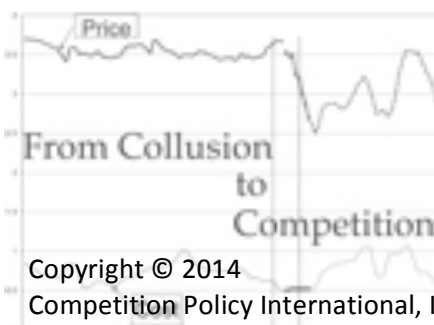


Cartel Investigations and Poverty Reduction: A Taste of Peru

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Overview

In this article I will discuss the course of actions in cartel detection and fighting collusion of the Competition Commission at Indecopi, the Peruvian National Authority for the Defense of Competition and Protection of Intellectual Property Rights. The Commission, and in particular its Technical Secretariat, have started ex-officio investigations regarding cartels following a un-official rule that confers priority to cases in sectors that are thought to have a direct and sufficiently large impact on poverty indices.

I will argue that, for the Peruvian case, this is a sensible approach although it reduces, for example, the applicability of empirical screens for conspiracies as the cases are very specific, making statistical data less likely to be available for systematic and timely analyses.

Successful ex-officio actions against cartels have included *Chicken Farmers*, *Compulsory Car Accident Insurance Policies (Soat)* and *Medicinal Oxygen*. All these three cases are likely to have had a direct, non-trivial positive impact on consumers' welfare in the country so that the un-written view of the Commission to give priority to cases of similar characteristics should remain for the next years. Indeed, the Commission is currently investigating *Retail Drugstore Chains* for price fixing agreements that confirm that the line of actions remains unaltered.

It is very important to stress that the Competition Commission at Indecopi is an autonomous body that, for example, does not depend on the technical advice of the Office of the Chief Economist. In that respect the Commission may require some technical support from the Office of the Chief Economist in specific cases, but in most cases it is its own technical team that designs cases and produces the evidence to open, develop and conclude ex-officio investigations.

An Informal Line Of Actions In Cartel Detection

Nowadays Peru has become a serious destination for *haute cuisine* lovers. Businesses related to food, drinks and catering services are also having a tremendous impact over poverty reduction. Indeed, according to the National Institute of Statistics almost nine small businesses related to the food, drinks and catering services open every day, creating formal jobs and prosperity.¹ Readers of this column may know that a number of Peruvian restaurants have irrupted into the international rankings of best restaurants in the world, which, in my opinion, provides evidence that this economic sector is not only flourishing in absolute numbers but also increasing standards of quality to deliver further value to money.

*Disclaimer: The opinions in this article are not necessarily those of the Peruvian Competition Authority and cannot be taken as an official notice. Errors and omissions are of entire responsibility of the author.

¹ <http://www.larepublica.pe/19-02-2014/mas-restaurantes-se-abren-en-lima-la-libertad-y-arequipa>.

Total population suffering from some kind of unsatisfied basic need reduced from 33.5 percent in 2009 to 27.8 percent in 2011² - not surprising for a country growing at an annual average rate of 6.4 percent from 2002 to 2012. Yet the incidence of poverty in the country is a major concern for policy makers so that any administrative action that may have a positive impact over the fight against it will have a general support in the public sector.

Despite this optimistic landmark, I should recognize that the Peruvian market is far from being as placid as a romantic dinner in one of the top quality restaurants in Lima. Mr. Frederic Jenny, Judge at the Supreme Court of France, said at the OECD Conference on Competition last October in Lima that the temptations for collusion are as the forces of gravitational attraction they are present in every market at any point in time. In the same vein, A close colleague of mine told me recently that in her view, Cartels might be around the corner and competition authorities will find them if they look carefully at market outcomes.

The Competition Commission at Indecopi is conscious that the above comments are true but its work is severely constrained by budget limitations making management of cases a challenging business. With respect to cartel detection and enforcement of the Peruvian Competition Act (Legal Decree 1034 of 2008 which replaced the Legal Decree 701 of 1991),³ fighting collusive practices is comparable to the exercise of pushing up a heavy ball of iron along one of the highest mountains in the Peruvian Andes.

With very few resources, however, the Competition Commission at Indecopi has successfully unveiled a number of cartels in the last 17 years, by means of ex-officio investigations. The common factor of these cartel breaks, as in the emerging food and catering industry, is that they all have necessarily had a strong impact over poverty reduction in Peru.

In my view, this is a sensible way to allocate scarce resources for Competition Law Enforcement in a developing country. In other words, the competition authority has correctly decided to fight cartels selecting cases based on a qualitative analysis of the potential impact over the poverty indices in the country, coupled with a high likelihood that cartels do exist in such industries.

In the next section I will briefly comment on ex-officio investigations on collusive practices conducted by the Commission. Although those ex-officio cases are not very numerous, each of them has had enough potential large welfare effects in the country to conclude that the line of actions of the Commission should remain for the coming years.

