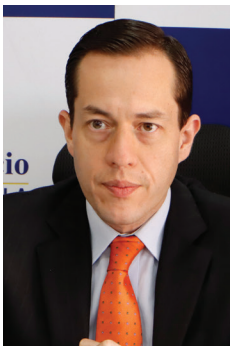


Interview with Andrés Barreto González, Superintendent, Superintendencia de Industria y Comercio (SIC), Colombia

Editor's Note: Andrés Barreto was appointed as Colombia's Superintendent of Industry and Commerce in September 2018. He holds a law degree from the Universidad del Rosario in Colombia, as well as several advanced degrees. Mr. Barreto has over 15 years' experience working as a lawyer, professor, and researcher in both the public and private sectors. He has been a legal advisor and held management roles in several corporations, as counsel to law firms, as a district attorney, legislative advisor in the Colombian Senate, and in the offices of the President and the mayor of Bogotá. He has also held a number of different positions within the Colombian Ministry of Foreign Affairs, including as the Deputy Director of Legal Affairs, Deputy Director of Protocol, and as a legal advisor. He was interviewed for the Antitrust Source by Krisztian Katona on March 10, 2021.



THE ANTITRUST SOURCE: I would like to start with cartel enforcement, an area in which SIC has been particularly active in recent years. A few years ago the agency also set up its bid-rigging task force that immediately hit the ground running with a number of important investigations. Just a couple of months ago, SIC imposed significant fines on members of a consortium led by Brazilian conglomerate Odebrecht for bid rigging, which followed other recent investigations in sectors such as mining, chemicals, and football ticketing. Would you tell us about these developments, in particular the Odebrecht case?

ANDRÉS BARRETO: The Odebrecht investigation was a very big case, first because it was a global case. As you know, we got some information from the U.S. Department of Justice, which investigated worldwide and discovered what was happening in Africa and in Latin America. That sort of opened everything that happened later on in Colombia. In the end, what we discovered is that Odebrecht participated in a scheme to pay some officials in order to get awarded contracts. But it goes further than that because we had a criminal case here in Colombia that had to do with relevant issues of Odebrecht in certain political campaigns and some of the things that they did across Latin America.

It has to do with enforcement of the competition policy. The case was important because of three things. First, I think it was one of the biggest global cases because of what the DOJ ultimately discovered. Second, it had lots of involvement in different countries and with different authorities. Third, because we have a leniency program that helped us to discover the cartel and to try to tackle what was happening. We had a former vice minister who in the end came to the leniency program. He helped with some evidence and with his testimony.

The bid-rigging group was very good in the investigation because we had a lot of information. Although we were investigating just one part of the contract, they discovered that it had implications in three parts of that contract. So it took us a lot of time to process the evidence, to have

several testimonies, to have the forensic capacity to analyze almost two or three terabytes, I think it was, of information, everything that had to do with the accounting files and with different documents that were submitted to us and developed by us.

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There were three important issues about this case: first, the global enforcement and international cooperation; second, the leniency program; and third, that it was the biggest fine that the Superintendency had ever issued using its maximum powers in order to fine Odebrecht, which was the main participant in the cartel because of everything it did.

In the end, we can see that competition in Colombia is very well supported and is very well respected. Although we are an administrative executive authority, we have no untouchable characters here. Anyone who tries to break the law will be fined, and that is important.

And, due to the cooperation agreement we have with the Attorney General's office, when we decide about some appeals that the fined parties have submitted to the authority, the whole filing will go back again to the Attorney General in order for him to determine if there is any other commission of criminal conduct that he might want to look into it.

So I think those are three important issues in this case.

ANTITRUST SOURCE: I would like to follow up on leniency. There have been some questions about how active the leniency program has been in Colombia. Could you tell us about the agency's experience with its leniency policy?

ANDRÉS BARRETO: The leniency program is a key tool for us in order to try to enforce the law. Of the biggest investigations I can remember, four have had leniency and have been very important: the chemical cartel, the sodium cartel, the football ticketing, and the Odebrecht case had leniency.

We have seen that leniency is still an important tool. We rely very much on leniency. For us it is very important because, of course, it expedites the process. We are very, very much into supporting leniency.

The last decision, the mining cartel, had leniency as well. That was a key decision because we had several parties applying for leniency. In the end we expelled other parties from the program when we discovered that they were trying to continue with the bid rigging even though they had signed a leniency agreement with the authority.

So for us it is very important. It is key. We try to uphold it. That is why we try to give as much guaranty as we can to the parties that come forward. But of course, we are always very, very severe about people who try to fool the program.

