

PERU

COOPERATION AND ENFORCEMENT - UNILATERAL EXCHANGE OF INFORMATION WITH ANTICOMPETITIVE EFFECTS

According to Background Paper: “Information Exchanges Between Competitors Under Competition Law” issued by the OECD Competition Committee, the exchange of information among competitors could raise concerns whenever “it enables firms to tacitly collude to increase prices, share or allocate markets” and “makes it easier for co-operating firms to detect and therefore punish deviating firms”¹.

The Peruvian Competition Commission (Indecopi) assesses exchanges of information as part of collusive practices to fix prices, reduce output or set other conditions, but our Competition Act does not consider unilateral exchanges of information as prohibited practices itself, as they do not fit on the legal description as “agreements, decisions, recommendations or concerted practices”. However, we have had the opportunity to examine unilateral declarations as traces that could eventually lead to findings of collusive practices in the form of recommendations or decisions.

For instance, in mid 2008 the Competition Commission initiated an administrative procedure against a transport association. The investigation was triggered by the declarations of the president of the association regarding an increase in the prices of passenger transportation.

The Competition Commission considered that, because of the specificity of the declarations regarding the date and amount of the price increase, these announcements were aimed to persuade the transport firms to raise their prices. Additionally, as the association president was the person who made those statements, the Competition Commission considered that he had enough influence over the associated transporters to achieve its anticompetitive goal. Accordingly, a collusive practice in the form of recommendations to increase the prices on passenger transportation was proved and therefore the association and its president were fined.

In late 2008 the chairman of a dairy companies association, discussing a government proposal to increase electricity prices, stated that such increase would result in an increase of milk prices, among other foodstuffs. The Competition Commission initiated an administrative procedure in order to determine whether such declarations could qualify as a collusive practice in the form of recommendations or decisions aimed to increase milk prices.

As a result, the chairman and the association recognized that, even not deliberately, the statements could have produced negative effects in the market. Therefore, they signed a commitment by which they agreed to cease its conduct. Also, they agreed to prepare and distribute a document for all members of the Peruvian major industrial association, explaining the practices that may constitute anticompetitive behavior, and

¹ Information Exchanges between Competitors under Competition Law, par. 2.

to hold, in conjunction with the Competition Commission an event dedicated to explain to members of industry the scope of Peruvian Competition Act.