A Brief History Of Cartel Detection

² <http://www.bcrp.gob.pe/docs/Publicaciones/Programa-Economico/mmm-2014-2016-mayo.pdf>

³ The legal framework for Competition Policy in Peru can be accessed at http://www.indecopi.gob.pe/0/modulos/JER/JER_Interna.aspx?ARE=0&PFL=2&JER=88

The first large case put forward by the Commission in 1997 was about price-fixing agreements among chicken farmers (the *Chicken Farmers* case), with chicken meat being the most important source of essential calories in the Peruvian daily diet. The Commission sanctioned 20 firms for unlawful agreements that fixed the wholesale price of chicken meat for almost two years (1995-1996), although the Competition Tribunal, the second instance in the administrative line at Indecopi, reduced the number of sanctioned firms to 15.

This case was taken as a precedent in several aspects for future investigations and case design. For example, the Competition Tribunal declared that in cases of explicit collusion there is no need to prove that the conduct has had an impact on consumers to consider the conduct illicit from the point of view of the Competition Act.

A long period of time elapsed until the second big case emerged. In 2002 the Commission fined 9 insurance firms that offered car insurance nationwide (the *Soat* case). Although the Competition Tribunal reduced the number of sanctioned firms to 7, the Commission successfully proved that the largest firms in the market fixed the amount charged for premiums between 1999 and 2003, especially for car accident insurance policies that are required by Law for car owners, *Soat*.⁴ The premium for non-commercial car insurance of that type was set by the cartel at US\$ 60.⁵ The Commission's actions in this market have benefited hundreds of thousands car owners in the country for which the cost of the compulsory minimum insurance policy is today of about US\$ 35 per year.

Finally, in 2010 the Commission fined a group of firms that provided Medicinal Oxygen to EsSalud (a state-owned social insurance and medical services provider), a product thought to have inelastic demand, used in medical applications to preserve the life and health of consumers unable to afford private medical treatments. In the *Medicinal Oxygen* case, the Commission proved that between 1999 and 2004 the providers of Medicinal Oxygen geographically divided the public tenders organized by EsSalud.⁶

The latter is most likely the case in which the Commission's action has had the largest welfare effect, as it directly affected the costs of essential public medical services oriented to the poorer segments of the population.

This line of actions has continued recently. For instance, in 2010 the Commission started an ex-officio investigation against seven major retail chains in the pharmaceutical sector for alleged price-fixing agreements. According to information from the Minister of Health, specifically from The Director General for Medicines and Drugs (DIGEMID) — a national authority that grants *Sanitary Registers* to commercialize pharmaceutical products — between 2002 and 2012, pharmaceutical consumption in the country has doubled in terms of volume. Although consumption through public health institutions accounted for almost 44 percent of the units consumed in 2012, in terms of monetary value it represented less

⁴ Seguro Obligatorio de Accidentes de Tránsito.

⁵ <https://www.indecopi.gob.pe/repositorioaps/0/0/jer/-1/ResolucionN0224-2003-TDC.pdf>

⁶ Resolution 051-2010/CLC-INDECOPI, 13 August 2010. Available in: http://www.indecopi.gob.pe/RepositorioAPS/0/2/par/RES_051_2010_CLC/Res051-2010.pdf

than 30 percent of the demand. On the other hand, independent drugstores and retail chains distributed around 48 percent of the units consumed in 2012, whereas their weight in terms of monetary value was 60.7 percent.

Long run figures indicate that private retail channels distributed 17 percent more units in 2012 with respect to 1995, whereas the distribution through public health institutions was 6.7 times larger in 2012 than in 1995. It is evident that any action over existing cartels in this sector will have a sizeable welfare impact. This reinforces the line of action of the Commission, which started in 1997, to continue to today.

The Use Of Empirical Screens For Cartel Detection In Peru

In general, the ex-officio investigations started with a process of data and soft evidence gathering far from being systematic. Yet, the Commission applied a protocol looking for alternative explanations that might have caused the observed performance of market values. In some sense, the Commission has used *ad-hoc screens* to detect and gather evidence to start a cartel investigation. However, no specific statistical analysis prompted red flags in the cases briefly described above.

In my view, the fact that the cases settled by the authority are very specific in terms of distinguishing features, makes it difficult to have one general screening tool that could have uniformly been used to help point at suspicious market outcomes across all of these markets, without additional effort on resources. In addition, the fact that the Commission is likely to focus in cases with potentially large impacts on poverty indices for which data may not be readily available, an empirical screening approach is difficult.

That said, the Commission may recognize the value of empirical screening and has asked the Office of the Chief Economist to deliver a monthly report for price screening based on the essential products reported systematically by the National Institute of Statistics. The report aims at statistically analyzing the data generating process of price time series of essential, non-durable consumption products, giving early notice of unusual trends on the time evolution of prices of products such as milk, sugar, domestic gas, among others.

This small step towards the use of more systematic tools for early cartel detection is designed to complement the efforts of the Commission in keeping its fight against collusion. The challenge may be to find a way to generate the highest synergies between this and future screening tools and the un-written view of the Commission of giving priority to ex-officio investigations that could have a large positive effect over consumer welfare and poverty indices in the country for which basic data is often unavailable.