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LATIN AMERICAN COMPETITION FORUM

Session I: Competition and Poverty Reduction

Contribution from Peru

18-19 September 2012, Santo Domingo, Dominican Republic

The attached document from Peru is circulated to the Latin American Competition Forum FOR DISCUSSION under Session I of its forthcoming meeting to be held on 18-19 September 2012 in Santo Domingo, Dominican Republic.

Contact: Jeremy WEST, Senior Expert
Tel: +33 (0) 1 45 24 17 51; Fax: +33 (0)1 45 24 96 95; Email: jeremy.west@oecd.org

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LATIN AMERICAN COMPETITION FORUM

-- 18-19 September 2012, Santo Domingo (Dominican Republic) --

Session I: Competition and Poverty Reduction

-- CONTRIBUTION FROM PERU --

1. Defining poverty

1. Poverty can be measured in several different ways and, depending on the variables applied, different outcomes are possible. In Peru's case, the primary method the Government uses to define poverty when analyzing and evaluating economic and social policy measures is to calculate the percentage of persons living below the poverty line. This line includes two components: the nutrition-based component (also known as the extreme poverty line) and the non-nutrition-based component.¹ Applying this method, poverty in Peru has been declining in recent years despite the current international crisis. Specifically, the total poverty rate in 2011 was 27.8% and the extreme poverty rate was 6.3% (see Table 1). More, precisely, the decline observed in this indicator during 2011 means that approximately 800,000 persons are no longer poor and that over 360,000 persons no longer live in conditions of extreme poverty.

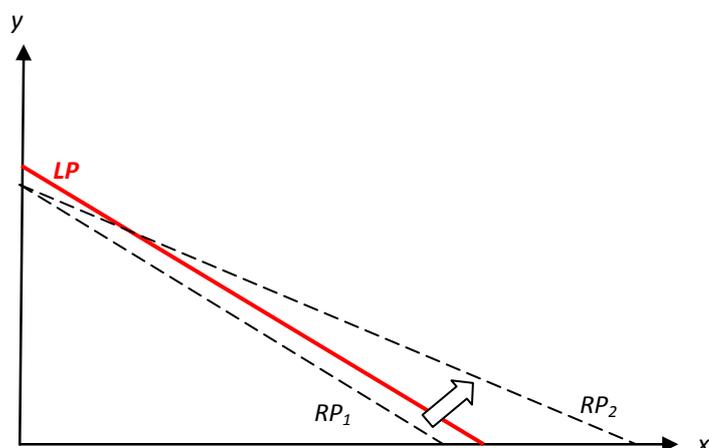
Table 1. Peru: Total and Extreme Poverty by Residential Area (% of population)

	2009	2010	2011
Total poverty			
National	33,5	30,8	27,8
Rural	66,7	61,0	56,1
Urban	21,3	20,0	18,0
Extreme poverty			
National	9,5	7,6	6,3
Rural	29,8	23,8	20,5
Urban	2,0	1,9	1,4

Source: Ministry of Economics and Finance (2012).
Multiannual Macroeconomic Framework 2013-2015.

¹ It is important to point out that the National Household Survey conducted by the National Institute of Statistics and Informatics (INEI) allows poverty to be measured in many ways that are utilized by other Government agencies in their decision-making and fund-allocation processes. The same is true of the Ministry of Development and Social Inclusion.