In the chemical cartel we had an issue in which they started changing their cooperation toward the authority. This was key in the moment of imposing the fine. Leniency requires that they collaborate with the authority with relevant information, evidence and to uphold their testimonies and cooperation until the end, some tried to change testimonies in order to trigger lack of competence of the SIC.

In the football ticketing case we used the leniency program. It was very important for the investigation. In the end it helped us discover the cartel. For the one who got awarded the leniency it was very important, because it was the smallest company, the smallest link in the whole anticompetitive or antitrust scheme. First, the company as well as the employees got off of being fined, and second, they got off from the criminal case.

I think it is very important to keep in mind that the criminal case is conducted by the Attorney General, while the leniency program is in the hands of the antitrust authority, which is not the same as the Attorney General. When they go to the Attorney General or come to us, it is fundamental that

they keep their versions and their collaborations very well coordinated, because in the end it will have consequences in any of the two stages of the investigation.

In Odebrecht it was key because the official who was bribed by Odebrecht was the one who came forward to the authority. Some of the other people investigated in the case had the chance also to come to the authority for the leniency program, but they decided not to come forward, and they were fined here and they were convicted in the criminal case.

ANTITRUST SOURCE: Following up on leniency policy in Colombia, some regional organizations, in particular the Andean Community,¹ are now also actively engaging in this area. I understand that this has posed challenges in antitrust enforcement in Colombia and the region. Would you tell us about these challenges and the relationship between the Andean Community and national authorities in antitrust enforcement?

ANDRES BARRETO: Issues and challenges—there are still a few. You mentioned the program in the Andean Community, something that is not very well understood.

We have seen a change recently with the competition authority in Ecuador, which understands very well not only the competition regime, what it has to do with competition worldwide, and the importance of the leniency program as a key tool in order to enforce antitrust.

As to Bolivia, although it has had a recent change in government, the former head of the authority is now again in the Business Enforcement Authority, and also has an understanding that leniency is very important not only for the local or domestic cases but in order to uphold antitrust in the whole Community.

Peru has also been leading as to what leniency has to do and has also enforced a policy about that. They also have their compliance rules, which are very important to try to uphold the leniency program.

But we have had recent developments. For almost a year or two, we have been negotiating a new Andean Community decision in order to reform the antitrust regime in the region. This is because of two things: first, the challenges that the leniency program has had in certain cases; and second the fact that Colombia is the only Andean Community Member State that is also a member of the OECD and of its Competition Committee.

We try to take this very seriously. Of course, we try to bring those best practices in order for the Andean Community to understand what it has to do with the jurisdiction and the competence it has to manage the cases. We have tried to make a comparison to what happens with the European Union and what happens in the case when it is affecting one country, or if the national authorities try the case.

So it was a big challenge, but in order to try to prevent what happened with the tissue paper cartel, including Kimberly Clark and others,² which was investigated thanks to the leniency program, the authorities started working together. This was an effort that started at the International Competition Network (the ICN) in 2018. We negotiated for almost a year.

¹ *Ed. Note:* The Andean Community, consisting of Bolivia, Colombia, Ecuador, and Peru, has regional legislation containing rules that apply to cross-border conduct within the region.

² *Ed. Note:* Kimberly Clark made a leniency application to competition agencies in Colombia, Peru, and Ecuador concerning a cartel in the tissue paper market. Leniency was granted in Colombia and Peru. The Ecuadorian agency indicated that the firm was eligible for leniency, but then referred the matter to the Andean Community, which began a cartel investigation using classified information disclosed by Kimberly Clark to the Ecuadorian agency in its leniency application.

We have had some changes in the political arena here in the continent, but I'm glad to say that we have an almost definitive version of the new Andean Community legislation that of course is very much to protect the leniency program. We are waiting for our turn in the Andean meeting of ministers in order to present this new regulation for the Andean countries, but we are almost 99 percent there. All of the authorities are in agreement with the instrument that we negotiated and we are just waiting for the next meeting in order to submit it to the General Council to be approved.

For now Colombia is the President of the Andean Community for Disputes, so it is a policy of this government to push forward that regulation in order to try to prevent the risks that we have had in the past, specifically with the case in Ecuador.

ANTITRUST SOURCE: I would like to move on to digital markets, which has been a key area of enforcement and policy for a number of competition agencies worldwide. Colombia's SIC, just like the U.S. FTC, is one of very few agencies worldwide with antitrust, consumer protection, and data privacy responsibilities. What are the benefits and challenges of housing these missions under the same roof as they relate to digital markets? Also, could you tell us about the agency's recent investigations into digital platforms, including Facebook, Zoom, Uber, and TikTok?

