

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Peru****-- 2018 --**

This report is submitted by Peru to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Peru

Executive Summary

1. 2018 was an important year for the consolidation of the activities of the Free Competition Commission of Indecopi and its Technical Secretariat, not only in relation to their regular activities of monitoring markets and prosecuting infringements to the Peruvian Competition Act, the Legislative Decree 1034 (hereinafter, the Act), but also in terms of activities to promote competition, publishing “advocacy reports”, and the amendments introduced in the Act, in order to strengthen its powers.
2. Particularly, in 2018 Indecopi imposed fines more than 248% in comparison to 2017. That is to say, more than 160 million American dollars imposed by the Commission last year. On the other hand, with respect to its activities to foster competition, the Commission approved some recommendation aimed at enhancing competition in public procurements.
3. It is worth to mention that Indecopi’s Leniency Program Guidelines were selected as one of the most innovative pieces of soft law in the Antitrust Writing Awards competition, organized by the Competition Law Centre of the Faculty of Law of the University of George Washington and Concurrences magazine.
4. Finally, Indecopi received a visit from a delegation of OECD experts to examine its Competition Policy or Peer review.

1. CHANGES TO COMPETITION LAW

1.1. Summary of new legal provisions of competition law

5. On September 7th 2018, the Legislative Decree 1396 was published and had approved a set of amendments and additions to the Act. At the request of Indecopi, this law is focused to strengthen and promote the effectiveness of the defense of competition system in Peru.
6. Legislative Decree 1396 introduced some improvements in the Act for the prosecution of these behaviors, among which we can highlight the following:
 - An Award Monetary Program was incorporated for people who provide decisive information to detect, investigate and sanction secret agreements between competing companies (cartels).
 - It is possible to suspend, exceptionally, for 90 working days and for parties’ circumstances.
 - It is possible to order corrective measures for offenders to implement a compliance program.

1.2. Leniency Program Guidelines

7. The promotion of more competitive markets is one of the main tasks on Indecopi's agenda. In exercise of its powers, in April 2018, Leniency Program Guidelines, developed by Indecopi, won the international prize in the antitrust Writing Award, organized by the Competition Law Center of the Faculty of Law of George Washington University and by the magazine 'Concurrences', being considered as an important tool for the effective fight against cartels in the Soft Law Category (Guides or Guidelines). In this contest, the Guide participated along with other works made by top-level competition agencies such as the United States, the United Kingdom, Germany, the European Union and Brazil. This Award is a sample of the technical and serious work that the Commission for the Defense of Free Competition of Indecopi and its Technical Secretariat have developed, which puts Indecopi at the forefront of Competition Law at an international level.

8. These Guidelines establishes terms, rules, conditions and restrictions, so the Leniency Program can achieve predictable, transparent and effective rules. The objective of these Guidelines is to maximize the incentives for the economic agents involved in cartels to apply for benefits under the Leniency Program, strengthening the fight against cartels.

2. ENFORCEMENT OF COMPETITION LAW

2.1. Actions against anticompetitive practices, including agreements and abuse of dominant position

2.1.1. Description of significant cases

Decided cases by the first administrative instance

9. The activities of the Commission for the Defense of Free Competition can be measured according to different criteria such as the number of cases decided and the importance of the assessed markets, among others. Regarding the cases of anti-competitive behavior decided by the Commission in 2018, the following can be highlighted:

Cajamarca passenger land transport:

10. In April 2018, the CLC sanctioned with US\$ 92,514.95 to five passenger land transport companies covering the route Cajamarca-Cajabamba (two cities in the Peruvian highlands), for agreeing to fix the price of the service. It is estimated that this practice may have affected approximately 121,000 passengers during the period of conduct.

11. The infringement could be detected from a complaint by the consumers of this transport service, which motivated the carrying out of research activities by Indecopi, with the support of Indecopi's regional office in Cajamarca. Thus, interviews and dawn raids were carried out without prior notice to the investigated companies. The information gathered showed the existence of a secret agreement of prices, which finally led to the initiation of an administrative procedure sanction in December 2016 against the companies involved.

