. However, considering that the fund was acting beyond its scope (market share allocation was not among the objectives of the fund), the SIC ordered a deep review of the mechanism to the Ministries involved: the Ministry of Agriculture and Rural Development and the Ministry of Commerce, Industry and Tourism.

This decision sets a precedent in Colombia for two reasons: firstly, it represents the highest total fine imposed in the history of the SIC (COP \$260.000 million which is equivalent to USD\$76,47 millions) and secondly, it is the first time that the SIC is ordering a review of the functioning of a fund. This sends a clear message to other agricultural sectors that their respective funds should not allow anticompetitive conducts that go beyond what is necessary to achieve the initial objective of the fund.

Link to the SIC decision (in Spanish):

<http://www.sic.gov.co/drupal/sites/default/files/files/RESOLUCION%2080847%20-%20AZUCAR.pdf>

¹ The author is a member of the Secretariat of the OECD, writing in a personal capacity. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD or its member countries.

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³ The sanction was adjusted to \$260.000 million (which is equivalent to USD\$76,47 millions), on 30th December of 2015, once the appeals were resolved.

⁴ CIAMSA stands for Comercializadora Internacional de Azúcar y Mieles de la Industria Azucarera Colombiana.

⁵ DICSA stands for Sociedad de Desarrollos Industriales y Comerciales.

⁶ For crude sugar the Price considered is the one of contract number 5 of New York Stock Exchange, and for refined sugar, the Price is the one of contract number 11 of London Stock Exchange.

⁷ Article 31, Law 1340, 2009.