

Anti-cartel enforcement in Peru

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Index

I. Peruvian Leniency Programme

1. Background on leniency
2. The current Competition Act
3. Further enforcement improvements against cartels

II. Confidentiality

III. International cooperation

IV. Conclusion



I. Peruvian Leniency Programme



1. The former Competition Law

- **1996:** The Peruvian Leniency Programme was introduced through an amendment of the Competition Act (Legislative Decree 701 of 1991).

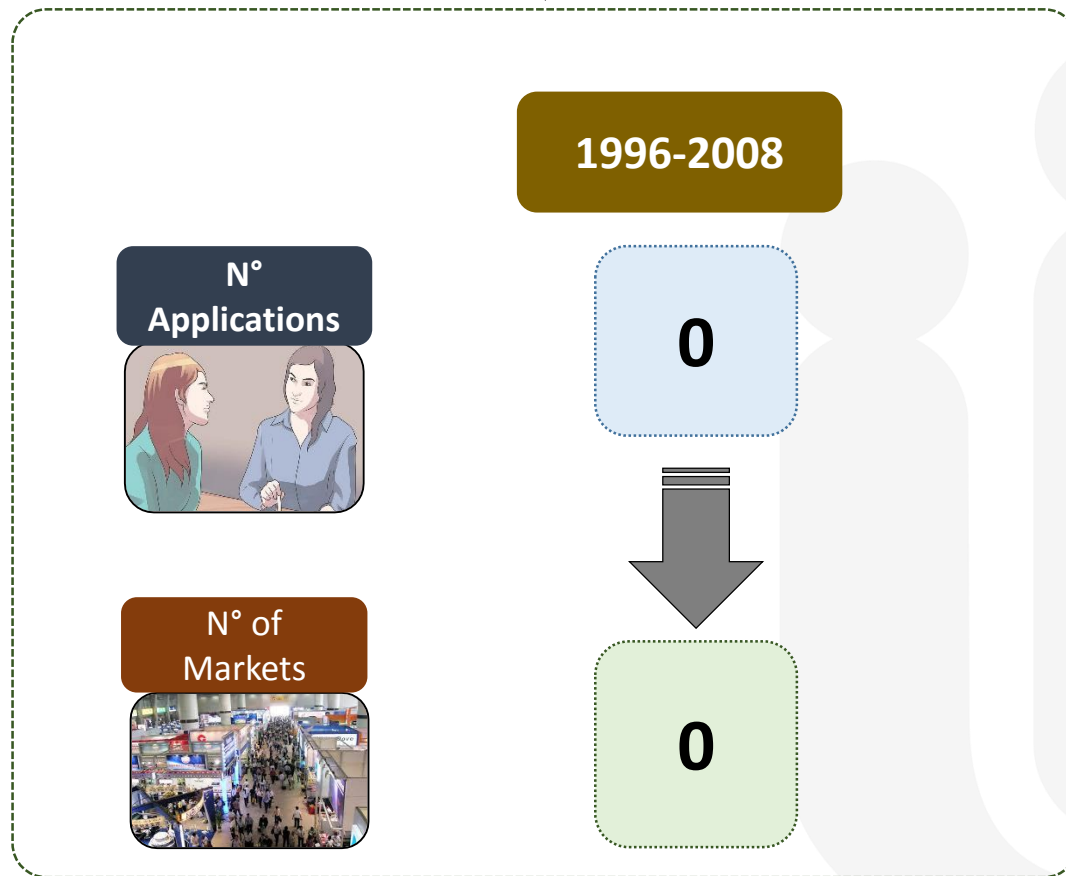
Main characteristics of the Peruvian Leniency Programme:

- Only the first undertaking coming forward could obtain full immunity in exchange of evidence.
- Confidentiality was not immediately granted after the application was filed. It was subject to analysis by the Competition Commission depending on the nature of the information provided.
- No possibility of fine reduction for the second or subsequent applicants.



2. Effectiveness of implementation

Peru: Applications of Exoneration of Sanction
(Leniency)



3. Main changes introduced to the law

- **2008:** A new Competition Act was passed, introducing some changes to this programme (Legislative Decree 1034):
 - Undertakings can obtain full or partial immunity if they are the first or second (or subsequent) applicants.
 - Confidentiality is no longer subject to approval by the Competition Commission. Officers have to keep the source of the information confidential.
 - The approval of exoneration from sanction does not remove nor limit civil liability if damages have been caused.



4. Peruvian Leniency Programme



STEP 1: The applicant should contact the Technical Secretariat. In that opportunity, the applicant will be informed about its priority order.

STEP 4: The Technical Secretariat assesses the applicant collaboration and recommends the definitive exoneration to the Competition Commission. The Competition Commission grants the definitive exoneration.