12. The cartel imposed on its passengers increases that reached up to 50% of the price of the transport ticket, as is the case of the route Cajamarca-Cajabamba (and vice versa), rising from US\$ 3 to US\$ 4.50, approximately. The Overprices imposed in concert with its

clients represent a direct affecting the conditions of competition in the market of terrestrial transport of passengers between the cities of Cajamarca and Cajabamba. This decision has been appealed to Indecopi's Court.

Shipping lines case:

13. In may 2018, the CLC sanctioned with US\$ 14,744,923.14 to six shipping lines that agreed to distribute clients for the international shipping of rolling cargo of various brands. This Cartel operated clandestinely between 2001 and 2012, affecting contracts that even had validity until 2015.

14. Product of a thorough investigation that counted with the collaboration of 2 companies that were accepted to the leniency program or of effective collaboration, it credited the existence of a system or coordinated understanding that had as main objective to guarantee the "Respect for customers "(with whom they had contracts to transport vehicles of certain manufacturers or importers on specific routes). Thus, no customers "ownership" were disputed of others and demanded the respect of "own" customers for the service of shipping of vehicles from Asia, Europe and America to Peru, affecting imports of vehicles brands such as Chrysler, Ford, Mazda, Nissan, Renault, Toyota and Volkswagen. The affected sector is of great importance, as the accumulated annual growth of vehicle imports was 16.28% (FOB) and 15.83% (CIF) between 2001 and 2015. In the same period, the importation of new vehicles increased steadily at an average annual cumulative rate of 23.48%. This decision has been only appealed by three of six sanctioned companies to Indecopi's Court.

Chimbote case:

15. In September of 2018, the CLC sanctioned with US\$ 3,674,035.29 to twenty-four companies and to 8 of its representatives by concertation of prices of diesel and of Gasoholes in Chimbote.

16. The aforementioned infringement was detected based on the market monitoring carried out by Indecopi. To this end of this monitoring, dawn raids were carried out without prior warning to the companies under investigation, and a copy of the emails was obtained. With this information, the existence of an anticompetitive conducts was, preliminary, proved. Thus, an administrative sanction proceeding was initiated.

17. This cartel would have operated secretly between 2012 and 2014, through coordination between officials and employees of competing service stations and members of the Ancash Costa Service Station Association, who determined the price they would charge, in soles, for the liter of Diesel and gasoholes of 84, 90 and 95 octanes. In this way, the cartel would have imposed to its clients price increases (Overprice) up to 7%, for the liter of Diesel and gasoholes of 84, 90 and 95 octanes, which represented an affectation to the competition in the market of liquid fuels in Chimbote. This concerted fixation would have impacted the cost of the transport service provided by heavy and light transport vehicles and, consequently, affected consumers who used such means of transport, to the extent that suppliers of the Service would have transferred these increments to their customers. This decision has been appealed to Indecopi's Court.

Vehicular Natural Gas case:

18. In December 2018, the CLC sanctioned 63 companies and 29 officials with US\$ 141,738,179.20, for having participated in the cartel of Natural Gas Vehicles (NGV) that operated in Lima and Callao, between July 2011 and May 2015.

19. The infringement was detected by Indecopi, thanks to the constant supervision of the market. Thus, in 2015, a preliminary investigation was initiated, and dawn raids without prior notice to the companies under investigation were conducted.

20. This cartel operated in Lima and Callao that represented 96%, approximately, of sales throughout the country when infringement was applied. The cartel included 40 companies and latter more companies or new service stations were incorporated. Certain executives of the investigated companies developed an important coordinating role for the implementation of the cartel, by setting up meetings and supervising compliance with the agreements.

21. The cartel generated increases of 14% on average, with a peak of 38% in 2012.

22. This conduct affected consumers of NGV, who are mainly taxi drivers. According to the investigation, the illicit profit of these companies for the practice was US\$ 45 million, approximately. This sanction has been appealed.