Figure 2. The effects of introducing competition



3. The effect of competition in the markets for essential goods and services, in reality

7. In recent years, the *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* [National Institute for the Defense of Competition and Protection of Intellectual Property] (Indecopi) has gained valuable experience applying Peru's competition laws to markets of essential goods, such as chicken, rice, milk, oxygen for medical use, cement, and medications. It has also gained valuable experience applying those laws to markets of basic services, such as automobile insurance, notary services, and public transport. A brief description of each of these cases follows:

- In the case of chicken (1996), Indecopi, both through the *Comisión de Defensa de la Libre Competencia* [Defense of Free Competition Commission] (CLC) and the *Tribunal de Defensa de la Competencia* [Tribunal for the Defense of Free Competition] (hereinafter, the Tribunal), sanctioned the member companies of a poultry association for collusion to fix prices and limit chicken production, one of the products in the basket of basic household products.²
- In the case of sugar (2006), after indications of possible collusion to fix prices and control sugar production, a thorough investigation was conducted in 2006. The investigation found that external factors explained the behavior patterns of the sugar market. These external factors determined supply conditions, independent of the will of the investigated companies.³
- In the case of milk (2007), a dairy farmers' association lodged a complaint against a company that is dominant in the production of evaporated milk, claiming that this company was imposing excessively low purchase prices. However, considering that the nature of the contested behavior could not affect competition (and could potentially lower the price of dairy products) the complaint was dismissed for lack of grounds.⁴
- In the case of oxygen for medical use (2008), the CLC sanctioned companies that provided this product to Peru's public health system after it was found that between 1999 and 2004 these companies had distributed geographically the bids for purchase of the product, demand for which

² See: Resolution 276-97-TDC of 19 November 1997, at: <http://aplicaciones.indecopi.gob.pe/ArchivosPortal/articulos/2005/3/1-66/Re276-1997.pdf>

³ See: Resolution 029-2009/CLC-INDECOPI of 7 May 2009, at: <http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES029-2009/Res029-2009.pdf>

⁴ See: Resolution 005-2010/ST-CLC-INDECOPI of 15 April 2010, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_005_2010_ST_CLC/Res005-2010ST.pdf

is inelastic because it is indispensable for sustaining the life and health of persons that do not have access to private establishments.⁵

- It is also important to point out that in 2010 two cases were opened that are still in process. The first case is looking into the possibility that a vertical boycott scheme was engaged against a newcomer to the cement market in Peru, a market that is highly concentrated and geographically distributed.⁶ The second case is a sanctioning action against several pharmacy chains for allegedly colluding to fix prices of some medications and supplements that are consumed on a massive scale.⁷
- As relates to basic services, in 2004 the CLC sanctioned companies that offered prepackaged auto insurance policies (targeted to the mass public) on a national scale, given that between 1999 and 2003 they had colluded to fix the amounts of premiums and minimum deductibles associated with those policies.⁸
- Additionally, several proceedings were opened against transport services in various zones of the country. These cases have to do with associations and groups of transport operators (both freight and passengers) colluding to fix service rates charged to users, to the detriment of the population. Several of these cases are still open.⁹
- Lastly, in the case of notary services (2011), proceedings have been opened against a society of notaries for allegedly having given anti-competitive recommendations to its members to fix the prices and conditions of notary services related to real estate guarantees (pledges), which are normally used for small loans.¹⁰

8. Unfortunately, we do not have precise studies of the real impact these decision have had on the poorest sectors of the populations.

4. Competitive markets and Government controls/interventions on behalf of the poor

9. On a regular basis, the State is pressured to intervene directly in the markets to provide goods or services, either through State-owned corporations or through subsidies of supply or demand. These calls

⁵ See: Resolution 051-2010/CLC-INDECOPI of 13 August 2010, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_051_2010_CLC/Res051-2010.pdf

⁶ The brief note at the start of this proceeding can be found at: http://www.indecopi.gob.pe/repositorioaps/0/2/jer/notas_interes_clc/NotasInicioProc/Res-004-2010-ST-CLC-INDECOPI.pdf

⁷ The brief note at the start of this proceeding can be found at: http://www.indecopi.gob.pe/repositorioaps/0/2/jer/notas_interes_clc/NotasInicioProc/Nota017-2010-ST-CLC-INDECOPI.pdf

⁸ See: Resolution 009-2008/CLC-INDECOPI of 25 February 2008, at: <http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES009-2008/Res009-2008.pdf>

