Non-official translation

**Legislative Decree approving the Repression of Anticompetitive Conducts Law**

**LEGISLATIVE DECREE Nº 1034**

THE PRESIDENT OF THE REPUBLIC:

WHEREAS:

That, in accordance with the set forth in Article 104 of the Political Constitution of Peru, through Law Nº 29157, which delegates to the Executive Branch the power to legislate on different matters related to the implementation of the United States of America - Peru Trade Promotion Agreement, and to the support to the economic competitiveness for its better use, issued on December 20th, 2007, the Congress of the Republic has delegated to the Executive Branch the power to legislate, among other matters, for the improvement of the regulatory framework;

That, after more than fifteen years of enforcement of the Legislative Decree Nº 701, Law against Monopolic, Controlling and Restrictive Practices affecting Free Competition, its diagnosis shows that this regulation has a number of shortcomings and gaps, requiring a comprehensive reform;

That, in that sense, it is relevant the enactment of a new law on anticompetitive conducts control specifying its purpose in accordance with the objective in the above-mentioned Trade Promotion Agreement; to clarify its scope (subjective, objective and territorial); highlight the supremacy of reality principle; to establish clear concepts and analysis criteria generating greater predictability in its application to establish conducts considered as anticompetitive, to forbid absolutely those collusive conducts considered worldwide as inherently anticompetitive; to redefine and enhance the administration procedure, incorporating reasonable and real terms, the preclusion in the presentation of evidences although without affecting the defense right, a better treatment of the precautionary measures and a clearer differentiation between the investigating and decision role; to grant greater dissuasive capacity for sanctions scheme, improving the criteria to establish them, extending the limit in case of capital offenses and developing the power of the competent authority in order to establish corrective measures, among others.

That, on the basis of such contents, a new law that forbids and sanctions the abuse of dominant position and horizontal and vertical collusive practices shall strengthen significantly the regulatory framework of free competition defense, promote the economic efficiency in the markets, boost the economic competitiveness of the country and enhance the consumer welfare, establishing a proper environment for its investments;

Passed by vote of the Cabinet and certificate of notification to the Congress of the Republic;

Has issued the following Legislative Decree:

Non-official translation

# REPRESSION OF ANTICOMPETITIVE CONDUCTS LAW

## TITLE I

## GENERAL PROVISIONS

Article 1.- Objective of this Law.-
This Law prohibits and sanctions the anticompetitive conducts in order to promote the economic efficiency in the markets for the consumer welfare.

Article 2.- Scope of Subjective Application.-
2.1. This Law is applicable to natural or legal persons, business associations, autonomous properties or other companies whether public or private, state or not, profitable or non-profitable, that in the market supply or demand good or services or whose affiliates, associates or members perform such activities. It is also applicable to those who perform the administration, management or representation of the above-mentioned entities, provided that these have participated during the planning, performing or execution of the administrative offense.

2.2. Natural persons acting on behalf and commissioned by legal persons, companies, business associations, autonomous properties or entities above-mentioned in the foregoing paragraph, with their acts generate liability on these, although it is not required Civil Representation for this purposes.

2.3. For purposes of this Law, where it is referred to any of the above-mentioned persons, business associations, autonomous properties or entities, the “economic agent” term shall be used. This term shall be also used to refer to companies of a same economic group.

Article 3.- Scope of Objective Application.-
Those conducts that are consequence of the set forth in a law are out of the scope of this Law. The questioning of such law shall be carried out through the respective means and in no event before the competent authority established on this Law. The government may assume the actions deemed necessary to contribute in order to improve the conditions of products supply in the best interest of consumers.

Nevertheless, discretionally, the competent authority may issue reports related to the above-mentioned conducts in the foregoing paragraph in order to assess its effects on free competition and the consumer welfare.

Article 4. - Scope of Territorial Application.-
This Law is applicable to conducts that produce or may produce anticompetitive effects in the whole or part of the national territory, even when such act has been started on abroad.

Article 5.- Supremacy of reality.-
In the application of this Law, the administrative authority shall determine the true nature of the investigated conducts, observing the situation and economic relations to intend, develop or establish in the practice. The form of legal acts used by contracting parties does not enervate the analysis that authority carries out on the true nature of the underlying conducts to such acts.

## TITLE II

## RELEVANT MARKET AND DOMINANT POSITION

Article 6.- Relevant market.-
6.1. The relevant market is composed by the product and the geographical market.

6.2. Generally, the relevant product market is the good or service subject of the investigated conduct and its substitutes. For the substitution analysis, the competent authority shall assess, among other factors, the preferences of customers and consumers; the characteristics, uses and prices of possible substitutes, as well as the technological possibilities and the required time to the substitution.

6.3. The relevant geographical market is the set of geographical zones where the alternative sources of relevant products supplying are located. In order to determine these supplying alternatives, the competent authority shall assess, among other factors, the costs of transport and the existing barriers of commerce.

Article 7.- Dominant position in the market.-
7.1. It is understood that an economic agent is in a dominant position within a relevant market when it has the possibility to restrict, affect or distort significantly the conditions of supply or demand in such market, and its competitors, suppliers or customers are not able to, in that moment or in the immediate future, counteract such possibility due to factors such as:

(a) a significant participation in the relevant market.

(b) the characteristics of supply and demand of goods and services.

(c) Technological developement or involved services.

(d) The competitor access to financing sources and supply as well as distribution networks.

(e) The existence of legal, economic or strategic entry barriers.

(f) The existence of suppliers, customers or competitors and their capacity to negotiate.

