

Unclassified

DAF/COMP/AR(2014)31

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

28-Nov-2014

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2014)31
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PERU

-- 2013 --

17-18 December 2014

This report is submitted by PERU to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 December 2014.

JT03367364

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

EXECUTIVE SUMMARY

1. This report contains information about the development of the Peruvian Competition Policy throughout 2013, according to the experience of the Peruvian Competition Authority, Indecopi¹. For the first time, the Indecopi report, together with the evolution of actions against anticompetitive behaviour, is introducing some important developments on its role in the elimination of bureaucratic barriers.

2. No normative changes on the Competition Act² have taken place; however, the Commission for the Defense of Free Competition (hereinafter, CLC) has issued Confidentiality Guidelines aim at facilitating citizens' applications for confidentiality in the proceedings under the scope of the Competition Act.

3. On the other hand, in 2013, Indecopi's mandate on its role of elimination of bureaucratic barriers was significantly strengthened by means of the Law 30056, increasing the monetary sanctions for the infringement of the legal provisions for the simplification of bureaucratic procedures and other regulations regarding the legality, design and rationality of public regulations, and introducing a fast track procedure to sanction misbehaviour in this regard.

4. In 2013, the Technical Secretary of the CLC of Indecopi (hereinafter, the Technical Secretary³) had been focused on closing pending investigations, overcoming the great deal of caseload accumulated over years. This increase in efficiency has been complemented with greater fines imposed in comparison with the 2012.

5. In the case law, some important sanctions have been imposed by the CLC⁴ and the Competition branch of the Tribunal for the Defense of Competition and Intellectual Property of Indecopi (hereinafter,

¹ Indecopi is the acronym of Instituto de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (Spanish for Institute for the Defense of Competition and the Protection of Intellectual Property), an independent public body created in 1992 for the supervision of the sound development of free markets. It is necessary to mention that the competition authority for the telecommunications markets is the Organismo Supervisor de Inversión Privada en Telecomunicaciones – Osiptel [Spanish for Supervisory Agency of Private Investment in Telecommunications]. Indecopi's mandates on competition issues involves among others, the supervision of anticompetitive conducts and the elimination of illegal or irrational bureaucratic barriers impeding market entry or increasing the costs of continuity for new firms or established businesses respectively.

² Act for the Repression of Anticompetitive Behavior, issued on June 25th, 2008.

³ The Technical Secretary acts as the prosecutor of anticompetitive behaviour, having broad power to investigate, request and gather information about market conditions and agents, to initiate administrative sanctioning proceedings and to issue recommendations to the Competition Commission for the imposition of fines and corrective measures for the commission of anticompetitive practices. The Technical Secretary can also elaborate reports on market conditions and recommend the adoption of guidelines regarding proceedings and competition enforcement.

⁴ The Commission for the Defense of Free Competition of Indecopi is the first instance decision-making body for infringements to the Competition Act (See footnote 3). It has powers to impose fines up to 12% of defendant's gross revenue and up to USD 130 000 (approx.) to the defendant's directives, corrective

the Tribunal⁵). In particular, the Commission imposed fines for USD 2 million in the cement market and Tribunal confirmed a fine for about USD 7.4 million in the public procurement of medical oxygen market.

6. The budget, assets and human resources of the branches in Indecopi related to competition enforcement and market assessment have increased year by year, meeting to some extent the ever present pressure of society for results and the continuously increasing market dynamism that generates an expectative for an increase in the activities of authority for the benefit of society.

7. Peru and its competition authority (Indecopi) are looking for concluding and enforcing cooperation agreements on competition policy with many other agencies, not only from the Latin American region but from the rest of America and overseas, within the context of FTAs or not. Cooperation should address common problems with other competition agencies regarding exchange of information, confidentiality, technical and human resources and competition advocacy. Training programs and inter-agency internships on competition policy are also a priority on the agenda for the next years.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Elimination of Bureaucratic Barriers to Entry: Law No. 30056

8. Indecopi's mandate on competition issues include identifying illegal or irrational bureaucratic regulations⁶ imposed by public entities at any level of government (national, regional or local). The legal framework conferring that specific role defines with precision the *type* of public regulations that can be subject to the ex-post evaluation of the competition authority. In particular the Commission for the Elimination of Bureaucratic Barriers (hereinafter, CEB) is the autonomous body that investigates and prosecutes the illegality or irrationality of requirements, prohibitions, and fees/payments on procedures typically, but not only, related to public authorisations and licenses.

