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LATIN AMERICAN COMPETITION FORUM

Session II - Measuring Competition Advocacy's Impact in Latin America and the Caribbean

-- Contribution from Peru --

23-24 September 2015, Montego Bay, Jamaica

The attached document from Peru is circulated to the Latin American Competition Forum FOR DISCUSSION under Session II at its forthcoming meeting to be held on 23-24 September 2015 in Jamaica.

Contact: Mario Umaña, Senior Trade and Competition Specialist, Inter-American Development Bank
Tel: +1 (202) 623-3256; Email: mariou@iadb.org.

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Session II - Measuring Competition Advocacy's Impact in Latin America and the Caribbean

ADVOCATING FREE COMPETITION – NOTARIAL SERVICES IN PERU AND THE PRACTICAL DRIVING TEST IN THE LIMA REGION

-- CONTRIBUTION FROM PERU --

1. Introduction

1. The aim of competition advocacy is to make recommendations to public authorities and private agents for them to take measures in their fields that are conducive to the development of competitive markets. To that end, the factors that can restrict competition within the markets under review are identified.

2. This contribution from the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (Indecopi) includes a brief description of the methodology, outcomes and the publicity methods used in 2014 to develop competition advocacy in the market in notarial services in Peru and in the market in the practical driving test in the Lima Region¹.

2. Methodology and use of economic tools

3. Theories of industrial organisation and competition law have generally formed the basic theoretical frameworks upon which Indecopi has constructed its competition advocacy activities, supplemented by a qualitative and quantitative analysis of the information collected in the process.

¹ Advocacy in the market in notarial services in Peru, available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/ABOG_001_2014_ST_CLC/ABOG_001_2014_ST_CLC.pdf.

Advocacy in the market in the practical driving test in the Lima Region available at: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/ABOG_002_2014_ST_CLC/ABOG_002_2014_ST_CLC.pdf.

4. The first step in developing Indecopi's advocacy activities is to identify the market or markets that might be suitable for study in view of their potential competition problems. Additionally, the principal economic agents and interest groups in the market are established, together with the prevailing legislative framework. This process makes intensive use of statistics to determine the characteristics of the market and how it has developed over time.

5. The chief characteristics are then described so that the existing dynamics of competition can be established. The next step is to identify the elements or factors (barriers), whether legal, economic or strategic, that may restrict competition, taking account of the particular characteristics of demand and supply. Finally, recommendations are made to the relevant public authorities and private agents to remove the restrictions on competition that have been identified.

6. Additionally, advocacy activities can include an analysis of the possible outcome of the measures proposed by the competition authority. Econometric techniques are usually used to estimate the outcomes. Accordingly, it is vital for quantitative information to be available at this stage because insufficient data on pricing or other characteristics of the market under investigation can place limits on this category of analyses.

7. In our case, one method of addressing this issue was to gather information from surveys of economic agents in the relevant market and then use that information in our advocacy work in that field to analyse the impact that the potential entry of new notarial offices into the market was likely to have on the prices of the main notarial services². Owing to the lack of information on the price of notarial services, we used a "secret shopper" survey of a sample of notarial offices nationwide to find out the prices of notarial services.

8. The theoretical basis used for this assessment drew on theoretical developments in the models of horizontal differentiation proposed by Hotelling (1929)³ and later by D'Aspremont *et al.* (1979)^{4,5}, which considered quadratic transportation costs. The estimated econometric models in our analysis considered the price of each service (seven in all) to be an endogenous variable and took as exogenous variables the number of notaries in the area studied, the distance to the closest notarial office, the reputation measured in the number of years the notarial office had been in business and other variables to control the economic and demographic differences in the area where the notarial office was engaged in its activities⁶.

² Working document No. 001-2014/GEE "Relación entre el Número de Rivaless y el Precio: El Caso de los Servicios Notariales" (The relationship between the number of competitors and pricing in notarial services). Available at: <http://www.indecopi.gob.pe/repositorioaps/0/0/jer/docstrabajo/DocTrabN01-2014.pdf>.

