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

Working Party No. 2 on Competition and Regulation

COMPETITION ISSUES IN LINER SHIPPING

-- Peru --

19 June 2015

This document reproduces a written contribution from Peru submitted for Item IV of the 59th meeting of the Working Party No. 2 on Competition and Regulation on 19 June 2015.

More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competition-issues-in-liner-shipping.htm>

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Abstract: the present document contains a brief summary about the main features of the liner shipping market in Peru and how the Peruvian Competition Act coexists with international regulations about practices and commercial operation included in the Convention on a Code of Conduct for Liner Conferences (hereinafter, the Code).

1. Unlike other developing economies, the Peruvian liner shipping market does not have a locally owned company. Liners in Peru are foreign owned companies that operate through maritime agencies, established according to local legislation. It is important to mention that rates are freely established by liners.
2. According to information from the Peruvian National Ports Authority, in 2014, the liners that transported the majority of containers were Maersk Line (267,000 TEU), Mediterranean Shipping Company (262,000 TEU), CSAV (230,000 TEU), Hapag Lloyd (213,000 TEU) and CMA CGM (149,000 TEU)¹.
3. The significance of liner shipping is its growing relative importance compared to other transportation means, being the main customers of such services the traders of groceries (fresh fruit, fish, etc.) and minerals among others.
4. Such significance is shown in the following numbers: in 2010, liners represented 41% of total maritime transport; in 2011, 49%; and, in 2012, it reached 52%. In particular, demand of liner shipping services has increased and export (2010: 26.55%, 2011: 29.65%, and 2012: 27.13%) and import (2010: 23.45%, 2011: 25.58%, and 2012: 25.14%) are important elements in the Peruvian Gross Domestic Product.
5. In Peru, the Code and Peruvian Competition Act coexist. It is important to mention that the Free Competition Commission of INDECOPI, as the national competition agency, is in charge of enforcing the Peruvian Competition Act. However, no authority has been designated to enforce the Code in Peru.
6. The Peruvian Competition Authority has identified eight conferences from Asia, America and Europe to Peruvian ports, such as: “Japan West Coast South America Freight Conference – JWCSA”, “Asia West Coast South America Freight Conference – AWCSAFC”, “Asia West Coast South America Agreement – AWCSA”, “West Coast South America Discussion Agreement - WCSADA”².
7. Accordingly, INDECOPI, in the context of monitoring maritime transport markets, has realized, preliminary, that even though the Code could allow liners to fix freights, there are several situations where the Competition Authority could declare liability of companies that could have developed anticompetitive behaviors that affect Peruvian markets. For this reason, INDECOPI is currently monitoring the potential of such agreements to international trade.
8. On this regard, INDECOPI has evaluated in its agenda the possibility to recommend to Peruvian Government to assess the convenience to exclude the Code from Peruvian legal framework. In this scenario, this recommendation could be issued through an advocacy document where a comprehensive analysis of the legal framework will be done, evaluating less restrictive alternatives for competition than an exemption for antitrust laws.

¹ http://www.apn.gob.pe/c/document_library/get_file?uuid=353a028a-1c2a-463a-b3d9-2c2f0d7c3429&groupId=10136

² According to public sources.

9. Furthermore, considering maritime sector is an economic activity that involves more than one country, it is important to have a global competition policy for liner conferences, but if there is only one country that eliminates this immunity (for example, European Union), the effect of hard core cartels could continue in the other countries (for example, the freight assumed by the exporter).

10. Unfortunately, in this moment, we do not have a report about the relative importance, in terms of shipping volumes, of a shipping conferences and consortia. We expect to have this information as a result of our maritime transport market investigations. Considering the confidentiality of this inquiry, it is not possible to discuss more information.

11. It is important to mention that the Technical Secretariat of the Defense of Free Competition Commission of INDECOPI has not published a market study related to competition in liner shipping in last five years, this market remains very important for the Competition Authority agenda.

12. Notwithstanding that, in 2006, INDECOPI issued a report titled "Inquires about competition level in port market services"³. This report identified principal economic agents and described the process to doing an export operation. Then, it analyzed competition level in the most important Peruvian ports, like Callao, Paita and Matarani and concluded that there was not a leader in maritime agencies and storage terminal markets, in terms of information, technology and capacity. Finally, the report proposed some recommendations, exclusively, about customs and port procedures as lack of control policy and public workers to facilitate foreign trade by Peruvian tax authority.

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