

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy 2024 – Peru

Mario Zúñiga (Universidad de Lima) · Tuesday, January 28th, 2025

In comparison to [the year prior](#), 2024 may have seemed a quiet time for Peruvian competition law, but it was not without important developments. Heralded worldwide as the “year of elections,” 2024 brought changes to the Peruvian competition agency (the [National Institute for the Defense of Competition and the Protection of Intellectual Property](#), or INDECOPI, after its Spanish acronym). Karin Cáceres, originally appointed to replace Julián Palacín as the institution’s president in 2023, resigned in April. Appointed in her place was [Alberto Villanueva Eslava](#), a former member and president of the INDECOPI Court’s Specialized Chamber for Bankruptcy Proceedings. Villanueva has a more technical profile and more extensive knowledge of the institution, and his appointment was welcomed by several specialists.

Prior to Villanueva’s appointment, an institutional crisis at INDECOPI had become apparent in March, as [more than 49 appointments of commissioners and members to INDECOPI’s decision-making bodies](#) were still pending. This backlog was causing delays or preventing important decisions in pending cases. Before her departure, Cáceres managed to appoint 12 officials, with several appointments made over the course of the year. But many of the new appointees to the Commission for the Defense of Free Competition (the “Commission”) lacked substantial backgrounds as academics or practitioners in antitrust law. Moreover, INDECOPI has faced [budgetary restrictions](#) that have prevented both the Commission and the National Directorate of Investigation and Promotion of Free Competition (the “Directorate,” which acts as prosecutor in anticompetitive-behavior cases and also provides general support to the Commission) from being proactive in prosecuting anticompetitive conduct.

A noteworthy development was that the government in July [officially launched](#) the process of formulating the National Multisectoral Competition Policy. Broader in scope than antitrust law, the policy aims to facilitate the elimination of regulatory barriers—namely illegal or unnecessary rules that impose unreasonable costs—that prevent competition and bar new entrants across various markets.

### Merger Control

As we mentioned in our [2023 review](#), there were two important transactions under Phase 2 review, and we noted that it was “possible that we will see the first blocked merger” in Peru. The deals in

question were the acquisition of Enel's distribution assets by China Southern Power Grid International (HK) Co. (CSGI HK), and the acquisition of Agrícola del Chira S.A. by Agroaurora SAC (Grupo Gloria).

The first was **resolved** in February, when the agency authorized Enel's acquisition, with conditions. According to the decision, Enel Distribución is obliged to acquire energy from its affiliated companies exclusively through public-bidding processes, supervised by Osinergmin (the energy regulator), or through transparent and competitive public tenders. In either scenario, the call, bases, and results must be published and notified to INDECOPI in order to guarantee transparency and free competition. It is important to note that, despite the **pressure that arose from various sectors to block the acquisition due to geopolitical concerns**, the agency acted in accordance with its mandate—that is, prioritizing the protection of competition and consumer welfare, and not geopolitical concerns. We do not dismiss such concerns. Some geopolitical concerns are reasonable, although they should be addressed, if or when necessary, through specific foreign investment or national security regulation.

The Commission's primary concern was that the acquisition could lead to excessive market-power concentration in Peru's electricity sector, potentially resulting in higher electricity prices, degraded quality, and decreased investment in infrastructure. By acquiring Enel Distribución, China Southern Power Grid International could gain the ability and incentives to create barriers to entry for new competitors, and leave limited consumer choices. To mitigate these risks, the agency approved the acquisition with the aforementioned conditions.

Conversely, the second acquisition was **blocked** in July, as it was deemed to “significantly reduce competition in the sugar cane acquisition market in Peru.” The Commission found that the solutions proposed by Grupo Gloria were inadequate to alleviate the identified competition concerns. According to the Commission, the deal would lead to excessive concentration in the sugar-cane acquisition market, particularly in the Lambayeque region, where the company would hold a market share of more than 80%. Moreover, the product's homogeneity and limited competition in regions such as Piura heightened the risk of horizontal anti-competitive practices, such as price fixing in the wholesale-sugar market. Notably, Grupo Gloria did not appeal this decision.

In another important decision, the Commission in September **authorized**, with conditions, a joint venture between Kohlberg Kravis Roberts (KKR), Telefónica, and Entel to operate in the wholesale market for fiber-optic networks. The primary concern was the possibility that this level of concentration of the fiber-optic market would reduce competition in the wholesale access-network segment, which could result increased wholesale prices for internet-access services for other operators. This, in turn, could limit options for end consumers and make it difficult for new competitors to enter the market. To mitigate these risks, the Commission conditioned the deal on shortened terms of the agreement's noncompete and exclusivity provisions. Likewise, if the parties sign new wholesale-service contracts with exclusivity conditions, these must be promptly submitted to the Commission.

This agreement would have been important for a telecommunications industry under considerable financial stress. But despite obtaining INDECOPI's approval, the joint venture was ultimately abandoned, apparently due to a **breach of contract related to a parallel transaction between KKR and Telefónica**.

