



Asia-Pacific Economic Cooperation

---

**2004/SOMII/CPDG/SEM/004**

## **Transparency and Due Process In Antitrust Procedures**

Purpose: Information  
Submitted by: Peru



**Seminar on Best Practices in the Enforcement  
of Competition Policy  
Pucón, Chile  
26 May 2004**

# **Transparency and Due Process in Antitrust Procedures**

Gonzalo Ruiz  
Indecopi, Perú

May, 2004

# Contents

The meaning and importance of transparency and due process

Institutional Framework

The Antitrust procedure in Peru: a general description

Transparency in the Antitrust Procedure

Due Process in the Antitrust Process

The Future Agenda

## What do transparency and due process mean in the context of antitrust procedures?

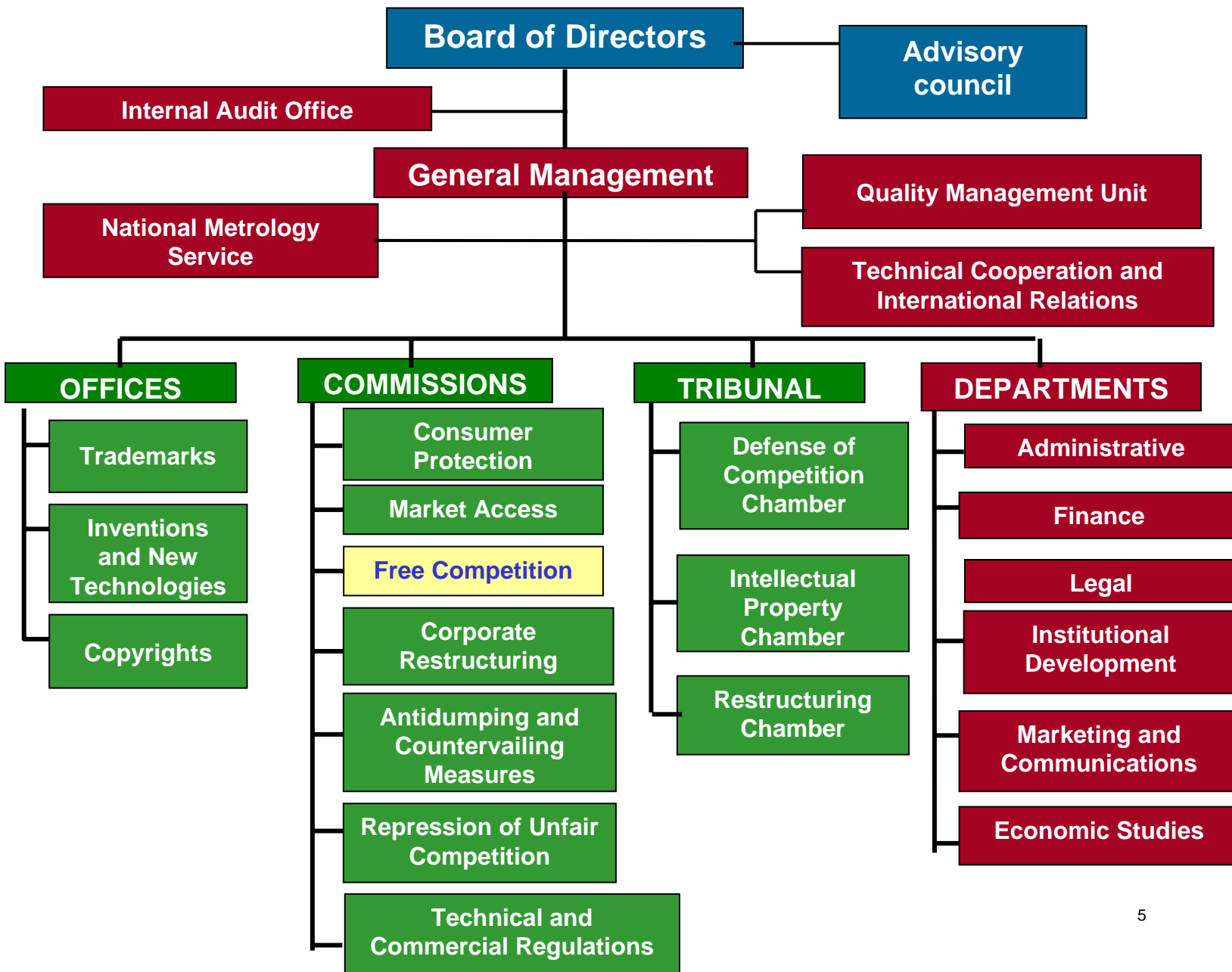
- **Transparency** means universal access to relevant information for parties directly or indirectly involved in a controversy or for stakeholders in general.
- **Due process** means having the opportunity to be heard and judged by impartial and independent bodies, and the possibility to request a revision of such decisions.