³ Hotelling, H. (1929), "Stability in competition", *The Economic Journal*, Vol. 39, No. 153, pp. 41-57. Available at: <http://people.bath.ac.uk/eecsjs/Teaching/Industrial%20Organisation/Papers/Hotelling%20-%20Stability%20in%20Competition.pdf>.

⁴ D'Aspremont, C., J. Gabszewics and J-F Thisse (1979), "On Hotelling's 'Stability in competition'", *Econometrica*, Vol. 47, No. 5, pp. 1145-1150. Available at: http://www.stern.nyu.edu/networks/phdcourse/DAspremont_Gabszewicz_Thisse_On_Hotellings_Stability_in_Competition.pdf.

⁵ The methodology made the following assumptions about short-term market behaviour: (i) notarial offices within the same geographical area have identical overheads; (ii) the service supplied is homogeneous; (iii) competition is price-based; (iv) there is no investment in advertising; (v) notaries' places of business are fixed; (vi) entry to the profession is exogenous; and (vii) a notary can have only one notarial office, in other words there is no branding. It should be noted that the assumptions draw on the characteristics of the market in notarial services.

⁶ The model was estimated using the ordinary least squares procedure calculating standard errors robust to spatial correlation of bootstrapped errors. Moreover, the robustness of the results was proved by controlling

3. Identification of factors that restrict competition and recommendations to interest groups

9. Advocacy activities are useful tools for identifying the elements or factors that might restrict free competition. We will briefly outline below the outcomes of the two sets of competition advocacy activities conducted by Indecopi.

10. The advocacy activities in the market in notarial services in Peru found that the elements that restrict competition are legal in nature. The elements we identified are:

- the establishment by the Council of Notaries of a minimum number of notarial appointments as a function of the population density within each province;
- the requirement for notarial appointments to be made following examination by the Notarial Colleges in the first instance, or by the Council of Notaries if the Notarial Colleges have failed to do so, or by the Ministry of Justice and Human Rights (Minjus) if the Council of Notaries has also failed to do so;
- the requirement for two of the five members of the Council of Notaries to be members of the Notarial Colleges, compromising their independence;
- the requirement that two of the five members of the Appointments Panel that assesses the open examination for new notaries should be members of the Notarial Colleges, compromising their independence;
- the introduction of maximum price controls for notarial services pursuant to Law 26741; and
- the ban on the use of any type of advertising using any means of communication.

11. It was anticipated that the lack of opportunity to engage in activities as a notary might exert downward pressure on prices for notarial services. Our empirical analysis indicates that the arrival of one additional competitor in the area served by a group of notaries would be likely to reduce the price of notarial services by between 1.7% and 7.9%.

12. Advocacy activities in the market in the practical driving test service in the Lima Region also identified legal factors that restrict competition, chief among them the refusal by the Ministry of Transport and Communications (MTC) to award permits to operate new Assessment Centres and its lack of initiative in issuing a public call for tenders for new economic agents to enter the market. Additionally, other factors that may hamper the entry of new competitors into the market are:

- the ban on assessment centres also having driving schools;
- the ban on candidates obtaining their driving licence from any regional government and therefore being able to take the practical driving test at any of the assessment centres authorised by the regional governments; and

for possible selection bias, because of the method used to collect data on prices, taking the approach proposed by Heckman (1979); and by the endogenousness that could be generated between the distance to the closest notarial office and the unobservable factors that affect the price of notarial services, taking the instrumental variables approach.

- the requirement for the driving test to be taken on a closed road network used for that sole purpose, instead of using the public highway, increasing the cost of market entry for new assessment centres.

13. Once the elements that restrict competition have been identified, advocacy activities enable recommendations to be made that will generate a more competitive environment. Accordingly, as part of its analysis, Indecopi also approaches the public authorities and economic agents who make up the interest group targeted by the advocacy activities so that it can establish their views on the recommendations and the actions that it has proposed to correct the competition issues identified in the market.