⁹ See, for example, the following resolutions: Resolution 085-2009/CLC-INDECOPI of 22 December 2009, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_085_2009_CLC/Res085-2009.pdf

Resolution 069-2010/CLC-INDECOPI of 6 October 2010, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_069_2010_CLC/Res069-2010.pdf

Resolution 055-2011/CLC-INDECOPI of 11 October 2011, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_055_2011_CLC/Res055-2011CLC.pdf

Resolution 056-2011/CLC-INDECOPI of 11 October 2011, at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_056_2011_CLC/Res056-2011CLC.pdf

¹⁰ Proceedings initiated through Resolution 019-2011/ST-CLC-INDECOPI of 27 December 2011.

for increased intervention by the State in the economy, though not wholly incompatible with an overall market development policy that promotes and defends competition, carry the risk that if they are not properly targeted they could end up excluding private competitors from the market.

10. In Peru, the State's interventions in the economy to conduct business activities that supply goods and services are bound to compliance with three requirements established in the Political Constitution of Peru, namely: (i) they must be authorized by express law; (ii) they must be subsidiary¹¹ to the activities of the private sector; and (iii) they must be founded on reasons of high public interest or manifest national convenience.¹² It is important to point out that, pursuant to Article 14.3 of Legislative Decree 1044¹³, Indecopi's Unfair Competition Monitoring Commission is responsible for analyzing the subsidiary role of the State's business activities.

11. To date, several of these cases have been analyzed by Indecopi, particularly complaints of services rendered at differentiated rates¹⁴ by two hospitals and four specialized institutions of the Ministry of Health. In the two hospital cases, Indecopi found that the services provided at differentiated rates were not authorized by express law.¹⁵ The cases of the specialized institutions are still being investigated.

5. Competition policies that target impoverished consumers

12. Competition policies that target poor consumers should not be different than those that target the rest of society. This notwithstanding, though policies that defend competition help, they do not appear to be sufficient to solve the problems faced by the poorest segments of the population when seeking access to goods and services. Therefore, States can and must employ other policies that focus more directly on poverty reduction.

13. The institution has been prioritizing *ex officio* actions conducted on the grounds that indications of anti-competitive practices exist and as a function of the sensitive nature of the good or service in question. This means that, though the potential effects on poverty are not explicitly considered when determining which sectors should be investigated, those investigations opened at the initiative of the authorities themselves are conducted primarily in the essential goods and services markets.

¹¹ The principle of subsidiarity means that the State can participate in supplying goods or services that are in the interest of society, insofar as no private supply capable of meeting the demand for those goods and services exists; or that, even when private supply does exist, it fails to serve some segments of the population because of their characteristics and conditions. In other words, in conducting its business activity, the State must avoid becoming a substitute supplier of goods or services that could be supplied by the private sector.

¹² “**Article 60.** The State recognizes economic pluralism. The national economy is sustained in the coexistence of diverse forms of ownership and enterprise. Authorized solely by express law, the State may subsidiarily engage in business activities, directly or indirectly, for reasons of high public interest or manifest national convenience. Business activity receives the same legal treatment, whether public or private.”

¹³ The Legislative Decree that approves the Unfair Competition Enforcement Law, of 25 June 2008.

¹⁴ Services under differentiated rates are those services rendered by public hospitals or health institutions (state-owned) at a higher rate than is charged to other patients (such as, for example, those who belong to the *Seguro Integral de Salud*, subsidized patients, etc.) in exchange for receiving care that has preferential characteristics like: shorter wait times, private hospital rooms, etc.

¹⁵ See: Resolutions 2549-2010/SC1-INDECOPI and 2550-2010/SC1-INDECOPI of 14 September 2010, at: http://sistemas.indecopi.gob.pe/sdc_Jurisprudencia/documentos/1-93/2010/Re2549.pdf and http://sistemas.indecopi.gob.pe/sdc_Jurisprudencia/documentos/1-93/2010/Re2550.pdf, respectively.