## Why do transparency and due process matter in the context of antitrust procedures?

- **Transparency.** Ensures predictability of decisions and provides the individuals the opportunity to be informed in order to exercise its right of selfdefense.
- **Due process.** Reduces the possibility of arbitrary and unfair decisions and thereby ensures predictability.

***Transparency and Due Process are mutually complementary***

# INDECOPI's Organizational Structure



## **Some Institutional characteristics of INDECOPI**

- The Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi), created in 1992, is an organization with autonomy at technical and jurisdictional level.
- Among its jurisdictional bodies includes the Free Competition Commission (FTC), Consumer Protection Commission (CPC), Unfair Competition Commission (CCD), Market Access Commission, among others. The inclusion of these fields in the same organizational structure permits to take advantage of synergies and complementarities between topics that have a close relationship among them.

## **The Free Competition Commission (CLC) (1)**

### **Main characteristics:**

- Is the first administrative instance of Indecopi.
- Is composed of six part-time members.
- Receives technical support from a Technical Secretariat and its staff.



## **The Free Competition Commission (CLC) (2)**

### **Main duties:**

- To solve, in the first instance, antitrust proceedings.
- To adopt necessary corrective measures and impose sanctions
- To require individuals or firms to submit any documentation including books of account, business correspondence and any other information relevant for the investigation.
- To conduct inspections, with or without notice, on the premises of individuals and companies and to request their books, records and documents.

# Competition Chamber of the Tribunal of Indecopi

## Main characteristics:

- Is the second administrative instance of Indecopi.
- Is composed of six members.
- Receives technical support from a Technical Secretariat and its staff.

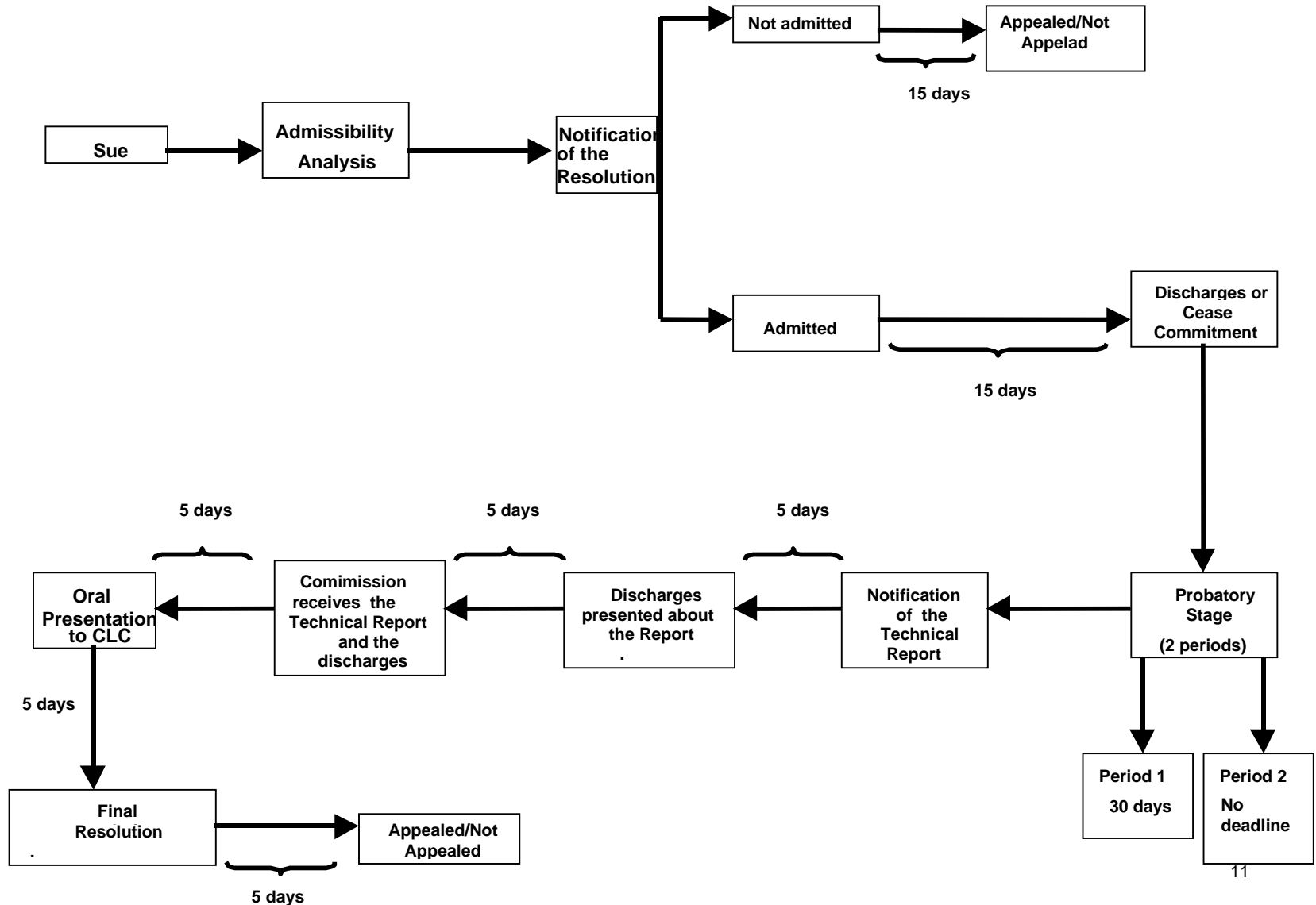
## Main duties:

