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COMPETITION AND COMMODITY PRICE VOLATILITY

Contribution from Colombia

-- Session I --

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COMPETITION AND COMMODITY PRICE VOLATILITY

-- Colombia --

1. Background

- 1.1 In recent years has there been significant volatility in the prices of commodities that are important to the general population in your country? Please briefly provide details (e.g., among others, on the product(s), market(s) and adjacent market(s) concerned and the magnitude and duration of this volatility, be it prices going up or down). Are the price volatility in these commodities, and the causes of that volatility, global, regional or domestic?
- 1. Colombia, an exporter of basic materials, was affected by the recent international commodity price shock. The country's economic situation relies strongly on the trade conditions of these products. While commodity exports are a good source of income, they do not generate as much employment as desired.
- 2. In addition, as Colombia imports almost all its supply of oil derivatives and other basic materials, an increase in the international prices of these goods affects the country's production costs and its inflation rate¹. For the years 2007 and 2008, the inflation rate exceeded the threshold fixed by Colombia's Central Bank². The behavior of the prices of oil and several agricultural commodities were some of the causes for the inflation rate's raise. In fact, 99.4% of the growth of inflation for the 2007-2008 periods is explained by the increase in the prices of food and regulated products/services such as public services, transportation and fuels³.
- 3. Additionally, when international prices of commodities decrease, Colombia's trade conditions are affected. These changes impact the country's available income. Furthermore, if a devaluation of the Colombian *Peso* does not occur as a response to decreasing prices in commodities, the internal prices of the Colombian economy could be affected⁴.
- 4. According to Llinás (2002), Oil Sector represents a significant portion of Colombia's income. Nevertheless, the magnitude of this income fluctuates due to the volatility of the price of the commodity. These income variations result in higher macroeconomic instability⁵.

⁴ Íbidem.

Banco De La República (Central Bank). "Report to the Congress". http://www.banrep.gov.co/documentos/junta-directiva/informe-congreso/2008/julio_resumen_2008.pdf. : accessed November 20, 2011.

Comunidad Andina. "Tema 1. Evaluaciones detalladas de los efectos de la crisis internacional en los países andinos". Enero de 2009: 29. http://www.comunidadandina.org/economia/consejo_11_doc1.pdf. : accessed November 20, 2011.

³ Íbidem.

ibidem

Llinás, Marco A. "Incidencia de la volatilidad de los precios del petróleo en la determinación del ciclo económico colombiano". September, 2002.: 7.

- 5. Also, oil's price volatility has effects on the inflation rate, as well as on the productive performance of the country. One of the major impacts of an increase in the price of oil, is a parallel raise in the prices of gasoline and other fuels. Consequently, transportation costs increase affecting the prices of other products, such as food and services⁶. Due to this relation, the agro-industrial sector reported large profits from 2006 to 2008. The buoyant situation can be explained by an increase in the prices of food, a raise in the costs of transportation as a result of an increment in the price of oil during that time-, and an augmentation in the prices of fertilizers⁷.
- 6. The paper "¿Dutch Disease? Remedies to cure its symptoms" indicates that, in addition to an increase in the inflation rate and a parallel rise in transportations costs, an increment in the price of oil, produces an indirect impact on the prices of food. This indirect impact affects the prices of fertilizers and, in so doing, raises the costs of production of food and of food itself.
- 7. This paper also informs that the large profitability of the oil business and the high prices of the commodity during January and March 2008 had a positive impact on Colombia's Foreign Direct Investment –FDI-. The FDI grew USD\$284 million from 2007 to 20089.
- 8. Between the second semester of 2009 and the first semester of 2010, the low international price of corn influenced –among other factors- the decrease of the cultivated areas of yellow corn. Furthermore, the total production of corn decreased 182.000 tons for that period: 154.000 tons of yellow corn and 38.000 tons of white corn were not produced. Consequently, Colombia reported a significant growth of 15% in its corn imports in 2010¹⁰.
- 9. During 2010, while the majority of agricultural and agro-industrial products experienced a decrease in their exports, "in absolute terms, the greatest declines were those of sugar, palm oil, banana, coffee, bovine meat, vegetables and milk." However, as a result of favorable international prices since mid-2010, many producers could counterbalance their income loss¹¹.
- 10. According to ANIF, ¹²Colombia's traditional exportations increased by 40%, during August 2009 and August 2010, as result of the recuperation of international prices of commodities ¹³.
- 1.2 Does your agency have any ongoing / pre-emptive monitoring activities in relation to these sensitive commodities? For example, do you routinely monitor prices, quantities or behaviors in these markets (both domestic and foreign markets)?
- 11. See answer 2.3.

