JOINT COMMENTS OF THE AMERICAN BAR ASSOCIATION
SECTIONS OF ANTITRUST LAW AND INTERNATIONAL LAW TO
THE SUPERINTENDENCY OF INDUSTRY AND COMMERCE ON
THE DRAFT LEGISLATIVE PROPOSAL OF THE CONGRESS OF
COLOMBIA REGARDING THE ENACTMENT AND MODIFICATION
OF RULES AND REGULATIONS REGARDING THE PROTECTION OF
COMPETITION

October 21, 2015

The views stated in this submission are presented on behalf of the Section of Antitrust Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore may not be construed as representing the policy of the American Bar Association.

I. Introduction and Summary

The Sections of Antitrust Law and International Law (the “Sections”) of the American Bar Association (“ABA”) appreciate the opportunity to present their views regarding the Congress of Colombia’s (the “Congress”) Draft Proposal Regarding the Enactment and Modification of Rules and Regulations Regarding the Protection of Competition (“Proposal”). The Sections appreciate the substantial thought and effort reflected in the Proposal and offer these comments in the hope that they may assist the SIC in advising the Congress as it completes the final version. The Sections’ comments reflect their expertise and experience with competition law in the United States as well as in many other jurisdictions worldwide.

The Sections commend the Proposal’s focus on continuing to improve the transparency, efficiency, and effectiveness of Colombia’s legal framework for the protection of competition, administered by the SIC. These comments focus on five aspects of the Proposal: Competition Advocacy; Business Mergers; the Leniency Program; Functions of the Superintendent of Industry and Commerce; and Unfair Competition.

II. Specific Suggestions

A. Competition Advocacy

Chapter 1 of the Proposal amends Article 7 of Law 1340 of 2009, entitled “Competition Advocacy.” Competition advocacy is an extremely important means by which competition authorities may help public officials draft more procompetitive rules, thereby strengthening the competitive system and consumer welfare. The U.S. Department of Justice Antitrust Division and the U.S. Federal Trade Commission have embraced competition advocacy as an important part of their missions, as have an increasing number of

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1 The Section’s comments are based on a translation into English of the Proposal, provided to the Sections by the Superintendency of Industry and Commerce of the Government of Colombia.

2 See, e.g., Timothy J. Muris, Chairman, Fed. Trade Comm’n, Creating a Culture of Competition: The Essential Role of Competition Advocacy, Prepared Remarks before the International Competition Network Panel on Competition Advocacy and Antitrust Authorities (Sept. 28, 2002), available at http://www.ftc.gov/speeches/muris/020928naples.shtm (“Constant vigilance and continuing efforts are necessary because there will always be pressures from the private sector, and often its government allies, to maintain old anticompetitive constructs or to create new ones.”); Deborah Platt Majoras, Chairman, Fed. Trade Comm’n, Promoting a Culture of Competition, Remarks before the Chinese Academy of Social Sciences, at 5 (Apr. 2006),
competition authorities worldwide, and the Sections commend the Congress for seeking to strengthen the SIC’s advocacy powers by amending Article 7. The amendment should strengthen the hand of the SIC in undertaking advocacy initiatives.

The original 2009 version of Article 7 authorized the SIC to issue non-binding prior opinions on draft national regulations that may have an impact on competition in the market, but did not specifically require national regulatory agencies to inform the SIC of the draft regulations in advance. Commendably, the amended version of Article 7 now (1) specifically requires such advance notice (“regulatory agencies shall inform the . . . [SIC] of the proposal of the administrative acts to be issued”); and (2) mandates that regulatory agencies “explicitly state the[r] reason[s]” if they decide not to adopt (“depart from the concept” of) the SIC’s recommendations. This is in accord with the 2013 OECD Review of Regulatory Reform in Colombia, which indicated that prior notification of regulations would enhance the effectiveness of SIC advocacy, and implicitly lent support to having regulators justify their failure to comply with SIC advice.

The Sections also applaud the provisions in revised Article 7 that authorize provincial and municipal authorities to request SIC opinions on proposed regulations “that may have an impact on competition,” and that empower the SIC to issue opinions regarding proposed provincial and municipal regulations on its own initiative (“without request”). Although the SIC’s opinions on draft provincial and municipal regulations are not binding, the accumulation of a body of well-reasoned SIC advice on such proposed rules may over time prove influential in helping move regional and local rulemaking in a more procompetitive direction. The Sections recognize that SIC resource constraints, coupled with the sheer volume of regional and local regulations, makes mandatory review of all sub-national enactments impractical, consistent with the approach taken by the revised Article 7.

