

**Twenty-First Intergovernmental Group of Experts on
Competition Law and Policy
Room XIX, Palais des Nations, Geneva
5-7 July 2023**

Interaction between Competition and Industrial Policies

Contribution

*Ms. Evelyn Olmedo
Coordinator of Interagency Relations and International Cooperation
Competition Superintendency
El Salvador*

This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

How do you think, based on your experience, the interaction frameworks and mechanisms between competition authorities and industrial policymakers can be improved?

Good afternoon to all colleagues. Although I've been delegated by El Salvador's Competition Superintendence views expressed herein are my own. Please receive the gratitude of our competition authority and its Superintendent with the UNCTAD for this opportunity to intervene in this renowned competition meeting and to all of you for your attention. Hopefully next year we will greet you in Geneva.

In El Salvador, Competition Law is transversal to all economic sectors, both regulated and not, and from the point of view of the frameworks and mechanisms available for our agency to interact with other public entities linked to industrial policy, the relationship has remained quite complementary throughout time, allowing the SC to promote procompetitive policy considerations.

Broadly, with regards to competition policy, besides Constitutional mandates and different norms applicable to the public sector that in a general sense encourage cooperation among the same, the closest and most specific interaction frameworks between our agency and other public entities are provided by legal instruments such as the Competition Law, the Central American Competition Regulation, multi-agency and bilateral agreements with other public bodies (including regulators), opportunities emanating from sectoral regulation and references in public policies. These legal frameworks provide sources of engagement to interact with other public entities through different mechanisms such as:

1) Information sharing. El Salvador's Competition Law enables the SC to request to any authority the necessary collaboration to perform its attributions. This power allows mechanisms such as holding meetings as needed; requesting the information in written to obtain key inputs that allow the SC to ensure that merger review, enforcement and advocacy acts such as opinions and market studies and monitoring are dully supported by trustworthy information of primary sources.

The SC has in place agreements with other public entities including the authorities in telecommunications, energy , civil aviation, financial, ports, regulatory improvement, consumer

defense, to mention some. These agreements include provisions supporting and regulating the particularities of information sharing and allowing collaboration between the parties to foster procompetitive public policies or to execute joint projects. The SC is also adept to grasp a great understanding about regulated sectors through proactively approaching relevant public entities and experts to deepen the knowledge of the subject matter, which is useful not only from the viewpoint of policymaking, but also technical expertise, leading to better-informed enforcement outcomes.

- 2) **A second mechanism is Conveying results of enforcement acts.** The Competition Law mandates the SC to inform to regulatory entities when the investigation of an anticompetitive practice determines that the cause or problem has its origin in the regulatory framework falling under the competence of such entities, so that they take measures as applicable.
- 3) **The third mechanism is Ex-ante merger review:** Pursuant our Competition Law with regards to mergers in regulated sectors, such as financial, electricity and telecommunications, civil aviation, and maritime the Superintendency's decision is binding upon sector regulators.
- 4) **The fourth mechanism are Opinions and market studies:** By law the SC is entrusted to issue non-binding opinions, ex-officio or upon request, analyzing legal instruments or public procurement processes in which competition might be significantly limited, restricted or impeded. The SC also assesses the competition conditions in a specific market and timeframe through market studies including public policy recommendations.

Considering the non-binding nature of the SC recommendations and opinions, its implementation in full or in part has not necessarily occurred immediately, but as the SC regards these products as relevant inputs for policymakers it has been perseverant over the years in monitoring the implementation of its recommendations and in using promotion tools such as dialogue to sensitize policymakers about synergies and/or tensions with regards to a procompetitive measure.

As it happens around the world, over the years the SC has experienced the adoption of some recommendations, the non-adoption of others and partial implementations. But, as the latest OECD Peer Review notices, recommendations that have been implemented have led to pro-competitive reforms and to an increased coordination between the Superintendency and relevant regulators.

For instance, in 2007 the SC conducted a market study over the wholesale electricity market which identified measures to favor competition jointly with the electricity regulator. In 2011, the regulator modified the methodology for its operations and the applicable regulation to replicate the behavior of a competitive Wholesale Electricity Market, favoring lower prices. In a 2017 assessment of the competition conditions the SC findings upheld the reform to the norms achieved the intended objective, decreasing the market power of incumbents and incentivizing more dynamism among market participants.