7.2. The sole fact of being in a dominant position is not an illegal conduct.

## TITLE III

## ANTICOMPETITIVE CONDUCTS

### Chapter I

### Nature of Prohibitions

Article 8.- Absolute prohibition.-
In cases of absolute prohibitions, to verify the existence of administrative offense, it is enough that the competent authority evidences the existence of such conduct.

Article 9.- Relative Prohibition.-

In cases of relative prohibitions, to verify the existence of administrative offense, the competent authority shall evidence the existence of such conduct and that it has or may have negatives effects, on the competition and consumer welfare.

## Chapter II

## Abuse of Dominant Position

Article 10. - Abuse of Dominant Position.-
10.1. It is considered that there is abuse when an economic agent being in a dominant position within the relevant market uses such position to restrict inappropriately the competition, obtaining benefits in detriment of real or potential, direct or indirect, competitors, which would not have been possible without being in such dominant position.

10.2. The abuse of dominant position in the market may consist on conducts of exclusionary effects such as:

a) To deny, without justification, to satisfy the selling or acquisition, or to accept selling or rendering offers of goods and services respectively;

b) To apply, in business relations or services, different conditions for equivalent services positioning, without justification, certain competitors in an unfavorable condition with respect to others. There is no abuse of dominant position in case of granting discounts or bonuses usually used and accepted in business practices, which may be given or granted due to compensatory and specific circumstances, such as pre-paid, law-cost high volume or others usually given, under equal terms.

c) To subject the entering into contracts upon acceptance of complementary services, those by their nature or in accordance with the business rules, are not consistent with the purpose of such contracts;

d) To prevent, without justification, the entry or permanence of a competitor in an association or organization of intermediation;

e) To establish, impose or suggest exclusive distribution or sale contracts, clauses of non-competence or similar, without justification;

f) To abuse and reiterate legal or administrative procedure, whose effect is to restrict the competition.

g) To incite third parties not to provide goods or render services, or not accept them; or,

h) In general, those conducts that prevent or make difficult the entry or permanence of current or potential competitors in the market due to different reasons than a greater economic efficiency.

10.3. This Law is also applicable when the dominant position arises from a law or ordinance, or an act, contract or administrative rule.

10.4. The conducts of abuse of dominant position represent relative prohibitions.

10.5. There is not an abuse of dominant position the sole excercise of such position without affecting real or potential competitors.

## Chapter III

## Horizontal Collusive Practices

Article 11.- Horizontal Collusive Practices.-
11.1. Horizontal collusive practices are those agreements, decisions, recommendations or concerted practices carried out by economic agents competitors among them, with the purpose or effect of restrict, prevent or distort the free competition, such as:

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

(b) To limit or control the production, distribution, technical development or investments;

(c) To distribute concertedly customers, suppliers or geographical zones.

(d) To agree the product quality, when it is not in accordance to national or international technical standards and adversely affects the consumers.

(e) To apply in business relations or services, concerted different conditions for equivalent services positioning, without justification, certain competitors in an unfavorable condition with respect to others;

(f) To subject, concertedly and without justification, the entering into contracts upon acceptance of complementary services that, by their nature or in accordance with the business rules, are not consistent with the purpose of such contracts;

(g) To deny, concertedly and without justification, to satisfy the selling or acquisition, or to accept selling or rendering offers of goods and services respectively;

(h) To prevent, concertedly and without justification, the entry or permanence of a competitor in a market, association or organization of intermediation;

(i) To agree, without justification, distribution or exclusive sale;

(j) To agree or coordinate offers, positions or proposal, or refrain from these during bids or public or private tenders or other forms of public contracting or acquisition provided by the corresponding legislation, as well as public auctions or auction sale, or,

(k) Other equivalent effect practices seeking for benefits due to different reasons than a greater economic efficiency.

11.2. Absolute prohibitions are those horizontal inter-brand agreements that are not supplementary or accessory for other legal agreements, which are aimed:

a) To fix prices or other business or services conditions

b) To limit the production or sales, particularly, by quotes;

c) To distribute customers, suppliers or geographical zones; or,

d) To establish positions or abstentions during tenders, bids or other forms of public contracting or acquisition provided in the corresponding legislation, as well as public auctions or auction sales.

11.3. The collusive horizontal practices different to the above-mentioned in the item 11.2 are relative prohibitions.

## Chapter IV

## Vertical Collusive Practices

Article 12.- Vertical collusive practices.-
12.1. Vertical collusive practices are those agreements, decisions, recommendations or concerted practices carried out by economic agents operating in different levels of the production, distribution or commercialization chain, aiming to restrict, prevent or distort the free competition.

12.2. The illegal vertical conducts may consist on those typified as reference in the items 10.2 of article 10 and 11.1 of article 11 of this Law, as applicable.

12.3. The configuration of a vertical collusive practice requires at least that one of the involved parties has, previous to the practice, a dominant position in the relevant market.

12.4. The vertical collusive practices are relative prohibitions.

## TITLE IV

## DEFENSE OF FREE COMPETTITION AUTHORITIES

Article 13.- Competition Authorities.-

13.1. In the first administrative instance the competition authority is the Commission, understanding it as the Defense of Free Competition Commission of INDECOPI.

13.2. In the second administrative instance the competition authority is the Tribunal, understanding it as the Tribunal for the Defense of Competition and Protection of Intellectual Property of INDECOPI.

Article 14.- The Commission.-

14.1. The Commission is an autonomous body responsible for technical and functional implementation of this Law with exclusive jurisdiction unless such jurisdiction has been allocated or assigned to another public body by special law.