Decided cases by the second administrative instance

23. The Competition Division of the Tribunal of Indecopi (SDC for spanish acronym), during the 2018, has resolved 23 appeals in competition matter, among which the sanctions to the collusive practices in the following markets stand out: toilet paper and other tissue paper products, hemodialysis services in Lima, notarial services in Lambayeque, and, public transport service in Arequipa.

Toilet paper and other tissue paper products:

24. In September 2018, SDC upheld the decision of the Commission for the Defense of Free Competition (CLC for spanish acronym) determined administrative responsibility of natural persons who participated in execution of collusive practices oriented to fix prices and commercial conditions in toilet paper and other tissue paper products commercialization and imposed a fine 106.59 UIT (US\$ 134 045). It should be noted that in the second instance only the responsibility of natural persons was assessed, as well as the sanction imposed on them, because the principal case started with a Leniency Agreement of the companies investigated. As a result, the Commission granted full immunity to one of those companies and exonerated it from paying any fine imposed. In the case of the other investigated company, its sanction imposed was reduced by 50% because of its collaboration.

25. To calculate the sanctions on each natural person, three factors were taken into account: (i) the impact on the market, (ii) the responsibility of persons, and, (iii) their degree of participation in the execution/planning of the anti-competitive practice.

Hemodialysis services:

26. In March 2018, SDC upheld the CLC decision determined the existence of a bid rigging practice at “EsSalud” (Peruvian National Health Institution) public procurement proceedings for provision of hemodialysis services with reuse in the regions of Lima and

Callao, between 2010 and 2012, establishing the administrative responsibility of many specialized centers. As a result, a total fine of 1,633.33 UIT (US\$ 2 054 036) was imposed.

27. The investigated companies coordinated the amount of their bids in order to increase the referential value, so they could receive higher payments. Likewise, it was verified that the hemodialysis centers abstained in a joint and coordinated manner from participating in the public procurement proceedings, in order to improve the effectiveness of the collusive agreement. The aforementioned infringement obliged EsSalud to declare those contests void and to make successive public procurement calls for more than two (2) years, putting at risk hemodialysis services provision, which are of vital importance to the health of the patients of EsSalud.

Notarial Services in Lambayeque:

28. In June 2018, SDC upheld the CLC decision determined the administrative responsibility of persons that labored as public notaries as well as a legal entity (College of Notaries of Lambayeque) and imposed a fine of 22.36 UIT (US\$ 28 119), because of the realization of a restrictive practice in the modalities of anticompetitive agreements and decisions. According to the investigation of the Commission (sustained by the SDC), these persons coordinately decided to stop providing the services of constitution, modification and cancellation of warrants of movable goods through the document called "Registration Form", approved by the National Superintendence of Public Registries.

29. The review of the evidence in the case let the SDC verified that the investigated notaries and the College of Notaries of Lambayeque adopted an agreement and an anti-competitive decision, respectively, to refuse to provide security services through the "Registration Form"; and that those practices had the capacity to affect competition in the market of notary services in the Lambayeque notarial district. This meant, for practical purposes, that natural persons and legal entities outside the financial system had - as a consequence of the imputed conduct - that they opt for the creation of security interests through a public deed.

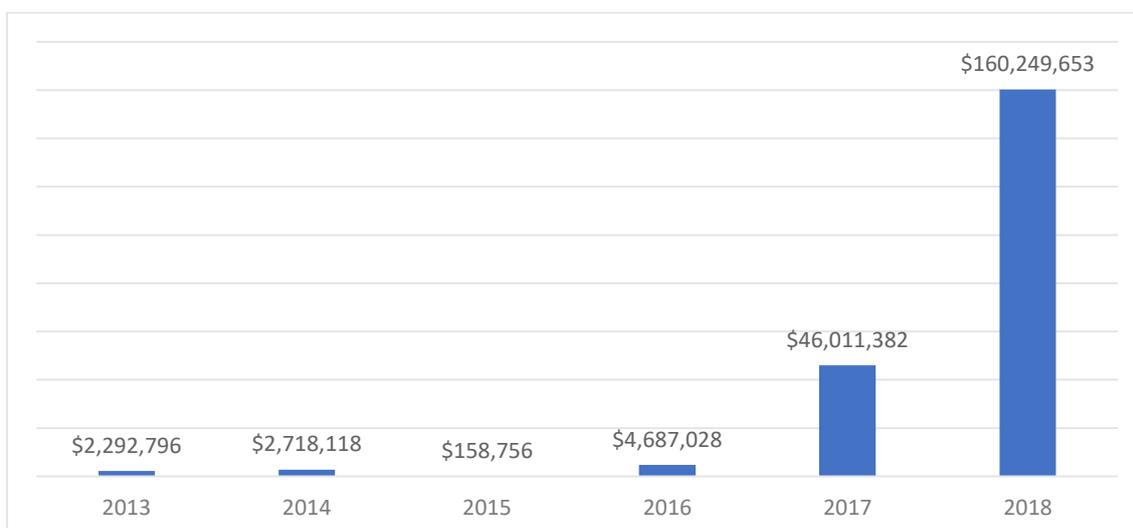
Transport service in Arequipa:

30. In August 2018, the SDC upheld the CLC decision that impose a fine of 18.89 UIT (US\$ 23 755) to many transport companies because they agreed increase the price of public transport service, in many routes in Islay province (Arequipa region), about eleven days in December, 2010.

2.1.2. Imposed fines

31. Although imposing fines is not an objective of a competition agency, fines can be an important indicator of the effectiveness of its work, because the fines are calculated taking into account the benefit obtained by sanctioned companies. The fines imposed in 2018 are historically the highest, as can be seen below:

Figure 1. Fines 2018



Note: The fines could have been modified by the second instance. This information includes discount for collaboration in Leniency Program proceeding.

3. RESOURCES OF THE COMPETITION AUTHORITY

3.1. Resources overall

3.1.1. Annual budget

32. The following table presents the total budget of the Commission and its Technical Secretariat. It also shows the total budget of the branch of the Tribunal of Indecopi in charge of appeals to decisions of the Commission and the Technical Secretariat, though it is worth to mention that such branch of the Tribunal also analyzes appeals on unfair competition, advertisement and antidumping proceedings.

33. Finally, this table also includes the budget of the Economic Studies Department, though only a part of its resources are actually focused of market assessment activities and activities related to competition issues. The Economic Studies Department supports many other areas of Indecopi.

Table 1. Annual budget of branches of Indecopi related to competition activities [2016 – 2018]

Branches		2016	2017	2018
Commission and Technical Secretariat		2 527 269 PEN	3 284 639 PEN	3 374 901 PEN
		749 931.45 USD	1 012 215.41 USD	1 001 454.30 USD
Tribunal (Competition branch)		2 774 818 PEN	2 733 249 PEN	3 332 442 PEN
		823 388.13 USD	842 295.53 USD	988 855.19 USD

Economic Studies Management	1 574 852 PEN	1 922 423 PEN	2 141 131 PEN
	556 335.91 USD	592 426.19 USD	635 350.44 USD
Indecopi Total	6 876 939 PEN	7 940 311 PEN	8 848 474 PEN
	2 129 655.49	2 446 937.13 USD	2 625 659.94
	USD		USD

Note: PEN = Peruvian Nuevos Soles (local currency)

Source: INDECOPI

3.1.2. Number of employees (person-years)

34. The following table includes information of employees from the Commission, the Technical Secretariat, the Economic Studies Department, and the Tribunal of Indecopi (Competition branch). It also includes personnel that work part-time for the authority, such as Commissioners and Members of the Tribunal (Competition branch).

Table 2. Employees of Indecopi working on competition activities

Employees	2018
Economists	20
Lawyers	24
Support staff	5
Indecopi	49
Total	

Source: INDECOPI

3.2. Human resources

35. Considering that in Peru, no merger control regulations have been enacted (except for the electricity sector), human resources data here presented are not differentiated by the type of enforcement (*ex ante* or *ex post*).