9. Some typical examples are related to documentation and other requisites required by municipalities to authorise the launch of new businesses or those to authorise housing and commercial building projects.

10. During the first semester of 2013 Indecopi proposed to the Ministry of Economics and Finance some legal measures to strength its ex-post supervision on the matter. Some of the most relevant include: i) increasing the value of monetary sanctions for infringements by public entities and public servants to the legal provisions for the administrative simplification and decisions of the Commission, ii) A fast track procedure to sanction entities or public servants whenever a previously illegal or irrational bureaucratic bottleneck has been detected in ex-officio investigations or in procedures initiated by a party; this procedure requires the administrative decision to be published in the official daily newspaper.

measures (behaviour remedies), approve guidelines and recommend advocacy measures through the President of Indecopi.

⁵ The Tribunal is the second and final decision-making body for competition infringements. The Competition branch of the Tribunal reviews the decisions of the CLC and other first instance bodies on appeal and has the same sanctioning powers. Its decisions could be reviewed by the Judicial Branch.

⁶ Law No. 1033, approved in 2008, defined the organisation and mandates of Indecopi. The full official text can be downloaded from:

< <http://www.indecopi.gob.pe/repositorioaps/0/0/par/legislacion/leyorganizacionfunciones.pdf> >

11. These measures were included in the Law No. 30056, approved by the National Congress in July 2013.⁷

1.2 Other relevant measures, including new guidelines

1.2.1 Confidentiality Guidelines the Submission of Information in procedures before the CLC

12. In August 2013, the CLC approved the Confidentiality Guidelines draft introduced by the Technical Secretariat. These Guidelines are aimed at providing direction to persons and companies about confidentiality of information being submitted to the Technical Secretariat and the Commission in its investigation and enforcement activities⁸. The Guidelines are based in the decisions the Competition Commission and the Tribunal issued in the last decade and comprises not only the protection of commercial and industrial secrets, but also the protection of third parties identity in their collaboration with the authority and the express recognition that any information or document that constitutes evidence of anticompetitive behaviour could not be subject to confidentiality, in order to protect the defendants' right to defence.

1.2.2 Guidelines for the Calculation of Monetary Sanctions for the CEB: Resolution of the Presidency of the Board of Directors 317-2013-INDECOPI

13. Regarding the role of identification and elimination of bureaucratic barriers, the competition authority approved and implemented the methodology to calculate monetary sanctions as instructed in the Law No. 30056 (See point 1.1, A).⁹ The methodology was designed by the Office for the Supervision and Prosecution at Indecopi, on the basis of the general methodology that was approved by the Board of Directors of the institution. That general methodology was developed by the Office of the Chief Economist in a series of documents published from 2012 to 2013.¹⁰

14. The new provisions that strengthen Indecopi's actions against bureaucratic barriers, together with the improved predictability of the administrative procedure and the calculation of monetary sanctions, have increased the ability of the institution to dissuade infringements the legal provisions regulating the legality, design and rationality of public rules and regulations. As a matter of fact, more than 25 public institutions have voluntarily eliminated about 370 bureaucratic barriers so far, on the basis of the increased fear of detection and sanction.

1.3 Government proposals for new legislation

15. A Legislative proposal has been introduced in 2013 for controlling the prices of medicines. Indecopi objected such proposal, considering that it was not a result of a thorough analysis of all the

⁷ The complete text of the Law can be downloaded from:

< <http://www.indecopi.gob.pe/repositorioaps/0/3/jer/legislacion/Leyes/ley30056.pdf>>

⁸ The Confidentiality Guidelines could be accessed in the following link (in Spanish):

http://www.indecopi.gob.pe/repositorioaps/0/2/jer/legislacion_lineamientos/LineamientosConfidencialidadCLC.pdf

⁹ The complete text of the corresponding Resolution can be obtained in the following link:

http://www.indecopi.gob.pe/repositorioaps/0/3/jer/legislacion/Resoluci%C3%B3n%20N%C2%BA%20317-2013-INDECOPI_COD_Aprueban%20Tabla%20de%20Graduaci%C3%B3n.%20Infracciones%20y%20Sanciones.pdf

¹⁰ The last and definite version of the methodology was published in the Working Paper series of the Office of the Chief Economist in April 2013. For the document follow the link:

< <http://www.indecopi.gob.pe/repositorioaps/0/0/jer/docstrabajo/DocTrabN01-2012V13.pdf>>

relevant variables that could affect the medicines market in Peru, and emphasising the scarcity problems that could arise from an ill-regulated market. By November 2014 such proposal has not been approved but is still in the table of commission in the Congress.