- Hear appeals against decisions of the Free Competition Commission.
- Rule on appeals regarding the adoption of corrective measures and the imposition of sanctions

## **The Antitrust regime in Peru: Legislative Decree 701**

- Consist of an ex post control of conducts regime.
- Seeks to eliminate monopolistic practices, and restraint on free competition in the production and marketing of goods and services.
- Applies to all persons and entities that undertake economic activities.
- Decree classifies anticompetitive practices in: i) abuse of dominant position and ii) restrictive practices. The former includes unjustified refusals to deal, discriminatory practices, bundling, among others. The latter includes price fixing agreements, bid rigging, division of markets, among others.

# Anticompetitive Conduct Cases: General description of the procedure



## Transparency in the Antitrust Procedure (1)

- The procedure provides free access to non-confidential information.

- Guidelines for Confidentiality of Information in Antitrust Procedure.

<http://www.indecopi.gob.pe/tribunal/clc/lineamientos/lineamientos.asp>

- Publications of resolutions in the web page.

<http://www.indecopi.gob.pe/legislacionyjurisprudencia/clc.asp>

- Oral presentations and public hearings at request of the Commission, Tribunal, or the parties.

- Acts of the Commission and Tribunal are accessible to the public.

## Transparency in the Antitrust Procedure (2)

### Other complementary rules

- General procedure for access to information.
- Any person could request non confidential information held by the Government (Law 27806)
- This Law also establish the publication of the balance sheets and financial flows of each public institution.

## Due Process in the Antitrust Procedure

- Two administrative instances (Commission and Tribunal) and two Judicial Instances (Superior and Supreme Court).
- Separation between prosecution authority (technical secretariat) and decision authority (Commission or Tribunal).
- Possibility of appeal (admission) both in early and final stages of the procedure (resolution)
- Mandatory Notification of the technical report prepared by the Technical Secretariat, prior to the Decision of the Commission.

## The Future Agenda

A working group at Indecopi, is assessing the Legislative Decree 701, in order to introduce modifications and new instruments for applying antitrust policy. In particular, it will include a proposal of a merger review regime.

The revision will also include some new issues related to improving transparency and due process in antitrust procedures.

- More precise deadlines, in some stages of the procedure.
- Establish the minimum contents of resolutions and technical reports
- To announce in the Official Newspaper the beginning of the case.



**THANK YOU**  
**MUCHAS GRACIAS**