

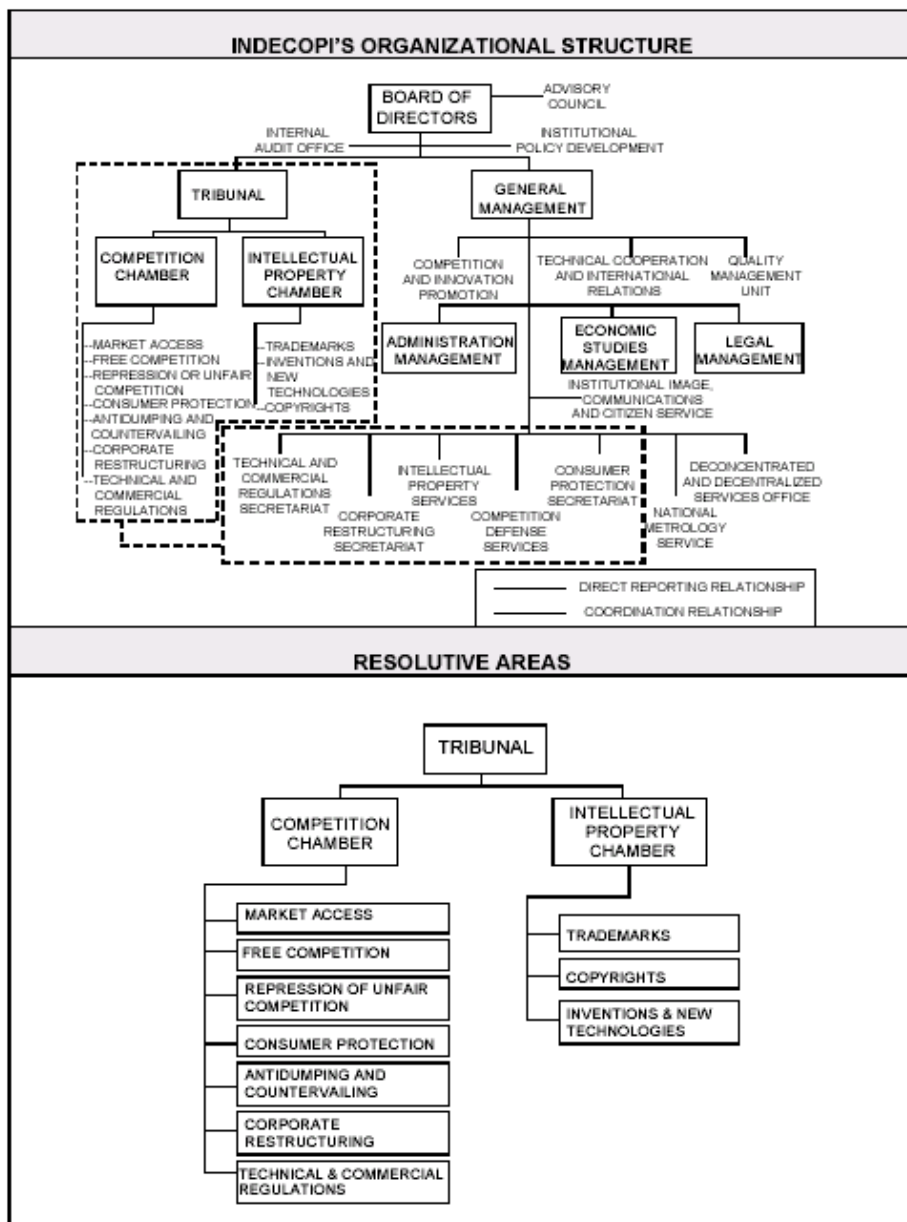
## **Competition: Organizational Structure**

In the last several years Peru has been undergoing major changes which have had a significant impact on the country's development. Many of the most significant changes involve the institution of a market economy system. For this, a mediator was required who, without intervening in or distorting the marketplace, would guarantee the effectiveness of the economic system to ensure that the basic rules of competition are honoured.

