



**Asia-Pacific  
Economic Cooperation**

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**2016/SOM1/CPLG/005**

Agenda Item: 8

## **The Work Developed by the Elimination of Bureaucratic Barriers Commission**

Purpose: Information  
Submitted by: Peru



**Competition Policy and Law Group Meeting  
Lima, Peru  
27-28 February 2016**

# *The work developed by the Elimination of Bureaucratic Barriers Commission*

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## What is a bureaucratic barrier? (Case 1)



Photographer: Heidas / Source: Wikipedia

- A requirement imposed by a municipality (local government) consisting of **“being the owner of the property”** in order to obtain an authorization of opening a business in such a place.
- Peruvian Law (28976 Act) does not require such an obligation. In fact, people can rent properties as tenants so as to carry out an economic activity.



## What is a bureaucratic barrier? (Case 2)

- When municipalities **ban the setting up of infrastructure** for the service of mobile telephony (aerials) alleging a potential risk of health damage for local residents.
- There is not a national law prohibiting the instalation of aerials. Conversely, Peruvian legislation promotes such an activity given its relevance for the provision of utilities.
- There are technical standards for the functioning of aerials, which are supervised by the Executive Branch, not by the municipalities.



Photographer: Peter Knorr / Source: Wikipedia



## What is a bureaucratic barrier? (Case 3)



Photographer: Feranza / Source: Wikipedia

- When the amount charged for obtaining an authorization of construction is defined **depending on the value of the building** or the proyect.
- The National Law of Administrative Procedures (27444 Act) states that public entities are allowed to charge citizens in their procedures when the payment is fixed according with **the administrative work and real costs**.



## Legal definition

Any requirement, obligation, prohibition and/or charging imposed by the government (national or local) affecting economic activities or administrative procedures.



Any bureaucratic barrier must be eliminated?


### Bureaucratic barriers

Regulations are negative *per se*?

Answer: **No.**

Regulations aim to protect public interest


According to the National Law	<del>Unlawful</del>
With a Regulatory Impact Assessment (rationality)	<del>Unreasonable Arbitrary Inefficient</del>



### Bureaucratic barriers

Just the *unlawful* and/or *unreasonable* ones must be eliminated

<del>X</del>	Unlawful
<del>X</del>	Unreasonable Arbitrary Inefficient



## Bureaucratic barriers

### Unlawful:

- ✓ When regulations go beyond the limits allowed by a national law.
- ✓ When regulations have not followed the formalities that national law requires (when approving through the low level norm, for instance).
- ✓ When regulations infringe a national law.

### Unreasonable:

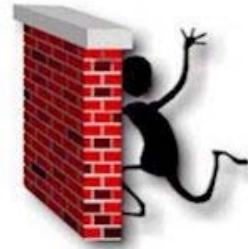
Those regulations lacking of reasonable justification, with no cost/benefit analysis and/or account the most expensive regulatory alternative.



Bureaucratic barriers are  
detrimental for competition?

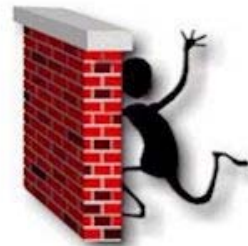
## Access and permanence in the market

- BB may reduce the number of new entrants into the market (barriers of access) and hence it can affect the choices for consumers.
- BB may be created in order to favor current firms affecting the new ones (changing the rules of the game or by giving exclusivities in certain economic activity).
- BB may discourage the permanence of current competitors .



## Access and permanence in the market Case 1: *Oxygen cylinders*

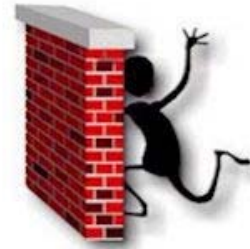
- The Health Authority issued a regulation consisting on the obligation for health facilities to purchase only medical oxygen with a purity of 99% to 100%.
- This regulation caused the firms selling medical oxygen of 93% concentration had the risk of being out of the market.
- The Health Authority could not justify the reason of this change in the regulation of oxygen.
- International standards allow oxygen of 93% of concentration.
- Oxygen of 99% to 100% of purity only could be produced by 5 firms within the Peruvian market.
- The EBC identified as unlawful and unreasonable this regulation and ordered the non-application of the regulation to the firms claimed against the regulation.



## Access and permanence in the market

### Case 2: *Luxury as an obligation*

- Certain local governments in Lima used to require that every restaurant that apply for a license must have a minimum standard of "3 forks".
- This regulation banned the possibility that little and simple restaurants could operate in certain avenues of some districts within Lima.
- This regulation aimed to concentrate the market in only few firms that were able to afford the cost of a "3 forks" category.
- The EBC identified as unlawful this regulation.
- Peruvian legal system protects the freedom of entrepreneurs to plan their economic activities in the way they consider convenient without interference from the government,
- Such a economic freedom is limited only by restrictions related to public interest matters (public health, environment, sanitation, among others).



