

PERUVIAN COMPETITION FRAMEWORK

Legal Disposition	Denomination	Comments
Peruvian Constitution	Title III (Economic regime), Chapter I (General Principles)	<p>Article 58 establishes that private initiative is free and is exercised in a social market economy. The State, under this regime, orientates the development of the country.</p> <p>Article 59 establishes the role of the State in promoting the creation of wealth and as guarantor of free business, trade and industry. Likewise, it establishes that the State should promote small enterprises in all its modalities.</p> <p>On the other hand, article 60 contains the State's recognition of economic pluralism, establishing that national economy is sustained in the coexistence of diverse forms of property and company.</p> <p>Finally, article 61 disposes that the State facilitates and supervises free competition. In this sense, it deals with any practice that limits it and with dominant or monopolistic position abuses.</p>
Legislative Decree 701 (Published 1991/11/07)	Elimination of monopolist, restrictive and control practices against free competition.	<p>This legal device establishes ex-post control for dominant position abuses and collusive practices.</p> <p>Article 3 of this law prohibits all conducts related with economic activities which constitute a dominant position abuse or restraint free competition (producing an adverse impact in general well-being).</p> <p>Article 4 defines dominant position and article 5 describes those practices that can be considered as dominant position abuse. According to this law, a company has a dominant position when it can act in an independent way without considering its competitors, buyers, clients or suppliers, due to factors as the company's market share, characteristics of the supply and the demand, technological development or related services, competitors' access to financial and supply sources, as well as, distribution networks.</p>

		<p>On the other hand, article 6 describes anticompetitive practices, that is to say, those agreements or other practices that restraint or can restraint competition.</p> <p>This law does not have any provision to put into practice previous notification for mergers that can produce anticompetitive effects, but there is one exception established in the Law 26876, Antimonopoly and antioligopoly of the Electrical Sector Law.</p>
<p>Law Decree 25868 (Published 1992/11/24)</p>	<p>Indecopi's organization and functions Law.</p>	<p>This Law Decree created the National Institute of Defense of the Competition and the Protection of the Intellectual Property (Indecopi) and granted its main role -among others- which is being the national competition authority in Peru.</p> <p>According to the organizational structure of Indecopi, there are two quasi-jurisdictional bodies directly related with the implementation of the Competition Law: the Free Competition Commission (CLC, according to its Spanish acronym), which is the first administrative instance (authority), and the Defense of Competition Chamber (SDC, according to its Spanish acronym), which is the second administrative instance (authority) entrusted to solve the appeals formulated in the Commission. On the other hand, even though the CLC is the authority entrusted to solve cases exclusively on free competition affectations, the activities of other commissions also have implications in topics related to competition, such as: Bureaucratic Barriers Surveillance Commission, Repression of Unfair Competition Commission, Consumer Protection Commission and Dumping and Countervailing Duties Commission.</p> <p>Likewise, this law establishes that the Free Competition Commission has technical and functional autonomy and is integrated by six non-full time members (commissioners) designated by the Board of Directors of Indecopi, previous opinion of the Consultative Council of the institution.</p>
<p>Legislative Decree 788 (Published 1994/12/31)</p>	<p>Reorganization of INDECOPI</p>	<p>According to this law, some dispositions established in the Legislative Decree 701 were modified. The original law established that the voting-members (vocals) of the Defense of Competition Chamber could only be removed of their positions by a well-founded reason; nevertheless, the Legislative Decree 788 modified this disposition and established that the voting-members could be removed without any reason, because they were considered as confidential positions.</p> <p>In the same way, the Free Competition Commission has six non-full time commissioners which can be removed without reason in any moment. These commissioners are independent from the Defense of Competition Chamber, except in those cases in which the commission must follow</p>

		dispositions established in precedents of mandatory observance and procedural (legal) mandates.
Legislative Decree 807 (Published 1996/04/18)	Indecopi's powers, procedures and organization Law	<p>This law modified some aspects of Indecopi's organic structure with the purpose of reinforcing its performance. For that reason, some powers for the Commissions were established, the amount of fines were raised and the administrative procedures that already existed were simplified.</p> <p>Articles 1 to 10 of this law specify wide powers of investigation and requirement of information for all Indecopi's Commissions, including the Free Competition Commission.</p> <p>Article 11 of the law modified articles 2, 5 (literal a to f), 6 (literal a, d and g), 19 and 23 of Legislative Decree 701.</p> <p>Article 2 specifies the application scope of the competition law (DL 701). The Law is applicable to persons and companies, public or private, that perform economic activities, as well as to persons who manage or represent companies, institutions or entities that take part in activities and practices sanctioned by the law.</p> <p>On the other hand, article 5 considers as a dominant position abuse the unjustified denial to satisfy needs to buy or acquire; or offers to sale both products and services (literally a), as well as other cases of equivalent effects (literally f).</p> <p>Likewise, article 6 establishes some cases of free competition restraint practices: price fixing between competitors; agreements about other commercial conditions or services (literally a), or about the quality of the products when it does not correspond to international standards and affects the consumers (literally d); and unjustified denial to satisfy acquisition requests or to satisfy sale offers of products or services (literal g).</p> <p>In the same way, article 19 establishes that the Commission can draw up a penal accusation when it concludes that the responsible for the dominant position abuse or free competition restraint acted fraudulently. Article 23 establishes the scale of the fines that can be placed by the Commission (up to 1000 Tax Units - UIT). Nowadays, a Tax Unit - UIT corresponds to S/. 3,400.00 nuevos soles, the Peruvian currency, approximately US\$ 1.060.</p> <p>According to article 12, some competition restrictive practices became part of article 6, as mentioned: to settle limitations or to control the production, distribution, technical developments or</p>

