



**Asia-Pacific  
Economic Cooperation**

---

**2016/SOM1/CPLG/007**

Agenda Item: 9.2

**Leniency Programme and the Experience of Peru in  
the Investigation for Anticompetitive Conducts in  
the Market of Toilet Paper and Other Products of  
Tissue Paper**

Purpose: Information  
Submitted by: Peru



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

# Leniency Programme and the experience of Peru in the investigation for anticompetitive conducts in the market of toilet paper and other products of tissue paper

February 2015  
Technical Secretariat of the Defense of Free Competition Commission



**Even though, the speaker is a full time  
employee of INDECOPI, the information set  
forth herein has been created as his own  
responsability and does not reflect or  
represent a formal or official view of  
INDECOPI**

---



## **Cartels as a threat to free competition and consumers' welfare**

---



### **When firms compete**

---

- **Prices decrease**
- **New and improved products are created**
- **Consumers' welfare increases**
- **Productivity increases**
- **National industries get more competitive**



## When firms colude

---

- They betray the consumers' trust
- Prices increase
- Firms stops innovating
- National industries get less competitive

**Cartels as a threat to free competition and consumers' welfare**



## Effects caused by cartels

---

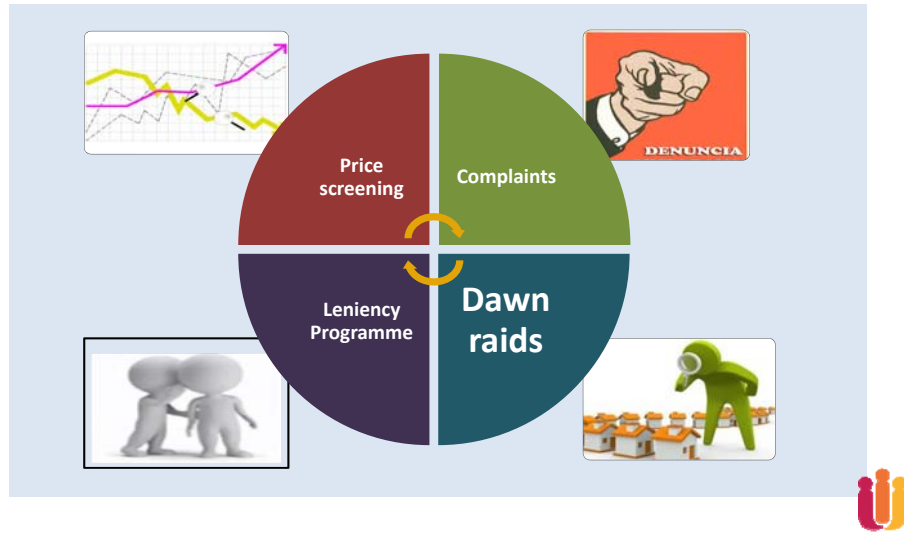
- The effects that cartels caused on consumers' welfare is significant.
- On average, one cartel can reduce production in 15%.
- On average, one cartel causes the prices to increase in 20%.

*Measuring the Economic Effects of Cartels in Developing Countries. IVALDI, KHIMICH y JENNY (2014).*

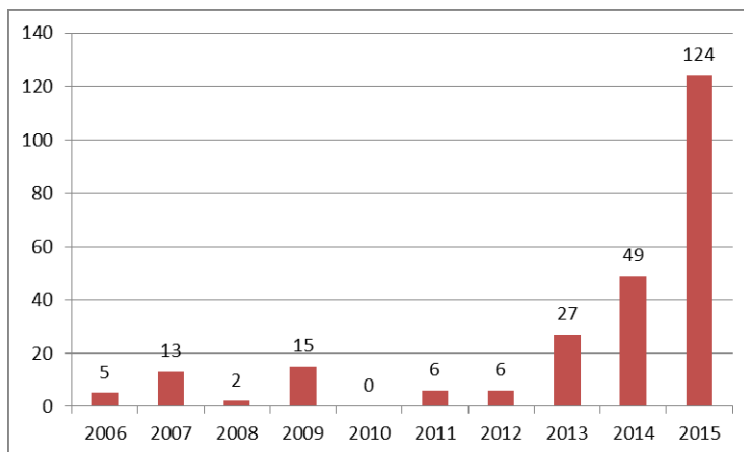
According to the OECD (2002) 16 cartel cases between 1996 and 2000 has costed U\$55 000 000 to consumers.



