

*Guidelines on*  
**TRADE ASSOCIATIONS &  
COMPETITION**



## Guidelines on Trade Associations and Competition

The following members of the Technical Secretariat of the Commission for the Defense of Free Competition contributed to this document:

**Jesús Eloy Espinoza Lozada**

Technical Secretary

**David Jesús Fernández Flores**

Consultant

**Humberto Ortiz Ruiz**

Advisor

**Fiorella Alexandra Colonna Murgueytio\***

Law Professional

**Naghira Franchesca Delgado Barreda**

Legal Assistant

**Sofía Guadalupe Rivera Alvarado**

Intern

Document approved by the Commission for the Defense of Free Competition:

**María del Pilar Cebrecos González**

President of the Commission

**Dante Mendoza Antonioli**

Vice-president of the Commission

**Diego Eloy Carrillo Purín**

Commissioner

**Raúl Lizardo García Carpio**

Commissioner

(\*) Worked for the Technical Secretariat of the Commission for the Defense of Free Competition until May 2019.

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**Indecopi**

Calle de la Prosa 104, San Borja, Lima, Peru.

Telephone: (51-1) 2247800, anexo 3101.



**[www.indecopi.gob.pe](http://www.indecopi.gob.pe)**

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# I. INTRODUCTION

## 1.1. Purpose

The purpose of these Guidelines is to promote the dissemination of and compliance with free competition statutes in the context of Associations and to formulate recommendations so that associations, their management or representative bodies and their members can detect and minimize the risks of incurring illegal actions, in particular, in the form of agreements, decisions or recommendations to restrict competition among themselves or to harm their competitors.

These Guidelines recognize the importance of associations in promoting efficiency in the several sectors of the economy and in channeling the legitimate interests of their members (companies and professionals). However, it also recognizes that there are scenarios in which associations can act as platforms that facilitate or promote anticompetitive behavior, particularly cartels, to the detriment of consumers and users who purchase goods and services from their members.

In this regard, these Guidelines explain, in a simplified manner, the usual ways in which associations can facilitate or participate in the commission of practices harmful to competition and how they can reduce these risks and promote compliance with free competition rules. By doing so, these Guidelines seek to reinforce and contribute to the role of associations in channeling the legitimate interests of their members and promoting the free and competitive performance of the sectors in which they operate; moreover, minimizing the exposure of associations to undesired actions taken by their members.

## 1.2. Importance of the Protection of the Competitive Process

Like most countries with market economies, Peru has as its central economic policy the promotion of sustainable development through open markets, competitive industries and systems of economic and social inclusion. These policies recognize that free and decentralized markets can foster economic efficiency, promoting innovation and producing savings for the citizens. To achieve this purpose, the State has implemented and continuously strengthens a set of mechanisms that facilitate trade, entry to markets, innovation and the defense and promotion of competition.

In this context, Indecopi is one of the main public bodies in charge of promoting competitiveness, by means of procedures to secure intellectual property rights, facilitate transparency and suitability in consumer relations, eliminate barriers to entry that are illegal or irrational, and defend the competitive process against anticompetitive and unfair practices that unduly restrict it<sup>1</sup>.

Concerning the protection of the competitive process, the Technical Secretariat of the Commission for the Defense of Free Competition of Indecopi (from now on, the Technical Secretariat) is in charge of investigating and prosecuting anticompetitive behavior: anticompetitive agreements and abuse of a dominant position. On its turn, the Commission for the Defense of Free Competition of Indecopi (from now on, the Commission) is the autonomous body in charge of declaring the administrative liability of infringing companies, imposing fines and dictating injunctions. In general, the final decisions of the Technical Secretariat and the Commission can be reviewed in a second administrative instance by the Tribunal of Indecopi and, through a subsequent contentious process, by the judiciary.

The reason for prosecuting anticompetitive conducts is the pernicious effects that they impose to society. Indeed, while the abuse of the dominant position allows dominant firms to maintain that position and obtain monopoly incomes due to reasons other than superior economic efficiency, horizontal and vertical agreements

<sup>1</sup> In the telecommunications public utility sector, the Supervisory Body of Private Investment in Telecom - Osiptel is the competition authority.

remove competitive rivalry among multiple agents or allow them to exclude third competitors with no valid justification. The lesser competitive intensity derived from anticompetitive practices could cause, in particular, higher prices for clients and consumers, poorer quality of products and services, less business offer and less efforts for innovations that would have benefitted consumers.

With the purpose of discouraging economic agents from participating in anticompetitive conducts, reestablishing the competitive process and reverting the effects of those infractions, the Commission and the Tribunal have the power to impose sanctions and injunctions. Indeed, according to section 46 of the Competition Act, in case of very severe infractions, the Commission and the Tribunal can impose fines above 1000 Taxation Units - UIT<sup>2</sup>, with a cap of 12% of the gross income of the infringing firm or its economic group in the year preceding the Commission's decision.

In addition to the administrative fines, according to section 49 of the Competition Act, the Commission and the Tribunal have the power to dictate injunctions. There are injunctions aimed at restoring the competitive process and injunctions aimed at reverting the effects that the offensive behavior might have produced.

To sum up, Indecopi deters anticompetitive behavior with the following mechanisms:

SANCTIONS	INJUNCTIONS	
Fines above 1000 UIT and up to 12% of the gross income of the offender or its economic group.	<b>For the reestablishment of competitive process</b>	<b>For restitution</b>
	Rules aimed at preventing the continuity of the offensive behavior or recidivism.	Rules aimed at reverting the detrimental effects of the offensive behavior.

As a result of the growing interest in increasing enforcement of competition rules in the most critical sectors of the national economy (i.e. those related to products of the basic food basket), in the last years the Technical Secretariat has shown a strong emphasis on the prosecution of cartels in these sectors. Cartels, as is generally known, are agreements among competitors whose objective is to eliminate competition and replace it with coordination on the prices of their products, or the quantities they sell, the customers of each company and the quality of these products or distribution areas, for instance<sup>3</sup>. Because of their pernicious effects, cartels are strongly prohibited and drastically prosecuted at an international level<sup>4</sup>.

Likewise, Indecopi has promoted the Leniency Program, a whistleblowing system aimed at maximizing the detection and elimination of infringements by encouraging the active and full collaboration of one or more participants in a cartel in exchange of incentives (discounts on fines they face for participating in such infringements)<sup>5</sup>.

These efforts have made possible, first, to strengthen Indecopi's presence as a competition agency, not only at the local but also at the regional level, giving clear signals to the markets and discouraging the formation of new cartels. On the other hand, the elimination of cartels in various sectors has resulted in significant savings for consumers<sup>6</sup>.

<sup>2</sup> The value of each Tax Unit in 2019 is 4200 Peruvian soles (around USD 1251). The exchange rate is approximately 1 USD = 3.357 PEN.

<sup>3</sup> In the last two years, the Commission has fined cartels in sectors such as the distribution of pharmaceuticals and related products in drug store chains, distribution of LPG, fuel in service stations and international maritime transport of vehicles, among others.

<sup>4</sup> It is estimated that, between 1990 and 2014, damages arising from cartels summed up to approximately USD 2.6 billion. John Connor, International Cartel Stats: A Look at the Last 26 Years, 2016. Available at: <https://ssrn.com/abstract=2862135>

<sup>5</sup> Indecopi recently reported on the success of the Leniency Program in the markets of distribution of toilet paper and other tissue products, as well as in the international maritime transport of vehicles. It is worth mentioning that the Leniency Program Guidelines was awarded at the 2018 Antitrust Awards as one of the best Guidelines of 2017 worldwide.

<sup>6</sup> For instance, regarding the toilet paper cartel, Indecopi calculated potential savings for consumers between 2015 and 2018 of PEN 1144.40 million (around USD 346.7 million).

Available at: [https://www.indecopi.gob.pe/documents/20182/2748605/20181018\\_Documento+de+Trabajo\\_PH\\_dise%C3%B1ado.pdf](https://www.indecopi.gob.pe/documents/20182/2748605/20181018_Documento+de+Trabajo_PH_dise%C3%B1ado.pdf)

### **1.3. Benefits of complying with free competition rules**

From a business perspective, antitrust rules play two particularly essential roles. On the one hand, they promote creation and efficiency, encouraging companies to improve their production processes and innovate in products and services, enhancing their chances to succeed in scenarios of increasing competitiveness. On the other hand, the elimination of restrictions on competition allows new firms to enter markets that would otherwise have been closed to them, as well as to prevent a dominant firm or a group of coordinated firms from using strategies that unduly limit their growth or expel them from the market.