		<p>investments (literal h); to establish, to settle or coordinate offers or abstaining to offer in bids, contests, auctions or public auctions (literally i); and other cases of equivalent effects (literal j).</p> <p>Article 13 included article 21 to the Legislative Decree 701. Article 21 granted the Free Competition Commission the power to issue precautionary measures to assure the fulfillment of the definitive decision.</p>
<p>Law 27146 (Published 1999/06/24)</p>	<p>Strengthening the Patrimonial Restructuring Law</p>	<p>The Fourth Final Statutory Clause of this law modified articles 2 and 5 of the Legislative Decree 807, establishing the following powers to Indecopi's Commissions: (i) to demand the exhibition of all kinds of documents, including countable and association books, vouchers, commercial mail, magnetic records and information about the organization, business, the entirety of shareholders and the property structure of the company; (ii) to mention and to interrogate the persons investigated or their representatives, employees, advisers, officials and others, being able to use tape or video recordings; and (iii) to carry out inspections, with or without previous notice, in the business establishments and to examine books, records, documentation and goods, being able to take copy of physical or magnetic files, as well as, filming or photography files.</p> <p>In the same way, it establishes that the sanctions for those persons who provide false information; destroy, change or hide information; and fail to comply the requirements of information; will not be less than one Tax Unit - UIT and no more than 50 Tax Unit - UIT, without considering the penal liability that could correspond.</p>
<p>Law 26876 (Published 1997/11/19)</p>	<p>Antimonopoly and antioligopoly of the Electrical Sector Law.</p>	<p>This law establishes previous notification (<i>ex-ante</i> control) in merger cases in the electrical sector (generation, transmission and distribution).</p> <p>Any vertical or horizontal merger that could take place in the activity of generation, transmission or distribution of electric power must have a previous authorization given by the Free Competition Commission, in order to prevent damages in free competition, like to diminish or to impede competition in this market.</p> <p>This law establishes that a merger could be understood as the accomplishment of the following acts: (i) mergers itself; (ii) jointly organization of a company; (iii) the direct or related acquisition of other companies' control through the purchase of stocks, participations or other contracts or legal measures that confer the direct or related control of a company, including joint ventures, use or usufruct of stocks and/or participations, management contracts, shareholder's agreements, or by</p>

		<p>any another business collaboration contract.</p> <p>Likewise, productive assets acquisitions of any company that develops activities in this sector, any act, contract or legal definition including legacies, by means of which it is possible the merger of companies, associations, stocks, social shares, trusts or general assets are included.</p>
Supreme Decree 017-98-ITINCI (Published 1998/10/16)	Administrative Regulation of the Antimonopoly and Antioligopoly of the Electrical Sector Law.	Regulatory rule of the Law 26876 that sets the procedure of previous notification in the Free Competition Commission concerned about mergers in the electrical sector. Likewise, this rule establishes the way in which the Free Competition Commission will proceed to evaluate the merger and opposition mechanisms of the Commission's decision.
Supreme Decree 087-2002-EF (Published 2002/06/01/)	Regulatory dispositions of the Law 26876, Antimonopoly and antioligopoly of the Electrical Sector Law, related to consolidation operations in the electrical sector.	Regulatory rule that sets the procedure of previous notification in the Free Competition Commission related to mergers in the electrical sector produced within processes of promotion of private investment controlled by PROINVERSION (Peruvian Promotion of the Investment Agency) and the procedure that will govern its evaluation. In this sense, this rule regulates the procedure of previous notification in mergers derived from the processes of private investment in State-owned electrical companies.
Law 27444 (Published 2001/11/04)	General Administrative Procedure Law	<p>In Peru, the competition law does not include proscribing rules for anticompetitive regulations emitted by the government, but there exists a legal framework that allows to identify and to abolish bureaucratic barriers that restraint the market access and restrict competition. This activity is developed by Indecopi's Bureaucratic Barriers Surveillance Commission.</p> <p>Within the dispositions that grant this power is the Law 27444 (General Administrative Procedure Law). Article 48 of this law establishes the powers of the Bureaucratic Barriers Surveillance Commission to notice and to solve denunciations drawn up by citizens or economic agents related to bureaucratic barriers that restrict competition. Article 26 of the Decree Law 25868 (Indecopi's organization and functions Law), Legislative Decree 807 (Indecopi's powers, procedures and organization Law) and Law 28032 contain regulations in the same sense.</p>
COMMUNITARIAN LEGISLATION		
608 Andean Community	Rules for the protection and	This legal device takes as an aim the protection and promotion of free competition in the Andean

Decision	promotion of free competition in the Andean Community	<p>Community region, looking for efficiency in the markets and the well-being of consumers. In this sense, it prohibits and sanctions free competition restrictive conducts (agreements or abuse of dominant position conducts) which take place:</p> <ul style="list-style-type: none">a) In the territory of one or more country members of the Andean Community and whose real effects are produced in one or more country members, except when the origin and the effect are produced in one country; and,b) In the territory of a country not member of the Andean Community and whose real effects are produced in two or more country members.
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