ANDRÉS BARRETO: For us it has been very helpful to be a holistic authority trying to mix the experience that the FTC has, some of what has happened in the United Kingdom with the Competition and Markets Authority (the CMA), and some other authorities that have shared powers and shared possibilities in different sectors.

Of course, in Colombia it is a huge challenge because we do not have Big Tech antitrust cases for now. But we have tried to be very active in what has to do from the perspective of consumer protection in the digital world, and of course data protection in the digital world, because we are the sole authority in both matters.

Aside from the competition perspective, we have seen that it is very valuable for us to have these two areas in the authority because it allows us to conduct market studies, to analyze what is happening in the rest of the world in different agencies, and to enforce the policies of data protection and consumer protection in order to learn in case we have antitrust cases concerning Big Tech.

First is the importance of having that policy in the same authority. It has been proven to be very useful because we have different viewpoints—not that we are perfect in our views, but it is easier to coordinate certain aspects and certain subjects in the same authority because we all speak the same language, we are in the same authority, and we can share our experiences in what happens in the different developments in our different areas. First of all, I will try to highlight that.

Second of all, is the fact that we have one of the most active data protection authorities in the region and, I can say, on the continent. We have recently gained membership in the Digital Economic Committee in the OECD and that has been very important and helpful in order to understand data protection as well as the digital economy from a holistic perspective of telecommunications, Big Tech, consumer protection, and antitrust, and trying to sharpen our competition policy as well. Although we do not have cases about Big Tech, it has been proved effective to have all this input from different perspectives.

Third, as you clearly stated, we have had the chance to work very closely in the past with the FTC, and the FTC has given us very important input in order to try to enforce our powers in data protection. Commissioner Chopra has always been very helpful to us because of the views he

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shared with us, the chats that we have had with him in different international conferences, forums and organizations in order to share our views.

We have had important developments. One had to do with Facebook in order to prevent security breaches in data protection. Zoom was very important because of the pandemic. Zoom was not used very much in Colombia, but it has of course been booming during the pandemic. Uber has to do with data protection and security breaches mostly. TikTok is a recent phenomenon. It was a tool that was used mostly last year. Colombia has a very young population, the average age is 30s old, and this social network is used mostly by teenagers and young people. During the pandemic people started using it more.

Since 2019 we have followed the FTC's action against TikTok. We had a case in 2020 here in Colombia, and we imposed some orders in order for them to comply with the data protection regulation.

We have had very important perspectives from what we have learned from the FTC, what we have learned from the OECD, and although we do not have a competition case, the fact that we are the data protection and the consumer protection authority has helped us to impose orders involving security breaches; prevent damages in what has to do mainly with the rights of minors; and, third, to try to tackle and prevent data protection violations by Facebook, Google, TikTok, Uber, and WhatsApp.

So it has very helpful. And I am very glad to say that recently we have been elected President of the Ibero-American Network of Data Protection Authorities. That is a huge commitment from us because all of these countries have put their trust in what Colombia has been doing in this area.

ANTITRUST SOURCE: I understand that SIC has also reviewed a number of recent mergers in the digital space. The *Bancolombia* case, focusing on digital banking, is particularly interesting as the agency imposed behavioral remedies regarding data protection in this matter. Could you tell us about your review of this merger?

ANDRÉS BARRETO: This case is very interesting. While banking has its own supervisor, the sole competition authority is my authority. In the end we share very much our perspectives on our work in our different areas.

We are in charge of data protection enforcement regardless of whether it is in the finance sector or any other sector. We can protect the consumers in what has to do with data protection and negative reporting of their clients. And in competition we still have the powers to oversee merger control and to act as the sole competition authority.

In 2019 there was this interest of three banks that together had something like 30 million clients in Colombia in creating a new entity that could engage in digital banking, a new company, without theoretically sharing information among them and it was not notified to the SIC under our merger control law. It posed three challenges. First, was it a new entity or was it was a merger between three entities? Second, how they would secure the data of their clients or how would they avoid sharing information between competitors about their clients? Third, could they share this information with other public entities in order to try to create some new digital identity in order to make people more comfortable, in order to get them to have more trust in the financial sector, in order to try to get them into going into banks and having digital platforms to exchange, etc?

We imposed these remedies in order to give warnings to the sector about what they could do and what they could not do, and that they could not use this new entity or this new company as a gun-jumping mechanism disguised as a new entity that was not going through the merger control.

But the remedies were also intended to try to protect financial consumers and data protection users by restricting information the banks can share between them.

What will the effects be in the market and who in the end will have control of that information and who will be the enforcers? We have shared powers. From the banking perspective point of view, the financial supervisor would not lose its competence or the capability to enforce the law. From the competition, data protection, and financial consumer point of view, the Superintendency will still be the sole regulator.

