

Working Group on Cross-Border Cartels UN  
Trade and Development  
Second Meeting of 2025  
10 April 2025

**Andean Community Competition Case:  
Transborder Cartel in the Soft Paper Market  
Colombia – Ecuador**

*Presented by*

*Superintendence of Industry and Commerce  
Colombia*

**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.**



**Superintendencia de  
Industria y Comercio**



# Andean Community Competition Case: Transborder Cartel in the Soft Paper Market Colombia – Ecuador

Superintendence of Industry and Commerce

---

April 10th, 2025



# Index

1. General ideas regarding price fixing case decided in Colombia
2. Timeline CAN investigation
3. Evidence used in the transborder cartel case
4. Defendants' arguments and counterarguments
5. Conclusion

## General ideas regarding price fixing case decided in Colombia

How the investigation  
started?  
Leniency program

Relevant Market:  
- Toilet paper  
- Paper towels  
- Napkins  
- Disposable tissues

The conduct was  
developed in Colombia  
from 2006 to 2013

Main evidence:  
- Dawn raids  
- Testimonies  
- Communications between  
competitors  
- Economic analysis

Price Fixing – Hard Core  
Cartel  
Transference of sensitive  
information between  
competitors

## Timeline CAN investigation

**October, 2016**

SGCA received a formal complaint presented by Ecuador



**November, 2016**

Resolution 1883  
SGCA opened an investigation



**May, 2018**

Resolution 2006  
SGCA fined Grupo Kimberly and Grupo Familia



**November, 2021**

Resolution 2236  
SGCA modified the fine for Grupo Kimberly



**September, 2024**

TJCA upheld SGCA Resolutions 2006 and 2236

## Evidence used in the transborder cartel case

While there was a cartel in Colombia in the soft paper market, the fines imposed by the SGCA were specifically based on the anti-competitive conduct that had effects on the Ecuadorian market

### **Emails:**

TJCA mentioned emails incorporated by the SIC in its Resolutions, which (I) indicated the parent company of Grupo Kimberly was aware of the conduct AND (II) Confirmed the existence of an agreement between managers of the Familia and Kimberly groups at a regional level.

### **Testimonies:**

TJCA had Access to several testimonies that confirmed meetings between managers from Kimberly Colombia and Familia Colombia with their counterparts from Kimberly Ecuador and Familia Ecuador to monitor the price agreement.

### **Parallel Price Evolution:**

Economical analysis that shows the evolution and parallelism of product prices.

# Defendants' arguments and Counterarguments

Topic	Defendants' arguments	CAN Counterarguments
<b>Illegally obtained evidence (fruit of the poisonous tree doctrine)</b>	Use of evidence that was later declared illegally declassified by an Ecuadorian court.	<b>Independent source doctrine</b> and the <b>good faith exception</b> .
<b>On the existence of a cross-border anticompetitive conduct</b>	Grupo Familia argued that the conduct did not meet the criteria of a cross-border practice .	The actions of the parent companies in Colombia instructing their subsidiaries in Ecuador to fix prices in the Ecuadorian market constituted a cross-border conduct.
<b>On the alleged violation of the principle of <i>non bis in idem</i></b>	SGCA fined conduct that had already been investigated and decided by national authorities	<b>Cross-border cartel</b> fined by the SGCA was different from the issues addressed in the national proceedings



Topic	Defendants' arguments	CAN Counterarguments
<b>On the alleged statute of limitations</b>	The infringement was time-barred under Article 43 of Decision 608	The Tribunal found evidence indicating that the <b>anticompetitive conduct continued</b> beyond the date claimed by the plaintiffs, extending to at least December 2013
<b>On the collection and destination of the fines:</b>	The plaintiffs questioned the SGCA's authority to determine the destination of the fines.	SGCA's <b>administrative power</b> under Decision 608 to decide the allocation of fines to promote competition
<b>Disincentive to leniency programs</b>	Peru argued that the resolutions would negatively impact the effectiveness of leniency programs in the region	<b>Evidence was insufficient to demonstrate a significant impact on leniency programs</b>

# Conclusions

Is it necessary to  
implement leniency  
programs in CAN  
regulation?

How to protect  
undisclose  
information?

Implementation of  
new regulation to  
analyze modern  
markets and the use  
of digital evidence



**Superintendencia de  
Industria y Comercio**