Therefore, compliance with competition rules should not be perceived as compliance with a demanding regulation, but as a condition of participation in economic activity and as an opportunity to increase the chances of success. This is why several companies have voluntarily and preventively adopted Compliance Programs, aiming at fostering an internal culture of respect for the free competition rules, as well as detecting risks of non-compliance or adjusting possible improper practices. Moreover, these programs have a positive effect on the reputation and corporate image of firms.

### **1.4. Free Competition and Associations**

In several economic sectors, associations play a fundamental role of integrating companies and serving as platforms for discussion of common interests, allowing their members to channel those interests vis-à-vis other private actors, but more importantly, representing them before the public authorities. In this way, associations play a significant role in informing the State and other actors about legitimate concerns and expectations, representing and guaranteeing such legitimate interests, mediating in the flow of information and even promoting market research and the strengthening of the industries in which they operate.

However, due to their role as platforms for discussion and information exchange, associations are also frequently linked to the formation or facilitation of cartels. Indeed, within their regular activities (general meetings, roundtables, analysis of information and formulation of recommendations or policies binding for their members), associations may be voluntarily or involuntarily used to coordinate, decide or facilitate agreements and other practices harmful to competition, turning into platforms aimed at eliminating competition among their participants or excluding or harming other competitors.

When the associations play this facilitating role for anticompetitive practices, they can be investigated by the Technical Secretariat and eventually penalized by the Commission. According to section 2 of the Competition Act, the liability for the offense committed also reaches the representatives or officials of the association that participated in its planning, commission or execution.

### **1.5. Scope of the Guidelines**

These Guidelines apply to all forms of trade associations, defined as any organized interaction platform that associates independent companies or professionals that are linked by the economic activity they carry out, acting as platforms in order to discuss and channel sectorial and commercial interests from their members. In general, the members are linked to the association by the commercial activity they develop, the goods they produce or the sector they belong to.

For the purpose of these Guidelines, associations may exist and operate irrespective of their name (e.g. "Society", "Guild", "Association", "Chamber", "Confederation"), the sector they represent (e.g. fishing, transport, manufacturing, retail, health), their geographical extension (i.e. local, regional, national), their internal organization, representativeness or legal personality (i.e. registered or informal association). Finally, the definition of "associations" also includes professional associations and other platforms for interaction between independent professionals.

According to their nature, these Guidelines don't apply to joint ventures, consortia or other forms of association or contracting that generate legal dependence relationships among companies.

Likewise, although these Guidelines focus mainly on the association's relations with its members, the recommendations contained herein may even apply to non-associated companies or professionals, for instance, regarding of recommendations from associations especially important that can influence the behavior of companies and professionals, regardless of their membership status.

## 1.6. Voluntary Nature of the Guidelines

The present Guidelines have an orientative nature for the economic agents and are not mandatory, as they only contain best practices that the Commission has retrieved from the national and international experience. Failure to comply with the Guideline won't result in any sanctions. However, it is necessary to highlight that associations and its members do have the obligation to comply with the Competition Act. In that sense, notwithstanding the recommendations here contained, associations and their members are subject to the Competition Act and will be sanctioned in case they incur in prohibited conducts. While these recommendations can facilitate compliance with the Law in the context of associations, the Technical Secretariat and the Commission won't prejudice the behavior of trade associations and its members based on the compliance with the present Guidelines.

## 1.7. Definitions

These Guidelines use the following definitions, as well as the definitions established in the Competition Act:

- **Anticompetitive practices:** The infringements defined in sections 10 (abuse of dominant position), 11 (horizontal agreements) and 12 (vertical agreements) of the Competition Act.
  - » **Abuse of dominant position** is the behavior whereby an agent with a dominant position in the relevant market uses this position to restrain the competition in a wrongful way, obtaining benefits and damaging real or potential, direct or indirect competitors (this is known as "exclusionary effect"). It is important to mention that, in order to consider this behavior illegal, the challenged agent must hold a dominant position and the behavior must produce a restrictive effect on competition and lack any justification.
  - » **Horizontal agreements** are agreements, decisions, recommendations or concerted practices carried out by competing economic agents with the purpose or effect to restrain, prevent or distort the competition. It is necessary to note that in order to consider this behavior illegal, it must produce a restrictive effect in the competition and lack any justification. This way, specific restrictions that are ancillary but necessary to promote pro-competitive agreement will not be considered illegal. However, agreements that don't have other purpose than to restrain the competition in prices or quantity are considered *per se* illegal (see definition of **cartels**). Cartels are the special focus of interest of these Guidelines.
  - » **Vertical agreements** are agreements, decisions, recommendations or concerted practices carried out by economic agents that operate in different levels of the production and distribution chain, whose objective or effect is to restrain, prevent or distort competition. It is worth noting that in order to consider this behavior illegal, at least one of the participants must hold a dominant position and the conduct must lack any justification and produce a restrictive effect on the competition.
- **Association:** Also known as Trade Associations. This refers to any organized interaction platform that associates independent companies that are linked by the economics activity they carry out, acting as platforms in order to discuss and channel sectorial and commercial interests from their members. The members of the association are linked to the association by the commercial activity they develop, the goods they produce or the sector they belong to.



- **Association member:** The natural or legal person that is a member of the association and has the right to participate in some or all of the association's activities, with voice and/or vote, regardless of the condition that may correspond under the association regulations (e.g. founding member, associate, applicant, etc.).
  - **Cartel:** Concept that identifies horizontal agreements that are subject to a per se prohibition according to section 11.2 of the Competition Act. Essentially, these are agreements by competing agents to limit competition among themselves over prices, output or conditions of commercialization of their products in the markets where they compete, including restrictions on competition in public procurement processes. Decisions or recommendations issued by an association that have the same object or effect are also considered under this definition.
  - **Compliance Program:** A program implemented by companies in order to prevent, detect and eliminate risks of non-compliance with the Competition Act, as well as to promote knowledge of its rules.
  - **Exchange of information:** Practice whereby one or more agents communicate or exchange sensitive information with competitors, directly or through an intermediate (e.g., an association or a third party), facilitating the commission of anticompetitive conducts. Even though the exchange of sensitive information doesn't constitute by itself an infraction to the Competition Act, under certain circumstances it can provide important evidence of an anticompetitive agreement.
  - **Competition Act:** The Act for the Repression of Anticompetitive Behavior approved by means of Legislative Decree 1034 (2008) and modified by Legislative Decrees 1205 (2015) and 1396 (2018). The codified version of the Act was approved by means of Supreme Decree 030-2019-PCM.
  - **Sensitive Information:** Information that, due to its nature and the characteristics from the markets associated to the exchange, can increase the probability of anticompetitive practices (risks on competition), particularly cartels.
- » **Regarding the characteristics of the information,** the risks increase when strategic information is exchanged, that is, information that significantly reduces the uncertainty in a competitive market. For instance, the information is strategic when it allows an agent to get to know what decisions the competitors will adopt, eliminating the uncertainty in the decision-making process inherent to competitive scenarios (e.g., How much will my competitors produce? What will be their price in the market? What new products will be launched in the future?).

Moreover, the exchange of disaggregated information (e.g., individualized information from each economic agent about costs, importations or prices), instead of aggregated information (e.g., industry volumes without identifying agents in particular), facilitates the coordination between competitors regarding corporate decisions (e.g., How much do I have to import? Which is the highest possible price in the market, taking in consideration the main costs of my competitors?). Accordingly, sharing recent or future information (e.g. changes in the prices and promotions policies, new products under development, future plans of expansion and investments strategies), instead of only historic information, generates increasing risks on competition because it allows agents to know their rival's competitive actions and decisions, facilitating a coordination. Under the same logic, the more frequently the exchange of this information, the higher the risk of transparency in actions and decision of competitors and, thus, the coordination between them. Finally, the confidential nature of the information exchanged increases the strategic value that competitors gain when accessing to it, providing them with an advantage that in other circumstances they wouldn't have had and facilitating the coordination of their actions and decisions with the information owner and other competitors.

» **Regarding the market characteristics**, the risk of anticompetitive agreements arising from the information exchange increases in concentrated markets; in stable markets (this means, subject to stable conditions of supply and demand); in markets whose agents are known for a significant symmetry in their price-costs structure, market shares, diversity of products, among others; in markets with significant barriers to the entry or expansion; and other factors that facilitate the adoption of anticompetitive practices.