We also worked very hard in order to ask the banks to invest in the best security platforms that they could in order to protect this information, because we didn't want any leaking, we didn't want to have any security breaches. We had had a threat between 2018 and 2020 of a 122 percent increase in criminal offenses involving the security details of clients of several banks. That is not an administrative issue that we tackled, but it is a criminal issue. So, for us it is very important for them to try to implement the best possible security systems that they could.

We studied the effects. We studied who the actors might be. We studied the security issues that we had to keep in mind from the data protection perspective. The fact is that this was a project that had in the end one product, the SoyYo digital identity package, but it was not a merger between three giant competitors in the market in order to create a new banking entity.

ANTITRUST SOURCE: Over the past year, competition authorities worldwide had to face significant challenges related to the Covid-19 pandemic. How have you overcome these challenges, and what have been the key Covid-related enforcement and policy developments for SIC?

ANDRÉS BARRETO: I think the key cornerstone of what we did during the pandemic is that, for the first time, the competition authority issued a resolution in which we allowed collaboration between competitors if they could provide us with their agreement and they could prove that the consumer in the end will benefit from this collaboration between competitors.

We saw different authorities in the world try to tackle the pandemic and try to ensure that consumers have products and services without restrictions and allow agreements as long as they benefit the consumers. We saw the experience that the CMA implemented in the United Kingdom.

We decided that it was a good moment for us to enforce our powers, but in a different way. We would not do our enforcement task as we currently do, but for the first time to allow firms to prove that certain agreements would benefit the consumer in certain critical aspects or areas. The authority would be interested in having those agreements and allowing those agreements to be in force and for the companies not to have any legal consequence whatsoever if they could prove that this was important for the consumer.

It was not a Colombian idea but something we saw from the CMA, and we tried to convert it to fit with our legal regime. It was the first time that we gave this possibility about personal protection items, medicines, the retail business, certain foods and beverages. We thought that we did not want to disrupt the supply chain for these industries, but wanted to make sure that competitors did not enter agreements that would have negative effects, so we opened this new possibility.

Unfortunately, we have had just one agreement here in the authority. It was submitted, I think, about one month ago. But during the hardest part of the pandemic, no one took advantage of it. However, it was an important and novel tool that had never been issued in Colombia and for the first time we used it, and I thought the pandemic was a good moment to use it.

In the other investigations that we carried out, we opened four formal investigations involving different products, such as gloves, antibacterial gel, certain soaps, disinfectants, and masks. We

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opened several investigations, which are still ongoing. We opened these investigations because we thought that those types of industries or businesses were the ones that were going to register those agreements, but in the end it didn't happen.

Another important thing is that we opened important investigations from the consumers' perspective around certain chemical products used in crops and different products in order to see why prices were going up or down. In the end we discovered that has to do with the agricultural supplies.

ANTITRUST SOURCE: How would you evaluate the agency's recent enforcement scorecard?

ANDRÉS BARRETO: I think for the first time we have moved in a very good way. In almost three years we have enforced against almost 32 cartels and we have imposed the highest fines in history. But I think we have done this without disregarding or affecting due process, with the procedures that we have to enforce, and with the fact that, as you know, our decisions can be challenged in the courts. So, for us it is very important not only to produce a good decision from the antitrust point of view, but that in the end when it is taken into court, it upholds the decision.

I think we have been very, very effective in shortening the time it takes to resolve a case

I think we have been very, very effective in shortening the time it takes to resolve a case, not in order to satisfy the need for us to impose fines but because I do think that in a balance, you have several actors that have the right for either their investigations to be finished or to go forward to a finding. Because we have had cases that have been here for five, six, or seven years. So first, we try to move swiftly.

Second, we try to enforce our powers but to be very, very much into upholding leniency, and of course guarantees and remedies in order for them to stop or defer the prosecution and to end those investigations quickly.

Third, we try to understand several markets and several important issues that are key to us. For instance, the sodium cartel became very important in the pandemic. It is a product that has no substitute. It's a product that is bought by every water supply service in Colombia, and it is a product that was key in order to make water clean. If people were asked to wash their hands every hour, every three hours, or whatever, it will affect the consumers because of the prices they were paying.

What does that have to do with the rest of the cases? Well, it is important because we have learned that cooperation is very important to construct and develop these cases, such as FIFAgate, the Colombian football ticket case, and the Colombian Odebrecht case. We have suggested in the ICN and the OECD that it is important not only to talk about cooperation from the academic perspective or just with the point of view to share our cases, but to us the fact that we can indeed and in fact share information is very important.