In this context, the National Institute for the Defence of Competition and Protection of Intellectual property (INDECOPI), was created in November of 1992 (Decree Law No25868 and Supreme Decree No025-93-ITINCI), but it opened its doors in March 1993. It is charged with being both arbiter and promoter of Peru's free market economy, focusing on two critical institutions that under gird it: market competition and intellectual property.

In broadest terms, INDECOPI is divided into two parts, Economic Policy Units and the Jurisdictional Area, both supported by a third part - Administration - and guided by a board of directors, represented on a day-to-day basis by the Chairman of the Board. The Jurisdictional Area, in turn, is divided into two chambers: Defence of Competition and Intellectual Property. Both chambers are comprised of several different jurisdictional bodies, either commissions or offices.

## ORGANISATION CHART: INDECOPI



Besides these commissions, the Jurisdictional Area also contains a judicial body of the second instance: the Tribunal. In fact, the Tribunal hears all appeals of cases decided at the first instance by Indecopi's Commissions and offices. Tribunal members are insulated from the first instance and removable without cause. Their decisions are appealable directly to Peru's Supreme Court.

On the one hand, the Free Competition Commission is in charge of ascertaining full compliance with antitrust, controlled and restrictive laws in protection of free competition, according to the provisions of Legislative Decree No 701. This legislation restricts all acts or behaviour that constitute an abuse of dominant position within a market as well as any restraining practices against free competition.

Therefore, the Free Competition Commission has the following duties:

- a. To resolve, in the first instance, proceedings initiated by the Technical Secretariat;
- b. To adopt the necessary corrective measures;
- c. To impose the corresponding sanctions;
- d. To require individuals or firms to submit any documentation including books of account, receipts for payment, business correspondence and computerized records; and to seek information relating to the organization, business, shareholders and ownership structure of firms;
- e. To summon persons material to the investigation or their representatives, employees, officers, advisors or third persons, by whatever means necessary, for questioning by designated officials;
- f. To conduct inspections, with or without prior notice, on the premises of individuals and companies and to examine their books, records, documents and properties. During such inspection, it may take copies of physical and computerized files and records, and make photographs or films, as it sees fit. It may call upon police assistance in gaining entry, and may make forced entry to locked premises with a prior court warrant;
- g. To authorize the Technical Secretariat to seize the documents of any person or firm under investigation;
- h. To bring criminal charges where it considers that the provisions of Legislative Decree 701 have been fraudulently violated and that the resulting injury is of serious consequence to the public interest;
- i. To request police support as necessary in the performance of its duties.

The Free Competition Commission's work is supported by a Technical Secretariat endowed the faculty to follow up administrative proceedings *ex officio* or at the request of interested parties. These proceedings aim to determine the existence of any illegal practice that breaks the law whose compliance has been charged to the Commission. The Secretariat has the following duties: a) To render opinions in cases involving violations of this law; b) To conduct inquiries and investigations on its own initiative or in response to a complaint, using the facilities and competence of the Commission on Free Competition as previously described in d), e) and f); c) In exceptional cases, and with prior consent of the Commission, it can seize the books, files, documents, correspondence, and general records of the person or firm investigated, making copies of same. In similar circumstances, it can remove them from the place where they are located if it has a court order to do so. The request to remove records must be justified and ruled upon within 24 hours by the judge of the first instance, without transfer to the other party; d) Prepare draft regulations and adopt directives; and e) Issue injunctions, *ex-officio* or at the initiative of parties involved with the procedure.

On the other hand, the Defence of Competition Chamber of the Tribunal has the second and final administrative jurisdiction for cases involving violations of Decree 701. This body has the following functions:

1. Hear appeals against decisions of the Free Competition Commission.

2. Rule on appeals regarding the adoption of corrective measures and the imposition of sanctions.
3. Recommend to the Chairman of Indecopi such action as necessary before the competent authorities toward adoption of the legal or regulatory measures needed to ensure free competition.
4. Request police assistance to enforce its decisions.