In general, information about prices, quantity, sales, capacities, quality, marketing plans, investment, technologies, investigation and development is considered sensitive. As noted, in order to determine whether the information is sensitive, the authority will analyze the conditions and characteristics of the markets related to the information exchange.

## II. ASSOCIATION PRACTICES THAT INCREASE THE RISKS OF ANTICOMPETITIVE COORDINATION AMONG ITS MEMBERS

Within the framework of their activities, consciously but also inadvertently, associations can promote the formation of cartels and other illegal forms of coordination among their members, as well as between the latter and other competing agents. Below, common scenarios in which such risks appear are presented.

### 2.1. Facilitation of direct anticompetitive coordination among its member s

As an essential part of their operation, associations call their members to various assemblies or meetings, some of a general nature; others aimed at a particular group of members. Frequently, particularly for the larger associations, they also hold meetings in committees or working groups, in which the discussions are usually more specialized and punctual. These meetings are generally planned and recorded, which facilitates transparency in the association's decision-making. Sessions can also be held in person or using any other form of real-time communication (e.g. teleconference, video call, instant messaging).

When these meetings are aimed at discussing the legitimate concerns and interests of the association, disseminating general knowledge of the sector or carrying out sector research or promotion activities, such exchanges generally do not give rise to significant risks of anticompetitive behavior. On the contrary, such discussions can foster market efficiency and competitive performance.

On the other hand, when these meetings have as their object, express or implicit, the coordination of actions or the joint decision-making among the members on variables that determine competition among them, these could turn into illegal platforms for the establishing and monitoring of cartels and, therefore, they could generate responsibility in the association and its members, as well as in its leaders and officers participating in those meetings. The principal competitive variables whose discussion introduces risks of entering into illegal arrangements are the following<sup>7</sup>:

- Current and future prices of goods or services.
- Lists of current or potential clients.
- Current and projected commercialization areas.
- Conditions or main variables in the negotiation and contracting of goods or services: benefits, discounts, volumes, terms, payment conditions, among others.

In general, there is no valid reason or justification for an association to convene its members to discuss any of the aspects listed above. It may even happen that a meeting has been called for the discussion of legitimate interests, but eventually turns illegal if the discussions deal with any competitively sensitive topic. Thus, even when a participant might not have anticipated the offense at the time the meeting was called, he may be involved in the infringement if, after changing the topics discussed, participates in, adheres to or is aware of such illegal coordination, without expressing his rejection in an express, clear and timely manner.

<sup>7</sup> For more detail, see the definition of "sensitive information" in the section 1.7 ("Definitions") of the Guidelines.

## INDECOPI RECOMMENDS

In the face of the problems and risks described above, it is highly recommendable that, throughout the process of determining the need for meetings, their purpose, calling, development and recording, the following guidelines are followed in order to reduce the risks of incurring in anticompetitive agreements:

- **Calling.** The calling for the meeting must express clearly the topics to be discussed so that the members can understand the purpose of the meeting, even in a general manner. The calling, as well as any document attached to it, must be duly registered and sent through means that allow to be certain about its date and content.
- **Advisory.** It is recommended that the meetings are held, whenever possible, in the presence of an advisor or an official or person familiarized with antitrust statutes, in-house or external, responsible for ensuring compliance with the Competition Act, who could warn about any risk of infringement that comes up through the development of such meetings. The advisor must have enough influence in order to ensure that the actions and decisions of the association adjust to the legal framework.
- **Record and minutes.** Whenever possible, considering the nature of the topics discussed in the different meetings and the risk of wrongdoings, records of attendance and meeting minutes should be taken so as to permit knowledge of the full content of their development, attendees (in person or remote), decisions taken, as well as any other relevant incidence. The association could adopt as a practice for meetings to be registered in audio-only or audiovisual means whenever feasible or preferable.
- **Development of the meetings.** The meetings must only deal with the reasons specified in the call and, when it is necessary to deal with issues other than those announced, this situation must be recorded in the corresponding minutes, especially when the nature of the new topics so mandates. Under no circumstances the topics discussed may develop or encourage anticompetitive coordination. Attendees should be prepared to contribute to the normal developing of meetings and to reduce risks of anticompetitive coordination.
- **Express refusal to participate in illegal coordination.** If the meeting deals with aspects that may constitute infringements to antitrust laws, attendees have the right and duty to record their refusal to continue participating in it (in the attendance or meeting minutes, or in any other record), expressly stating such refusal, as well as the time they left. Threats or punishments against the non-participating members in these coordination are incompatible with the antitrust rules and may be immediately reported to Indecopi.

It is important to highlight that the recommendations here mentioned are applicable to meetings carried out face to face, as well as those developed remotely, through teleconferences or virtual means. In order to implement these recommendations, as well as others that may be advisable in the face of the particular activities of the association and the characteristics of the sector, it is recommended to receive specific advice, internal or external, about compliance with antitrust rules. Moreover, it should be pointed out that an association and its members are encouraged to request general and orienting (non-binding) advice to the Technical Secretariat on the scope of the Competition Act.

### 2.2. Facilitation of exchanges of sensitive information among its members

Anticompetitive coordination that can take place among competitors is not only a consequence of the discussion and adoption of express agreements, negotiated directly by their participants. Participants in a cartel may seek to eliminate the need to discuss openly and directly with each other about the relevant aspects of an anticompetitive agreement and thus reduce possible scrutiny by the competition authority.

To this end, it is possible for the participants in these offenses to resort to indirect mechanisms for the exchange of sensitive information in order to eliminate the uncertainty inherent in the competitive process, and thus promote or facilitate an anticompetitive interaction among them. In other words, once competitors are aware of the decisions and strategies that their competitors will develop (e.g. increases in their prices, customer selection and contracting conditions), they can adjust their own choices and strategies to avoid competing with each other, and they can also monitor the development or “compliance” of their competitors’ announcements, and organize themselves as a cartel without needing to establish a permanent communication channel. As pointed out, even if not illegal in itself, exchanging sensitive information may promote, facilitate or support cartel behavior. Instead, when the exchange doesn’t involve sensitive information, there are no specific risks of infringing the Competition Act.

As highlighted in the definition of “sensitive information” in the section 1.7 of these Guidelines, the sensitive nature of certain information results from its characteristics and the characteristics of markets associated to the exchange. Taking into consideration these particular circumstances, the sensitive information that generally promotes or facilitates the formation of cartels usually relates to the following<sup>8</sup>:

- The announcement of immediate or future prices.
- The announcement of volumes to be produced imported or marketed.
- Disclosure of cost structures.
- Disclosure of customer lists.
- Disclosure of business strategies, expansion plans, investment or contracting with the public sector.
- Disclosure of trading and contracting terms, including discounts and payment terms.

On the other hand, during the analysis and distribution of information relevant to their members, associations usually require from them data on their business performance, future plans, expectations of the sector and other information of commercial or strategic nature, which may include sensitive information that may eventually be used to promote or facilitate the operation of a cartel.

### **Example of a legal information requirement<sup>9</sup>**

The Peruvian Association of Professional Obstetricians, in response to concerns raised by the health sector due to the low number of obstetricians in some regions of the country, has commissioned a health consultant firm to conduct a nationwide survey. The purpose of this survey is to learn about the conditions under which professional obstetricians provide their services in each region and to learn about the incentives and problems faced by them. The consultant will guarantee the confidentiality of the information provided and will only publish the data in an aggregate fashion in its final report.

<sup>8</sup> This enumeration is not exhaustive. Depending on the particular characteristics and practices of the sector concerned, there may be other types of information whose exchange has the purpose or effect of eliminating or reducing the competitive intensity among competitors, allowing agreements to be made and facilitating their monitoring.

<sup>9</sup> Unless otherwise indicated, the examples presented in these Guidelines are hypothetical and do not reflect any actual situation or event known by the Technical Secretariat.

### Example of a risky request for sensitive information

The Peruvian Chamber of Heavy Machinery Importers requires its members (which includes all participants in the sector) to report their plans to import heavy machinery of different kinds (trucks, excavators, tractors, etc.) for the following year, as it has been done in recent years. Although the objective of the requirement is allegedly statistical, the uniform increase in the prices of the machinery offered by the members and the importation decrease in comparison with previous years could be an indication of the adoption of strategies of limitation of imports facilitated by the publication of said reports.

## INDECOPI RECOMMENDS

According to the reasons stated, it is of high importance that associations ensure that, in carrying out their activities, their functional bodies and members comply with the following guidelines to reduce the risks of engaging in exchanges of sensitive information:

- **Sensitive information.** The association and its members must not require or exchange sensitive information or any other information that encourages or contributes to the formation of cartels or anticompetitive schemes. Associations should evaluate the possibility of substituting this information with historical, public, aggregated or other information that is not sensitive for antitrust purposes. In case of doubts about the sensitivity of the data, the association should ask for advice before requesting it from its members.