The Sections recommend that, in carrying out its advocacy functions, the SIC consult the advocacy-related resources that have been made available by the International Competition Network (“ICN”). These include, in particular, the ICN’s Recommended Practices on Competition Assessment (Spanish version), the ICN’s Advocacy Toolkit, and the ICN’s Benefits Platform, a web-based toolbox integrated within the Advocacy Toolkit which assists competition authorities in explaining the benefits of competition to multiple government stakeholders, as well as in the evaluation of competition interventions.


4 Id. at 46 (“in order for SIC to carry out this[advocacy] function effectively, regulatory authorities must inform when they plan to issue regulations, which does not always happen”).

5 Id. (“it is expected that if the regulator does not follow SIC’s [advocacy] opinion, it will have to justify its decision”).

6 Although the Congress may wish to consider requiring provincial and local regulators to explain their failures to adopt SIC advocacy recommendations, the Sections make no specific recommendation in this regard. The Sections recognize that this issue may raise sensitive questions regarding relationships between national and subnational governments that are beyond the Section’s institutional purview.


10 ICN, Explaining the Benefits of Competition, available at http://www.internationalcompetitionnetwork.org/working-groups/current/advocacy/benefits.aspx. (“The Benefits Project Online Resource seeks to provide ICN members with knowledge, strategies and arguments for explaining the benefits of competition to support their competition advocacy efforts with government and non-government stakeholders, as well as in the evaluation of competition interventions.”)
stakeholders. These materials should help the SIC ensure that its advocacy reports are of the highest quality, consistent with international best practices.

**B. Business Mergers**

Chapter 2 of the Proposal amends Articles 9 and 10 of Law 1340 of 2009, entitled “Business Mergers,” including both the jurisdictional and administrative procedure provisions. Although these amendments should be commended for bringing the jurisdictional and procedural requirements further toward international best practices, care should be taken in the implementation of the amendments to ensure fairness and transparency.

*Jurisdictional Requirements:* The Proposal’s most significant amendments relate to the jurisdictional requirements for transactions subject to formal review and prior approval by the SIC. Currently, parties to covered transactions such as mergers, consolidations, and acquisitions of control must file with the SIC where (1) the relevant undertakings participate in the same economic activity or in the same chain of value in Colombia and (2) the undertakings meet certain aggregate thresholds for operating revenues or total assets set by the SIC. The Proposal would remove the subjective jurisdictional component effectively requiring a horizontal overlap or vertical relationship in Colombia. At the same time, the Proposal would grant further discretion to the SIC to set individual operating revenue or total asset thresholds for each undertaking. The Proposal would also eliminate a de minimis exemption whereby the parties to transactions involving a combined market share threshold of 20% or less are obliged to submit only a non-suspensory notification.

The proposed amendments have the potential to provide more clarity to market participants. Removing the subjective jurisdictional requirements tied to the parties’ activities in Colombia will likely increase the number of transactions subject to prior approval. However, the emphasis on objective individual revenue and asset thresholds may be more consistent with international best practices, provided that the thresholds are implemented to ensure that jurisdiction is asserted only over transactions with an appropriate nexus with Colombia. Exemplifying international best practices, the ICN recommends that the jurisdictional nexus should be measured by reference to the local sales or assets of at least two parties to the transaction in the local territory and/or by reference to the local sales or assets of the acquired business in the local territory.

Accordingly, the Sections recommend that the jurisdictional thresholds should be based on the individual operating revenue or total assets of two or more parties to the transaction in Colombia to ensure that the transaction has an adequate local nexus. The thresholds as implemented should not incorporate what we understand to have been the SIC’s past practice of considering worldwide operating revenue and assets where the parties have export sales into Colombia but no local assets or income. Instead, the calculation of operating revenue in Colombia could be defined to include these export sales into Colombia. The Sections also recommend that only the assets or operating revenue of the target be taken into account, rather than those of the entire seller group. The Sections further suggest that the jurisdictional test

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12 *Id.* Rec. I.A. (“[J]urisdiction should be asserted only with respect to those transactions that have an appropriate nexus with the jurisdiction concerned.”)