14.2. Commission attributions are:

a) To declare the existence of an anti-competitive conduct and apply the corresponding penalty;

b) To order precautionary measures;

c) To order corrective measures regarding anti-competitive conducts;

d) To issue Guidelines that informs the economic agents about the correct interpretation of the regulation of this Law;

e) To suggest the Chair of the Board of INDECOPI to give an opinion, exhort or recommend to the legislative, political or administrative authorities on the implementation of measures that restore or promote free competition, such as the elimination of entry barriers, the implementation of economic regulation to a market where competition is not possible, among others; and,

f) Others assigned by the current legal provisions.

Article 15. - Technical Secretariat.-

15.1. The Technical Secretariat of the Commission is the technical autonomous body which performs the task of an instructor of the investigation and punishment procedure of anti-competitive conducts; and issues an opinion on the existence of the offending conduct.

15.2. Secretariat functions are:

a) To execute preliminary investigations;

b) To initiate ex-officio the procedure for investigating and punishing anti-competitive conducts.

c) In case of a complaint, to decide the admissibility of the investigation and punishment of anticompetitive conduct procedure, being entitled to declare the complaint inadmissible, as appropriate;

d) To request the Commission the order of a precautionary measure;

e) To instruct an infringement procedure, carrying out investigations and acting forms of evidence, and exercising for that purpose the powers and jurisdiction that the laws have attributed to the Commissions of INDECOPI ,;

f) Under exceptional circumstances and by a previous agreement of the Commission, it may withhold for a period not exceeding ten (10) working days, extendable for a similar period of time, ledgers, files, documents, correspondence and records in general of the natural or legal person under investigation, and make copies thereof. In similar circumstances, it may withdraw them from the place where they are kept, up to fifteen (15) working days, requiring judicial authorization to execute such recovery, according to the special proceeding set forth in literal c) of item 15.3 of this Article;

g) To carry out studies and publish reports;

h) To prepare Guidelines proposals;

i) To focus the administrative support required by Commission;

j) To carry out training and spreading activities regarding the application of the defense of free competition regulations and,

k) Others provided by the current legal provisions.

15.3. For the development of its investigations, the Technical Secretariat is empowered to:

(a) Demand individuals, business associations and autonomous properties, to exhibit all kind of documents, including accounting and corporate books, payment vouchers, internal and external correspondence and magnetic records including, in this case, the needed programs for its reading; as well as to request information regarding the organization, its businesses, the shareholders and the ownership structure of firms.

(b) Summon or examine, through the officers assigned for such purpose, the individuals under investigation or its representatives, employees, officers, advisors and third parties, using technical resources it deems necessary to generate a complete and accurate record of its statements, being entitled to use magnetic tape recordings in video, compact disc or any other electronic instrument.

(c) To conduct inspections, with or without prior notification, at the premises of the natural or legal person, business associations and autonomous properties, and examine books, records, documents and goods, being entitled to check on the development of the production processes and take the statement of the persons found at the premise. In the inspection may take copies of physical files, magnetic or electronic, as well as any document that is deemed relevant or taking photographs or filming as may be necessary... To access such premises, police support may be requested.

The Technical Secretariat shall obtain prior judicial authorization to proceed with the forcible unlocking in case any opposition to entry into the premises occur or they were closed, as well as to copy private correspondence that may be contained in physical files or electronic records, according to the especial process detailed as follows:

(i) The Technical Secretariat shall request to the corresponding Criminal Judge on duty a hearing to obtain a special authorization for forcible unlocking or for copying private correspondence, not mentioning the name of the individuals, business associations or autonomous properties that will be subject to unannounced inspection.

(ii) Upon receipt of the request, the Judge will schedule, within a period not exceeding three (3) business days, and under its responsibility, a meeting with the Technical Secretariat, in which a prosecutor may be present.

(iii) Before Judge and at the scheduled time, the Technical Secretary shall explain to the Judge and, if applicable, also to the prosecutor, the reasons of its special authorization request for forcible unlocking or for copying private correspondence, submitting the information or the documents evidencing the existence of reasonable evidences of the administrative offense by the person or company that will be subject to inspection, which will be identified immediately as well as the place inspected.. At that meeting, if the Judge deems that the request is justified; the Judge shall declare it appropriate, issuing immediately the corresponding decision thereon, rising a record signed by all who were present.

(iv) The resolution referred to in the preceding paragraph shall specify the name, corporate name of the person or company that will be inspected by the Technical Secretariat, as well as the place where is located the place or premises subject to inspection, and motivate and specify the scope of the authorization, which may include, among others, the review and copies of the received or sent emails by the Administrators, Managers or Representatives of the individual or company to be inspected.

(v) In a period no more than three (3) working days of the inspection visit culminated, the Technical Secretariat shall prepare a report giving the details of the diligence, which shall be forwarded to the Judge and, if appropriate, to the prosecutor who was at the meeting.

(vi) Both the above-mentioned Judge and the Prosecutor must keep absolute reserve of the special process, under their responsibility, since the beginning of the meeting for the evaluation of the special authorization request for forcible unlocking and/or for copying private correspondence presented by the Technical Secretariat to the moment of receipt of that report referred to above.

(vii) In case of refusal, the Technical Secretariat is empowered to make a second request for special authorization request for forcible unlocking and/or for copying private correspondence.

Article 16.- The Tribunal.-

16.1. The Court is the body in charge to verify in second and last instance the indisputable acts issued by the Commission or the Technical Secretary.

16.2. The Tribunal, through its Technical Secretariat, is entitled to, ex -officio, act forms of evidences in order to clarify the charged facts as offenses.

Article 17.- OSIPTEL.-
The application of this Law to the market of public telecommunications services shall be in charge of a Supervisor Body of Private Investment in Telecommunications - OSIPTEL pursuant to the set forth in Law Nº 27336, Law of the Development of Functions and Powers of OSIPTEL. In this regard, the corresponding instances, its powers and proceeds governing its procedure shall be established by a regulatory framework.