## Investigation tools



## Number of Dawn Raids

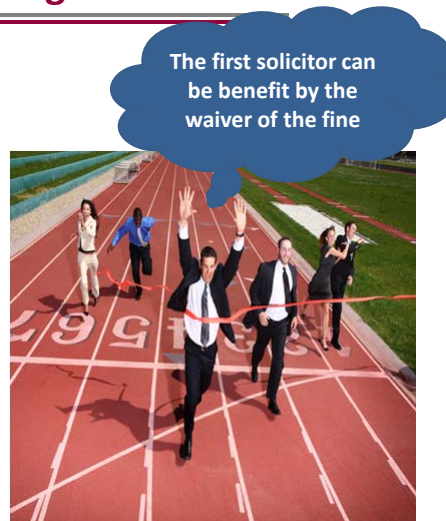
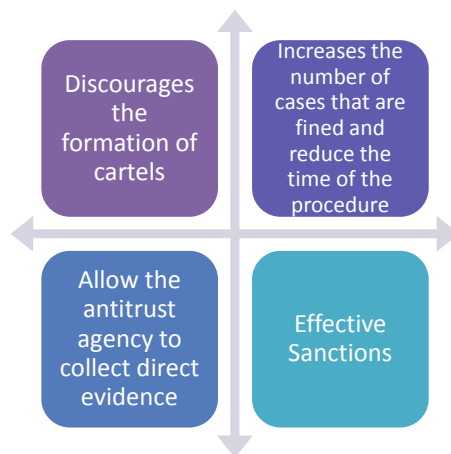


## Leniency Programme

The Leniency Programme create incentive for the members of a cartel to reveal its existence and provide information to the antitrust agency. Hence, the solicitors deliver information that allowed the antitrust agency to indentify and sanction the rest of the members of the cartel, in exchange for the waiver or reduction of the fine.



## Benefits of the Leniency Programme



## Leniency Programme in Peru

Year	N° of applicants	N° markets
1996 to 2013	1	1
2014	2	4
2015	2	2



## Leniency Programme

### Confidentiality

Obligation to keep reserve on the origin of the given evidence.

It represents a guarantee for the applicant. Therefore, encourage the submission of applications for leniency.

However, the applicants can waive the confidentiality, as it has happened in the following case.



## Procedure for investigating an anticompetitive conduct in the market for toilet paper and other products of tissue paper



### Procedure

Indecopi has collected reasonable evidence that the two leading companies in the Peruvian market of toilet paper and other tissue products (**Kimberly Clark S.R.L.** and **Productos Tissue del Perú S.A. – Protisa**) agreed to fix the prices of their products and other commercial terms, between 2005 and 2014.

Kimberly Clark Perú S.R.L.



Productos Tissue del Perú S.A.



## Evidence of the alleged cartel

- ❖ Through the leniency programme, **Protisa** has collaborated in the detection of the cartel.
- ❖ **E-mails and electronic files.**
- ❖ **Written information** provided by both firms, at the request of the Technical Secretariat.
- ❖ **Testimonies given by key individuals**, at the request of the Technical Secretariat.
- ❖ Other evidence collected, as **physical agendas and hotel bills.**



## Communications between competitors



Meetings at hotels



Telephonic communications

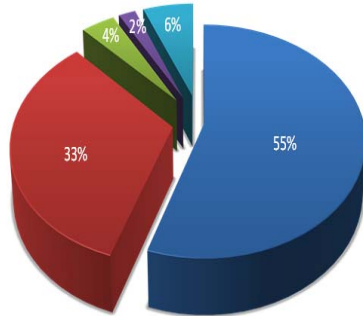


**With the purpose to coordinate price increases and changes to discounts and promotions, between 2005 and 2014 .**



## The importance of the firms involved in the cartel

Market share of the firms in the market of manufacture of tissue products ( 2013 )



The firms involved in the cartel operate in several countries in the region. They have been in Peru for more than 20 years .

Kimberly Clark sells the brands Suave, Kleenex and Scott; while Protisa sells the brands Noble and Elite.

The market for toilet paper and other tissue products in Peru represents annual sales of over 800 million soles, for the two firms involved in the conduct.