For instance, we tried to get as much information as we could from Odebrecht from Brazil, but unfortunately, we didn't get any financial information. For us that was important in order to see what types of fines we can impose; but second, what international cooperation we might need to collect or seize their assets in order to try to make them pay the fines.

So I think there is something pending there and it is a matter where we can move forward, not just from rhetorical cooperation but to have proper enforcement and international cooperation, which has been very key, for instance, with the FTC and the DOJ. We need that with the rest of the authorities in the antitrust landscape.

And we have been moving our compliance program as well. We have been working with the biggest company in Colombia, Ecopetrol, which was the victim of the mining cartel, in order to implement this compliance policy and the compliance guidelines for them to prevent being victims

of other cartels. But it's also important to have the biggest company in Colombia as an example of a key player in compliance, good governance, good conduct, good practices, and to try to bring this into the Colombian business culture so that this can be tackled and prevented.

For now we are working on lots of cases of classical bid rigging or collusions. We have very important cases involving transportation. We have important cases involving digital platforms. We are working as well in cases involving the telecommunications market.

I do think this resembles what is happening in the rest of the world. The only fact that you have to keep in mind is the economic sectors, the regulatory landscape, and the capacity of the authorities.

Whether in the Big Tech cases that Europe and the United States are working on or the domestic version of those Big Tech cases—if someone here is developing a software, if someone here is developing a platform, if someone here is developing a certain type of technology for certain businesses—how we learn from the biggest experience in the Big Tech cases. But how can this be enforced? Of course, the rules, the legislation, and the regulation we can learn in-house, but we can also learn from the big or biggest cases in the world.

This also resembles something we spoke earlier about, antitrust in the Andean Community. I have suggested to the Andean Community that we should look also at data protection or see if we can enforce a policy once we have a better Andean decision in order to try to cooperate among these authorities. And of course, we try to bring as many of the authorities as we can to go through that process through the OECD. I think it is very important for us to all try to learn from the OECD and see what is happening about antitrust in the multilateral world more than in the regional world.

I think we still have a lot of work to do. In the end we try to be very effective and move swiftly with decisions on the cartels. The three key issues in Colombia, the three biggest cases, were Odebrecht, the football ticketing, and involving the sodium cartel. The sodium cartel case decision was not very popular in the public opinion, but it was key because of the fining, the leniency, and that we do not know if this cartel can be corrected because of the products and the fact that they have no substitutes. So we had to take different perspectives and approaches. That's why we went to the regulator of public services here in Colombia to suggest that we have to do a market study, a market definition, and try to prevent this from happening again with another product.

ANTITRUST SOURCE: In recent speeches you highlighted that compliance issues were at the forefront of your agenda. Would you tell us about your vision for the SIC's compliance program and key agency developments in this area?

ANDRÉS BARRETO: We have had lots of developments.

We have a technical document, the compliance rules for Colombia, if you like. Although it is a "soft law" document, it has been very well received by different actors. For us it was very important to see that a big player in the Colombian economy, such as Ecopetrol, actually thought the idea was very good and is trying to implement it in its own processes. For us it is very important to see that it has gained a bit of a traction in a practical perspective.

Secondly, we are trying to create a proper office of compliance here in the Superintendency. We are now drafting the architecture of what our compliance direction might be here in the antitrust division of the authority. We want an office that can oversee those rules, that can be the one where you can voluntarily submit your compliance program to the authority as a way to demonstrate its commitment to free competition. Then this division or direction here in the Superintendency is the

one that is in charge of overseeing and verifying that you are complying with the guidance that you might use in the compliance program that you issue in your organization.

In the end, I think we will benefit from having different sets of compliance rules from different companies, good governance codes of conduct in different companies, but also an authority that can oversee the compliance program that you want to implement in your company. That will in the end inform the authority that you are complying with the program, and of course for the program to gain more traction in order for you to present them as remedies in order to not have a sanction imposed by us, not only fines, but of course trying to give orders for you to implement a good compliance program.

A recent development has been our technical guideline. By December this year I hope to have here in the Superintendency an office that can oversee these compliance rules and programs.

ANTITRUST SOURCE: Questions related to institutional design, agency independence, and accountability have been extensively discussed in international fora in recent years. A few years ago there was a government proposal recommending the creation of an additional decision-making body within the SIC. What are your views in this regard, and how do you see competition policy fitting into the government's broader policy agenda?

ANDRÉS BARRETO: We have touched many of the interests that were untouchable here in Colombia. I would refer to football ticketing, Odebrecht and giant companies, finance corporations. Several were fined and sanctioned by the Colombian authority without any interference of the executive power or the executive branch.