## TITLE V

## INFRINGEMENT ADMINISTRATIVE PROCEDURE

### Chapter I

### Initiation

Article 18. - Initiation of Procedure.-

18.1. The infringement procedure of investigation and sanction of anti-competitive conducts are always initiated ex-officio, at initiative of the Technical Secretariat or upon a petition of a party.

18.2. In the infringement trilateral procedure initiated upon petition by one party, the complainant is a collaborator in the investigation procedure, preserving the Technical Secretariat’s holder status of the ex-officio act.

18.3. The infringement procedure may be initiated when the reported conduct is being performed, when there is threat of it and even when its effects have already stopped.

Article 19. - Requirements for a complaint.-
The complaint charging the anti-competitive conducts shall contain:

(a) Name, denomination or legal name of the complainant, its domicile and respective powers, if applicable.

(b) Reasonable evidences of the alleged existence of one o more anti-competitive conducts.

(c) Identification of the alleged responsible, as far as it is possible.

(d) The expenses vouchers of procedure fees for infringement procedure. These procedure fees are exempted from the limit, regarding the established amount in the Law of General Administration Procedures.

Article 20.- Prior proceedings to the admission to procedure of a complaint.-
Once the complaint is filed and prior the initiation decision of investigation and punishment procedure of anti-competitve conducts, the Technical Secretariat may act doing prior proceedings in order to collect information or identify reasonable evidences of anti-competitive conducts. These prior proceedings shall be developed in no more than forty five (45) working days from the filing date of the complaint.

Article 21.- Procedure initiation decision.-

21.1. The Technical Secretariat shall decide on the admissibility of a complaint after verifying the compliance of the legal requirements demanded by the Unique Text of Administration Procedure - TUPA of INDECOPI, the jurisdiction of the Commission and the existence of reasonable evidences of infringement to this Law.

21.2. The charging or initiation of procedure decision shall contain:

a) The identification of an economic Agent or Agents who are charged with the alleged offense;

b) A concise statement of the facts underlying the establishement of the procedure, the legal definition of the alleged offense and, where appropiate, all the sanctions that may correspond;

c) The identification of the jurisdictional authority for the solution of the case, stating the legal regulation that attributed such competence; and,

d) The instruction of the right to file a defense and the term of its execution.

21.3. The decision of initiation of procedure shall be informed to the Commission in a time period no more than five (5) working days, within this period, the charged economic agents and the complainant shall be notified, those who will be considered as appeared to the procedure for such presentation, if applicable.

21.4. The decision declaring that a complaint is inadmissible is appealable before the Court within a period of fifteen (15) working days.

21.5. Once the complaint is admitted for procedure, if the Technical Secretariat deems appropriate, it shall publish a brief note on its subject matter, in order that anyone with legitimate interest may appear to the procedure or simply provide useful information for the investigation. Such note shall be published in the webpage of INDECOPI, in the Official Newspaper El Peruano and in one of the most widely circulated newspaper in the national territory.

Article 22.- Terms to submit evidences for defense.-

22.1. The defendant or defendants shall answer the charges in the decision of initiation of procedure within a period of thirty (30) working days, submitting its arguments they deem convenient and providing the corresponding evidences.

22.2. During the mentioned term in the foregoing paragraph, other parties with legitimate interest may attend to the proceeding, expressing their arguments and providing relevant evidences, subject to fulfillment of the requirements for filing a complaint of a party.

## Chapter II

## Precautionary Measure

Article 23.- Precautionary Measure.-

23.1. Before the initiation of infringement procedure or at any stage in it, the Commission may order, upon request of the Technical Secretariat, complainant or a third party having legitimate interest, a precautionary measure to ensure the efficacy of the final decision, which includes ensuring the execution of the correctives measures that may be ordered in the final decision.

23.2. The Commission may adopt an innovative or non-innovative, generic or specific precautionary measure, that it deems convenient, particularly the order of activities cessation, the obligation to contract, the imposition of conditions, suspension of the effects of legal acts, the adoption of positives conducts, and any others contributing to preserve the affected competence and avoid the damage that such conducts may generate to the procedure.

23.3. Precautionary measures shall conform to the intensity, proportion and need of the damages to avoid.

23.4. When precautionary measure is granted before the initiation of an infringement procedure, such measure shall expire if such infringement procedure not initiated within fifteen (15) working days from its notification.

23.5. In case of petitions by one of the parties, the Commission may accept or reject them in a period no more than thirty (30) working days, extendable just once and for the same period. These are not applicable to whom submits the petition, civil assuring measures such as bonds for costs or similar. The Commission may grant precautionary measures different from the requested, provided that these are according to the intensity, proportion and need of the damage to avoid.

23.6. At any stage during the procedure, ex-officio or ex-parte, suspension, amendment or revocation of precautionary measures may be agreed.

23.7. The Court decisions imposing precautionary measures are appealable before the Tribunal in a period of five (5) working days. The appeal of precautionary measures shall be granted without suspenssive effect, filed in separated, and without prejudice to the set forth in the Article 216 of the Law of General Administration procedures. The Tribunal shall state the appeal within a period not exceeding thirty (30) working days.

23.8. The Tribunal has the same attributions as the Commission to order precautionary measures.

Article 24. - Requirements to order precautionary measures.-
To order a precautionary measure, the Commission shall verify the fulfillment of the following concurrent requirements:

(a) The payment of the procedure right fee amounting to a half (1/2) tax reference unit;

(b) The verisimilitude of the complaint;

(c) The danger of final decision delay; and,

(d) The possibility of the requested.