This recommendation does not apply to those scenarios where the exchange of information is legally mandatory or when it is within the scope of the supervision powers of the regulatory bodies for the purposes stipulated in the relevant legislation.

- **Historical information.** Whenever possible, the association should request, centralize and disseminate only historical data, that is, data on past actions by its members, and not on future strategies or conditions. The dissemination of historical information by the association should not be accompanied by other data or annotations that allow to predict the competitive strategies that its members will implement.
- **Aggregated information.** The association should seek to disseminate only information of an aggregated nature, that is, general information on the sector that does not individualize the behavior, performance or strategies of a particular competitor. Whenever possible, the description of the information to be delivered (e.g. size of companies, products or services offered, or their geographic location) should not identify any particular company.
- **Transparency.** The process of gathering, analyzing and disseminating information should, as far as possible, be reasoned, transparent and predictable. The functional bodies of the association, its members, their legal advisors and any interested party (including the authority, if a request is made), must be able to determine the purpose of the dissemination of information, the treatment that will be given to it and the type of results that are expected. It is recommended that the association approves a protocol on the processing of information received from its members that is compatible with the antitrust statutes, particularly on the manner in which information is requested or delivered, security measures in the chain of custody, confidentiality mechanisms during the processing of data and delivery of results, among others.

- **Volunteerism.** The association should prefer that provision of information by its members is carried out on a voluntary basis, i.e. free from sanctions, corrective measures or any other form of undue pressure by the association, its officers or other members.
- **Processing outsourcing.** Whenever possible, but particularly in instances where it is deemed necessary to require specific information that may have a sensitive nature, the collection, processing and dissemination activities should be entrusted to companies or entities independent of the association or its members. These companies must secure the confidentiality and protection of the information, and guarantee that the results of the processing of the information provided and its dissemination are not incompatible with the Competition Act. Although these measures are particularly effective to mitigate the risks of non-compliance with the law, the association can choose other mechanisms equally suitable for attaining this purpose (e.g., providing that the processing of the information could only be managed by staff of the association that don't have a relationship with the members, and that they will adopt enough confidentiality measures).

As noted, whenever possible, the implementation of these recommendations should be accompanied by specific advice, internal or external, on compliance with antitrust rules, taking into account the particular activities of the association and the characteristics of the sector. Likewise, associations and their members are encouraged to request general and orienting (non-binding) advice to the Technical Secretariat on the scope of the Competition Act.

### 2.3. Formulation of anticompetitive decisions or recommendations, including Codes of conduct

As has been pointed out, associations play the role of platforms to discuss common interests among their members, and also, through their governing bodies, they can centralize these interests, defend a position that represents their members and take specific actions to materialize the decisions or recommendations of these bodies, both within the association and vis-à-vis third parties.

Decisions or recommendations differ in the degree to which they are binding. While decisions are formally binding (by the statutes of the association or the conditions of their issuance), recommendations lack this compelling character, being of voluntary compliance by members.

However, for the Competition Act, both anticompetitive decisions and recommendations receive similar treatment, since both are capable of decisively influencing the behavior of the association members. Indeed, although members are not formally directed to follow the recommendations (i.e. they will not be subject to fines or loss of certain benefits), they comply with such recommendations because they benefit all the association members or because of the "moral" backlash they may be subject to if they refuse to comply.

#### Example of an anticompetitive decision

Announcement from the National Association of Vegetable Wholesalers: "The Board has determined that, from next month's first working day, the members of the Association will follow a list of minimum and maximum prices for the products included in the list here attached, under penalty of disciplinary sanctions in the event of non-compliance".

#### Example of an anticompetitive recommendation

Breaking news: "After evaluating the market conditions and, in particular, the increasing risks (accident rate) currently faced by its members, the Presidency of the National Personal Insurance Association suggests that, as of January 1, 2019, personal insurance policies of all categories will be increased by 10%".

Under the *per se* prohibition established in section 11.2 of the Competition Act, decisions or recommendations with the sole purpose of reducing or eliminating rivalry among members (or even with competitors outside the association) to the detriment of consumers will always be deemed illegal. Specifically, the authority will always consider unlawful those decisions or recommendations aimed at influencing the most relevant competitive variables for its members, such as:

- To increase, standardize or otherwise affect the prices of the goods its members produce, or the fees of the services they provide.
- To standardize other relevant conditions such as the benefits to be offered, the applicable discounts, terms and payment conditions, among others.
- To limit the amounts of goods members can offer in the market.
- To divide the market or markets among the members, distributing them by geographical areas, by suppliers, by customers, or by other similar criteria.
- To predetermine, condition or otherwise influence the bids and abstentions of members in public procurement processes.

**Example of a per se illegal decision:**

Following discussions among its members in the context of meetings called for this purpose, the National Association of Office Paper Producers has established a "role" indicating which members are "authorized" to participate in procurement processes or contracts with the country's various public entities. The Association expects to achieve "order" in the market, for the benefit of all its members.

Similarly, when associations acquire a certain relevance in their sector or incorporate all the participants in a market due to its own nature (e.g. professional associations), they can influence the way in which business activities are developed. As a matter of fact, these associations may recommend the adoption of business standards and practices (e.g. codes of conduct), generally aimed at ensuring the development of the industry more efficiently or ethically, that is, under a set of values generally accepted by the society<sup>10</sup>. These Codes are positive when they provide members with the knowledge and promotes respect for the laws and regulations applicable to the sector.



<sup>10</sup> Thus, for example, the Code of Ethics and Self-Regulation in Advertising, Marketing and Commercial Conduct signed in November 2017 by the manufacturers of alcoholic beverages belonging to the Guild of Importers and Traders of Wine, Liquors and other beverages of the Lima Chamber of Commerce – CCL and the Wine, Pisco and Beer Committees of the National Society of Industries - SNI, aimed at reinforcing the restrictions established by Law 28681, in particular regarding under-age access to alcoholic drinks advertising. Further information can be found in the following link: <https://bit.ly/33i7Xpe>



### Example of pro-competitive self-regulations:

The President of the Peruvian Packers Association announced the results of the roundtable aimed at recommending the use of a single measure (centimeters, inches, feet) for the service fees each member charges independently, based on the size and weight of each product to be packed. The objective of this regulation is to make it easier for customers to choose between the different offerings of the members, avoiding confusion as to the measures or volume of packaged products.

After an evaluation of this measure, the Technical Secretariat determined that the recommendation allows consumers to take decisions with better information because it enhances proper comparison of the prices offered by the different packers.

Occasionally, however, codes of conduct and the regulations issued by the associations may impose or recommend its members the adoption of conduct contrary to the Competition Act. In this scenario, professional associations and other associations may be exposed to sanctions for developing, disseminating and monitoring compliance with codes of conduct with anticompetitive objectives.

### Example of anticompetitive self-regulation:

The President of the Association of Professional Folk Dancers of Peru celebrated in a ceremony the publication of the new "Price List of the Peruvian Folk Dancer 2019". It provides prices according to criteria such as the time, length and type of event, the place where it is held, selected dates and ticket prices if applicable. As he explained, the List will solve the claims of various members on the differences in payments they receive for their services and will encourage greater appreciation for the work of the Professional Folk Dancer. The President remarked that compliance with the Price List is mandatory and penalties will be imposed to disobedient members.

An association could also promote potentially risky conduct prohibited by the Competition Act, which is based on alleged ethical or "dignity" reasons of the profession. For example, the prohibition of any type of advertising by its members<sup>11</sup>.

## INDECOPI RECOMMENDS

According to the reasons here stated, it is essential that, in the process of developing and issuing decisions and recommendations, associations respect the following guidelines to reduce risks of engaging in anticompetitive behavior:

- **Purpose.** The management of the association must analyze the purpose of the decision or recommendation to be discussed and issued, in order to verify that it complies with the Competition Act. In particular, if the primary objective of the decision involves a limitation of competition among members through an increase in the prices they charge or the standardization of other competitive variables, the division and distribution of markets or the rigging of bids or abstentions in public procurement processes, such decision or recommendation will be held always illegal, regardless of any other aim that may seem desirable or legitimate for the association.

