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Organisation de Coopération et de Développement Economiques
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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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OECD Global Forum on Competition

CONTRIBUTION FROM PERU

This note is submitted by Peru as a background material for the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.

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Actual experiences in international co-operation in cartel and/or merger cases

Related the actual experience about international co-operation in cartel or merger we have just development the answer in the questionnaire. But in generally In jurisprudence and activities carried by the Free-Competition Commission, there is not so much experience on international co-operation about the control of international cartels neither about subjects on concerted actions.

About the competition policy in Peru

Before 1990, in Peru the State had a regulating and managing (owner) role carrying out a protection policy to the local industry with a model of import substitution and export subsidies. After 1990, the State assumes the role of market arbiter on the basis of rules of the game and free participation of the stakeholders: businessmen, consumers and the State itself. That is, since that year the components of a free-market economy were applied. The State arbitrates in problems between businessmen and consumers and also looks after and watches over free competition, giving this task to the Free Competition Commission of INDECOPI. The purpose of this policy is to preserve and protect the free-market system and the consumer.

For this reason, the Constitution in force protects this model: market social economy, the freedom to private initiative and the business freedom are guaranteed: free access to market.

Free Competition Commission

The Free Competition Commission is an organisation with technical and administrative autonomy which is part of the National Institute of Defence of Competition and Protection of Intellectual Property (INDECOPI), created in 1991.

The task of the Commission is to watch over the observance of the competition defence regulations contained in Legislative Decree N° 701, as well as those referred to the control of business concentrations in the Electrical Sector, contained in Law N° 26876. This Commission has also an active role in wide spreading the benefits of the establishment of a culture of competition in Peru, being empowered to carry out studies and preparing reports on the subjects that may be deemed necessary.

Legislative Decree N° 701, Law of elimination of monopoly, control and restrictive practices of free competition establishes the prohibition of abusive practices of a dominant position as well as the restrictive practices of competition which involve the concerted action of two or more competitors in the market. The Commission is in charge of looking after this regulation. The investigations carried out by the Commission may be requested by one of the parties and by means of formal complaints submitted by the agents, or by the investigations started officially by the Commission.

With respect of the abusive practices of a dominant position, the punishable practices include: the unjustified negative to contract, the application of unequal conditions to equal services on commercial relations, the tied sales and any other practice of similar effects.

The previous authorisation forms of concentrations in the electrical sector are carried out under Law N° 26876 which demands an analysis on the effects of concentration in competition in the electrical sector for those cases involving a concentration above 5% of the market (measured in terms of revenues) in the case of vertical concentration and 15% in the case of horizontal concentration. Concentration is understood as merges, acquisition of shares and/or assets, joint ventures, etc.

Furthermore, since April 2001, the Commission is in charge of evaluating the business activities of the State, on the basis of a methodology fully developed by INDECOPI and in response to a demand of the National Financing Fund of the State Business Activity (FONAFE). The studies conducted by the Commission are oriented to evaluate the legality and the subsidiary nature of the companies kept by the Peruvian State. Up until now, the Commission expressed its opinion about State-owned companies in different sectors, such as: commercial airlines, post, naval construction and repairation, editorial, real estate and coca leaf trading.

Nevertheless, it is important to point out that the Commission is not empowered to set prices, grant compensations, apply a control of mergers in markets other than the electric sector, and apply the rules concerning abuse of dominant position and concerted practices to companies operating within the telecommunication sector, as this is the task of the Supervisor Organisation of Private Investment in the field of Telecommunications (OSIPTTEL).

From the jurisprudence of the Commission we can point out the investigation officially conducted in 1997 against poultry companies and the Peruvian Aviculture Association because of the concerted fixing in the price of frozen chicken imposing fines to all the involved parties. Likewise, in 2001 the Commission prepared a report assessing the effects on the market of the acquisition of the Electroandes S.A., a State-owned electric company, on behalf of the company PSEG Global Inc. which hold assets in electrical distribution in the Peruvian market.