## Chapter III

## Agreement of Cessation and Penalty Waiver Application

Article 25.- Agreement of Cessation.-

25.1. Within the period of forty-five (45) working days from the date of notification of the charges or decision of initiation of the procedure, the alleged responsible may offer an agreement related to the cessation of the investigated facts or the modification of issues related to those thereof.

25.2. The agreement of cessation request shall be processed separately, being an attachment of main file.

25.3. To assess the Agreement Cessation request of, and in the exercise of a discretionary authority, the Technical Secretariat shall take into account the concurrent accomplishment of the following conditions:

(a) That everyone or part of the investigated economic agents acknowledges all or part of the charges appearing in the resolution of admission procedure. Such acknowledgement must be credible before the form of evidence kept on the main file or that has been given by the parties within the frame of the agreement cessation approval procedure;

(b) That is plausible that the anti-competitive conduct charged and acknowledged by the investigated economic agents has not affected or do not affect seriously the consumer welfare. For that, the relevant market size, the conduct duration, the good or service subject of the conduct, the number of affected companies or consumers, among others can be taken into account; and,

(c) That the investigated economic agents offer corrective measures allowing the possibility to verify the cessation of the reported anti-competitive practice and guarantee that there will not be any recurrence. Additionally, complementary measures giving evidence of the offender rectification can be offered.

25.4. The Technical Secretariat shall assess the proposal and, in case it is considered satisfactory, it shall propose to the Commission the suspension of the main administrative procedure by suggesting suitable measures in order to verify the commitment fulfillment. The Commission decides to approve or reject the proposal, and its ruling is not appealable due to their nature essentially discretionary.

25.5 In case of failure, the procedure shall be re-initiated, ex-officio or upon request of the parties. Such failure shall be considered as a serious offense. Therefore, the Committee can impose a fine of up to one thousand (1 000) Applicable Tax Units to the accused party.

25.6. The statements and information given by the investigated parties to the cessation agreement request procedure cannot be used in the main file of the investigation and sanction of anti-competitive conduct procedure; otherwise, this last procedure may be annulled.

25.7. The cessation agreement approval does not either free or limit the denounced parties from civil liability for damages they have caused, if the case.

Article 26.- Waiver of penalty.-

26.1. Without prejudice to what is set forth in the foregoing article, any person may request to the Technical Secretariat to be exempted from punishment in return for evidence to help identify and establish the existence of an illegal practice. Assuming that the evidence offered is crucial to punish those responsible, the Technical Secretariat may propose, and the Commission accepts, the approval of the made offer. For this purpose, the Technical Secretariat has all the powers of negotiation that may be necessary to establish the terms of the offer.

26.2. The penalty waiver commitment shall be signed by the interested party and the Technical Secretariat; it shall include the obligation to keep reserve on the origin of the given evidence. The failure to comply with this obligation shall produce in the officer the administrative and criminal responsibility provided for the case of information declared as reserved by the Commission. The signing of the commitment and compliance with the agreement by the interested party, exempts it from punishment for the undertaken conduct, the Commission, or any other administrative or judicial authority cannot follow or introduce an administrative or judicial procedurefor those facts.

26.3. If there are several economic agents requesting exemption from punishment, only the first that has provided evidence of the existence of an anticompetitive conduct and the identity of the offenders, will benefit from the exemption. Other economic agents that provide relevant information may be benefited with the reduction of the fine, if that information is different from the one that the competition authority already has, either by own research or for the request for exemption filed previously. The Technical Secretariat will examine in each case the relevance of the reduction of the fine.

26.4. The approval of penalty waiver does not eliminate or limit the civil liability of the defendants for caused damages and losses, if any.

## Chapter IV

## Instruction

Article 27.- Probationary Period.-
The probationary period cannot exceed seven (7) months from the deadline to answer the charges. The evidence is offered at the parties' own expenses, and has no tax nature.

Article 28.- Forms of evidence.-

28.1. The Technical Secretariat may act, or the parties may offer the following forms of evidence.

a) Documents;
b) Party's statements;
c) Testimonies;
d) Inspections;
e) Expertise; or,
f) Other evidences if in the opinion of the Technical Secretariat are needed to clarify the facts alleged or charged.

28.2. In the event it is necessary to carry out an inspection, this will be performed by the Technical Secretariat or the officer designated by it for that purpose. Whenever an inspection is made, a minute shall be made which shall be signed by the person who is in charge of it, as well as stakeholders, those who are their representatives or the person in charge of the store, office or establishment concerned.

28.3. Whether the actions of the evidence to the completion of the proceedings, the Technical Secretariat or the officer designated by it, may require the intervention of the National Police, without prior notification, to guarantee the fulfillment of their duties.

28.4. The cost of the evidence shall be borne by the person who offered it. The costs of those ordered by the authority may be distributed between the accused and who filed the complaint, if any, when the procedure is finished and depending on its outcome.

Article 29. - Inadmissibility of evidence.-
The Technical Secretariat may reject the evidence offered by the economic agents under investigation, by those who have filed the complaint or by third parties with a legitimate interest that have also appeared at theprocedure, when they are manifestly irrelevant or unnecessary, through resolution stating grounds.

Article 30.- Instruction proceedings.-

30.1. The Technical Secretariat is entitled, due to its jurisdiction, to perform at its own initiative the necessary proceedings for evidentiary examination of the facts, gathering documents, information or relevant material to determine, as appropriate, whether or not the charged administrative infringement exists.