<sup>11</sup> On the role of advertising for the promotion of competition, see pp. 51 to 53 of the Advocacy Report for the market of public notary services, approved by the Commission in December 2014, and available at: [https://www.indecopi.gob.pe/documents/20182/143803/ABOG\\_001\\_2014\\_ST\\_CLC.pdf](https://www.indecopi.gob.pe/documents/20182/143803/ABOG_001_2014_ST_CLC.pdf)

- **Volunteerism.** Considering that each member may have different interests and competitive strategies for their development in the market, whenever possible, associations should prefer to promote voluntary compliance with the guidelines they issue and that have an influence in the commercial behavior of its members<sup>12</sup>, instead of forcing compliance through fines and other pressure instruments. The adoption of such coercive mechanisms should only be a response to actions that are seriously incompatible with the legitimate objectives of the association or with the laws applicable to the sector.
- **Alternatives.** Before issuing a particular decision or recommendation, the bodies responsible for the association must analyze the existence of choices or alternative mechanisms that could be equally effective in guaranteeing the legitimate objectives of the association and that generate less risks of non-compliance with the Competition Act.

As noted before, whenever possible, the implementation of these recommendations should be accompanied by specific advice, internal or external, on compliance with antitrust rules, taking into account the particular activities of the association and the characteristics of the sector (see recommendation in the section 2.1.). Likewise, it should be pointed out that associations and their members are encouraged to request general and orienting (non-binding) advice to the Technical Secretariat on the scope of the Competition Act.



<sup>12</sup> The recommendation in these Guidelines about preferring a voluntary compliance with the recommendations or policies of an association doesn't reach to corporate behavior of members in fields other than the commercial. For example, associations may consider convenient assure compliance with anti-corruption rules and mechanisms in the sector, in line with various conventions and international recommendations (e.g. APEC, Anti-corruption Code of Conduct for Business, September 2007; OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1999). In these cases, mandatory compliance with the association's rules is not contrary to competition laws.

### III. PRACTICES OF ASSOCIATIONS THAT INCREASE THE RISKS OF MARKET EXCLUSION

Associations affect competition not only by diminishing rivalry among their members, or between them and other competitors in the market. Certain associations, those holding a particularly important position in the sector, may also disturb competition by unjustifiably promoting market foreclosure for the benefit of particular competitors at the expense of others.

In this regard, it is necessary to recognize that, generally, associations are free to establish their membership conditions and the conditions for businesses to access the services the association may offer, as long as those conditions don't infringe competition rules. In fact, when associations hold a particularly important position in the sector, denial of membership, the expulsion of a member or a discriminatory treatment in the access to the services they provide may affect significantly the capacity of businesses and professionals to compete in the market. Though these practices are not *per se* prohibited, they may be considered illegal when they generate a negative impact on competition and lack an acceptable justification (this means, they are subject to a relative prohibition).

The authority might consider that an association holds a particularly important position in the sector when, due to its high representativeness or the need of its members to access the services it offers, it has the capacity to restrict competition in the market where its members compete<sup>13</sup>.

Likewise, the authority might consider that a denial of membership, the exclusion of a member or a discriminatory treatment in the access to the services offered by the association lack justification when it can be proven that such actions have the main purpose or effect of excluding competitors without a valid commercial reason (e.g. the failure of an agent to meet his or her payments or other general conditions for becoming a member of the association or to access the services it offers), when they lack reasonability (e.g. when it exists obvious less harmful and more effective means to achieve the legitimate purpose pursued by these measures) or when they are contrary to the association's interests (e.g. the association has a significant decrease in its income after implementing the discriminatory treatment or exclusion with no apparent reason).

The following are instances of practices developed in the context of associations that can unjustifiably foreclose markets for one or more competitors, members or non-members of the association.

#### 3.1. Unjustifiably excluding certain competitors from joining or continuing in the association

A natural purpose of associations is to achieve a significant positioning in the market, because this can facilitate the development of their activities and the achievement of their legitimate objectives. Indeed, the growth of an association involves greater access to financing, economies of scale, access to relevant information, media and higher capacity to influence the performance of the sector.

However, the growth of an association can also present risks for competition when, using this positioning in an unjustified manner, it promotes differentiated treatment between members and non-members, or among different types of members. In these cases, the association serves as a platform to maintain or strengthen the positioning of some competitors at the expense of others without a valid reason or justification. When this type of practices involves significant risks for the free development of the competitive process, Indecopi can investigate and prosecute the association, its representatives and any member that may be liable for the conduct.

<sup>13</sup> As it can be inferred, this is quite a particular situation, as in general, companies don't require the access to an association or to the services it provides in order to develop effectively in the market.

Indeed, while a differentiated treatment among members and non-members, or among different types of members is not *per se* prohibited by the Competition Act, it could become an infringement when an association that holds a particularly important position in the sector imposes unjustified conditions and requirements for affiliation or exclusion of members, so that these requirements may constitute barriers to entry, insofar as they prevent specific competing agents from entering the affected market, benefiting some or all of its members and ultimately harming consumers.

**Example of a potentially unjustified requirement or condition:**

Under the Regulations for Affiliation to the Land Freight Companies Guild of Peru, the most important guild for the nationwide land transport sector (the only one that can import vehicles), as of next year only those freight companies that have a minimum fully paid-up capital of 25 million Peruvian soles will be allowed to join the Guild. Its representatives have pointed out that this requirement seeks to guarantee the eventual compensations to be assumed by members in future accidents. Some specialists have stressed, however, that the existence of insurance policies (obligatory or voluntary) are more suitable mechanisms for this purpose, and that this requirement would instead reflect the interest of some principal members to stop the growth of some smaller transport companies that have introduced more efficient and less polluting vehicles.

**INDECOPI RECOMMENDS**

Considering the concerns here explained, it is highly recommended that associations, especially those with a particularly important position in the sector, consider the following suggestions in determining the requirements, conditions or criteria for membership or exclusion of members:

- **Purpose.** The process of defining membership requirements and the situations that determine the imposition of disciplinary measures (in particular, expulsion), must fulfill a function compatible with the legitimate objectives of the association and with the Competition Act.
- **Objective criteria.** The requirements or conditions of membership and expulsion of members may not be arbitrary but must meet objective criteria and must be reasonable (that is, proportional to the intended purpose). Whenever possible and considering the fulfilment of its legitimate objectives, the association should prefer the establishment of requirements or conditions less onerous or restrictive to competition. Where the adoption of subjective criteria is indispensable (e.g. recommendations from established members), these should respond to legitimate interests of the association and should not facilitate or disguise an anticompetitive exclusion strategy.
- **Transparency and predictability.** The requirements or conditions of membership and expulsion (e.g. costs or fees, as well as disciplinary measures) should be known in advance by the members and be publicly available with the statutes or by-laws of the association. Moreover, any modification to these requirements or conditions must be timely informed to the members.
- **Equity.** The requirements or conditions of membership and expulsion should not establish unjustified differences among the interested parties. Accordingly, whenever possible, the requirements should be general and avoid producing privileged or discriminatory treatments that don't reflect the legitimate goals of the association.

- **Competitive Effects.** In defining the requirements or conditions of membership and expulsion of members, the association must consider the effects of such requirements on the market or sector in which they operate. Whenever possible, these conditions, as well as other rules established by the association, should be aimed at promoting the competitive performance of its members.

### 3.2. Unjustifiably denying or conditioning the provision of services to members and non-members

An association that holds a particularly important position may also promote barriers to entry or permanence in the market by unjustifiably denying the provision of certain services to members and non-members, as long as these services are critical for the competition in the sector and such denial lacks objective and reasonable criteria.

#### Example of a refusal to provide anticompetitive services:

The Commission imposed sanctions to an association that controlled a wholesaler market for having unreasonably denied access of a rice trader to the distribution services offered in that market. In its decision, the Commission considered the particular importance of that market for the wholesale distribution of rice in the capital city and the absence of a reasonable justification for the denial.

*Source: Decision 002-99-INDECOPI-CLC issued by the Commission*

## INDECOPI RECOMMENDS

Considering the concerns here explained, it is highly recommended that associations, especially those with a particularly important position in the sector, consider the following suggestions in determining the requirements, conditions or criteria for access to their services:

- **Purpose.** The definition of conditions for access to the provision of services to members and non-members (e.g. fees, requirements, preferences) must fulfill a function compatible with the legitimate objectives of the association and with the Competition Act.
- **Objective criteria.** The requirements or conditions for access to the provision of services to members and non-members cannot be arbitrary, must meet objective criteria and be reasonable (that is, proportional to the intended purpose). Where differentiated treatment between members and non-members is established, this must be justified (e.g. because of the nature of the service, the rights of established members, the disincentive to opportunistic behavior or *free riding*). In no case should these requirements facilitate or disguise an anticompetitive foreclosure strategy.
- **Transparency and predictability.** The requirements or conditions of access to the services provided by the association to members and non-members (e.g. fees or waiting times) should be known in advance by the interested parties. Any modification to these requirements or conditions must be timely informed.
- **Competitive effects.** In defining the conditions of access to the services provided by the association to members and non-members, the association must consider the impact of such decisions on the market or sector in which they operate. Whenever possible, these conditions, as well as other rules established by the association, should be aimed at promoting the competitive performance of the sector and, in particular, of the association members.