Second, I do think this government is very respectful of competition policy first, because we have a president who is an economic expert, and second, we have a president who understands very much what we have to do with competition policy worldwide—not the competition policy in Colombia, but the competition policy from the OECD perspective, the inter-American perspective, and the multilateral perspective. I do think the commitment he has to this is deep, first because he was the first who had to uphold the requirement of appointing someone to the authority under the legislation that was previously issued by a different administration and in a different situation; second, because it is the first time the authority is now a member of the OECD, and this superintendent in particular is the first to sit in the bureau of the Competition Committee in the OECD.

So in the end I think that we have a very interesting protection focus—first, because the Colombian executive power and the president, who is my boss and the one who appointed me to my job, has a huge comprehension about the competition regime and has never even thought about interfering in the work of the authority, and this has been proven with the cases that we have brought. We have imposed the biggest fines, we have had the swiftest cases, and we have tackled several practices in several sectors, and until now nothing political has happened, first to me and second to my authority. I think it is a commitment that goes beyond words. It is a commitment that can be proven by what this authority has been doing.

Second, I think the OECD and the Competition Committee have seen that commitment and I have been awarded the honor to be sitting in its Bureau, and of course we are a vice-chair of the ICN Advocacy Committee. So I think the authority is doing the things that it needs to do.

Third, going back to the Andean Community, we have been the leader in trying to push forward the renegotiation of the Andean decisions because we see the negative effects that political interference might create in our policy. This is not only domestically but internationally because of the

commitments we have with the OECD and on the good policy we try to bring from the ICN and the rest of the colleagues in the world.

I think we have been very active on this issue and it shows the commitment that we have regardless of the independence and regardless of many other issues. You can be as independent as you want. Of course, it is an ethical matter that you as an authority also have to be responsible in the work you do, and in case you suffer any pressure or in case you see cases are not going the way they need to go, you have to raise your hand and of course bring this up.

Another key issue here in the Internet landscape that might be unknown in the rest of the world is that the Superintendent is the sole competition authority, but he does not decide on his own. He depends on a procedure where the investigator is the one who conducts the investigation, directing the investigation phase and gathering the evidence to present the case to the Authority, and has to present the case to the Superintendent in order for him to decide, with a team of lawyers and economists, what is happening with the case.

In the end we have to ensure that what has been done by the Deputy Superintendent for Competition Protection is upheld not only by the law but that we have a case that can be presented to the decision committee. That committee is composed of five independent members of this authority. Every investigation is conducted by the Deputy Superintendent for Competition Protection, or prosecutor, which recommends sanctioning, has to go to this Commission. If the recommendation is to dismiss the case, it doesn't. The Commissioners are the ones that in the end uphold the decision of the Superintendent or recommend not to sanction a cartel.

This is very important to remind you that I do not rule on my own, that the Commission recommends to me the sanctioning or dismissing of the case. I have to go through my decision council that is composed of five individual independent members that have been here for many years—there are people who have been in that collegiate body for 10, 15, 20 years, and the most recent one has two years. They have the power to know about the case, ask about the case, recommend sanctioning or the fining of the case, among other issues.

So I think you have several different mechanisms or tools that, regardless of the fact that I am appointed by the Senate or I am a member of a collegiate body, we have very, very strict issues about the independence of what you can do or what you cannot do.

Another important issue is that Colombia, being more a civil law state, has different courts to challenge a decision.

I have three authorities that oversee my work. I have disciplinary responsibilities overseen by an authority here. I have criminal responsibilities overseen by the Attorney General's office in case I try to save someone from a competition case or try to fine someone who didn't have the responsibility or I couldn't prove it. And I have fiscal responsibilities in case one of my cases goes to the court, gets challenged, and gets overturned, because in the end I have to pay with my organization's own money if something happens. So I have three controls from different authorities that are not part of any of the branches of the power.

I have political responsibilities because from time to time I am requested by the Congress, by the committees—not to explain about the cases because it is very well understood by them that they cannot get into the cases. I'm subject to being questioned by Congress despite the independence of the Authority. Being a part of the executive power carries the actions taken in order to enforce the law, and my work is sometimes overseen by Congress. I have political responsibility to go and represent my authority and answer the questions that the committees might have, very

much like what happens to the U.S. Department of Justice if the Attorney General or the Assistant Attorney General has to go to Congress to present himself before a congressional committee.

So I do think that, regardless of whether there might be changes to the constitution, if we need a new regulation, if we need a different scheme or a different structure of having a general economic attorney and a general economic court, what we have has been proven to be effective so far. Of course, there is always room for better practices in different situations, but for now the Colombian legal landscape, the Colombian economic reality, and Colombian maturity of the authority have proven to be effective and sufficient.