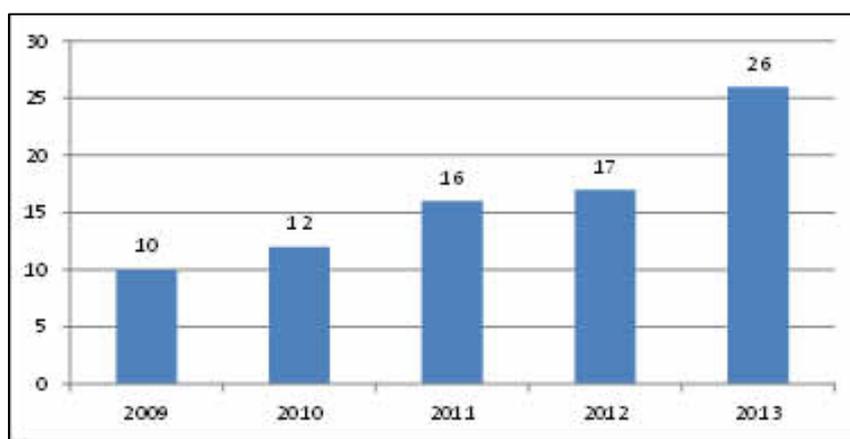
2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of competition authority

16. In 2013, the Technical Secretary of the CLC of Indecopi focused on closing pending investigations, overcoming the great deal of caseload accumulated over years. The following chart shows the annual evolution of concluded investigations of procedures initiated as a consequence of alleged infringements to the Competition Act.

Figure 1: Investigations concluded by the Technical Secretariat [2009 – 2013]



Elaboration: Technical Secretariat - CLC

17. This increase in the administrative efficiency has been complemented with greater fines imposed in comparison to 2012 and a greater number in dawn raids performed by the Technical Secretariat of the CLC. Indeed while in 2011 and 2012 only six (6) companies were raided, twenty-seven (27) businesses were subject to dawn raids in 2013. The results of the increasing number of onsite investigations will be observed in the near future.

18. Regarding the elimination of bureaucratic barriers, in 2013 the CEB identified 613 illegal or irrational barriers, most of which were imposed by the national transportation authority and local governments. From these barriers, 288 were either confirmed by the Tribunal (See footnote 6) or not challenged by the public entity as of the end of 2013. In 2014 the Tribunal will take a final administrative decision regarding the remaining decisions of the corresponding first instance.¹¹

¹¹ Details of this information can be obtained from the Statistical Report on Bureaucratic Barriers published by the Office of the Chief Economist at:

http://www.indecopi.gob.pe/repositorioaps/0/0/jer/estadisticas_portal_principal/Informe_009-2014-GEE.pdf

2.1.2 *Description of significant cases*

- Cement

19. In February 2013, the Competition Commission fined several firms for agreeing a vertical restriction in the cement market. As a result of a successful dawn raid, the Technical Secretariat of the Competition Commission obtained evidence of a vertical agreement among a quasi-monopolist cement company (dominant in the central region of Peru) and its three only distributors, aimed at obstructing the entrance of a new competitor in that market by closing the distribution channel downstream. The obstruction (boycott) was implemented through refusals to deal and refusals to concede commercial benefits to all distributors selling the competitor's cement. The Commission imposed total fines for more than USD \$ 2 million to the companies and its directives involved in the infringement. The appeal of the companies is pending decision by the Tribunal of Indecopi.

- Public transport in Puno

20. In March 2013, the Competition Commission fined several transport companies for fixing prices of public transport in Puno city. The Technical Secretariat of the Competition Commission collected information about the increase in prices and the declarations of bus drivers, who confirmed the cartel among the public transport companies. The Commission imposed total fines for more than USD \$ 150m. The appeal of the companies is pending decision by the Tribunal of Indecopi.

- Freight and public transport in Huaraz

21. In 2013, the Tribunal of Indecopi confirmed the sanctions imposed by the Competition Commission to several transport companies in two different markets (freight and public transportation) in Huaraz city. The Commission found that several companies agreed to restrict share the freight market by establishing load quotas. In the other case, the Commission found that several taxi companies had fix prices for their public transportation services. The Tribunal confirmed total fines for more than USD \$ 1 million.

