

MORE FREQUENTLY ASKED QUESTIONS ABOUT FREE COMPETITION

- **WHAT DO WE MEAN BY COMPETITION AND WHY SHOULD IT BE ENCOURAGED?**

In a market economy, supplier and consumers decide, through innumerable transactions, on what to buy and what to sell and under which terms, such system is based on the consumers' freedom of choice. In a market economy, the competition is defined as a dispute between offerents of a product to attract a great number of clients, by offering lower prices, better quality, a wide range of products, services, among other things. The fundamental reason for promoting the competition is that, when it exists, a consumer can achieve the best terms.

- **WHICH IS THE ORGANIZATION IN CHARGE OF WATCHING OVER COMPETITION?**

INDECOPI, through the Commission on Free Competition, is the competent governmental organization in charge of enforcing and administrating the law in cases of a business conduct intended to restrict or limit the competition.

- **WHICH ARE THE CASES OF A CONDUCT THAT RESTRICTS OR LIMITS FREE COMPETITION?**

There is two kinds of conduct prohibited by the free competition law: (i) restrictive practices affecting free competition, and (ii) abuse of dominant position. Both practices eliminate the benefits of free competition.

- **WHAT DO WE MEAN BY RESTRICTIVE PRACTICES AFFECTING FREE COMPETITION?**

They are agreements or concerted actions among competitors to define coordinately their business strategy and to eliminate the risk of reducing or losing their market share as a result of competition. This conduct causes businesses participating in the agreement to apparently compete against each other; however, they really act as though they were a only business, establishing the same terms of sale and limiting thus consumers' options.

Among restrictive practices affecting free competition, we can mention: fixing prices, dividing market or quotas on production, concerted actions for purchasing and bid submission in public biddings.

- **ARE PARALLEL CASES OF THE SAME CONDUCT EVIDENCE OF AN AGREEMENT AMONG COMPETITORS?**

No, the fact that different competitors act in the same way at the same time, which is called *parallelism*, in relation to price fixing or other terms of sale, does not of itself constitute sufficient evidence of an agreement or concerted action among businesses. In fact, this may be due to, for example, the behavior called

"leader-follower" (companies follow the actions taken by the company recognized as a leader in the market).

That is why it proves to be necessary to collect more evidence that allows to confirm or discard that there is a common will among competitors to restrict the competition. For example, exceptional meetings among competitors, subsequent documentation evidencing that compliance with the agreed conditions, implementation of policies developed by a trade union bringing together the competitors, etc.

- **WHAT DO WE MEAN BY DOMINANT POSITION IN THE MARKET?**

A dominant position is the condition in which a leader company or the largest company in the market is determined for each particular case. The pertinent market is determined by defining a product or its substitutes (butter and margarine, for example) and the geographic area where such products are commercialized under the same conditions (considering transportation costs, tariffs, product perishableness, among other things). More difficult is the entry of new companies into the market, greater is the possibility that a company holds its dominant position.

- **DOES THE DOMINANT POSITION CONSTITUTE AN ATTEMPT AGAINST THE PRINCIPLES OF FREE COMPETITION?**

No, the company may have achieved this dominant position by attracting a greater number of clients through better prices, quality and other terms of sale (efficiency), which is not questionable because this benefits the consumers. However, the abuses by a company with dominant position are considered illegal since they are harmful to the market and the consumers.

- **WHAT IS THE ABUSE OF DOMINANT POSITION?**

It is a conduct of non-competition by which the leader company takes advantage of the position it holds in the market in order to keep and improve such condition, causing damages to other agents and obtaining benefits, which that would not have been possible if such dominant position did not exist. Among the main practices being an abuse of dominant position, we can mention the unjustified refusal to buy or sell, the discriminatory treatment in business practices, tie-ins and other actions causing similar effects.

- **HOW ARE CLAIMS FILED?**

Claims shall be filed to the Technical Secretariat of the Commission on Free Competition, including information as detailed in the document "Basic Information Needed" and the payment of a fee equivalent to 0.3 UIT (Unit for Tax Purposes) (currently S/.840.00). Petitions are received at the INDECOPI reception desk. When confidential information is included, it shall be delivered in a closed envelope with the indication "Reserved" or "Confidential". In addition, the reasons why such information is considered to be declared as reserved for the Commission, shall be indicated in the petition.

- **WHICH MEASURES DOES THE COMMISSION ON FREE COMPETITION TAKES WITH RESPECT TO A CLAIM FOR RESTRICTIVE PRACTICES AFFECTING FREE COMPETITION?**

In the framework of the procedure established by the law, claims are evaluated by the Technical Secretariat, the body that issues a final report on the market situation and the existence of such practices. The Commission evaluates the claims based on strictly technical criteria and timely arranges for the necessary measures to prevent the denounced acts from continuing to cause damages and, if applicable, imposes sanctions that may be admissible.

- **WHICH POWERS DOES THE COMMISSION HAVE TO MAKE SUCH INVESTIGATIONS?**

The law establishes that the Technical Secretariat has powers to make interviews, to examine records, to review documents and to consult any sources that may provide relevant information to know the market.

If there is a violation of the Legislative Decree No. 701, the Commission on Free Competition may order the discontinuance of the illegal practice or impose certain conditions on companies that violate the law. Likewise, it may impose fines for violation or noncompliance with its decisions (up to 1000 UITs). In addition, the Commission may issue precautionary measures to ensure the compliance with the final decision.