

Unclassified

English - Or. English

18 May 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

## **Working Party No. 2 on Competition and Regulation**

### **Competition and Regulation in the Healthcare Sector – Note by Peru**

22 June 2026

This document reproduces a written contribution from Peru submitted for Item 7 of the 81<sup>st</sup> meeting of Working Party 2 on 22 June 2026.

Federica MAIORANO  
Federica.Maiorano@oecd.org

**JT03587157**

## *Peru*

### **1. Description of the main elements in the healthcare sector**

#### **1.1. Main authorities**

1. The Peruvian Constitution establishes that the State is responsible for protecting public welfare, including key areas such as healthcare and states the importance of guaranteeing universal access to medicines and medical devices, particularly for the most vulnerable citizens. To achieve this, the State implements mechanisms such as joint procurement and price information systems in order to optimize costs and prevent anticompetitive practices.
2. The Ministry of Health (MINSA), through DIGEMID, regulates the production, distribution, and marketing of medicines in the country, implementing multiple legal instruments to guarantee the availability of safe and affordable medicines in all healthcare facilities through an adequate, timely, and continuous supply. In 2010, through Supreme Decree No. 003-2010-SA-EP the Directorate for the Supply of Strategic Health Resources (DARES) was created, which is responsible for the nationwide acquisition and distribution of pharmaceutical products and medical supplies.
3. In 2016, DARES was renamed the National Center for the Supply of Strategic Health Resources (CENARES), and its functions were redefined to improve the management of the public supply of medicines and medical devices. Hence, CENARES oversaw the supply of pharmaceutical products, medical devices, and health products through joint procurement processes for decentralized bodies and public entities. CENARES is also responsible for conducting national procurement processes.
4. Additionally, the health insurance system is managed by the Health Insurance Fund Administrators (IAFAS), among which ESSALUD stands out. ESSALUD is a decentralized public entity attached to the Ministry of Labor and Employment Promotion, with technical, administrative, and accounting autonomy, and is financed mainly through employer contributions. Within ESSALUD, the Strategic Goods Supply Center (CEABE) is responsible for managing the procurement needs for medicines and medical equipment, ensuring efficient supply through centralized and joint procurement processes.
5. Lastly, the Competition Law contains a special section dedicated to collusive practices committed within a selection and contracting procedure with the State. Thus, the agreement or coordination of “offers, abstentions, bids or proposals” is prohibited and sanctioned, due to their appreciably harmful nature for competition and consumers (in this case, public entities) and is subject to sanctions by the Competition Commission.

#### **1.2. Supply of medicines through joint public procurement**

6. The Constitution also establishes that the State must acquire medicines through procurement procedures, to ensure transparency and efficiency in the use of public funds, acquiring medicines under the best possible conditions, considering both quality and cost.
7. Between 2006 and 2020, a total of one hundred and eighty-one (181) companies submitted bids in the healthcare sector. The highest number of new entrants was recorded in 2008 and 2019, with twenty-three (23) companies participating in public auctions.

8. Likewise, from 2006 to 2020, only a limited number of companies entered the market, suggesting the existence of possible barriers to entry that could have made anticompetitive coordination easier.

9. Although around one hundred and thirty (130) companies were awarded at least one procurement contract (either individually or as part of a consortium), and seven (7) companies received 62.7% of the total value awarded in these procurement processes. As a result, a small number of companies obtained the largest share of revenues generated through procurement contracts awarded by MINSA (DARES/CENARES) and ESSALUD between 2006 and 2020.

10. As a result, the procurement procedures for the supply of pharmaceutical products to the State are governed by public procurement regulations, which underwent several amendments affecting their conditions and characteristics.

11. During the period under analysis, there were two main procurement methods for the acquisition of medicines through public tenders: the traditional procedure, which remained the standard method until 2005–2006, and reverse auctions, adopted thereafter.

12. Both methods followed the legally established stages of: (i) planning and preparatory stages, aimed at defining procurement needs and contractual conditions, as well as the bidding terms, requirements and schedule; (ii) the selection stage, which included the invitation to bid, registration of participants, submission of proposals (technical and economic), and evaluation process; and (iii) contract performance, aimed at fulfilling the obligations arising from the awarded contract.

13. The procurement procedures during the analyzed period were mainly conducted through reverse auctions, which underwent several regulatory changes over time. Unlike the traditional tender procedure, reverse auctions allow bidders to improve their price bids throughout the procurement process, thereby increasing price competition by progressively improving their offers. This mechanism has played a key role in the State's joint procurement of medicines and, given its impact on the pharmaceutical market, the specific conditions and regulations that influenced its implementation will be analyzed in detail.

### 1.3. The reverse auction procedure

14. As explained, a reverse auction is a specific type of procurement method in which suppliers may improve their economic offers through a bidding system, with the contract ultimately awarded to the bidder offering the lowest price for the goods or services being procured.

15. Reverse auctions were introduced in Peru in 2004 with the Consolidated Text of Law No. 26850, the State Procurement and Acquisitions Law. In 2005, the first in-person reverse auction was conducted.