13 *Id.* Rec. I.C. (“Determination of a transaction’s nexus to the jurisdiction should be based on activity within that jurisdiction, as measured by reference to the activities of at least two parties to the transaction in the local territory and/or by reference to the activities of the acquired business in the local territory.”)

14 *Id.* Rec. LB.3 (“the relevant sales and/or assets of the acquired party should generally be limited to the sales and/or assets of the business(es) being acquired”).
specifically requires that the transaction have a local effect so that the formation of an offshore joint venture with no connection to Colombia would not require notification, even if the undertakings involved in the joint venture have sufficient Colombian assets or operating revenue to meet the thresholds.

Filing Fee: The Proposal would establish for the first time a filing fee to be set by the SIC based on the operating revenues and total assets of the parties, subject to a cap of 0.1% of the total assets of the parties involved. While a fee to cover the expenses of the authority in reviewing a transaction is required in some jurisdictions, international best practices would require further guidance on the methodology for calculating the filing fee in order to provide transparency and ensure proportionality. For example, the United States uses standardized fees that can be determined clearly in advance based on the value of the notified transaction. Because basing the amount of the filing fee on the total worldwide assets of the notifying parties could impose undue financial burdens on multinational companies, the Sections recommends that the standard for setting the filing fee should ensure that the fee is not disproportionate to the size of the transaction in Colombia.

Review Procedure: The Proposal would make significant amendments to the administrative procedure for review of transactions subject to a prior ruling of the SIC. For example, the Proposal would require the SIC to certify the date on which the parties submitted all of the required information regarding the merger. This certification triggers a three-month review period after which the merger will be deemed approved if the SIC has not objected to or imposed conditions on the merger. The Proposal would also provide for a single extension for an additional three-month period where the SIC and the parties are negotiating the terms of a conditional approval. The amendments provide further certainty and transparency to the parties regarding the relevant timeframe for the review. To be effective in practice, however, the SIC should ensure that clear guidance is given so that the parties are aware of the information necessary to obtain the certification and are able to comply within a reasonable timeframe.

Because the jurisdictional amendments described above would likely result in an increase in the number of reportable transactions that are unlikely to raise material competition concerns, the Sections also recommend creating a simplified procedure to expedite review and reduce information requirements for such

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15 Id. Rec. VIII.B. (“[m]erger control regimes should be transparent with respect to […] the competition agency’s decision-making procedures”) and VIII.B.2. (“[P]ublicly available materials should permit ready determination of: […] any filing fees[.]”)
17 ICN Rec. VI.E. (“Competition agencies should seek to avoid imposing unnecessary or unreasonable costs and burdens on merging parties[.]”)
18 Id. Rec. VI.A. (“Merger investigations should be conducted in a manner that promotes an effective, efficient, transparent and predictable merger review process.”)
19 Notably, “[b]ecause most transactions do not raise material competitive concerns, the initial notification should elicit the minimum amount of information necessary to initiate the merger review process.” Id. Rec. V.A.1. Consistent with this observation, it has been the experience of the United States that the vast majority of reported merger transactions do not raise competitive issues. For example, in 2012, there were 1,400 transactions reported to the U.S. Federal Trade Commission and the U.S. Department of Justice under the Hart-Scott-Rodino Act (HSR), which specifies pre-merger notification requirement in the United States. The two U.S. agencies issued Second Requests for information in only 49, or 3.5 percent, of those transactions. The agencies challenged only 44, or 3.1 percent, of the transactions reported in 2012; conversely, the agencies determined that almost 97 percent of the reported transactions were unlikely to substantially lessen competition. See FED. TRADE COMM’N & U.S. DEPT OF JUSTICE, HART-SCOTT-RODINO ANNUAL REPORT, FISCAL YEAR 2012 5-6 (2013), available at http://www.ftc.gov/os/2013/04/130430hsrreport.pdf.
transactions. Although jurisdictional requirements generally should not be based on subjective criteria such as combined market shares or competitive overlaps, these factors could appropriately be used in determining whether a transaction qualifies for a simplified review procedure.

Agency Coordination: Finally, the Proposal would appear to more clearly require the Civil Aeronautic Authority and the Superintendency of Finance to consult the SIC on competition matters when reviewing transactions within their respective jurisdictions. The Proposal would also make any SIC opinion binding on the relevant agency. These amendments make meaningful progress in consolidating competition authority to encourage transparency and consistency, while continuing trends of centralization identified by the OECD.

