

## CRISIS CARTELS

-- Peru<sup>1</sup>--

### 1. Governmental policies towards cartels during crises: assessment and evolution

1. The Peruvian competition law (Legislative Decree N° 1034<sup>2</sup>) prohibits any agreement, decision, recommendation or concerted practice which aims at restricting, impeding or distorting free competition, whether it was done by economic agents that compete among them or by economic agents operating in different levels of the production chain<sup>3</sup>.
2. It should be noticed that the Peruvian competition law and enforcement is relatively young. In fact, it was not until 1991 when the first competition law was enacted and enforced through the creation of INDECOPI<sup>4</sup>. As a result, INDECOPI's practice toward cartels have been to consider price-fixing agreements *per se* illegal without making any differentiated treatment for cartels during severe economic downturns. For all other type of cartelization, not involving directly or indirectly the price and/or quantities in the market, a rule-of-reason approach is applied.
3. In general, INDECOPI's position toward cartels has been endorsed by the Government. To some extent, the fact that the Peruvian economy has been relatively resilient to the current market turmoil has contributed to this policy (see section 2).
4. In few occasions where a Government branch has intended directly to agree with industry some sort of concerted practice, which in the view of the Government may help consumers, INDECOPI's role has always being to inform both the Government branch and the private sector about the prohibition on concerted practices which aims at restricting, impeding or distorting free competition.

### 2. Enforcement record on cartels during the recent crisis

5. There was no change in Peru's cartel-related enforcement priorities during the recent economic crisis. In addition, there were no noticeable differences in the types of cartels investigated in this period. However, it is important to consider that the economic downturn experienced worldwide had a relatively low impact on Peruvian economy. In fact, Peru was one of the least affected countries in Latin America<sup>5</sup> and it was precisely because of its ability

---

<sup>1</sup> For comments or question please refer to [sdavilap@indecopi.gob.pe](mailto:sdavilap@indecopi.gob.pe) .

<sup>2</sup> Legislative Decree N° 1034 was enacted on June 24, 2008.

<sup>3</sup> It should be mentioned that in the case of economic agents operating in different levels of the production chain, the prohibition of this kind of practices is conditioned to the existence of a dominant position in the relevant market by at least one of the involved agents prior to the exercise of the practice.

<sup>4</sup> Legislative Decree N° 701 was enacted on November 5, 1991. It was repealed by Legislative Decree N° 1034.

<sup>5</sup> For instance, see: <http://www.globalviewc.com.ar/files/article/file/30.pdf> .

to withstand external shocks that Moody's Investors Services raised the credit rating of Peru to investment grade on December 2009, following other credit ratings agencies<sup>6</sup>.

### **3. International cooperation on cartels**

6. Indecopi has signed cooperation agreements with the competition authorities of Panama, El Salvador and Chile, which provide cooperation in the investigation of practices that may distort competition. Furthermore, we are negotiating similar agreements with Ecuador and Colombia. Nonetheless, there has not been any request of foreign competition authorities for cooperation on cartel-enforcement matters during the crisis.

### **4. Competition advocacy on cartel-related matters**

7. During the current crisis, Indecopi has not undertaken any cartel-related competition advocacy. However, as we mentioned before, Indecopi is always informing all economic agents and political authorities about the prohibition on practices that may distort free competition.
8. Furthermore, it should be mentioned that the treatment of cartels during economic downturns is an issue on Indecopi's competition agenda, as well as the treatment of public aids for industries in crisis.

---

<sup>6</sup> See: <http://semanaeconomica.com/articulos/47923-moody-s-otorga-grado-de-inversion-al-peru-porsucapacidad-para-resistir-shocks-externos> .