30.2. If, following the instruction of the procedure, the initial determination of the facts or its possible description is modified, the Technical Secretariat will issue a new charging resolution which will replace the decision to initiate the procedure with a list of charges, by informing it to the Commission and notifying the accused persons, as well as the persons who have filed the complaint, if applicable. In case this new decision is issued, a new calculation of deadlines for the formulation of the discharges and a new calculation of the legal period that corresponds to the process proceedings, are initiated.

30.3. A month before the end of the probationary period, the Technical Secretariat shall inform the parties about such circumstance.

30.4. Within a period not exceeding ten (10) working days after the notification referred to in the preceding paragraph, the parties that consider it appropriate may present, as

additional evidence, only documents, which shall be transferred to all parts of the procedure.

30.5. At the end of the probationary period, the Technical Secretariat shall inform the parties that the probationary phase under its charge has ended, therefore no additional forms of evidences will be accepted.

## Chapter V

## Public and Confidential information

Article 31.- Access to the file.-
At any stage of the procedure and until it ends in the administrative office, only the party under investigation, who filed a complaint or third parties with a legitimate interest that have also appeared at theprocedure, are entitled to know the status of the application processing, access it and obtain copies of procedural documents, provided that the Commission has not approved its reserve for representing confidential information.

Article 32.- Confidential information.-

32.1. At the request of a party or third party with legitimate interest, including a public entity, the Commission will declare the reservation of the information considered confidential, whether it is a commercial or industrial secrets, information affecting personal or family privacy, whose disclosure could harm the owner and, in general, the one provided as such in the Law of Transparency and Access to Public Information

The reserve declaration request for a commercial or industrial secret shall be granted, provided that:

a) Such information is a knowledge that is considered reserved or private regarding a particular object;

b) Those who have access to that knowledge and have the will and interest to keep it confidential, adopting the necessary measures to keep it as such;

c) The information has a commercial, effective or potential value.

32.2. Only Commission members and Tribunal members, their Technical Secretaries and people duly authorized by them working or keeping a contractual relation with INDECOPI may access the information declared as confidential.

32.3. Where the Commission or the Tribunal grants the reservation request made, it will take all the necessary measures to guarantee the reservation of confidentiality of information, under its responsibility.

32.4. To proceed with the request for reservation, the interested party must specify which information is confidential, justify its request and submit a non-confidential summary of such information. To assess whether the information is confidential, the Commission shall assess the adequacy of such information, its non-prior disclosure and the possible effects that its disclosure could cause.

32.5. In the case of an inspection visit or an interview, and at the time of the proceeding, the interested party may request the generic reserve of all the information or documentation that is declaring or providing to the Technical Secretariat. This,

subsequently, must inform the interested party which information or documentation is considered relevant to the investigation, allowing a reasonable time for the interested person to individualize, with respect to relevant information, the request for confidentiality as stated in the previous paragraph.

32.6. The authority may declare ex-officio the reserve of the information linked to personal or family privacy.

32.7. The procedures and deadlines for the declaration of reserve of confidential information shall be established by Directive Order pursuant to what is set forth by the Law on Organization and Functions of INDECOPI.

## Chapter VI

## Conclusion of First Instance Procedure

Article 33.- Technical Report.-

33.1. In a period no later than thirty (30) working days from the expiration of the probationary period, the Technical Secretariat will issue a Technical Report realizing the following:

(i) Proven facts;
(ii) Determination of the administrative infringement;
(iii) Identification of the responsible party;
(iv) Proposal for the penalty grading; and,
(v) Proposal of relevant corrective measures.

33.2. If the Technical Secretariat does not find evidence of the existence of anticompetitive conduct, it shall propose to the Commission the declaration of non-existence of the administrativeinfringement.

33.3. The Technical Report shall be notified to the parties in the procedurewho willhave fifteen (15) working days to make allegations and submit writing requesting to speak before the Commission.

33.4. Once the deadline to submit allegations has expired, the Technical Secretariat shall have a period of five (5) working days to inform the Commission acted in the procedure, its Technical Report, the arguments of the parties on the Technical Report and, be the case, requests for hearing that had been presented.

Article 34.- The hearing.-
Once the Commission is informed about the Technical Report and the allegations, it may, in accordance with the requests made by the parties or ex-officio, summon the parties to an hearing, considering the need for such diligence to secure sufficient evidence to solve the case, with no less than five (5) days in advance.

Article 35.- Preclusion in the presentation of evidence and closing statements.-

35.1. Exceptionally, the Commission may establish submission of additional evidences if, in its opinion, are relevant to clear up the allegations

35.2. If the Commission orders the submission of additional evidences, the parties shall be entitled to present their own evidences, opening an evidentiary phase of thirty (30) working days, which shall be notified to all the parties in theprocedure.

35.3.Once the evidentiary phase mentioned in the preceding paragraph has concluded, the Commission may summon the parties to a second hearing, with no less than five (5) days in advance.

35.4. The parties may present final allegations only until ten (10) days after the above-mentioned oral report has been carried out.The parties cannot submit additional evidence in their final allegations.

35.5. Any document submitted after the deadline indicated above, shall not be taken into consideration by the Commission.

Article 36. - Final decision.-

36.1. The Commission shall have thirty (30) working days from the deadline that the parties have to present their final allegations, to issue its decision.

36.2. La resolución de la Comisión será motivada y decidirá todas las cuestiones que se deriven del expediente. En la resolución no se podrá atribuir responsabilidad a los involucrados por hechos que no hayan sido adecuadamente imputados en la instrucción del procedimiento.

36.2. The decision of the Commission shall be substantiated and shall decide over all issues arising from the file. In the decision, the involved parties cannot be ascribed to facts that have not been duly charged during the procedure instruction.