C. The Leniency Program

Leniency Reserved for Cartel Cases: Chapter III, Article 4 of the Proposal amends Article 14 of Law 1340 of 2009, entitled “Benefits for Competing with the Authority.” Article 14 establishes the legal framework for Colombia’s leniency policy. The Proposal clarifies that leniency is available only to persons that have engaged in cartel activity, not any type of anticompetitive practices. This change conforms Colombian law to the widespread global practice of reserving leniency for cartel cases alone.

Elimination of Bar to “Promoters” and “Instigators”: The Proposal also eliminates the condition that leniency is unavailable to the “promoter” or “instigator” of the reported conduct. The Sections commend this change for making the leniency policy more predictable and certain. Predictability is a hallmark of effective leniency programs. For this reason, many jurisdictions have done away altogether with all eligibility disqualifiers based on the applicant’s role in the offense. Making a “promoter” or “instigator” of a cartel ineligible for leniency injects a high degree of uncertainty into the process. Those terms are vague and subject to widely varying interpretations. The determination of which applicants meet those criteria is an inherently subjective and unpredictable exercise. Thus, the proposed change should enhance the leniency program’s effectiveness. It will give prospective leniency applicants confidence that the SIC will not disqualify them by applying ill-defined and nebulous criteria. Nevertheless, and despite the importance of certainty, the Congress should consider provisions that would permit the denial of leniency where there was strong evidence that the ringleader of a conspiracy had had coerced others to join the in a cartel.

Joint and Several Liability: Chapter 4 would allow the leniency applicant to avoid joint-and-several liability for damages in follow-on private civil damage actions. This provision is laudable. It should create additional incentives for cartel participants to come forward and self-report. It addresses a concern raised in

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20 ICN Rec. IV.B. (“Merger review systems should incorporate procedures that provide for expedited review and clearance of notified transactions that do not raise material competitive concerns.”) See also, e.g., Joint Comments of the American Bar Association Section of Antitrust Law and Section of International Law on the Draft Merger Notification Guidelines of the Mexican Comisión Federal de Competencia Económica, at 3 (June 5, 2015) (a “provision for simplified procedure would better promote more efficient reviews if it were broadened to encompass transactions that plainly have no potential to result in anticompetitive effects in Mexico”), available at http://www.americanbar.org/content/dam/aba/administrative/antitrust_law/at_comments_salsil20150605.authcheckdam.pdf.
22 See ICN, Anti-Cartel Enforcement Manual, Chapter 2—Drafting and implementing an effective leniency policy (May 2009) (“ICN Effective Leniency Policy”) at 2, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc341.pdf (“Leniency is a generic term to describe a system of partial or total exoneration from the penalties that would otherwise be applicable to a cartel member which reports its cartel membership to a competition enforcement agency.”).
23 Id. (“An applicant needs to be able to predict with a high degree of certainty how it will be treated if it reports the conduct and what the consequences will be if it does not come forward.”)
the OECD Peer Review Study of Colombia’s competition law in 2009. It is similar to legislation enacted in the United States that confers benefits to leniency applicants that provide satisfactory cooperation to plaintiffs in private cases. (The Sections note that the Colombian provision does not require cooperation with plaintiffs.) The U.S. law eliminates joint-and-several liability and reduces treble to single damages. (The latter provision is not relevant in Colombia, which does not allow treble damages.)

**Confidentiality:** Other important and positive changes in the Proposal are provisions that would require confidential treatment for the identity of leniency applicants, for the information they provide, and for the process of negotiating leniency. Strong confidentiality rules are crucial elements of effective leniency programs. A leniency applicant must have confidence that neither its identity nor the information it provides to the government will be disclosed to civil litigants or other enforcement officials that may use the information against the applicant. In a recent high-profile investigation, Colombian authorities made widespread public disclosures of information that a leniency applicant provided. This course of action raised concerns about whether future leniency applicants would face similar treatment. The proposed changes should help allay the fears of prospective leniency applicants about damaging public disclosures and encourage them to come forward.