Arias Vargas, Francisco Javier. "Perspectivas del Agro colombiano frente a la actual crisis financiera". Universidad Autónoma de Manizales: 2.

Sociedad de Agricultores de Colombia. Departamento de Estudios Económicos. "Balance y perspectivas del sector agropecuario 2010-2011". April, 2011: 17.

¹² Colombia's National Association of Industrialists

http://anif.co/sites/default/files/uploads/Oct11-10 0.pdf: accessed November 20, 2011.

⁶ Ibídem.: 31.

Asobancaria, Semana Económica. "¿Enfermedad holandesa? Remedio para curar sus síntomas". July, 2008: 3.

Ibídem : 2.

¹¹ Ibídem: 31.

2. Competition Law Enforcement & Formal Investigation

2.1 Please provide a brief overview of significant competition law enforcement matters that your agency has undertaken in relation to commodities.

12. The Superintendence of Industry and Commerce has conducted a great number of investigations of anticompetitive practices on commodity markets. These numerous investigations are explained by the fact that Colombia's economic environment relies strongly in commodity exports; consequently, there has been wide government surveillance on the agricultural sector. Prominent cases that had been analyzed by this Authority will be exposed as follows:

2.1.1 Mergers assesments

- Chicken (2003) Non-Informed Merger. Under Resolution No. 8315/2003¹⁴, the Superintendence sanctioned four undertakings active in broiler and egg production and processing, for not informing a merger transaction before it was closed. The operation was completed through the creation of a company in charge of supporting the economic activities of the parties. As the SIC could determine, the parties as well as the created company, were active in the same productive chain, therefore, it imposed a fine that was later on ratified by the Administrative Tribunal in 2005¹⁵.
- Chicken (2008) Horizontal Merger. POLLOS BUCANERO, CAMPOLLO, INCUBADORA SANTANDER, AGROPECUARIA LATINOAMERICANA and HUEVOS ORO, undertakings active in broiler and egg production and processing, informed the SIC of a merger transaction that consisted in the creation of a company for the importation of animal food products. The SIC's assessment determined that the proposed operation was actually a vertical merger and, as such, it would not change the market structure nor the shares of the parties in the markets where they were active.
- Flowers (2009) Horizontal Merger. SUNFLOWER INVESTMENTS LTD. and SINGLETREE CORP informed the acquisition of the 100% of the share of SINGLETREE by SUNFLOWER. The parties were active in international trade operations related to flower exportation activities. As the products and services of the merger had an international destination, the SIC's assessment determined that the proposed transaction would not have an impact in Colombia.
- EGG (2008) Horizontal Merger. The SIC did not opposed to the fusion informed by GRANJA SANTA ANITA S. A. and AVÍCOLA NÁPOLES MEJÍA VILLEGAS CIA, companies with business activities in the egg production industry. The undertakings offered different types of eggs and compost.
- Coal Transportation System (2009) Horizontal Merger. Through this proposed transaction eight coal companies would jointly construct, operate, administrate and maintain a port for coal exportation activities. The objective of the concentration was to incorporate, in an integral port, all operations related to the exportation of the mineral. This port would replace small and inefficient ports as well as other ineffective systems for coal transportation and exportation. The efficiencies generated by the transaction were considered by the Superintendence as an important factor for its approval.

Resolution No.8315 / 2003. Sanctioned undertakings: Super Pollo Paisa S.A., Durán y Tascón, Granja Santa Anita y Cía S.C.A., Pollos el Bucanero S.A

Administrative Tribunal of Cundinamarca, First Division. Sub section B. File No: 200300930-1.Officer: Carlos Enrique Moreno Rubio. August 4, 2005.