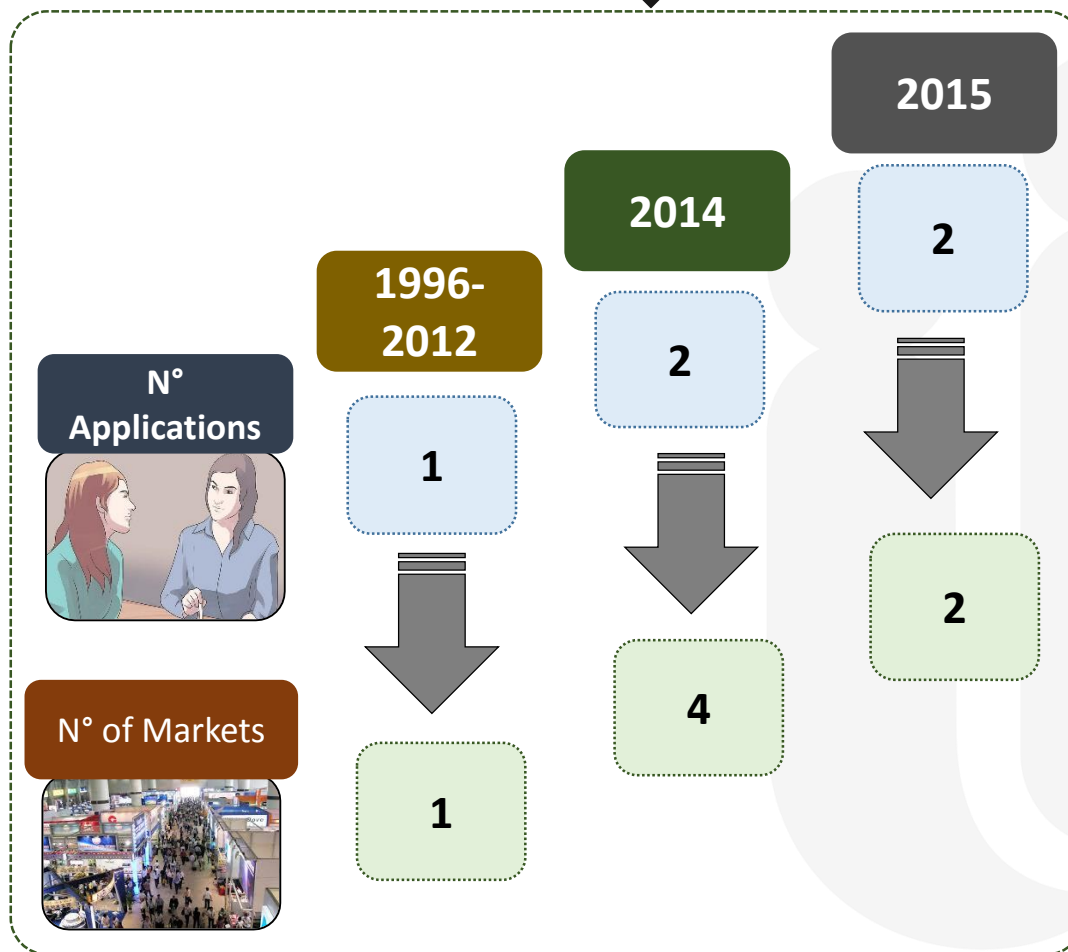
STEP 2: The applicant provides all the information about the cartel and signs a Commitment of Sanction Exoneration.

STEP 3: The applicant should collaborate with the Technical Secretariat along the investigation procedure in order to prove the illegal conduct. Its identity will remain confidential.



5. Effectiveness: Statistics of leniency

Diffusion of the programme, market growth, increase of the fines



6. Problems of the current law and diagnosis

- For the subsequent applicants, the Competition Act states that **evidence** should be relevant and different. What should be understood by “relevant and different”?
- What is the level of **reduction** of the fines? 20%?, 50%, 90%?
- Should the authority allow the access to the evidence provided by the applicant to those undertakings denounced as cartel members? Can the competition authority exchange information with other competition authorities?
- There is no **marker system** that reserves the position in the queue while the applicant gathers more evidence.
- In general, the **lack of predictability** of the current Competition Act may have discouraged several applicants because they do not know how the Technical Secretariat will execute its powers of negotiation.



7. Proposal Leniency Programme

Marker system

- The markers «book» temporarily the order of priority, allowing the applicant to complete his application.

Level of reduction of fines

- 30%-50% for the second applicant, 20%-30% for the third one, and 20% for the rest.

Standard of evidence for subsequent applicants

- The evidence provided should contribute significant added value to the procedure.

Discretion is removed

- Automatical approval of the applications by the Commission if the conditions are met.

No full immunity for coercion

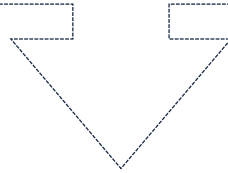
- Someone who has coerced others into execution of the conduct may not benefit from the full exemption of the penalty. Nevertheless, reduction of fines is permitted.

II. Confidentiality



Confidentiality

The Defense of Competition Chamber has established that the right of defense is a fundamental guarantee that must prevail, even against the confidentiality that could be granted to certain information



Proposal:

1

The information that constitutes incriminating evidence may not be declared or maintained as confidential in order to permit the defense of the defendants.

2

Allow the publication of the Technical Report and the Final Resolution of the Commission, once the latter is notified.



III. International cooperation



International cooperation

Currently in force

Requirements for international cooperation according to the Competition Act:

- 1 A previous international treaty
- and
- 2 Reciprocity

Proposal

- 1 A previous international treaty
- or
- 2 Inter-institutional agreement between Competition Authorities



IV. Conclusion



With the anti-cartel enforcement modifications, it is expected a significant increase of investigations.



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