**Criteria for Receiving Leniency:** The Proposal does not change Article 14’s language that establishes the criteria that SIC will apply in determining whether to grant leniency. The current law requires an assessment of, among other things, “the supply of information and evidence” that allow the SIC to “establish the existence, manner, duration and effects of the conduct . . . and the benefits obtained through the illegal conduct.” These criteria make it very difficult for a potential leniency applicant to know before approaching SIC whether it will ultimately qualify for leniency. No applicant can predict at the outset of an investigation whether its cooperation, however good, will allow an agency to establish the existence, manner, duration, effects, and benefits obtained through the conduct. Therefore, this language could be read to give the SIC extremely broad authority to deny leniency at the end of an investigation on the basis that the applicant’s information alone was insufficient to prove every last detail about the cartel reported. The Sections recommend that the criteria for leniency be amended to eliminate the SIC’s authority to subjectively weigh an applicant’s evidence in terms of whether it establishes existence, manner, duration, effects, and benefits of a cartel. Instead, the Sections recommend adopting a requirement that simply requires an applicant to admit to its involvement in cartel activity, give a full accounting of its conduct, and provide full and continuing cooperation.

**D. Functions of the Superintendent of Industry and Commerce**

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24 OECD, Colombia - Peer Review of Competition Law and Policy (2009) at 59, available at http://www.oecd.org/countries/colombia/44110853.pdf. (“[T]he success of the [leniency] programme may be compromised by the fact that [the law] does not affect the whistleblower’s liability for damages in a civil suit. Depending on the violation, the amount of damages could far outweigh any fines applicable under the competition law, and this could deter firms from coming forward under protection of the leniency programme.”)


26 See ICN Effective Leniency Policy at 10. (“It is good practice to keep the identity of the leniency applicant and any information provided by the leniency applicant confidential unless the leniency applicant provides a waiver, the agency is required by law to disclose the information, or the leniency applicant discloses its application.”)

27 See William D. Dillon and Jorge Andrés de los Ríos, Colombian Cartel Leniency and U.S. DOJ Leniency: Different Approaches to the Same Objectives, Cartel & Criminal Practice Committee Newsletter, Issue 2 (Spring 2015) at 38, available at http://www.mcmillan.ca/Files/180449_The%20Canadian%20Approach%20to%20Corporate.pdf. (“[C]lients must recognize the potential for intense, damaging media attention once a Colombian investigation opens, especially if they seek leniency.”)

28 See ICN Effective Leniency Policy at 10 (describing the cooperation requirements for leniency applicants in terms of tasks required, not ultimate outcomes that must be achieved).
Criteria for Debarment: Chapter IV, Article 5 of the Proposal amends Decree 2153 of 1992, entitled “Functions of the Superintendent of Industry and Commerce.” Among other things, this section would give the SIC the authority to order the exclusion of bidders from participating in the public procurement process based, in part, on the “appearance of wrongfulness of the conduct.” Debarment is a potential sanction in the United States and other jurisdictions for bidders that have committed serious offenses. It can be far harsher than any fine. In industries that rely primarily on public sector contracts, a debarment order can effectively be a death sentence that forces a company out of business. But normally debarment authorities cannot sanction a company without some process that establishes it has engaged in wrongdoing.29 The Sections recommend elimination of the provision allowing for debarment based on nothing more than an “appearance of wrongfulness.”

Fines: This Chapter also makes extensive revisions to penalties that the SIC can impose for violations of any competition laws—including cartel violations—as well as failure to comply with SIC orders or regulations. The proposed law makes no effort to differentiate among the different potential violations and calibrate the sanctions accordingly. As drafted, the law would allow the SIC to impose the same sanctions for a failure to comply with an SIC order to conduct an economic study or comply with notice requirements on a merger as it could impose on the most serious hard-core cartel offense. The Sections recommends that the provision be amended to take into account the seriousness of and the harm caused by different offenses. The most severe penalties should be reserved only for the most harmful cartel offenses; less serious violations such as failure to comply with merger noticing requirements should be subject to less severe sanctions.

The law provides that fines shall be based on the highest of a number of metrics, including (1) 10 percent of the entity’s total turnover in the preceding fiscal year; (2) 10 percent of the entity’s net worth in the preceding fiscal year; and (3) 30 percent of all affected sales. The law does not make clear whether these figures are to be based on the entity’s Colombia-only or worldwide turnover, net worth, or affected sales, respectively. The Sections recommend that these provisions be amended to make clear that they are based only on Colombian commerce. Basing fines for violations in Colombia using global commerce figures could result in draconian fines for many entities doing business internationally that are wholly disproportionate to the harm caused in Colombia.