Later, in 2017 and 2018 the Central Bank "Technical Rules for the Transparency of Information on Financial Services" and "Norms for the Credit Card System" took in account some of the recommendations made by the SC in the 2011 competition market study about the credit and debit card sector and two opinions issued in 2012.

- 5) **A fifth mechanism are opportunities emanating from sectoral regulations to coordinate with other government agencies within the application of their legal mandates:** The SC seizes opportunities in sectoral regulation general mandates for the respective public authority to collaborate with the SC aimed at preventing anticompetitive practices, as it is the case in the Telecommunications Law, or in broad mandates for competition promotion, as it is the case in the General Electricity Law, Law Governing Civil Aviation, Law on Maritime Ports, among others.

Additionally, sectoral regulation might specifically provide collaboration mechanisms with the Competition Superintendence. For instance, since 2016, the amendments to the Telecommunications Law grant discretion to the telecommunications regulator for requesting opinion to our agency with regards to transactions in the secondary market for transferring the exploitation rights over radioelectric spectrum concessions and about the participation of

economic agents in spectrum award processes. These collaborations make the most of the expertise of each Party and contribute with the regulator's decision making.

For instance, in 2019 the SC issued an opinion in response to a request made by the telecommunications regulator about the possibility of assigning, through a contest, a surplus of 20 MHz in the PCS band to telecommunications operators that did not have spectrum in said frequency and the recommendation was effectively implemented by the regulator, strengthening rivalry in the telecommunications markets.

- 6) **A sixth mechanism are Bilateral and multi-agency agreements with other public authorities.** Our Competition Law provides grounds for establishing coordination mechanisms with regulators and other public entities. From an agency effectiveness perspective, these agreements, which are available in our website, provide the framework for different cooperation mechanisms such as a more expedite way for information exchanges and regulate its operation, favor capacity building activities and other competition advocacy initiatives in matters of common interest, and the framework to specifically coordinate joint projects or multi-year activities.

Tools used within the bilateral agreements framework are: 1) Fostering well-developed trust ties between agencies to favor an open dialogue scenario for regulators to become aware of competition policy concerns and 2) establishing a cooperation system with other public authorities to execute activities of common interest such as and a joint project with the respective authority to foster micro and small enterprises capacities to participate in public procurement, or conducting joint market monitoring with the consumer protection authority during the most egregious time of the pandemic.

- 7) **Another mechanism is Collaboration with the Ministry of Economy within the Regional Competition Regulation and Committee.** Pursuant the Central American Competition Regulation, the representation of El Salvador before the Regional Competition Committee is constituted by the Ministry of Economy and the Competition Superintendence. As you will hear with greater detail in a couple of hours in the following IGE Session, the Regulation provides for cooperation mechanisms such as notifications of enforcement activities, consultations, exchange of

information, technical assistance, and joint training activities, in accordance with the legislation of each Party; and regional competition promotion mechanisms such as opinions, recommendations, regional market studies and monitoring, among other activities.

- 8) **The latest mechanism are References in public policies:** competition is a matter broadly mentioned in national policies that identify sectors or activities with great potential to support economic and social development as well as other aims such as sustained economic growth, attraction, and retention of national and foreign investments. For instance, competition is mentioned in the Trade and Investment Policy for 2020-2050.

A useful tool of this framework is seeking policy coordination by considering the context when planning activities. For instance, the SC is currently developing a market study on competition in logistic services, which could serve as an important input within industrial policy aims and a complement to previous studies that diagnosed the competition conditions at a certain time, among those some in trade-related markets such as passenger air transport, maritime ports, freight transport.

Despite the SC has positive experiences about the adoption of its procompetitive recommendations and it regards competition and industrial policy as effective complements to achieve different public policy objectives, it is aware that depending upon the specific context (situation, jurisdiction, public policy aim being pursued, synchronicity, etc) this relationship could in certain moments demand great perseverance in raising interagency awareness when trying to balance procompetitive alternatives to achieve public policy objectives. Moreover, it has ultimately benefited from the context and from a procompetitive balancing decision of the respective governmental body in charge of safeguarding specific public policy aims.