14. Recommendations for the market in notarial services were made to Minjus, the Congress of the Republic and the National Public Records Oversight Agency on the adoption of measures to gradually lift the barriers, including:

- incorporation of a commercial or economic activity-based criterion into the decision on the minimum number of appointments per province;
- derogation of the provision that empowers Notarial Colleges to hold an open competition in order to enter practice as a notary;
- removal of involvement by notaries in membership of the Council of Notaries and the Appointments Panel to ensure their independence;
- abolition of price ceilings for notarial services;
- withdrawal of the ban on advertising by notaries;
- introduction of an Information Record on the quality of the notarial service provided, detailing notaries' main errors and infringements, to be published for consumer information purposes, thereby improving competition among notaries; and,
- in the long term, the gradual removal of the system of minimum numbers of notarial appointments per province and public examinations as conditions for entry into practice as a notary, and the establishment of a system of free access to the profession of notary.

15. Where the market in the practical driving test service is concerned, the MTC, the Lima Metropolitan Authority and the Regional Government for the Non-Metropolitan Provinces of Lima received recommendations to take measures to remove barriers, including that it should:

- choose a system for authorising the entry of new assessment centres to the market or establish competition in the market by issuing a call for tenders;
- allow assessment centres to have driving schools;
- allow candidates to obtain their driving licence from any regional government; and
- allow the driving test to be taken on the public highway.

4. Dissemination of advocacy outcomes

16. Indecopi used two channels to disseminate the outcomes and recommendations of the competition advocacy activities: (i) it delivered the advocacy recommendations to the relevant authorities, and (ii) it disseminated the advocacy recommendations among the public through the press. Indecopi also conducted follow-up co-ordination activities with the agents who received the advocacy recommendations to get their feedback.

17. In relation to the first channel, Indecopi published the advocacy recommendations on its website⁷ and forwarded them to the authorities involved in each market. The advocacy recommendations for the market in notarial services in Peru were sent to Minjus, the Congress of the Republic and the National Public Records Oversight Agency; whereas the recommendations for the market in the practical driving test service in the Lima Region were sent to MTC, the Lima Metropolitan Authority and the Regional Government for Non-Metropolitan Provinces of Lima. Additionally, the recommendations of both studies were forwarded to the Presidency of the Council of Ministers.

18. In relation to the second channel, Indecopi held a press conference on 3 March this year to set out the main outcomes of the competition advocacy process. The current characteristics of competition in the markets assessed were outlined alongside the factors that restrict competition, especially those related to the regulatory framework.

19. To increase the impact of the advocacy, invitations to the press conference were extended to various branches of the media, and the journalists in attendance included representatives from the newspaper *El Peruano*, the review *Semana Económica*, the newspaper *El Comercio* and the national radio station *Radio Programas del Perú*. To ensure that the message was conveyed appropriately to the public, Indecopi adopted a fluent, less technical style of language, and when referring to its analysis and recommendations, it focused on the aspects that were easy to understand.

20. The conference led to press releases that were published by important media such as the newspapers *El Comercio*⁸ and *Gestión*⁹, which reported the chief findings of the research and the recommendations made by Indecopi to the authorities involved in the market.

21. Finally, as stated, Indecopi conducted a number of co-ordination activities with the various agents that received the advocacy recommendations. In particular, between March and June this year, Indecopi held meetings with the Chair of the College of Notaries of Lima and the President of the Board of Chairs of Colleges of Notaries of Peru, the MTC and Minjus, at which it outlined the outcomes of the advocacy activities and the chief proposals for legislative reform.

⁷ The advocacy recommendations were published on the Indecopi website at the following address: http://www.indecopi.gob.pe/0/modulos/PAR/PAR_ListarArchivos.aspx?PFL=2&GRU=205&VALTEM=0.

⁸ *El Comercio* “Indecopi pide mayor competencia en exámenes de manejo en Lima” (Indecopi asks for greater competition in Lima driving tests), *El Comercio*, Lima, 4 March 2015. Viewed on 20 July 2015 at: <http://elcomercio.pe/economia/peru/indecopi-pode-mayor-competencia-examenes-manejo-lima-noticia-1795262>.

⁹ *Gestión* “Indecopi propone cambios a normas que rigen servicios notariales y de exámenes de manejo” (Indecopi proposes changes to the rules governing notarial services and driving tests), *Gestión*, Lima, 3 March 2015. Viewed on 20 July 2015 at: <http://gestion.pe/economia/indecopi-propone-cambios-normas-que-rigen-servicios-notariales-y-examenes-manejo-2125068>.