- Medicinal oxygen

22. In July 2013 the Tribunal of Indecopi affirmed the decision of the Competition Commission that sanctioned a cartel in public procurement of medicinal oxygen. The Commission found, and the Tribunal confirmed, that between 1999 and 2004 the three main producers of medicinal oxygen (around 90% of market) agreed to geographically share the public tenders the Government carried out in order to acquire this essential good for health. The agreement was implemented through «cover biddings», where the designated winner submitted the highest acceptable bids and the others submitted bids higher than the bid of the designated winner or submitted bids known to be too high to be accepted. The Tribunal confirmed total fines for about USD \$ 7.4 million.

3. The role of competition authorities in the formulation and implementation of other policies

23. Additionally, it is worth to mention that, in September 2013, Lima hosted the XI OECD – IDB Latin American Forum on Competition (LAFC), the Iberoamerican Competition Forum, the Regional Competition Center for Latin American and the I Competition Day in Peru. Those events constituted a great opportunity for Peru to serve as a hub in the most important discussions of our regional competition authorities in the current development of their activities. Topics discussed included «the importance of competition for the development of Latin American economies», «effectiveness of dawn raids in the

prosecution of cartels», «the importance of inter-institutional cooperation agreements» and «adequacy in the determination of fines».

24. Moreover, the event served as the framework for the signing by Indecopi alongside Chile and Colombia, of the «Declaration of Lima», an instrument aimed at strengthening cooperation and training activities on competition enforcement in the region.

4. Resources of competition authorities

4.1 Resources overall:

4.1.1 Annual budget:

25. As can be seen below, the overall annual budget for the branches related to competition activities (market assessment and enforcement) seems to have decreased slightly (Δ 3.5%). However this reduction is the consequence of the creation of a new branch in the Tribunal of Indecopi for reviewing bankruptcy proceedings, a function that the competition branch of the Tribunal Indecopi had performed until 2012. Moreover, it is expected that this budget could be increased in the following years in order to meet the persistent society demands and the ever growing market dynamics.

Table 1: Annual budget of branches of Indecopi related to competition activities [2012 – 2013]

Branches	2012	2013
Technical Secretariat and CLC	1 758 560 PEN 666 577 USD	2 056 955 PEN 734 626 USD
Tribunal (Competition branch) ⁽¹⁾	2 385 910 PEN 904 373 USD	2 076 510 PEN 741,610 USD
Office of the Chief Economist ⁽²⁾	1 427 145 PEN 540 956 USD	1 243 433 PEN 444 083 USD
Indecopi Total ⁽³⁾	5 571 615 PEN 2 111 906 USD	5 376 898 PEN 1 920 319 USD

PEN = Peruvian Nuevos Soles (local currency)

Notes:

(1) The chart presents the total budget of the branch of the Tribunal of Indecopi in charge of reviewing appeals to decisions of the CLC, though it also reviews appeals in proceedings on advertisement, bureaucratic barriers and antidumping.

(2) The chart presents the total budget of the Economics Research Department, though only a part of its resources are focused of market assessment activities (other activities include reviewing quality of management and support to other areas of Indecopi).

(3) This total does not include the budget corresponding to the CEB

4.1.2 Number of employees (person-years)

26. The number of employees focused on competition activities has increased (Δ 2). It is also expected that the number of employees will increase as the enforcement and assessment activities increase.

Table 2: Employees of Indecopi related to competition activities [2012 – 2013]

Employees	2012	2013
Economists	24	22
Lawyers	15	19
Support staff	3	3
Indecopi Total	42	44

Note:

(*) The table includes information of employees from the Technical Secretariat and the CLC, the Office of the Chief Economist, the Legal Department and the Tribunal of Indecopi (Competition branch). It also includes personnel that work partial-time for the authority, such as Commissioners and Members of the Tribunal. It does not include employees from the CEB.

4.2 *Human resources applied to:*

Table 3: Employees of Indecopi related to competition activities by application [2012 – 2013]

Employees ⁽¹⁾	2012	2013
Enforcement ⁽²⁾ and Advocacy	25	36
Market assessment ⁽³⁾	4	5
Indecopi Total	29	41

Notes:

(1) This table includes information of employees from the Technical Secretariat, CLC, the Office of the Chief Economist, the Legal Department and the Tribunal at Indecopi (Competition branch). It also includes personnel that work partial-time for the authority, such as Commissioners and Members of the Tribunal.