What is the economic impact of a bureaucratic barrier?



## Economic impact of a Bureaucratic barrier

✓The Economics Research Department of Indecopi reported that during 2014, the EBC's interventions generated savings of almost 418, 14 Million soles (**US\$ 126 Million**) for those firms that were benefited with the elimination of the barrier.

✓Such an amount was taken from a formula that obtains the cost of each barrier that was assessed by the EBC and then was object of an elimination command. That is to say, the barriers identified as unlawful or unreasonable by the EBC during 2014, accounted an amount of almost 420 Million soles.



Which is the authority in charge of  
controlling bureaucratic barriers in  
Peru?

## Elimination of Bureaucratic Barriers Commission (EBC)

Main legal powers  
(from 2013)

### 1. Issuing commands of elimination or non application on regulations.

- ✓ Commands are binding to any public entity of the government when their regulations or administrative acts were identifying as unlawful or unreasonable.
- ✓ Only the INDECOPI's Court or the Judiciary are allowed to repeal their decisions.



## Elimination of Bureaucratic Barriers Commission (EBC)

Main legal powers:  
(from 2013)

### 2. Imposing fines on public servants and/or public entities

- ✓ Fines are imposing when public servants fail to comply a Commission's mandate.
- ✓ The maximum amount allowed is 79 000 soles (approximately US\$ 22 500).



There is an authority with similar legal powers in the world?

### Elimination of bureaucratic barriers Commission

- ✓ In many economies, the control of administrative acts and regulations in an ex-post fashion is performed exclusively by the Judiciary.
- ✓ The assessment of regulations in an ex-ante manner (regulatory impact analysis or RIA) is performed by the regulator itself and it is controlled in many OECD members by an oversight body.
- ✓ The Peruvian model of regulatory control seems to be uniquely worldwide.



## Elimination of bureaucratic barriers Commission

✓Some regulatory overview authorities in the world:

- ❖In the U.S., the Office of Information and Regulatory Affairs (OIRA).
- ❖In the U.K., the Regulatory Policy Committee (RPC).
- ❖In Mexico, the Federal Commission of Better Regulation (Cofemer, in Spanish).
- ❖In Australia, the Office of Best Practice Regulation (OBPR).

✓Most of the regulatory overview bodies have not binding powers but only advisory ones.

✓None of them have the power of fining public servants or regulators as the Peru's EBC.

✓Neither the possibility to issue mandates of removing an unnecessary regulation (ex -post).



What the Commission has reached?  
(2013-2015)

## EBC's ACHIEVEMENTS

- ✓ After certain supervision activities carried out by the EBC, from June 2013 to December 2015, **45 public entities** of Lima eliminated –voluntarily- **978 bureaucratic barriers** of different economic sectors, such as:
  - Telecommunication
  - Infrastructure of public utilities (water supplying, gas and electricity)
  - Construction
  - Retail (mainly about licenses of operation and outdoor advertising).
- ✓ According to the National Institute of Statistic and Informatics (INEI), in the first period of 2015, Telecommunication and Construction services accounted 9% and 6,8% of the Gross Domestic Product (GDP), respectively, whereas the services of water, electricity and gas accounted 4,6%.



## EBC's ACHIEVEMENTS

- ✓ As a representative sample, the Economics Research Department of Indecopi estimated that **the potential savings for eliminating uniquely 203 bureaucratic barriers** (equivalent to 20,76% of the total of 978 bureaucratic barriers) amounted to S/. 17 581 949,15 million soles (around **5 207 923,2 million U.S. dollars**).
- ✓ This value reflects the cost that economic agents would have had to assume in case of such barriers had not been eliminated.



## EBC's ACHIEVEMENTS

- ✓ The elimination of those barriers were carried out –voluntarily- by the public entities themselves, after a process of coordination and advisory activities performed by the EBC's Technical Secretariat (by sending prompt letters, phone calls, and some workshops).
- ✓ Most of these results were achieved **without imposing fines** on public servant. However, the possibility of imposing fines of more than 20 000 dollars certainly has been one of the main incentives for changing their regulatory behavior.



## EBC's ACHIEVEMENTS

- ✓ Such a model of enforcement strategy has certain elements of the so-called "responsive regulation" (Ayres and Braithwaite, 1992) in which the EBC's Technical Secretariat used a gradual escalation of an "enforcement pyramid" to persuade regulators to comply with the regulatory impact assessment provisions.
- ✓ These actions promote the entrance of new firms into the market by sending prompt letters notifying them about the likely sanctions (as a "benign gun") and the possibility to avoid this penalty.
- ✓ Sanctions and fines are used only as the last resort in this enforcement strategy.



Thank you for your attention

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