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Global Forum on Competition

CARTEL CASE STUDIES

Case submitted by Peru

-- Session III --

This case is submitted by Peru in view of its discussion in GFC Sub-Session 1 on Thursday 9 February 2006 (from 9:15 am).

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FREE COMPETITION COMMISSION V. PERUVIAN ASSOCIATION OF INSURANCE COMPANIES AND INSURANCE COMPANIES

PRICE- FIXING IN MANDATORY TRAFFIC ACCIDENT INSURANCE (SOAT)

1. Antecedents

1. The requirement for Mandatory Traffic Accident Insurance -SOAT- was established by the General Law of Transport in October 8, 1999. However, the provisions related to SOAT did not enter in force until early 2000.

2. Investigation of the Case and the Commission ruling

2. The investigation was initiated ex-officio by the Free Competition Commission of Indecopi by Resolution N ° 008-2002-INDECOPI/CLC of July 21, 2002, against the Peruvian Association of Insurance Companies – APESEG – and nine of its member insurance companies. The period of investigation comprised from July 28, 2001 to April 20, 2002.

3. Evidence

3. The investigation process comprised conducting some interviews and sending requests for information to the defendants. It also consisted of the gathering of price information that was advertised to the public. This process allowed the Commission to determine the following evidence, regarding prices advertised (in US dollars):

Vehicle	Pacifico	Sul America	Wiese Aetna	Generali	Mapfre	Rimac	Royal & SunAlliance	La Positiva
Private automobile	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00
Truck	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00
Taxi	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Intercity bus	1250.00	1250.00	1250.00	1250.00	1250.00	1250.00	1250.00	1250.00
Van (collective transport)	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
City bus	350.00	350.00	350.00	350.00	350.00	350.00	350.00	350.00

4. Other pieces of evidence:

- Record N° 15/2001 of the Committee of vehicles of the Peruvian Association of Insurance companies of December 4, 2001: The insurance companies entrusted the same actuary to calculate the risk premium of the insurance.
- Record N° 16/2001 of the Committee of vehicles of the Peruvian Association of Insurance companies of December 11, 2001: It showed that the insurance companies unanimously approved the technical note elaborated by the actuary, together with the percentages that would be used to calculate administrative expenses, issuance fees and utility.
- Notifications sent to the Superintendence of Banking and Insurance Companies for eight member companies of the Peruvian Association of Insurance companies, signed by the same actuary and with identical content: These notifications recorded for every classification of vehicles, equal surcharges for the expenses of external management (10%), internal management (12,5%), profit margin (5%), issuance fee (3%) and VAT (18%).
- Advertisements in which six member companies of the Peruvian Association of Insurance companies offered to the public the same prices as those that were notified to the Superintendence of Banking and Insurances Companies
- Record N° 02/2002 of the Committee of Vehicles of the Peruvian Association of Insurance companies of February 5, 2002, showing that the companies approved a reduction in price from US\$ 60,00 to US\$ 55,00.

5. The investigative phase of the proceedings ended with the issue of the report of the Technical Secretary of the Free Competition Commission on December 4, 2002. The report recommended that the Commission declare that the undertakings had engaged in price-fixing, resulting in a violation of article 6 of Legislative Decree N° 701. In addition, it stated that per se rule should be considered applicable. The technical report was not notified to the defendants.

6. On December 11, 2002, the Commission issued Resolution N°025-2002-INDECOPI, ruling that the defendants were responsible for price-fixing in the market of the Mandatory Traffic Accident Insurance, in the period between December, 2001 and February, 2002. The sanctions imposed by the Commission were the following:

Interseguros:	5 Tax Reference Units (TRU; 1TRU - US\$ 1,000, approximately)
Wiese Aetna:	50 TRU
Pacifico	60 TRU
Mapfre	60 TRU
Royal & SunAlliance	80 TRU
Generali	100 TRU
Sul America	100 TRU
La Positiva	100 TRU
Rimac	100 TRU
Apeseg	20 TRU

4. Appeal and ruling of the competition Chamber of the Tribunal

7. The insurance companies filed an appeal against the Commission's resolution and requested that it be reversed due to the lack of notification of the Technical Secretary's report. This omission, they claimed, constituted a violation of due process, resulting in impairment of defendants' right to prepare a defence. In addition, they claimed that there was insufficient substantiation for the amount of the sanctions imposed by the Commission.

8. The defendants also denied that they had reached an agreement fixing prices. In their view, they had only shared information regarding the actual costs of a mandatory insurance with the characteristics of the SOAT. Finally, they questioned the application of the per se rule, which had been adopted in Peru in the year 1997 by the Chamber of Competition Defence of Indecopi's Tribunal.

5. Final decision

9. The Competition Chamber of Indecopi's Tribunal reversed the Commission's resolution on due process grounds, but it found responsibility in APESEG and in the majority of its members, and it established a new precedent of mandatory compliance related to the prohibition of agreements.

10. Regarding the evidence gathered and its sufficiency to prove a price-fixing agreement, the Chamber stated the following:

- The evidence showed that the insurance companies contracted for the preparation of a technical note with one actuary, at a meeting of the Automobile Committee of APESEG.
- Although the companies claimed that they did not have much experience in insurance with the characteristics of the SOAT, there was evidence that at least three of them (or their shareholders) had experience with similar products in other countries.
- There was no need to hire a single actuary. One of the defendants hired a Chilean firm to get advice in the calculation of the premium.
- Even though the companies had engaged a single actuary, the determination of a single premium for all of them should not necessarily follow from this. Again, one of the firms notified the regulator with different values for the risk premium and the commercial premium.
- The notifications the companies sent to the regulator showed an identical cost structure with respect to the risk premium, and the same percentage for administrative expenses, profit margin and issuance fee.
- The investigation proved that at least six of the defendants not only participated in the agreement, but also implemented it, by advertising the agreed price.
- The evidence also showed that the insurance companies later agreed to reduce the minimum premium they would charge by the same proportion (8.33%, for private cars).

11. The ruling of the Chamber applied sanctions to APESEG and only seven of the nine companies, since there was no evidence that the other two had participated in the agreement. It also revised, and reduced, the amount of the fines imposed. The final sanctions were the following:

Pacifico	40 TRU
Mapfre	35 TRU
Royal & SunAlliance	20 TRU
Generali	28 TRU
Sul America	26 TRU
La Positiva	40 TRU
Rimac	36 TRU
APESEG	10 TRU