(2) Considering that in Peru, a merger control system for markets doesn't exist, other than related to the electricity sector, the human resources are not differentiated by the type of enforcement (*ex ante* or *ex post*) they are applied to.

(3) Although enforcers usually are engaged in market assessment; this section shows only the number of employees at the Office of the Chief Economist.

5. **Summaries of or references to new reports and studies on competition policy issues¹²**

5.1 *Competition in the markets for notary services*

27. The Office of the Chief economist issued in December 2013 an internal Discussion Paper on the analysis of the role of entry and the number of competitors in the markets for notary services. The document modelled competition in the market by characterising the competitive interactions in the short run conditioned to long run entry and location decisions. Those decisions are regulated based on the *numerus clausus* criteria common on the Latin notary system adopted by numerous countries by which entry is limited and controlled by a council of notaries and government officials.

28. Based on a sample of about 90 notaries from diverse geographic markets across the country, the empirical strategy identifies the causal effect of the number of competitors on the expected prices of a number of services that are commonly demanded by non-specialised customers (e.g., households, small businesses) by means of reduced form linear regressions using the variance of the information along the cross section of geographic markets.

29. The evidence suggests that one additional notary in a specific geographic market can be associated with lower mean prices in a range that goes from -2% to -8% depending on the service. These results are to be used for the analysis of future reforms aim at improving competition.¹³

5.2 *The cost of legal barriers for pharmaceutical and personal care products*

30. The Office of the Chief Economist issued a public Monitoring Report to analyse the impact of bureaucratic barriers on the authorisations required by the General Direction for Medicines, Chemical Products and Drugs (DIGEMID).¹⁴ The economic team worked together with the Commercial Association of Lima (Cámara de Comercio de Lima), one of the largest private associations of firms in the Country.

¹² The reports summarised in this section does not include the regular Consumer's and Wholesale Price Monitoring Reports issued monthly by the Office of the Chief Economist that are used as a screening tool for key final and intermediate markets.

¹³ In 2010 the Office of the Chief Economist published a Working Paper on the main features conditioning competition in the markets for notary services. That document can be downloaded from the following link:

< <http://www.indecopi.gob.pe/repositorioaps/0/0/jer/publicacionesqs/DocTrabN01-2010-A.pdf>>

¹⁴ For the Monitoring Report follow the link:

31. Based on the information provided by the companies and the quantification performed using a Standard Valuation Method, there were identified up to 11 bottlenecks that might be impeding the launch of pharmaceutical products with a cost of more than US\$ 12 000 on paperwork for one product. Likewise, there were identified 10 bottlenecks for the commercialisation of personal care products for a cost per product of about US\$ 1 600.

32. The conclusions were discussed with DIGEMID's officials as a mean to help on the evaluation of the rationality of the requirements. Similar studies for other economic activities are to be conducted along 2014.

5.3 Price Monitoring for Inter-Province Passenger Road Transportation Services

33. As of 2012, more than 72 million passengers travelled every year using one of the almost 350 formal companies that offer road transportation services in different inter-province routes across any two or more bordering regions. As it is common, every Christmas and New Year's Evening seasons families travel from Lima to diverse destinations around the country, increasing significantly the demand for seats.

34. The Office of the Chief Economist prepared an extensive Monitoring Report analysing several aspects of the markets for passenger road transportation services (number of firms, capacity in transport units, fares, etc.) that was published some days before Christmas¹⁵, including a simple yet informative price comparison before and after fare adjustments for the most demanded routes (e.g. Lima-Cuzco) and main companies. The general public could obtain information on how firms react to demand shocks, depending on intra and intermodal competition.

35. Observed average price increases in a route ranged from 17% to almost 50%, whilst the variance registered of such increases in a route was in general relatively large. For instance, for the route Lima-Arequipa, one firm increased its prices on average around 97% whereas a comparable competitor increased its prices to 21%.

36. The information analysed included also yearly data of complaints presented by consumers before Indecopi from 2011-2013¹⁶, monetary sanctions imposed by the institution for infringements to the Code for Consumer's Protection and other useful administrative data aim an increasing transparency in the market for consumers.

< <http://www.indecopi.gob.pe/repositorioaps/0/0/jer/publicacionesqs/ObservatorioMercados-2013.pdf> >

¹⁵ For the Monitoring Report follow the link:

<http://www.indecopi.gob.pe/repositorioaps/0/0/jer/publicacionesqs/ObservatorioMercadosTIPT-2013_v2.pdf>

¹⁶ Indecopi is the National authority for the protection of consumer's rights.