Table 3. Employees of Indecopi related to competition activities

Employees	2018
Enforcement and Advocacy	44
Market assessment	5
Indecopi Total	49

Source: INDECOPI

4. MERGER CONTROL AND STUDIES ON COMPETITION POLICY ISSUES

4.1. Merger Control

36. In January 2018, the CLC authorized without conditions the application for prior authorization of concentration operation presented by ATN S.A. for the acquisition of 100% of the share capital of Hydrocañete S.A. Likewise, in April 2018, the application for prior authorization of the concentration operation presented by ISQ Global Fund GPGP, LTD and ISQ Global Fund II GP, LLC was approved without conditions, for the acquisition of 100% of the shares of Inkia Americas LTD. This, considering that these operations did not affect competition in the analyzed markets.

4.2. Competition Advocacy

37. In August 2018, with the support of the Economic Studies Management of Indecopi, the CLC approved the "Study Market on the Conditions of Competition in the Manufacture and Distribution of Vehicular Plates", through which, it recommended the Ministry of Transport and Communications (MTC) to implement mechanisms to strengthen competition in this sector and benefit consumers with lower prices, better product safety conditions, higher quality of distribution service. Therefore, considering that from 2010 to date the service has been provided by a single operator, without there being a public contest in between.

38. The study also suggests reviewing the minimum requirements and conditions contemplated by the draft Regulation of the Single National Filming Plate System (SPUNR, for its acronyms in Spanish), in order to eliminate those that unreasonably restrict competition due to the existence of requirements not related to an adequate provision of the service. For example, it is proposed that the applicant company should have as its main activity the marketing of new vehicles, leaving aside the companies that sell second-use vehicles or do not import cars.

39. In August 2018, the CLC approved "Recommendations to promote competition in public procurement". Through this advocacy, it was recommended to amend aspects of the legal and institutional framework that currently governs the public procurement system. Thus, for example, it was recommended not to advertise the reference value or reserve price of the public entity, because this publicity gives an advantage to potential bidders, by informing them about the price that is willing to pay a public entity for the hiring of certain goods or services, diminishing the possibility of the offer of more competitive prices.

40. Another proposal is for bidders to submit an affidavit that their offer has not been coordinated or agreed with another competing company. Such affidavits are intended to make the bidders and their representatives aware of the prohibition on anti-competitive conduct and its consequences, assuming administrative and criminal responsibilities in the event of making a false affidavit. Finally, it was recommended that in order to avoid contact between competitors and reduce the risks of an anti-competitive agreement, electronic procurement should be prioritize, so that bidders could not identify with each other and the economic offers were presented in anonymous ways (by using codes or numbers) via electronic. These recommendations were introduced in the Public Procurement Law, carried out by Legislative Decree 1444, and its Rules of Procedure, approved in December last year.

41. In September 2018, the CLC approved the "Guide to fight collusion in public procurement". This document is mainly aimed at all the officials involved in the state recruitment and hiring processes, with a twofold objective. On one hand, to help them design competitive and efficient selection processes within the current legal framework and, on the other, to provide them with tools to warn of possible signs of anti-competitive behavior inside public purchases. It should be remembered that more than half of the expenditure of the Peruvian State is carried out through public procurement. State purchases – understood as procurement of goods and services by public entities – accounted for 50.7% of government spending and 11.6% of the country's Gross Domestic Product, according to an OECD study of 2017.

4.3. Other activities

42. In 2018, Peru voluntarily participated in an Inter-Peer Review (Peer Review) on Competition Law and Policy, in order to evaluate the development of its competition regime focusing on the current policy and its application. As a result, the OECD highlighted that Peru has established an active competition regime and in line with international practices and standards. It also highlighted the admirable commitment of Indecopi's staff to fulfill their work.

43. Without prejudice to this, OECD formulated some recommendations to enhance competition policy in Peru. For example, the adoption of a concentration-control procedure for all sectors, ensuring that staff compensation is competitive, avoiding relying on fines as a source of funding, taking advantage of synergies arising from Indecopi's multiple areas of competence, pursuing competition enforcement against all types of anticompetitive conduct, actively combatting bid-rigging, strengthening settlement and commitment procedures, reforming how pecuniary penalties are calculated, among others. It is worth to mention that all of those recommendations are part of Indecopi's Roadmap for next years.