

Agreement for cessation of conducts

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INSTITUTO NACIONAL
DE DEFENSA DE LA
COMPETENCIA Y DE LA
PROTECCIÓN DE LA
PROPIEDAD INTELECTUAL



Legislative Decree 1034, Peruvian competition law

- Period to submit the agreement for cessation of conducts.
- Process of the agreement for cessation of conducts.



Legislative Decree 1034, Peruvian competition law

Conditions to assess the agreement for cessation of conducts:

- Investigated economic agents have to accept the anti-competitive conduct.
- There is no anti-competitive effect in the market.
- Corrective measures offered by the investigated economic agents.



Legislative Decree 1034, Peruvian competition law

The Commission decides whether the proposal is approved or denied. This decision cannot be appealed.

Exceptionally, the process shall be re-initiated. The Commission can impose a fine of up to \$ 1,321,428 when the agreement is breached.

The information given by the investigated parties cannot be used in the main file of the investigation.



Milk case

The main administrative procedure



The main procedure

- January 21st, 2009, the Technical Secretariat initiated a procedure against Mr. Piskulich, Milky Industry Association and the Milky Products Committee of the Industrial National Society to have recommended to increase the price of the elaborated milk.
- Mr. Piskulich is the chairman of the Milky Industry Association and the president of the Milky Products Committee of the Industrial National Society.



The main procedure

Legislative Decree 1034

Article 11.- Horizontal Collusive Practices .-

11.1. Horizontal collusive practices are those agreements, decisions, recommendation or practices among competitors, which aims to restrict, impede or distort free competition, such as:

(a) To fix, previous agreement, direct or indirectly, prices or other business or service conditions;

(free translation)



The main procedure: The Facts

November 3th, 2008, in Gestión Journal, Mr. Piskulich stated:

“En el caso de las panificadoras, muchas de estas utilizan hornos eléctricos, por lo que el precio unitario del pan subiría a S/. 0,28. Y en el caso de la Industria láctea, el tarro de leche que ahora cuesta S/. 2,30, podría subir a S/. 2,70. (...)



The main procedure: The Facts

November 5th, 2008, in La República Journal, Mr. Piskulich stated:

Rolando Piskulich, presidente del Comité de Lácteos de la Sociedad Nacional de Industrias (SNI), dijo a La República que para los empresarios de su sector es imposible mantener las actuales tarifas (...)

Los industriales evalúan el monto del alza de la leche, pero preliminarmente sería de entre S/. 0.20 o S/. 0.30 para el tarro de leche evaporada, con lo cual pasaría a costar entre S/. 2.70 y S/. 2.80.



The main procedure: The Facts

November 11th, 2008, in 90 Segundos TV News, Mr. Piskulich stated:

ese incremento en la tarifa que para el caso de la industria láctea y otros sectores de alimentos es de uso intensivo de corriente eléctrica tiene que ser trasladado al consumidor, no hay alternativa, eso significa incremento de precios. El Presidente del Comité de Lácteos de la Sociedad Nacional de Industrias, Rolando Piskulich, asegura que Osinerg debe reconsiderar el modelo con el cual se ha establecido las nuevas tarifas (...)



The main procedure: The Facts

November 11th, 2008, in America Televisión TV News, Mr. Piskulich stated:

La Sociedad Nacional de Industrias estima que textiles, metalmecánica y las fundiciones se verán seriamente afectadas, el sector lácteo será el más perjudicado, incluso ya se informó que a partir de la próxima semana el costo del tarro de leche se incrementará entre 20 y 30 céntimos debido al constante uso de electricidad para congelar el producto. Entonces, de que sube, sube, y ya está este anuncio que afecta la canasta familiar (...)



The main procedure: The Facts

November 12th, 2008, in Expreso Journal, Mr. Piskulich stated:

Entre 20 y 30 céntimos de sol subiría la leche este fin de mes como consecuencia del incremento de las tarifas eléctricas, anunció el gerente de la Asociación de Industriales Lácteos de la Sociedad Nacional de Industrias (SNI), Rolando Piskulich.



The main procedure: The Facts

January 21st, 2009, the Technical Secretariat opened a procedure against Mr. Piskulich, Milky Industry Association and the Milky Products Committee of the Industrial National Society for recommending the increase of the price of the elaborated milk.



The agreement for cessation of conducts



The agreement for cessation of conducts

March 10th, 2009, Mr. Piskulich submitted to the Technical Secretariat an agreement for cessation of conduct.

He recognized to have recommended the increase of the price of the elaborated milk in journals and TV news.

He mentioned that his declarations did not have the effect to increase the price of the milk elaborated. Even, in some cases, the prices decreased.



The agreement for cessation of conducts

Finally, Mr. Piskulich offered the following conditions:

- Do not declare any recommendation to increase the price of the elaborated milk in the future.
- To prepare a document to explain to its associates the conducts sanctioned by the Peruvian competition law.
- To prepare a presentation in its local to explain the conducts sanctioned by the Peruvian competition law.
- To answer any questions of the associates about the Peruvian competition law.



The agreement for cessation of conducts

The Technical Secretariat verified:

- Investigated economic agents recognized the anti-competitive conduct.
- There was not affectation of the anti-competitive conduct.
- The corrective measures offered by the investigates economic agents.

April 27th, 2009, Technical Secretariat proposed to the Defense of Free Competition Commission to approve the agreement for cessation of conducts.



The agreement for cessation of conducts

May 7th, 2009, The Defense of Free Competition Commission approved the agreement for cessation of conducts and decided the suspension of the main administrative procedure.