36.3. The decision shall be notified to the parties involved in the procedure within a ten (10) working day period from its issue date.

## Chapter VII

## Second Instance Procedure

Article 37.- Appeal.-

37.1. The Commission's final decision may be appealed by the accused party, by who has filed the complaint and by third parties with a legitimate interest who have attended to the procedure before the Tribunal within fifteen (15) working days. The Technical Secretariat may appeal the decision to exonerate the investigated parties, as well as the imposed fine.

37.2. They are also appealable in the same period to the Tribunal the following acts of the Technical Secretariat or the Commission, as appropriate:

a) The acts determining the impossibility to continue with the procedure; and,

b) Acts that can produce helplessness or irreparable damage to rights or legitimate interests.

37.3. The appeal shall be granted by the body that issued the decision and it won't have suspense effect, unless such body stipulates otherwise.

37.4. No reconsideration is allowed against the acts and decisions issued by the Technical Secretariat and the Commission.

37.5. The motion to appeal is processed in no more than one hundred twenty (120) working days. The Tribunal decision shall be notified to the parties involved in the procedure and to third parties who have appeared in a ten (10) working day term from its issue date.

Article 38.– Filing the appeal.-

38.1. The appeal shall be filed before the body which issued the decision being appealed, which will forward it to the Tribunal within fifteen (15) working days, with the main file, or in a separate file, as appropriate, and once having verified that it meets the requirements for admissibility and cause of action. In case the appeal is declared inadmissible, a complaint appeal can be filed before the Tribunal.

38.2. The parties interested in determining the existence of an infringing conduct and the imposition of a penalty may only appeal the final decision when it has acquitted the accused party.

Article 39.- Processing the appeal.-

39.1. The Tribunal shall notify the interested parties within fifteen (15) working days from the receipt of the fil, its arrival and the start of the appeal process.

39.2. The appellants may submit all the allegations, documents and justifications that they deem appropriate within fifteen (15) working days period from the above-mentioned notification.

39.3. At the request of a party or ex-officio, the Tribunal shall summon the parties to the hearing to state their final allegations, with no less than five (5) days in advance.

39.4. The parties can only submit final allegations within five (5) working days after that the hearing has been carried out. Any other document submitted after that date shall not be taken into consideration by the Tribunal.

Article 40.- Tribunal's Decision.-
The Tribunal's decision may not include the imposition of more severe punishments for the offender punished, in the case that it appeals the decision of the Commission

Article 41.- Challenge of the Court's decision.-
Final decisions of the Tribunal exhaust the administrative channel. There can be no application for review within the administrative channel and may only be brought against them a contentious administrative complaint in the terms established in the concerning legislation.

## Chapter VIII

## Statute of Limitation of the Infringement

Article 42.- Term of the Statute of Limitation.-
Infringements of this Law shall expire after five (5) years from performing the last offending conduct. The statute of limitation is interrupted by any action of the Technical

Secretariat related to the investigation of the offense, which is notified to the accused. The time counting shall be re-started if the procedure remains paralyzed for more than ninety (90) working days for reasons not attributable to the investigated party.

## TITLE VI

## SANCTION AND ELIMINATION OF ANTI-COMPETITIVE CONDUCT

### Chapter I

### Sanctions due to Administrative Infringements

Article 43.- The fine amount.-

43.1. The anti-competitive conducts shall be sanctioned by the Commission based on the Applicable Tax Units (TU), with the following fines:

a) In case of a considered minor offense, the fine shall be up to five hundred (500) TU, provided that such fine does not exceed the eight percent (8%) of sales or gross income earned by theoffender, or its economic group, related to all its economic activities corresponding to the fiscal year immediately preceding the issuance of the decision of the Commission

b) In case of a considered major offense, the fine shall be up to one thousand (1 000) TU, provided that such fine does not exceed the ten percent (10%) of sales or gross income earned by theoffender, or its economic group, related to all its economic activities corresponding to the fiscal year immediately preceding the issuance of the decision of the Commission; or,

c) In case of a considered seriousoffense, the fine shall be up to one thousand (1 000) TU, provided that such fine does not exceed the twelve percent (12%) of sales or gross income earned by theoffender, or its economic group, related to all its economic activities corresponding to the fiscal year immediately preceding the issuance of the decision of the Commission.

43.2. In case of professional or business associations, or economic agents who have started its operations after January 1$^{st}$ of the preceding fiscal year, the fine shall not exceed, in any case, the thousand (1 000) TU.

43.3. Apart from the penalty that, according to the Commission discretion, shall be applied to the offenders, in case of a legal person, companies, business associations, autonomous property or entity, a fine as to one hundred (100) UIT could be applied to each of the legal representatives or to those persons comprising the management or administrative organs as determined its responsibility for the offenses committed.

43.4. Recidivism shall be considered an aggravating circumstance; for this reason the penalty shall not be less than the previous one.

43.5. In order to estimate the fine amount to be applied in accordance with this Law, the current TU at the date of actual payment or coercive enforcement of the penalty, shall be used.

43.6. The applicable fine shall be reduced in a twenty-five percent (25%) when the infringer pays the amount before the completion of the term for contesting the decision

of the Commission that put end to the instance and as long as the offenderdoes not appeal against that decision.

Article 44.- Criteria to determine the severity of the offense and set the fine.-
The Commission shall take into consideration to determine the severity of the infringiment and application of corresponding fines, among others, the following criteria:

(a) The illicit benefit expected from the infringement perpetration;

(b) The probability of detection of the infringiment:

(c) The form and scope of competence restriction;

(d) Affected market size;

(e) Offender market quote;

(f) The competence restriction effect on effective or potential competitors, on other parties of the economic process and consumers;

(g) The duration of the competence restriction;

(h) The recidivism in the prohibited conducts; or,

(i) Procedural actions of the party,

Article 45. - Prescription of the penalty.-

45.1. The action for the enforcement of sanctions prescribes three (3) years from the day following that on which the decision imposing the penalty becomes final.