- Aluminum (2008) Horizontal merger. Under Resolution No. 19729/2008 the Superintendence, conditioned the acquisition of the 94.8% of the shares of ALUMINIO REYNOLDS SANTO DOMINGO S.A. by INDUSTRIAS ARFEL S.A.S. The conditions were imposed considering that of the parties had dominant position in the national aluminum market, circumstances that rose competition concerns in the market studied. Afterwards, through Resolution No. 19080/2011, the Superintendence declared the non-compliance of one of the conditions for the clearance of the transaction, therefore imposing a fine.
- Coffee (2009) Vertical merger. The Superintendence cleared the transaction in which DESCAFECOL S.A. would acquire a coffee processing plant pertaining to FOODEX S.A. While the parties operated in the same productive chain, their economic activities differed. However, before the transaction, DESCAFECOL supplied the decaffeination process service to FOODEX.

2.1.2 Cartels and Horizontal Agreements

- Rice (2005) Price agreement between competitors. Under Resolution No. 22625/2005 the SIC sanctioned MOLINOS ROA S.A.; MOLINO FLOR HUILA S.A.; ARROZ DIANA S.A.; PROCESADORA DE ARROZ LTDA. y UNIÓN DE ARROCEROS S.A. The companies had a price agreement for the purchase of paddy verde rice type. The SIC concluded that the parties increased and decreased the purchase prices of the abovementioned product in the same value, magnitude and proportion at similar dates.
- Sugar Cane (2010) Price agreement between competitors. Under Resolution 6839/2010 the SIC sanctioned eleven sugar mills for a price agreement in the purchase of raw sugar cane, used in the production of sugar and ethanol. The parties argued that the formula utilized for the determination of the purchase price of raw sugar cane depended on external variables such as the international price of sugar cane that they could not control. Nevertheless, the investigation conducted, concluded that one of the variables of the referred formula was subject to an indirect agreement among the competitors.
- Cocoa (2009) Price agreement between competitors. The Industry and Commerce Superintendence sanctioned COMPAÑÍA NACIONAL DE CHOCOLATES S.A. and SUCESORES DE JOSÉ JESÚS RESTREPO & CÍA S.A. CASA LUKER S.A. for an agreement on the price at which both companies purchase cocoa from suppliers. During the investigation period, the prices at which the parties purchased cocoa evidenced a parallel behavior, which was present at different aggregation levels (national and local), and with diverse periodicities (monthly and weekly). Despite the fact that the parties argued that the purchase price of cocoa depended on external variables such as the international price of the commodity and the country's rate of exchange the SIC proved that, in many cases, the prices offered by the two companies were exactly the same.

2.1.3 Vertical Restrictions

• Tobacco (2009-2010) – Horizontal Merger. The SIC evaluated the vertical effects of the merger between COLTABACO and PROTABACO, two cigarette producers which also had nation-wide programs to guarantee the supply of tobacco leaves. The Superintendence assessment concluded that the concentration would create a monopsony in the market of tobacco leaves where the integrated entity would have the possibility to impose conditions to tobacco growers. Consequently, the merger was conditioned. Nonetheless, the parties did not complete the operation.

2.1.4 Price Control

- 13. The Superintendence of Industry and Commerce does not have a regulatory competence over prices. According to the Colombian legal system, the SIC can supervise the compliance of Competition Law through the faculty of Competition Advocacy. This faculty will be described in Section 3 of this document.
- 2.2 Has your agency undertaken a market study into any commodity or commodities? Please explain what triggered the market study, the substance of the allegation, the analysis undertaken and the remedies imposed (if any).
- 14. What started them? Under the agreement between the SIC and the Agricultural Ministry, the Superintendence has carried out sector studies on agricultural products such as cocoa, corn, meat, milk, oil palm, potato, vegetable rice and chicken. These studies have analyzed competition concerns as well as antitrust practices on the corresponding markets. Their conclusions have systematically suggested that, SIC should continue with the surveillance of the agricultural markets with atomized producers and dominant buyers.
- 2.3 Has your agency received request from governments or other parts of society to formally investigate commodities markets or request for the competition authority to put downward pressure on prices where there has not been information or evidence suggesting anticompetitive behavior? What was the nature and circumstances of the request and how did your agency respond?
- 15. In 2005, the Agricultural Ministry requested the SIC to monitor the companies importing agrochemical products¹⁶.
- 16. The Ministry requested to investigate MONÓMEROS and ABOCOL, two companies presumably engaged in a price agreement. The investigation was closed after the SIC accepted the commitments proposed by the parties. Later on, in 2008, preliminary inquiries were carried out based on the same presumptions; however, the investigation was closed again when the SIC found no merit for its continuation.
- 17. The complaints made by Associations as well as those forwarded by common citizens have, many times, started antitrust investigations. In particular, in 1999, the SIC conducted an investigation to determine if the agents in CORABASTOS food supply central were engage in a price agreement for a market allocation. The SIC decided to impose fines on the agents after finding the conduct occurred.

