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COMPETITION COMMITTEE****Global Forum on Competition****USING MARKET STUDIES TO TACKLE EMERGING COMPETITION  
ISSUES – Contribution from Peru****- Session IV -**

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This contribution is submitted by Peru under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: [oe.cd/mktcomp](https://oe.cd/mktcomp).

Please contact Mr. James Mancini [E-mail: [James.Mancini@oecd.org](mailto:James.Mancini@oecd.org)], if you have any questions regarding this document.

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## *Using market studies to tackle emerging competition issues*

### **- Contribution from Peru<sup>1</sup> -**

1. Within their role of promoting and disseminating a competition culture through mechanisms other than imposing sanctions, the competition authorities are entitled to carry out market studies and competition advocacies that provide recommendations to both public authorities and private agents so that, within their scope of action, can adopt measures that facilitate the development of competitive markets for the benefit of consumers.
2. On this basis, and following the best international practices, the National Institute for the Defense of Competition and the Protection of Intellectual Property of Peru (Indecopi) published in 2016 the Guide for Market Studies aiming at explaining what are market studies, what is their importance and what are the possible outcomes they can lead to.
3. In recent years, Indecopi has carried out various studies and advocacies in markets such as: notary services, driving tests in Lima Region for the issuance of driving licenses, bidding for roadway corridors by the Municipality of Lima, health insurance provided by private health care institutions, tourist transport services for the access to the Inca Citadel of Machu Picchu, manufacture and distribution of license plates and public procurement.
4. In general, the factors that can generate concerns about the functioning of a market include: apparent high prices compared to other geographic markets; the shortage in the supply of a good or service; none or very limited entry of new agents into the market; an apparent low quality of goods or services; a high level of consumer discontent and low consumer mobility rates, among others.
5. As a result of the market research and competition advocacies carried out in recent years, Indecopi has identified a set of risks for competition that affected the investigated markets.
6. For instance, in the advocacy for the market of health insurance provided by private health care institutions (EPS), it was identified that one of the problems was the heterogeneity of the health plans offered by EPS. In particular, it was determined that, although EPS did compete based on a basic health plan, they could introduce different arrangements on the network of healthcare centres that they offered as well as on additional plans. These elements increased the heterogeneity in the plans offered by the EPS and made it difficult for the individuals to choose.
7. Likewise, in the advocacy in the market for tourist transport services to access the Inca Citadel of Machu Picchu, it was identified that the main problem was related to the validity of the concession contract for the route “Aguas Calientes-Puente Ruinas-Inca Citadel of Machupicchu” granted by the District Municipality of Machu Picchu to a company named Consettur. Specifically, it was evidenced that the contract was entered into by both parties without a previous bidding process and, therefore, without allowing competition for the provision of this service, granting the concession under non-competitive conditions.

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<sup>1</sup> This document was prepared by the Technical Secretariat of the Commission for the Defense of Free Competition of Indecopi.

8. Also, in the advocacy in the bidding market for roadway corridors by the Municipality of Lima, it was identified that the characteristics of the bidding design created barriers to the entry for new agents. In particular, it was observed that the bidding rules gave advantages to operators that already provided the public transport services on routes that belonged to the corridor areas, assigning them a privileged position in the bids and discouraging the entry of new agents.

9. Furthermore, due to the Covid-19 crisis, consumers have increased the use of digital platforms to carry out their transactions. Indeed, according to a study by Visa for Latin America and the Caribbean, between January and March 2020, out of every ten Visa active card users in the e-commerce, two were new users. Likewise, the study indicated that the use of digital wallets and electronic transfers were the preferred payment methods during the Covid-19 emergency. Peru has not been immune to this trend: thus, during the social isolation measures (quarantine) resulting from Covid-19, 45% of the total of card transactions were carried out through e-commerce, reaching an average ticket of PEN 231 (USD 64)<sup>2</sup>. Finally, it was observed that new types of businesses have entered into the electronic commerce.<sup>3</sup>

10. In this regard, competition authorities have the task to identify the risks that could occur as a result of changes in consumer behaviour and the increase in the importance of digital means for customer transactions. Among these, there are potential competition risks generated by the use of digital platforms, possible anticompetitive practices facilitated by the use of algorithms, the handling of user data and possible barriers to entry arising from the accumulation of a large amount of user data, among others.

11. The risks identified can be addressed through monitoring actions by the competition agency, such as the important use of market studies, since they are flexible tools to analyse the structure of the markets, the changes generated by the use of digital media, the emergence of new markets, the role of regulation and the behaviour of agents, among others.

12. Also, during the pandemic, the demand for health services has increased as a result of the rise of Covid-19 cases. For example, Peru experienced a significant increase in demand for medical oxygen and certain medicines that have been officially recommended for the treatment of this disease. Several problems have arisen from the shortage of health services and the increase in the prices of different products.

13. In this context, the authority carried out several monitoring actions in the health services markets. Thus, for instance, in the medicinal oxygen market acquired by public institutions, the authority is assessing the problems in the domestic supply of oxygen linked to its reduced production and the level of purity required by the State, among other potential factors that would affect competition in the public acquisition of medicinal oxygen by procurement processes.

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<sup>2</sup> Currently, the dollar exchange rate is approximately 1 USD = 3.614 PEN.

<sup>3</sup> PERUVIAN CHAMBER OF ELECTRONIC COMMERCE (2020). The evolution of e-commerce in Peru during Covid-19. Available at <https://www.youtube.com/embed/ZjJ8E0WGY3Y> (last access on October 21st, 2020).

14. As market studies and competition advocacies are tools aimed at promoting competition, they won't normally result in investigations about the behaviour of specific companies in order to determine whether they have infringed the Peruvian Competition Act. On the contrary, these tools are intended to increase knowledge about how markets work, in order to adopt informed decisions that promote competition by non-enforcement means. In this sense, as noted, market studies become flexible tools to obtain information and encourage procompetitive changes in the investigated markets.

15. Recommendations introduced by competition advocacy reports are not mandatory. However, the Peruvian Competition Act compels public administration institutions to respond by explaining their position in relation to the recommendations made, within no more than 90 working days from their notification date.

16. For example, as a result of the advocacy in the private health insurance market provided by the EPS, the National Health Superintendency agreed with Indecopi's recommendations and approved the implementation of measures to facilitate the joint evaluation of EPS health plans, in order to reduce information problems that may arise due to the heterogeneity of the plans.

17. Likewise, the Municipality of Lima agreed with Indecopi's recommendations in the public procurement processes of the roadway corridors, accepting to set aside certain criteria that benefit only established agents in future bidding processes. In addition, the aforementioned authority committed to implement measures to prevent the exchange of information in the context of tenders and to guarantee the confidentiality of sensible information arising from them.

18. On its turn, the Ministry of Transport and Communications supported the recommendations of Indecopi issued in the advocacy in the market of tourist transportation services to the Inca Citadel of Machu Picchu. Accordingly, it approved a bidding procedure that the Provincial Municipality of Urubamba will have to follow to grant the concession of the route.

19. Finally, this office considers crucial to introducing monitoring efforts on the implementation of the recommendations made through advocacies and market studies, by means of coordination with public authorities and private actors in the relevant markets. This task is even more relevant in constantly changing markets, such as digital platforms and e-commerce markets.