Maybe this discussion can be opened in some years to come, but in a post-pandemic economy and in a situation as we have now, we have proven to be effective not only in the antitrust arena but also with the protection of the consumers, the data protection as a different right that we have to oversee, and I think that it has been very important.

I have to say that I have never heard or suffered any pressure from the executive power in the cases that I enforced. Our independence is very well respected and it is very well known to the other authorities in this country.

ANTITRUST SOURCE: You have touched upon competition advocacy, including the SIC's leadership role in the ICN's Advocacy Working Group. Could you expand on the agency's ongoing work in this area? What key advocacy activities shall we expect from the SIC in the near future?

ANDRÉS BARRETO: For us it has been very important to complement the work of the advocacy team with the economic affairs office here in the authority in order to produce the best advocacy possible, but of course to understand many of the markets where we might have investigations or where we might need to understand because we see they are important for competition policy.

Second, being the vice chair of the Advocacy Committee in the ICN, it is important for us to share our perspectives and the developments that we have.

We have produced a variety of advocacy concepts in several different markets that have to do with some very key issues or industries here in Colombia. Mainly they have to do with oil and gas, mining, telecommunications, the health sector, and of course infrastructure and transportation. So I might say that those five sectors are the key sectors where we have tried to understand as best as we can what is happening from the economic perspective and from the legal perspective, in order to produce our advocacy concepts.

Second, since this government started the national development plan that is the key regulation that we have to implement for the four years of the term of this government, we managed to introduce something very interesting. That is the fact that local and regional authorities can also come to the competition authority to ask for advocacy concepts to tackle or prevent any antitrust effects that many of the regulations might have.

Thirdly, Colombia is experiencing lots of developments in the telecommunications sector, and telecommunications are key to the digital consumer protection and data protection.

Although our advocacy concepts are our thoughts from the competition perspective, in the end to have the authority be the data protection and consumer protection authority enriches our concepts and enables us to have better advocacy tools to try to prevent or tackle any anticompetitive regulation that might be proposed.

These are the most active sectors. These are the sectors where we are asked for most of our concepts. Congress can ask us for concepts in an advisory way, and we have had the chance to share with the Congress different perspectives of the competition policy for them to see when it

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is better to regulate on where they are trying to pass bills through Congress or whether it is better to understand what we have now in regulation. Otherwise it would not be effective to try to pursue any new regulations because in the end regulators have to come to the authority with proposed regulations, and either accept our suggestions or justify why they do not.

I will divide the advocacy main issues in those five industries or sectors. I would like to highlight the fact that we have also the power or the possibility to engage in advocacy in regional or local legislation or regulation.

The fact is that Congress has been very much interested in what we do, and of course they come from time to time to the authority when they have bills or projects going on in the Congress to see what the authority is thinking from that perspective.

ANTITRUST SOURCE: SIC has been very active internationally in recent years. You hosted the annual ICN conference in Cartagena in 2019. Colombia recently also joined the OECD as a member, and you, personally, became a member of the OECD Competition Committee's Bureau. Congratulations! In light of these developments, what challenges and opportunities do you see in international cooperation?

ANDRÉS BARRETO: For us international cooperation has been key, and that is why we have empowered our International Affairs Division with Cristina Rodríguez, the head of International Affairs and her team.

We have brought new members to the team. We have a bilingual staff, even people who speak three or four languages, people from different perspectives, people who have worked in regulation, in ministries, in private practice, and in different sectors in order to have a holistic view of what is happening.

Second, they have been gaining experience about the accession to the OECD. They have this good experience. They have been very active as well in the Andean Community. The Pacific Alliance is another big international organization where we see that we might have lots of opportunity because of the economic input of that organization to bring competition policy and consumer protection policy. And of course, an open-market economy is a key issue of these organizations. So I do think that we have taken measures from an administrative perspective to have a bigger team, a better team, a very well-respected team because of the professionals that we have, and an international office that is transformational to the rest of the organization. For instance, in legal metrology issues, such as weights and measures, and consumer protection, they of course are the speakers for the authority with the different international organizations, from the United Nations to international specialized organizations; to the OECD committees; and with our different allies in the world—the FTC, the DOJ, the CMA, etc.

I think international cooperation has been key to the development of this authority and to the outreach that it might have. But second, not only does it have to do with policy, international organizations, soft law, cooperation, etc., even organized events, they have been very key in shaping the next steps in competition policy. For instance, they have been key in the renegotiation of the Andean Community decision to try to enhance the competition decisions that we have. They have been key to bring new perspectives to the Andean Community concerning intellectual property policy, data protection policy, and consumer protection policy. They have been key in the Organization of the American States with the protection of the consumers. We are nowadays the president of product safety there. We share a lot of experience with the FTC.