16. With the enactment of Legislative Decree No. 1017, which approved the State Procurement Law, reverse auctions were formally incorporated into the legal framework and consolidated as a special public procurement mechanism. In addition, Directive No. 006-2009-OSCE/CD established specific guidelines for their implementation.

17. There are two types of reverse auctions: in-person and electronic. As explained above, both forms of reverse auctions share the same objective: the public procurement of standardized goods, with the contract awarded to the bidder offering the lowest price.

18. However, there is one key difference: while the in-person version requires a public act for the submission and improvement of bids, in the electronic version this public act is eliminated, as the entire process is conducted online. The system records the results and

ranking of bidders, generating a digital record containing the details of the procurement process.

19. Although this electronic mechanism already existed in the regulatory framework since 2004, the State initially opted to conduct only in-person reverse auctions. Over time, electronic reverse auctions completely replaced the in-person mechanism: in 2017, the Board of Directors of the Supervisory Agency for State Procurement established that joint procurement procedures, including the acquisition of pharmaceutical products for healthcare facilities, would be conducted exclusively through electronic mechanisms.

20. In this context, the different reverse auction mechanisms affected the participation dynamics and behavior of the economic agents involved in the procurement procedures under analysis.

#### 1.4. Conditions applicable

21. For further understanding, the conditions that influenced the conduct of the participating companies are developed next:

**Table 1. Reverse Auctions: Regulatory and Procedural Evolution**

| Element   | Content and regulatory evolution   |
|---|--|
| Submission of price bids and qualification of bidders | <p>Bidders were required to submit two separate envelopes: (i) a technical envelope, containing the documentation relating to the requirements necessary for qualification; and (ii) a financial envelope, containing the price bid submitted based on the reference value.</p> <p>In-person reverse auctions (until 2017): The technical envelope was evaluated first, disqualifying bidders that failed to comply with the required technical conditions (exceptionally allowing the correction of certain omissions). If the bidder passed the technical evaluation, the financial envelope was evaluated: Bids exceeding the reference value were disqualified.</p> <p>A substantial change was introduced in the electronic procedure. Bids were submitted <u>before</u> the verification of the technical documentation, which meant that the technical documentation was reviewed only for the bidder with the best price offer.</p>  |
| Admission to the bidding stage                        | <p>Initial framework (2004–2009): only bids that did not exceed the lowest bid by more than 10% were allowed to participate in the bidding stage. If fewer than three bidders met this condition, the three lowest bids were allowed to participate even if they exceeded the aforementioned threshold. This criterion remained in force under Legislative Decree No. 1017 (2009) and Directive No. 006-2009-OSCE/CD.</p> <p>Directive No. 015-2012-OSCE/CD (2012) and subsequent amendments: Access to the bidding stage was expanded to all qualified bidders with valid offers, eliminating the previous percentage threshold. Accordingly, this framework applied to public tenders conducted between 2013 and 2017.</p> <p>Implementation of electronic auctions (2017): Directive No. 002-2017-OSCE/CD established that bidders whose offers had been validly submitted could participate in the bidding stage, while the technical verification would take place only after the bidding stage and only for the winning offer. The provisions introduced by this Directive were applied to procurement procedures initiated from 2018 onwards.</p> |
| Number of permitted bidders                           | <p>With respect to the minimum number of bidders required, the regulatory framework did not initially establish any distinction between the different reverse auction mechanisms.</p> <p>Initial framework: Law No. 26850 established that a procurement procedure had to be declared void when fewer than two bidders participated or when only one valid bid had been submitted. Subsequently, it was clarified that such declaration would apply only when there was a single valid bid.</p> <p>Despite this, several contracts were awarded with only one bidder, justifying the decision by the need to ensure continuity in the provision of services or the timely supply of medicines and related goods.</p>   |