45.2. The prescription of the penalty could be interrupted, with knowledge of the interested party, due to the initiation of the coercive enforcement proceeding. The time-limit will begin again if the coercive enforcement proceeding remained paralyzed for more than thirty (30) working days for reasons not attributable to the offender.

## Chapter II

## Corrective Measures

Article 46. - Corrective Measures.-

46.1. In addition to the penalty imposed for infringement of this Law, the Commission may order corrective measures conducive to restore the competitive process, they may include, among others:

a) The suspension or the execution of activities, even under specific conditions;

b) According to the circumstances, the obligation to contract, even under specific conditions; or,

c) The unenforceability of the anti-competitive clauses or provisions of legal acts; or,

d) The access to an intermediary association or organization.

46.2. The Tribunal has the same powers conferred on the Commission for the issuance of corrective measures.

## Chapter III

## Corrective Fines

Article 47. - Coercive fines for breaching of precautionary measures.-

47.1. If the person forced to comply with a precautionary measure ordered by the Commission or the Tribunal do not fulfill it, a fine no less than twenty (25) TU and no more than one hundred twenty five (125) TU, will be automatically imposed, taking into account for its adjustment, the criteria set forth in the Article 44 of this Law. The corresponding fine shall be paid within the period of five (5) working days, after which enforced collection is ordered.

47.2. In the event of a persistent noncompliance referred to above, the Commission may impose a new fine, successively doubling the amount of last fine imposed, up to a limit of one thousand (1 000) TU. The fines imposed shall not prevent the Commission from imposing a different penalty at the end of the procedure.

Article 48. - Coercive fines for breaching of corrective measures.-

48.1. If the person forced to comply with a corrective measure; ordered by the Commission in the final decision do not fulfill it, a corrective fine equivalent to the twenty five percent (25%) of the fine imposed for offense of the anti-competitive conduct will be imposed. The imposed coercive fine shall be paid within five (5) working days, after which enforced collection is ordered.

48.2. In the event of a persistent noncompliance referred to above, the Commission may impose a new coercive fine, successively doubling the amount of the last coercive fine imposed, until the compliance of the ordered corrective measure and within the limit of sixteen (16) times the amount of the coercive fine originally imposed..

48.3. The coercitive fines have not a nature of penalties for breaching the anti-competitive conduct.

## CHAPTER VII

## INDEMNIFICATION PRETENSION

Article 49.- Indemnification for damages.-
Once the administrative procedure is exhausted, any person who has suffered damages from conducts declared as anti-competitives by the Commission, or, where appropiate, by the Tribunal, even if it was not a party in the proceedings before INDECOPI, and provided that it is capable to evidence a causal connection with the declared anti-competitive conduct, it shall be able to claim before the Judiciary the civil pretention of indemnification for damages.

## TRANSITORY COMPLEMENTARY PROVISION

UNIQUE.- Application of this Law to the procedures in process.-
The provisions of this Law of proceeding nature will be applied to the procedures being processed under the Law Decree Nº 701, at the stage where they are.

## DEROGATORY COMPLEMENTARY PROVISIONS

FIRST.- Generic Derogation.-
This is a public order Law and revokes all legal or administrative provisions of equivalent or lower rank, and those which conflict with or contradict.

SECOND.- Express Derogation.-
The following regulations remain expressly revoke as from the legal effect of this Law:

a) Legislative Decree Nº 701 and its amending, supplementary, alternative and regulatory regulations; and,

b) The Articles 232 and 233 and item 3 of Article 241 of Criminal Code.

## FINAL COMPLEMENTARY PROVISIONS

FIRST.- Primary competition.-
The control of anti-competitive conducts is governed by the primary competition principle, which corresponds to INDECOPI and OSIPTEL, as provided in the respective Laws. In no event, Judiciary shall be appealed without first exhausting the administrative instances before the above-mentioned bodies.

SECOND.- Anti-competitive practices in State Contracting-
In accordance with the provisions of Article 11 of Legislative Decree No. 1017, Law on Government Procurement, when the Court of State Contracting identify any conduct that would constitute an anti-competitive practice in the terms of this Law, it shall communicate such fact to INDECOPI, in order that it, through its competent bodies and, if appropriate, initiate an infringement procedure and determine the responsibility that may exist.

Only in the event that INDECOPI determines the existence of an offense and it becomes final, the State Contracting Supervisor Body - OSCE will proceed to registrate the offenders in the registry of disqualified suppliers to be contracted by the corresponding State.

THIRD. - Conduct investigations having effects out of the national territory.-
Within the exclusive framework of an international agreement, and in application of the reciprocity principle, the Commission may investigate, pursuant to the set forth in this Law, anti-competitive conducts developed within the national territory having effect in one or more countries taking part of such Agreement.

Likewise, during the development of the investigation carried out in accordance with an international agreement, and in application of the reciprocity principle, the Commission may exchange information, including confidential data with competent authorities of the countries forming part of such Agreements.

CUARTA.- Validity.-
This Law will enter into force after thirty (30) days from its publication in the Official Newspaper El Peruano.

THEREFORE:

An order to be published and fulfill, informing the Congress of the Republic.

Non-official translation

Issued at the Presidential Palace, in Lima, on June 24th, 2008.

ALAN GARCÍA PÉREZ
President of the Republic

JORGE DEL CASTILLO GÁLVEZ
President of the Cabinet