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Third, because I do think the next step—it is now something that we are working on as a draft but it is a project that we might like to bring to the table hopefully not that late this year—is the issue that we have faced in several challenges in our cases. I referred to one in Odebrecht, the fact that it is very hard still to get information from different authorities.

Second, the fact that international cooperation is now very important, since not all countries are members of the Vienna Convention on the Law of Treaties, we must develop good cooperative measures on or own because bilateral cooperation with our counterparts may be more effective than state-to-state cooperation.

So we have to have better tools among us in order to share information. I understand there are very different issues about sharing evidence, where we might have to see the legal landscape in each country, but to share information is key for us to enforce our decisions, to see where we focus our investigations, but in order to uphold the decisions for the cartels to pay their fines or if we see conduct that might affect a third jurisdiction or a third country or a third party, to try to raise our hands and prevent or warn that country that something might happen. That has been very effective with the DOJ. That is why we are in contact with the DOJ. We are always looking at their investigations. They have been key in three of the biggest cases that we have had because of the conduct that they have discovered.

So for us I think the next step is to have international cooperation in the enforcement of cases as well as international cooperation that actually fulfills our cooperation needs, such as to share information, finance information, information about different actors, and information about different sanctions in order to properly enforce the legislation.

ANTITRUST SOURCE: To conclude, I wanted to look ahead and ask you about what is in store for SIC? What are your priorities for 2021 and beyond?

ANDRÉS BARRETO: For 2021 we try to shape our program. Even from October last year we had to start thinking about what is coming. Of course, we have to see what cases are a priority for us not to lose the timeframe to enforce our powers.

We have of course to take into account the need to refine our tools in different sectors and markets to bring the best decisions possible.

But of course we don't have an incentive to seek fines because those fines don't come to my budget. So we are very much fans of having compliance programs and leniency programs and to try to stop investigations when we have proper remedies for the different actors to stop the conduct and for us to move forward to different cases.

The only instances where we are bound to continue the investigation is when there is criminal conduct or when we have a hard cartel, where is impossible to accept a warranty or a remedy or a leniency application from the key coordinator of the conduct.

I do think that although we have been moving forward very fast, very swiftly, and I think very effectively, we still have a lot of terrain to cover to create a much broader culture of competition here in Colombia, to try to have better tools for local governments, local enterprises, and different sectors to understand why competition policy is important for them—not only not to be sanctioned, but why it is important for their business as well—and of course to try to cooperate with different authorities.

A good practice that we have is that we signed MOUs with different authorities here in Colombia, so we work hand-in-hand with the Attorney General's office, with the fiscal control department, and with the disciplinary authority here in Colombia. That allows us to enforce our powers, and to

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accompany them in their investigations. There are criminal investigations in many of the agencies that they do not understand—for instance, economic crimes. That is a key issue where we work with the Attorney General.

So for us the tasks ahead are to get convictions in the criminal arena of the cases that we have developed from the antitrust administrative perspective, to continue to enhance our work with these three authorities in order to try to bring competition and economic issues to these authorities, and to try to move as swiftly as we can with the cases that we have.

I do hopefully have my work until August 2022, so time is an issue to see how many cases we can bring. The average is between 18 and 24 months for us to bring a case.

But of course we have other areas to focus our efforts in—advocacy, compliance, leniency, and remedies.

ANTITRUST SOURCE: Thank you very much for the interview, Andrés. I think we really covered a lot of ground today.

I don't have any other questions, but of course I wanted to give you the opportunity to share any parting thoughts or any additional message.

ANDRÉS BARRETO: No. Thank you so much for your time. I think we have covered several issues.

I wanted to share the fact that the accession to the OECD came as well as the accession to the Bureau. That for us is very important as we are a young authority and one of the youngest members of the OECD and the Competition Committee of the OECD.

The fact that in data protection we have had key developments and we are also the president of the Ibero-American Network gives us the opportunity to shape policy not only in our country, not only in the region, but in a broader landscape.

The fact that we are trying to work as best as we can with the compliance program, learning about the recent changes that the DOJ had last year, what INDECOPI [National Institute for the Defense of Free Competition and the Protection of Intellectual Property] in Peru was doing, what we are trying to do, and within that to balance the *ex ante* and the *ex post* mechanisms and to try to bring the best possible tools to defer prosecution and to prevent the commission of the conduct or to stop the cases when we can. I think it is also key to try to focus our efforts on the most important conduct possible.

For me it was a pleasure. It was great to see you, even if it is in this virtual way, but I hope will get the chance to see each other hopefully during this year.

ANTITRUST SOURCE: Thank you very much, Andrés. ●