Protisa Kimberly Clark Papelera Reyes S.A.C. Papelera Panamericana S.A. Otros

Fuente: Euromonitor International (Citado en Plan de Marketing 2014: Elite)  
Elaboración: Secretaría Técnica



## Marketing channels for the products involved

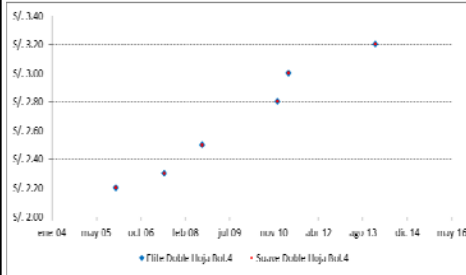
The alleged anti-competitive practice would have covered the three main marketing channels.



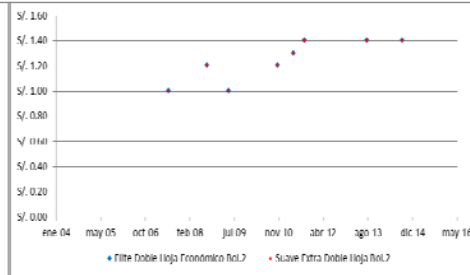
## Evolution of market prices

The cartel has been related mainly to the prices to distributors. However, these increases would have affect the consumers' welfare.

Double sheet



Economic double sheet



Various magnitudes. Even sometimes close to 10% and 20% .



## Natural persons under investigation

- ❖ In addition, the Technical Secretariat has initiated an investigation procedure to 17 individuals (13 from Kimberly Clarck and 4 from Protisa) for their alleged involvement in the planning and implementation of the cartel.



## The policy against cartels has been tightened

"2.4. The Law also apply to the natural or legal persons who, though not competing in the market in which the conducts occur, act as planners, brokers or facilitators of an offense subject to the absolute prohibition . It is included in this provision the officials, managers and public servants, who does not act in accordance to the regular course of their duties ".



## The policy against cartels has been tightened

The Legislative Decree 1205 (September 2015) has introduced modifications regarding the rules for the leniency programme:

- The leniency procedure deadlines have been specified.
- It has been specified that only the first applicant can receive the waiver of the fine. The second applicant can receive a reduction of the fine from 30% to 50%. The third applicant could receive a reduction of the fine from 20% to 30%. Other applicants could receive a reductions of the fine up 20%.
- Now the Technical Secretariat is the body empowered to sign the exemption commitment.
- The firm that has coerced the others to join the cartel may only access to the reduction of the fine.



## Ceilings for fines that can be imposed

- ❖ The anticompetitive conducts will be sanctioned by the Commission, on the basis of tax units (UIT), with the following fines:

For firms:

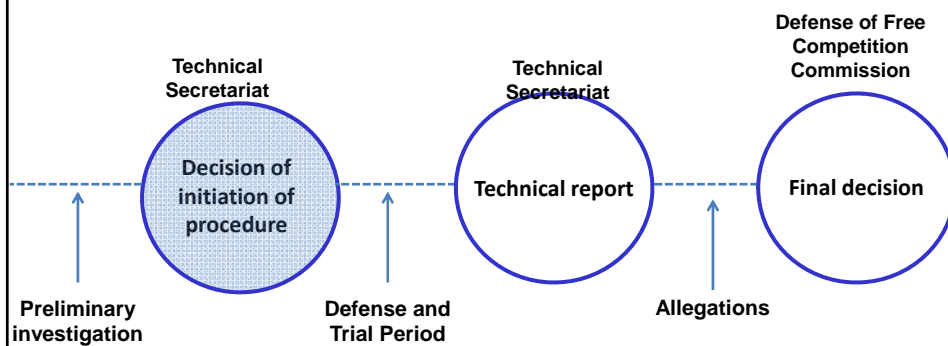
Qualification of the infraction	Ceilings (UIT)	Ceilings (% of incomes)
Minor	500	8
Major	1000	10
Capital	Over 1000	12

For natural persons: Until 100 UIT

1 UIT = 3950 soles = Approximately US\$ 1128



## Investigation Procedure



## Conclutions

---

1

Indecopi has found reasonable evidence of the existence of an alleged cartel to fix prices and trading conditions in the market for toilet paper and other tissue products between 2005 and 2014, which sold about 800 millions soles (approximately US\$ 228 millions) in 2013. The firms involved in the cartel have a market share of 88 % in total.

2

The Leniency Programme is an important tool for the detection of cartels. It's worth to be noted that while there are other procedures where firms collaborate under the Leniency Programme; this is the first case where a firm has waived the confidentiality of its identity .

3

Indecopi has recently improved the rules of the leniency programme and is particularly vigilant in the detection of possible anti-competitive conducts.



**Thank You**