### 3.3. Imposition of technical standards

This last section addresses certain recommendations that, although having the purpose to achieve the standardization of technical criteria in the provision of products and services, can also have a negative impact in the competitive intensity among the members of an association that observe those standards.

It is worth noting that the technical standards mentioned in this section are different from those demanded by a sectoral authority in the exercise of its supervisory powers and whose compliance is mandatory according to the pertinent statutes<sup>14</sup>. Nor is it forbidden for associations to request the authorities to approve standards or technical requirements by legitimate means (i.e. the exercise of their right to petition). On the contrary, this section refers to those technical standards that, without being mandatory, are adopted or required by an association that, due to its particularly important position in the sector, can significantly affect competition in the market where its members develop their activities.

Associations may have justified reasons for promoting the standardization of specific practices of their members, aimed at ensuring quality or generally accepted characteristics of the products or services offered by them. In fact, under certain conditions, technical standards reduce consumer information asymmetry and search costs, producing efficiency in market transactions. For this reason, demanding respect for certain technical standards generally accepted by the industry is not forbidden in itself. However, it is possible that, by promoting the adoption of specific standards, associations may cause an unjustified restrictive effect on the market which may not be justified (e.g. because the standard generates the expulsion of certain competitors from the market or prevents the entry of new firms). In these cases, the authority may evaluate the impact of these restrictions under the Competition Act.

#### **Example of the imposition of a potentially unjustified technical standard:**

The National Association of Peruvian Producers of Hen Egg, the largest in this sector, is imposing to its members the "Technical Standard of the Peruvian Hen Egg", which aims at determining the minimum characteristics of weight, size, color and diameter that must respect a product to be considered an "egg". It is stated that this measure was motivated by several complaints about instances of illness by salmonella, bacteria present in some hen eggs. However, among the characteristics established in the standard, only "brown" eggs can receive the "egg" denomination.

As a result, Indecopi has just received a complaint signed by a group of small producers of white eggs from a central region of the country. According to the complaint, if approved, the technical rule will only benefit the large producers in the coast, because the coastal area is the only place in the country where hens that lay brown eggs can be reared. Moreover, they pointed out that the quality of the eggs relates to criteria other than color, and attached a technical report from specialists in the subject. Finally, they indicated that the principal source of egg demand are supermarkets and wholesalers, who request the products to comply with the technical standards of the Association and to use its collective mark. In practice, this means that they will no longer have access to those distribution channels under the denomination of "egg" and that the standard would force them to create an alternative denomination, contrary to the demand and the final consumers' expectations.

In order to determine the legality of this type of actions, the authority will analyze whether they involve, introduce or promote significant restrictions on competition and if so, will verify whether the reasons for their implementation offset these restrictions more efficiently in business relations or sector performance.

<sup>14</sup> It is worth mentioning that, according to Section 3 of the Competition Act, the Commission can't find antitrust liability in those conducts that are mandatory under applicable law.

## INDECOPI RECOMMENDS

Considering the concerns here explained, it is highly recommended that associations, especially those with a particularly important position in the sector, consider the following suggestions in promoting or requiring the adoption of technical standards to its members:

- **Purpose.** The definition of technical standards shall be compatible with the legitimate objectives of the association or the sector, and with the Competition Act.
- **Objective criteria.** The definitions, process or requirements demanded by the technical standards must reflect objective and reasonable criteria, coherent with the purpose that its approval pursues. In no case the standard shall unjustifiably exclude certain competitors to benefit others.
- **Transparency and predictability.** The process of approving technical standards to be required to members should be public, the purpose of its approval and the requirements that it establishes should be understandable and predictable, and it should allow, before its definitive approval, an open discussion about its need.
- **Competitive effects.** In defining the technical standards to be demanded to their members, associations must consider the effects of those decisions on the market or the sector in which they develop their activities. Whenever possible, the requirements that the standards introduce must be strictly oriented to promote the competitive performance of the sector and, particularly, of the association members.

As pointed out, whenever possible, the implementation of these recommendations should be accompanied by specific advice, internal or external, on compliance with antitrust rules, taking into account the particular activities of the associations and the characteristics of the sector (see recommendations in the section 2.1.). Similarly, it should be reminded that associations and their members are encouraged to request general and orienting (non-binding) advice to the Technical Secretariat on the scope of the Competition Act.









## IV. RECOMMENDATIONS

The recommendations set out in these Guidelines are summarized below for associations and for their members.

### 4.1. Recommendations to Associations

- i. Know, adopt and disseminate the free competition rules.** Your officials and governing bodies or representatives must know the principles, rules and prohibitions established in the Competition Act. It is also recommended that you disseminate these rules among your members to reduce risks of non-compliance. The decisions and regulations issued by the association and its bodies must recognize objectives compatible with the Competition Act.
- ii. Do not promote, adopt or impose actions that are harmful to competition.** Make sure none of your association's activities infringes the recommendations in these Guidelines or other provisions established in the Competition Act. In particular, do not promote meetings or contacts among members that have the purpose or effect of restricting competition, raising prices, restraining production, dividing markets or determining bids or abstentions in public procurement. Do not require, process or publicize sensitive information. If in doubt, consult your advisor or officer in charge of compliance with the Competition Act.
- iii. Appoint a Compliance Advisor or Officer.** Designate an internal or external adviser or professional with knowledge about Competition Law, or an officer responsible of ensuring compliance with the Competition Act, who will warn any risk of non-compliance, especially in those cases where the nature of the discussions or actions taken by the association demands more diligence. This advisor must have sufficient influence to ensure that main association actions conform to the antitrust regulatory framework.
- iv. Keep a reliable record of the association's activities.** It is essential to keep an accurate and updated record of all meetings of your members, of your association bodies, and of decisions and recommendations of the association, as well as the processes carried out in order to issue or amend regulations, market research activities or other similar projects, especially when it involves information that might be qualified as sensitive according to the criteria described in the "sensitive information" definition (section 1.7 of these Guidelines).
- v. Promote transparency and predictability in the association's actions.** Allow all members to know the rules of the association regarding access, permanence or loss of membership, as well as regarding the development of activities, meetings, services and regulations (including technical standards). Promote predictability in decision-making by your functioning bodies and avoid the adoption of unjustified, unnecessary or arbitrary decisions or regulations.
- vi. Promote the implementation of compliance programs for the association and antitrust compliance codes.** Disseminate the importance for your members to independently and continuously implement compliance programs aimed at eliminating risks of breaching the Competition Act. Establish and publicize minimum standards that guarantee that the interaction among your members does not involve a threat of non-compliance with antitrust laws.
- vii. Consult the authority.** In case of doubts about the legality of any action, decision or recommendation, before its adoption and implementation, the association is encouraged to formulate general, orienting and non-binding consultations to the Technical Secretariat on the scope of the Competition Act.

## 4.2. Recommendations to Association Members

- i. Train your representatives in compliance with the Competition Act.** Ensure that your representatives, particularly those who participate in discussions in the context of associations or have contact with competitors, are fully aware of the scope and the main rules in the Competition Act.
- ii. Implement an antitrust Compliance program.** Entrust a risk specialist the implementation and monitoring of antitrust compliance programs, and make sure to comply with her recommendations.
- iii. Define a compliance officer or specialized advisor.** Appoint an internal contact point, responsible for routinely monitoring compliance with the Competition Act, as well as an external advisor responsible for periodically reviewing and recommending the implementation of measures to minimize risks of non-compliance with these regulations.
- iv. Keep a record of incidences in meetings within the association and any other meeting with competing agents.** Establish as a business policy for members of your company that participate in association's meetings or have contact with competitors, in order to keep a record of any incidence that may have relevance from an antitrust perspective during such interactions. Consult your advisor or compliance officer if you have any questions about the development of these contacts.
- v. Do not request or submit sensitive information without an objective and legitimate reason.** Determine, in line with section II of these Guidelines, which competitive information is sensitive for you or your firm. Avoid requesting or submitting such information. Consult your advisor or compliance officer if you feel necessary to require or provide information that may have a sensitive nature.
- vi. Consult the authority.** In case of doubts about the legality of any action, decision or recommendation by the association you're a member of, any company or professional is encouraged to formulate general, orienting and non-binding consultations to the Technical Secretariat on the scope of the Competition Act.