|   |   |
|---|---|
|   | <p>Consolidated Text of Law No. 26850 (approved by Supreme Decree No. 083-2004-PCM) authorized awarding the contract even when only one valid offer had been submitted. This provision remained in force between 2004 and 2009.</p> <p>Legislative Decree No. 1017 (2009) established that contracts in reverse auctions could only be awarded when at least two valid offers had been submitted. This rule applied to procurement procedures initiated between 2009 and 2011. Subsequently, Law No. 29873 (2012) once again allowed contracts to be awarded with only one valid offer, a rule that remained in force until 2014.</p> <p>Law No. 30225 (2014) delegated the authority to determine the circumstances under which procurement procedures would be declared void. However, the exception allowing single-bidder awards in medicine procurement continued to be extended through subsequent budget laws and remained applicable to procurement procedures initiated until December 31, 2018.</p> <p>Finally, for procurement procedures initiated from 2019 onwards, the requirement of at least two valid offers was reinstated in accordance with Law No. 30225.</p> |
| Limits applicable to price bids                               | <p>The regulatory framework establishing the limits applicable to price bids in reverse auctions underwent several changes during the relevant years:</p> <p>Initial framework: Supreme Decree No. 083-2004-PCM established that only price bids that did not exceed the reference value by more than 10% would be admitted, with higher bids rejected.</p> <p>Legislative Decree No. 1017 (2009) eliminated the previous 10% margin and established that price bids could not exceed 100% of the reference value, thereby prohibiting any increase above the bidding terms. This provision applied to procurement procedures initiated from 2009 onwards.</p> <p>Law No. 30225 (2014) repealed the previous restriction, allowing the participation of bids exceeding the reference value and removing any maximum limit, thereby enabling bidders to compete freely during the bidding stage. This provision became applicable to procurement procedures initiated from 2016 onwards.</p>   |
| Minimum bid reductions during the bidding stage               | <p>As stated, both types of reverse auctions include a bidding stage in which bidders whose offers have been admitted may improve their proposals through successive price reductions:</p> <p>Directive No. 006-2009-OSCE/CD: established a mandatory minimum reduction range between 0.1% and 3% of the unit reference value for each improved bid. This criterion was subsequently maintained in Directives No. 006-2009-OSCE/CD, 015-2012-OSCE/CD, and 018-2016-OSCE/CD.</p> <p>With the implementation of electronic reverse auctions, Directive No. 002-2017-OSCE/CD eliminated the mandatory minimum reduction, providing greater competitive flexibility for bidders to improve their offers without a predefined threshold. This regulatory change marked a significant transformation in the competitive dynamics among participants. This reform was applied to procurement procedures initiated from 2018 onwards.</p>   |
| Benefits granted to domestic companies over foreign producers | <p>This benefit only applies to in-person reverse auctions.</p> <p>Initial framework: Law No. 27143, the Temporary Promotion of National Industry Law, granted additional scoring benefits to national companies in public procurement procedures. Initially, the bonus consisted of an additional 10% applied to the combined technical and financial scores. This percentage was later increased to 15% and subsequently to 20%.</p> <p>This regulatory framework remained in force between 1999 and 2009, allowing domestic companies to obtain competitive advantages despite offering higher prices, which significantly affected procurement processes.</p> <p>With Legislative Decree No. 1017 (2009), the National Preference Law was tacitly repealed, thereby eliminating this benefit.</p>   |

## 2. Influence on the Cartel

22. As stated, the importance of public procurement has led Indecopi to devote efforts to promote competition and detect anticompetitive behaviors in several kinds of tenders.

23. In this investigation, the parties were charged with an alleged bid rigging agreement in public procurement procedures within the nationwide pharmaceutical products market between December 2006 and February 2020. Companies chose not to submit bids or not to participate in the bidding stage for certain products of interest to one or more of the other parties, engaging in various dynamic negotiations aimed at allocating and distributing those medicines among themselves, while creating the appearance of competition.

24. Under this arrangement, once the initial bid had been submitted, and despite qualifying as eligible bidders, companies refused to compete for products that had allegedly been allocated to another participant, seeking to ensure that those items would be awarded at higher prices.

25. This anticompetitive conduct involved various medications included in public procurement procedures managed by MINSA (DARES and CENARES) and ESSALUD, which were generally initiated on an annual basis. This allowed parties to identify in advance which products would be awarded and, based on their prior experience, which companies would participate.

26. Negotiations between the parties took place at key moments during the public procurement procedures, occurring in both in-person and electronic reverse auctions, although with certain differences:

- In the former, the bidding stage took place in an auditorium where all bidders were physically present. These bidding sessions often extended over several days, and sometimes even weeks, due to the large number of medications. Likewise, throughout the public session, the contracting entity progressively announced which companies qualified as eligible bidders for each item until all products had been covered. This prolonged interaction and physical proximity encouraged contact among companies, allowing them to become familiar with one another as well as to identify the bidders in each item, including the possible presence or absence of third parties prior to the beginning of the bidding stage. This, in turn, encouraged the coordination of their positions and the allocation of medications, enhancing negotiations among them.
- Regarding electronic reverse auctions, since these procurement procedures were conducted through an online platform (without the physical presence of the parties and without a publicly disclosed reference price, allowing bidders to make successive price reductions until the bidding system closed), the parties did not initially know whom they would be competing against. Hence, the parties adapted their strategies by either refraining from making price improvements that would surpass the offers of their counterparts or submitting their final offers well before the closing of the virtual bidding stage, avoiding direct competition among themselves.

27. In summary, depending on the analyzed characteristics applicable to each procurement procedure, among other factors, these anticompetitive coordinations took place at different moments: (i) before the submission of bids, through the allocation of the products for which each company would bid; (ii) after the qualified bidders for each item became known, usually following the formal announcement by the contracting entity regarding the bidders authorized to participate in some or all items; (iii) days before the scheduled bidding stage for each procurement procedure; or (iv) during the bidding stage itself.

28. Therefore, the behavior of the parties in the bidding process demonstrates that their negotiations were carried out considering the rules applicable in each investigated tender.