Needs of Technical Assistance

The most important needs of technical assistance that may be offered by OECD to the Commission are those referred to the personnel training of the Technical Department of the Commission studying in depth the assessment techniques of cases related to abusive practices of dominant positions and restrictive practices of free competition.

Such training could be received through the participation in conferences or seminars organised by the OECD as well as by means of documents referred to this analysis.

The Commission must also publish the guidelines corresponding to the assessment criteria of abusive practices of dominant positions and restrictive practices of free-competition in order to make more predictable the work of the Commission to their users. In this respect, preparing these documents, the OECD could serve as source of advising through the above-mentioned methods or other more direct methods.

ANNEX A

PAIS: PERU

AGENCY: FREE COMPETITION COMMISSION - INDECOPI

EXPERIENCE: WORKING SINCE 1991

This experience covers the period from 1 January 2000 to the present.

1. Provide a copy of each formal co-operation agreement between your country or your competition agency and a foreign country or competition agency relating to competition investigation or cases.

The Free Competition Commission of INDECOPI doesn't have an agreement with other competition agency about mutual co-operation in the investigation of cases.

2. Describe your country laws or regulations that relate to or effect you agency's ability to exchange information or co-operate with competition agency.

The Law doesn't permit an interchange of information, nevertheless if the information is not confidential, the public can access to it. In consequence, if a competition agency asks for information that is public, the Commission will provide it.

Cartels

3. If you agency issued one or more formal requests to a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests.

We haven't made a formal requirement for information. But, we asked for information to the FTC. If that's the case, we can say that we just required information once, for one case.

4. If your agency received one or more formal requests from a foreign competition agency for information or assistance in an investigation or case involving a hard core cartel, please provide the following information about such requests

Once we received a communication from CLICAC, the Competition Agency of Panama, asking for the proofs and information about the case of presumption concerted prices in the commissions paid to the travel agencies for selling airline's tickets.

5. Please describe any other instances of co-operator with a foreign competition agency core cartel investigation or case not described above, such as meetings, telephone or email

communication, including, if possible the co-operating country or countries, the nature of the co-operation and the importance or significance of the co-operation to your agency.

In all the international meetings, like APEC, ALCA or FTAA, the agents of the competition agencies make contact. The consults are made verbally or by e-mail subsequently the questions.

6. State the number of instances in which a hard core cartel investigations or case could have benefited from information or co-operation from a foreign competition agency but your agency did not request such assistance because you knew that it could not or would not be granted. Describe the type of assistance that would have been useful and impact of its unavailability on your enforcement effort.

In our experience we don't cope cases with such characteristics.

Mergers

7. Identify each merger that your agency reviewed that, to your knowledge, was also reviewed by the competition agency of another country.

In Perú, just the mergers of electrical companies are analysed. In that way, the case of ENDESA had repercussions in Chile, Argentina and Peru, because the economical group had investment in these countries. The Free Competition Commission asked for information related to the Fiscalía Nacional Económica de Chile and to the Superintendencia de Administración de Fondos de Pensiones en Chile.

8. For each investigation or proceeding involving a merger in which there was communication between your competition agency and the competition agency of another country during the course of the investigation or proceeding.

Any other kind of information has not been required to another competition agency.

9. Describe any instances in a merger case of investigation
 - a. in which your agency sought the assistance of a foreign competition agency but it was denied;

We don't need this assistance.
 - b. in which your agency sought a waiver of confidentiality restrain from one of the merging parties but it was denied.

We don't have this problem because we don't need this assistance.

10. Describe any investigation or proceeding involving a merger that would have benefited from co-operation with a foreign agency but your agency did not pursue such co-operation because

you knew that it would not be possible. Describe the type of co-operation that would have been useful and the impact of its unavailability on your enforcement effort.

The cases that we administration are local, then we don't have experience about this question.