

MARKET DEFINITION IN PERU

1. In Peru, the Defense of Free Competition Commission (hereinafter, the Commission) of the National Institute for the Defense of Competition and the Protection of Intellectual Property (Indecopi) has an important experience in the assessment and definition of relevant markets using the most widely accepted –also called traditional– economic and legal methodologies. However, as we will see, in recent years the Commission have had the opportunity to enrich its analysis in some decisions by looking for new concepts from modern economic research although not displacing the traditional model, because our legal model strongly relies on the market definition methodology.
2. In general, the decisions of the Commission reflect the traditional approach over markets consisting on the definition of the product and geographic markets as the basic elements to determine the economic framework where competitive behaviour of the market actors will be assessed. This approach has been accepted in most countries, mainly because of the large influence of the antitrust systems of the United States and the European Union.
3. Furthermore, this traditional market definition is a fundamental step in the analysis of anticompetitive behaviour, not only as an economic concept but also as a legal obligation for the authority. Indeed, the Peruvian Competition Act provides the need to establish a preliminary definition of the relevant market, based on product and geographic markets methodology, in order to initiate a procedure for an alleged abuse of dominant position or vertical restraints. Such definition of the market is then debated by the defendants. Ultimately, the Commission has to define the relevant market in finding an infringement of the Competition Act. The Tribunal of Indecopi, acting as a second instance, can review the market definition of the Commission and re-define the market based on its own considerations.
4. On these regards, market definition is a legal step for the authority to follow in its assessment of anticompetitive conducts. Nevertheless, in enforcing the Competition Act, the Commission has used some new approaches from the economics field in order to complement its market definition methodology or to explain in a more comprehensive manner the level of competitive constraints on the undertakings in a particular procedure.
5. For instance, in deciding a case where a shopping center allegedly agreed with a fast food restaurant chain to deny its facilities to a latter's competitor, the Commission importantly based its decision on the two sided markets theory. The Commission determined that the indirect net effects generated by the platform (the shopping center) in managing two inter-dependent demands (the demand for fast food hamburgers and the demand for commercial premises), and the lack of "*multihoming*

effect” defined the relevant market as the shopping center itself. Therefore, it granted the platform a dominant position in the market. The defendants had alleged that the market was defined as every area suitable for commercial premises. The firms’ appeal is pending decision by the Tribunal.

6. Also, in recent reports where the Technical Secretariat of the Commission evaluates the existence of competition in the provision of different port services (e.g. dangerous goods freight for export), the authority has frequently used the concept of “bundled services” in order to better understand and explain the competitive constraints that are placed on companies that offer port services. The analysis of bundling is very important as, whenever a service is provided in a “package” with other services and there is a high degree of complementarity between them, the market definition and the analysis of competitive conditions shall not be conducted over an individual service but on the package.