## V. CONTACT THE AUTHORITY

In any of the following circumstances, as well as in others you may consider necessary, do not hesitate contacting the Technical Secretariat:

- You or your company are invited to participate in a meeting to discuss prices, production, customers or other sensitive information (prices, production plans, clients or otherwise).
- Although a meeting did not initially have such purpose, you or your company become aware of exchanges of sensitive information (prices, production, clients or otherwise).
- You or your company are requested by an association to provide sensitive information, or the association sends you, by any means, information that may influence the decisions of your company or other members about prices, production or customers or other sensitive information.
- You or your company become aware of decisions or recommendations issued by an association that have the purpose or effect of influencing the prices, production or competitive behavior of its members.
- You or your company take notice of undergoing or potential changes in the membership rules to access the association or in the sanctioning procedures where expulsion of members may be unjustified or unreasonable.
- You or your company become aware of the implementation of discriminatory or unfavorable treatment by an association, which puts some members in disadvantage to others, or which establishes conditions that prevent certain members or non-members from operating effectively in the sector.
- Any other action by an association or one or more of its members that may restrain competition in the market or sector in which they operate.

It is worth noting that you can report the existence of an illegal practice, even, anonymously. The technical Secretariat is able to protect the confidentiality of your identity.<sup>15</sup>

### **Contact Information**

#### **Technical Secretariat of the Commission for the Defense of Free Competition**

**Address:** Calle de la Prosa 104, San Borja, Lima 41, Peru.

**Phone:** +511 2247800, Extension 3101

**Email:** st.clc@Indecopi.gob.pe

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<sup>15</sup> Moreover, it is worth mentioning that, under Section 26-B of the Competition Act, the Technical Secretariat can grant economic rewards to those natural persons that did not participate in an antitrust infringement but are able to provide key information to detect, investigate and punish cartels.

## CHECK-LIST: MAIN RECOMMENDATIONS

### DO

Know and disseminate in your organization the importance of complying with the Competition Act. Moreover, consider the possibility of implementing an Antitrust Compliance Program.

### DON'T

Adopt, promote or facilitate conducts that generate risks of infringing the Competition Act, particularly, those whose goal or direct effect is to eliminate the rivalry between competitors or exclude third parties without justification.

### DO

Actively participate in meetings and activities of your association that aim at promoting the legitimate interests of the sector.

### DON'T

Participate of activities of your association that seek to coordinate your decisions on prices, clients or markets with your competitors.

### DO

Keep a reliable and updated record, by any suitable mean, about the incidents in the meetings held by the association.

### DON'T

Impede the association or its members to register, by any suitable mean, incidents in the meetings called by the association they may deem relevant.

### DO

Define what information is sensitive for your organization, with the purpose to guarantee its adequate treatment and confidentiality.

### DON'T

Request, receive or transfer sensitive information to or from the association or its members, without following protocols aimed at eliminating risks of breaching the Competition Act.

### DO

Promote that membership requirements to access the association and its services, as well as the decisions or recommendations that it adopts, respect objective, transparent and reasonable criteria.

### DON'T

Promote membership requirements to access the association or the services it provides, as well as decisions or recommendations whose effect is to restraint competition in the sector without justification.

### DO

Communicate the authority any action of the association or its members that might be contrary to the Competition Act.

### DON'T

Hide, destroy or alter information that might reveal the existence of an illegal practice by the association or its members.

## ANNEX:

### Decisions by Indecopi on the participation of associations in conduct prohibited under Peruvian antitrust laws

- 1. Decision 006-93-INDECOPI/CLC.** The Commission approved the commitment proposed by the Asociación de Grifos y Estaciones de Servicio de Perú - AGESP (Association of Service Stations of Peru), by means of which they committed not to promote price agreements among its members.
- 2. Decision 015-93-INDECOPI/CLC.** The Commission found that the Federación de Choferes del Perú - FECHOP (Drivers Federation of Peru), the Central de Empresas de Transporte Urbano de Lima y Callao - CETU (Central of Urban Transport Companies of Lima and Callao), the Asociación de Empresas de Transporte Urbano de Lima y Callao - ASETUP (Association of Urban Transport Companies of Lima and Callao) and their presidents, through decisions and recommendations, concerted the prices of the urban passenger transport service in Lima and Callao cities. The prosecuted associations signed and published a price list to be complied by their members.
- 3. Decision 021-94-INDECOPI/CLC.** The Commission accepted the commitment proposed by the Asociación de Grifos y Estaciones de Servicio de Arequipa - AGESA (Association of Service Stations of Arequipa), by means of which they committed not to promote price agreements among its members.
- 4. Decision 029-94-INDECOPI/CLC.** The Commission found that the Asociación de Industriales Panificadores y Similares de Arequipa (Association of Bakeries and Similar of Arequipa), through its president, incurred in an anticompetitive practice, by releasing press statements publicly announcing the standardized prices that their members should charge for the bread they sell.
- 5. Decision 015-95-CLC-INDECOPI/CLC.** The Commission found that the Asociación Peruana de Autores y Compositores - APDAYC (Peruvian Association of Authors and Composers) and the Sociedad Peruana de Autores y Compositores - SPAC (Peruvian Society of Authors and Composers) incurred in price-fixing agreements and abuse of a dominant position, by imposing discriminatory conditions among users for the music rights they represented and imposing the obligation to hire 100% of the protected repertoire, regardless of any specific request. This ruling was confirmed by the Tribunal by means of Decision 592-1996/TDC-INDECOPI.
- 6. Decision 033-95-INDECOPI/CLC.** The Commission approved the commitment proposed by the Asociación de Industriales en Panadería (Association of Bakery Industrial Companies). The association released a series of statements in the main newspapers of Lima and on various television channels through a representative, suggesting an increase in bread prices. Accordingly, the association committed not to formulate any further recommendations and to inform its members that they are free to determine their prices independently.
- 7. Decision 068-96-INDECOPI-CLC.** The Commission imposed sanctions to the Colegio Químico Farmacéutico del Perú (Professional Association of Pharmaceutical Chemists of Peru) for engaging in anticompetitive decisions to determine the minimum wage for pharmaceutical chemists (under penalty in case of non-compliance). This ruling was confirmed by the Tribunal by means of Decision 229-1997/TDC-INDECOPI.
- 8. Decision 074-96-INDECOPI-CLC.** The Commission approved the commitment proposed by the Asociación de Panificadores de la Provincia de Barranca (Association of Bakeries of the Province of Barranca), after promoting bakeries in Barranca province to agree on the prices of bread they sell.