## Prosecuting Anti-Competitive Conduct: Cartels and Abuse of Dominant positions

The past year was relatively slow when it came to prosecuting anti-competitive conduct, particularly regarding cartels —historically, a priority for the Directorate. Only one case concluded with an indictment. In January, the Commission sanctioned a group of companies and individuals in Puerto Maldonado for fixing the price of bottled water. This anti-competitive practice, carried out between April and October 2021, consisted of a secret agreement between competitors to set artificially high prices for 20-liter containers.

The Directorate did, however, open a big case. A group of 15 pharmaceutical companies and five company executives were accused of bid-rigging practices in public-procurement procedures for the acquisition of medicines. The case alleges that these laboratories coordinated their proposals (and abstentions) in 23 selection processes, thereby affecting competition and distorting market conditions. The scheme consisted of distributed products among the agreement’s members and designating the winners of bid tenders in advance to avoid real competition. Among the products were antibacterials, antineoplastics, immunosuppressants, and anti-anemic agents.

The Directorate also issued the final version of its Guidelines for Joint Ventures in Public Procurement. The guidelines’ purpose is to provide guidance to both bidders and government-procurement bodies in order to protect competition in public tenders, without affecting the potential pro-consumer effects of joint bids.

In what constituted a severe setback in the prosecution of cartels, pursuant to a Supreme Court order, INDECOPI’s Competition Tribunal—which oversees antitrust cases as a second administrative instance—revoked Resolution 052-2012/CLC-INDECOPI. The resolution had held two labor unions and their representatives liable for a boycott cartel in the Port of Salaverry’s cargo-handling market. This original resolution had correctly interpreted the unions’ actions as horizontal collusive practices under the Antitrust Act (Legislative Decree 1034). A subsequent court order, however, determined that the acts did not fall within the subjective or objective scope of this regulation, due to “the very nature of unions.” It was therefore judged to be a labor dispute in which “competition rules are not applicable.”

The Supreme Court decision, alas, took a very formalistic approach to collusive boycotts, assuming that labor unions “do not compete” and therefore are not subject to antitrust laws. This ignores the economic reality that unions do compete with one another and that their members compete with other workers. As a result, the decision gives a “get out of jail free” card to unions for conduct that is beyond what is expressly authorized by labor regulations. In the case at hand, that meant not only fixing prices and allocating work time, but also physically impeding third parties from entering the port infrastructure. I have written with more detail about the case (in Spanish) [here](#).

INDECOPI also addressed issues of abuse of dominant position. In March 2024, the Court for the Defense of Competition and the Protection of Intellectual Property confirmed the decision in the Electro Dunas case, in which an electricity distributor was accused of abuse of dominant position for selectively applying the exemption from the one-year notice period to regulated users who migrated to the status of free users. According to both the Commission and the Tribunal, this discriminatory practice affected competition in the market, benefiting at least 58 users who chose to remain with Electro Dunas, while others who chose competitors had to comply with the notice

period. As a result, an illicit benefit derived from this conduct was established, which led to the imposition of a fine of S/ 748,054.83 (151.12 UIT). The resolution mentioned that the regulations do not distinguish between users who migrate to free status with the same distributor or with another, and that the exemption from the notice period was a key factor in attracting customers, thus constituting an anti-competitive infringement.

## Market Reports

In July 2024, INDECOPI conducted a [market study](#) on the Valuables Transportation Service in Peru, which revealed a highly concentrated market, dominated by a few companies that have established significant barriers to entry for new competitors. According to the study, this lack of competition has created an environment in which dominant companies can set higher prices, offer lower-quality services, and limit innovation. Faced with this situation, INDECOPI recommended measures to promote competition, such as simplifying regulatory requirements that facilitate the entry of new players to the market, promoting transparency through the publication of relevant information, and strengthening supervision to prevent anti-competitive practices.

In December, INDECOPI [announced](#) that the Commission would evaluate competition in the port services to be provided at the recently inaugurated Port of Chancay, one of the most important infrastructure projects inaugurated in Peru in recent years. The result of the evaluation will determine whether the sector regulator will be able to apply price regulation for the aforementioned services.

## What's Coming in 2025

Even if the institution's budgetary problems are not overcome, this coming year should see increased activity in the pursuit of cartels. The Directorate and the Commission have a reputation to uphold in this regard.

The Directorate has announced that it is preparing guidelines on remedies and conditions in merger operations, and it is expected that they will publish at least a draft for comments in 2025. Although the number of merger operations will probably decline, considering slow economic growth and the fact that 2026 is an election year (with the uncertainty that this entails), [merger activity is expected to be dynamic in the first semester of 2025](#), given that some mergers were not closed in 2024 and that some private-equity firms are looking to sell their investments. We can hope to have some interesting merger-control cases in 2025.

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