3. Advocacy Opportunities and Challenges

18. Article 6 of the Law 1340/2009 appointed the SIC as Colombia's National Competition Authority, with antitrust faculties on every economic sector¹⁷. Particularly, Article 7 of the Law commanded the Superintendence to carry out the duty of Competition Advocacy. By this faculty, the SIC must render previous opinion on every regulatory project that can potentially affect competition.

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Fertilizers: UREA, KCL, DAP

There are special exceptions.

3.1 Has your agency the opportunity to improve the efficiency and effectiveness in commodities markets through advocacy?

- 19. The Superintendence has given many opinions regarding the regulatory projects affecting energetic markets:
 - Resolution project to regulate short term electric transactions between Ecuador and Colombia, in accordance with Decision 720 of the CAN (Andean Nations Community): The Superintendence considered that this regulatory proposal did not raise competition concerns in Colombia's electric markets. On the contrary, the SIC considered that the project would stimulate market efficiency while ensuring the national supply of this commodity.
 - Resolution project to adopt a code for the commercialization of Liquefied Petroleum Gas (LPG) in the wholesale market: The SIC expressed that the regulatory initiative had no impact on the competition of the studied market. The proposal established different means of guaranteeing the concurrence of consumers to the market, and assuring information transparency. Additionally, it also envisaged the international trade of the product.
 - Resolution project to regulate crude oil transportation by pipeline: The SIC considered that this regulatory initiative would introduce competition into the market by ensuring the access of third parties to transportation infrastructure. Additionally, the Superintendence said that some of the measures would mitigate the asymmetric information issues present in the market.
 - Resolution Project to establish mechanisms to ensure the national supply of natural gas: The SIC considered that, in general terms, the proposed measures promoted competition in the sector by stimulating the entrance of new competitors and creating additional activities. In addition, the project also introduced a system to coordinate produced quantities and transportation capabilities. The SIC considered that this system would support the coordination of agents and activities in the sector. Nevertheless, the Superintendence made recommendations on two of the articles of the project:
 - The Article 11 of the project indicated that, in exceptional cases, the CREG Energy and Gas Regulatory Agency- could accredit less value to transportation assets presenting poor technical and economic efficiencies. The SIC recommended that clear standards on these efficiencies as well as the occasions in which this exception applies, should be defined previously. These recommendations headed towards the assurance of legal security and the promotion of confidence for future investors.
 - The Paragraph 4 of the Article 15 of the project prohibited producers to own re-gasification plants. The SIC recommended to eliminate this prohibition since producers are, generally, the agents with the capital required to undertake the construction of these plants.
- 20. Additionally, the Superintendence has also given opinion on various regulatory projects that affect agricultural markets.
 - Regulatory project to regulate the prices of agricultural inputs.
 - Regulatory project by which some fertilizers and pesticides undergo price controls.
 - Regulatory project to establish requirements for the processing and trading of different types of marinated chicken carcasses. Although the SIC has considered technical requirements as a barrier to international trade, in this case, the formalities were justified since they were intended to protect human health. Furthermore, they also prevented consumer's misleading.

- 3.2 Has your agency been confronted by a government proposal to address pressing concerns about commodity prices that did impede competition (or would have impeded competition if it had been introduced)?. What was the nature of the problem that the government was seeking to address? What was the timing and political constrains upon your opportunity to provide advocacy? What advice did the agency provide and what was the result?
- 21. Not applies.
- 3.3 Please describe any pre-emptive steps available to your agency to: (i) Reduce the risk that commodity price volatility volatility becoming a problem in your country? (ii) Reduce the risk that governments or public societies seek policy responses to problematic commodity process volatility that would impede competition?
- 22. In an *ex ante* scenario, the SIC monitors and guards competition through preliminary investigations and advocacy. These previous faculties try to avoid alterations and subsequent harms on the competition of national markets.