- 9. Decision 001-97-INDECOPI-CLC.** The Commission imposed sanctions to the Asociación Peruana de Avicultura – APA (Peruvian Poultry Farming Association) for its decisive role in the agreement to fix prices and production volumes of live chicken commercialized in Metropolitan Lima and Callao cities. The association coordinated the development of measures to reduce production and the exchange of sensitive information among its members, and also promoted and financed measures to slaughter and freeze poultry, and organized the meetings where these agreements were adopted. This ruling was confirmed by the Tribunal by means of Decision 276-1997/TDC-INDECOPI.
- 10. Decision 24-97-INDECOPI/CLC.** The Commission approved the commitment proposed by the Asociación de Panaderos Pequeñas Empresas «Las Tres Rosas» (Association of Small Bakers «The Three Roses») of Yungay province. The association promoted an agreement, in a member assembly, to increase the price of bread they sell in this region.
- 11. Decision 012-98-INDECOPI/CLC.** The Commission found that the Colegio de Abogados de Loreto (Loreto City Bar Association), incurred in an anticompetitive practice, by forcing the acquisition of insurance provided by the Association itself, under penalty of disbaring members in case of non-compliance, affecting the lawyers of this region and their respective clients.
- 12. Decision 002-99-INDECOPI/CLC.** The Commission imposed sanctions to the Asociación de Productores Agrícolas del Mercado de Santa Anita – APAMSA (Association of Agricultural Producers of Santa Anita district Market), for having unreasonably denied access of a rice trader to the Santa Anita wholesale market. In this decision, it was considered that the Santa Anita Market had an especially important position for the wholesale distribution of rice, and that the refusal lacked a reasonable justification. This ruling was confirmed by the Tribunal by means of Decision 216-1999/TDC-INDECOPI.
- 13. Decision 002-2000-INDECOPI/CLC.** The Commission approved the commitment proposed by the Asociación de Mototaxistas de Huanta (Motorcycle-taxi Drivers Association of Huanta). The association promoted an increase in its members' prices. The association then committed to void the agreement and to refrain from adopting any other conduct that could have a similar effect.
- 14. Decision 0224-2003/TDC-INDECOPI.** The Tribunal imposed sanctions to the Asociación Peruana de Empresas de Seguros - APESEG (Peruvian Association of Insurance Companies) for its participation in the agreement among its members on premiums for the Seguro Obligatorio de Accidentes de Tránsito – SOAT (Mandatory Traffic Accident Insurance) between December 2001 and April 2002.
- 15. Decision 366-2003/TDC-INDECOPI.** The Tribunal imposed sanctions to the Colegio de Notarios de Lima (Public Notaries Association of Lima) for signing an "Inter-Institutional Cooperation Agreement" inviting its members to participate in the establishment of a Single Preferential Cost of Formalization, recommending the amount to be charged for the provision of certain notary services.
- 16. Decision 009-2008-INDECOPI/CLC.** The Commission imposed sanctions to the Asociación Peruana de Empresas de Seguros - APESEG (Peruvian Association of Insurance Companies) for its participation in an agreement among its members on minimum premiums and deductibles for car insurance, acting as a platform in the adoption, implementation and supervision of this agreement. This ruling was confirmed by the Tribunal by means of Decision 1042-2013/SC1-INDECOPI.
- 17. Decision 085-2009/CLC-INDECOPI.** The Commission imposed sanctions to the Asociación de Empresas de Transporte Urbano de Pasajeros - ASETUP (Association of Urban Passenger Transport Companies) for developing anticompetitive recommendations, announcing in the media, through its president, the dates and amounts of an increase in the prices of the passenger transport service in Metropolitan Lima and Callao city. This ruling was confirmed by the Tribunal by means of Decision 3240-2010/SC1-INDECOPI.

- 18. Decision 069-2010/CLC-INDECOPI.** The Commission imposed sanctions to the Central Regional de Transporte Público de Pasajeros, Zona Sierra – Ancash (Regional Central of Public Passenger Transport, Highlands Zone - Ancash), for developing anticompetitive recommendations intended to fix the prices of the passenger transport service for individual and shared taxi, in the city of Huaraz. This ruling was confirmed by the Tribunal by means of Decision 756-2013/SC1-INDECOPI.
- 19. Decision 055-2011/CLC-INDECOPI.** The Commission imposed sanctions to the Unión de Transportistas de Carga, Región Ancash - Zona Sierra (Union of Freight Carriers, Highlands Zone - Ancash), for having participated in the realization of an agreement aimed at limiting the offer of freight transport service, that have as origin or destination the Callejón de Huaylas area, determining the number of vehicles that each carrier could operate in the market. This ruling was confirmed by the Tribunal by means of Decision 1117-2013/SC1-INDECOPI.
- 20. Decision 056-2011/CLC-INDECOPI.** The Commission imposed sanctions to the Unión de Transportistas de Carga – Región Ancash Zona Sierra (Union of Freight Carriers, Highlands Zone - Ancash), for having participated in the realization of an agreement to fix prices and allocate customers in the freight transport service on the routes that have as origin or destination the Callejón de Huaylas area, adopting for this purpose a customer allocation system among its members. This ruling was confirmed by the Tribunal by means of Decision 2424-2013/SC1-INDECOPI.
- 21. Decision 017-2013/CLC-INDECOPI.** The Commission imposed sanctions to the Asociación Regional de Transportistas Interprovinciales en Camionetas Rurales – ARETICAR (Regional Association of Inter-province Passenger Transport Companies) and the Asociación Unificada de Transportistas Interprovinciales en Camionetas Rurales – AUTICAR (Unified Association of Inter-province Passenger Transport Companies), for developing anticompetitive recommendations and actively promoting an agreement among their members to increase the tickets for the inter-provinces transport service in minibus vehicles and vans. ARETICAR even implemented a mechanism to monitor this agreement. This ruling was confirmed by the Tribunal by means of Decision 888-2014/SDC-INDECOPI.
- 22. Decision 029-2014/CLC-INDECOPI.** The Commission proved that the representatives of the Asociación de Transportistas del Sector Urbano (Urban Sector Association of Passenger Transport Companies) and of the Federación Regional de Transportistas, Choferes y Afines de Puno (Regional Federation of Passenger Transport Companies, Drivers and Similar of Puno Province) developed anticompetitive recommendations aimed at increasing the prices of urban, inter-province and inter-regional passenger transport service, having disseminated the exact amount and date of the increase in the media. This ruling was confirmed by the Tribunal by means of Decision 037-2017/SDC-INDECOPI.
- 23. Decision 002-2015 / CLC-INDECOPI.** The Commission proved that the president of the Central Regional de Transporte Urbano de La Libertad - CERTULL (Regional Urban Transport Central of La Libertad Province) incurred in anticompetitive recommendations by releasing press statements in the media aiming at increasing the price of passenger transport service in the city of Trujillo.
- 24. Decision 030-2015/CLC-INDECOPI.** The Commission proved the participation of the Asociación de Propietarios Industriales Panificadores de la Provincia de Piura – ASIPAN (Association of Industrial Bakery Owners of the Province of Piura), having called members and non-members to a meeting with the purpose to increase the price of bread in the province of Piura. This ruling was confirmed by the Tribunal by means of Decision 581-2016/SDC-INDECOPI.



- 25. Decision 075-2015 / CLC-INDECOPI.** The Commission imposed sanctions to the Colegio de Notarios de Lambayeque (Public Notaries Association of Lambayeque Province), for incurring anticompetitive decisions intended to force its members to provide the service of constitution, modification and cancellation of certain guarantee instruments only through certain processes and not others that were less onerous to customers. This ruling was confirmed by the Tribunal by means of Decision 126-2018/SDC-INDECOPI.
- 26. Decision 019-2016/CLC-INDECOPI.** The Commission proved that the Asociación de Centros Privados de Hemodiálisis - ADECEPRIH (Association of Hemodialysis Private Centers) played a decisive role in the agreement among various hemodialysis centers to standardize their bids to provide services requested by EsSalud (the Peruvian public health provider). Particularly, ADECEPRIH arranged meetings where members and non-members discussed these agreements, and established an active communication channel to coordinate the bids these companies presented in public procurement processes. This ruling was confirmed by the Tribunal by means of Decision 068-2018/SDC-INDECOPI.
- 27. Decision 103-2016/CLC-INDECOPI.** The Commission imposed sanctions to the Asociación Central de Productores de Mango del Valle San Lorenzo - ACEPROMANGO (Central Association of Mango Producers of San Lorenzo's Valley) for incurring anticompetitive recommendations, by releasing press statements and communications formulated by its representative in various media, aiming at increasing the price of "Kent" mango at the producer level in the valley of San Lorenzo, in the province of Piura.
- 28. Decision 099-2017/CLC-INDECOPI.** The Commission proved that the Asociación de Estaciones de Servicios Áncash Costa (Association of Service Stations of Coastal Áncash) served as a facilitating platform for the operation of a price-fixing cartel in the provision of vehicle Liquefied Petroleum Gas - LPG in Chimbote. The decision was appealed, and it's currently pending final ruling by the Tribunal.
- 29. Decision 508-2017/SDC-INDECOPI.** The Tribunal imposed sanctions to the Colegio de Ingenieros del Perú – CIP (Professional Engineers Association of Peru) and the Asociación Peruana de Consultoría – APC (Peruvian Consulting Association), for incurring in anticompetitive decisions, intended to increase the personnel costs of engineering consulting services, as well as other concepts in engineering services, in the context of public procurement processes carried out by Provías Nacional (a public body in charge of developing and maintaining of the Peruvian highway network). Non-compliance with these decisions was punished under the CIP Code of Ethics, that provided the imposition of penalties on its members, including their temporary suspension. This decision is currently under discussion before the judiciary.
- 30. Decision 049-2018/CLC-INDECOPI.** The Commission proved that the Asociación de Estaciones de Servicios Áncash Costa (Association of Service Stations of Coastal Áncash) served as a facilitating platform for the operation of a price-fixing cartel in the provision of vehicle diesel and gasohol liquid fuel market in Chimbote city. The decision was appealed, and it's currently pending final ruling by the Tribunal.

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