In addition, the fine provisions provide that in cases involving public procurements, the fine “cannot surpass [ ] 30% of [the value of the public contract].” As drafted, this provision could lead to fines that are disproportionate to the violations they are intended to sanction. It could result in fines to each participant in the violation of 30 percent of the value of the contracts won by all of the participants. This approach is inconsistent with the other provision in the Proposal that sets fines based on 30 percent of a company’s own affected sales, not the sales of all participants with violation. In addition, it is inconsistent with other sentencing regimes that tie sanctions to the contracts that each company won, not the contracts that all companies won. For example, in the United States, fines in bid-rigging cases are based on the contracts that a company was awarded pursuant to the illegal agreement.30 In addition, in cases involving complementary bids in the United States, fines are based on the higher of (1) the contracts that each company won or (2) the largest contract on which the company submitted a complementary bid in connection with the violation.31 The Sections recommend that this provision be amended to base fines on the commerce of each participant in the violation.

29 For example, in the United States the Federal Acquisition Regulations require agencies to establish procedures governing the debarment decision making process that are “consistent with principles of fundamental fairness.” 48 C.F.R. § 9.406-3(b)(1). Contractors must be given an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, among other things. 48 C.F.R. § 9.406-3(b)(2)(i). Further, in any case not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence. 48 C.F.R. § 9.406-3(b)(3).
31 Id. at §2R1.1(d)(3).
**Mandatory Debarment**: This Chapter’s second debarment provision would require that any entity sanctioned for violations of competition laws involving public procurement shall—not may—be debarred for a period of two months to five years. As previously discussed, debarment is widely acknowledged as an appropriate sanction. But debarment authorities normally have wide discretion in exercising their authority. They decide at times that debarment could harm consumers by eliminating companies that are necessary to maintain a competitive market. As the OECD has recognized: “Particularly in smaller economies . . . this penalty may have the paradoxical effect of reducing the number of qualified bidders to an uncompetitive level.”32 In addition, debarment may eliminate a strategically essential supplier for critical government functions. By making debarment mandatory, even for as little as two months, the Proposal would eliminate discretion that the SIC may need to ensure competitiveness in certain public procurement markets. Again, the OECD has pointed out: “[A] systematic (and automatic) debarment policy bears risks for collusion in markets where there are already few potential suppliers.”33 The Sections recommend that this section be made discretionary, not mandatory.

**Non-Prosecution by the Attorney General**: Article 14 of the Proposal amends Article 410 A of the Colombian Criminal Code, entitled “Restrictive Competition Agreements in Public Procurement Procedures.” Article 410 A gives the Attorney General the authority to criminally prosecute cartel agreements involving public procurements. The proposed amendment requires the Attorney General to provide non-prosecution protection to leniency applicants that could be prosecuted under Article 410 A, in return for their cooperation. The Sections support this provision. It will give leniency applicants in public procurement matters the assurance that if they provide the required cooperation, they will avoid all criminal prosecution. The ICN has recognized that in systems where prosecutorial roles are divided between two different agencies, “it is important that the authorities have consistent leniency policies.”34 This provision will further that goal. It will ensure that the SIC and Attorney General take consistent approaches to leniency applicants in public procurement cases. It will promote certainty and predictability in the leniency system and increase the incentives for companies to come forward and seek leniency from the SIC.

**E. Unfair Competition**

Chapter 6 of the Proposal adds that it shall be an illegal act of unfair competition to engage in deceptive acts and practices, including “illegal advertising.” The Congress may wish to consider defining with more particularity the definition of “deceptive acts” and “illegal advertising” intended to be treated as unfair competition, because otherwise illegal advertising is defined by various laws that deal with specific goods and services (for example, clothing, tobacco, toys, etc.).35 Greater clarity would put advertisers on notice of the type of conduct covered by the legislation. It would also reduce the burden on courts to look first to other laws and regulations before determining what might be considered deceptive or illegal advertising. The Congress may wish to clarify whether violations of the Code of Self-Regulation in Advertising may also be deemed an act of unfair competition.

33 Id. at 31.
34 ICN Effective Leniency Policy at 12.
III. Conclusion

The Sections very much appreciates the opportunity to comment on the Proposal and hopes that the SIC finds these comments useful in advising the Congress. We would be pleased to respond to any questions that the SIC may have and to provide any further assistance that may be appropriate.

Respectfully submitted,

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